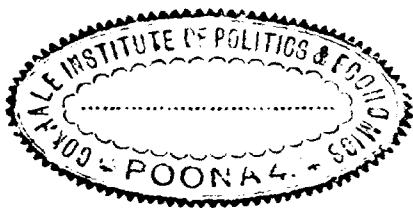


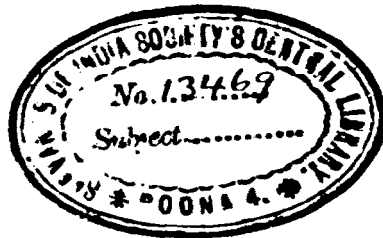
134-69



Dharamajivaram Gadgil Library



GIPE-PUNE-013469



THE  
BOMBAY  
VILLAGE PANCHAYATS ACT

(Bombay Act VI of 1933)

WITH  
ANNOTATIONS, & all Government Rules,  
Resolutions, notifications, tables,  
forms, circulars etc. etc.

By

**S. D. Joshi**, B. A. LL. B., Belgaum  
(author of "Concrete Studies in Criminal Procedure,  
Village Panchayats Act - Marathi and Kanarese Edns., etc.)

**Foreword**

By

**The Hon. Mr. A. B. Lathe**, M. A. LL. B.  
(Congress Finance Minister, 1937-39,  
Government of Bombay.)



**November 1941.**

Price Ra. 3-2-0

- Printed by - V. Y. Shahapurkar, at his  
MANOHAR PRINTING PRESS, Belgaum.
- Published by - V. S. Joshi, Belgaum.

( ALL RIGHTS RESERVED. )

## FOREWORD

By

**The Hon'ble Mr. A. B. Latthe, M. A. LL. B.**

**Congress Finance Minister 1937-39, Government of Bombay.**

Mr. Joshi deserves congratulation on his being able to place before the Public an English Edition of The Bombay Village Panchayats Act as amended by the Congress Ministry in 1939. He has already popularised his Marathi Edition of the Act and its Kanarese Version has been published for the benefit of the Kanarese Districts. Those two editions were meant for the use of villagers who were called upon to put the Act into effect in their own villages. The English version which is now being issued by Mr. Joshi is intended for the use of another class of people who will be entrusted with the duty of supervising the working of the panchayats, either as officials or as non-officials, who will be expected to guide their bretheren in the villages whenever questions of difficulty may crop up and necessitate expert advice. This difference in purpose, as well as the exeperience which Mr. Joshi obtained during the time when he was working on his Marathi and Kanarese versions, suggested to him certain changes and improvements which he has embodied in the book, I am now with great pleasure introducing to the English knowing Public.

The Village Panchayat Act had been in operation in our Province for several years before my friend the Hon'ble Mr. Patil, Minister Local-Self-Government, undertook to revise it. The experience of those years pointed out several

glaring defects. The number of panchayats established under that act was not great; nor did they work satisfactorily. In several villages, the Panchayats were the victims of village factions. Most people were either indifferent or opposed to the introduction of Panchayats in their villages. Even when a Panchayat was established the people concerned were extremely reluctant to levy or pay taxes, however moderate. The result was that in the limited number of villages which were persuaded to go through the lengthy and tedious procedure and to put up with the dilatory methods of the officers whose sanction was a condition precedent to the establishment of a Panchayat, the panchayats were either moriband or, if active, factions.

Still, the Ministry went into office with the firm conviction that it was necessary to carry the banner of democracy to the remotest corner of rural area. How was this to be done...? The existing panchayats were based on adult franchise. That was democratic enough. But as far as the experiment had gone democracy had failed. How then could one reasonably expect, the extension of a system which evoked no enthusiasm amongst the people concerned? The answer which the Ministry gave was based on the idea that the failure of the Panchayats was not the failure of rural democracy. And even assuming that it had failed for the time being and although it was possible that the failure may be repeated in the case of the new attempt which the amended Act was designed to make, the only way to make democracy successful in any area was to invest it with power and duties which the democracy valued, and leave it to gather its own experience and to learn the lessons of which experience was the most efficient teacher.

It is admitted on all hands that the Panchayats in our villages were as old as the hills. In spite of our castes and

communities they had worked well and had won the encomiums of competent observers. How was it that the very same villagers which had produced successful panchayats in the old days, could not now work the panchayats established by the British Government? The answer was that the work which the old successful panchayats did so well in olden times was such as created interest among the villagers. These Panchayats were essentially judicial bodies. The removal of this function from the jurisdiction of the panchayats, simply killed the soul of the Panchayat idea. If, therefore, one desires that the old panchayat spirit should be revived in India, the Panchayats must be restored to their old position by entrusting civil and criminal powers to deal with matters which *matter* in the life of the rural communities. For the first time, therefore, judicial functions were made an essential part of the duties to be performed. The greater the powers the keener will be the interest in the choice of persons to exercise them. Even if mistakes are committed in making the choice of the panch, as sometimes they will be, the harm which a bad Panchayat functioning as a court of Law may do, will be amply compensated for by the lessons which that harm will effectively teach those who may be responsible for the making of the bad choice.

Another point. It was only when the leaders of a village had enough go in them to approach the Revenue Officials that panchayats could be established. In many cases this meant—only such villages, as had the misfortune to be cursed with busy bodies who manouvered to be in the good books of petty officials, were chosen to enjoy the previledge of panchayats.



The experiment was tried in uncongenial and artificial surroundings. To judge aright, whether Indian Villages can work the Panchayat system it is necessary that the experiment should be made in surroundings which are congenial and on a scale which is sufficiently wide.

The amended Act seeks to remove the defects in the old panchayat system and to put it on its legs by creating the necessary surroundings in which the system may reasonably be expected to succeed. Better finances are provided for the panchayats. A Government appointed secretary is promised for executive work. Judicial work is entrusted to them. The Panchayats under the New Act would begin working in hundreds of villages. These are the main features of the amendments the Ministry has introduced in the Act and one may reasonably hope that the sad experience of the past will not now be repeated. The officials and the non-officials in the local bodies have now to discharge their duty with enthusiasm and if only they do so by studying the system embodied in the Act and by guiding their fellowmen in the villages in its working, I feel confident that we shall have amongst us within a short time, a complete net work of panchayats, in every village of our Province, giving new life, to the decaying life there.

*11, November, 1941.*

**A. B. Latthe**

## THE CALL OF OUR VILLAGES

Our eyes now are turned on our villages. Our life-blood comes from them. They feed and sustain us. They are our Mother India. But her condition is appalling. We have long neglected her, and she is almost dying now.

Could nothing be done? ...

We have been thinking of Village Improvement, Rural Development and so on. It was inevitable that this interest in villages should find expression in legislation about them, especially during the days when our province was ruled by the Congress Government, and the Village Panchayat Amendment Act was passed.

It is without doubt an important legislation. The amended Village Panchayats Act brings into existence 1400 Village Panchayats which mean so many Village Self-Government Centres radiating their influence through-out the Province.

How are these our Villages going to be administered? What are the promising features of Panchayat administration under the new act? How would the funds necessary for the improvement of sanitation etc. be raised in Villages? What is the method of taxation? What would be the cases which the village benches would be empowered to try? ...

The Village Panchayats Act -- Marathi Edition -- was first published in January 1941. It was intended to initiate the least sophisticated Villager in the administration of his village,

It was welcomed by almost every one interested in the administration. We beg to quote the Commissioner, Central Division, Poona. He wrote: "*I have requested the Collectors in my division to bring this publication to the notice of the village panchayats in their districts advising them to purchase the copies directly from you.*"

The present Edition of the Bombay Village Panchayats Act incorporates all the features of the Vernacular Editions (Marathi and Kanerese) which marked them out for recognition.

It is not a mere translation, however. The demands of the English Reader are certainly more complex. The Edition has been particularly planned to meet all these complex demands of the English Reader, the Government Officer, the Advocate, the Judge, the Magistrate ...

### **The Plan of the English Edition**

- 1 The amendments of 1939 have introduced many important changes in the Act. The previous state of law has been given and the reasons for the change indicated.
- 2 The analysis and ingredients of important sections are set out below the sections.
- 3 All the relevant sections of other enactments referred to in the Act are reproduced so as to render reference to other books unnecessary.
- 4 All the rules, notifications, circulars on the subject of village panchayats are included. Instead of relegating the rules and forms under the various Sections of the Act to the usually neglected last part of the book, they

are given just below the sections. It is hoped, this method of arrangement would better enable the understanding of the sections and the rules in the light of each other.

- 5 Almost every chapter begins with an introductory note and prepares the ground for the reception of the subject and concludes with a bird's eye view which fixes it in the mind.
- 6 The pages are given headings which bring out in bold relief the subject matter of the page.

Besides, there is the Honourable Mr. Latthe's introduction which gives the inside story of the attitude of Government responsible for the amendments of the Act.

The book has been very carefully printed. A variety of type has been used to bring out, at a glance, the varying emphasis on important ideas and words.

This edition is intended to deal as completely as possible with all the questions connected with the Panchayat administration in our Province. The Village Panchayats Act is modelled after the District Municipal Act & The District Local Boards Act. In all these Acts the underlying plan is the same. The Headings of the chapters and the phraseology of the sections further reveal the identity. No wonder. The Subject matter is the same - local self-government.

**S. D. Joshi.**

\* The reader would perhaps miss High Court Rulings in a book of this kind. The reason for the absence is that no cases whatever have been decided by the High Court.

# CONTENTS

|          | Page |
|----------|------|
| Preamble | 21   |

## CHAPTER I

### PRELIMINARY (23-27)

|               |       |
|---------------|-------|
| 1 Short Title | 23    |
| 2 Extent      | 24    |
| 3 Definitions | 24-27 |

## CHAPTER II

### Establishment & Constitution of Panchayats (28-76)

|   |       |
|---|-------|
| 4 Declaration of Village                      | 28    |
| ○ Declaration of Village ( Old Section )      | 29    |
| The Rules of Inquiry-before declaration:      |       |
| G. R. No. S. 174/8 of 7-5-40                  | 30    |
| Form A - B                                    | 32-33 |
| 5 Establishment of Panchayats                 | 34    |
| 6 Constitution of Panchayats                  | 34    |
| ○ Constitution of Panchayats ( Old Section )  | 35    |
| Principles Governing the reservation of Seats |       |
| under S. 6: G. R. No. S. 174/9 of 11-3-40     | 38    |

|    |   |      |     |       |
|----|---|------|-----|-------|
| 7  | Election  | ...  | ... | 40    |
|    | Election Rules: G. R. No. S. 174/3 of 6-6-40                            |      |     | 42-55 |
|    | Programme of Elections  |      | ... | 56-59 |
| 8  | Disqualifications   | ...  | ... | 59    |
| 9  | Collector to declare election invalid                                   |      | ... | 62    |
| 9A | Declaration, if disqualification is incurred                            |      | ... | 65    |
| 10 | Fresh Election or appointment, if election<br>or appointment invalid    |      | ... | 65    |
| 11 | Term of office of members   |      | ... | 66    |
| 12 | Commencement of term of office  |      | ... | 66    |
| 13 | Resignation of members  |      | ... | 66    |
| 14 | Election of sarpanch and deputy sarpanch                                |      | ... | 67    |
| 15 | Term of office of Sarpanch and Deputy<br>sarpanch                       | .... | ... | 67    |
| 16 | Sarpanch to carry on current duties<br>until his successor is appointed |      | ... | 67    |
| 17 | Election of sarpanch on establishment of<br>panchayat                   | ...  | ... | 67    |
| 18 | Resignation of sarpanch and deputy<br>sarpanch                          | ...  | ... | 68    |
| 19 | Time and place of sitting of panchayat<br>and procedure at meetings     |      | ... | 69    |
|    | By-laws: Procedure at meetings  |      | ... | 69-73 |
| 20 | Executive of panchayat  |      | ... | 73    |
| 21 | Removal from office   |      | ... | 73    |
| 22 | Leave of absence  | ...  | ... | 73    |
| 23 | Filling up of vacancies   |      | ... | 74    |
|    | Rules regarding notice under S. 23                                      |      |     |       |
|    | G. R. No. S. 174/1 of 18-12-34  |      | ... | 74    |

|    |  |       |
|----|--|-------|
| 24 | Vacancy not to affect proceedings of panchayat ... ..                  | 75    |
| 25 | Temporary provision pending establishment of panchayats under this Act | 75    |
|    | The establishment and constitution of panchayats : Review ...          | 75-76 |

## CHAPTER III

## Administrative powers and duties (77-81)

|    |   |    |
|----|---|----|
| 26 | Administrative powers and duties of panchayat ... ..  | 77 |
|    | The Indian Forest Act. S. 28: ...   | 78 |
| 27 | Powers of district local board to transfer maintenance of institutions and execution of other works ... | 80 |
| 28 | Other duties ... ..   | 80 |

## CHAPTER IV

## Incorporation of village panchayat: its property and fund 82-88

|    |  |       |
|----|--|-------|
| 29 | Incorporation of village panchayat             | 82    |
| 30 | Property of panchayat ... ..                   | 83    |
| 31 | Village fund ... ..                            | 83    |
| 32 | Application of village fund ... ..             | 85    |
|    | Government Resolution No. S. 174/1 of 18-12-34 | 85    |
|    | Village fund - Summary ... ..                  | 86-88 |

## CHAPTER V

|    |  |        |
|----|--|--------|
|    | <b>Establishment &amp; Accounts</b>  | 89-101 |
| 33 | Secretary of panchayat   | 89     |
|    | Rules regarding the powers, duties remuneration and conditions of service of the Secretary of panchayat appointed under S. 33.- G. R. No. S. 174/10 of 13-9-41 | 90     |
| 34 | Schedule of servants   | 92     |
| 35 | Appointment of servants  | 92     |
| 36 | Budget and accounts.   |        |
|    | Panchayat to convene a meeting of residents of village   | 92     |
|    | The village panchayat Budget and Accounts Rules, Forms etc. under S. 36- G. R. No. S. 174/6 of 2-1-35.   | 94-100 |
|    | The total forms prescribed   | 101    |

## CHAPTER VI

**Constitution and powers of village benches ( 102-136 )**

|     |  |         |
|-----|--|---------|
| 37  | Election of village bench                                    | 103     |
| 37A | Chairman of village bench                                    | 104     |
|     | The Village Benches Rules :<br>G. R. No. S. 174/11 14-8-40   | 105-117 |
| 37B | Judicial clerk of panchayat.                                 | 118     |
|     | Duties of the Judicial clerk :<br>G. R. No. S. 174/1 19-1-40 | 118     |
| 37C | Removal of a member from the village bench                   | 119     |



|    |   |     |         |
|----|---|-----|---------|
| 38 | Saving of pending proceedings   | ... | 119     |
| 39 | Suits triable by village bench  | ... | 120     |
| 40 | Suits not triable by village bench  | ... | 120     |
| 41 | Offences cognizable by village benches  |     | 121-128 |
| 42 | Certain persons accused of theft not to be tried by village bench                                 | ... | 129     |
| 43 | Offences by or against public servant not cognizable by village bench                             | ... | 129     |
| 44 | Conviction by a village bench not a previous conviction   | ... | 130     |
| 45 | Maximum penalties   | ... | 130     |
| 46 | Powers of Provincial Government to empower particular village bench to inflict enhanced penalties | ... | 130     |
| 47 | Compensation to complainants  | ... | 131     |
| 48 | Compensation to accused for false or frivolous case   | ... | 131     |
| 49 | Youthful offenders  | ... | 131     |
| 50 | Members interested not to sit on village bench  | ... | 132     |
| 51 | Res judicata and pending suits and cases  |     | 132     |
| 52 | Suits to include whole claim  | ... | 133     |
| 53 | Limitation for suits and cases  | ... | 133     |
| 54 | Village bench before which suits to be instituted   | ... | 133     |
| 55 | Village bench before which cases to be instituted   | ... | 133     |
| 56 | Return of complaints  | ... | 134     |
| 57 | Bar of jurisdiction of courts in suits and cases  | ... | 134     |

|     |  |     |     |
|-----|--|-----|-----|
| 58  | Bombay Act VIII of 1867, Ss. 14, 15 and 16 not to apply to village which has village bench | ... | 134 |
| 58A | Pending cases before village bench, when term of office has expired                        | ... | 135 |
|     | Constitution of village benches : Review   | ... | 135 |
|     | Powers of village benches : Review   | ... | 136 |

## CHAPTER VII

## Procedure of panchayats in suits and cases ( 136-150 )

|    |  |     |         |
|----|--|-----|---------|
| 59 | Suits and cases, how instituted                                  | ... | 138     |
| 60 | Substance of application to be recorded                          |     | 138     |
| 61 | Plaintiff or complainant to attend next sitting of village bench | ... | 138     |
| 62 | Summons to be issued to defendant or accused                     | ... | 138     |
| 63 | Summons by whom served   | ... | 139     |
| 64 | Mode of service of summons                                       | ... | 139     |
| 65 | Mode of service outside village                                  | ... | 140     |
| 66 | Exemption of certain persons from appearance in suits            | ... | 141     |
| 67 | Issue of summons to witnesses                                    | ... | 141     |
|    | Ss. 121 to 126: The Evidence Act                                 | ... | 142-144 |
| 68 | Pleaders, etc. excluded from appearance                          |     | 144     |
| 69 | Decision of suit or case on facts ascertained                    |     | 145     |
| 70 | Decision of the village bench                                    | ... | 145     |
| 71 | Adjournment  | ... | 146     |
| 72 | Disposal of suits and cases in absence of party concerned        | ... | 146     |

|    |  |     |     |     |
|----|--|-----|-----|-----|
| 73 | Compromise of suits and compounding<br>of cases                        | ... | ... | 147 |
| 74 | Death of parties   | ... | ... | 148 |
| 75 | Village bench not to revise or alter its decision                      |     |     | 148 |
| 76 | Interest and instalments   | ... | ... | 149 |
| 77 | Reference by village bench to District<br>Court or District Magistrate | ... | ... | 149 |
| 78 | Appeals  | ... | ... | 150 |
| 79 | Finality of decrees and orders   | ... | ... | 150 |
|    | New Era of Village justice:  |     |     |     |
|    | Hopes and Fears: Review  | ... | ... | 150 |

## CHAPTER VIII

## Execution (151-157)

|    |  |     |     |     |
|----|--|-----|-----|-----|
|    | Out line of the chapter  | ... | ... | 151 |
| 80 | Satisfaction or adjustment of decree to be<br>recorded         | ... | ... | 150 |
| 81 | Execution through Collector                                    | ... | ... | 151 |
| 82 | Execution of instalment decree through<br>Collector            | ... | ... | 153 |
| 83 | Satisfaction of decree or instalment<br>after certificate      | ... | ... | 154 |
| 84 | Fine and compensation when payable                             |     |     | 154 |
|    | Mode of recovery   | ... | ... | 154 |
| 85 | Fine or compensation when realised<br>to be recorded           | ... | ... | 155 |
| 86 | Payment of compensation out of<br>village fund                 | ... | ... | 155 |
| 87 | District Court or District Magistrate<br>may quash proceedings | ... | ... | 155 |

|     |  |     |
|-----|--|-----|
| 87A | Transfer of suit or case by the District court or District Magistrate ...  | 156 |
| 87B | Procedure in proceedings before District Court and District Magistrate ... | 157 |
| 88  | Bar to arrest & imprisonment in execution of decree ...                    | 157 |

## CHAPTER IX

## Taxation and Recovery of Claims (158-192)

|    |  |         |
|----|--|---------|
| 89 | Levy of taxes and fees by Panchayat  | 158     |
| A  | Rules re. the manner of taxation-S. 89. Govt. Notification No. S. 174/1 of 18-12-1934. ... | 160-163 |
| B  | Rules re. the levy of tax on owners or occupiers of houses and lands-S.89(1)               | 163-171 |
| C  | Rules for the levy of a tax on pilgrims-S. 89 (2) (ii) ...                                 | 172     |
| D  | Rules for the levy of a tax on fairs and festivals-S. 89 (2) (iii) ...                     | 173     |
| E  | Rules for the levy of a tax on the Sale of Goods-S. 89 (2) (iv) ...                        | 174     |
| F  | Rules for the levy of octroi-S. 89 (2) (v)   | 175     |
| G  | Rules for the lavy of a tax on marriages, adoptions, and feasts-S. 89 (2) (vi)             | 176     |
| H  | Rules for the lavy of Sanitary Cess- Govt. Notification No. S. 174 (1) (a) 1-4-36 ...      | 178     |
| 90 | Power of District Local Board to increase taxation of panchayat ...                        | 180     |
| 91 | Recovery of taxes and other dues ...   | 181     |

|   |         |
|---|---------|
| Form of "Writ of demand"—Government<br>Notification No. S. 174/12/1 of 3-1-40.  | 183-184 |
| The form of warrant, the method of<br>attachment, auction, and sale of the<br>defaulters moveable property—under S. 91 (3)  | 184-187 |
| Form of Warrant of Distress : Form A. ...   | 187     |
| Form of Inventory and Notice : Form B. ...  | 188     |
| Inventory: Government Notification<br>No. S. 174/12 (3) of 12-2-1940 ...  | 189-190 |
| The Remuneration of Village Officers for<br>the recovery of taxes and other sums<br>due to a Panchayat and the manner<br>in which the remuneration shall be<br>paid. — S. 91 (5)... G. Notification<br>No. S. 174/1 of 18-12-34 ... | 190     |
| 92 Collector's Power to direct irrecoverable<br>sums to be written off ...  | 192     |

## CHAPTER X

## Financial Assistance to Panchayats (192-194)

|  |     |
|--|-----|
| 93 Contributions and loans by District<br>Local Boards ...   | 192 |
| Rules re. the terms on which loans may be<br>granted to a panchayat by the D.L.B.:<br>G. Notification No. S. 174/1 of 18-12-34 | 193 |

## CHAPTER XI

## Control (194-207)

|  |     |
|--|-----|
| 94 Power to call for proceedings &c. ... | 195 |
|--|-----|

|      |   |        |     |
|------|---|--------|-----|
| 95   | Delegation of duties, appointment of officers, utilisation of honorary agencies, for encouraging the establishment and fostering the growth of panchayats       | ...    | 196 |
| 96   | Power of Entry  | ...    | 197 |
| 97   | Audit of accounts   | ...    | 197 |
| 98   | Reduction of Establishment  | ...    | 197 |
| 99   | Suspension of execution of order  | ...    | 198 |
| 100  | Execution of work in case of emergency  |        | 198 |
| 101  | Default in performance of duty  | ...    | 199 |
| 102  | Dissolution or supersession of panchayat for default  | ... .. | 200 |
| 103  | Dissolution and reconstitution of panchayat on alteration of limits of village  |        | 201 |
| 104  | Vesting of property etc. of Panchayat which has been dissolved in re-constituted or established panchayat   |        | 202 |
| 104A | Effect of area being excluded from village  |        | 203 |
| 105  | Effect of area ceasing to be a Village  |        | 204 |
| 106  | Effect of dissolution or supersession of panchayats or of withdrawal of judicial powers of Village Bench on Village Benches and proceedings pending before them | ... .. | 204 |
| 107  | Authority of Provincial Government  |        | 205 |
| 107A | Provincial Government may call for Proceedings  | ... .. | 206 |

## CHAPTER XII

## Rules and By-Laws (207-212)

|     |         |     |     |         |
|-----|---------|-----|-----|---------|
| 108 | Rules   | ... | ... | 207     |
| 109 | By-laws | ... | ... | 210-212 |

## CHAPTER XIII

## Miscellaneous (213-219)

|     |   |     |     |         |
|-----|---|-----|-----|---------|
| 110 | Liability of members for loss, waste<br>or misapplication   | ... | ... | 213     |
| 111 | Bar of action against panchayats,<br>Village Benches, etc., and previ-<br>ous notice before institution | ... | ... | 213     |
| 112 | Delegation of powers  | ... | ... | 214     |
| O   | Notification 561 District Judge, Ratnageri  |     |     | 216     |
| 113 | Local inquiry and reports by panchayat  | ... | ... | 216     |
| 114 | Members, etc., of panchayats or<br>village benches to be public servants                                | ... | ... | 216     |
| 115 | Repeal and Savings  | ... | ... | 217     |
| —   |   |     |     |         |
|     | Transitory Provisions—S. 50   | ... | ... | 219     |
|     | Savings ( amending act-IV-of-1940 )   | ... | ... | 220     |
|     | Index   | ... | ... | 221-225 |

---

## ENACTMENTS

### REFERRED TO IN THE VILLAGE PANCHAYATS ACT

---

|    |   |        |                    |
|----|---|--------|--------------------|
| 1  | Government of India Act 1935  | ...    | 21, 24             |
| 2  | Government of India Order   | ...    | 24, 25             |
| 3  | Bombay Local Boards Act, 1923 Ss. 3, 7,   |        | 25, 41             |
| 4  | Bombay Primary Education Act, 1923 S. 3 ...   |        | 27                 |
| 5  | Coperative Societies Act, 1912 (Central),<br>Bombay Coperative Societies Act, 1925                                      |        | 92                 |
| 6  | Bombay Village Panchayats Act, 1930<br>& 1933-Ss. 6   | ... .. | ... 22, 23, 24, 35 |
| 7  | Indian Forest Act S. 28   | ...    | 78                 |
| 8  | Bombay District Minicipal Act, -Ss. 3...  |        | 23, 83             |
| 9  | Indian Penal Code. Ss. 269, 277, 283,<br>323, 352, 358, 372, 447, 448,<br>461, 504.                                     | ... .. | ... 121, 122       |
| 10 | Cattle Trespass Act. S. 24  | ...    | 122                |
| 11 | Criminal Tribes Act, 1924. S. 4   | ...    | 129                |
| 12 | Code of Criminal Procedure. Ss. 109, 110  |        |                    |
| 13 | Bombay Village Police Act. Ss. 14,<br>15, 16 ( Provisions of these sect-<br>ions not to apply to Panchayat<br>Village ) | ... .. | ... 134            |
| 14 | Code of Civil Procedure. S. 133   | ...    | 141                |
| 15 | Indian Evidence Act. Ss. 121-126  | ...    | 142-144            |

---



## **CORRECTIONS**

**( Please make the following Corrections before reading )-**

- (1) For 174/6 1-1-1935 on page 118, line 6, Read 174/1 19-1-40.**
- (2) " 351 on page 121, line 28, Read 358.**
- (3) " 372 " " " " 31, " 378.**

**THE  
BOMBAY  
VILLAGE PANCHAYATS ACT  
1933**

---

**AMENDED BY**

- (1) Bom. Act 34 of 1935.
- (2) Bom. Act 24 of 1936.
- (3) Adapted and modified by the Adaptation of Indian Laws Order in Council.
- (4) Bom. Act. 18 of 1939.
- (5) Bom. Act 4 of 1940.

**An Act to amend and consolidate the law relating  
to the constitution of Village Panchayats.**

**PREAMBLE**

Whereas it is expedient to amend and consolidate the law relating to the constitution of village panchayats, with a view to fostering their growth and of increasing their utility in the further development of local self-government in rural areas and in the administration of civil and criminal justice; and whereas the previous sanction of the Governor General required by sub-section (3) of section 80A of the Government of India Act and of the Governor, required under section 80C of the said Act, have been obtained for the passing of this Act; It is hereby enacted as follows:—

The amending Act XVIII of 1939 introduced a number of important changes in the Bombay Village Panchayat Act 1933. It is a piece of Congress Legislation and bears the stamp of popular democratic Government.

The objects of the amending Act of 1939 have been thus stated in the Bill:

#### Statement of Objects and Reasons.

Although the law relating to panchayats was revised in 1933, experience has shown that the provisions of the present Act are not suitable for the development and growth of these bodies which are primary units of Local Self-Government.

The object of this Bill is to remove the difficulties which retard such development and growth and to democratise the constitution of the said bodies with a view to popularise them as far as possible.

The main changes proposed in the Bill are:—

- (1) The compulsory establishment of panchayats for every local area having a population of 2,000 or more, the Provincial Government having power to direct the establishment of a panchayat for any area having a population of *less* than 2,000;
- (2) The abolition of the system of nominations and *ex-officio* members and the constitution of panchayats consisting of elected members only;
- (3) The establishment of village benches for every panchayat for the purpose of exercising judicial powers;
- (4) The compulsory levy of house tax in village areas;
- (5) Providing for appeals and revision to District Courts and District Magistrates in cases decided by village benches.

**Statement of Objects in the Preamble.**

1. To foster the growth of village Panchayats,
2. To increase the utility of Village Panchayats in the further development of Local Self-Government in rural areas, and
3. To increase the utility of Village Panchayats in the administration of (a) Civil and (b) Criminal justice.

**Interpretation of the Act.**

By interpretation or construction is meant the process by which the courts seek to ascertain the meaning of the Legislature through the medium of the authoritative forms in which it is expressed.

It is always to be assumed that the legislature has said what it meant and meant what it has said. The preamble states the purpose of the Act and may, therefore, be drawn upon to clear up ambiguous expressions in the Act.

---

**CHAPTER I****PRELIMINARY**

1. **Short title**—This Act may be called the Bombay Village Panchayats Act, 1933.

**History of Village Panchayat Legislation in the  
Bombay Presidency :**

1. The first enactment on the subject was in the year 1920. This was the Bombay Village Panchayat Act of 1920. It was very limited in scope.

Its object was to give the inhabitants of certain small areas the opportunity of providing for the requirements of such areas in respect of water supply, sanitation and other works of public utility, with the object that they may be encouraged to take an interest in local self-government,

This Act was repealed by the Act of 1933.

2. The scope of the Bombay Village Panchayat Act of 1933 was widened so as to include the administration of civil and criminal justice in respect of certain matters. This was the intermediate stage.

3. The present stage in the history of the legislation was reached when the Act of 1933 was amended in 1939. These amendments introduced many changes. The Act of 1933, however, was not repealed, only the amendments were incorporated in it. The present Act in spite of the numerous amendments of 1939 is, therefore, still styled as the Bombay Village Panchayats Act 1933.

**2. Extent**—It extends to the whole of the Presidency of Bombay, except the City of Bombay.

**3. Definitions**—In this Act, unless there is anything repugnant in the subject or context—

(1) "Backward tribe" means a tribe specified in Part II of the Thirteenth Schedule to the Government of India (Provincial Legislative Assemblies) Order, 1936.

This clause has been inserted by the amendment of 1939.

Section 6 provides for the reservation of seats "for the representatives of Mahomedans, Harijans or Backward Tribes." Therefore, "Backward Tribes" and "Harijans" have been defined here. The definitions are similar to those in the District Local Boards and the Municipal Boroughs Acts.

Government of India Act 1935 is an enactment of the British Parliament. Government of India (Provincial Legislative Assemblies) Order 1936 may be described as an appendix of this Government of India Act.

The following tribes are Backward Tribes according to it:

- |            |                |                 |                 |
|------------|----------------|-----------------|-----------------|
| 1. Barda,  | 9. Gamit or    | 14. Naikda or   | 18. Poward,     |
| 2. Bavcha, | Gampta,        | Nayak,          | 19. Rathawa,    |
| 3. Bhil,   | 10. Kathodi or | 15. Pãrdhi      | 20. Tadvi Bhil, |
| 4. Chodra, | Katkari,       | including       | 21. Thakur,     |
| 5. Dhenka, | 11. Koukna,    | Advichincher or | 22. Valvai,     |
| 6. Dhodia, | 12. Koli       | PhasePardhi.    | 23. Varli,      |
| 7. Dubla,  | Mahadev,       | 16. Patelia,    | 24. Vasava.     |
| 8. Gond,   | 13. Mavchi,    | 17. Pomla,      |                 |

(1A) "by-laws" means by-laws made by the district local board under section 109;

(2) "case" means, with reference to any judicial proceedings, a criminal proceeding in respect of any offence triable by a village bench;

The word 'Case' is used in a restricted sense in this Act. 'Case' here means "a criminal proceeding".

(3) "Chairman" means the chairman of a village bench, appointed under section 37A.

(4) "district local board", used with reference to any local area, means a district local board established under the Bombay Local Boards Act, 1923, for the district in which such local area is situated;

(5) "Harijan" means a person belonging to any of the Scheduled Castes as defined in the Government of India (Scheduled Castes) Order, 1936.

The Scheduled Castes defined in the Government of India (Scheduled Castes) order, 1936 are:

1. Through-out the Province of Bombay: Asodi, Bakad, Bhambi, Bhangi, Chakravadyadasar, Chalawadi, Chambhar or Mochigar or Sangar, Chemadasru, Chuhar or Chuhra, Dakeleru, Dhcd, Dhegu Megri, Dhor Haleer, Halsar, Haslor or Halsav or Halya, Khalpa, Kolcha or Kolgha, Koli Dhor, Lingader, Madig or Mang, Mahar, Mang Garudi, Meghaval or Meghval, Mini Madig, Mukri, Nadin, Shenva or Shindava, Shingdov or Shingadya, Sochi, Timali, Turi, Vankar, Vilholia.

2. Throughout the Province except in the Ahmdabad, Kaira, Broach and Panch Mahals and Surat Districts: Mochi.

3. In the Kanara District: Kotegar.

(6) "offence" means any act or omission made punishable by any law for the time being in force;

(7) "panchayat" means a panchayat established under this Act;

(8) "prescribed" means prescribed by rules;

To "prescribe" is to lay down.

The rules are not *any* rules but those made by the Provincial Government under S. 108 of this Act. Vide the definition of rules under (10) below.

(9) "revenue village" means any local area which is recognised as a village in the revenue accounts;

(10) "rules" means rules made by the Provincial Government under section 108;

(11) "sarpanch" means a sarpanch elected under section 15;

The office of a 'Sarpanch' is different from that of a 'Chairman.'

(12) "school-board" means a school-board constituted under section 3 of the Bombay Primary Education Act, 1923;

(13) "suit" means a civil suit triable by a village bench under this Act;

(14) "tax" means a tax, cess, rate, or other impost leviable under this Act;

(15) the expression "the term of a panchayat" means the period for which the elected members thereof shall hold office under section 11;

(16) "village" means any local area declared to be a village under section 4;

The word 'Village' is not used here in its ordinary dictionary sense. It has a special meaning given to it here by the Act. It is different from "a Revenue Village" which is differently defined. Vide (9) above.

(17) "village bench" means a bench constituted under section 37 for the purpose of the trial of suits and cases.

---



## CHAPTER II

## ESTABLISHMENT AND CONSTITUTION OF PANCHAYATS

The Chapter deals with two questions. The first relates to 'The establishment of Panchayats', and the second to 'The Constitution of Panchayats'.

(I) Where, in which villages or groups of villages or hamlets would the Panchayats be established?

(II) How would the Panchayat be constituted? What is to be the number of members required for constituting a Panchayat? How many of them are to be Mohamadans and how many Harijans?

The amendments of 1939 have introduced important changes in dealing with both these questions.

1. Before the amendment, the establishment of Panchayats in villages with a population of 2000 or more was not compulsory; now, it is made compulsory.

2. Before the amendment, the Panchayats consisted of elected as well as nominated members; now, *all* the members of the Panchayat have to be elected.

**4. Declaration of village:—** (1) Whenever the Provincial Government after making such inquiry as may be prescribed, is satisfied that any local area comprising a revenue village or a group of revenue villages or hamlets forming part of a revenue village has a population of not less than 2,000, it shall, by notification in the *Official Gazette*, declare such local area to be a village:

Provided that the Provincial Government may, by notification in the *Official Gazette*, direct that any local area having a population of less than 2,000 shall be declared a village under this section.

(2) The Provincial Government may after consultation with the district local board by like notification at any time—

(a) include within any village or exclude from any village any local area or otherwise alter the limits of any village, or

(b) declare that any local area shall cease to be a village.

This section is entirely new. The old section stood thus :

○ **Declaration of village**—On a written application made—

(1) by the district local board with previous notice to the Collector,

(2) by the Collector with previous notice to the district local board, or

(3) by not less than twenty adult residents of any local area, the Commissioner may, after making such inquiry as may be prescribed, by notification in the *Bombay Government Gazette*, declare the local area in respect of which the application has been made to be a village, or to cease to be a village or declare that any area is included in or excluded from a village:

Provided that if there be a holder of any revenue village in any such area and if any such holder objects to a declaration being made including any such revenue village in any such area, the Commissioner shall not make a declaration with respect to such revenue village, but shall refer the objection of such holder to Government and thereupon Government after taking the objec-

tion into consideration shall, by notification in the *Bombay Government Gazette*, declare that such revenue village shall or shall not be included in the village.

There was considerable opposition in the Legislature to the amendment, embodied in this new section on behalf of Inamdars and others. The opposition was directed chiefly against the compulsory establishment of Panchayats. Government's views on the subject, particularly of compulsion, have been fully stated by the Honourable Mr. Lathe in his introduction. As Government intended to have Panchayats in as many villages as possible, the opposition did not succeed.

There is to be, first, an inquiry in the prescribed manner.

If the inquiry discloses that the population of a revenue village is 2000 or over, then, the Government shall declare such local area to be a "village" and in every village declared to be such under this section, there shall be a Panchayat. Government undertakes to shoulder the responsibilities of establishing a Panchayat in such local area.

The Honourable Minister for the Local Self Government stated in the Assembly "To begin with, each Panchayat may get a grant of Rs. 100."

### **The rules of inquiry prescribed in Section 4.**

#### **Government Resolution No. S. 174/8 of 7-6-40.**

1. Whenever it is proposed to declare any local area to be a village under sub-section (1) of section 4 of the Act, the Collector shall make an enquiry to ascertain the population and the extent of such local area and whether such local area comprises a revenue village or a group of revenue villages or hamlets forming part of a revenue village.

2. If the local area comprises a revenue village having a population of not less than 2000, the Collector shall submit to Government a statement in Form A hereto annexed through the Commissioner who shall forward it to Government with his remarks thereon. Vide Form A on P. 32.

3. If the local area comprises a revenue village having a population of less than 2000 or if the local area comprises a group of revenue villages or hamlets forming part of a revenue village, the Collector shall first obtain the views of the District Local Board concerned on the proposal to declare such local area to be a village. The Collector shall then submit to Government a statement in Form B hereto annexed through the Commissioner who shall forward it to Government with his remarks thereon. Vide P. 33.

In pursuance of this section and the rules under it, the Government of Bombay has, in the Official Gazette—the Bombay Government Gazette—published a list of villages, where panchayats would be established under this Act...This is Government Resolution No. 518/33 (A & B) of 19-3-40.

Over 1400 Panchayats would thus commence working in the Presidency according to this new Act. This would mean a net work of so many self governing units in the Presidency, the first fruits of the new Legislation.

1. There has to be (*shall*) a Panchayat in every village which has a population of 2000 or more.

2. There *may* be a Panchayat in Villages, which have a population of less than 2000.

3. Revenue villages or hamlets could be grouped under a local area, and given a Panchayat.

FORM A  
( See rule 2. )

32

| Name of the<br>revenue village.<br><br>1 | Taluka.<br><br>2 | District.<br><br>3 | Extent of the<br>revenue village.<br><br>4 | Population of<br>the revenue<br>village.<br><br>5 | Remarks of the<br>Collector.<br><br>6 |
|--|------------------|--------------------|--|---|---------------------------------------|
|  |                  |                    |  |   |                                       |

Collector.

Commissioner.

[ Ch. II

**FORM B**  
( See rule 3. )

Sec. 4. ]

| Names of the villages<br>and /or hamlets<br>comprised in the<br>local area. | Taluka. | District. | The extent of the local<br>area and where the<br>local area consists<br>of parts of revenue<br>villages and hamlets<br>the Survey Nos.<br>to be<br>mentioned. | The popula-<br>tion of the<br>local area. | Remarks of<br>the District<br>Local<br>Board. | Remarks<br>of the<br>Collector. |
|---|---------|-----------|---|---|---|---------------------------------|
| 1   | 2       | 3         | 4   | 5   | 6   | 7                               |
|   |         |           |   |   |   |                                 |

Collector.

Commissioner.

**5. Establishment of panchayats**—In every village declared to be such under section 4, there *shall* be a panchayat.

“Such” i.e. “a village.” “village” has been defined at P. 26.

**6. Constitution of panchayats**—(1) A panchayat shall consist of such number of elected members, not being less than seven or more than eleven in number, as the Collector after consultation with the district local board may determine.

In any such panchayat such number of seats shall be reserved for the representatives of women, Muhammadans, Harijans or backward tribes as may be prescribed by the Provincial Government under clause (b) of sub-section (1) of section 108 :

Provided that no such seat shall be reserved for the representatives of Muhammadans, Harijans or backward tribes in any panchayat unless the Provincial Government is of the opinion that the reservation of such seats is necessary having regard to the population of such community, class or tribe in the village.

(2) Where the Collector after consultation with the district local board determines that the number of elected members of a panchayat shall exceed seven, failure to elect more than seven such members shall not affect the constitution of a panchayat..

(3) If for any reason the election does not result in the return of the required number of qualified persons willing to take office, the district local board shall, within four weeks from the date on which the names of elected members are published in the *Official Gazette* under section 7, appoint the required number

of persons, being persons who would have been qualified to be elected. If the district local board fails to make all or any of such appointments within the time specified, the Collector shall make such appointments; and the persons so appointed shall be deemed to have been duly elected under sub-section (1).

This section is *entirely* new. The *old* section stood thus:

○ **Constitution of Panchayats**—(1) A panchayat shall consist of the following members, namely:—

(a) such elected members, not being less than five or more than eleven in number, as the Collector after consultation with the district local board may determine:

Provided that when among such elected members there is not a member of any class of persons residing in the village, which in the opinion of the Collector, by reason of its numbers or for any other reason, should in the public interest be represented on the panchayat, the Collector shall nominate a member of such class qualified and willing to be so nominated a member of the panchayat:

Provided further that the number of members nominated by the Collector under the first proviso shall not exceed two.

(b) an officiating patel in the following order of preference:—

(i) the senior officiating revenue patel if there be more than one officiating revenue patel in the village, or

(ii) the officiating revenue patel, if there be not more than one officiating revenue patel in the village, or



(iii) the officiating patel, if there be no separate officiating revenue patel in the village.

For the purposes of clause (b), an officiating patel includes a village officer appointed under section 3 of the Sindh Village Officers Act, 1881.

(c) The holder of any revenue village and when there are more than one revenue villages in the village as defined under the Act the holder of any such revenue village, and when there are more than one holder of any such revenue village, the principal among such holders, nominated by the Collector. If any such holder is unable or unwilling to serve, the Collector shall nominate a representative of such holder whom the Collector may approve.

(2) The decision of the Collector as to who is the senior officiating revenue patel or the principal holder or the representative of the holder shall be final.

(3) Where the Collector in consultation with the district local board determines that the number of elected members of a panchayat shall exceed five, failure to elect more than five such members shall not affect the constitution of a panchayat.

### **Report of the Select Committee :**

*Clause 4.*—We are of opinion that the maximum number of members to be elected on a panchayat should not exceed 11. We have revised this clause and made it clear that the seats should be reserved for Muhammadans, Harijans and backward tribes on the population basis when in the opinion of the Provincial Government such reservation is necessary.

In sub-section (3) of the revised section 6, it is provided that if at any contested election no votes are recorded or if for

any reason the election does not result in the return of the required number of qualified persons willing to take office, the power should be with the District Local Board in the first instance to appoint the required number of persons. On the failure of the District Local Board to make such appointments, the power should be exercised by the Collector.

### The Changes

The amendment completely does away with nominations. All the seats are thrown open for Election. What then is the chance for candidates of the minority communities to be elected? How are the interests of minorities, in the absence of nominations from out of their communities, to be safeguarded? To safeguard the interests of the various minorities in the village, provision is made in para 2 of S. 6 where-by Government is empowered to reserve seats in every Panchayat for the candidates representing these communities in the village. These candidates, however, are to be elected by a joint electorate of all the communities in the village. The amendment "The seats reserved for the representatives of Muhammadans shall be filled up by *separate electorates* for the Muhammadans" was *negated*. There is no provision, therefore, in this Act for separate electorates as there is in the District Local Board and the Municipal Boroughs Acts. The amended section marks a step forward in the direction of Democracy and is intended to maintain and work for close relations among all the communities of the village. A Hindu Candidate for Panchayat membership (here) has to approach as much a Hindu voter for his vote as a Muhamadan or a Harijan voter for it. In the same way a Muhamadan candidate has to earn the vote as much of his Moslem neighbour as of his Hindu voter.

**Principles governing the reservation of seats—S. 6.****Government Resolution No. S. 174/9 of 11-3-40.**

RESOLUTION.—Government is pleased to lay down the following principles which should be followed by the Commissioners in working out their proposals for the reservation of seats for the representatives of women, Muslims, Harijans or backward tribes on village panchayats to be constituted under section 6 (I) of the Bombay Village Panchayats Act, 1933, as amended by the Bombay Act No. XVIII of 1939:—

(1) *One seat shall be reserved for women in each panchayat;*

(2) Seats shall be reserved for the Muslims, Harijans or Backward Tribes *strictly* on a population basis and shall be allotted to the community, caste or tribe referred to in such a way that *the number of unreserved seats shall not go below half the total number of elected seats.*

In calculating the number of seats to be reserved on a population basis half a seat shall be taken as equivalent to one seat.

No seat shall be reserved if the community, caste or tribe concerned is not entitled to at least half a seat or has a majority in the village.

2. The Commissioners should be requested to reconsider their proposals for the reservation of seats on the lines of the principles indicated in paragraph 1 and submit the revised proposals to Government as early as possible.

3. Under section 6 (1) of the Bombay Village Panchayats Act, 1933, as amended by Bombay Act XVIII of 1939, a village panchayat is to consist of such number of elected members, not being less than seven or not more than eleven in number, as the Collector after consultation with the District Local Board may determine. The following basis is suggested, for the sake of uniformity, for determining the number of members in a village panchayat:-

|  | No. |
|--|-----|
| (1) For a panchayat area with a population of 1,000 or under           ...    ...    ...         | 7   |
| (2) For a panchayat area with a population between 1,000 and 2,000           ...    ...          | 9   |
| (3) For a panchayat area with a population over 2,000                   ...    ...    ...    ... | 11  |



In accordance with the principles laid down in the Government Resolution noted above, the Government of Bombay has published in the Bombay Government Gazette separate lists of the Village Panchayats in each of the districts of the Presidency, setting out in a tabular form the number of reserved seats for women, Mohamadans, Harijans and Backward classes, in respect of every Panchayat in each of these districts. There is a separate G. R. for every district. For examples, G. R. No. S. 174/9 (A) of 7-9-1940 sets out the Village Panchayats in East Khandesh in the Central Division and notes the number of reserved seats for women, Mohamadans, Harijans and Backward Classes against each of the Panchayats mentioned there in a tabular form. G. R. No. 174/9 of 17-9-40 sets out the Village Panchayats in the district of Ratnagiri in Southern

Division and notes the number of reserved seats for women, Mohamadans, Harijans and Backward Classes against each of the Panchayats mentioned there in a tabular form.

The 1400 and odd villages (local areas) declared to the 'villages' under S. 4 of this Act and referred to at P. 31, are all given in these tables under their respective districts. It is beyond the scope of this book to set out all these lists.

An idea only of the tabular lists under the G.R.s is given here:

### Ahmedabad District.

Government Resolution No. S. 174/9 of 3-10-41.

| Serial No. | The Village Panchayat of                                  | Number of seats to be reserved for the representatives of |          |         |                 |
|------------|---|---|----------|---------|-----------------|
|            |   | Women   | Harijans | Muslims | Backward tribes |
| 1          | 2   | 3   | 4        | 5       | 6               |
| 1          | <i>Ahmedabad City Mahal.</i><br>Naroda<br><i>Daskroi.</i> | 1   | ...      | ...     | ...             |
| 2          | Unvarsad  | 1   | ...      | ...     | ...             |
| 3          | ...   | 1   | ...      | ...     | ...             |

“It remains to be seen how the obligatory provisions of the Act are to be enforced where the people refuse to have a Panchayat.”—Report on the Administration of District Local Boards in the Northern Division for the year 1939-40.

**7. Election—(I)** The election of members to a panchayat shall be held on such date as the Collector may appoint in this behalf.

(2) All adult persons who ordinarily reside in the village and all adult persons who own in the village a house assessed to house tax or land assessed to cess under section 93 of the Bombay Local Boards Act, 1923, shall be entitled to vote at the election.

Such election shall be conducted in the prescribed manner and the names of members elected shall be published by the Collector in the *Official Gazette*.

(3) The Collector shall, after such enquiry as he considers necessary, decide in any case of dispute or doubt, who is qualified to vote at such election.

Who has the right of vote at the Village Panchayat Election?

1. All adult person persons who *ordinarily* reside in the village,

2. All adult persons *who own a house assessed to house-tax*, and

3. All adult persons *who own land assessed to Cess* under the Bombay Local Boards Act  
shall be entitled to vote.

All adult residents ( male as well as female ), and

All adult owners of house or land, whether they reside or do not reside in the village, are entitled to vote.

(Note here Rule 6 of the Bombay Village Panchayat Election Rules. )

“6. Who are entitled to vote.—Every person who possesses the qualifications specified in sub-section (2) of section 7 *and* whose name is entered in the voters' list shall be entitled to vote.”

*The mere possession of the qualifications mentioned in S. 7 (2) is not enough. The name must also appear in the voters' list.*

In case of doubt or dispute the Collector shall decide who is qualified to vote.

By Government Resolution No. S. 174 (3) dated 12th June 1935, Government, in exercise of the powers conferred by S. 95 (3), has appointed all Mamaladdars and Mahalkaries as 'Special Officers' to exercise the powers of a collector under S. 7 (3).

The word 'Special Officer' has been defined in the Election Rules.

"Such election shall be conducted in the prescribed manner" i. e. according to Rules laid down by The Provincial Government.

### **Election Rules-S. 7**

**Government Resolution No. S. 174/3 of 6-6-40.**

1. *Short title.*—These rules may be called *the Bombay Village Panchayats Election Rules.*

2. *Definitions.*—In these rules, unless there is anything repugnant in the subject or context—

(1) "Act" means the Bombay Village Panchayats Act, 1933;

(2) "Election" means an election held to elect a member to a panchayat;

(3) "Presiding officer" means any person appointed by the Collector under clause (b) of rule 8 to be a presiding officer;

(4) "Reserved seat" means a seat reserved for the representatives of Women, Muhammadans, Harijanas or backward tribes, by rules made in this behalf under clause (b) of sub-section (1) of section 108 of the Act. *All other seats shall be unreserved seats;*

(5) "Returning officer" means any person appointed by the Collector under clause (a) or (b) of rule 8 to be a returning officer;

(6) "Section" means a section of the Act;

(7) "Special officer" means an officer appointed by the Provincial Government under sub-section (3) of section 95 to exercise the powers of a Collector under sub-section (3) of section 7 of the Act;

(8) "Village Chavdi" includes a place deemed to be a chavdi under the Bombay Land Revenue Code, 1879;

(9) "Voter" means a person entitled under sub-section (2) of section 7 to vote at an election;

(10) Words and expressions not defined in these rules shall have the meanings respectively assigned to them in the Act.

3. *Mode of election.*—An election may be held either by show of hands or by ballot. The Collector shall determine in the case of each election whether it shall be held by show of hands or by ballot.

4. *Preparation of Voters' lists.*—(1) not less than two months before the date fixed for a general election, the Collector shall cause a voter's list to be



prepared in the regional language of the village by an officer appointed by him in this behalf.

(2) The voters' list shall, as soon as may be after it is prepared, be published by affixing copies thereof at the village chavdi or at the village panchayat office or at such other public place as may be appointed in that behalf by the officer who has prepared the list under sub-rule (1). Such list shall be published along with a notice in the regional language of the village stating that any person whose name is not entered in the list and who claims that his name should be entered therein, or any person whose name is entered in the list and who thinks that his own name or that of some other person has been wrongly entered therein or that the name of any person has been wrongly omitted therefrom, may apply in writing within fourteen days from the date of the publication of such notice to the special officer or, if no such officer is appointed, to the Collector for the amendment of such list.

5. *Amendment of Voters' list.*—(1) The special officer or the Collector, as the case may be, shall decide the applications for amendment of the voters' list made under sub-rule (2) of rule 4 and the voters' list shall be revised in accordance with his decisions.

(2) The voters' list so revised shall be published again not less than one month before the date of the election, by the officer who prepared the list under rule 4, by affixing copies thereof at the village chavdi or at the village panchayat office or at such other public place as may be appointed in that behalf by the said officer.

6. *Who are entitled to vote*—Every person who possesses the qualifications specified in sub-section (2) of section 7 and whose name is entered in the voters' list shall be entitled to vote.

7. *Qualifications of candidates for reserved seats*—When any seat is reserved for women or for any community, class or tribe, only women or persons belonging to such community, class or tribe, as the case may be, shall be qualified to be chosen to fill such seat.

8. *Time and place of election*—The Collector shall,

(a) if the election is to be held by show of hands fix the place where and the time when it shall be held on the date appointed by him under sub-section (1) of section 7, and appoint a returning officer to hold such election and one or more polling officers to assist the returning officer in election work;

(b) if the election is to be held by ballot,

(i) fix the polling station or stations where and the hours during which the voting shall take place,

(ii) if there is more than one polling station determine what voters shall vote at each polling station; and

(iii) appoint a returning officer to hold the election, a presiding officer for each polling station and one or more polling officers to assist the returning and presiding officers in the election work,

Provided that the Collector may if he so deems fit, appoint the returning officer to be also the presiding officer for any polling station;

(c) cause a written notice stating whether the election shall be held by show of hands or by ballot, *the date* on which the election shall be held, *the place* and *the time* at which it shall be held or if it is to be held by ballot, *the polling station* or *stations* where, and *the hours* during which, the voting shall take place and *the names of persons* appointed as the returning officer and presiding officers, to be published in the regional language of the village by affixing copies thereof at the village chavdi or at the village panchayat office or at any other public place appointed by him in this behalf, not less than *thirty days before the date* fixed for the election; and

(d) cause a notice to be given in the village by beat of drum on the day immediately preceding the day fixed for the holding of the election, inviting all voters to be present on such day at the time and place fixed for the election or during the hours and at the polling station or stations fixed for recording of votes, as the case may be.

9. *Procedure at elections held by show of hands—*

(1) When an election is to be held by show of hands, the procedure laid down in this rule shall be followed.

(2) The returning officer shall preside at the meeting of the persons assembled in response to the notices given under clauses (c) and (d) of rule 8.

He shall *exclude* from the meeting all *persons* whose names are *not in the voters' list*.

(3) The returning officer shall then call upon all candidates who seek election to state their names to him. He shall decide if any such candidate is disqualified under section 8. If any candidate is held by him to be so disqualified, he shall briefly record the reasons for his decision. He shall then prepare a list showing the names of all candidates who are not held by him to be so disqualified.

(4) At any time before the name of the first candidate is put to vote, a candidate may withdraw his candidature by an application in writing subscribed by him and delivered to the returning officer. On receipt of such application the returning officer shall score out the name of such candidate from the list prepared by him under sub-rule (3). A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal.

(5) If the number of candidates who are qualified to be chosen to fill the reserved seats is equal to the number of such seats and the total number of candidates for all the seats does not exceed the total number of seats, all the candidates shall be declared elected by the returning officer without any votes being taken.

(6) (a) In cases not falling under sub-rule (5), if the number of candidates who are qualified to be chosen to fill any reserved seats and who have not withdrawn their candidature is equal to the number of such seats the candidates so qualified shall be

declared by the returning officer to be elected to fill such seats.

(b) If the number of candidates who are qualified to be chosen to fill any reserved seats and who have not withdrawn their candidature is less than the number of such seats, the candidates so qualified shall be declared by the returning officer to be elected, and it shall be deemed that the election has not resulted in the return of the required number of qualified persons willing to take office within the meaning of sub-section (3) of section 6 of the Act, in respect of the remaining reserved seats.

(c) If there is no candidate qualified to be chosen to fill any reserved seat, it shall be deemed that the election has not resulted in the return of the required number of qualified persons willing to take office within the meaning of sub-section (3) of section 6 of the Act in respect of such seat.

(d) In cases not falling under this sub-rule votes shall be taken, if necessary, only for filling such seats as are not filled under this sub-rule but excluding those reserved seats in respect of which the election has not resulted in the return of the required number of qualified persons willing to take office.

(7) In cases not falling under sub-rule (5) or (6) votes shall be taken for filling all the seats.

(8) The name of every candidate shown in the list prepared under sub-rule (3) and who has not withdrawn his candidature as provided in sub-rule (4) shall be put to vote separately and votes shall be taken—

- (a) by show of hands,
- (b) by separation of the voters into "Ayes" and "Noes" groups, or
- (c) in such other manner as may be determined by the returning officer.

(9) From amongst the candidates qualified to be chosen to fill reserved seats, the returning officer shall, subject to the provisions of rule 7, declare the candidate or candidates who have secured the largest number of votes to be elected to fill such reserved seats. From amongst all the candidates excluding those who have been declared elected to fill the reserved seats, the returning officer shall then declare the candidate or candidates who have secured the largest number of votes to be elected to fill the unreserved seats.

(10) Where the number of votes secured by any two or more candidates is equal, the determination of the candidate who is to be declared elected shall be made by lot to be drawn in the presence of the returning officer and in such manner as he shall determine.

10. *Procedure at elections held by ballot—*

(1) When an election is to be held by ballot, the procedure laid down in this rule *shall* be followed.

(2) Every candidate seeking election shall make an application in *person* to the returning officer at least twenty days before the date fixed for the election, signifying his willingness to serve on the panchayat. He shall state in such application the community, class or tribe to which he belongs.

(3) On receipt of such application, the returning officer shall within a period of three days from the date of the receipt of the application endorse on it his decision rejecting or accepting the same according as the candidate is or is not disqualified for election under section 8 and shall, if the application is rejected, record a brief statement of his reasons for rejecting it. He shall inform the candidate of his decision.

(4) An appeal against the decision of the returning officer rejecting an application under sub-rule(3) may be made to the Collector or to any other officer appointed by the Provincial Government in this behalf, within three days of the date of such decision. The Collector or such other officer, as the case may be, shall decide the appeal not later than the tenth day before the day appointed for the election.

"Government is pleased to appoint the Prant Officers to receive and decide these appeals." G. R. No. 4235/33—14-11-40.

(5) At any time before the commencement of the poll, a candidate may withdraw his candidature by an application in writing subscribed by him and delivered to the returning officer. On receipt of such application the returning officer shall cause a copy of it to be affixed to some conspicuous part of each of the polling stations. A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal.

(6) If any candidate dies after the scrutiny of the nomination papers and before the votes are taken, the returning officer shall, upon being satisfied of the fact of the death of such candidate,

proceed as if the candidate had withdrawn his candidature.

(7) The provisions of sub-rules (5), (6) and (7) of rule 9 shall, *mutatis mutandis* apply to an election held by ballot.

(8) If votes are to be taken for filling any seat or seats the returning officer shall—

(a) prepare a list of candidates for such seat or seats.

(b) assign to each of them a separate and distinct symbol, and

(c) cause to be posted at the village chavdi or at the village panchayat office or at such other public place as may be appointed by him in that behalf the list of such candidates together with the symbol assigned to each of them.

(9) Votes shall be taken on the day fixed for the election under sub-section (1) of section 7 and during the hours and at the polling station or stations appointed under rule 8.

(10) Before the commencement of poll, a candidate may deliver to the returning officer a declaration in writing appointing any voter as his election agent for the election.

(11) Every polling station shall be provided with a voting room with a screened partition.

(12) The presiding officer shall regulate the admission of persons to the polling station. He shall admit to the polling station only (a) the candidates and one election agent of each candidate, (b) the



polling officers, the police, the village officers and other public servants on duty, (c) voters who have not recorded their votes and who are entitled to vote at such polling station, (d) necessary attendants of infirm voters and (e) such other persons as he may from time to time admit for the purpose of identifying voters.

The presiding officer shall *exclude* from the polling station *all other persons*.

(13) Before the commencement of poll, the presiding officer shall allot one box to each of the candidates and shall cause to be affixed to such box a slip showing the name and symbol of the candidate. Such boxes shall be locked and sealed in the presence of the candidates or their election agents by the presiding officer before the commencement of poll and shall be kept in the voting room.

(14) Before the voters proceed to give their votes, the presiding officer shall explain to the voters assembled the method of voting prescribed.

(15) Only one voter shall at a time be admitted to the voting room.

(16) While a voter is inside the voting room, no person other than the presiding officer and one attendant if such voter is infirm shall be permitted to enter such room.

(17) In case of a dispute as regards the identity of a voter the presiding officer shall give his decision and such decision shall be final.

(18) The voter may give all his votes to one candidate or distribute them among the various candidates in any manner he deems fit.

(19) The voters shall proceed one by one to the voting room. Immediately before entering the voting room each voter shall be given as many slips of paper as there are members to be elected and a mark against his name shall be made in the voters' list. Such slips shall be serially numbered and stamped or signed by the presiding officer.

(20) After receiving the slips, the voter shall enter the voting room and shall record his vote by putting the slips into the box or boxes of the candidate or candidates for whom he wishes to vote, without making any mark on the slips. He shall leave the voting room immediately after recording his vote.

(21) The presiding officer may give such assistance as may be required to any voter who is under any disability which incapacitates him from voting in the manner prescribed.

(22) No person shall be allowed to hold communication with a voter after he has received the slips and before he leaves the voting room after recording his vote.

(23) Where the presiding officer is not also the returning officer, he shall, as soon as may be after the voting is over, in the presence of the village officers and of any candidates or their election agents who may be present, make up into separate

parcels and seal with his own seal and the seal of such candidates or agents as may desire to affix their seal, each ballot box in use at the polling station unopened but with the key attached and shall deliver such parcel to the returning officer. The returning officer shall, as soon as may be practicable, after receiving all the boxes proceed to count the votes.

(24) Where the presiding officer is also the returning officer, he shall as soon as the voting is over, proceed to count the votes.

(25) The returning officer shall then open one box at a time and count in the presence of such candidates and their election agents as may be present, the votes given to each candidate. If the work of counting votes is not finished on the same day, it may be completed on the following day.

(26) When the counting of votes has been completed, the returning officer shall from amongst the candidates qualified to be chosen to fill the reserved seats, declare, subject to the provisions of rule 7, the candidate or candidates who have secured the largest number of votes to be elected to fill such reserved seats.

From amongst all the candidates excluding those who have been declared elected to fill the reserved seats, the returning officer shall *then* declare the candidate or candidates who have secured the largest number of votes to be elected to fill the unreserved seats. —

(27) Where the number of votes secured by any two or more candidates is equal, the determination of the candidate who is to be declared elected shall be made by lot to be drawn in the presence of the returning officer and in such manner as he shall determine.

11. *Publication of result of election.*—(a) The returning officer shall cause the names of the elected candidate or candidates to be posted at the village chavdi or at the village panchayat office or at such other public place as may be appointed in that behalf by him and shall report such name or names immediately to the Collector.

(b) The Collector shall publish the result of the election in the *Bombay Government Gazette* and shall also communicate it to the district local board.

12. *Record of proceedings.*—The returning officer shall keep a record of the proceedings of every election.

13. *Casual vacancies.*—On receipt of a notice under sub-section (1) of section 23 regarding the occurrence of a vacancy in the office of a member of a panchayat or whenever an election is declared invalid under section 9, a bye-election to fill the vacancy so caused shall be held as soon as conveniently may be and these rules with the exception of rules 4 and 5 shall, with such modifications as may be necessary, apply to such bye-election.

How would the election work be carried on in the light of these rules?

### The programme of Election

This falls into three parts. (1) The *preparation* of election. (2) The *day* of election. (3) The *result* of election and its publication.

#### 1. The preparation of Election

(1) The first step is to prepare a list of voters *not less than two months* before the date fixed for election. The list shall be published by affixing copies thereof at the village Chawadi. ( Rule 4 )

(2) Within 14 days of the date of the publication of the list, it is open to apply to the 'Special Officer' to get the list amended. ( Rule 4 )

(3) The 'Special Officer' shall decide the applications for the amendment of the voters' list and the revised list shall be published *again, not less than one month before the date of the election* by affixing copies thereof. ( Rule 5 )

(4) The Collector has to ascertain the sense of the voters in the village and decide whether the election in the particular village should be by ballot or by show of hands.

### General Department

#### Circular No. S. 28 of 16-9-1937.

*Government desire that in deciding the mode of election of Village Panchayats the Collectors should be guided by the feeling in the village on the subject so far as it can be ascertained.*

(5) The Collector shall cause a written notice stating whether the election shall be held by *show of hands or by ballot,*

*the date* on which the election shall be held, *the place* and *the time* at which it shall be held, etc., to be published by affixing copies at the village Chawdi *not less than 30 days before the date* fixed for the election. ( Rule 8 ).

(6) There shall be given a notice in the village by beat of drum on the day immediately preceding the day of election to invite all voters to be present. ( Rule 8 )

## 2. The day of Election

### (A) When the election is to take place by show of hands:

(1) The Returning Officer shall preside at the meeting of the voters. He shall *exclude* from the meeting *persons whose names are not in the voters' list*.

The Returning Officer shall then call upon all candidates for election to state their names. He will then decide if any candidate is disqualified under S. 8. He will briefly record the reasons for his decision.

If the number of candidates qualified to be chosen to fill the reserved seats is equal to the number of such seats, the candidates, shall be declared elected. If the total number of candidates does not exceed the total number of seats of the Panchayats, all the candidates shall be declared elected.

(2) In other cases, the name of every candidate shall be put to vote separately and votes shall be taken either by show of hands or by the separation of the voters into "Ayes" and "noes" groups.

(i) *First*, the election in respect of the reserved seats shall be declared.

(ii) Then, election in respect of the other seats shall be declared.

## 2. The day of Election

### (B) When the election is to take place by ballot:

(1) Every candidate shall make an application *in person* to the 'Returning Officer' *at least 20 days* before the date of election. He shall *mention the community, class or tribe* to which he belongs. (Rule 10-2)

(2) The Returning Officer shall decide within three days the eligibility of the candidate and *shall, if the application is rejected, record his reasons and shall inform the candidate.* (Rule 10-3)

(3) An appeal against this decision lies to the collector (Rule 10-4)

(4) If the number of qualified candidates is equal to the number of seats, the candidates will be declared elected without taking votes. (See 'A' above)

(i) If votes are to be taken, the Returning Officer shall prepare a list of candidates, and assign to each of them a separate symbol and cause it to be posted at the village Chawdi. (Rule 10-8)

(ii) Votes shall be taken on the day fixed for the election and during the hours and at the polling station or stations appointed before-hand. (Rule 10-9)

(iii) There will be a separate box for each of the candidates bearing the name and symbol of the candidate (Rule 10-13)

(iv) The Returning Officer shall, as soon as may be practicable, proceed to count the votes by opening one box at a time and count *in the presence of candidates and their election agents*, the votes for each candidate.

### 3. The Result of the election and its publication

(1) After the counting is over, the Returning Officer shall first declare candidates for the reserved seats elected.

The Returning Officer shall *then* declare the result in respect of candidates for the unreserved seats.

(2) The Returning Officer shall cause the names of the elected candidates to be posted at the village Chawdi and shall report the names *immediately* to the collector.

The collector shall publish the result of the election in the 'Bombay Government Gazette,' and shall also communicate it to the District Local Board.

**8. Disqualifications**—No person may be a member of a panchayat or continue as such who—

(a) is under 21 years of age, or

(b) does not ordinarily reside in the village, or

(c) has been sentenced by a criminal court to imprisonment or whipping for an offence which involves moral turpitude and which is punishable with imprisonment for a term exceeding six months, or to transportation, such sentence not having been subsequently reversed or remitted, so long as such sentence has not expired unless he shall have by an order which the Provincial Government is hereby empowered to make, been relieved from the disqualification arising on account of such sentence, or

(d) has been adjudged by a competent court to be of unsound mind, or

(e) has been adjudicated an insolvent and has not obtained his discharge, or



(f) has been removed from office under section 21 and five years have not elapsed from the date of such removal, unless he shall have, by an order which the district local board after the expiry of one year from the date of such removal is hereby empowered to make, been relieved from the disqualification arising on account of such removal from office, or

(g) holds any salaried office or place of profit in the gift or disposal of the panchayat, while holding such office or place, or

(h) has directly or indirectly any share or interest in any contract with, by or on behalf of the panchayat while owning such share or interest, or

(i) fails to pay any tax or fee due to the panchayat within three months from the date on or before which the amount of such tax or fee is required to be paid in the bill presented to the person under sub-section (I) of section 91, or

(j) is a servant of the Crown or a servant of any local authority.

Section 7 sets out the qualifications of a voter.

Section 8 sets out the qualifications of a candidate in a negative manner i. e. by setting out the disqualifications.

The disqualifications are grouped under 10 heads—*a.* to *j.*

(c) ..... has been sentenced by a criminal court to imprisonment or whipping for an offence which involves *moral turpitude* and which is punishable with imprisonment for a term exceeding 6 months;

..... has been sentenced to transportation, such sentence, not having been subsequently reversed or remitted,

so long as such sentence has not expired unless he shall have been relieved from the disqualification arising on account of such sentence by an order which the Provincial Government is hereby empowered to make,

(f) ..... has been removed from office under S. 21 (i. e. for misconduct, neglect or incapacity etc.) and 5 years have not elapsed from the date of such removal, unless he shall have been relieved from the disqualification arising on account of such removal from office, by an order which the District Local Board *after the expiry of one year from the date of such removal*, is hereby empowered to make.

(j) "Local Authority" has been defined in the General Clauses Act in S. 3 (26) thus:

"local authority" shall mean a municipal corporation, municipality, local board, body of port trustees or commissioners, or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

These disqualifications have to be taken into account *as much before the election as after it*. Vide election rules [ (9), (3); 10 (3). ]

The word "servant of the Crown" has not been defined either in this Act or anywhere else. A "servant of the Crown" is necessarily a public servant. A public servant has been described in S. 21 of the Indian Penal Code.

A Patil or a Kulkarni would not be eligible for election according to this clause being "servants of the Crown."

According to the old Act an officiating Patel used to be an Ex-officio member of the Panchayat by virtue of his position as a Patel. The present Act does not allow him even to stand for the election,

**Explanation**— A person shall not, by reason of being a shareholder in, or a member of, any incorporated or registered company or a co-operative society registered under the Co-operative Societies Act, 1912, or the Bombay Co-operative Societies Act, 1925, be held to be interested in any contract entered into between the company or co-operative society and the panchayat.

This explanation is a part of S. 8 and is intended to clear up the words "share or interest" figuring in (h).

**9. Collector to declare election invalid**— (1) If the Collector, after such enquiry as he considers necessary, is satisfied that any member has been elected in contravention of the provisions of section 8, or that any corrupt practice or irregularity has been committed in connection with such election, and that such illegality, corrupt practice, or irregularity has materially affected the result of the election, the Collector may declare the election of such member to be invalid, and such declaration shall be final :

Provided that when the Collector is satisfied that a corrupt practice has been committed by a member, the Collector shall, whether such corrupt practice has or has not materially affected the result of the election, declare the election of such member to be invalid and such declaration shall be final.

**Analysis.**

If the Collector — after such enquiry as he considers necessary — is satisfied ...

that (a) Any member has been elected in contravention of the provisions of S. 8. [This — the election of a candidate who is disqualified to be a member under S. 8 — amounts to an illegality.] Or

that (b) any corrupt practice, or

that (c) any irregularity has been committed in connection with such election,

and

that such (a) *illegality*, (b) *corrupt practice*, or (c) *irregularity* has materially affected the result of the election,

the collector may declare the election of such member to be invalid and such declaration shall be final.

But

if the Collector is satisfied that a *corrupt practice* has been committed by a member,

the collector shall, whether such corrupt practice has or has not materially affected the result of the election, declare the election of such member to be invalid and such declaration shall be final.

What is a corrupt practice?

It has been thus defined and explained by the Act:

(2) A person shall be deemed to have committed a corrupt practice—

(a) who, with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury, to any person, or

(b) who gives, procures, or abets the giving of a vote in the name of a voter who is not the person giving such vote.

*Explanation 1*—A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

*Explanation 2*—“A promise of individual profit”—

(i) does not include a promise to vote for or against any particular measure which may come before a panchayat for consideration, but

(ii) subject thereto, include a promise for the benefit of the person himself or any person in whom he is interested.

(a) A person who (1) with a view (2) to inducing any voter (3) (a) to give or (3) (b) to refrain from giving a vote in favour of any candidate (4) (a) offers or (4) (b) gives any (5) (a) money or (5) (b) valuable consideration or (4) (c) holds out (5) (c) any promise of individual profit or (4) (d) holds out (5) (d) any threat of injury to any person, shall be deemed to have committed a corrupt practice.

Or

(b) A person who (a) gives or (b) procures a vote in the name of a voter who is not the person giving such vote,

or

(c) A person who abets the giving of such a vote in the name of a voter who is not the person giving such vote, ... is deemed to have committed a corrupt practice.

*Corrupt practice* has been generally defined in Sub-Section (2) above. *Corrupt practice by a candidate* has been explained below it.

Note the special obligatory provision for a corrupt practice "by a member" in the proviso to Sub-section (1) above.

**9A. Declaration, if disqualification is incurred-** If at any time the Collector after such inquiry as he considers necessary and after giving an opportunity to the member concerned to be heard is satisfied that—

(a) a member appointed under sub-section (3) of section 6 was subject to any of the disqualifications mentioned in section 8 at the time of his appointment, or

(b) any member whether elected or appointed has incurred any of the disqualifications mentioned in section 8 after his election or appointment, as the case may be,

the Collector shall declare the appointment of such member invalid or that such member shall not continue to be the member of the panchayat, as the case may be. Such declaration shall be final.

After such inquiry...and after giving an opportunity...

The inquiry part is optional; the hearing part is obligatory.

**10. Fresh election or appointment, if election or appointment invalid-** If the Collector declares the election or appointment of any member invalid or that any member shall not continue to be the member of a panchayat, under section 9 or 9A, as the case may be, a fresh election or appointment for the vacancy so caused shall be held in accordance with the provisions of this Act.

These sections set out the circumstances which would give rise to a fresh election or appointment.

**11. Term of office of members-**(1) The members of a panchayat shall, save as otherwise provided in this Act, hold office for a term of three years.

(2) The Collector may, by order in writing, for reasons recorded therein, extend the said term for a period not exceeding one year. Any such order shall be notified in such manner as the Collector may approve.

**12. Commencement of term of office-**(1) *The term of office* of the members elected at a general election or appointed under sub-section (3) of section 6 shall be deemed to commence on the date of the first meeting of the panchayat. The first meeting of the panchayat shall be held on a day fixed by the President of the district local board within four weeks from the date on which the names of elected members are published under section 7. If the President fails to fix such date within the time so specified the Collector shall fix such date.

(2) *The term of office* of the outgoing members shall be deemed to extend to and expire with the day before such meeting.

**13. Resignation of members-**Any member may resign his office by giving notice in writing to that effect to the sarpanch and such resignation shall take effect from the date of its receipt by the sarpanch.

“effect from the date of receipt” -The resignations of the Sarpanch and the Deputy Sarpanch, however, will take effect from the date of their acceptance...vide S. 18 and note the change of wording.

**14. Election of sarpanch and deputy sarpanch-** Every panchayat shall be presided over by a sarpanch who shall be elected by the members from among their own number. The panchayat shall also elect one of its members to be deputy sarpanch.

**15. Term of office of sarpanch and deputy sarpanch-** Save as otherwise provided in this Act, a sarpanch and a deputy sarpanch shall hold office for the term of a panchayat.

**16. Sarpanch to carry on current duties until his successor is appointed-** After the expiry of his term of office, the sarpanch shall continue to carry on the current duties of his office until such time as a new sarpanch shall have been elected and shall have taken over charge.

**17. Election of sarpanch on establishment of panchayat, etc-** (1) On the establishment of a panchayat for the first time under this Act, or on its reconstitution or establishment under section 102 or 103, a meeting shall be called on the date fixed under sub-section (1) of section 12 by the president of the district local board who shall himself preside or appoint a person who is not a member of the panchayat, to preside over the meeting. *The president of the district local board or the person so appointed shall preside at such meeting, but shall have no right to vote, and the meeting shall then proceed to elect the sarpanch.* In the case of an equality of votes the result of the election of the sarpanch shall be decided by lot to be drawn by the person presiding at the meeting in such manner as he may determine.



(2) On the expiry of the term of a panchayat, the sarpanch shall convene on the date fixed under sub-section (1) of section 12 a meeting of the panchayat for the election of a new sarpanch. He shall preside at such meeting, but shall not vote thereat unless he is a member of the panchayat at that time. In the case of an equality of votes the result of the election shall be decided by lot to be drawn by the presiding sarpanch in such manner as he may determine :

Provided that when no meeting for the election of a sarpanch has been called by the retiring sarpanch on the date fixed under sub-section (1) of section 12 or if a meeting called by him for this purpose on the aforesaid date has not been attended by him, the president of the district local board shall proceed to convene a meeting of the panchayat in the manner described in sub-section (1) and a new sarpanch shall be elected accordingly.

If the president of the district local board fails to convene such meeting within a period of 15 days from the date fixed under sub-section (1) of section 12, the Collector himself shall convene such meeting. The President of the district local board or the Collector, as the case may be, shall nominate one of the members to preside at the meeting so convened. If the person so nominated fails to preside at the meeting the members present shall elect one of them to preside.

**18. Resignation by sarpanch or deputy sarpanch-**  
The deputy sarpanch may resign his office by giving notice in writing to the sarpanch.

The sarpanch may resign his office by giving

notice in writing to the president of the district local board.

Such resignations shall take effect from the date of their acceptance.

**19. Time and place of sitting of panchayat and procedure at meetings**—The time and place of sitting and the procedure at a meeting of the panchayat shall be in accordance with by-laws.

The district local board is empowered to make by-laws under the various clauses of S. 109.—

“(a) under section 19, prescribing the time and place of the sittings and regulating the procedure at meetings of a panchayat, and fixing a quorum;”

“(b) under section 20, prescribing the powers and duties of a sarpanch which may be exercised and performed by a deputy sarpanch;”

Different district local boards may make different by-laws in accordance with the local conditions and requirements.

The by-laws of the District Local Board of Bijapur are reproduced here- by way of illustration only:

**By-laws** under section 109 of the Bombay Village Panchayat Act, 1933, as finally adopted by the District Local Board, Bijapur at their meeting held on 20-12-35.

1. A Panchayat shall meet together not less than once every month.

2. An ordinary meeting shall be held on any day in the first week of the month to be fixed by the sarpanch,

3. A special meeting shall be called by the sarpanch on his own accord or upon the request of any two members of the Panchayat or when called upon by the President, District Local Board for any special purpose, within 15 days from the date of receipt of such requisition.

4. The meetings of the Panchayat shall be held in the Panchayat Office, if any, or in the Village Chawdi or any other place to which the public may have a free access.

5. Three clear days notice of an ordinary General Meeting and at least one clear day's notice of a Special Meeting specifying the time and place at which such meeting is to be held and the business to be transacted thereat shall be circulated to the members and posted up at the Village Panchayat office and also at the Chawdi.

6. No business shall be transacted at any meeting unless a majority of the members are present from the beginning to the end of such meeting. If there is no quorum the presiding authority shall adjourn the meeting to such time as he thinks proper. No quorum will be necessary at an adjourned meeting provided due notice of such adjourned meeting has been given to all the members and only the business which would have been brought before the original meeting, had there been a quorum thereat, shall be brought before the adjourned meeting and disposed of at such meeting or at any subsequent adjournment.

7. Every meeting shall be open to the public unless the presiding authority deems any enquiry or deliberation pending before the Panchayat such as should be held in private and provided that the said authority may at any time cause any person to be removed who interrupts the proceedings.

8. Every meeting shall be presided over by the Sarpanch, or if he is absent, by the Deputy Sarpanch and if both

the Sarpanch and the Deputy Sarpanch are absent, by such one of the members present, as may be chosen by the members present, to be Chairman for the occasion.

9. All questions shall be decided by a majority of votes of the members present, the Sarpanch, Deputy Sarpanch or the Chairman presiding at the meeting having a second or casting vote in all cases of equality of votes.

10. The order in which any business shall be brought forward at the meeting shall be determined by the presiding authority, who in case it is proposed by any member to give priority to any particular item of such business shall put the proposal to the meeting and be guided by the majority of votes given for or against the proposal.

11. Except with the permission of the presiding authority, which permission shall not be given in the case of proposition to modify or cancel any resolution within three months after the passing thereof, no business shall be transacted and no proposition shall be discussed at any monthly meeting unless it has been entered in the notice convening such meeting or in the case of a special meeting, in the written request for such meeting.

12. The presiding authority may, with the consent of a majority of members present, adjourn meetings from time to time, but no business shall be transacted at any adjourned meeting, other than that left undisposed of at the meeting from which the adjournment took place.

13. No resolution of a Panchayat shall be modified or cancelled within three months after the passing thereof, except by a resolution supported by not less than one half of the whole number of members passed at a monthly meeting, whereof notice shall have been given, fulfilling the requirement of

by-law No. 5 and setting forth fully the resolution which it is proposed to modify or cancel at such meeting and the proposition for the modification or cancellation of such resolution.

14. The proceedings of each meeting of the Panchayat shall be recorded in vernacular or in any language approved by the Collector in a bound book. In this book shall be entered the names of the members present at each meeting, the decisions arrived at and in the case of any decision not being unanimous the names of the members forming the majority and the minority. The proceedings shall be signed by the Sarpanch, Deputy Sarpanch or Chairman appointed for the meeting and by the members present at the meeting. A copy of the proceedings shall be submitted to the President of the District Local Board. The proceedings shall be open to inspection, at all reasonable times by any member of the Panchayat or by any inhabitant of the village.

---

In the absence of the Sarpanch the following powers and duties of the Sarpanch may be exercised and performed by the Deputy Sarpanch:—

- (i) To pay the salaries of the servants of the Panchayat from the village fund.
- (ii) In cases of emergency, to engage such temporary servants as he may deem necessary.
- (iii) To suspend any servant appointed by the Sarpanch,
- (iv) To sign bills to be presented to persons from whom taxes or fees are due to the Panchayat.
- (v) To sign writs of demand.
- (vi) To exercise supervision over the Panchayat servants and the works.

- (vii) To accept money due to the Panchayat and to spend it on works provided in the budget and to maintain accounts as prescribed by Government.

It will be noted that *these by-laws are modelled after S. 35 of the Bombay Local Boards Act and the Municipal Boroughs Act* which lays down, in detail, the procedure at meetings of local boards and municipalities.

**20. Executive of Panchayat**—*The executive power for the purpose of carrying out the provisions of this Act and the resolutions passed by a panchayat vests in the sarpanch who shall be directly responsible for the due fulfilment of the duties imposed upon the panchayat by or under this Act. In the absence of the sarpanch, the powers and duties of the sarpanch shall, save as may be otherwise prescribed by by-laws, be exercised and performed by the deputy sarpanch.*

**21. Removal from office**—*The district local board may, after giving due notice to the panchayat and after such inquiry as it thinks fit, remove from office, with the previous sanction of the Collector any member, or any sarpanch or deputy sarpanch who has been guilty of (1) misconduct, or (2) neglect of or (3) incapacity to perform his duty, or (4) is persistently remiss in the discharge of his duties. A sarpanch or deputy sarpanch so removed may, at the discretion of the district local board, and subject to the like sanction, also be removed from the panchayat.*

**22. Leave of absence**—(1) Any member of a panchayat who, during his term of office,—

- (a) is absent for more than four consecutive months

from the village unless leave not exceeding six months, so to absent himself, has been granted by the panchayat; or

(b) absents himself for six consecutive months from the meetings of the panchayat without the leave of the said panchayat,

shall cease to be a member and his office shall become vacant.

(2) Any dispute as to whether a vacancy has or has not occurred under this section shall be referred for decision to the Collector whose decision shall be final.

**23. Filling up of vacancies—**(1) Any vacancy of which notice shall have been given to the Collector in the prescribed manner due to the disablement, death, resignation, disqualification, absence without leave, or removal of a sarpanch or a deputy sarpanch, or member, shall be filled, by the election of a sarpanch or deputy sarpanch or a member, who shall hold office so long only as the sarpanch, deputy sarpanch, or member, in whose place he has been elected, would have held office if the vacancy had not occurred.

(2) The meeting for the election of a sarpanch under sub-section (1) shall be convened by the president of the district local board in the manner described in sub-section (1) of section 17.

### Rules re. notice under S. 23

#### Government Resolution No. S. 174/1 of 18-12-34.

1. The notice of a vacancy in the office of a sarpanch, deputy sarpanch, or member shall be given to the Collector,

within 7 days of such vacancy, by the sarpanch, in the absence of the sarpanch, by the deputy sarpanch, and in the absence of both the sarpanch and the deputy sarpanch, by the Secretary.

2. The notice shall state the cause of the vacancy; and in case the vacancy is due to a cause other than death or resignation, the notice shall state the circumstances causing the vacancy.

**24. Vacancy not to affect proceedings of panchayat-** During any vacancy in the panchayat, the continuing members may act as if no vacancy had occurred.

**25. Temporary provision pending establishment of panchayats under this Act-** Notwithstanding any thing contained in this Act, the village fund shall, until such date as the Provincial Government may notify in the *Official Gazette*, be administered, so far as may be, under the provisions of this Act by the panchayats constituted under the Bombay Village Panchayat Act, 1920, which panchayats shall be deemed to have been established under this Act.

---

## The Establishment and Constitution of Panchayats:

### Establishment of Panchayats

1. There is, first, an enquiry according to rules under S. 4.

2. Then, there is a declaration in the *Official Gazette* about the local area to be 'a village'. In every such 'village' there shall be a Panchayat. Vide Ss. 4 and 5.

---



**Constitution of Panchayats**

1. Every Panchayat shall consist of from 7 to 11 members. The collector is to determine the exact number after consultation with the district local board.

2. *All the seats of the panchayat are to be filled by election.*

3. The election will take place according to Rules prescribed.

4. The Provincial Government will reserve seats for the representatives of Women, Muhammadans, Harijans or Backward Classes.

The seats - reserved as well as unreserved - are all to be filled by election.

5. There are *no separate electorates* for different communities. *The electorate is one.*

6. The members of the panchayat will elect a Sarpanch and a Deputy Sarpanch from amongst their own number.

7. *The Sarpanch is the chief executive head of the panchayat.*

8. The term of office is three years.

9. The term commences on the date of the first meeting of the Panchayat after the publication of the election results.  
S. 12.

10. The district local board may remove any member or any Sarpanch or deputy Sarpanch who has been guilty...  
S. 21.

---

## CHAPTER III

## ADMINISTRATIVE POWERS AND DUTIES

Panchayats are local-self Government units in their own local areas. They are miniatures of the District Local Boards and the Municipalities. The powers and duties of the Panchayat are, therefore, similar to these bodies. While the powers and duties of these bodies cover a wide field, those of the Panchayats are mainly restricted to small villages. This is about the administrative powers and duties of all these bodies.

The Panchayat Benches have judicial powers and duties which the district local boards and the municipalities have not.

This chapter deals with the *administrative powers and duties of panchayats*, while chapter VI deals with the powers of village benches.

The *obligatory duties* of Panchayats are set out in Sub-S. (1) of S. 26, the *optional ones* in Sub-Ss. (2) & (3).

**26. Administrative powers and duties of panchayats—**(1) It shall be the duty of a panchayat, so far as the village funds at its disposal will allow subject to the general control of the district local board, to make reasonable provision within the village in regard to the following matters, namely:—

(a) the supply of water for domestic use;

(b) the cleansing of the public roads, drains, bunds, tanks and wells ( other than tanks and wells used for irrigation ) and other public places or works;

(c) the construction, maintenance and repair of public roads, drains, bunds and bridges :

Provided that, if the roads, drains, bunds and

bridges vest in any other public authority, such works shall not be undertaken without the consent of such authority;

(d) sanitation, conservancy, and the prevention and abatement of nuisances;

(e) the preservation and improvement of the public health;

(f) the maintenance and regulation of the use of public buildings, grazing lands, forest lands (including lands assigned under section 28 of the Indian Forest Act, 1927), tanks and wells (other than tanks and wells used for irrigation), vesting in or under the control of the panchayat;

### [ The Indian Forest Act S. 28 :

(1) The Local Government may assign to any village community the rights of Government to or over any land which has been constituted a *reserved forest* and may cancel such assignment. All forests so assigned shall be called *village forests*.

(2) The Local Government may make rules for regulating the management of *village-forests*, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.

(3) All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to *village-forests*. ]

(g) the lighting of the village;

(h) control of fairs, bazars, slaughter-houses and cart-stands; and

(1) provision and maintenance of burning and burial grounds.

(2) A panchayat may also make provision for carrying out within the village any other work or measure which is likely to promote the health, safety, education, comfort, convenience or social or economic well-being of the inhabitants of the village.

It would be noted, *religious welfare cannot come within the scope of even the optional duties* of the panchayats.

The limits to the legitimate administrative powers and duties of Panchayats must always be borne in mind. The village fund is public property and cannot be used for purposes for which it was never meant by the Act.

(3) A panchayat may, with the previous sanction of the district local board, also make provision for carrying out outside the village any work of the nature specified in sub-sections (1) and (2).

The wording of the three subsections may be noted:

(1) It *shall* be the duty;

(2) A Panchayat *may*;

(3) A Panchayat *may*, with the previous sanction....

The Village Fund...Chapter IV deals with the property and fund of Panchayats. S. 31 of that Chapter deals with "Village Fund". For Sources of the village fund, vide S. 31.

The village fund can be used only for the purposes mentioned in S. 26; it cannot be used for those mentioned in Ss. 27 & 28 unless special provision is made for them. Vide the concluding provisions of these sections.

S. 109 (1) (c) (i) to (xii) provides for the framing of by-laws for carrying out the purposes of the Act-S. 26.

**27. Powers of district local board to transfer maintenance of institutions and execution of other works**— The district local board may, at any time, with the consent of the panchayat, transfer to such panchayat the management of any institution or the execution of any work not provided for in section 26, and it shall thereupon be lawful for such panchayat to undertake the management of such institution or the execution of such work:

*Provided that in every such case the funds necessary for such management or execution shall be placed at the disposal of the panchayat by the district local board.*

**28. Other duties**— (1) The panchayat shall,—

(i) subject to the regulations made by the local authority under the Bombay Primary Education Act, 1923, supervise the village school and carry out such repairs as may be necessary for the maintenance and upkeep of the same; and

(ii) subject to by-laws to be made by the district local board in this behalf,—

(a) supervise the labour employed by local boards on works within the village;

(b) supervise repairs to dharamshalas;

(c) manage and maintain cattle-pounds; and

(d) execute such works as are entrusted to it by the district local board; and

(iii) subject to such conditions as the Provincial Government may impose and with the consent of the

panchayat concerned, perform such other administrative duties, including the distribution of irrigation water, as may be assigned to it by the Provincial Government by notification in the *Official Gazette*, after consultation with the district local board.

(2) The regulations to be made by the local authority shall be made within six months from the passing of this Act. If no such regulations are made within the said period the Provincial Government may make rules for the purpose.

(3) A panchayat shall not be bound to carry out repairs to a village school under clause (i) of sub-section (1) *unless sufficient funds have been placed at the disposal of the panchayat by the local authority or the School Board*, as the case may be, or to perform the duties specified in clause (ii) of sub-section (1) *unless sufficient funds have been placed at the disposal of the panchayat by the district local board*.

These duties of panchayats again appear in the budget estimate and annual account of expenditure in respect of them. Vide Forms 1 and 3 at the end of Chapter V.

---

## CHAPTER IV

INCORPORATION OF VILLAGE PANCHAYAT; ITS  
PROPERTY AND FUND

The last Chapter set out the powers and duties of panchayats. To carry out the duties, money is required. From where is it to come, how is it to be applied, where is it to be kept...? This Chapter deals with these questions.

**29. Incorporation of village panchayat**—Every panchayat shall be a body corporate by the name of “the village panchayat of \_\_\_\_\_,” and shall have perpetual succession and a common seal, and may sue and be sued in its corporate name, and shall be competent to acquire and hold property, both moveable and immoveable whether within or without the limits of the village over which it has authority, to lease, sell or otherwise transfer moveable or immoveable property which may become vested in or be acquired by it, and to contract and do all other things necessary for the purposes of this Act:

Provided that no lease of immoveable property (other than property referred to in sub-section (1) of section 30) for a term exceeding three years and no sale or other transfer of any such property shall be valid unless such lease, sale or other transfer shall have been made with the previous sanction of the Collector.

The code of civil procedure—Order XXIX deals with suits by or against corporations.

Panchayats are competent to acquire and hold property, both moveable and immoveable, whether within or without

the limits of the village, and *they can lease, sell, or transfer the said property.*

The proviso sets out the limitations on the powers of the panchayat to lease, sell or transfer property:

**30. Property of panchayat—**(1) It shall be competent to a local board from time to time to direct that any property vesting in such local board shall vest in panchayat:

Provided that no lease, sale or other transfer of any such property shall be valid without the previous sanction of such local board.

(2) Every work constructed by a panchayat out of the village fund, shall vest in such panchayat.

**31. Village fund—**(1) There shall be in each village a fund, which shall be called the village fund.

The section gives the sources of revenue for the panchayat: they are 9.

(2) The following shall form part of, or be paid into, the village fund, namely:—

(a) the amount which *may* be allotted to the village fund by the Provincial Government under the provisions of section 191 of the Bombay District Municipal Act, 1901;

S. 191 of the Bombay District Municipal Act deals with the application of the funds of areas ceasing to be notified. It lays down "The unexpended proceeds of any taxes levied in any 'notified area' which ceases to be notified shall be applied for the benefit of the inhabitants of the area as Government may think fit".



The 'area' is 'notified' by Government to be administered on the lines of a *Municipality* under chapter XIV of the District Municipal Act.

Assets of abolished "Notified Area Committee" may be allotted by Government.

(b) the proceeds of any tax or fee imposed under section 89;

S. 89 deals with the "Levy of taxes and fees by panchayat".

(c) all sums ordered to be paid as compensation realised under sections 45 and 46;

S. 45 and S. 46 deal with the maximum penalties i. e. fines which may be inflicted by a village Bench.

(d) all other sums ordered by a court to be placed to the credit of the village fund;

According to S. 29 a panchayat is a corporate body and the panchayat can sue and obtain decrees in its favour.

(e) the sale proceeds, except in so far as any person is entitled to the whole or a portion thereof, of all dust, dirt, dung or refuse (including the dead bodies of animals) collected by the village servants;

(f) sums contributed to the village fund by the Provincial Government or a district local board;

The Minister for the Local-self Government stated in the Assembly "to begin with, each panchayat may get a grant of Rs. 100/-". Such a contribution by Government would come under this clause.

Besides, "the district local board shall assign not less than  $\frac{1}{4}$  of the local fund cess realised within the limits of the village" vide S. 93.

(g) all sums received by way of loans from the Provincial Government or the district local board or by way of gift;

(h) *This clause has been omitted.*

(i) the income or proceeds of any property vesting in the panchayat; and

(j) fees levied for the institution of suits and cases under section 59.

Under S. 59 fees are prescribed for the institutions of suits and cases.

The rates of the fees are set out under the village Bench Rules.

**32. Application of village fund**—All property vested in the panchayat under this Act, and *all funds* received by it in accordance with the provisions of this Act, and *all sums accruing* to it under the provisions of any law for the time being in force shall *be applied* subject to the provisions and for the purposes of this Act and all such funds and sums shall *be kept in such custody* as may be *prescribed*.

---

**Government Resolution No. S. 174/1 of 18-12-34.**

1. (1) A panchayat may allow its Secretary to keep a permanent advance not exceeding Rs. 50 for meeting current expenditure.

(2) At the end of each month, the sarpanch, or in his absence the deputy sarpanch, shall check the secretary's permanent advance account and verify the balance.

2. (1) A panchayat may—

(i) Deposit with such bank as may be approved by the collector all funds other than the sum allowed to be kept with its secretary under sub-rule (1) of rule 1, or

(ii) Invest such funds in public securities as defined in clause (18) of S. 3 of the Bombay District Municipal Act, 1901, in the name of the panchayat, and, from time to time, dispose of such securities as may be necessary.

(2) All such funds shall, unless deposited or invested under sub-rule (1), be deposited in the Taluka Sub-Treasury in the first week of every month, if such funds do not exceed Rs. 100, and as soon as conveniently may be if such funds exceed Rs. 100.

## ●

### Village Fund

**I. Heads of Income—Vide S. 31 (2) (a) to (j)**

**(1) Panchayats' Direct Income.**

- |   |     |        |     |     |
|---|-----|--------|-----|-----|
| (1) Proceeds of taxes and fees  | ... | Clause | ... | (b) |
| (2) Income of property vested in Panchayats   | ... |        |     | (i) |
| (3) Sale-proceeds of dust, dirt, etc., collected by village servants (subject to rights of private individuals).. |     |        |     | (e) |

**(2) Through Government.**

- (1) Amount which Government may allot under S. 191 of the District Municipal Act (Assets of abolished Notified Area Committee ... Clause ... (a)
- (2) Sums contributed by Government ... ... (f)
- (3) Loans from Government ... ... (g)

**(3) Through District Local Board.**

- (1) Sums contributed by District Local Board ... (f)
- (2) Loans from District Local Board ... ... (g)

**(4) Through Court.**

- (1) All fines and sums ordered to be paid as compensation (Ss. 45-46) ... ... (c)
- (2) Sums ordered by a court to be credited to the Village Fund ... ... (d)
- (3) Fees for institution of suits and cases (S. 59) ... (g)

**(5) Other Income.**

- (1) Sums received by way of gifts ... ... (g)

**II. Custody of Village Fund**

All funds received by the Panchayat shall be kept in such custody as may be prescribed by rules (Sect. 32).

The following rules are framed for the purpose:—

**(1) Secretary's permanent advance.**

- (1) Panchayat may allow not more than Rs. 50/- for current expenditure.
- (2) Sarpanch shall check this account at the end of every month.

**(2) Deposit with Bank.**

Panchayat may deposit all funds (except Secretary's advance) with Banks approved by Collector.

**(3) Investments.**

Panchayat may invest all funds in—

- (1) Public securities as defined in Section 3 of the District Municipal Act-1901.
- (2) In the name of the Panchayat and
- (3) may dispose of such securities as may be necessary.

**(4) Deposit in Taluka Sub-Treasury.**

All sums neither (1) deposited in Banks nor (2) invested in securities as mentioned above, shall be deposited in the Taluka Sub-Treasury—

- (1) in the first week of every month if funds do not exceed Rs. 100/-.
- (2) as soon as conveniently may be, if funds exceed Rs. 100/-.

**Public Securities.**

Under section 3 (18) of the District Municipal Act 1901, "Public securities" shall mean—

- (1) securities of the Government of India,
  - (2) stocks debentures or shares in railway or other companies, the interest whereon has been guaranteed by the Secretary of State for India in Council.
  - (3) debentures or other securities for money issued by or on behalf of any local authority in exercise of powers conferred by an Act of a Legislature established in British India, or
  - (4) a security expressly authorised by any order which the Governor in Council may make in this behalf.
-

## CHAPTER V

## ESTABLISHMENT AND ACCOUNTS

**33. Secretary of panchayat—(1)** For every panchayat there shall be a Secretary. He shall be appointed by the Provincial Government, and his powers, duties, remuneration and conditions of service shall subject to the provisions of sub-section (2) be as may be prescribed.

(2) The secretary of a panchayat shall be forthwith removed by the Provincial Government from office, if at a meeting of the panchayat *specially* called for the purpose not less than two-thirds of the total number of members of the panchayat vote in favour of such removal. The Secretary may also be removed from office by the Provincial Government at any time if it shall appear to the Provincial Government that he is incapable of performing the duties of his office or has been guilty of any misconduct or neglect which renders his removal expedient.

This section is entirely new, the old section stood thus:

○ Every panchayat shall appoint a secretary. Such appointment shall be subject to the approval of the Standing Committee of the district local board.

The power of appointment now vests in Government.

## Analysis.

The secretary, however, shall be, removed if at (i) a meeting of the panchayat (ii) *specially called for the purpose* (iii) *not less than two-thirds of the total number of members of the panchayat* vote in favour of such removal.

The secretary may, also be removed if it shall appear to Government that (i) he is *incapable* of performing the

duties of his office or (ii) has been *guilty* of (a) *misconduct* or (b) *neglect which renders his removal expedient*.

These provisions give the panchayat the power of control over the secretary, though the appointment is made by Government.

The secretary has to work as a judicial clerk to the village. Vide 37 (b) and the rules under it.

The power of appointment of secretaries—and their removal—has been delegated by Government under S. 112 (1) to the Collectors by Government Notification No. S. 174/10-12-2-1940 ... and to the assistant or deputy Collectors by No. S. 174/10 (b) - 2-2-1941.

In the same way, the power of determining the remuneration and conditions of service has been delegated to the Collectors by Government Notification S. 174/10 (b)-13-9-1940 and to assistant or deputy Collectors by No. 174/10 (b)-3-2-1941.

Government however desire in their Circular No. 174/10-3-2-1941 that "until the system is put in working order, the Collectors themselves should take a very considerable part in this respect".

### **Rules re. the powers, duties, remuneration and conditions of service of the Secretary of the panchayat appointed under section 33.**

#### **Government Resolution No. S. 174/10 of 13-9-41.**

1. The appointment of Secretary may be full-time or part-time or may be honorary or a paid one, or it may be in combination with some other appointment (such as village school master or secretary of the Co-operative Societies) according as the local conditions allow. The appointment of Secretary shall be filled

by the Collector by selecting a suitable person from the village or elsewhere, preference being given to those who are working, or who have worked, as secretaries to the village panchayats or who have been trained for rural development department work. If a village worker trained for rural development department work is selected, his appointment shall be made by the Collector in consultation with the Registrar of Co-operative Societies and Director of Rural Development Department. If an honorary worker is selected his appointment shall be made by the Collector on a resolution passed by the village panchayat to that effect. If a village school teacher is selected to fill the appointment, his appointment shall be made by the Collector in consultation with the Chairman of the School Board.

2. The remuneration, if any, to be given, to the Secretary will be determined by Government at the time of his appointment according to the nature of the appointment, that is, whether it is full-time or part-time or is honorary or a paid one or is in combination with some other appointment, but his remuneration, if his appointment is not honorary, shall not be less than Rs. 5 or more than Rs. 35 per mensem.

3. The conditions of service of the Secretary shall be determined by Government at the time of his appointment according to the nature of his appointment but in regard to this matter, the Bombay Civil Services Rules, as amended from time to time, shall apply so far as they are consistent.

4. The Village Panchayat Secretary shall furnish a surety bond of Rs. 200 and one surety of like amount.



5. The powers and duties of the Village Panchayat Secretary shall be as under—

(a) The Secretary shall perform all the duties, administrative or others which may be entrusted to him by Government and Village Panchayat.

(b) The Secretary shall carry out all the executive orders of the Village Panchayat.

**34. Schedule of servants—** Subject to the provisions of section 98, a panchayat shall determine and submit for information to the district local board a schedule of the number and salaries of its servants required for carrying out the duties imposed upon the panchayat by or under this Act.

**35. Appointment of servants—** (1) The sarpanch shall appoint the servants of the panchayat and pay their salaries from the village fund at his disposal. He may also, in cases of emergency, engage such temporary servants as he may deem necessary. The sarpanch may, from time to time, by a written order, fine, suspend or dismiss any servant appointed by him.

(2) An appeal shall lie against an order passed under sub-section (1) to the panchayat.

The panchayat establishment would thus consist of (a) the secretary (appointed by Government) and (b) the other servants (appointed by the sarpanch) who may either be permanent or temporary,

**36. Budget and accounts. Panchayat to convene a meeting of residents of village—** (1) A panchayat shall determine annually and shall submit to the district

local board, *on or before such date and in such form as may be prescribed by the Provincial Government, a statement of—*

(a) the opening balance and estimated income of the panchayat for the following year;

(b) the expenditure proposed on establishment and the discharge of the duties specified in section 26 (1);

(c) the expenditure proposed under section 26 (2) and section 28 (1).

(2) The district local board shall, within three months from the date of the receipt of such statement, either approve the same or direct that the proposed expenditure on any of the duties specified in sections 26 and 28 shall be increased or decreased:

Provided that the district local board shall not have power to direct that the total proposed expenditure shall exceed the estimated income of the village fund for the following year and the opening balance.

(3) The Secretary appointed under section 33 shall keep the accounts of the panchayat in such form as may be prescribed. He shall prepare the annual report of the administration of the panchayat and shall place the accounts and the report for approval before the panchayat. The annual statements of such accounts together with the annual report as approved shall be sent to the district local board on or before such date and in such form as may be prescribed.

(4) A panchayat shall convene in a manner and at a time prescribed a meeting of all adult residents of the village and the statements of the accounts together with a report on the administration for the preceding year and the programme of the work proposed for the year following shall be read out and explained at such meeting.

**The Village Panchayat Budget & Accounts Rules—S. 36**

Government Notification No. S. 174/6 of 2-1-1935.

1. These rules shall be called the Village Panchayat Budget and Accounts Rules, 1934.

2. In these rules unless there is anything repugnant in the subject or context—

(i) "Act" means the Bombay Village Panchayat Act, 1933.

(ii) "Official year" means the year commencing on the first day of April.

(iii) "Form" means a form appended to these rules.

(iv) "Section" means a section of the Act.

(v) "Village Chavdi" includes a place deemed to be a chavdi under the Bombay Land Revenue Code, 1879.

(iv) Words and expressions not defined in these rules but defined in the Act shall have the same meaning assigned to them in the Act.

3. The budget estimate shall be submitted by a Panchayat under sub-section (1) of S. 36 on or before 10th October in each year and shall be in Form 1.

["3A. A statement of re-appropriations of funds in the budget estimates shall be prepared, each month, in Form 23 and submitted to the district local board."

"In rules 4 and 5, for the figures "22" the figures "23" shall be substituted."] *Vide the latest Draft Notification under No. S. 174-B of 11-8-1941.*

4. A panchayat shall maintain its accounts in Forms 4 to 23 and shall annually submit to the district

local board on or before the 1st June returns of income and expenditure in Forms 2 and 3.

5. If in the opinion of the district local board, having regard to the local conditions of any panchayats it is not necessary to require the panchayat to maintain accounts in any Forms 4 to 22, the district local board may, with the previous approval of the Collector, exempt such panchayat from maintaining accounts in any of the said forms notwithstanding any thing contained in rule 4.

6. (1) The meeting of the adult residents of the village shall be convened under sub-section (4) of S. 36 within 2 months after the close of the official year at the village chavdi and if there is no chavdi in the village at any other place in the village which in the opinion of the sarpanch is accessible to the residents of the village on a date to be fixed by the sarpanch.
  - (2) Three clear days before the date of meeting, notice in writing specifying the time and the place at which the meeting is to be held and the business to be transacted there, shall be posted at the place of meeting and shall be given by beat of drum in the village.
  - (3) The Sarpanch, and in the absence of the sarpanch, the deputy sarpanch shall preside at the meeting. In the absence of both the sarpanch and the deputy sarpanch the members present shall select one of their number to preside at the meeting.
-

## FORM I.

*Budget Estimate of the Village Panchayat of**Taluka**District**, for the year*

| Income   | Expenditure   |
|--|---|
| Opening balance on 1st April 19  | 1. General Establishment—   |
| 1. Amount allotted to the village fund by Government under section 191 of the Bombay District Municipal Act, 1901. | (a) Secretary.  |
| 2. Proceeds of taxes or fees imposed under section 89—   | (b) Other establishment.  |
| (a) Tax upon the owners or occupiers of houses and lands.  | (c) Office contingencies.   |
| (b) Pilgrim tax.   | (d) Travelling Allowance to Establishment.  |
| (c) Tax on fairs and festivals.  | 2. Water Supply—  |
| (d) Tax on sales of goods.   | (a) Original works.   |
| (e) Octroi.  | (b) Repairs to.—  |
| (f) Tax on marriages, adoptions and feasts.  | (1) tanks.  |
| (g) Any other tax (to be specified).   | (2) wells.  |
| 3. Fines and sums ordered to be paid as compensation realised under sections 45, 43 and 48—                        | (3) Maintenance and Construction—river ghats or hels of potable water and supply of the same to the public from the water sources of the village. |
| (a) Fines under the Indian Penal Code and the Cattle-trespass Act, 1871.   | 3. Communications—  |
| (b) Fines for breaches of by-laws.   | (a) Construction of minor roads, bunds or culverts.   |
|  | (b) Maintenance of minor roads, bunds or culverts.  |
|  | 4. Other works of public utility  |
|  | 5. Maintenance of public buildings vesting in the panchayat.  |

| Income  | Expenditure  |
|---|--|
| (c) Compensation.<br>(d) Other items.   | 6. Sanitation and Conservancy—<br>(a) (i) Establishment.<br>(ii) Contingencies.                      |
| 4. Assignments—<br>(a) By Government under section 31 (2) (b).<br>(b) By the District Local Board under section 93 (1) (i). | (b) Construction and maintenance of—<br>(i) drains;<br>(ii) manure pits.                             |
| 5. Contributions—<br>(a) By Government.<br>(b) By the District Local Board<br>(c) Other contributions.                      | 7. Lighting—<br>(a) Establishment<br>(b) Oil.<br>(c) Other requisites.                               |
| 6. Fees under section 59.   | 8. Fairs, bazars and cart-stands.  |
| 7. Income from lands or other properties vesting in the panchayat.  | 9. Slaughter house—<br>(a) Construction.<br>(b) Repairs.   |
| 8. Cattle-pound receipts.   | 10. Burning and burial grounds—<br>(a) Purchase.<br>(b) Maintenance,                                 |
| 9. Sale proceeds—<br>(a) Of dust, dirt, dung, refuse and other matter.<br>(b) Of unserviceable property.                    | 11. Cattle-pounds—<br>(a) Establishment.<br>(b) Contingencies.<br>(c) Remuneration to pound-keepers. |
| 10. Miscellaneous receipts.   | 12. Tools and Plant.   |
| 11. Loans, deposits and advances—<br>(a) Loan from Government.<br>(b) Loan from the District Local Board.                   | 13. Interest on loans.<br>14. Miscellaneous.   |

| Income  | Expenditure  |
|---|--|
| <p>(c) Funds placed at the disposal of a panchayat by a district local board, a local authority of the school board for the purpose of the village school and for carrying out other duties under section 28.</p> <p>(d) Advances.</p> <p>Total Receipts.</p> <p>Grand Total (including opening balance).</p> | <p>15. Loan, deposits and advances—</p> <p>(a) Repayment of loans.</p> <p>(b) Repayment of deposits—</p> <p>(i) Expenditure on works transferred by the District Local Board.</p> <p>(ii) Expenditure on a village school.</p> <p>(c) Advances.</p> <p>Total Receipts.</p> <p>Closing balance.</p> <p>Grand Total.</p> |

| FORM 2 : Income  | FORM 3 : Expenditure   |
|--|--|
| <i>Annual account of Income</i><br>—for the year 19 .  | <i>Annual account of Expenditure</i><br>—for the year 19 .   |
| <p>1. Division.</p> <p>2. District.</p> <p>3. Name of Panchayat.</p> <p>4. Opening balance.</p> <p>5. Government allotment under section 191 of the Bombay District Municipal Act, 1901.</p> <p>6. Receipts from taxes under section 89—</p> <p>(a) Tax upon the owner or occupiers of houses &amp; lands.</p> | <p>1. Division.</p> <p>2. District.</p> <p>3. Name of Panchayat.</p> <p>4. General establishment.</p> <p>(a) Secretary.</p> <p>(b) Other establishments.</p> <p>(c) Office contingencies.</p> <p>(d) Travelling allowance to establishment.</p> <p>5. Water supply—</p> <p>(a) Original works.</p> |

| FORM 2 : Income  | FORM 3 : Expenditure  |
|--|---|
| <p>(b) Pilgrim Tax.</p> <p>(c) Tax on fairs and festivals.</p> <p>(d) Tax on sales of goods.</p> <p>(e) Octroi.</p> <p>(f) Tax on marriages, adoptions and feasts.</p> <p>(g) Any other tax ( to be specified ).</p> <p>7. Receipts from fines and compensations—</p> <p>(a) Fines—</p> <p>(i) Fines under the Indian Penal Code and the Cattle-trespass Act. 1871, and fines and sums realized under sections 45 (1) (a) and (b) and 46 (a) and (b)</p> <p>(ii) Fines for breaches of by-laws inflicted under section 45 (1) (c).</p> <p>(b) Compensation under section 48.</p> <p>(c) Other items.</p> <p>8. Assignments—</p> <p>(a) By Government under section 31 (2) (h).</p> <p>(b) By District Local Board under section 93 (1) (i).</p> <p>9. Contributions—</p> <p>(a) By Government.</p> | <p>(b) Repairs to—</p> <p>(i) tanks,</p> <p>(ii) wells.</p> <p>(iii) Maintenance and Construction—river ghats or hells of potable water and supply of the same to the public from the water sources of the village.</p> <p>6. Communications—</p> <p>(a) Construction of minor roads, bunds or culverts.</p> <p>(b) Maintenance of minor roads, bunds or culverts.</p> <p>7. Other works of public utility.</p> <p>8. Maintenance of public buildings vesting in the panchayats.</p> <p>9. Sanitation and Conservancy—</p> <p>(a) (i) Establishment.</p> <p>(ii) Contingencies.</p> <p>(b) Construction and maintenance of—</p> <p>(i) drains.</p> <p>(ii) manure pits.</p> <p>10. Lighting—</p> <p>(a) Establishment.</p> <p>(b) Oil.</p> <p>(c) Other requisites.</p> <p>11. Fairs, bazars and cart-stands.</p> |



| FORM 2 : Income  | FORM 3 : Expenditure   |
|--|--|
| (b) By District Local Boards.<br>(c) Other contributions.<br>10. Fees under section 59.<br>11. Income from properties vesting in the panchayat.<br>12. Cattle-pound receipts.<br>13. Sale proceeds—<br>(a) From dust, dung, dirt or refuse and other matter.<br>(b) Unserviceable property.<br>14. Miscellaneous receipts.<br>15. Loans, deposits and advances—<br>(a) Loan from Government.<br>(b) Loan from District Local Board.<br>(c) Funds placed at the disposal of a panchayat by a district local board, a local authority or a school board for the purpose of a village school and for carrying out the duties under section 28.<br>16. Total Receipts.<br>17. Grand Total ( including opening balance ).<br>18. Income per head of population. | 12. Slaughter houses—<br>(a) Construction.<br>(b) Repairs.<br>13. Burning and burial grounds—<br>14. Cattle-pounds—<br>(a) Establishment.<br>(b) Contingencies.<br>(c) Remuneration to pound-keepers.<br>15. Tools and Plant.<br>16. Interest on loans.<br>17. Miscellaneous.<br>18. Loan, deposits and advances—<br>(a) Repayment of loans.<br>(b) Repayment of deposits—<br>(i) Expenditure on works - transferred by the District Local Board.<br>(ii) Expenditure on a village School.<br>(c) Advances.<br>19. Total Expenditure.<br>20. Closing balance.<br>21. Grand Total.<br>22. Expenditure per head of population. |

*The Budget* shows, on the one hand, the various sources of income & the heads of duties of the panchayat on the other, on which the income is to be expended & gives, in detail, a *bird's eye view* of the preceding chapters in which the subjects are treated.

The total forms prescribed under section 36.

- Nos. 1 to 3 } Form No. 1—Budget, vide pp. 96–98  
 must be }  
 observed. } 2—Annual account of income. pp. 98–100  
 3—Annual account of expenditure „
- { No. 4—General Cash Book for the year.  
 „ 5—Classified monthly Register of Receipts  
payments  
 „ 6—General Receipt.  
 „ 7—Assessment list of buildings and lands  
 liable to taxation for the year.  
 „ 8—Demand Register of assessed taxes for  
 the year.  
 „ 9—Receipt for taxes.  
 „ 10—Register of miscellaneous demands for  
 the year.  
 „ 11—Octroi Receipt.  
 „ 12—Collection Register of Octroi for the year.  
 „ 13—Consolidated Kird of Collections.  
 „ 14—Voucher. 15—Scale Register.  
 „ 16—Stamp account for the year.  
 „ 17—Stock Account of Receipt Books  
Materials  
 „ 18—Form of Register of Dead Stock or  
 moveable property.  
 „ 19—Register of Advances  
Deposits  
 „ 20—Petty Cash Book.  
 „ 21—Muster Roll of Men employed on—  
 (nature of work) during the month.  
 „ 22—Estimates—Inner and Outer Sheets.  
 \* „ 23—Statement of Re-appropriations and  
 Allotments approved by the Village  
 Panchayat Act during the month of

Nos. 4 to 22.  
 Any of these  
 may be dis-  
 pensed with  
 by District  
 Local Board  
 with Collec-  
 tor's sanction.

(Draft Notification  
 under No. S. 174 - B  
 of 14-8-1941 ).

## CHAPTER VI

**CONSTITUTION AND POWERS OF VILLAGE BENCHES**

The objects of the Panchayat Act stated in the preamble are 2.

1. To confer on the village population, some of the powers of local self-government in respect of sanitation and health etc.

2. To confer on the village population, powers to administer (a) civil, and (b) criminal justice within certain specified limits.

The Panchayat Act discloses *two parts* which deal with these *two objects*. The first part deals with *the general administration* of the village, the second with *the administration of justice* in the village.

The first five chapters of the Act deal with the general administration, with the establishment and constitution of Panchayats, their powers and duties, their property and servants to carry on their duties.

The next three chapters (VI, VII, VIII) deal with the judicial administration: the first chapter of this part which is Chapter VI of the Act, deals with the constitution and powers of village Benches; the next deals with the procedure for the conduct of suits and cases before the village benches; and the last which is Chapter VIII, deals with the execution of decrees and orders passed by benches in accordance with the procedure laid down in the previous chapter.

The rest of the Act deals with taxation, control and general miscellaneous matters.

**The subject matter of the chapter:**

1. The constitution of the village Bench: who can be its members and who its Chairman?

2. The nature of the suits and cases (a) that can be tried and (b) that cannot be tried by the bench.
3. The extent and limits of the power of punishment.

**37. Election of village bench-** (1) Every panchayat shall at its first meeting elect out of its members in the manner prescribed five persons for the purpose of constituting a village bench.

Vide part B of the Bench Rules.

(2) The five persons so elected shall constitute a village bench and the Provincial Government shall direct that such bench may exercise *all or any of the judicial powers which may be conferred on the bench under this Act*: Provided that the Provincial Government may at any time, by notification in the Official Gazette, withdraw all or any of the judicial powers conferred on a village bench if, in the opinion of the Provincial Government, such bench has been *incompetent* in the exercise of or has been *guilty of the abuse* of the said powers.

(3) Save as herein provided *the term of office* of the members of such bench shall be co-extensive with the term of their office as the members of the panchayat.

(4) If any vacancy arises in the office of any of the members of such bench, it shall be filled by election in the manner prescribed. The member so elected shall hold office so long only as the member in whose place he has been elected would have held office if the vacancy had not occurred.

(5) Out of the members so elected *three* members shall form a *quorum*.

(6) Save as provided in this Act, the Provincial Government may make *rules to regulate*—

*Vide part C of the Bench Rules.*

(a) the conduct and distribution of business and practice before a village bench,

(b) the times and places at which the village bench shall sit,

(c) any other matter which in the opinion of the Provincial Government may be necessary for the conduct of proceedings before a village bench.

The present section has been amended beyond recognition. Under the old section, the constitution of village benches proceeded on completely different basis; it was *based on appointments, selections and nominations*. The Collectors had wide powers. He appointed the chairman of the bench. The selection of elected panchayat members for bench membership was in his hands. He nominated outsiders also to the bench. Besides, the holder (the inamdar) of the village had a place on the bench.

Under the present section, the Collector has no hand in the constitution of benches; it proceeds on *the basis of elections pure and simple*.

**37 A. Chairman of village bench**—Every village bench shall have a Chairman. The Chairman shall be elected by the bench from amongst the members of the bench and *the term of office* of the Chairman of such bench shall be co-extensive with the term of the bench.

*Vide part C of the Bench Rules.*

## The Bombay Village Benches Rules

Government Resolution No. S. 174/11 of 14-8-1940.

### *A.—Preliminary.*

1. *Short title.*— These rules may be called the Bombay Village Benches Rules, 1940.

2. *Definitions.*— In these rules, unless there is anything repugnant in the subject or context,—

(i) “ Act ” means the Bombay Village Panchayats Act, 1933;

(ii) “ form ” means a form appended to these rules;

(iii) “ member ” means a member of a village bench;

(iv) “ section ” means a section of the Act;

(v) “ village chavdi ” includes a place deemed to be a chavdi under the Bombay Land Revenue Code, 1879;

(vi) Words and expressions not defined in these rules but used in the Act shall have the meanings assigned to them in the Act.

### *B.—The manner in which the members constituting a Village Bench shall be elected.*

3. *Mode of election of the members of a village bench.*— After the Sarpanch has been elected at the first meeting of a panchayat convened under section 17, the panchayat shall proceed to elect five persons out of its members for the purpose of constituting the village bench. Such election may

be held either *by show of hands or by ballot*. The Sarpanch shall determine in the case of each election, after ascertaining the sense of the meeting at which the election is to be held, whether it shall be held *by show of hands or by ballot*.

4. *Procedure at elections held by show of hands.*—(1) When the election is to be held by show of hands, the procedure laid down in this rule shall be followed.

(2) The Sarpanch shall call upon all candidates who seek election to state their names to him.

(3) He shall put to vote the name of every candidate separately and shall declare the candidates who secure the largest number of votes to be elected.

(4) Where the number of votes secured by two or more candidates is equal, the determination of the candidate who is to be declared elected shall be made by lot to be drawn in the presence of the Sarpanch and in such manner as he shall determine.

5. *Procedure at elections held by ballot.*—(1) When an election is to be held by ballot, the procedure laid down in this rule shall be followed.

(2) The Sarpanch shall call upon all candidates who seek election to state their names to him.

(3) The Sarpanch shall give to every member of the panchayat, who is present at the meeting, five voting slips and shall ask him to write on each slip the name of the candidate whom he wants to be elected to the village bench.

(4) After the voting slips are duly filled in, they shall be folded and handed over to the Sarpanch. He shall appoint two scrutineers who shall be approved by the members of the panchayat present at the meeting, for counting of the votes.

(5) The scrutineers shall count the votes and report immediately the result of voting to the Sarpanch.

(6) The Sarpanch shall declare the candidates who have secured the largest number of votes to be elected.

(7) Where the number of votes secured by two or more candidates is equal, the determination of the candidate who is to be declared elected shall be made by lot to be drawn in the presence of the Sarpanch and in such manner as he shall determine.

6. *Manner of publishing the result of election.*—The result of every election shall be pasted on a notice board at the office of the panchayat.

*C-Election of Chairman of the Village Bench, the conduct of business before the Village Bench, the times and places of its sittings, etc.*

7. *Election of Chairman.*—After the panchayat has elected the members of the village bench, the Sarpanch shall convene a meeting of the bench for the purpose of electing its Chairman. At such meeting the Chairman shall be elected by the bench.

7A. The Sarpanch shall preside over that meeting until the Chairman has been elected.



7B. The Sarpanch so presiding shall not be at liberty to vote upon, or to make any proposition at the meeting unless he is himself a member of the bench.

7C. If the Sarpanch is unable, or, for any reason, fails to preside over the meeting, the members present shall elect from amongst themselves a chairman for the meeting. Such chairman shall preside over the meeting, until the Chairman of the Bench has been elected.

7D. In case of an equality of votes the result of the election shall be determined by lot to be drawn in the presence of the person presiding over the meeting, in such manner as he may determine.

8. *Appointment of Chairman when Chairman is absent or unable to preside.*— The Chairman of the village bench shall preside at every sitting of such village bench. In the absence of the Chairman or in case of his inability to preside at any sitting, the members present shall elect a member from among those present to be the Chairman for that sitting. If the number of votes secured by two or more members for election as a Chairman is equal, the determination of the member who should be considered elected shall be made by lot.

9. *Place of sitting.*— Every village bench shall sit at the place of sitting of the panchayat fixed in accordance with the by-laws made under section 19 and if such place is not available at the village chavdi:

Provided that if in any village there is no such village chavdi the village bench may sit at any other place which is approved by the Sub-Divisional Magistrate within whose jurisdiction the village is situated and which is accessible to all persons concerned.

10. *Hours of sitting.*— The Chairman of the village bench shall, in consultation with other members, fix the hours of sitting of such bench.

11. *Registers.*— Every village bench shall maintain the following registers:—

- (1) Register of proceedings in Form I.
- (2) Register of suits in Form II.
- (3) Register of cases in Form III.

FORM No I

(See RULE 11.)

*Register of Proceedings.*

| Date. | Name of members present. | Business transacted. |
|-------|--------------------------|----------------------|
| 1     | 2                        | 3                    |
|       |                          |                      |

FORM No. II : ( See RULE 11. )

Register of Suits instituted in the Village Bench of

| Suit No. | Date of application. | Name, age, caste, father's or husband's name and residence of plaintiff; substance of his statement, his signature or thumb-impression and date, and the signature of the Chairman or Member ( S. 60 ). | Date, time and place fixed for sitting ( S. 61 ). | Date, time and place fixed for producing evidence and for hearing the suit ( S. 62 ) | Substance of evidence of the plaintiff and the names of his witnesses and the substance of their evidence. | Name, age, caste, father's or husband's name and residence of defendant or his representative; substance of his statement and substance of the evidence of his witnesses together with their names. | Decree or order passed, with brief reasons, showing <i>inter alia</i> the amount decreed, if any. The date of the decree or order ( rule 16 ) | Date on which and the manner in which the decree or order was satisfied or adjusted, wholly or in part ( S. 80 ). | Any subsequent order passed by the District Court ( S. 87 ). | Transfer of suit by the District Court ( see S. 87A ). |
|----------|----------------------|---|---|--|--|---|---|---|--|--|
| 1        | 2                    | 3   | 4   | 5  | 6  | 7   | 8   | 9   | 10   | 11   |
|          |                      |   |   |  |  |   |   |   |  |  |

Signatures or thumb-impressions of the members of village bench passing the decree/order.

Signature of the Chairman.

Signatures or thumb-impressions of members of village bench disagreeing. Signatures or thumb-impressions of the parties as per rule 16.

FORM No. III. : ( See RULE 11. )

Register of Suits instituted in the Village Bench of

SEC. 87A

| Case No. | Date of application. | Name, age, caste, father's or husband's name and residence of complainant; substance of his statement, his signature or thumb-impression and date and signature of the Chairman or member ( S. 60 ). | Date, time and place fixed for sitting ( S. 61 ). | Date, time and place fixed for hearing of the case ( S. 62 ). | Substance of the evidence of the complainant and his witnesses together with their names. | Name, age, caste, father's or husband's name and residence of the accused, or his representative and substance of his statement, his signature or thumb impression and date, and substance of the evidence of witnesses on his behalf together with their names. | Orders passed with brief reasons; the date of the order (rule 16). | Recovery of the amount of fine or compensation and date ( S. 85 ). | Any subsequent order passed by District Magistrate ( S. 87 ). | Transfer of case by District Magistrate ( see S. 87B ). |
|----------|----------------------|--|---|---|---|--|--|--|---|---|
|          |                      |  |   |   |   |  |  |  |   |   |

Signatures or thumb-impressions of members of the village bench passing the orders.

Signature of Chairman.

Signatures or thumb-impressions of members of village bench disagreeing. Signatures or thumb-impressions of the parties as per rule 16.

12. *Language.*— The proceedings of a village bench shall be held and all registers of the bench shall be maintained in the principal regional language of the district in which the village is situated, or in such other language of the village as the Sub-Divisional Magistrate, within whose jurisdiction the village is situated, may direct.

13. *Hearing of suits or cases and adjournments.*— So far as is practicable every village bench shall finish the hearing of a suit or case on the day fixed for such hearing. If for any reason the hearing of any suit or case is not finished on any day, the bench shall after recording its reasons in writing for the adjournment, adjourn the hearing, if practicable, to the following day and shall then continue the hearing from day to day. If any suit or case is not decided within fourteen days of the date of its first hearing, the chairman shall report the reasons therefor to the Sub-Divisional Magistrate within whose jurisdiction the village is situated.

14. *Recording of evidence.*— Every village bench shall record in the register of suits or register of cases as the case may be a minute of the proceedings of every suit or case heard by it, containing the substance of the application, the statement made by the defendant or the accused, and the evidence given in such suit or case.

15. *Documents.*—If any documents are produced in any suit or case, they shall be endorsed to that effect and a note of them taken in the register of suits and cases, as the case may be.

Such documents shall be returned by the village bench to the person producing the same after the suit or case is decided.

16. *Decision to be recorded.*— Every village bench shall record in the register of suits (Form No. II) or the register of cases (Form No. III), as the case may be, its decision and reasons in brief for its decision, and the members giving the decision shall affix their signatures or thumb impressions thereto. The decision shall be communicated to the parties present whose signatures or thumb impressions shall then be taken in the register.

*D—Fees on institution of suits, Forms of summons, etc*

17. *Fees on institution of a suit or case.*— Fees shall be charged at the following rates for the institution of suits or cases:—

- (1) In the case of a suit when the amount or value of the claim—
  - (a) does not exceed  
Rs. 10 ... .. Eight annas.
  - (b) exceeds Rs. 10 but does  
not exceed Rs. 25 ... One rupee.
  - (c) exceeds Rs. 25 but does  
not exceed Rs. 50 ... One rupee &  
eight annas.
  - (d) exceeds Rs. 50 but does  
not exceed Rs. 75 ... Two rupees.
  - (e) exceeds Rs. 75 but does  
not exceed Rs. 100 ... Two rupees &  
eight annas.

(2) In the case of any case (other than a case instituted on behalf of a panchayat or by a public servant in his official capacity in respect of any offence or a breach of any bylaw )

... Eight annas.

18. *Form of summons.*— Every summons issued by a village bench shall be in duplicate and shall be in Form IV in the case of a defendant or accused and in Form V in the case of a witness.

19. *Process fees.*— For every summons issued by a village bench, when the summons is to be served within the village, a fee of one anna, and when the summons is to be served outside the village, a fee of four annas, shall be charged.

20. *Receipt of fees.*— The fees chargeable under rules 17 and 19 shall be paid in cash to the Chairman, or in his absence from the village, either to the Secretary of the Panchayat, or to the member appointed under section 59 for receiving applications regarding institution of suits or cases. Such Chairman, Secretary or member shall forthwith give a receipt under his signature for the amount paid to him, in such form as the village bench has approved in this behalf and shall credit the amount to the village fund and enter it in the column relating to fees in the cash book of the village bench.

21. *Payment of fees to village officers for service of summons.*— If a village officer is employed the fee charged under rule 19 shall be paid to such officer.

## FORM No. IV.

( See RULE 18. )

*Summons to Defendant or Accused.*Number of <sup>suit</sup> \_\_\_\_\_  
                  <sub>case</sub>

Names of parties \_\_\_\_\_

Nature of <sup>claim</sup> \_\_\_\_\_  
                  <sub>complaint</sub>

Date of institution \_\_\_\_\_

Whereas this <sup>suit</sup> will be heard before the village bench  
                  <sub>case</sub> of \_\_\_\_\_ on (date and  
time) \_\_\_\_\_ at (place) \_\_\_\_\_you \_\_\_\_\_ are hereby required  
to attend with documents if any and your witnesses  
to defend your <sup>suit</sup>  
                                  <sub>case.</sub>

Dated \_\_\_\_\_

\_\_\_\_\_  
Signature of Chairman.

## FORM No. V.

( See RULE 18. )

*Summons to Witness.*Number of <sup>suit</sup> \_\_\_\_\_  
                  <sub>case</sub>

Names of parties \_\_\_\_\_

Nature of <sup>claim</sup> \_\_\_\_\_  
                  <sub>complaint</sub>

Date of institution \_\_\_\_\_

Whereas you \_\_\_\_\_ have been required



to give evidence  
to produce the document mentioned below in the above suit  
case

you are hereby required to appear  
to produce the document afore-

said before the village bench of \_\_\_\_\_

on (date and time) \_\_\_\_\_

at (place) \_\_\_\_\_

Dated \_\_\_\_\_

Signature of Chairman.

*E-Supply of copies, etc.*

22. *Supply of copies of entries in registers.-*

(1) An application for copy of any entry in the register of suits or in the register of cases shall be made to the Chairman of the village bench or in his absence either to the Secretary of the village bench or to the member appointed under section 59 for receiving applications regarding institution of suits or cases. Every such copy shall be furnished within a week from the receipt of the application. A fee of four annas shall be paid for each such copy.

(2) The Chairman of the village bench shall either make the copy himself or cause it to be made by the Secretary of the Panchayat, or by the Talati of the village or by a school teacher or any other literate person. Every copy shall be compared by the Chairman with the register and shall be certified by him to be a true copy.

(3) Half of the amount of copying fee received under sub-rule (1) shall be paid to the person making the copy and the balance shall be credited to the village fund.

*F-Miscellaneous.*

23. *Payment of fine, compensation, etc, and receipt therefor.*—Every person liable to pay any amount on account of fine, compensation or otherwise under an order or decree of a village bench shall pay such amount to the Chairman of the village bench or, in his absence from the village, either to the Secretary of the Panchayat, or to the member appointed under section 59 for receiving applications regarding institution of suits or cases. Such Chairman, Secretary or member shall give a receipt for the amount so received in the "general receipt" form prescribed in the case of accounts of the village panchayat under the rules made under clause (f) of sub-section (1) of section 108 of the Act. When any amount is paid to any person under an order or decree of a village bench, a receipt for the amount so paid shall be taken from such person in such form as may be approved by the village bench.

24. *Costs in suits.*—The order of costs in suits for money shall follow the event and such costs shall include the fees paid under rules 17 and 19 and such part of the expenses of witnesses incurred under sub-section (3) of section 67 as the village bench may deem reasonable to award.

**37 B. Judicial Clerk of panchayat**— The Secretary of a panchayat shall act as the Judicial Clerk of the village bench for the purpose of recording its proceedings and decisions and doing such other duties as may be prescribed.

**Duties of the judicial clerk—S. 37 B.**

**Government Notification No. S. 174/6 of 2-1-1935.**

The secretary of a panchayat acting as the Judicial Clerk of the village Bench shall perform the following duties, namely:—

(a) He shall maintain the registers of suits and proceedings and of cases instituted, heard or decided by the village bench in the form prescribed by the Bombay Village Bench Rules.

(b) He shall furnish to the village panchayat for incorporation in its accounts—

(i) all sums recovered as fines or compensation under section 45, 46 or 48 of the said Act;

(ii) all other sums ordered by a Court to be placed to the credit of the village fund;

(iii) fees levied for the institution of suits and cases under section 59 of the said Act; and

(iv) the expenditure incurred by the Village Bench in connection with its judicial work.

(c) He shall execute the orders of the Village Bench.

(b) He shall perform such other duties as the Provincial Government or the Village Bench may entrust to him in connection with the functions of the Village Bench.

Vide p. 90 for duties of the Secretary.

**37 C. Removal of a member from the village bench-** (1) The Provincial Government, if it thinks fit, may remove any member elected on the village bench after giving him an opportunity of being heard and after such inquiry as the Provincial Government deems necessary, if in the opinion of the Provincial Government such member has been guilty of *misconduct* in the discharge of his duties or of *any disgraceful conduct* or *neglects* or *refuses to perform* or has been *incapable of performing any of the duties as a member* of the village bench.

(2) If any inquiry is held under sub-section (1), the Provincial Government may suspend such member from being on the village bench for such period as it thinks fit.

(3) The removal or suspension of such member under sub-section (1) or (2) shall not by reason of that fact alone disqualify him from being a member of a panchayat.

(4) A person removed from a village bench under sub-section (1) shall *not be eligible for re-election* on such bench.

**38. Saving of pending proceedings-** Every suit or case of the nature specified in section 39 or 41, *pending* in any court and cognizable by a village bench empowered under section 37 and all proceedings arising from and incidental to any such suit or case shall be tried, heard and determined by such court or any other court having jurisdiction to try, hear and determine the same, as if this Act had not been passed.

**39. Suits triable by village bench—**(1) Save as otherwise provided in section 40, power to try *all or any* of the following suits may be conferred on a village bench under section 37, namely:—

(a) suits for money due on contracts, *not affecting any interest in immoveable property*;

(b) suits for the recovery of *moveable property* or for the value of such property;

(c) suits for compensation for wrongfully taking and injuring *moveable property*; where the amount or value of the claim does not exceed *twenty-five rupees*.

(2) With the *written* consent of both the parties, recorded in the presence of the village bench, suits of the nature described in sub-section (1), but the value of which does not exceed one hundred rupees, shall be triable by such village bench.

(3) The Provincial Government may, by notification in the *Official Gazette*, direct that any village bench may try any suit of the nature described in sub-section (1), up to such value as may be specified in the notification *not exceeding one hundred rupees*.

**40. Suits not triable by village bench—**No suit shall be brought before any village bench—

(i) on a balance of partnership account;

(ii) for a share or part of a share under any intestacy, or for a legacy or part of a legacy under a will;

(iii) by or against the Crown or any local authority or an officer or servant of the Crown or a

member, officer or servant of a local authority *in his official capacity*;

(iv) by or against a minor or a person of unsound mind; and

(v) on account of any dispute or matter in respect of which any suit or application would be cognizable by a revenue court.

**41. Offences cognizable by village benches—**  
Power to take cognizance of and try *all* or *any* of the following offences may be conferred on a village bench under section 37, namely:—

| (a) Under the Indian Penal Code— |  | Section. |
|----------------------------------|--|----------|
| 1                                | Negligently doing any act known to be likely to spread the infection of any disease dangerous to life ... .. | 269      |
| 2                                | Fouling the water of a public spring or reservoir ... ..   | 277      |
| 3                                | Causing danger, obstruction or injury to any public way ... ..   | 283      |
| 4                                | Voluntarily causing hurt ... ..  | 323      |
| 5                                | Assault or use of criminal force otherwise than on grave and sudden provocation ... ..                       | 352      |
| 6                                | Assault or use of criminal force on grave and sudden provocation ... ..                                      | 351      |
| 7                                | Theft, where the value of the property stolen does not exceed Rs. 20 ... ..                                  | 372      |

|    |  |     |
|----|--|-----|
| 8  | Mischief when the loss or damage caused does not exceed Rs. 20 in value ... ..                                   | 426 |
| 9  | Criminal trespass ... ..   | 447 |
| 10 | House trespass ... ..  | 448 |
| 11 | Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property ... .. | 461 |
| 12 | Intentional insult, with intent to provoke a breach of the peace ...   | 504 |

(b) Under the Cattle-trespass Act, 1871—

|  |    |
|--|----|
| Forcibly opposing the seizure of cattle or rescuing the same ... | 24 |
|--|----|

(c) Breaches of by-laws made punishable under this Act:

Provided that no offence of theft shall be cognizable by any village bench, *unless an accused person has been either apprehended or recognised and named.*

**Power to try 3 classes of offences can be conferred on the village benches by the Provincial Government.**

(a) *Offences under the Indian Penal Code.*

(b) *Offences under the Cattle-trespass Act.*

(c) *Offences of breaches of by-laws made punishable under the Village Panchayat Act.*

(a) These are offences which fall into 4 divisions under 4 different chapters of the Penal Code:

- I *Offences* under Ss. 269, 277, 283 are *against Public Health and Safety*—Chapter XIV.
- II *Offences* under Ss. 323, 352, 358 are *against the Human Body*—Chapter XVI.
- III *Offences* under Ss. 379, 426, 447, 448 are *against property*—Chapter XVII.
- IV *Offences* under Ss. 504 are *in respect of insult*—Chapter XXII.

The relevant Sections are reproduced below.

(a) I **Offences against Health and Safety.**

(1) 269. **Negligent act likely to spread infection of disease dangerous to life**—Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(2) 277. **Fouling water of public spring or reservoir**—Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(3) 283. **Danger or obstruction in public way or line of navigation**—Whoever, by doing any act or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.



## (a) II Offences against the Human Body.

(1) 321. **Voluntarily causing hurt**—Whoever does any act with intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt.”

323. **Punishment for voluntarily causing hurt**—Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

(2) 350. **Criminal force**—Whoever intentionally uses force to any person, without that person’s consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

(2) 351. **Assault**—Whoever makes any gesture, or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

*Explanation*—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

(2) S. 352 states “whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person shall be punished.....”

(3) 358. **Assault or criminal force on grave provocation**—Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both.

*Explanation*—The section is subject to the same explanation as section 352.

(a) III Offences against Property.

378. **Theft**—Whoever, *intending to take dishonestly* any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

*Explanation 1.*—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

*Explanation 2.*—A moving effected by the same act which effects the severance may be a theft.

*Explanation 3.*—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

*Explanation 4.*—A person, who by any means cause an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused is moved by that animal.

*Explanation 5.*—The consent mentioned in the definition may be expressed or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

**379. Punishment for theft**—Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

S. 41 lays down 2 limitations on the power of the bench to try offences of theft.

- (i) *The value of property stolen should not exceed Rs. 20.*
- (ii) *The accused person should have been either apprehended or recognised and named.*

S. 42 lays down other limitations.

**425. Mischief**—Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

*Explanation 1.*—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

*Explanation 2.*—Mischief may be committed by an act affecting property, belonging to the person who commits the act, or to that person and others jointly.

S. 426 states the punishment for mischief.

(3) **441. Criminal trespass**—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property.

or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

is said to commit "criminal trespass."

S. 447 states the punishment for trespass.

(4) 442. **House-trespass**—Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

*Explanation.*—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

S. 448 states the punishment for house trespass.

(5) 461. **Dishonestly breaking open receptacle containing property**—Whoever dishonestly, or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(a) IV Offence in respect of insult.

(1) 504. **Intentional insult with intent to provoke breach of the peace**—Whoever intentionally insults, and thereby gives provocation to, any person intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

---

The above mentioned offences — they are 12 — are against Public Health, Safety and Peace of the village as well as against the Human Body and Property of individual villagers and are, therefore, brought within the jurisdiction of the village bench.

(b) **Offences under the Cattle Trespass Act.**

24. **Penalty for forcibly opposing the seizure of cattle or rescuing the same**—Whoever forcibly opposes the seizure of cattle liable to be seized under this Act,

and whoever rescues the same after seizure, either from a pound or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

“Cattle liable to be seized” are those which “trespass and damage land or crop or produce” ( S. 10 ) “or public roads, grounds, canals &c.” ( S. 11 ).

(c) **Offences of Breaches of By-laws.**

S. 109 of the Panchayat Act enables the District Local Boards to frame by-laws with the previous sanction of the Commissioner. They may provide for punishment with fine in case of their breach. The benches can try offences of breaches of these by-laws.

*No person shall deposit any dust, ashes, garden, kitchen or stable refuse or filth of any kind on the street or in any place other than a place or places ear-marked by the Panchayat for the purpose.*

The offence of the infringement of a by-law like this can be tried and punished by the bench.

**42. Certain persons accused of theft not to be tried by village bench**—No village bench shall take cognizance of any offence of theft punishable under section 379 of the Indian Penal Code, in which the accused—

(a) has been previously convicted of an offence punishable, under Chapter XII or Chapter XVII of the Indian Penal Code, with imprisonment of either description for a term of three years or upwards;

(b) has been previously fined for theft by any panchayat;

(c) is a *registered* member of a criminal tribe under section 4 of the Criminal Tribes Act, 1924; or

(d) has been bound over to be of good behaviour in proceedings instituted under section 109 or, section 110 of the Code of Criminal Procedure, 1898.

(a)...Indian Penal Code Chapter XII deals with "offences relating to Coin and Government Stamps" Chapter XVII deals with "offences against property" viz: 1. theft, 2. extortion, 3. robbery, 4. dacoity, 5. misappropriation, 6. breach of trust, 7. receiving stolen property, 8. cheating, 9. fraudulent deeds, 10. mischief and 11. trespass.

(d)...Criminal Procedure Code Chapter VIII S. 109 deals with security from *suspicious characters*; S. 110 deals with security from *habitual offenders*.

**43. Offences by or against public servant not cognizable by village bench**—No village bench shall take cognizance of any offence specified in section 41 in which either the complainant or the accused is a public servant serving in the district in which the village for which the panchayat is established is situated:

Provided, however, that a village bench shall not be debarred from taking cognizance of an offence for a breach of a by-law, notwithstanding that the complainant in the case is a public servant.

**44. Conviction by a village bench not a previous conviction**—A conviction by a village bench under this Act shall not be deemed to be a previous conviction for the purposes of section 75 of the Indian Penal Code.

**45. Maximum penalties**—(1) The following are the maximum penalties which may be inflicted by a village bench for the offences mentioned in section 41:—

(a) Under the Indian Penal Code—

Fine not exceeding Rs. 10 or double the amount of the loss or damage caused up to a limit of Rs. 20;

(b) Under section 24 of the Cattle Trespass Act, 1871—

Fine not exceeding Rs. 5; and

(c) For a breach of a by-law made punishable under this Act—

Fine not exceeding Rs. 10 or Re. 1 a day for a continuing breach as provided in sub-section (3) of section 109.

(2) *No sentence of imprisonment, whether substantive or in default of fine or of whipping, shall be inflicted by a village bench.*

**46. Power of Provincial Government to empower particular village bench to inflict enhanced penalties.**—The Provincial Government may empower, by a

notification in the *Official Gazette*, a village bench to inflict the following maximum penalties :—

(a) Under the sections of the Indian Penal Code mentioned in section 41—

Fine not exceeding Rs. 20 or double the amount of the damage or loss caused, whichever is greater.

(b) Under section 24 of the Cattle Trespass Act, 1871—

Fine not exceeding Rs. 10.

**47. Compensation to complainants—**In inflicting any fine under S. 45 or 46, the village bench may direct that the whole or any portion of the fine recovered shall be applied—

(a) towards defraying the expenses properly incurred in the case by the complainant, or

(b) in giving compensation to a person for any material loss or damage caused to him by reason of the commission of the offence.

**48. Compensation to accused for false or frivolous case—**If a village bench is satisfied, after enquiry, that a case brought before it is false, frivolous or vexetious, such village bench may order the complainant to pay the accused such compensation, not exceeding Rs. 5, as it thinks fit.

**49. Youthful offenders—**Instead of passing any sentence, a village bench may discharge, after due admonition, a youthful offender who, in the opinion of such village bench, is at the time of conviction of the offence, under the age of sixteen years.



**50. Members interested not to sit on village bench**—No member of a village bench who is a party to, or has any interest in any suit or case shall sit on the village bench while it is trying such suit or case.

Any dispute as to whether a member of a village bench is a party to or interested in a suit or case shall, on a written application of a party to such suit or case, be referred to the Collector or such officer as he may authorise in this behalf for decision. The decision of the Collector or such officer shall be final.

These provisions enable parties in doubt about the impartiality of the members on village benches to approach the Collector to get suits or cases transferred from such benches. They are similar to the provisions of Civil and Criminal Procedure Codes on the subject. Vide S. 24 C. P. C. and Ss. 526 and 528 Cr. P. C.

Vide also S. 87A of this Act.

**51. Res judicata and pending suits and cases—**  
(1) No village bench shall try any suit or issue in respect of any matter which is pending for decision in, or has been heard and decided by, a court of competent jurisdiction in a previously instituted suit between the same parties or those under whom they claim.

(2) Where an accused person has been tried for any offence, no village bench shall take cognizance of such offence or, on the same facts, of any other offence of which the accused might have been charged or convicted.

These provisions also are similar to those of the Civil and Criminal Procedure Codes—vide S. 11 and S. 403, respec-

tively. They aim at the finality of litigation. *Matters once decided may not be agitated again.*

**52. Suits to include whole claim-**Every suit instituted before a village bench shall include the whole of the claim which the plaintiff is entitled to make in respect of the matter in dispute but he may relinquish any portion of his claim in order to bring the suit within the jurisdiction of the village bench.

If a plaintiff intentionally omits to sue in respect of or relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

**53. Limitation for suits and cases-**(1) *No suit shall be entertained by a village bench after the expiration of one year from the time when the right to sue first accrued.*

(2) *No case shall be cognizable by a village bench after the expiration of one month from the date on which the offence was committed.*

**54. Village bench before which suits to be instituted.**-Every suit under this Act shall be instituted before the village bench of the village in which the defendant or each of the defendants, where there are more than one, resides at the time of the institution of the suit, *irrespective of the place where the cause of action arose.*

**55. Village bench before which cases to be instituted.**-Every case under this Act shall be instituted before the village bench of the village in which the offence was committed.

**56. Return of complaints.**— Any magistrate upon receiving a complaint of facts constituting an offence cognizable by a village bench shall, unless reason to the contrary be shown to the satisfaction of the magistrate, return the complaint *for presentation to the village bench* having jurisdiction to try the same.

**57. Bar of jurisdiction of courts in suits and cases.**— Notwithstanding anything contained in any law for the time being in force, no court, subject to the provisions of section 56, shall entertain any suit specified in section 39 or take cognizance of any offence specified in section 41 unless and until the District Court or the District Magistrate as the case may be has passed an order in writing under section 77 or 87.

Relevant sections regarding the jurisdiction of benches on the one hand and the courts on the other to entertain suits:     **Ss. 38, 39, 40.**

Sections relevant to cases:     **Ss. 38, 41, 42, 43, 55, 56, 58.**

Sections applicable to suits as well as cases:     **Ss. 27, 77, 87.**

**58. Bombay Act VIII of 1867, Ss. 14, 15 and 16 not to apply to village which has village bench.**— Notwithstanding anything contained in the Bombay Village Police Act, 1867, the provisions of sections 14 15 and 16 of the said Act shall not apply to any village in which a village bench shall have been constituted under section 37.

These sections of the Village Police Act empower the Police Patel to try and punish certain *petty offences of abuse or assault* under S. 14 and — when he is *specially empowered* by

the District Magistrate - *mischief* or *petty theft* under S. 15 and *nuisances* under S. 16.

**58A. Pending cases before village bench, when term of office has expired.**- A village bench newly constituted on the expiry of the term of office of the members of another bench or a village bench newly constituted on the dissolution of another bench under section 106, shall hear and dispose of all suits, cases and proceedings pending before the latter at the date of the expiry of such term or at the date of such dissolution:-

Provided that the hearing of such suits, cases and proceedings shall commence anew before the village bench newly constituted, as if such suits cases and proceedings were instituted before it.

### Constitution of Village Benches

*The voters*, first, elect members to the panchayat.

*The panchayat members*, then, in their turn, elect from out of their own number, 5 members for the bench. These 5 members constitute the village bench.

*The members of the bench*, in their turn, elect, from out of their own number, the chairman of the bench. He presides at every sitting of the village bench.

The office of the Sarpanch is different from that of the Chairman. While the Sarpanch is the administrative head of the village panchayat, the Chairman is the judicial head of the village bench.

Election rules at every stage while nomination is ruled out completely.

### Powers of Village Benches.

Both Civil and Criminal Jurisdiction is vested in the Benches.

On the civil side, they have powers to try suits for *money* and *moveables* in which the value of the claim does not exceed Rs. 25 ordinarily and Rs. 100 in special circumstances.

On the criminal side, they can try (a) offences under the Penal Code such as *assault*, *simple hurt*, *petty theft*, *mischief* and (b) those under the Cattle Trespass Act and (c) those of *breachs of by-laws* under this Act.

The power of punishment is limited to fine upto Rs. 10 only.

They have no powers of imprisonment in any case.

---

The Procedure of Benches for trying these suits and cases forms the subject of the next Chapter.

---

## CHAPTER VII

### PROCEDURE OF PANCHAYATS IN SUITS AND CASES

The village benches are invested with civil and criminal jurisdiction in matters specified in the previous chapter. The procedure, they are to follow in deciding these, is now set out here.

The code of civil procedure deals with the method of proceeding in civil matters; the code of criminal procedure, in criminal matters. Besides these two codes, there is the Indian Evidence Act. These 3 enactments regulate the procedure of courts in India. They embody the underlying principles of all judicial trials. Their knowledge is therefore, very helpful in arriving at truth and justice. But it cannot

be expected for obvious practical reasons that members of village benches should have undergone legal training in these codes, however desirable such a training may be. The village panchayat act, therefore, has framed simple rules in the form of its sections which embody the broad principles of the law of procedure. It is sufficient if these rules are followed, as it is hardly possible or practical to observe rigorously and strictly all the provisions of the procedural law in an out of the way village in India. The Act, therefore, lays down in S. 69 :

(1) It shall be the duty of a village bench to ascertain the facts of a suit or case before it after holding an inquiry in accordance with the provisions of this Act and the rules.

(2) Nothing in any enactment relating to evidence or procedure shall in any way affect the powers of a village bench to hold such inquiry—

and excuses the infringement of the provisions of these enactments provided the procedure, laid down in the Act, is followed carefully. The village benches are to deal out unsophisticated plain justice to the village population.

The normal elements of judicial procedure are 5: (1) Summons, (2) Pleading, (3) Proof, (4) Judgment, and (5) Execution. The object of the first is to secure for all parties interested an opportunity of presenting themselves before the court and making their case heard. Pleading consists of statements of parties which give rise to the points at issue. Proof consists of evidence necessary for the decision of these points. Judgment is the decision itself. Execution, is the last step. It has to be resorted to when voluntary submission to the judgment is withheld.

The village Panchayat Act provides for all these elements in this & the next Chapter.

**59. Suits and cases, how instituted.**— Any person who wishes to institute a suit or case under this Act before a village bench shall make an application orally or in writing to the Chairman or during his absence from the village to such other member of the village bench as the Chairman may appoint in this behalf and shall at the same time pay the prescribed fees.

Vide p. 113 and 114 for fees for (i) suits and (ii) cases. -

**60. Substance of application to be recorded.**— The substance of the application shall be recorded *without delay* in the prescribed register and the signature or thumb-impression of the applicant shall be taken on the register and the register shall be signed by the Chairman or, in his absence, by any member authorised under section 59.

Vide the forms of registers at p. 110 & 111. .

**61. Plaintiff or complainant to attend next sitting of village bench.**— Every suit or case instituted in accordance with the provisions of section 59 shall be brought before the village bench at its next sitting and the plaintiff or complainant, as the case may be, shall, at the time of making the application, be *informed* of the time and place fixed for such sitting and directed to attend at that time and place.

**62. Summons to be issued to defendant or accused.**— The village bench after hearing the application, shall cause a *written summons* in the prescribed form to be served *on the defendant or accused*, as the case may be, requiring him to *attend and produce his evidence* at

such time and place as may be stated in the summons and shall, at the same time, direct *the plaintiff or complainant to attend and produce his evidence* at such time and place :

Provided that the village bench may for reasons to be recorded after hearing the application and examining the plaintiff or complainant, refuse to issue a summons and dismiss the suit or complaint.

The prescribed form of summons to the defendant or accused is at p. 115.

The fees for serving the summons are at p. 114. They are to be ultimately paid to the village officer—patel.

The bench has power to dismiss the suit or the complaint. It can, however, be exercised only after hearing the application and examining the applicant. The reasons for the dismissal must be recorded.

**63. Summons by whom served.**—Such summons shall ordinarily be caused to be served by the patel or village head man. Where there are two patels in a village, one of whom is a revenue patel and the other a police patel, the summons shall ordinarily be served *by the revenue patel if it relates to a suit* and by the police patel *if it relates to a case* :

Provided, however, that a village bench may cause the summons to be served through any other person.

**64. Mode of service of summons**—The summons shall be in duplicate, signed by the presiding member of the village bench and shall, as far as possible be served personally on the defendant or accused, as the case may be, whose signature or thumb-impression shall



be taken in token of service. If the defendant or accused cannot be found and the village bench is satisfied that he is evading service or if he refuses to take the summons, the village bench may order service to be made *on an adult male member* of his family residing with him, *or by affixing a copy thereof upon some conspicuous part of the house* in which he ordinarily resides.

The summons is to be in duplicate. One copy is for the party; the other – with the signature of the party in token of services – is for the record of the bench.

#### Analysis.

The summons shall be served personally on the defendant or the accused.

I A If he cannot be found and (ii) the bench is satisfied that he is evading it,

or

B if he refuses to take it,

II the Bench may order service of summons

III to be made on an adult member of his family residing with him or

IV by affixing a copy of the summons upon...the house.

**65. Mode of service outside village.**— If a defendant or accused is, at the time of the issue of the summons, outside the village of the panchayat, the summons may be forwarded by the village bench to the Collector or to any officer not below the rank of a mamlatdar, who may be authorised by the Collector in this behalf, and the Collector or such officer shall cause the summons to be served as if it were summons from his own court.

**66. Exemption of certain persons from appearance in suits—**(1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public, shall be exempt from personal appearance before a village bench in any suit.

(2) Persons exempted from personal appearance in any court under section 133 of the Code of Civil Procedure, 1908, shall also be exempt from personal appearance before a village bench in any suit.

Sub-sections (1) and (2) of this section are similar to Ss. 132 and 133 of the Code of Civil Procedure. S. 132 exempts purdanashin women from personal appearance in court. The court has power, however, to order a pardanashin lady to give evidence in court provided she is not compelled to come forth into view or become visible to the public gaze.

S. 133 exempts persons of rank from personal appearance. The Local Government has to notify such exemptions. The evidence of such persons can be obtained by means of commission.

**67. Issue of summons to witnesses—**(1) A village bench *may*, if it considers the evidence of, or the production of a document by, any person necessary in a suit or case, *issue a summons* to such person *to compel him to attend or to produce or cause the production of such document*, and such person shall be bound to comply with the directions contained in the summons. Such summons shall be in the form and served in the manner as hereinbefore provided.

(2) A village bench *may refuse to summon a witness or to enforce a summons already issued against a witness where, in its opinion, the attendance of the*

witness cannot be procured without an amount of *delay, expense or inconvenience* which in the circumstances, would be unreasonable.

(3) *No village bench shall enforce the attendance of any person living outside the village to give evidence, or to produce a document, unless such sum of money is deposited with the village bench as appears to the village bench to be sufficient to defray his reasonable expenses and if in the opinion of the Collector or officer empowered under section 65, as the case may be, the attendance of any such person is not necessary for the proper adjudication of the suit or case, such Collector or officer shall return the summons to the village bench with his endorsement accordingly.*

(4) *No village bench shall compel any person to give evidence or to disclose any communication which such person cannot be permitted to give or compelled to disclose under the provisions of the Indian Evidence Act, 1872, or under any other law for the time being in force.*

Disobedience of the summons is an offence under S. 174 of the Indian Penal Code, punishable with simple imprisonment for one month.

The important relevant sections of the Evidence Act are given below:

**121. Judges and Magistrates**—No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

**122. Communications during marriage**—No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

**123. Evidence as to affairs of State**—No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the Officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

**124. Official communications**—No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

**125. Information as to commission of offences**—No Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenues.

*Explanation*—“Revenue-officer” in this section means any officer employed in or about the business of any branch of the public revenue.

**126. Professional communication**—No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any

document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

1. any such communication made in furtherance of any illegal purpose;
2. any fact observed by any barrister, pleader, attorney and vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client.

*Explanation*—The obligation stated in this section continues after the employment has ceased.

**63. Pleaders, etc. excluded from appearance—**  
*No pleader, vakil, or mukhtyar, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any suit or case before a village bench*

Provided that any party to any such suit or case may be permitted, on reasonable cause being shown to the satisfaction of the village bench, to employ any relation, servant, dependant, or friend *who is not and who has not previously been a pleader, vakil, or mukhtyar or an advocate or attorney of a High Court*, to appear either conjointly with or in lieu of such party.

When a relation, servant, dependant, or friend appears in lieu of a party, he shall be furnished by such party with a written authority defining the extent to which he is empowered to act.

**69. Decision of suit or case on facts ascertained-**

(1) It shall be the duty of a village bench to ascertain the facts of a suit or case before it after holding an inquiry in accordance with the provisions of this Act and the rules.

(2) *Nothing in any enactment relating to evidence or procedure shall in any way affect the powers of a village bench to hold such inquiry.*

(3) After holding such inquiry, a village bench may pass such decree or order, with or without prescribed fees subject to the provisions of this Act, as may in its opinion seem just and equitable. Such decree or order shall state the finding and a brief statement of the reasons thereof.

1. The purpose of all inquiry is to ascertain the fact, the truth. The ascertainment of the facts of a suit or a case is the most important matter. It is the basis of all justice.

2. Therefore, the Act gives a free hand to the village bench to hold its inquiry even if it occasionally contravenes the provisions of the Codes of civil and criminal Procedure and the Indian Evidence Act.

3. A decree or order is always preceeded by judgment. It should consist of 2 parts - (i) the reasons and (ii) the result of reasons which is the finding.

Vide p. 113 for prescribed fees.

**70 Decision of the village bench-**The decision of the village bench shall be in accordance with the

opinion of the members of the village bench who are present at the sitting or of the majority of such members. If the members are equally divided, the person presiding shall have a second or casting vote.

**71. Adjournment**— The village bench may, from time to time, adjourn the hearing of any suit or case :

Provided that such *adjournment* is, in its opinion, *unavoidable or necessary* to a just and equitable decision of the suit or case.

Unavoidable...for want of a Quorum.

Necessary...in the absence of a witness who is too ill to be present.

Vide p. 112—Rule 13 on this subject — the Bench Rules.

**72. Disposal of suits and cases in absence of party concerned**— (1) If the plaintiff or complainant fails to appear, after having been informed of the time and place fixed for the hearing, the village bench may hear and decide the suit or case in his absence.

(2) The village bench may hear and decide a suit or case in the absence of the defendant or the accused, if a summons has been served upon him in the manner hereinbefore prescribed, or if he has been informed of the time and place fixed for hearing :

Provided that no sentence shall be passed by a village bench on any accused, unless he has appeared, either in person or by a representative, before the village bench and the substance of his statement has been recorded in the prescribed register.

(3) If, after the service of summons upon him, an accused fails to appear, either in person or by a representative, the village bench may apply to the District Magistrate or to any officer not below the rank of a second class magistrate authorised by the District Magistrate in this behalf, and such District Magistrate or officer shall compel the accused to appear in person or by his representative before the village bench as if he were a court trying the case.

(4) Where an accused person has, under subsection (3), been compelled to appear before the village bench, the village bench shall forthwith take his statement, and thereafter his attendance at the hearing of the case shall not be compulsory.

1. Deals with the situation when Plaintiff or Complainant is absent.

2. Deals with it when Defendant or Accused is absent. The proviso lays down the necessity of recording the statement of the accused.

3. Deals with the manner of compelling the accused to appear personally or through a representative.

**73. Compromise of suits and compounding of cases—**(1) Where it is proved to its satisfaction that a suit has been adjusted wholly or in part by *oath* or by any *lawful agreement, compromise or satisfaction*, the village bench shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to the suit.

(2) A village bench may permit any case to be compounded:

Provided that when a village bench does not pass a decree in accordance with the agreement, compromise



or satisfaction under Sub-section (1) or does not permit a case to be compounded under sub-section (2), it shall record its reasons in writing.

The bench must satisfy itself about the fact of the adjustment.

The agreement, compromise or satisfaction shall be a matter for record. This will form the basis for the decree which must restrict itself to the subject matter of the suit whatever the terms of the agreement or compromise.

**74. Death of parties**—When any party to a suit dies before a decree has been passed, the suit shall abate, but a fresh suit may be brought on the same cause of action, and the period during which the suit was pending shall be excluded in computing the period of limitation prescribed under section 53 for the fresh suit.

S. 53 gives the period of limitation. It is one year from the date of the cause of action.

Note the curtailment of the period allowed by the Indian Limitation Act and its effect on the rights and liabilities of parties and their representatives.

**75. Village bench not to revise or alter its decision**—(1) Except as provided in sub-section (2), a village bench shall not have power to cancel, revise or alter any decree or order passed by it.

(2) On application made within one month from the date of the decree or order of a village bench, the village bench may, for reasons to be recorded in writing, restore any suit which has been dismissed for default or in which an *ex parte* decree has been passed against the defendant.

“Dismissed for default”—owing to the absence of the plaintiff and evidence on his behalf. Vide S. 72 (1).

‘An *ex darte* decree’ is that which is passed in the absence of the defendant. Vide S. 72 (2).

**76. Interest and instalments**—In suits for money, a village bench may, in its discretion, direct payment of interest on the sum decreed, at a rate not exceeding six per cent, per annum, from the date of the decree until the date of payment and of any fees which may be prescribed.

When a village bench decrees the payment of a sum of money in a suit, it may direct that it be paid by instalments, without interest, or with interest not exceeding the above rate.

**77. Reference by village bench to District Court or District Magistrate**—(1) When any village bench is of opinion that any suit or case before it is of such a nature, or of such intricacy or importance that it ought to be tried by a court, *it shall stay proceedings and refer the suit to the District Court or the case to the District Magistrate for orders.*

(2) If the District Court or District Magistrate as the case may be is of the opinion that the suit or case is of such *nature, intricacy or importance* that it ought not to be tried by the village bench, such Court or Magistrate shall pass orders directing the plaintiff or complainant to the civil or criminal court, as the case may be competent to take cognizance of such suit or case.

(3) If the District Court or District Magistrate as the case may be is of opinion that the suit or case is not of such nature, intricacy or importance that it

ought to be tried by a Court, such Court or Magistrate shall return the suit or case to the village bench, which made the reference, for disposal.

The parties also can move in this connection.

**78. Appeals—***(1) An appeal shall lie to the District Court against a decree passed by a village bench in any suit and to the District Magistrate against an order in any case.*

*(2) The period for filing such appeals shall be thirty days from the date of the decree or order as the case may be.*

All decrees in Suits and orders in cases are appealable.

**79. Finality of decrees and orders—***Every order passed under sections 77, 78, 87 or 87A by a District Court or by a District Magistrate shall be final and shall not be subject to any appeal, revision or review.*

---

### **New Era of Village Justice: Hopes and Fears.**

It is Justice without jurnies; *without cost of time, labour and money; without pleaders without codes of procedure: without legal complications, subtilities, and quibbles; without a series of appeals and revisions, which means without delay.*

There is provision for appeal — one appeal only.

It is possible as a result of election and all that it means — wrong type of persons may occupy the bench and abuse it.

There is no doubt such a fear is widely expressed and it is not without justification.

Two factors at least have to be taken into account here: 1. The provision for appeal. 2. The general control of higher authorities.

Besides, Government can withdraw the powers of the offending benches.

---

## CHAPTER VIII

## EXECUTION

**Outline of the Chapter:** Benches decide both civil suits and criminal cases. How would the execution of decrees in "suits" and orders in "cases" proceed? This chapter lays down the scheme of execution.

Ss. 80 to 83 deal with execution of decrees while Ss. 84 to 86 deal with the execution of orders in criminal cases.

The bench has powers to execute its own orders in criminal cases by distraint and sale.

The execution of decrees, however, will always proceed through the Collector. The bench has no powers to execute them.

**80. Satisfaction or adjustment of decree to be recorded—**(1) If, on *the application of a decree-holder* or judgment-debtor, the village bench, after enquiry, finds that the decree has been satisfied or adjusted, wholly or in part, the village bench shall record the fact in the *prescribed register*.

It is in the interest of the judgment debtor to get the satisfaction or adjustment of the decree recorded. Vide column 9 of the Register of suits at p. 110.

**81. Execution through Collector—**(1) If, *after a period of one month from the date of a decree*, the decree remains unsatisfied or unadjusted, in whole or in part, the decree-holder may, *within one year of the date of the decree* apply to the village bench for execution.

(2) On such application for execution, the village bench shall certify to the Collector that the decree

remains unsatisfied or unadjusted, in whole or in part and on receipt of such certification the Collector shall, provided that the village bench shall have certified to the Collector *within one year from the date of the application for execution*,—

(a) if the decree is for money, proceed to recover it as if it were an arrear of land revenue; or

(b) if the decree is for any specific moveable property, cause the decree to be executed as if it were a decree of a civil court, and in so acting may exercise all the powers of a civil court.

The right to apply for execution accrues after one month after the date of decree and continues for one year from the date of the decree.

If the decree remains unsatisfied, the duty of the bench is to certify the fact to the collector in time — one year from the date of the application.

*The Act is silent as to what is to happen to the decree if the bench does not certify non-satisfaction in time.*

(a) **The Bombay Land Revenue Code.**

**S. 150 Process for recovery of arrears**—An arrear of land revenue may be recovered by the following processes:—

- (1) by serving a written notice of demand on the defaulter under **S. 152**;
- (2) by forfeiture of the occupancy or alienated holding in respect of which the arrear is due under **S. 153**;
- (3) by distraint and sale of the defaulter's moveable property under **S. 154**;
- (4) by sale of the defaulter's immoveable property under **S. 155**;

(5) by arrest and imprisonment of the defaulter under S. 157 and 158;

(6) in the case of alienated holding consisting of entire villages, or shares of villages, by attachment of the said villages or shares of villages under sections 159 to 163.

(b) The powers of a civil court in executing decrees include (a) "seizure of the moveable" (b) "detention in the civil prison" (c) "attachment of his property". Vide order XXI Rule 31 of the code of civil procedure.

Prison is out of question here in view of S. 88 of this Act.

**82. Execution of instalment decree through Collector—**(1) If, after a period of one month from the date fixed for the payment of any instalment of a sum of money decreed by a village bench under section 76, an instalment or any portion thereof remains unpaid, the decree-holder may, *within one year of the date when it fell due*, apply for execution to the village bench.

(2) On such application for execution, the village bench shall certify to the Collector that the instalment or a portion thereof still remains unpaid, and on receipt of such certification the Collector shall, provided the village bench shall have certified to the Collector *within one year from the date of the application for execution*, proceed to recover the amount of the instalment so remaining unpaid as if it were an arrear of land revenue.

Vide S. 76 for the powers of the bench to order instalments.

The plan of this Section is similar to that of the preceding one.

**83. Satisfaction of decree or instalment after certificate**—If, after the issue of the certificate to the Collector under section 81 or 82, but before the decree has been executed through the Collector, the decree or the instalment is fully satisfied and satisfaction is recorded under section 80, the village bench shall forthwith certify such satisfaction to the Collector who shall thereupon stay the execution proceedings. All sums of money realised by execution through the Collector shall, after satisfaction of the decree, be refunded to the judgment-debtor.

**84 Fine and compensation when payable**—(1) Every sum ordered to be paid as *compensation* and every *fine* imposed under sections 45, 46, 47 and 48 by a village bench shall be payable at once.

Provided that the village bench may allow any person ordered by it to pay compensation or fine to pay the same within such time, not exceeding fifteen days as it may think proper and on such terms as to security as it shall seem to the village bench necessary to impose.

**Mode of recovery**—(2) If the amount of fine or compensation remains unpaid for fifteen days from the date of the order, the village bench shall recover the same by *distrain and sale of the defaulter's moveable property*.

(3) If the amount of fine or compensation is not fully recovered, the village bench shall certify accordingly to the Collector, and on receipt of such certification the Collector shall, provided the panchayat shall have certified to the Collector within a period of

one year from the date when the amount became recoverable by the village bench under sub-section (2), proceed to recover it as if it were an arrear of land revenue and shall remit the amount so recovered to the village bench.

Ss. 45 and 46 deal with fines.

S. 47 deals with compensation to *the complainant*.

S. 48 deal with compensation to the *accused*.

If the amount is not fully recovered by distraint and sale, the Collector's assistance shall be invoked in time i. e. within one year.

**85. Fine or compensation when realised, to be recorded-** As soon as the amount of fine or compensation referred to in section 84 is realised by the village bench whether directly or through the Collector, the amount so realised shall be entered in the prescribed register,

Vide column 9 of the Register of cases at p. 111.

**86. Payment of compensation out of village fund-** Any money which has been ordered by the village bench, under section 47 or section 48, to be paid as expenses or compensation, shall be paid by it out of the amount realised under sections 45 and 46

"Out of village fund" in the heading are unnecessary and misleading. The body of S. 86 has undergone amendment. The heading remains the same—through oversight, it seems.

**87. District Court or District Magistrate may quash proceedings-** (1) The District Court in any suit and the District Magistrate in any case may, at any



time, either on the application of an aggrieved party or otherwise or on a reference made by a village bench under section 77 by order in writing, quash any proceedings of a village bench at any stage, or cancel any decree or order passed by a village bench.

(2) When an order has been passed by the District Court under sub-section (1) in respect of any suit, the plaintiff may institute a fresh suit for the same relief in a civil court, and the period from the date of the institution of the suit before the village bench to the date of such order shall be excluded in computing the period of limitation for the fresh suit.

(3) Where an order has been passed by the District Magistrate under sub-section (1) in respect of any case, proceedings in respect of the same offence may be instituted in the court of a magistrate having jurisdiction.

The bar of S. 57 forbidding the entertainment of suits and cases by courts is removed by subsections (2) and (3) of this Section and S. 77.

The relevant Sections are 56, 57, 77, 87.

**87A. Transfer of suit or case by the District Court or District Magistrate—**(1) The District Court in any suit and the District Magistrate in any case may at any time on the application of an aggrieved party or otherwise by order in writing transfer any suit or case, as the case may be, to a civil or criminal Court competent to try the same.

(2) On the transfer of such suit or case, the Court to which it is transferred shall hear such suit or case anew as if such suit or case was instituted before it.

**87B. Procedure in proceedings before District Court and District Magistrate**—Subject to the provisions of this Act in regard to all proceedings under this Act, District Courts and District Magistrates shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to proceedings in connection with decrees or orders of courts subordinate to them in their ordinary jurisdiction.

The District Court is presided over by the District Judge. It is a civil court while the sessions court is a criminal court. The District Court in relation to courts subordinate to it is their appellate court. All the powers of a court of appeal can be exercised by the District Court in respect of decrees and proceedings of the village bench, therefore. Vide **Ss. 78 & 79**.

The District Magistrate exercises appellate as well as revisional powers—revisional when he orders retrial of cases dismissed under Ss. 203 and 204 or S. 253 of the code of criminal procedure i. e. when they are dismissed for want of sufficient ground for proceeding (S. 203) or for want of process fees (S. 204) or when the case against the accused is not made out and he is discharged (S. 253). —**Ss. 78 & 79**.

**88. Bar to arrest and imprisonment in execution of decree**—*No person shall be arrested or imprisoned in execution of a decree under the provisions of this Act.*

S. 88 is the last section of the part of the Act which deals with the judicial administration of villages. It lays down the most important limitation on the powers of benches, and thereby removes at least the worst of the possibility of the abuse of their powers.

The prohibition of arrest and imprisonment in the course of execution extends to the execution of *decrees only*, however, and *not* when the Collector proceeds to recover fine or compensation as an arrear of land revenue.

## CHAPTER IX

## TAXATION AND RECOVERY OF CLAIMS

The first five chapters of the Act dealt with the establishment of panchayats, their powers and duties. The administration of panchayats cannot proceed without funds – without regular income. Of the heads of panchayat income, taxes are the most important. They form the subject of this chapter.

It has two parts (1) taxes – Ss. 89 and 90 (2) recovery of claims viz. taxes – Ss. 91–92.

The first part deals with (i) which taxes? and heads of taxation are mentioned, (ii) the manner or the procedure of taxation and (iii) the rates of taxes.

The second part deals with the recovery of taxes and sets out its manner.

Rules are prescribed for (a) the manner and (b) rates i. e. limits of taxation and (c) recovery of claims. They are given here under the relevant sections viz. 89 and 91.

**89. Levy of taxes and fees by panchayat—**  
 (1) Every panchayat shall levy a tax upon the owners or occupiers of houses and lands which are not subject to payment of agricultural assessment within the limits of the village in such manner and at such rates as may be prescribed. The rules made for the levy of such tax may provide that the payment of such tax may be made either in cash or by the rendering of work and labour.

(2) It shall be competent to a panchayat to levy all or any of the following taxes or fees at such rates and in such manner as may be prescribed, namely:—

- (ii) a pilgrim tax ;
- (iii) a tax on fairs and festivals ;
- (iv) a tax on sales of goods ;
- (v) octroi ;
- (vi) a tax on marriages, adoptions and feasts ;

(vii) any other tax *not being a toll on motor vehicles or trailers*, save as provided by section 14 of the Bombay Motor Vehicles Tax Act, 1935 which the Provincial Legislature has, under the Government of India Act, 1935, power to impose in the Province and which has been approved by the district local board and sanctioned by the Provincial Government.

(3) Any person aggrieved by the assessment, levy or imposition of any such tax or fee may appeal to the district local board. The decision of the district local board in the matter shall be final.

(4) The Provincial Government may suspend the levy or imposition of any tax or fee and may at any time rescind such suspension.

(5) Until provision to the contrary is made by the Central Legislature, a panchayat which, immediately before the commencement of Part III of the Government of India Act, 1935, was lawfully levying under this section, as then in force, any tax other than the taxes mentioned in sub-section (2) may continue to levy that tax.

The section gives 2 classes of taxes: The first mentioned in (1) is obligatory and the second mentioned in (2) is optional. The total heads of taxes are, therefore, 7 (1 + 6).

The amendment of 1939 made the tax on houses and unassessed lands compulsory. The reason for the amendment was that panchayats showed no inclination to levy any taxes and they could not carry out their duties for want of funds in the absence of any compulsory tax.

The amendment provides for the option to pay the tax either "in cash" or by "work and labour" and removes the ground for excuse on account of poverty in villages. This provision, though novel in the Bombay Presidency, is not quite new in India. Mysore village panchayats follow a similar rule.

Rules regarding these taxes have been framed by Government in respect of each of these 7 heads of taxes.

The rules fall into 2 parts: The first deals with the manner of levying taxes and the second with the rates and limits of taxes.

All these rules are given below in order.

### **Rules re. the manner of taxation—S. 89**

#### **A B C D E F G H**

**Government Notification No. S. 174/1 of 18-12-1934.**

\* \* All these rules—except rules for the levy of the tax on houses and lands—are old i. e. of 1934. But they have not been so far superceded and are therefore still good law.\* \*

#### **A. General Rules.**

1. Every panchayat shall, before imposing a tax or fee, observe the following procedure by resolution passed at a meeting of the panchayat—

- (a) It shall select one or more taxes or fees which may under section 89 (2) be leviable, and

- (b) **frame such regulations as may be necessary to suit local circumstances for the levy of such taxes or fees and submit them through the District Local Board and the Collector for the sanction of the Commissioner; and**
- (i) **specify the classes of persons or of property, or of both, which the panchayat proposes to make liable and the exemptions which it desires to make;**
  - (ii) **the amount for which or the rate of tax or fee at which it proposes to make each such class liable;**
  - (iii) **the mode of levying the tax or fee and the dates on which the tax or fee or the instalments thereof, if any, shall be payable; and**
  - (iv) **such other matters as may appear necessary to be specified.**

2. **When a panchayat proposes to levy a tax or fee under section 89 or when it proposes to enhance the rate of any tax or fee which is already levied, it shall notify the proposal together with its regulations by beat of drum in the village and by means of a notice affixed in the office of the panchayat or at the village chavdi specifying the date not earlier than one month from the date of such publication on which the panchayat will take the proposal into consideration.**

3. **Any inhabitant of the village objecting to the imposition of a tax or fee or to the rate proposed or to the class of persons or property to be made liable thereto or to any enhancement of the rate, may make any objection or suggestion in writing on or before the date specified in the notice published under rule 2 above, or orally on the date on which the panchayat considers the proposal.**

4. The panchayat shall consider all objections or suggestions made under rule 3 on the date fixed and on the following days, if necessary, and may approve of the proposal with or without modifications, provided that if the panchayat considers that the rate of tax or fee originally proposed should be enhanced, fresh notice shall be given before the enhancement is finally decided on.

5. The rate of taxes or fees leviable under section 89 (2) shall be determined by the panchayat, and shall be submitted to the Commissioner for his sanction, and shall not exceed the maximum fixed by Government under clause (n) of sub-section (1) of section 108.

6. All regulations sanctioned by the Commissioner with all modifications, subject to which they are sanctioned, shall be published by the panchayat, in the village together with a notice reciting the sanction and the date and the number thereof. The panchayat shall also announce by beat of drum the fact of publication of the said notice; and the tax or fees as described in the regulations so published shall, from a date which shall be specified in such notice and which shall not be less than one month from the publication of such notice, be imposed accordingly, and the proceeds thereof shall be applied by the panchayat in accordance with the conditions, if any, subject to which the sanction is given, provided that

- (i) a tax or fee leviable by the year, which shall be that beginning on 1st April and ending on 31st March, shall not come into force except on the following dates, viz. 1st April, 1st July, 1st October, or 1st January, in any year, and
- (ii) if it comes into force on any day other than the 1st April, it shall be leviable by the quarter till the 1st April next ensuing

7. The tax shall be recovered by the sarpanch or by any person duly authorised by the panchayat in this behalf. A receipt for every such payment shall be given by the person receiving it.

**B. Rules regarding the levy of the tax on owners or occupiers of houses and lands. S. 89 (1).**

Commissioners' Notification No. V. P. 123 of 5-5-1941.

Commissioners' Draft Notification V.P. 123 of 11-9-1941.

[Government by their notification No. S. 174/1 (a) of 1-11-1940 delegated to the Commissioners the powers of making rules prescribing the manner and rate of levying taxes on houses and lands. The Commissioners of divisions in exercise of these powers framed rules given below. The draft notification of these rules, which was published by the Commissioners under V. P. No. 123 on 17-1-1941 in accordance with the provision of pre-publication given in S. 108 (2) of this Act, did not include one or 2 important items which were included in the final notification of 5-5-1941. The final notification was considered invalid on the technical ground of defective previous publication. To remedy the defect and validate the rules which appeared in the form of a final notification of 5-5-1941, the same rules appear now in the form of a previous draft notification to be considered and published as final notification after 13-10-1941 i. e. after giving opportunities for objections and suggestions. The final notification not having been yet i. e. 1-11-41 published, the final notification of 5-5-1941 which appears again as draft notification of 11-9-1941, without any change in the body, is given below. It is hardly necessary to add that the final notification rules to come will not be different from those given here in the following pages.]



1. In these rules unless there be something repugnant in the subject or context—

- (a) "owner" includes the person who receives or is entitled to receive rent of the house or land if such house or land is let;
- (b) "occupier" includes a person in actual possession of a house or land whether as owner, agent or tenant;
- (c) "annual letting value" means the annual rent for which the house or land might be reasonably expected to let per year or from year to year;
- (d) "house" means any building or set of buildings within the same enclosure and used by the same occupier;
- (e) "land" means any land which is not subject to payment of agricultural assessment.

2. Every panchayat—mentioned in the schedule hereto annexed—shall levy a tax on the owners or occupiers of houses and lands within the limits of the village—at the rates specified opposite to it in the next column of the said schedule.

3. These rules, together with a notice that a tax on the owners or occupiers of houses and lands within the limits of the village shall be levied at the rates mentioned in such notice, shall be published by each Panchayat by affixing copies of such rules and notice in the office of the Panchayat. The Panchayat shall also announce by beat of drum the fact of such publication. The tax as prescribed shall, from a date which shall be specified in the notice and which shall not be less than one month from the publication of such notice, be imposed accordingly, provided that—

- (i) the tax shall be leviable for the year beginning on 1st April ending on 31st March and shall not come into force except on the following dates, viz., 1st April, 1st July, 1st October or 1st January, in any year, and
- (ii) if it comes into force on any day other than the 1st April, it shall be leviable by the quarter till the 1st April next ensuing.

4. (1) The Sarpanch shall prepare or have prepared an assessment list showing.

- (a) the serial number of each house or land;
- (b) the name of the owner and the occupier if known;
- (c) the capital valuation or the annual letting value as the case may be; and
- (d) the amount of tax assessed thereon.

(2) When the tax is assessed on the annual letting value a sum equal to ten per cent. of the said valuation shall be deducted therefrom in lieu of all allowance for repairs or on any other account whatsoever.

(3) For the purpose of preparing such assessment list the Sarpanch or any person acting under his authority may inspect any house or land in the village.

5. When the name of the person primarily liable for the payment of the tax cannot be ascertained, it shall be sufficient to designate him in the assessment list and in any notice which it may be necessary to serve upon the said person as "the holder" of such premises without further description.

6. When the assessment list is completed, a notice shall be published by beat of drum in the village that the list is open for inspection at the office of the Panchayat and that objections will

be considered and decided by the Panchayat on a day, which shall not be within thirty days of the date of notice aforesaid.

7. Every person whose name is in the list, every person claiming to be the owner or occupier of any property, every person in possession of any property, included in the list, and the agent of such person, shall be at liberty to inspect the list and to make extracts therefrom without charge.

8. All objections to the assessment will be considered and decided by the Panchayat on the date specified in the notice published under rule 6 or on any later date to which the meeting may be adjourned and the decision of the Panchayat shall be communicated to the person objecting to the assessment. An appeal shall lie to the District Local Board within thirty days of the date of communication of the decision and the order of the District Local Board shall be final. The Panchayat shall cause all amendments, necessary in accordance with the order of the District Local Board, when an appeal is preferred, and the decision of the Panchayat in other cases, to be made in the assessment list which shall be authenticated by the signature of the Sarpanch.

9. The entry in the list authenticated under the last preceding rule shall be conclusive evidence of the amount of the tax leviable.

10. (1) The Panchayat may at any time alter the assessment list by inserting or altering an entry in respect of any property, such entry having been omitted from or erroneously made in the assessment list through fraud, accident or mistake or in respect of any house constructed, altered, added to or reconstructed in whole or in part, where such construction, alteration, addition or reconstruction has been completed after the

preparation of the assessment list, after giving notice to any person interested in the alteration of the list of a date not less than one month from the date of service of such notice, before which any objection to the alteration should be made,

(2) An objection made by any person interested in any such alteration before the time fixed in such notice shall be dealt with in all respects as if it were an application under rule 6.

(3) An entry or alteration made under this rule shall have the same effect as if it had been made in the case of a house constructed, altered, added to or reconstructed on the day on which such construction, alteration, addition or reconstruction was completed or on the day on which the new construction, alteration, addition or reconstruction was first occupied, whichever first occurs, or in other cases, on the earliest day in the current official year on which the circumstances justifying the entry or alteration existed; and the tax or the enhanced tax, as the case may be, shall be levied in such year in the proportion which the remainder of the year after such day bears to the whole year.

11. (1) When any house or any portion of a house which is liable to the payment of a rate on houses is demolished or removed, the person primarily liable for the payment of the said rate shall give notice thereof, in writing to the Sarpanch.

(2) Until such notice is given, the person aforesaid shall continue liable to pay every such rate as he would have been liable to pay in respect of such house, if the same, or any portion thereof, had not been demolished or removed:

Provided that nothing in this rule shall apply in respect of a house or portion of a house which has fallen down or been burnt down.

12. (1) It shall not be necessary to prepare a new assessment list every year. Subject to the condition that every part of the assessment list shall be completely revised not less than once in every three years, the Panchayat may adopt the valuation and assessment contained in the list for a year, with such alterations as may be deemed necessary, for the year immediately following.

(2) But the provisions of rules 4 to 11 shall be applicable every year as if a new assessment list had been completed at the commencement of the official year.

13. The tax shall be leviable primarily from the actual occupier of the house or land upon which it is assessed, if such occupier is the owner of such house or land.

If the land or house is not occupied by the owner himself the tax shall be primarily leviable from—

- (a) the lessor, if the property is let,
- (b) the superior lessor, if the property is sublet,
- (c) the person in whom the right to let the same vests if it is unlet.

On failure to recover any sum due on account of such tax from the person primarily liable, such portion of the sum may be recovered from the occupier of any part of the house in respect of which it is due in the ratio which the Sarpanch decides to be an equitable ratio to the amount of tax assessed on the whole house in the authenticated list.

The decision of the Sarpanch in this matter is appealable to the Panchayat whose decision shall be final.

14. Where any building or land which is assessed to a rate payable by the year has remained vacant and unproductive of rent throughout the year or portion of the year for which the rate

is leviable, the Panchayat shall remit or refund the amount of the rate proportionate to the period of vacancy:

Provided that no such remission or refund shall be granted unless the building or land as aforesaid is vacant and unproductive of rent for not less than ninety consecutive days and that notice in writing of the fact of the building or land being vacant and unproductive of rent has been given to the Sarpanch :

Provided further that no remission or refund shall be granted for any period previous to the date on which such notice is given to the Sarpanch.

15. The tax shall be recovered by the Sarpanch or by any other person duly authorised by the Panchayat in this behalf. A receipt for every such payment shall be given by the person receiving it.

16. (1) *Payment of the tax may be made either in cash or by the rendering of work and labour but shall be made in cash unless notice is given in writing to the Sarpanch that work and labour will be rendered in lieu of cash.*

(2) The notice shall be in the Form "A". The Panchayat shall supply copies of the form free of charge on demand.

(3) If such notice is not given before the 1st of April in any year or, if the tax comes into force on any day other than 1st April, before the day on which it comes into force, the notice shall take effect from 1st April next following unless the Sarpanch orders otherwise.

(4) Such notice once given shall be valid until it is withdrawn or until the work or labour appointed by the Sarpanch to be rendered is refused, or cash payment is offered in lieu of labour. Such cash payment when offered shall be accepted.

(5) The Sarpanch shall enter in a register the names of all persons liable to the tax who have given notice that they will render work and labour in lieu of cash and shall appoint the work and labour to be rendered and the time for it to be rendered. He shall enter in the register the value of the work to be rendered, the date or dates on which it is rendered and the value of the work or labour rendered on such date or on each of such date. The value of a day's work in cash shall be entered in writing in the register by the Sarpanch. The decision of the Sarpanch as to the value of the work done shall be final.

(6) If the work or labour is not rendered to the full amount due for the period ending 31st March before the period elapses the balance still due shall become forthwith payable in cash.

*Schedule.*

( Vide B Rule 2 )

| Name of the District. | Name of the Village Panchayats. | Rate specified under rule 2.  |
|-----------------------|---------------------------------|---|
| All districts ..      | All Village Panchayats.         | <p>In the case of panchayats which already levy house tax, the rate in force on the day before the application of these rates subject to the maximum prescribed in Government Notification, General Department, No. S. 1741(a), dated 1st November 1940.</p> <p>In the case of all other Panchayats a rate of 2 annas per Rs. 100 of the capital valuation.</p> |

## FORM A

To

The Sarpanch \* Name of village.

I \* Name of assessee wish to render work and labour in lieu of cash in payment of the house tax due from me to the panchayat.

( Signature )

Accepted.

Date

Sarpanch.

**No. S. 174/1 (a) of 1-11-40**—In exercise of the powers conferred by sub-section (1) of S. 112 of the Bombay Village Panchayats Act, 1933, the Government of Bombay is pleased to authorise the **Commissioners of Divisions to make rules** under clause (m) of sub-section (1) of **S. 108** of the said Act, *prescribing the rate at which, and the manner, in which, the tax upon the owners or occupiers of houses and lands* under sub-section (1) of **S. 89** of the said Act shall be leviable by the panchayats constituted for the areas within their respective jurisdiction, subject to the condition that the rate to be prescribed by the Commissioners in the case of any panchayat shall not be lower than the minimum rate or higher than the maximum rate specified below, namely:—

|  | Minimum rate.                                 | Maximum rate.                                 |
|--|---|---|
| (a) For tax based on capital valuation of the buildings and lands. | 2 annas per Rs. 100 of the capital valuation. | 4 annas per Rs. 100 of the capital valuation. |
| (b) For tax based on letting value of the buildings and lands.     | 4 per cent. on the annual letting value.      | 8 per cent. on the annual letting value.      |



**C. Rules for the levy of a tax on pilgrims****S. 89 (2) (ii)**

1. In these rules a "pilgrim" means a person, not being a resident of the village who enters the limits of the village for religious worship at any place of worship within the limits of the village.

2. A tax at a rate to be fixed by the panchayat and not exceeding the maximum fixed by Government under clause (n) of sub-section (1) of section 108, and approved by the Commissioner shall be levied from every pilgrim visiting the village, during the period which may be fixed by each panchayat with the approval of the District Magistrate

3. On payment of such tax an authorized pilgrim pass shall be issued to each pilgrim.

4. The panchayat shall determine the size, form and colour of pilgrim passes to be issued for the purposes of these rules and shall print such passes.

5. The pass shall be valid for the full period of the pilgrimage.

6. The tax shall be collected at such place or places as may be fixed by the panchayat for the purpose.

7. The following persons shall be exempt from the payment of the above tax :-

(a) All Government and Local Board servants coming to the village for the purpose of discharging their official duties,

(b) religious mendicants, and

(c) persons below the age of 12 years.

8. For the purposes of these rules, the decision of the sarpanch that a person is a pilgrim or a religious mendicant shall be final.

**\* Maximum Rate**

Pilgrim Tax ... 4 annas from every pilgrim.

**D. Rules for the Levy of a Tax on Fairs and Festivals**

**S. 89 (2) (iii)**

1. Every panchayat shall, with the approval of the District Magistrate, fix the period or periods during which and the limits within which a tax or fee shall be leviable during any fair or festival that may be held in the village.

2. No person shall be allowed to occupy any open space or plot of land for the purposes of a shop, booth, stall or for doing business of any kind or for a cinema, circus or other like purpose within the periods and the limits specified in rule 1, unless he has previously obtained a permit for the purpose under these rules.

3. A permit shall be issued on payment of a tax at a rate fixed by the panchayat with the sanction of the Commissioner according to the size of the plot occupied.

4. The tax shall be paid in advance to the person or persons authorised by the panchayat for the purpose, who shall give a receipt in the form prescribed under the rules.

**\* Maximum Rate**

Tax on Fairs and  
Festivals...

(a) 4 annas for the period of the fair or festival for every plot measuring not more than 9 square feet occupied for the purpose of a shop or

booth or stall, and 6 pies for every additional plot of 9 square feet or part thereof.

- (b) Rs. 50 per acre per day for spaces taken up for cinemas, circuses or other amusements.

## E. Rules for the levy of a tax on the sale of goods

### S. 89 (2) (iv).

1. Every person exposing commodities for sale within the limits of a market or fair held within the limits of the village shall pay a tax as hereinafter provided.

2. Each panchayat shall determine the rate to be charged not exceeding the rates fixed by Government under clause (n) of section 108 (1) either according to the size of the plot allowed to be occupied or on the quantity of goods to be exposed for sale and obtain thereto the sanction of the Commissioner.

3. *The tax shall be payable on demand at the site to the person authorised by the panchayat in this behalf who shall pass a receipt in the form prescribed under the rules.*

#### • Maximum Rate

Tax on the sales of  
goods...

- (a) If the panchayat decides that the tax shall be payable on the area of the plot occupied the rate shall be the same as above but for each day.
- (b) If the panchayat decides that the tax shall be payable by a rate on the quantity of articles exposed for sale the

maximum rate shall be as follows per day:—

|                                   |     |           |     |
|-----------------------------------|-----|-----------|-----|
| (1) <i>Vegetables or fruits</i> — |     |           |     |
|                                   |     | Rs. a. p. |     |
| (a) Basket                        | ... | 0         | 0 6 |
| (b) Gunny bag                     | ... | 0         | 1 0 |
| (c) Cart                          | ... | 0         | 4 0 |
| (2) <i>Grain</i> —                |     |           |     |
| (a) Head load                     | ... | 0         | 0 6 |
| (b) Gunny bag                     | ... | 0         | 2 0 |
| (c) Cart                          | ... | 0         | 4 0 |
| (3) <i>Other Articles</i> —       |     |           |     |
| (a) Head load                     | ... | 0         | 0 6 |
| (b) Gunny bag load                |     | 0         | 2 0 |
| (c) Cart load                     |     | 0         | 4 0 |

#### F. Rules for the levy of octroi S. 89 (2) (v).

1. Each panchayat shall, with the approval of the Collector, fix the octroi limits and the number and location of Nakas where octroi is to be levied.

2. Octroi shall be levied on the following articles at rates to be fixed by the panchayat when the articles are imported within the limits of the village, for consumption, sale or use therein and are not goods in transit.

Cloth, Kerosene, Timber, Corrugated iron sheets, Sugar or Gul. Other articles approved by the Commissioner.

3. Octroi shall be paid by the person importing the articles or material mentioned in rule 2 at the Naka fixed for the purpose.

4. A receipt for the payment of octroi shall be given in such form as may be prescribed by the panchayat.

5. No octroi shall be levied on articles or materials imported by Government or a Local Board or a village panchayat for their use.

**\* Maximum Rate**

Octroi—

|                            | Rs. a. p.   |
|----------------------------|---|
| (i) Cloth—                 |   |
| (a) Cotton ...             | 1 0 0 per Bengal maund.                                     |
| (b) Woollen ...            | 1 8 0 per Bengal maund.                                     |
| (c) Silk ...               | 3 0 0 per Bengal maund.                                     |
| (ii) Kerosene ...          | 0 2 0 per tin.  |
| (iii) Building materials—  |   |
| (a) Timber ...             | 0 8 0 per every cart load<br>( i.e., 16 Bengal<br>maunds ). |
| (b) Carrugated iron sheets | 0 4 0 per Bengal maund.                                     |
| (iv) Other articles        | 0 4 0 per Bengal maund.                                     |

**G. Rules for the Levy of a Tax on marriages, Adoptions and Feasts—S. 89 (2) (vi)**

1. Each panchayat shall determine the rate or rates of taxes, not exceeding the maxima prescribed under clause (c) of section 108 (1) to be levied on each feast, adoption, or marriage given, made or celebrated by any person or persons within the limits of the village, and submit the same for the sanction of the Commissioner with such regulations regarding classification of marriages, feast, etc., into different grades as may be necessary to be prescribed in this behalf.

2. The class in which a marriage, or feast falls shall be decided by the panchayat according to the expenditure incurred. The class in which an adoption should be put shall be decided by the panchayat according to the financial position of the

person adopting the child. Any inhabitant of the village dissatisfied with such classification may appeal to the Mamlatdar whose decision in the matter shall be final.

3. Every parent or guardian celebrating a marriage, every person adopting a child and every person giving a feast in the village shall give written intimation thereof to the sarpanch at least three days before the date of the marriage, adoption or feast, as the case may be, and pay the tax imposed under rule 1. If notice is not given as prescribed the person concerned shall be liable to pay at double the rate prescribed.

#### \* Maximum Rate

Tax on Marriages, adoptions and feasts—

|                       |     |     | Rs. a. p. |
|-----------------------|-----|-----|-----------|
| A. <i>Marriages</i> — |     |     |           |
| Class I               | ... | ... | 5 0 0     |
| Class II              | ... | ... | 2 0 0     |
| Class III             | ... | ... | 1 0 0     |
| Class IV              | ... | ... | 0 8 0     |
| B: <i>Adoptions</i> — |     |     |           |
| Class I               | ... | ... | 5 0 0     |
| Class II              | ... | ... | 2 0 0     |
| Class III             | ... | ... | 1 0 0     |
| Class IV              | ... | ... | 0 8 0     |
| C. <i>Feasts</i> —    |     |     |           |
| Class I               | ... | ... | 3 0 0     |
| Class II              | ... | ... | 1 0 0     |
| Class III             | ... | ... | 0 8 0     |
| Class IV              | ... | ... | 0 4 0     |

#### (vii) "Any other tax..."

Government of India Act, 1935, Schedule II of Scheduled Taxes Rules enumerate the following taxes—

- (1) A toll.
- (2) A tax on land or land values.
- (3) A tax on buildings.
- (4) A tax on vehicles or boats
- (5) A Tax on animals.
- (6) A tax on menials and domestic servants.
- (7) An octroi.
- (8) A terminal tax on goods imported into, or exported from a local area.
- (9) A tax on trades, professions and callings.
- (10) A tax on private markets.
- (11) A tax imposed in return for services rendered, such as—
  - (a) a water rate,
  - (b) a lighting rate,
  - (c) a scavenging, sanitary or sewage rate,
  - (d) a drainage tax,
  - (e) fees for the use of markets and other public conveniences.

## H. Rules for the levy of sanitary cess

### S. 89 (2) (vii)

Govt. Notification No. S. 174 (1) (a) 1-4-36.

1. *General Sanitary Cess.*— Subject to the General Rules a Panchayat may levy a general sanitary cess on houses which are inhabited or occupied at a rate to be fixed by the Panchayat, not exceeding the maximum fixed by rules framed by Government under S. 108 (1) (a) and approved by the Commissioner.

2. *Special Sanitary Cess.*—Subject to the General Rules a Panchayat may levy a Special Sanitary Cess on all houses to which privies or latrines are attached at a rate to be fixed by the Panchayat, not exceeding the maximum fixed by rules framed by Government under S. 108 (1) (n) and approved by the Commissioner. The rate may be fixed for each privy or latrine or for each family using such privy or latrine.

*Explanation*—For the purposes of this rule, “family” means a collection of individuals living and messing together including visitors, guests and servants.

3. *Revision of Rates*—The Panchayat may, with the previous sanction of the Commissioner, from time to time revise the rates prescribed under rules (1) and (2); provided that such revised rates do not exceed the maximum limits fixed by Government.

4. *Bill of Demand*—Early in April each year the Sarpanch shall issue to the person liable for the payment of cess a bill of demand specifying therein the date on or before which the amount of the cess shall be paid.

5. *Notice to be given if privy or latrine ceases to be used*—If any privy or latrine ceases to be used as such, and it is desired to claim refund or remission of the Special Sanitary Cess, notice in writing of such cessation shall be given to the Panchayat.

6. *No refund for less than three months' non-user*—No refund or remission of the Special Sanitary Cess shall be made for a period previous to the date on which notice has been given under rule 5, nor shall any such refund or remission be made unless a privy or a latrine has ceased to be used as such for a period subsequent to such notice, of not less than



three months. If the Panchayat is satisfied that a privy or latrine has ceased to be used as such for a period of not less than three months and notice of such cessation has been given to the Panchayat in the manner aforesaid, the Panchayat may refund or remit the whole or any portion of the cess levied or due in respect of the said privy or latrine, for the period subsequent to the receipt of the notice.

7. *Disposal of objections to assessment*—All petitions of objections that may be made by any person to the assessment of the cesses shall be disposed of by the Panchayat subject to an appeal to the District Local Board concerned within thirty days from the date of communication of the decision of the Panchayat. The decision of the District Local Board in the matter shall be final and conclusive.

8. *Exemptions*—A Panchayat may, in deserving cases, with the previous sanction of the Commissioner, grant exemptions from the payment of the cesses.

**\* Maximum Rate**

“General sanitary cess:—Rs. 2 per annum per house.

“Special sanitary cess:—Rs. 6 per annum per privy, latrine or family using a privy or latrine. Rs. 3 for each additional privy or latrine used by the same family.”

90. **Power of district board to increase taxation of panchayat**—(1) If in the opinion of the district local board the *regular income* of a panchayat falls below what is necessary for the proper discharge of the duties specified in sections 26 and 28, the district local board may require the panchayat to take steps, within six months, to increase its income to such extent as the

*district local board considers necessary. If the panchayat fails to take adequate steps to increase its income to the required extent, the district local board may require it to levy or increase any of the taxes or fees specified in section 89 :*

Provided that the *district local board shall not compel the panchayat to levy or increase any tax or fee beyond the maximum rate to be prescribed in this behalf.*

(2) Any panchayat may appeal to the Commissioner against an order made under sub-section (1) and the Commissioner may stay the execution of such order until he has decided the appeal.

\* The maximum rate prescribed by Government in respect of every head of taxation has been given below the rules regarding the levy of each of the taxes under S. 89...vide above.

Ss. 89 & 90 and the rules under them constitute the first part—the taxation part of this chapter. The provisions of this part are quite similar to those of the District Municipal & Local Boards Acts.

Chapters VII of each of these Acts deal with “Taxation.” They set out the procedure—general as well as particular—for the imposition of taxes—such as House Tax, Pilgrim’s Tax, Sanitary Cess, Octroi etc.

Chapters VIII of these Acts deal with “Recovery of claims”. They correspond with the second part i. e. the recovery part of this chapter which is set out in Ss. 91 & 92 below.

**91. Recovery of taxes and other dues—(1)** When any tax or fee has become due, a panchayat shall with

the least practicable delay, cause to be presented to the person liable for the payment thereof a bill for the amount due from him, specifying the date on or before which the amount shall be paid.

(2) If any person fails to pay any tax or any other sum due from him to a panchayat under this Act or the rules or by-laws on or before the specified date of payment, the panchayat shall cause a *writ of demand* in the prescribed form to be served on the defaulter.

(3) If the sum for which a writ of demand has been served is not paid *within thirty days from the date of such service*, the panchayat may levy such sum by distraint and sale of the moveable property of the defaulter in the prescribed form

(4) Fees for—

- (a) every distress made under sub-section (3),
- (b) every writ of demand issued under sub-section (2), and
- (c) the costs of maintaining any livestock seized under sub-section (3)

shall be chargeable at such rates as may be prescribed.

(4A) Notwithstanding anything contained in the foregoing sub-section, any tax or fee payable on demand in accordance with the rules shall be recoverable in such manner as may be prescribed.

(5) If a panchayat is to recover a tax or other sum due to it as aforesaid, it may furnish to the mamlatdar or mahalkari a statement of the arrears due, with a request for the recovery of the same through the

village officers, and on receipt of such statement of arrears, the mamlatdar or mahalkari shall, provided such statement of arrears shall have been furnished by the panchayat to the mamlatdar or mahalkari *within one year* from the date specified in the bill presented under sub-section (1), proceed to recover the same as an arrear of land revenue through the village officers. For the recovery of such sums, the village officers shall be remunerated by the panchayat in such manner as may be prescribed.

(6) If a panchayat fails to recover any tax, fine or other sum due to it, or neglects to take action under sub-sections (2) and (3) of section 84 or (2) and (3) of this section, the district local board may apply to the Collector to recover the same as an arrear of land revenue :

Provided that no such application shall be made to the Collector after the *expiry of two years* from the date when the amount became certifiable under sub-section (3) of section 84 or from the date specified in the bill presented under sub-section (1) of this section, as the case may be.

On receipt of such application from the district local board, the Collector shall after holding such enquiry as he thinks fit, proceed to recover the sum as an arrear of land revenue unless such sum is not under section 92 directed to be written off.

**Government Notification No. S. 174/12/1 of 3-1-40.**

The writ of demand to be presented to the defaulter under sub-section (2) of section 91, shall be in the form appended hereto, namely:—

**Form of Writ of Demand.**

To

A. B.

residing at

Take notice that the Village Panchayat of \_\_\_\_\_  
 demands from \_\_\_\_\_ the sum of \_\_\_\_\_ due  
 from \_\_\_\_\_ on account of \_\_\_\_\_ (here  
 describe the nature of the tax or sum due to a  
 panchayat under the Act or rules or by-laws, as the  
 case may be, in respect of \_\_\_\_\_ ) for the period of  
 \_\_\_\_\_ commencing on the \_\_\_\_\_ day of  
 19 \_\_\_\_\_ and ending on the \_\_\_\_\_ day of  
 19 \_\_\_\_\_, and that if within thirty days from the date of  
 service of this writ, the said sum, together with Rs.

As. Pies \_\_\_\_\_ as fee for this writ of demand is not  
 paid into the Village Panchayat Office at \_\_\_\_\_ or  
 sufficient cause for non-payment is not shown to the  
 satisfaction of the Village Panchayat, a warrant of dis-  
 tress will be issued for the recovery of the same, with  
 costs.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

(Signed)

By order of the Village Panchayat of \_\_\_\_\_

**The form of Warrant, the method of attachment,  
 auction and sale of the defaulter's moveable  
 property under section 91 (3).**

1. If the person liable for the payment of the sum  
 for which a writ of demand has been served on him

does not, within thirty days from the date of service of such writ of demand either,

(1) pay the sum demanded in the writ, or

(2) show sufficient cause to the satisfaction of the Village Panchayat for the non-payment of the sum demanded,

a warrant of distress in Form A appended to these rules shall be issued and served on him.

2. Every such warrant shall be signed either by the Sarpanch or the deputy Sarpanch and shall be executed by such officer of the panchayat as the panchayat may authorise in this behalf.

3. The officer authorised to execute the warrant under rule 2 shall distrain, wherever found, any goods or chattel of the person named in the warrant as defaulter, subject to the following conditions and exceptions, viz. :—

(a) The following property shall not be distrained, namely:—

(1) the necessary wearing apparel, cooking vessels, beds and bedding of the defaulter, of his wife and children and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman,

(2) the tools of artizans, and

(3) if the defaulter is an agriculturist his implements of husbandry, seed, grain and such cattle as may be necessary to enable him to earn his livelihood

(b) The property distrained shall be as nearly as possible equal in value to the amount recoverable under the warrant, and if any property has been distrained which in the opinion of the person authorised to sign the warrant under rule 2 should not have been so distrained it shall forthwith be returned to the person in whose possession it was at the time of distraint.

4. The officer authorised under rule 2, to execute the warrant of distress issued under rule 1, shall forthwith make an inventory of the goods and chattels which he has seized under such warrant and shall at the same time give a written notice in Form B appended to these rules to the person in whose possession it was at the time of seizure, that the said goods and chattels shall be sold if he fails to pay within seven days from the day of the date of the notice, into the office of the Village Panchayat the amount recoverable under the notice together with the cost of recovery:

Provided that if after the property is distrained and before it is removed, the sum due by the defaulter together with all costs incidental to the service of writ, warrant and distress of the property are paid, the officer authorised to issue the warrant may suspend or discharge the warrant.

5. A copy of the notice given under rule 4 shall be also affixed on the Village Panchayat Office.

6. The goods and chattels seized shall, after the expiry of the period named in the notice served under rule 4, be sold by the Village Panchayat by public auction held at the Village Panchayat Office:

Provided that no servant or office-bearer of the Village Panchayat shall be permitted to bid at such auction.

7. The surplus, if any, of the sale-proceeds of the distrained goods after satisfying the claims of the Village Panchayat shall be credited to the Village Panchayat fund, but if the same be claimed by an application made in writing to the Village Panchayat within one year from the date of the sale, a refund thereof shall be made to the person in whose possession the goods and chattels were at the time of the distraint.

---

#### FORM A.

#### Form of Warrant of Distress.

(Rule 1.)

( here insert the name of the officer charged with the execution of the warrant ).

Whereas A. B. of \_\_\_\_\_ village has not paid,  
or shown sufficient cause to my  
satisfaction for the non-payment of  
the sum of Rs. \_\_\_\_\_ due for the  
tax/fee mentioned in the margin for which a writ of  
demand was served on him/her on the \_\_\_\_\_ 19 ,

And whereas thirty days have elapsed since the  
service on him/her of the writ of demand for the same ;

This is to command you to distrain the goods and  
chattels of the said A. B. to the amount of Rs. \_\_\_\_\_  
being the amount due from him as follows :—



|                                    | Rs.   | a. | p. |
|------------------------------------|-------|----|----|
| On account of the said tax/fee ... | ...   |    |    |
| For service of writ of demand ...  | ...   |    |    |
| Total ...                          | _____ |    |    |

and forthwith to certify to me, together with this warrant, all particulars of the goods distrained by you thereunder.

Dated this            day of            19 .

( Signed )

Sarpanch (or depuly sarpanch, as the case may be.)

**FORM B.**

**Form of Inventory and Notice.**

( Rule 4. )

To

A. B. residing at

Take notice that I have this day distrained the goods and chattels specified in the inventory beneath this, for the value of            due for the tax/fee mentioned in the margin, together with Rs.

due as fee for service of writ of demand and that unless within seven days from the day of the date of this notice you pay into the office of the Village Panchayat,            , at            the said amount

together with the cost of recovery, the said goods and chattels will be sold.

Dated this            day of            19 .

(Signature of the officer executing the warrant).

\*

### Inventory.

(Here state particulars of goods and chattels distrained.)

#### Government Notification No. S. 174/12 (3) of 12-2-1940.

1. *Writs of demand*—The fee for every writ of demand issued under sub-section (2) of section 91 of the said Act shall be chargeable at the following rate, namely:—

|   | Rs. a. p. |
|---|-----------|
| (1) When the amount demanded does not exceed Rs. 5     ...     ...     ...  | 0 1 0     |
| (2) When the amount demanded exceeds Rs. 5 but does not exceed Rs. 25     ...   | 0 2 0     |
| (3) When the amount demanded exceeds Rs. 25 but does not exceed Rs. 100     ...   | 0 4 0     |
| (4) When the amount demanded exceeds Rs. 100, Re. 0-4-0 for the first Rs. 100 and for every additional amount of Rs. 25 or part thereof     ...     ... | 0 1 0     |

2. *Distress Warrants*—The fee for every distress made under sub-section (3) of section 91 shall be chargeable at the rate of two annas for every amount of Rs. 5 or part thereof for which the distress is levied.

3. *Costs of maintaining live-stock seized*—The costs of maintaining any live-stock seized under sub-section (3) of section 91 of the said Act shall be chargeable at the following rate, namely:—

- |   |     |       |       |          |
|---|-----|-------|-------|----------|
| (1) For every elephant  | ... | ...   | 0 8 0 | per day. |
| (2) For every camel or buffalo                                    | ... | 0 6 0 | „ „   |          |
| (3) For every horse, mare, gelding,<br>pony, bull, bullock or cow | ... | 0 4 0 | „ „   |          |
| (4) For every colt, filly, calf, heifer,<br>mule or ass           | ... | 0 2 0 | „ „   |          |
| (5) For every ram, ewe, pig, bird,<br>sheep, lamb, goat or kid    | ... | 0 1 0 | „ „   |          |

*Explanation*— For the purposes of this rule, a colt or a filly shall be deemed to become a horse or a mare, when it has completed its three years of age and a heifer shall be deemed to become a cow when it bears a calf.

---

**The remuneration of village officers for the recovery of taxes and other sums due to a panchayat and the manner in which the remuneration shall be paid. S. 91 (5)**

**Government Notification No. S. 174/1 of 18-12-34.**

1. The remuneration payable to village officers for the recovery of taxes and other sums due to a panchayat shall be one anna per rupee recovered and shall be distributed as follows:—

|                             |     |   |
|-----------------------------|-----|---|
|                             | Ps. | } Out of every anna recovered as remuneration from the village panchayat ( vide Government Resolution, Revenue Department, No. 7485/24 of 11th February 1929 ). |
| (i) Talati<br>(or Kulkarni) | 5   |   |
| (ii) Patil                  | 4   |   |
| (iii) Inferior Servant      | 3   |   |

2. In the case of panchayats which have deposited their funds in the sub-treasury under sub-rule (2) of rule 2 of the rules under clause (e) of sub-section (1) of section 108 read with section 32 the remuneration to the village officers and servants for the recovery of the panchayat dues shall be paid as soon as practicable after the close of the financial year, by a cheque drawn on the sub-treasury by the sarpanch and countersigned by the Mamlatdar or the Mahalkari as the case may be. Any difference between the village officers and the Sarpanch should be settled by reference to the Assistant or Deputy Collector, whose decision shall be final.

3. In the case of panchayats which have deposited their funds in any Bank approved by the Collector under rule 2 of the rules under clause (e) of sub-section (1) of section 108 read with section 32 the village officers may recover the remuneration by preferring a bill to the sarpanch, any difference between the village officers and the sarpanch being settled by reference to the Assistant or Deputy Collector, whose decision shall be final.

4. The Talati ( or Kulkarni ) shall be responsible for distributing the remuneration in accordance with rule 1.

---

**92. Collector's power to direct irrecoverable sums to be written off**— The Collector may direct—

(a) any sum certified by a panchayat and recoverable by him under sections 81, 82 and 84 and sub-section (c) of section 91 ;

(b) any arrear of a tax or any other sum due to a panchayat and recoverable, through a mamlatdar or mahalkari under sub-section (d) of section 91 ;

to be written off if, in the opinion of the Collector, such sum or arrears are irrecoverable.

---

## CHAPTER X.

### FINANCIAL ASSISTANCE TO PANCHAYATS.

**93. Contributions and loans by district local boards**— Notwithstanding anything contained in the Bombay Local Boards Act, 1923, the district local board—

(i) shall assign to every panchayat within the district *not less than one-fourth of the local fund cess realised within the limits of the village*, and

(ii) may, subject to rules, *grant a loan to such panchayats*, for the purposes of this Act.

**Rules re. The terms on which loans may be granted to a panchayat by the District Local Board—S. 93**

**Government Notification No. S. 174/1 of 18-12-34.**

1. No application made by a panchayat for a loan shall be entertained by a district local board unless such application is supported by a resolution passed by a two-thirds majority of the whole number of members of the panchayat.

2. A district local board may, on an application made by a panchayat in accordance with rule 1, grant to the panchayat a loan not exceeding the sanctioned estimate of the work on which the amount is required to be spent by the panchayat, on the security of the funds of the panchayat.

3. No loan exceeding in amount five times the excess of the average current revenue over the average current expenditure based on the last three years' figures, shall be granted by a district local board to a panchayat.

4. The rate of interest payable by a panchayat on a loan granted by a district local board shall be settled by mutual agreement between the district local board and the panchayat :

Provided that such rate of interest shall not exceed the rate at which loans are from time to time granted by Government under the Land Improvement Loans Act, 1883.

5. A loan granted by a district local board to a panchayat shall be repayable with interest in not more than ten equated payments.

Vide p. 84 Villages Fund S. 31 (1) (f) and p. 87 – heads of income under the village fund (viz. 3)

Formerly,  $1/5$  only of the local fund cess was assigned. Now, after the amendment, it is raised to  $1/4$ , to place a larger amount at the disposal of the panchayats.

The Provincial Government levies a cess ordinarily at the rate of one anna on every rupee of every sum payable as Land Revenue. This is the local fund cess, the property of the District Local Board.

---

## CHAPTER XI

### CONTROL.

The necessity of supervision and control. The preceding chapters dealt with the establishment and constitution of panchayats, their powers and duties, the sources of their revenue and the method of their taxation. The panchayat is a human institution. It may go wrong, sometimes even deliberately. What is the safeguard? How are the panchayats to be guided and controlled? The question forms the subject of this chapter.

To guard against all possibilities of mistakes and mischiefs, the general control over the administration of panchayats is vested in the District Local Board on the one hand and the Collector on the other. The control is on the lines of the provisions laid down on the subject in the District Local Boards and Municipal Acts—chapters X & XII, respectively.

**94. Power to call for proceedings, etc-** (1) The Collector or the district local board shall have power—

(a) to call for any extract from the proceedings of a panchayat, any book or document in the possession or under the control of a panchayat, and any return, statement, account or report which the Collector or the district local board may think fit to require such panchayat to furnish; and

(b) to require a panchayat to take into consideration—

(i) any objection which appears to the Collector or the district local board to exist to the doing of anything which is about to be done or is being done by such panchayat, or

(ii) any information which the Collector or the district local board is able to furnish, and which appears to the Collector or the district local board to necessitate the doing of a certain thing by the panchayat,

and to make a written reply to the Collector or the district local board, as the case may be, within a reasonable time, stating its reasons for not desisting from doing or for not doing such things.

(2) All or any of the powers given to the district local board under sub-section (1) may be delegated by it to its president, vice-president, chief officer, public health officer or executive engineer.



**95. Delegation of duties, appointment of officers, utilisation of honorary agencies for encouraging the establishment and fostering the growth of panchayats—**

(1) The district local board may delegate to the President, Vice-President, the Chief Officer, Public Health Officer or any other officer specially appointed by the district local board in this behalf, the duties of encouraging the establishment and fostering the growth of panchayats and of assisting panchayats in the proper exercise of their powers and performance of their duties under this Act.

(2) It shall be competent to the district local board to accept and utilise in an honorary capacity in the performance of any of the duties which may be delegated under sub-section (1) the services of any person who in the opinion of such Board is specially fitted to assist in this behalf.

(3) It shall be competent to the Provincial Government to appoint an officer to exercise such of the powers and perform such of the duties of a Collector and, if the district local board has been superseded, the duties of a district local board under this Act as the Provincial Government may prescribe. Such officer shall also perform such other duties and exercise such other powers as the Provincial Government may prescribe for the purpose of encouraging the establishment and fostering the growth of panchayats and village benches and of assisting and advising panchayats and village benches in the proper exercise of their powers and performance of their duties under this Act.

For examples of delegation of powers vide Pp. 42, 43, 50, under S. 7.

**96. Power of entry**—The district local board may authorise its president, vice-president, or any of its officers to enter on and inspect, or cause to be entered on and inspected, any immoveable property occupied by any panchayat or any work in progress under its direction.

**97. Audit of accounts**—*The audit of the accounts of a panchayat shall, unless provision is otherwise made by the Provincial Government in that behalf, be carried out each year by the district local board, and such board shall, within one month of the completion of the audit, forward a copy of the audit note to the Collector.*

**98. Reduction of establishment**—(1) If, in the opinion of the Collector or the district local board, the number of persons maintained or proposed to be maintained by a panchayat as officers or servants, or the remuneration given or proposed to be given by the panchayat to such persons is excessive, the panchayat shall, on the requirement of the Collector or the district local board, as the case may be, reduce such number or remuneration.

(2) If there is a difference between the requirement of the Collector or of the district local board under sub-section (1), the panchayat shall refer the matter in difference to the Commissioner whose decision shall be final.

(3) The panchayat may appeal to the Commi-

ssioner against any requirement made under sub-section (1), and the decision of the Commissioner in the matter shall be final.

**99. Suspension of execution of order**—If in the opinion of the Collector, the execution of any order or resolution of a panchayat, or the doing of anything which is about to be done or is being done by or on behalf of a panchayat, is causing or is likely to cause injury or annoyance to the public, or to lead to a breach of the peace, he may, by order in writing, suspend the execution or prohibit the doing thereof.

(2) When the Collector makes an order under sub-section (1), he shall forthwith send to the panchayat affected thereby a copy of the order, with a statement of the reasons for making it.

(3) The Collector shall forthwith submit to the Commissioner a report of every case occurring under this section, and the Commissioner may revise or modify any order made therein and make in respect thereof any other order which the Collector could have made.

**100. (1) Execution of work in case of emergency**—  
(1) In cases of emergency the Collector may provide for the execution of any work or the doing of any act which a panchayat is empowered to execute or do, and the immediate execution or doing of which is, in his opinion, necessary for the health or safety of the public, and may direct that the expense of executing the work or doing the act shall be forthwith paid by the panchayat.

(2) If the expense is not so paid, the Collector may direct the officer in charge of the treasury in which the village fund is kept to pay such expense, or so much thereof as is possible, from the balance of such fund in his hands.

(3) The Collector shall forthwith report to the Commissioner every case in which he exercises the powers under sub-section (1).

**101. Default in performance of duty—**(1) If at any time it appears to the district local board that a panchayat has made default in the performance of any duty specified in section 26, it may order the duty to be performed within a specified period, and, if the duty is not performed within the period specified, the district local board may appoint some person to perform it, and direct that the expense of performance shall be paid by the defaulting panchayat, within such period as the district local board may fix.

(2) If the expense is not so paid, the district local board may direct the person in custody of the village fund to pay such expenses, or so much thereof as is possible, from the balance of such fund in his hands.

(2A). If at any time it appears to the Provincial Government or any Officer authorised by the Provincial Government in this behalf that a panchayat has made default in the performance of any duty specified in section 26 and that the district local board has failed or neglected to take action under sub-section (1), the Provincial Government or the Officer authorised, as the case may be, may take such action as could have

been taken by the district local board under subsections (1) and (2).

(3) The district local board or the Officer authorised, as the case may be, shall forthwith report to the Commissioner every case occurring under this section and the Commissioner may revise or modify any order made therein and make in respect thereof any other order which the district local board could have made.

**102. Dissolution or supersession of panchayat for default—**(1) If, in the opinion of the Provincial Government *a panchayat exceeds or abuses its powers, or makes persistent default in the performance of the duties imposed on it under section 26 or any other law for the time being in force or persistently disobeys any of the orders of the Collector or Commissioner* under section 99, the Provincial Government may, after consultation with the district local board *by an order in the Official Gazette—*

(i) *dissolve such panchayat, or*

(ii) *supersede such panchayat for the period specified in the order,*

(2) When a panchayat is dissolved or superseded, all members of the panchayat shall, from the date specified in the order, vacate their offices as such members.

(3) When a panchayat is dissolved it shall be reconstituted in the manner provided in this Act.

(4) If a panchayat is superseded—

(a) all the powers and duties of the panchayat shall, during the period of supersession, be exercised and performed by such person or persons as the Provincial Government may, from time to time, appoint in that behalf; and

(b) all property vested in the panchayat shall during the period of supersession, vest in the Provincial Government; and

(c) on the expiry of the period of supersession, the panchayat shall be reconstituted in the manner provided in this Act, and the persons vacating office shall be eligible for re-election or re-nomination.

The control over the administration of a panchayat may take several forms. These are set out in the preceding sections. The extreme form which the control may take is given in this section. The power to dissolve or supersede panchayats is vested in the Provincial Government. It is exercisable, however, *only* (1) after consultation with the Local Board and (2) in circumstances detailed in the section.

Sub-section (2) states the consequences of dissolution and supersession on the members.

The section is modelled after the District Local Boards Act Ss. 129-131 and the District Municipal Act S. 179.

**103. Dissolution and reconstitution of panchayat on alteration of limits of village—(1)** When, during the term of the panchayat the limits of a village are altered, the Collectar may by order in writing dissolve such panchayat and direct a panchayat—

(i) to be reconstituted for the village of which the panchayat has been dissolved, or

(ii) to be established for a village which has been newly declared.

The members of the panchayat which has been dissolved shall vacate their office from the date specified in the order.

(2) The panchayat reconstituted or established under the provisions of sub-section (1) shall consist of such members, either elected, or appointed in such manner as the Collector shall, by order in writing, direct.

The sarpanch and deputy sarpanch of the panchayat so reconstituted or established shall be elected in the manner provided in this Act.

(3) *The term of the panchayat so reconstituted or established shall be for such period, not exceeding one year, as the Collector shall, by order in writing, specify.*

(4) On the expiry of the term of the panchayat in accordance with the provisions of sub-section (3), the panchayat shall be constituted in the manner provided by this Act.

**104. Vesting of property, etc., of panchayat which has been dissolved in reconstituted or established panchayat—**(1) When a panchayat has been dissolved and reconstituted or established under S. 103, so much of the village fund and other property vesting in the panchayat which has been dissolved shall

vest in, and such portion of the debts and obligations shall be transferred to, the reconstituted or established panchayat, as the Commissioner may, by order in writing, direct.

(2) The rights and liabilities of the panchayat which has been dissolved in respect of contracts, agreements and other matters or things arising in or relating to any part of the area subject to the authority of the reconstituted or established panchayat, shall vest in such panchayat.

(3) Any notice, tax, order, licence, permission, rule or by-law made, issued or imposed in respect of any part of the area subject to the authority of the reconstituted or established panchayat shall be deemed to have been made, issued or imposed by or in respect of such panchayat, unless and until it is superseded by any notice, tax, order, licence, permission, rule or by-law made, issued or imposed by or in respect of such panchayat.

**104A. Effect of area being excluded from village—**  
Where by a notification under section 4 any local area forming part of a village is excluded from such village and such area is not included in or declared to be a village, so much of the village fund and other property vesting in the panchayat of the village of which such area formed part, as the Commissioner may by order in writing direct, shall vest in the district local board to be utilised for the benefit of the area as the district local board may think fit.



**105. Effect of area ceasing to be a village—** On any area ceasing to be a village, by virtue of any notification under section 4,—

(1) the panchayat shall be dissolved and all members of the panchayat shall vacate office as from the date of the notification;

(2) the unexpended balance of the village fund and the property vesting in the panchayat shall vest in the district local board, to be utilised for the benefit of the inhabitants of the area as the district local board may think fit.

**106. Effect of dissolution or supersession of panchayats or of withdrawal of judicial powers of village bench on village benches and proceedings pending before them—**(1) When a panchayat is dissolved or superseded under section 102, 103 or 105, the village bench constituted in the village for which the panchayat was established or where all the judicial powers of a village bench have been withdrawn under the proviso to sub-section (2) of section 37 such bench shall be deemed to have been dissolved and all members of the village bench shall vacate office as from the date of dissolution or supersession or the withdrawal of judicial powers as the case may be.

(2) On the dissolution of the village bench under sub-section (1)—

(i) the provisions of sub-sections (2) and (3) of section 87 shall be deemed to apply in respect of any suits or cases pending before the village bench

as if the District Court or District Magistrate, as the case may be, had passed an order under sub-section (1) of section 87 quashing such suits or cases; and

(ii) all pending proceedings and applications for the execution of decrees or orders in suits, and for the recovery of fines and compensation in cases shall be transferred to the Court of the Subordinate Judge or the Magistrate, as the case may be, who would have had jurisdiction to try the suit or case if the village bench had not been constituted and such Subordinate Judge or Magistrate, as the case may be, shall deal with the proceedings or applications as if the suit or case out of which the proceedings or applications arose, had been heard, and decided by such Subordinate Judge or Magistrate.

(3) If any local area is excluded from a village and no panchayat is constituted for the area so excluded the provisions of sub-section (2) shall, so far as may be, apply in respect of any suits, cases, proceedings or applications which may be pending before the village bench in respect of the said area, as if so far as such suits, cases, proceedings and applications are concerned, the village bench had been dissolved.

**107. Authority of Provincial Government—**(1) In all matters connected with this Act, the Provincial Government shall have and exercise the same authority and control over the district local boards as it has and exercises over them under the Bombay Local Boards Act, 1923.

(2) In all matters connected with this Act, the Provincial Government and the Commissioners and Collectors shall have and exercise the same authority and control over the Commissioners, the Collectors and their subordinates, respectively, as they have and exercise over them in the general and revenue administration.

For a rough idea of the control of Government over the district local boards under the Bombay Local Boards Act, Vide Pp. 194 and 201.

**107A. Provincial Government may call for proceedings**—The Provincial Government may call for and examine the record of proceedings of any officer (except the proceedings of the District Court, or the District Magistrate in judicial proceedings in appeal, revision or reference from the proceedings of a village bench) for the purpose of satisfying itself as to the legality or propriety of any order passed and may revise or modify the order as shall seem fit.

#### **The Concluding Survey**

The panchayats have to carry on their administration under a double control that of the District Local Board on the one hand and the Collector, on the other. The Local Board is the main local self-government organisation in the district of which the village panchayat is a branch. It is but proper that the branch should work under the supervision, direction and control of the main organisation. On the other hand, the Collector is the chief executive officer of the Government in the district and therefore responsible for the good government of the district which, of course, includes the village panchayat administration.

On top of this double control comes the control of the Commissioner and above him is the Provincial Government. This is, in outline, the scheme of control over the village panchayats.

It is open to any one aggrieved by any of the acts or orders of a village panchayat to approach higher authorities and there is a whole heirachy of them.

It is hoped, such a system of control should leave no room for mal-administration, abuse of power or misuse of public funds.

---

## CHAPTER XII

### RULES AND BY-LAWS

**108. Rules—(1)** The Provincial Government may, by notification in the *Official Gazette*, make rules—

1 (a) under **S. 4**, regulating the manner in which the Collector may hold an inquiry. ...P. 28-33.

2 (b) under **S. 6**, prescribing the number of seats to be reserved for the representatives of Women, Muhammadans, Harijans or backward tribes in each village panchayat. ... P. 34, 38, 40.

3 (c) under **S. 7**, prescribing the manner in which the election of members shall be held; P. 40, 41, 42-55.

4 (d) under **S. 23**, regulating the manner in which notice of a vacancy in the office of a sarpanch, deputy sarpanch or members of a panchayat shall be given; P. 74.

5 (e) under **S. 32**, prescribing **the custody** in which all **funds** received by and all sums accruing to a panchayat shall be kept; ... P. 85, 86.

6 (e1) under **S. 33**, prescribing the powers, duties, remuneration and conditions of service of **the secretary** of the panchayat; ... P. 89-90.

7 (f) under **S. 36**, prescribing the date of submission and form of **annual budgets**, returns and accounts and the manner in and the time at which **the meeting** of the residents of the village shall be convened; P. 92-101.

8 (g) under **S. 37**, prescribing the manner in which the members constituting a **village bench** shall be elected, and regulating any of the matters specified in sub-section (6) of the said section; ... P. 103, 105-117.

9 (gg) under **S. 37B**, prescribing the other duties which the Secretary of a panchayat acting as the **Judicial Clerk** of that panchayat shall do; P. 118.

10 (h) under **S. 59**, prescribing **the fees** payable on the institution of **suits and cases**; ... P. 113.

11 (i) under **S. 60, 72, 80 and 85** prescribing the particulars to be entered in **registers for suits and cases**; P. 110-111.

12 (j) under **S. 62**, prescribing **the form of summons**; P. 115.

13 (l) under **S. 76**, prescribing the scale of fees which a village bench may direct to be paid in a suit or case;

14 (m) under **S. 89**, prescribing **the rate and the manner** in which **taxes and fees** specified in the section shall be leviable; ... P. 158-180.

15 (n) under **S. 90**, prescribing the maximum rate for the levy of taxes or fees specified in section 89;

16 (n1) under **S. 90, (2)** prescribing the form of the writ to be presented to the defaulter; P. 184.

17 (n2) under **S. 90, (3)** prescribing the form of warrant, the method of attachment, auction and sale of the defaulter's movable property; P. 184-189.

18 (o) under **S. 91, (4)** prescribing the rates of fees for writs of demand, distress and costs of maintaining any live-stock seized, and under **S. 91, (5)** prescribing the remuneration of village officers for the recovery of taxes and other sums due to a panchayat and the manner in which such remuneration shall be paid; P. 189-190.

19 (p) under **S. 91**, prescribing the terms on which loans may be granted to a panchayat by the district local board; P. 193.

20 (q) under **S. 95**, prescribing the powers and duties which may be delegated to or exercised or performed by an officer or person appointed;

21 (r) under sub-sections (3) and (4) of **S. 112**, regulating the delegation by the District Court or the District Magistrate of the powers therein referred to.

22 (s) for any other matter which may be prescribed.

(2) The rules to be made under sub-section (1) shall be subject to the condition of previous publication.

(3) Rules made under sub-section (1) shall be laid before each of the Chambers of the Provincial Legis-

lature at the session thereof next following and shall be liable to be modified or rescinded by a resolution in which both Chambers concur and such rule shall, after notification in the *Official Gazette*, be deemed to have been modified or rescinded accordingly :

Provided that when, in the opinion of the Provincial Government such modification or rescission is likely to defeat or frustrate any of the purposes of this Act, the Provincial Government may, by notification in the *Official Gazette*, declare that the modification or rescission shall have no effect and thereupon the rule shall remain in force as if it had not been modified or rescinded.

**109. (1) By-laws**—The district board may, *with the previous sanction of the Commissioner*, make by-laws generally for the carrying out of the purposes of this Act.

(2) Without prejudice to the generality of the foregoing provision, the district local board may make by-laws—

(a) under **S. 19**, prescribing the time and place of the sittings and regulating the procedure at **meetings** of a panchayat, and fixing a quorum ;

(b) under **S. 20**, prescribing the powers and duties of a sarpanch which may be exercised and performed by a **deputy sarpanch** ;

(c) under **S. 26**—

(i) for the purification and protection from pollution of all **sources of water** used for drinking purposes ;

(ii) for the prohibition of the removal or use for drinking purposes of any water from any stream, tank, well or other source, where such removal or use causes, or is likely to cause, disease or injury to health, and the prevention of such removal or use by the filling in or covering over of such tank or well, or by any other method which may be considered advisable ;

(iii) for the **prohibition of the deposit or storage of manure**, refuse or other offensive matter in a manner or in places prejudicial to the public health, comfort or convenience ;

(iv) for the **regulation of offensive callings or trades** ;

(v) for the **disposal of corpses** by burning or burial ;

(vi) for the excavation of earth and the filling up of excavations and depressions injurious to health or offensive to the neighbourhood ;

(vii) for the **removal of noxious vegetation** ;

(viii) for the **repair and removal of dangerous or ruinous buildings** ;

(ix) for the prevention of the erection of buildings without adequate provisions for ventilation, or the laying out and location of streets ;

(x) for the **control of fairs and bazars** and the regulation of markets, slaughter-houses and cart-stands ;



(xi) for the inspection and distruction of **unfit food and drink** exposed for sale; and .

(xii) for the general **regulation of sanitation and conservancy**;

(d) under **S. 28**, for the *supervision of labourers* employed by local boards, and of *repairs to dharamsalas*, the management and maintenance of *cattle-pounds*, execution of works entrusted by the district local board, distribution of *irrigation* water and performance of other duties assigned by the Provincial Government.

(3) Any by-law made under the foregoing subsections may provide that a contravention thereof shall be punishable—

(a) with a fine, which may extend to Rs. 10, or

(b) in the case of a continuing contravention, with a fine, which may extend to Re. 1 per day after conviction for the first contravention during the period within which such contravention continues.

The Village Panchayat Act is a Provincial Enactment. It is passed by the Provincial Legislative Assembly and Council with the necessary sanction of the Governor and the Governor-General.

The rules under the Act are framed by the Provincial Government. While the various sections of the Act give the broad out-line, the rules fill in the picture. Both are important as each complements and completes the other.

The by-laws are framed by the District Local Boards. **They lead the local colour and thus complete the picture.** They may vary according to changing requirements and conditions of different districts. They are not therefore reproduced here.

Not so is the case with the rules. They are universal and are therefore *all* reproduced under the relevant sections.

---

## CHAPTER XIII.

## MISCELLANEOUS.

**110. Liability of members for loss, waste or misapplication-** (1) Every member of a panchayat shall be personally liable for the loss, waste or misapplication of any money or other property of the panchayat, to which he has been a party, or which has been caused or facilitated by his misconduct or gross neglect of his duty as a member.

(2) If after giving the member concerned a sufficient opportunity for showing cause to the contrary, the Collector is satisfied that the loss, waste or misapplication of any money or other property of the panchayat is a direct consequence of misconduct or gross neglect on his part, the Collector shall, by order in writing direct such member to pay to the panchayat, before a fixed date, the amount required to reimburse it for such loss, waste or misapplication.

(3) If the amount is not so paid, the Collector shall recover it as an arrear of land revenue and credit it to the village fund.

(4) The decision of the Collector shall be subject to an appeal to the Commissioner as to the liability of a member under sub-section (2) and as to the amount to be recovered from him.

**111. Bar of action against panchayats, village benches., etc. and previous notice before institution-**

(1) No action shall lie against any member, officer, servant or agent of a panchayat or a village bench acting under its direction, in respect of anything done in good faith under this Act or any rule or by-law.

(2) No action shall be brought against any panchayat or village bench, or any member, officer, servant or agent of such panchayat or village bench acting under its direction for anything done or purporting to have been done under this Act, until the expiration of three months next after notice in writing has been left or delivered at the office of the panchayat or village bench, and also at the residence of the member, officer, servant or agent thereof against whom the action is intended to be brought. The notice shall state the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the person who intends to bring the action.

(3) Every such action shall be commenced within six months after the accrual of the cause of action and not afterwards.

(4) If any panchayat or village bench or person, to whom a notice under sub-section (2) is given shall, before an action is brought, tender sufficient amends to the plaintiff and pay into court the amount so tendered, the plaintiff shall not recover more than the amount so tendered. The plaintiff shall also pay all costs incurred by the defendant after such tender.

**112. Delegation of powers-**(1) The Provincial Government may, by notification in the *Official Gazette*

authorise the Commissioner or any officer including an officer specially empowered under sub-section (3) of section 95 to exercise in respect of panchayats any of the powers which may be exercised by the Provincial Government under this Act except the powers in respect of the village benches under Chapter VI.

(2) The Provincial Government may also, by notification in the *Official Gazette*, authorise any person to exercise in respect of panchayats any of the powers conferred on a district local board under the provisions of this Act, when such district local board shall have been dissolved or superseded.

(3) Subject to rules made in this behalf, the District Court may delegate to a Subordinate Judge the powers exercisable by the District Court in regard to suits under this Act in respect of a village bench in a village within the jurisdiction of the said Subordinate Judge;

(4) Subject to rules made in this behalf, the District Magistrate may delegate to a Magistrate of the First Class exercising appellate jurisdiction under section 407 of the Criminal Procedure Code, 1898, the powers exercisable by him in regard to cases under this Act in respect of a village bench in a village within the said jurisdiction of the said Magistrate;

(5) Subject to the general or special orders of the Provincial Government the Collector may delegate to an officer not below the rank of an Assistant or Deputy Collector powers other than the powers under section 4 exercisable by the Collector under this Act.

By Notification No. 174/1 (a) of 1-11-40 the Government of Bombay has authorised Commissioners of Divisions to determine the rate at which and the manner in which, the tax upon owners or occupiers of houses and lands under S. 89 (1) shall be leviable vide: P. 171 and Pp. 163 to 170.

Additional examples of delegation of powers are:

**Notification No. 561 District Judge Ratnagiri 13-3-35.**

**Bombay Government Gazettes 1935 Part I P. 553.**

Under the authority vested in him by S. 112 (3) of the Bombay Village Panchayats Act (VI of 1933), the District Judge of Ratnagiri hereby delegates to all the Subordinate Judges in the district the powers exercisable by the District Judge in regard to suits under sub-section (1) of section 87 in respect of village benches in the villages within their respective jurisdictions.

Similar notifications by District Judges of Belgaum, Bijapur, Nasik have been published.

**113. Local inquiry and reports by panchayat-**

It shall be the duty of every panchayat to inquire and report in any of the following cases :-

(a) any case where a magistrate has directed that a previous local investigation be made by a panchayat under section 202 of the Code of Criminal Procedure, 1898, and the words "such other person" in sub-section (1) of the said section shall be deemed to include a panchayat ;

(b) any case in which a magistrate making an inquiry under section 488 of the Code of Criminal Procedure, 1891, may require from the panchayat in whose village either the wife or child for whose maintenance the application is made or the husband or parent respectively of such wife or child resides,

a report as to the amount of maintenance which, having regard to the circumstances of the parties, should be payable, and such report shall be evidence in such inquiry :

Provided that no member of the panchayat shall be required to attend as a witness touching any matter on which the report is itself evidence, but the magistrate may, in his discretion, call for a further report.

**114. Members, etc., of panchayats or village benches to be public servants**—Every member of a panchayat or village bench and every officer and servant maintained by or employed under a panchayat or village bench shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

**115. Repeal and savings**—(1) The Bombay Village Panchayats Act, 1920, is hereby repealed :

Provided that—

(a) such repeal shall not affect the liability of any person to pay any sum due from him under the said Act or the validity or invalidity of anything already done thereunder ;

(b) all panchayats established under the Bombay Village Panchayats Act, 1920, and existing immediately before the coming into force of this Act shall be deemed to have been established under this Act ;

and the rights and liabilities of any such panchayats shall be vesting in and attached to the panchayat so deemed to have been established ;

and any appointment, notification, notice, tax order, permission, rule or by-law made, issued or imposed in respect of any such panchayat under the

Act so repealed shall, so far as is not inconsistent with the provisions of this Act, be deemed to have been made, issued or imposed under the provisions of this Act in respect of the panchayats so deemed to have been established under this Act, unless and until superseded by any appointment, notification, notice, tax, order, permission, rule or by-law made, issued or imposed under this Act.

(2) During such time as this Act and the rules and by-laws shall be in operation in any village, the enactments mentioned in the Schedule shall, to the extent specified in the third column of the Schedule, cease to have any operation in the said village.

### SCHEDULE.

( See section, 115 )

| No. and year of enactment. | Subject or Title.                     | Extent of repeal.   |
|----------------------------|---------------------------------------|---------------------|
| Bombay Act VII of 1867 ... | The Bombay District Police Act, 1867. | Sections 33 and 34. |

S. 33 deals with nuisances and S. 34, with noxious vegetation such as prickly pear.

Section 50 of Bombay Village Panchayats (Amendment) Act, 1939, as amended by S. 2 of Bom. 4 of 1940, reads as follows:—

**50. *Transitory provision***—A panchayat established and a village bench constituted immediately before the commencement of this Act shall, notwithstanding anything contained in this Act, or in the said Act and notwithstanding that the term of office of the members of such panchayat or bench has expired continue in office, till such date as the Collector may appoint in this behalf. On the date so appointed the panchayat and the bench shall be dissolved and all the members of such panchayat and of such bench shall vacate office and a new panchayat and a new bench shall be constituted in the manner prescribed by the provisions of the said Act as amended by this Act.

All suits, cases and proceedings pending before a village bench at the date of its dissolution under this section shall be heard and disposed of by the new bench of the area in which such suits, cases and proceedings arose:

Provided that the hearing of such suits, cases and proceedings shall commence anew before the said bench as if such suits, cases and proceedings were instituted before the said bench.

---



**Bombay V. P. Amendment Act No. IV of 1940.**

**Savings-** (1) Any appointment, notification, notice, tax, order, scheme, licence, permission, rule, by-law or form made, issued or imposed by a panchayat the term of the office of which has expired under the Bombay Village Panchayats Act, 1933, before the coming into force of this Act, shall, notwithstanding the expiration of such term, be deemed to be valid and duly made, issued or imposed and shall continue in force unless it is superseded by any new appointment, notification, notice, tax, order, scheme, licence, permission, rule, by-law or form duly made, issued or imposed.

(2) All suits, cases and proceedings which were pending before any bench the term of office of the members of which expired under the Bombay Village Panchayats Act, 1933, on a date before the coming into force of this Act, but which were heard or disposed of by such bench after such date and before the date of the coming into force of this Act, shall, notwithstanding the expiration of such term, be deemed to have been validly heard or disposed of and any notice, summons, order, decision, distraint or sale issued or made by such bench in any suit, case or proceeding during such period shall not be called in question on the ground that such bench had no jurisdiction to issue or make such notice, summons, order, decision, distraint or sale, by reason that the term of office of its members had expired.

---

# INDEX

## Appeals

|  |     |
|--|-----|
| Against the decision of the<br>village Bench | 150 |
| Period for filing appeals                    | 150 |

## Acts

( See page 20 )

### Bench, Village

|   |                    |
|---|--------------------|
| Constitution                                      | 102, 103           |
| Compensation: (1) to Comp-<br>lainant (2) to aeed | 131                |
| Decision of                                       | 145                |
| Election of Member                                | 103                |
| Election of chairman                              | 104                |
| Execution of decrees etc.<br>through Collector    | 151, 152, 153, 154 |
| Institution of Suits & Cases                      | 131                |
| Limitation for Suits & Cases                      | 133                |
| Maximum Penalties                                 | 130                |
| Offences not Cognizable by<br>village benches     | 129                |
| Offences Cognizable by<br>Benches                 | 121                |
| Pleaders-not allowed                              | 144                |
| Removal of member etc.                            | 119                |

## RULES RE: 105-117

|   |                    |
|---|--------------------|
| (1) Manner in which<br>members are to be<br>elected   | 105                |
| (2) Manner of Election<br>of Chairman, Conduct of<br>business, the times &<br>places of Sitting | 107                |
| (3) Fees on Institution<br>of Suits; Forms of Sum-<br>mons etc.                                 | 113                |
| (4) Supply of Copies  | 116                |
| (5) Miscellaneous   | 117                |
| Reference to district Court<br>or to district Magistrate  | 149                |
| Some Persons not to sit on<br>Benches   | 132                |
| Summons   | 133, 139, 140, 141 |
| Triable, not triable Suits  | 120                |
| Youthful offenders: not<br>triable  | 131                |

## Budget & Accounts ( 95-101 )

|                              |     |
|------------------------------|-----|
| Approval of Budget by D.L.B. | 95  |
| Meeting of Residents         | 95  |
| Prescribed form of budget    | 96  |
| Total Forms prescribed       | 101 |

**Commissioner**

|  |               |
|--|---------------|
| Considerations when "Reser-<br>vation of Seats" is to be<br>made               | 38-39         |
| Dissolution of Panchayats  | 200           |
| Forward to Government<br>form A & B. ( See "local<br>area" to be a village )   | 31-33         |
| Power to make rules—for the<br>rate, manner, etc. in which<br>tax to be levied | 171           |
| Sanction rules for the levy<br>of taxes etc.                                   | 161, 162, 163 |

**Collector**

|  |     |
|--|-----|
| Appeal against the decision of<br>returning officer to collector<br>or prant officer | 50  |
| Approval of language   | 72  |
| Appointment of secretary   | 91  |
| Approve a bank for the<br>custody of the Village<br>Fund                             | 191 |
| Cause a voters' list   | 43  |
| Cause summons to be<br>served (outside the Village)                                  | 140 |
| Decision in the matter of<br>"who is qualified to vote?"<br>—his decision            | 42  |
| Declaration of village (old<br>section )   | 29  |

|   |     |
|---|-----|
| Determine the number of<br>members after consultation<br>with D. L. B.  | 34  |
| Declare election invalid  | 62  |
| Declare the appointment<br>invalid  | 62  |
| Decide the applications<br>for amendment of the vot-<br>ers' list   | 44  |
| Enquiries regarding popula-<br>tion of a village  | 30  |
| Execution of a decree through<br>Collector  | 151 |
| Execution of Instalment<br>decree   | 153 |
| Fix the date of election  | 40  |
| Fix time and place of<br>election   | 45  |
| If the D. L. B. fails to make<br>appointments within a time<br>specified, collector to make<br>appointments       | 35  |
| Mode of election—his decision   | 43  |
| May return the summons (if<br>the person on whom it is<br>to be served stays outside<br>the area of the village ) | 142 |
| No hand in the constitution<br>of benches   | 104 |
| Power to direct irrecoverable<br>sums to be written of  | 192 |
| Publication of the result of<br>election in the Official  |     |

|   |    |
|---|----|
| Gazette and to communicate it to the D. L. B.                       | 55 |
| Receive notice of sarpanch or a Deputy Sarpanch                     | 74 |
| Sanction of the lease, sale or other transfer of immovable property | 82 |

### Definitions of

|   |    |
|---|----|
| Act   | 42 |
| Backward Tribes, By-Laws, Case, Chairman, District Local Board, Harijan, Offence, Panchayat, Prescribed, Revenue Village, Rules, Sar-Panch, School-Board, Suit, Tax, "The term of a Panchayat" Village, Village Bench 24, 25, 26, 27. |    |
| Election  | 42 |
| Form  | 94 |
| Official Year   | 94 |
| Presiding Officer   | 42 |
| Reserved Seat   | 43 |
| Returning Officer   | 43 |
| Section   | 43 |
| Special Officer   | 43 |
| Village Chavdi  | 43 |
| Voter   | 43 |

### Deputy Sarpanch

( See Sarpanch )

### District Local Board

|  |       |
|--|-------|
| Control when panchayat is performing its administrative powers             | 77    |
| Decision of appeals against Panchayat assessment                           | 166   |
| Loans to Panchayat   | 85    |
| Power to transfer maintenance of institutions and execution of other works | 80    |
| Power to increase taxation   | 180   |
| Power to call for proceedings etc  | 195   |
| Power of entry   | 197   |
| Part played in 'constitution of Panchayats'                                | 34    |
| President to cause the first meeting of a Panchayat                        | 66-67 |
| Removal of a member from the office of a panchayat                         | 73    |
| To make By-Laws re: procedure at meetings                                  | 69    |

### Election of Members

( 43-59 )

|                             |    |
|-----------------------------|----|
| Casual vacancies            | 55 |
| Mode of Election            | 43 |
| Preparation of Voter's List | 43 |
| Procedure—                  |    |

(1) When election by Show of Hands

(2) by ballot 16, 17, 18, 19

Publication of result of election 55

Qualifications & disqualifications of Candidates 45, 59, 60

Time and place of election 45

Voters, Definition 41, 43, 45

### Fund, Village & its Custody ( 83-88 )

Direct Income 84, 85

Desposit in Bank & Taluka

Sub-Treasury 83

Other Income 85

Secretary's Permanent advance 85

Through Government 83, 84, 85

Through D. L. B. 84, 85

Through Court 84

Judicial Clerk 118

( See SECRETARY )

### Mamlatdar

Appointment of Mamlatdars and Mahalkaris as special Officers 42

### Prant ( Officer )

Appointed to receive and decide appeals in election matter 50

### Panchayat Village

Amount allotted by provincial Government 83

Benches of the Panchayat ( See under Benches )

Control over Panchayat 94

Corporate body 82

Duties 77

optional & obligatory 77, 77

Loans from P. Govt. 85

Meeting of Residents to be convened for discussion

on " Taxes " 12

Property Income 85

Property 83

Village Fund 83

( See Village Fund )

Sale proceed of dust etc. 84

Sums recd of fees for Suits & cases 85

Sums ordered by a court 84

Sums paid as Compensation 84

Secretary, appointment Removal etc. 89, 92

Servants; their appointment etc. 92

Taxation ( See under Taxation )

Tax or fees -S. 89 84

Presiding Officer 46-54

**Provincial Government**

|   |          |
|---|----------|
| Assign duties to Panchayats<br>such as distribution of<br>irrigation water etc. |          |
| Allot funds to panchayat  | 83       |
| Appointment of secretary etc.   | 89       |
| By-Laws   | 207, 208 |
| Declare 'local area' to be a<br>village   | 28-34    |
| Extend Judicial Powers of<br>the Panchayat                                      | 120      |
| Its Authority   | 209      |
| Loans to Panchayat  | 85       |
| Prescribe forms of budget &<br>accounts etc.                                    | 93       |
| Removal of a member from<br>the Village Bench                                   | 119      |
| Relieving from membership<br>disqualifications                                  | 59       |
| Withdraw Judicial Powers<br>of the Bench  | 103      |

**Returning Officer 46-54****Secretary**

|                          |        |
|--------------------------|--------|
| Appointment & Removal    | 89     |
| Duties as Judicial Clerk | 118    |
| Keeping of accounts      | 93     |
| (See BUDGET & ACCOUNTS)  |        |
| (i) Powers (ii) duties   |        |
| (iii) Remuneratior etc.  | 90, 91 |

**Sar-Panch**

|                                     |            |
|-------------------------------------|------------|
| Definition                          | 26         |
| Election                            | 67, 68, 74 |
| Powers & Duties of Sar<br>Panch re- |            |
| (1) Meetings                        | 106-109    |
| (2) Executive Office                | 73         |
| (3) Finance and Accounts            | 95, 165    |
| (4) Resignation and<br>Vacancies    |            |
| Resignation                         | 68, 69     |
| Removal from Office                 | 73         |

**Taxation & its Recovery  
(158-194)**

|  |         |
|--|---------|
| Appeal against Assessment                    | 159     |
| Inventory & notice, form                     | 188     |
| Rules re: General...                         | 169     |
| Levy a of Tax on                             |         |
| (i) owners or occupiers<br>of houses & Lands | 163-171 |
| (ii) Pilgrims                                | 172     |
| (iii) Fairs & Festivals                      | 173     |
| (iv) Sale of Goods                           | 174     |
| (v) Octroi                                   | 175     |
| (vi) Marriages, Adopt-<br>ions, Feasts etc.  | 177     |
| (vii) Sanitary Cess                          | 178     |

|   |          |                                  |              |
|---|----------|----------------------------------|--------------|
| Maximum and Minimum<br>rates of Taxation                                      | 174-178  | Taxes and Fees leviable          | 159, 163-180 |
| Power of Taxation, it's   | 158      | Writ of demand, form             | 184          |
| Power to increase Taxation<br>of D. L. B.                                     | 180, 181 | Warrant, attachment etc,<br>form | 184          |
| Remuneration to Village Off-<br>icers for recovery of taxes<br>and other dues | 190      | Warrant of Distress, form        | 187          |

---

...An Outstanding Legal Publication...

**CONCRETE STUDIES**  
IN  
**CRIMINAL PROCEDURE**

- The Latest Book on The Subject.
- The First Book of its Kind.
- Interesting. Unique.
- Indispensable.

**OPINIONS**

"...most useful handbook for Junior Magistrates, legal practitioners, and others whose duties lead them to the Criminal Courts..."

H. F. Knight Esq. B. A. ( Cantab. ), I. C. S., C. I. E.  
Councillor, Governor's Council, Bombay.

"It is the first book of its kind"

The Hon'ble Mr. Justice N. S. Lokur B. A. LL.B.

"The book is certainly Unique," The Madras Mail.

"A book such as yours has been badly needed."

Dr. S. V. Fitzgerald, M. A. Bar-at-Law I. C. S. ( Retd. )  
Lecturer in Indian Law, to the I.C.S. Probationers, London.

"This book, moreover, like good wine, needs no bush."

The Hon'ble Mr. Justice S. B. Dhavla, I. C. S.  
High Court, Patna.

...Price 2-8-0. B; V. P. P. 2-14-0...

**S. D. Joshi, B. A. LL. B. Vakil Belgaum.**