NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

REVIEW OF THE WORKING OF THE CONSTITUTIONAL PROVISIONS FOR DECENTRALIZATION (PANCHAYATS)

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Decentralisation and Devolution; Empowerment and strengthening of Panchayati Raj Institutions

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CHAPTER 1

INTRODUCTION

1.1 A new Part, namely, Part IX relating to Panchayats was incorporated in the Constitution of India, *vide* The 73rd Constitution Amendment Act, 1992. This Amendment generated great expectations. It was considered as radical in nature, for it promised institutionalisation of a third stratum of government at the local level. The implications of establishing institutions of self-government at the sub-state level have been, indeed, far-reaching. It seemed that a decentralised polity was a distinct possibility in our country. More than eight long years have passed, but the change brought about by the Amendment has not been radical, nor its implications are found to be far-reaching. For, Panchayats have, till now, failed to emerge as governments at the third stratum, up to the expected level.

1.2 Yet, change that has taken place in Indian polity cannot certainly be belittled. Substantial changes did take place in at least three fronts. First, certainty of Panchayat institutions has been assured. Every State has to establish Panchayats. Their space in the institutional structure of Indian State is now guaranteed. Second, continuity of the institutions through elections every five years has been stipulated. Even the defaulting States – and they are many in number – which did not take their Constitutional duty seriously had to explain to the public, to the media and also to the judiciary the reasons as to why they could not hold the elections. Third, entry of weaker sections of people including women in the power-structure of Panchayats. Today, Panchayats elect three million members of whom one million are women and 0.66 million belong to the Scheduled Caste/Scheduled Tribe communities. As many as 175 district Panchayats, 1970 intermediate Panchayats and over 77,000 village Panchayats are headed by women. Positioning of innumerable elected bodies below the State level and representation within them of the people belonging to the weaker sections constitute an event that cannot be dismissed easily.

1.3 Despite this achievement, no evidence is yet available to indicate that the country is moving towards a system of decentralised governance with Panchayats (and municipalities) as governments at the third stratum capable of voicing the 'local will' and empowered to exercise autonomy over local functions. Those who noticed radical elements in the Constitution Amendment believed that as institution of self-government nearest to the people, Panchayats would assert their autonomy and prepare the ground for dispersal of political power at an unprecedentant scale. But, the old order has refused to yield for the new. Forces are at work to scuttle the project of decentralisation. The list of omissions and

commissions on the part of the status quoist is quite long. Elections have not been held regularly, functional and financial devolution has not taken place, administrative and financial resources have been denied to the Panchayats, gram sabha has not been empowered and even right of Panchayats to prepare development plans and implement them has not been given proper recognition. Besides, both the Central and State Governments have set up implementation machinery for development schemes by-passing the Panchayats and have been responsible for creation of parallel power-structures outside the panchayati raj system.

1.4 No doubt, this tendency has to be reversed. Major task for decentralisation of the polity was given to the States. Even within the existing framework of Part IX of the Constitution, the States can cover a large ground than has, so far, been attempted. The case of Kerala is an instance where heroic efforts are being made to decentralise development functions of the State.

1.5 At the same time, experience of the last few years suggest that the provisions of the 73rd Constitution amendment themselves require a fresh look. From the hindsight, it has now become clear to us that the amendment did say certain things clearly and unambiguously but preferred to express many other vital things only by way of implications, suggestions and hints, as it were. This led to various interpretations of the same provisions – refreshingly liberal in nature at one extreme and highly conservative at the other end of the pole. Most States have stuck to the conservative view and refused to give concrete shape to the 'spirit' of the Constitution. It is not without some justification that the Panchayats that came in the wake of the post-73rd Constitution amendment have been described as democratic institutions without power – a decorative box, as it were, that contains nothing inside.

1.6 It is also necessary to remember that Parts IX and IXA were added to the then existing body of the Constitution vide the Constitution (73rd Amendment) Act, 1992 (w.e.f. 24-4-1993) and the Constitution (74thAmendment) Act, 1992 (w.e.f. 1-6-1993) respectively. Not much thought was probably given to the kinds of issues of fundamental nature that they might throw-up afresh. Were we, by Constitutionalising the Panchayats and by defining them as 'institutions of self-government' opting for a multi-level federation in place of the existing two-level federation? Did this imply conferring coordinate status to the local government? If so, what were its implications in respect of division of powers and functions among different levels of Government? If the Constitution did not think about conferring co-ordinate status to the local government institutions, contrary to the expectations of many advocates of decentralisation, what kind of status it sought to give to these institutions? Certainly the Constitution did never intend that the Panchayat would be like any other authority created by a statute of the State with the only difference as regards the Constitutional guarantee of its certainty, continuity, reservations, etc., but with no difference as regards the State Government's unfettered power to restrict or limit its autonomy. If the position of the Panchayats (and municipalities) was above that of usual statutory authorities, then how much above the floor, short of the level of coordinate status, should the local government institutions rise. The Constitution left these questions unanswered.

1.7 Thus, it is felt that there is scope to introduce reforms in the existing pattern of Part IX and Part IXA of the Constitution. By leaving unattended the basic question of the status of Panchayats, the Constitution, by and large, failed to give a definite direction to the decentralisation process. This needs to be corrected drawing insights from the experience of the past eight years. Assuming that the local government institutions will have autonomy, however limited it may be, Parts IX and IXA will have implications for provisions in other parts of the Constitution, particularly in matters connected with the distribution of executive and financial powers. Since this was not taken care of earlier, some inconsistencies have begun to surface while attempting to operationalise the provisions of Part IX. This apart, there are internal inconsistencies and even incongruities between the provisions of Part IX and IXA themselves.

1.8 The purpose of this paper is to make a review of the working of the Constitutional provisions on Panchayats in different States and to suggest, on the basis of such review, specific Constitutional reform in certain matters. Institutionalisation of panchayati raj system will depend to a large extent on the State Governments. Hence reforms are necessary in their Panchayat Acts and rules as also in their executive orders which supplement the legal instruments. These issues differ from State to State and have not been

addressed in this paper. In its suggestive part, the paper concentrates only on that part of reform measures that pertains to Constitutional provisions on Panchayats.

1.9 In the seven chapters that follow, several issues have been taken up for consideration.

There are as under:

(1) Election;
(2) Functional domain;
(3) Financial domain;
(4) Planning Process;
(5) Gram Sabha;
(6) Personnel System; and
(7) Residual issues, such as, reservation for OBCs, intermediate tier, size of Gram Panchayat, direct election of sarpanch, membership of MPs/MLAs in Panchayats, regulatory and coordinating machineries.

1.10 The concluding chapter of the paper addresses the issue relating to the integration of parts IX and IXA of the Constitution and briefly touches on the need for taking a holistic view of decentralisation.

CHAPTER 2

Elections

Irregular Elections

2.1 The mandate of the Constitution for holding regular elections to the Panchayats is clear and unambiguous. Clause (1) of article 243E stipulates that every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) of the said article stipulates that election to constitute a Panchayat should be completed before the expiry of its duration as specified in clause (1). Thus, the Constitution provides for completion of the election just before the 5-year term of the previous Panchayat ends, so that transition to the newly constituted Panchayat can be a smooth process.

2.2 "It is a sad commentary on our respect for Constitutional norms and practices that State after State is being allowed to defy with impunity" the mandate to hold Panchayat elections on time (Mathew, 2001). Almost all the States, except West Bengal, Tripura and Rajasthan, are guilty in this respect. For example, Bihar took 8 years' time after the 73rd Constitution Amendment legislation was passed to announce its first Panchayat elections in April 2001. Similarly, the States of Tamil Nadu, Kerala and Karnataka delayed their first election. When the five-year term of Panchayat was complete, postponement took place in Assam and Madhya Pradesh. Madhya Pradesh held the second election in January 2000, but Assam's election remains due since October 1997. In Orissa, the State Government dissolved all the elected Panchayats before expiry of their term, but failed to hold elections within six months as stipulated in the Constitution. Gujarat postponed its gram Panchayat elections that was scheduled to be held in May-June 2000. Punjab has held up elections to the intermediate level and district level Panchayat since September 1999. The election to all the three-tiers of Panchayat in Andhra Pradesh was due in July 2000. Despite directives from the High Court and then from the Supreme Court, elections were not held. In Orissa and Uttar Pradesh, Panchayat elections were held after the Court intervened and gave direction. In the case of Andhra Pradesh, even direction of the Supreme Court failed to produce result.

2.3 The view that the Constitutional provisions with regard to the holding of Panchayat election is unambiguous and mandatory in nature has been vindicated by several judicial pronouncements. In Prof. B.K. Chandrasekhar and others vs. the State of Karnataka, a Division Bench of Karnataka High Court declared that article-243G of the Constitution is 'mandatory and not directory,' (AIR 1999, Karnataka, 461). In W.P. No. 2481 of 2000, the High Court of Andhra Pradesh also gave similar view. Finally the Supreme Court in its judgement dated 12 August 1997, in WP (Civil) No, 719 of 1995 observed as follows:

> "…. It is necessary to emphasise that various clauses of Art.243 are to be followed in letter and spirit. The concerned States cannot be permitted to withhold election of Panchayats except in case of *genuine supervening difficulties,* e.g., unforseen natural calamities in the State like flood, earthquake, etc., or urgent situation prevailing in the State for which election of the Panchayat cannot be held in time. It will be unfortunate if the concerned States remain insensitive to the Constitutional mandate of holding election of Panchayats in time…." (emphasis added).

Thus, the only valid ground for withholding Panchayat election after it has become due is some 'supervening difficulty', but difficulty has to be 'genuine' in nature. In no case where the States withheld Panchayat elections during the post-73rd-amendment period, the difficulties cited by the States could be considered as 'genuine.'

Strengthening State Election Commission

2.4 One of the compelling reasons for Constitutionalising Panchayats and municipalities was to ensure regularity of election to these bodies. The objective does not seem to have been realised fully because of the stubborn resistance from a large number of States. By refusing to perform their Constitutional duty, the defaulting States have denied the people of their democratic right to elect their Panchayat representatives. This shows that legal instrument alone may not always guarantee realisation of the democratic rights. They have to be earned through various forms of 'public-action' in which people themselves have to take active role. Nevertheless, it is worthwhile to examine if further reforms in the provisions of law could improve the situation.

2.5 One can have no dispute with the provisions contained in article 243E. It is clear and the mandatory nature of these provisions has been reconfirmed by judicial pronouncements. In the light of the experience of last few years, it may however be fruitful to consider if there is scope to introduce reform in the provisions of article 243K. This article provides for the appointment of State Election Commissioner (SEC) for "superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats." (Similar provisions exist in article 243ZA for municipal elections). These powers are comprehensive and wide and they enable the SEC to conduct polls in free and impartial manner. However, clause (4) of article 243K empowers the State Legislatures to frame laws to regulate "all matters relating to, or in connection with, elections to the Panchayats". Once such law is there, SEC can exercise his inherent powers, subject to the provisions of such laws. Election rules/Acts of many States have armed the State Governments with powers relating to many vital election matters, such as, issuance of election notification, delimitation of constituencies, reservation of seats, rotation of reserved seats, etc. When holding of election gets delayed because of non-completion of such works on time, SEC remains helpless.

2.6 There is no inherent problem with article 243K relating to elections to the Panchayats or article 243ZA relating to elections to the Municipalities. (The provisions of these articles are in line with article 324 which deals with matters relating to the conduct of election to the Union and State legislatures and Constitution of Election Commission). However, past experience indicates that the State Governments quite often delay the process of Panchayat elections willfully on purely political considerations. They can do so, partly because they retain some powers relating to the conduct of elections under the States' Acts/Rules and partly because SEC has to depend upon the State Government for logistic support that

includes staff as well as fund-support. There is specific provision for providing staff support to SEC under clause (3) of article 243K, but similar provision does not exist in respect of funding to defray the expenses of conducting elections. At least, SECs of some States cited non-receipt of adequate funds as reasons for not holding elections. Besides, as has been noted in the previous paragraph certain important powers like issuance of election notification, delimitation of constituency, earmarking reserved seats etc. are retained by the State Governments in many States. Considering all these, ***there seems to be a case for strengthening further the hands of the SEC by making specific provisions in the Constitution itself.*** **Article 243K (and article 243 ZA) may specifically, assign the following functions, among others, to the SEC, namely:-**

(1) **Delimitation of territorial constituencies of Panchayats and municipalities;**
(2) **Allotment of reserved seats to various electoral wards; and**
(3) **Rotation of reserved seats among constituencies.**

2.7 Sometimes, SECs had to fight lone battles against the State Governments in order to fulfil their Constitutional duty to hold election timely and as per provisions of law. The classic case is that of State Election Commissioner of Andhra Pradesh. He sought judicial intervention to prevent operation of an Ordinance promulgated by the Government just before the Panchayat election was due, as this ordinance made provisions which were clearly unconstitutional. One may take recourse to judicial intervention in extra ordinary situation. But, other channels should be made available to the SEC, so that it can register its views on the acts of omission and commissions of the State Government which stand in the way of performing its Constitutional duty. Accordingly, ***it may be considered as to whether the Constitution should make provisions requiring SEC to submit a report annually to the Governor in the same manner as the State Public Service Commission is required to submit under clause (2) of article 323*****. As provided in the said clause, the report of the SEC along with the views of the State Government on the same may be placed before the State Legislature**. Such a provision will, at least, enhance the accountability of the State Government, if it fails to fulfil the Constitutional mandate of holding Panchayat/municipal elections.

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CHAPTER 3

Functional Domain

3.1 Ever since the coming into force of the 73rd Constitution amendment, controversies have been raised about the kind of functions the Panchayats should discharge and powers and authority they should possess to perform the functions assigned to them. The root of such controversies lies in the rather vague nature of article 243G. The said article reads as under:-

"**243G.** Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to –

(a) the preparation of plans for economic development and social justice;
(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.".

This article along with the Eleventh Schedule indicates the kind of functions to be discharged by the Panchayats. It does also probably indicate, as some observers assert, the nature of power and

authority that the Panchayat should be endowed with. But the provisions do not go to the extent of specifying the 'functions', 'powers' and 'authority'. That task is left to the respective State Legislatures. Most of the State Legislatures in their turn have interpreted the provisions in a way that seem to be in contravention with the basic principles of democratic decentralisation.

Institution of Self-Government

3.2. In article 243(d), 'Panchayat' is defined as an institution of self-government. Article 243G expresses the intention that while framing laws, the State Legislatures should endow the Panchayats "with such powers and authority as may be necessary to enable them to function as institutions of self-government". This guideline is in full conformity with that of article 40.

3.3. The Constitution has not elaborated the concept of 'self-government'. In order to derive the meaning and the implications of the concept, one has to take into consideration the context in which the expression has been used either in article 243G or in article 40. Viewed from that context, the term,' self-government' must have two major attributes. Firstly, it is a Government by the people, that is to say, it is a Government which is democratically elected by the people. Secondly, an institution of self-government is, by its very nature, autonomous. This means that it is empowered to function without any outside interference. To be more explicit, within the boundary of the specific functions devolved upon it, an institution of self-government will have powers and authority to take decisions independently. Autonomy, however is an elusive concept in a State where there are governments at multiple levels . Here Government at any particular level enjoys only partial autonomy. Accordingly, the functional autonomy of Panchayats has also to be partial. How much autonomy Panchayats should enjoy is, however, a matter of judgement as well as policy. The Constitution empowers the respective State Legislatures to adopt their individual policies in this regard based upon their own judgement of practical situation. But, they have to ensure that devolution of functions becomes as complete as possible and does not get reduced to a situation where Panchayats enjoy only such 'power' and 'authority' as may enable them to function merely as *agents* of the State Government. That clearly is not the intention of the Constitution, as it hurts the basic principles of democratic decentralisation. What Part IX of the Constitution intends to bring about is 'devolution' type of democratic decentralisation, and not the 'deconcentration' or 'delegation' type of administrative decentralisation under which the superior decision-making body retains various control including the power of withdrawing the power and authority given to a lower body for administrative convenience.

Functions of Panchayats

3.4. The question as to whether the Panchayats are for development purpose only or for the wider purpose of governance is being debated for quite sometime. The notion that the Panchayats are for development purpose only was popularised by the Balvantray Mehta committee of 1957. The same view was endorsed by the Asoka Mehta Committee of 1978. All the policies of Government on panchayati raj from the 50's onwards also reflect such a view.

3.5. Nevertheless, there has always been an alternative school of thought represented by such eminent persons as Jayaprakash Narayan and E.M.S Namboodiripad. They held the view that the panchayati raj institutions should be considered as governments of local areas and therefore no distinction should be made between the so called 'developmental' and 'regulatory' functions of the State, while assigning functions to them. For a clear exposition of this view, it will be worthwhile to refer to the classic dissenting note of Namboodiripad in the Asoka Mehta committee report. " I cannot …think of panchayati raj institutions" observed Namboodiripad in his dissenting note, "as anything other than the integral parts of the country's administration with no difference between what are called the 'developmental' and 'regulatory' functions. What is required is that, while certain definite fields of administration like defence, foreign affairs, currency, communications, etc., should rest with the centre, all the rest should be transferred to the States and from there to the districts and lower levels of *elected administrative bodies*". (GOI, 1978:163, emphasis added).

3.6. The above observation is a bold statement in favour of democratic decentralisation under which the local self-government institutions will have a distinct role to play in the country's governance along with the Governments of the States and the Centre. Hence, in assigning functions to the governments at the three levels, the totality of the governmental functions have to be considered and then division of powers and functions between them has to be made on the basis of the principle of subsidiary. Under such a situation what is required to be considered is what functions can be done best at what level. Whatever function can be discharged at a lower level without loss of efficiency should not be unnecessarily usurped by the government at the higher level. This is the essence of the idea of decentralisation voiced by Namboodiripad or Jayaprakash Narayan. Hence, the question of drawing distinction between the developmental and regulatory functions for the purpose of devolution of functions to Panchayats has no place in such conceptualisation. This view about the role of the Panchayati Raj Institutions (PRIs) shared by many today and has found systematic expression in the literature on panchayati raj.

3.7. How does article 243G stand against this? From a plain reading of the provisions of this article, particularly those in clauses (a) and (b) read with the Eleventh Schedule, it would appear that the Constitution reserves only developmental functions for the Panchayats. In Mukarji (1993) and Mukarji and Bandopadhyay (1993) , however, we find a different view. According to the latter, that portion of article 243G which directs the State Legislatures to endow, by law, the Panchayats "with such powers and authority as may be necessary to enable them to function as institutions of self-government" has overriding force over the rest of the portions of the said article. Accordingly, they observe as follows:

> " Our own view is that it is entirely within the competence of the State Legislatures to decide what powers and authority the Panchayats should have in order that they function as credible institutions of self-government. This was the Constitutional position all along[1]; the Amendment served to reaffirm it. The introduction of the development motif in the Amendment, perhaps, limits the competence of the legislatures only in the sense of indicating the minimum that each State Legislature should transfer to the Panchayats. There is, in other words, a floor but no ceiling. How far above the floor a particular State may go is a question of policy for that State, bearing in mind that the Panchayats from now on are (1) Constitutional bodies and (2) institutions of self-government."

3.8. Whether harmonious construction of article 243G leads to the above view is a matter of debate. As the later discussion would show, at least the conformity Acts of various State Legislatures do not subscribe to this view. But, one should not fail to note that there are valid reasons to interpret article 243G in the manner Mukarji and Bandyopadhyay have done. The point to note for our purpose is the fact that the Eleventh Schedule is only an illustrative list which may be ignored by the State Legislatures, if they so desire.

The Conformity Acts[2]

3.9. By and large, none of the conformity Acts has tried to grapple with the concept of self-government. In fact, excepting the mandatory provisions of the Constitution, these Acts have nothing new to offer. We may examine Acts of a few States to illustrate the point.

3.10. Under the Gujarat Panchayat Act, the duties of village, Taluka and District Panchayats have been elaborated in three separate schedules. The list of functions as detailed in these schedules may appear to be impressive, but adequate provision for fund and staff has not been made in order to enable them to carry out the duties. Panchayats receive funds for depertmentally determined specific projects. As a result, the PRIs function largely as agents of State Government. Their functional autonomy is highly restricted.

3.11. In Maharashtra or Tamilnadu, there has been no attempt whatsoever, to alter the pattern of distribution of functions to the panchayati raj bodies. There is no reflection of the 11th Schedule in assigning functions to the Panchayats. What is more, the Maharashtra Panchayat Act empowers the

State Government to 'omit any entry' or add and amend any such entry, by an executive order, from the schedule of the Act that contains list of functions devolved to the PRIs. In the Rajasthan Act, a number of functions have been assigned to all the tiers of Panchayat, but the same Act confers power to the State Government to take away any such function.

3.12. Uttar Pradesh had made much noise on the issue of decentralisation. The State had appointed an Administrative Reforms and Decentralisation Commission. The Commission after studying the activities and functions listed in the 11th Schedule, identified thirty two departments of the State Government whose activities/functions could be shared with the gram Panchayats, kshetra samitis and zilla Panchayats. To examine the feasibility of these recommendations, the State Government appointed a committee of officials. After receiving the report of this committee in 1997, the Government had issued orders to twenty-eight departments for transferring some of their functions to the PRIs. But such transfer of functions has no operational significance, since all important decisions are taken as before by the respective departments.

3.13. In Orissa, the gram Panchayats have been assigned with an impressive functions/activities of 43 odd items under obligatory and discretionary lists. But there is no provision for fund or staff to enable them to discharge such functions, thus making their statutory functional domain practically useless. Powers and functions of Orissa's Panchayat samiti remain unaltered since the sixties and the 11th Schedule does not seem to have any impact upon them. The gram Panchayats and Panchayat samitis of the State have no power to prepare plans for their own areas, even though this right is Constitutionally given to all such institutions.

3.14. In Andhra Pradesh also, the gram Panchayats and the mandal parishads are not required to plan for 'economic development' and social justice'. All the tiers of Panchayat have been assigned with large number of functions. But none of them has financial or administrative resources under their control to execute them. The mandal parishad has no control over the staff of Development blocks, and the zilla parishad has no control over the DRDA which controls huge fund under various poverty alleviation programme.

3.15. West Bengal which claims to have a highly developed panchayati raj system has shown little respect for devolution type of decentralisation following the Constitution amendment. Even though the State's conformity Act recognises each Panchayat to be a 'unit of self-government', it keeps its earlier scheme of distribution of power unaltered. The Act provides impressive lists of functions which Panchayats may discharge, but does not make provisions either of untied fund or of staff. By executive orders the State Government allows the Panchayats to share implementation responsibilities of some of its projects/ schemes/ functions. Thus the Panchayats of the State have to remain satisfied with only 'agency functions' which are, of course, substantial, but are incapable of exercising autonomy in its own functional domain as given by the statute.

3.16. Karnataka, Madhya Pradesh and Kerala are the States where some attempts have been made to ensure the growth of Panchayats as self-governing institutions. In 1997, Karnataka had amended substantially its original conformity Act of 1993. The amendments expressed explicit commitment for developing Panchayats 'as units of self-government', eliminated bureaucratic control over elected bodies, gave powers of delimitation of constituencies to the State election commission, made provisions for establishing a State Panchayat council with chief minister as chairperson and all the adhyakshas of zilla parishads as members to act as a forum for discussing matters relating to the functioning of Panchayats. Substantial staff and resources also are being transferred to the Panchayats. But, the situation cannot be called as satisfactory. Funds come to the PR bodies in tied form for the purpose of administering departmental schemes. Untied funds are not substantial and the Panchayats have little scope to launch programmes based upon their own initiative. They also have no effective administrative control over the Government staff transferred to them and they do not have their own cadres. Hence, despite some laudable attempts, Panchayats of the State perform mainly agency functions.

3.17. The original conformity Act of Madhya Pradesh only referred to the State Government's power of entrusting functions to the Panchayats in terms of the provisions contained in article 243G read with 11th

Schedule. But, like before, the Act also provided that the State Government had the right to withdraw functions already assigned to the Panchayats. An amendment made in 1996 reaffirmed the position and provided that the Panchayats at different levels should have such power and authority as may be necessary to enable them to function as institutions of self-government in relation to the matters listed in the 11th Schedule. It also provided that the Panchayats should have the power to select employees necessary for implementation of the assigned functions. But such provisions were in the nature of general statement and could not be operationalised in the absence of the statutory provisions that would entrust the PRIs with specific powers and authority. Since the Panchayat Act by itself was insufficient to carry forward the project of decentralisation, the State Government has issued from time to time a series of executive orders for delegation of powers. As the matter stands now, responsibility for programmes/activities of seventeen departments have been transferred to the Panchayats along with staff and resources. Despite these efforts , Panchayats remain only implementing agencies of the schemes conceived by the State or Central Government. They receive funds which are mostly tied to specific schemes. The staff continues to remain with the Government even where full responsibilities of any function or activity have been stated to be transferred to the Panchayats. Even in respect of taking major decisions on implementation, the district bureaucracy retains control. By far the greatest distortion in the process of decentralisation has been made by making a State Minister the Chairperson of district planning committee and naming it as district Government. The concept of district Government as developed in M.P is a direct assault on the authority of the Zilla Parishad.

3.18. Kerala appears to be the only State where a sytematic and sincere effort is on since 1996 to carry forward the process of decentralisation in its totality. Kerala's Panchayat Act as amended in 1999 is probably the best attempt to define the functional areas of different tiers of PRIs as precisely as possible, the objective being to reduce their agency role and expand their autonomous-actor's role. The Act has eliminated direct control of Panchayats by bureaucracy and reduced drastically Government control over them.

Devolution of function: An assessment

3.19. From a brief survey of the conformity Acts of different States, certain general conclusions can be drawn. Firstly, most States have shown lack of political will to decentralise. Taking advantage of the non-mandatory nature of article 243G in its operative part, as distinguished from its conceptual part relating to the idea of 'self-government', most States have chosen to keep the functional domain of Panchayats unaltered. Even the mention of the 11th Schedule functions in many State Acts does not alter the character of the functions assigned to them.

3.20. Secondly, the post-Constitution-amendment-Panchayats are operating, like before, within the framework of what may be called 'permissive functional domain'. That is to say, the State Legislatures do not carve out an exclusive functional area for the Panchayats, but merely permit them to work within the functional domain of the State, subject to such conditions as it may deem fit to impose. Excepting some municipal functions which are invariably given to the gram Panchayats, for all other so-called developmental functions assigned to the different tiers of Panchayat, there are specific line departments of State Government or parastatal bodies like DRDA. They handle these functions. They have access to necessary resources as also staff for the discharge of the functions. Mere statutory authority to undertake functions already being performed by the State Government is no guarantee that those would, indeed, be taken up by the PRIs, unless they have adequate funds and personnel to discharge them. Since these resources are not made available to them, the lists of various functions that every Panchayat Act religiously provide remain sterile. What the 73rd Constitution amendment intended is 'exclusive' and not 'permissive' functional domain, backed up by resources for the Panchayats. That has not happened.

3.21. Even in the States which have shown political will to decentralise, devolution has not gone beyond the implementation responsibility of the schemes/projects conceived by the State or Central Government. As a result, Panchayats have not blossomed into institution of self-government. Instead they have become one of the implementing arms of the State Government.

3.22. Lastly, all the States, except to a certain extent, Kerala, have chosen to assign functions not through the statute, but by delegated legislation in the form of rules or executive orders. The task of assigning functions to the Panchayats was given to the State Legislatures, but the same seems to have been usurped by the State Government. The Constitution failed to guarantee assignment of a set of exclusive functions for the Panchayats. Hence, the kind of role they would be expected to play in governance depends on the policies of the regime that controls the Government of a State.

Need for Constitutional reform:

3.23. The State Legislatures, it is clear, have denied autonomy to the Panchayats. This is contrary to the expectations of those who held the view that the 73rd amendment has constitionalised "three strata of governance of the country: the Union, the States and the Panchayats." (Mukarji and Bandyopadhyay, 1993:6).

3.24. The concept of a third stratum of governance at the district level and below was voiced initially by Nirmal Mukarji (1986, 1993). Today, there are many who subscribe to the view that the panchayati raj institutions should be treated as governments for the respective local areas at the sub-state level, just as the State Government is the Government for the State and the Union Government for the whole country. They also hold that by making provision for enabling the Panchayats to function as 'institutions of self government', article 243G has practically introduced the 'third stratum' in the country's federal structure. (Arora, 1995).

3.25. Practically, all the State Legislatures/Governments, except perhaps that of Kerala, has rejected this view. On the contrary, their vision of Panchayat, like before, has been one of 'local authority' that will enjoy such kind of delegated power and authority as may be given to them by the State Acts or rules and executive orders made thereunder. Again, such powers and authority could be exercised by the Panchayats, subject to such limitations and control, including bureaucratic control, as the State Government would like to prescribe. *What is singularly absent in the State Acts is the concept of 'autonomy' of Panchayats which is at the centre stage of conceptualisation of the institution as the third stratum of governance. Also missing in the State Acts is the idea that Panchayats can be relied upon not only for developmental functions, but also for regulatory functions of the State*.

3.26. It seems that in the Constitution itself there are sources from which the State Legislatures/ Governments have derived their own understanding about the nature of self-government that Panchayat (or municipality) represents. In article 243G itself (as also in 243W in the case of municipalities), there are provisions for specifying 'conditions' while devolving power and responsibilities to the Panchayats (and municipalities). There is no check upon the State Legislatures in specifying 'conditions' upon the functions to be assigned to the Panchayats or municipalities. The power seems to be absolute, unless the provisions in the same articles regarding empowerment of Panchayats (and municipalities) for enabling them to function as institutions of self-government are considered to be possessing an overriding force. Clearly, this is a source of confusion. Another source of confusion arises from entry 5 of Seventh Schedule of the Constitution. Here, three terms have been used interchangeably, namely, 'local government', 'local self government' and 'local authorities'. According to the illustrations given, Panchayats or municipalities under this entry stand in the same footing as an Improvement Trust or any other local authority as defined in the General Clauses Act, 1897.

3.27. Thus, we are now faced with two types of conceptualisation of Panchayats and municipalities. Both of them draw their strength from the Constitution. One type of conceptualisation leads us to envision these institutions as constituting the third stratum of governance. Another takes us to the opposite extreme under which the Panchayats (and municipalities), subject to the Constitutional guarantee of their permanent existence, composition, election etc, are no more than a local authority as understood under the General clauses Act. *The Constitution has to categorically express the status of the 'institution of self government' as mentioned in article 243G or 243W*.

Options for reform:

It seems that three options are available.

(a) Panchayats (and municipalities) constitute the third stratum of governance. Hence, in the Constitution there shall be clear recognition of such status. This would mean that these institutions will have a coordinate status along with the Union and State Governments, each having its Constitutionally given functional domain, area of jurisdiction, powers and authority. This will amount to the formal conversion of the existing two-level federation into a multi-level federation.

(b) They will not have a coordinate status along with the other two levels of governance. They will still be the creatures of the State Acts and subject to some kind of control by the State Government. Yet, they will have sufficient autonomy over a set of identifiable functions which should be spelt out in the Constitution. The functions that will be carved out by the Constitution for these institutions will represent the minimum that should be given to all such bodies of the country, but the State Legislatures may have the option to endow these institutions with more functions, power and authority.

> **N.B.** Under both the options, the functional domain of Panchayats and municipalities have to be carved out by making suitable entries in the Seventh Schedule to the Constitution by introducing separate lists for local government or for state-local concurrent jurisdiction or both. Alternatively, the character of the 11th (and 12th) schedules should be altered in order to ensure 'devolution' type of decentralisation. Obviously some functions, power or authority from the existing State List will have to be taken out for endowment to the Panchayats/ municipalities.

(c) They will continue to remain as local authority as envisaged under entry 5 of List II (State List) in the Seventh Schedule to the Constitution, even though their right to exist, nature of their composition, election and some other things would be guaranteed by the Constitution.

3.28. The third option, obviously, is unacceptable. This amounts to maintaining the *status quo.* Constitutional reform is necessary, since the existing provisions have, by and large, failed to ensure local democracy. To be really effective, measures for reform have to be chosen either from option (a) or option (b). A fully decentralised polity demands Constitutional reform on the line of the first option. But, it has far reaching implications - legal, administrative and political. This will transform India's two-level federation into a multi-level federation. It is apprehended that decentralisation in this form may generate complex and difficult problems of administrative coordination between the State and the local bodies. Besides, such an arrangement may be construed as coming into conflict with the basic features of the Constitution. (Datta, 1987). The second option is comparatively easier to implement and many features of the first option may be introduced in it. This will avoid the problem of granting coordinate status to the Panchayats and municipalities. But, at the same time it will give the Constitutional guarantee of independent status to these bodies, thus enhancing their autonomous jurisdiction considerably. (Ibid)

3.29. Whatever the choice may be, the vagueness about the expression 'self government' has to be removed. It is also necessary to distinguish between the democratically elected institutions of self-government and other kinds of local authority within the meaning of the General Clauses Act, 1897. 'Local government' within the meaning of entry 5 of List II (State List) in the Seventh Schedule and the various provisions of Part IX and IX A cannot coexist.

CHAPTER 4

Financial Domain

4.1 As an institution of self-government, the Panchayat should have adequate fiscal capacity as well as substantial fiscal autonomy. The fiscal capacity may be defined as the capability of the Panchayat to raise financial resources commensurate with the functions assigned to it. In other words, the functions assigned to a Panchayat institution must match with the financial resources it is capable of raising from various sources including grants from the State Government. Fiscal autonomy, on the other hand, is the extent of independence the Panchayat has in raising and spending financial resources. This means that its dependence on the discretionary funding from the higher level Government for the discharge of its 'core functions' should be minimum, and on the other hand, it should not be unduly bound by the conditionalities of 'tied' grants coming from the State Government.

Fiscal Decentralisation

4.2 It was noted earlier that decentralisation of governmental functions from the State to the local bodies has not taken place in the manner intended by the Constitution. Barring one or two, no State has made serious efforts in transferring functions, powers and responsibilities to the PRIs. This is also reflected in the expenditure decentralisation ratio (EDR) which represents local government expenditure as percentage of State Government expenditure. In table 4.1 given below, this ratio is constructed for 12 States based on the figures relating to the year 1997-98.

Table 4.1

Expenditure Decentralisation Ratio

Figures in Rs. Lakhs

States	Total Expenditure PRIs 1997-98	Total Expenditure ULBs 1997-98	Total Expenditure (ULBs+PRIs)	State Total Expenditure (RE) 1997-98	PRIs Expenditure as % of Total State Exp.	ULBs Expenditure as % of Total State Exp.	Local Govt.Exp. as % of State Exp.
Assam	4056.91	5338.47	9395.38	475939.00	0.85	1.12	1.97
Gujarat	226880.85	95089.25	321970.10	1155902.00	19.63	8.23	27.85
Haryana	14642.90	34425.57	49068.47	634809.00	2.31	5.42	7.73
Karnataka	369640.89	44585.38	414226.27	1183320.00	31.24	3.77	35.01
Kerala	73056.08	27261.64	100317.72	920388.00	7.94	2.96	10.90
Madhya Pradesh	178529.90	62143.64	240673.54	1222886.00	14.60	5.08	19.68
Orissa	64002.25	13787.79	77790.04	582310.00	10.99	2.37	13.36
Punjab	15954.89	35939.89	51894.78	819565.00	1.95	4.39	6.33
Rajasthan	153738.30	48902.45	202640.75	920972.00	16.69	5.31	22.00
Tamil Nadu	49061.87	125191.9	174253.77	1489359.00	3.29	8.41	11.70
Uttar Pradesh	90714.07	60587.18	151301.25	2509649.00	3.61	2.41	6.03
West Bengal	55487.91	38111.55	93599.46	1269906.00	4.37	3.00	7.37

Source: Report of the Eleventh Finance Commission for 2000-2005, Annexure VIII 2A and VII 3A.
RBI Bulletins, February 1999

4.3 It has to be admitted that the computation made in Table 4.1 was a crude exercise, since the data were not sufficiently refined to make comparison between local government expenditure and State Government expenditures accurate. Nevertheless, it gives an indication that sufficient fiscal decentralisation has not taken place. PRI expendiure as percentage of total expenditure of the State Government is less than 10 per cent in as many as 7 out of 12 States. In six among them it is less than 5 per cent. Out of the five remaining States, EDR in respect of PRIs ranges between 11 and 20 per cent in 4 States. The State of Karnataka only is found to be an exception where local government expenditure constitute more than 30 per cent of the State expenditure. Considering other evidence, EDR in respect of Orissa and Rajasthan seem to be a suspect. There are strong reasons to believe that EDR in these States is below 10 per cent.

4.4 An exercise was done by Oommen (2000) to measure tax-revenue decentralisation ratio, indicating percentage of local government tax revenue to total State Government tax revenue. It was found that out of 12 major States the tax revenue of local bodies (PRIs and urban local bodies) in 9 States constituted less than five per cent of the total tax revenue of State Government. In two other States, the ratio was higher, but less than 10 per cent. This indicates that the local bodies have not been given sufficient tax assignments to raise revenue locally.

4.5 In table 4.2 given below, revenue collected by the Gram Panchayat and all the three tiers of Panchayats has been separately shown. It is noted that in 6 States out of 12 major States, gram Panchayats collect less than 10 per cent of their revenue requirements. When all the three-tiers of Panchayats are taken into account, the position deteriorates further. Of the rest, the position in Haryana and Punjab seems to be much better, as the gram Panchayats of these States can raise 68 per cent and 46 per cent revenue respectively internally. Own revenue in respect of all the three tiers of PRIs in these two States constitute 62 per cent and 40 per cent respectively. The position of Gujarat is also comparatively better in the sense that the gram Panchayat of the State can raise nearly one-third of their revenue requirements, but when it comes to the position of all the three-tiers taken together, own revenue turns out to be around two per cent of the total revenue. The position of Kerala, Karnataka and Assam is marginally better but none of them can raise more than 22 per cent of their total revenue internally.

Table 4.2
Revenue of the PRIs: 1997-98

Figures in Rs. Lakhs

States	Own Revenue		Total Revenue		Own revenue as % of Total Revenue	
	GP	PRIs	GP	PRIs	GP	PRIs
Assam	234.85	345.99	1391.85	1550.31	16.87	22.32
Gujarat	3158.25	4036.11	9838.40	223253.71	32.10	1.81
Haryana	5295.00	5301.00	7744.00	8522.00	68.38	62.20
Karnataka	3013.72	3013.72	23365.29	376806.54	12.90	0.80
Kerala	9909.34	9909.34	74427.39	98276.59	13.31	10.08
Madhya Pradesh	2718.24	3203.83	68242.67	177901.47	3.98	1.80
Orissa	699.38	699.38	14573.15	64002.25	4.80	1.09
Punjab	4610.30	5386.62	10117.51	13541.04	45.57	39.78

Rajasthan	1344.00	3074.57	80109.82	152020.75	1.68	2.02
Tamil Nadu	2575.30	3403.77	27929.04	42216.41	9.22	8.06
Uttar Pradesh	382.13	4665.17	73281.22	88324.36	0.52	5.28
West Bengal	1296.51	1959.21	25507.46	48775.46	5.08	4.02

Source: Report of the Eleventh Finance Commission for 2000-2005, AnnexureVIII.2A and VIII.2B

4.6 From table 4.2 above, it becomes clear that the fiscal autonomy of PRIs is extremely poor – almost throughout the country. Data used in this table relate only to the revenue receipts, that is to say, the receipts that are necessary to meet the recurring expenses of the institutions, namely, salary of staff, office expenses, and maintenance of assets. To be viable, they should be able to meet a least 50 per cent of their revenue requirements by using their own fiscal powers. But, this is not the case and the Panchayats remain principally grant fed.

4.7 The capacity of PRIs to meet their revenue expenses from own sources is reflected in table 4.3 under paragraph 4.9. The table indicates that in eight out of 12 major States, the GPs can meet not more than 12 per cent of their revenue expenditure from internal sources. When it comes to the case of all the three tiers taken together, the figure sharply goes down to below 10 per cent in 9 States and at or below 5 per cent in at least 6 States. An immediate impact of this is the lack of autonomy of the PRIs to finance from its own funds, the maintenance expenses of the core services, that is to say, water supply, street lighting, sanitation and roads. As table 4.3 shows, expenditure on core services as a percentage of total revenue expenditure is low in all the States and below even one percent in a number of States. Similarly, very small portion of internally collected revenue is spent on core services.

4.8 To sum up, the following conclusions can be drawn from the above discussion.

(a) the extent of fiscal decentralisation through the empowerment of the PRIs has been very little.

(b) The fiscal autonomy of the PRIs is far from adequate, because they cannot balance their revenue budget (not to speak of creating a surplus), by using their own fiscal powers.

(c) The PRIs are principally grant-fed and their dependence upon the State Government even for carrying out their routine functions is quite heavy.

(d) Among the three-tiers of Panchayats, the gram Panchayats are comparatively in a better position. This is so, because the GPs have some taxing power of their own, while the other two tiers are dependent only on tolls, fees and non-tax revenue for generating internal resources.

4.9 The data have indicated that the fiscal capacity of the PRIs even at their present level of functional responsibilities is poor and they are disproportionately dependent upon the State Government and secondly, their fiscal autonomy is negligible. What the data do not show is the additional funding necessary for providing reasonable services to the people. In fact, **major fiscal restructuring and financial resources are necessary to enable the Panchayats to function as viable local self-government institutions**. Some of the measures necessary for such reforms may be taken even within the framework of existing Constitutional provisions. But, there are areas where rethinking about the Constitutional framework itself would be necessary. In the rest of the chapter an attempt will be made to present certain views in this regard.

Table 4.3

Table 4.3 : Revenue Receipts and Expenditure of PRIs : 1997-98	
	Figures in

Rs. Lakhs

States	Own Revenue		Total Expenditure		Expenditure on Core Services		Own revenue as % of Total Expenditure		Expenditure on Core Services as % of Own Revenue		Expenditure on Core services as % of Total Expenditure	
	GP	PRIs	GP	PRIs	GP	PRIs	GP	PRIs	GP	PRIs	GP	PRIs
Assam	234.85	345.99	2919.69	4056.91	1049.68	1082.14	8.04	8.53	446.96	312.77	35.95	26.67
Gujarat	3158.25	4036.11	5908.53	226880.85	1657.28	1657.28	53.45	1.78	52.47	41.06	28.05	0.73
Haryana	5295.00	5301.00	13652.00	14642.90	NA	NA	38.79	36.20	NA	NA	NA	NA
Karnataka	3013.72	3013.72	24365.02	369640.89	5727.05	36124.04	12.37	0.82	190.03	1198.65	23.51	9.77
Kerala	9909.34	9909.34	44057.89	73056.08	7191.05	8725.05	22.49	13.56	72.57	88.05	16.32	11.94
Madhya Pradesh	2718.24	3203.83	70767.86	178529.90	2563.73	5640.33	3.84	1.79	94.32	176.05	3.62	3.16
Orissa	699.38	699.38	14573.15	64002.25	436.63	793.25	4.80	1.09	62.43	113.42	3.00	1.24
Punjab	4610.30	5386.62	12382.88	15954.89	3910.10	3915.10	37.23	33.76	84.81	72.68	31.58	24.54
Rajasthan	1344.00	3074.57	82123.69	153738.30	NA	1163.57	1.64	2.00	NA	37.84	NA	0.76
Tamil Nadu	2575.30	3403.77	23753.93	49061.87	10832.00	16386.42	10.84	6.94	420.61	481.42	45.60	33.40
Uttar Pradesh	382.13	4665.17	74361.98	90714.07	5060.44	5060.44	0.51	5.14	1324.27	108.47	6.81	5.58
West Bengal	1296.51	1959.21	31515.93	55487.91	63.00	194.51	4.11	3.53	4.86	9.93	0.20	0.35

Source: Report of the Eleventh Finance Commission for 2000-2005, Annexure VIII.2A and VIII.2B

N.B. Core Services mean water supply, street lighting, sanitation and roads.

The Constitutional Provisions on the Finances of Local Government

4.10 There are two provisions in the Constitution, namely 243H and 243-I dealing with the finances and fiscal powers of the Panchayats. (Exactly similar provisions exist for the urban local bodies in Part IXA of the Constitution, namely articles 243X and 243Y)

Tax Assignments

4.11 Article 243H is in the nature of an enabling provision that gives authority to the State Legislature to authorise the Panchayats in respect of levy, collection and appropriation of taxes, duties, fees and tolls as well as for the creation of a fund within the Panchayat institution to regularise and control inflow and outflow of financial resources. In effect, this article provides nothing new, but only reconfirms and

institutionalises the practices that were in existence even prior to the enactment of the Constitution (73rd Amendment) Act, 1992. In other words, like before, the prerogative to decide what taxes, duties, fees and tolls leviable under legislation made under entries in the State List of the Seventh Schedule to the Constitution should be assigned to the Panchayat and in what manner lies with the State Legislature. The Constitution also permits the Legislatures of the States to put such 'conditions and limits' as they deems proper, before assigning specific fiscal powers. The said article also authorises the State Legislature to enact laws for enabling the State Government to give grant-in-aid to the Panchayats from the Consolidated Fund of the State.

4.12 What is significant is that the Constitution does not specifically earmark some of the fiscal powers of the State List either exclusively for the local government or under State-local concurrent jurisdiction. In the State List, there are some entries on the levy of taxes/rates covering subjects that can be administered better locally.

Examples are as under:

Entry	:	49	: Taxes on land and building
		53	: Tax on the entry of goods
		54	: Tax on advertisements other than advertisement published in the newspaper, and advertisement broadcast by radio or television.
		57	: Taxes on vehicles (At least non-mechanically propelled vehicles are fit to be administered by the local bodies).
		58	: Taxes on animals and boats
		59	: Tolls
		60	: Taxes on professions, trade, callings and employment
		61	: Taxes on entertainment, betting and gambling.

Some of the above mentioned taxes have been traditionally levied and collected by the rural and urban local governments for a long time. For example, the property tax (entry 49), octroi (entry 53) and profession tax (entry 60) have remained traditionally under the jurisdiction of either the municipalities or the rural local bodies or both. Similarly, 'tolls' on roads and ferries have been traditionally levied and collected by the zilla parishad, while bill boards in cities and town, have been taxed by the municipal bodies.

4.13 Given the situation as above, it is not difficult to introduce the concept of exclusive and/or State-local concurrent tax domain for the Panchayat as well as the municipal bodies. At the moment this concept is absent. The purpose behind article 243H was to ensure that the issue of financial viability of PRIs is not overlooked by the State Legislatures. But by giving blanket power to the State Legislatures, the said article has been made practically sterile. It is not capable to serve its purpose since the State Governments do not want to share their fiscal powers with the local government institutions. ***The only way out is to introduce afresh the concept of a separate tax domain for the local bodies*.**

4.14 Independent as well as concurrent tax domain for the local bodies can be brought about by restructuring the existing seventh schedule. ***The restructuring would necessitate introduction of a local list and a State-local concurrent list***. The other alternative is to make changes in the 11th and 12th Schedules. There are problems in the second alternative, as these Schedules, in present form, are no more than illustrative lists. Experience shows that without Constitutional support, Panchayats and the municipalities will not be able to achieve substantial fiscal autonomy. ***Ideally, a Local List in the Seventh Schedule will be most helpful to provide fiscal autonomy to the local government institutions. If that is found difficult, then the Eleventh and Twelfth Schedules have to be restructured in a manner that reduces the area of State's discretion and guarantees devolution of fiscal powers from State to the Panchayats/Municipalities*.**

4.15 It is true that there are some difficulties in carving out a list of fiscal powers exclusively for the local bodies from the Seventh Schedule exclusively. First, between Gram Panchayats and Zilla Parishads and between Nagar Panchayats and Municipal Corporations, there are various types of local bodies

which differ from one another in respect of size, functional responsibilities and administrative or financial resources. How to distribute taxing power among them may be difficult to determine centrally by the Constitution. Secondly, some kind of uniformity across the State is necessary in respect of principles for determining the base for the tax and the fixing of tax rate. While some differences among the different local bodies are natural and may, in fact, be welcome, wide disparities may hurt the principle of equity. However, some power for fixing the 'procedure', or 'conditions' or 'limits' may be retained by the State Legislatures, while earmarking certain taxes for the local bodies.

Transfer and Grant-in-Aid

4.16 By far, the most novel provisions that brought the local government institutions in the scheme of fiscal federalism are contained in articles 243-I (for Panchayats) and 243Y (for Municipalities). They envisage the setting up of State Finance Commission (SFC) as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992 and thereafter after expiration of every fifth year in every State for reviewing the financial status of the Panchayats/municipalities and for recommending measures to improve the same by restructuring, if necessary, the State-local fiscal relationship.

4.17 In making these provisions, it was rightly assumed that the financial viability of the rural and urban local bodies cannot be ensured only by assigning tax, duties, tolls and fees, for by their nature, they are less elastic and less buoyant. Transfer from the States' revenue as well as grants-in-aid would thus be necessary to supplement the finances of the PRIs and the municipalities. It is through such mechanism that the vertical imbalance and horizontal imbalance can be corrected in a federal polity. (The former refers to the mismatch between the revenue earning power and functional responsibilities of a unit of Government and the latter refers to the unequal development of areas falling under the jurisdiction of different governmental units). Accordingly, these provisions provide to States "a unique opportunity to redesign the existing fiscal system that is coherent and flexible enough to meet the rapidly changing local needs and responsibilities." (Mathur, 2000: 360).

4.18 The status as on 1st July, 2000 with regard to the setting up of SFCs and submission of their report after the coming into effect of Constitutional amendments is provided in table 4.4. It will be seen that the first reports of SFCs have been submitted in all the States (except Bihar) and in some States, second SFCs have been set up.

4.19 The reports of the SFCs have not been uniform in respect of their approach, coverage and methodology adopted for making recommendations. "Many SFC reports have not addressed the specific items listed in articles 243-I and 243Y, nor have they provided a clear idea of the power, authority and responsibilities actually entrusted to the local bodies. Many of these reports also do not clearly indicate the principle formulated for sharing or assignment of State taxes, duties, tolls, fees and the grants-in-aid." — (Report of the Eleventh Finance Commission: para 8.11b). Some SFC reports such as those of West Bengal and Karnataka have been hailed because their approach unmistakably, was towards creating institutions of self-government.' Some reports, on the other hand, have been criticised for their failure to take a similar approach (Oommen, 2000: 30-31).

Table 4.4
Status of State Finance Commissions (as on 1 July 2000)

State/Union Territory	First State Finance Commission			Second SFC Constituted on
	Constituted on	Report Submitted on	Action Taken #	
Andhra Pradesh	June 22, 1994	May 31, 1997	4	Dec. 8, 1998
Arunachal Pradesh	SFC not constituted as the State Panchayat Act did not receive assent of the President			
Assam	June 23, 1995	Feb. 29, 2996	1	-
Bihar	April 23, 1994	Report not	-	-

State/Union Territory	First State Finance Commission			Second SFC Constituted on
	Constituted on	Report Submitted on	Action Taken #	
		submitted		
Goa	April 22, 1994	June 5, 1999	1	-
Gujarat	Sept. 15, 1994	July 13, 1998	1	-
Haryana	May 31, 1994	March 31, 1997	2	-
Himachal Pradesh	April 23, 1994	Nov. 30, 1996	3	May 25, 1998
Karnataka	June 10, 1994	Jan. 31, 1996 (Urban Local Bodies)/ July 30, 1996 Panchayat Raj Institutions	4	June 23, 1999
Kerala	April 23, 1994	Feb. 29, 1996	3	June 23, 1999
Madhya Pradesh	June 17, 1994	June 20, 1996	4	June 17, 1999
Maharashtra	April 23, 1994	Jan. 31, 1997	4	June 22, 1999
Manipur	April 22, 1994	Dec. 20, 1996	4	-
Orissa	Nov. 21, 1996	Dec. 30, 1998	4	-
Punjab	April 22, 1994	Dec. 31, 1995	2	-
Rajasthan	April 23, 1994	Dec. 30, 1995	3	May 7, 1999
Sikkim	July 22, 1998	Aug. 16, 1999	2	Aug. 16, 1999
Tamil Nadu	April 23, 1994	Nov. 26, 1996	4	Dec. 1, 1999
Tripura	April 23, 1994	Jan. 12, 1996	4	Oct. 29, 1999
Uttar Pradesh	Oct. 22, 1994	Dec. 26, 1996	4	Feb. 25, 2000
West Bengal	May 30, 1994	Nov. 27, 1995	3	-
Pondicherry	March 1997	Sept. 15, 1997*	5	-
Chandigarh	April 1995	De. 31, 1997	1	-
Delhi			1	-
A&N Islands	Sept. 8, 1995	Aug. 28, 1998	2	-
D&N Haveli			2	-
Daman & Diu			2	-
Lakshadweep			2	-

Note: #Action taken: 1 = No action taken; 2 = Report under consideration of the State Government/UT Administration; 3 = Accepted; 4 = Accepted with modifications; 5 = Information not available.

Jammu and Kashmir, Mizoram, Meghalaya and Nagaland are excluded from the purview of the Constitution (Seventy-third Amendment) Act, 1992.

* This was the first report to be followed by a report every six months. The Commission was constituted for three years.

Source: Status of Panchayati Raj in States and Union Territories of India, 2000.

4.20 Whatever may be omission and commission committed by the SFCs, their first reports have been successful in creating the concept of a divisible pool between the State and the local bodies, almost similar to the pattern of transfer of central revenue to the States. At least in nine major States, such as West Bengal, UP, Tamil Nadu, Rajasthan, Kerala, Karnataka, Assam and Andhra Pradesh, the respective SFCs have recommended a certain percentage of the net proceeds of the total tax revenue of the State for transfer to the local bodies. The recommended share of local bodies however ranges from as low as 2 per cent in Assam to nearly 40 per cent in Andhra Pradesh. In some other States, certain taxes have been earmarked, a certain percentage of the proceeds from which could be transferred to the local bodies. Some SFCs have identified innovative parameters for distribution of divisible pool fund among different local bodies in order to ensure horizontal equity.

4.21 Experience shows that some corrective measures are necessary to make the institutional mechanism of SFC more effective and purposeful. These have been brought into focus by the Eleventh

Finance Commission (para 8.11 to 8.13) as well as by some others. Some of the measures recommended relate to changes necessary in the State Panchayat laws. In some cases, executive interventions would be necessary. But, there are few areas where more fundamental changes involving Constitutional amendment seem to be called for. These are indicated below:

4.22 Sub-clauses (bb) and (c) of clause (3) of article 280 require the Federal Finance Commission to make its recommendations in respect of the Panchayats and municipalities "on the basis of the recommendations made by the Finance Commission of the State". The Eleventh Finance Commission found it difficult to work strictly within this frame because of various problems. It found that in some States SFCs were not either constituted or did not submit their reports. Again, in view of the 'heterogeneity of approach' of different SFCs and differences in contents and periods covered by them, the Eleventh Finance Commission found it difficult to form their opinion only on the basis of their recommendations. For the purpose of avoiding such situation in future and in order to enable the Federal Finance Commission to take a macro-level view, **the provisions of article 280(3) (bb) and (c) may be amended. The words "on the basis of the recommendation" in these clauses may be replaced by the words "after taking into consideration the recommendations**."

4.23 In order to enable the Federal Finance Commission to give due weight to the reports of SFCs for assessing the situation in each State, it is necessary to synchronize the periods covered by the reports of both of them. The first generation SFC reports made available to the Eleventh Finance Commission were for different periods of time. It would have been much better if the periods covered by both of them were same or nearly the same. Since the second generation SFCs has already started working, it will also be creating the same problem for the Twelfth Finance Commission. **Ideally, the periods covered by both the types of Finance Commissions should more or less be the same. Presently, that part of the provision of clause (1) of article 243-I which calls for constitution of SFC at the expiration of every fifth year create problem to get the above objective realised. Hence, in line with article 280(1), the words "or at such earlier time as the Governor considers necessary" may be added after the words 'fifth year'.**

4.24 According to the information available to the eleventh Finance Commission, some States—for example, Goa, Gujarat, Haryana and Sikkim – had not submitted to the respective Legislatures the report on action taken on the SFC recommendations, even after the lapse of one year or more after the submission of the report. Some States had taken more than six months time to present the action taken report (ATR). Some States (for example, West Bengal) took about four years to implement partially the SFC recommendation. While, it is for the State Legislature to ensure that the Government implements fully what it assures before it, ***there has to be Constitutional obligations for placing the ATR before the legislature within `six months' or so after the submission of the report. Clause (4) of article 243-I may need to be amended accordingly***.

4.25 Taxes on professions, trades, callings and employment under article 276 has been a traditional source of revenue for the local bodies. (Of late, there is, however, a tendency for the State Governments to take over such powers from the local bodies). One of the impediments in generating substantial revenue from the levy and collection of this tax is that the upper ceiling (presently, Rs. 2500 per annum) has been Constitutionally fixed [*see*article 276(2)]. While there is a need for fixing the upper ceiling of the tax centrally in order to avoid the charge of double taxation on 'income', Constitutional provision for this is unnecessary and troublesome. For long, the upper ceiling remained at the unrealistic level of Rs. 250 only because of the rather difficult process involved in amending the Constitution. ***It would be better to change this provision and give the necessary legislative power of fixing upper limit to the Parliament. The words "district board, local boards or any other local authority" as mentioned in clauses(1) and (2) of Art. 276 may be suitably replaced by the words "Panchayats and Municipalities"***.

4.26 Now-a-days, the local governments are being encouraged to take recourse to borrowing for financing asset-building and/or remunerative projects. Some Municipal Corporations have been given power even to go to the capital market. The Panchayats of West Bengal are permitted to borrow from the financial institutions, subject to Government approval. With the role we are envisaging for PRIs in the

governance structure, there is no reason as to why the borrowing power should not be Constitutionally given to the Panchayats, especially, the Zilla Parishads. ***In chapter II of Part XII of the Constitution, a new article may be added to allow the Panchayats (and Municipalities) to borrow from the State Government and financial institutions. The zilla parishads may, in addition, be permitted to borrow from the capital market***.

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CHAPTER 5

Planning Process

5.1. The 73rd and the 74th Constitution Amendments have sought to initiate a process of decentralisation in respect of developmental planning as well as implementation. This becomes clear from the provisions of articles 243G, 243W and 243ZD. *Vide* article 243G, the State Legislatures are given specific direction to frame laws which would contain provision for the "devolution of powers and responsibilities upon the Panchayats at the appropriate level" with respect to (a) "the preparation of plans for economic development and social justice" and (b) "the implementation of schemes for economic development and social justice *as may be entrusted to them* including those in relation to matters listed in the Eleventh Schedule" (emphasis added). Similar provisions exist for the municipalities in article 243W.

Decentralised and Participatory Planning: The Constitutional Scheme

5.2. Preparation of plans seems to be the original function of Panchayats (and Municipalities). If this is so, implementation of schemes arising out of such plans should also fall in that category, even though it is not explicitly mentioned in clause (a) of article 243G. Such inference is logical since planning becomes merely a 'wish list' and, therefore, a useless exercise, unless it can be implemented. It cannot be the intention of the Constitution to entrust the Panchayats with a useless exercise. The subject of implementation is brought in clause (b). Does the provision in this clause mean that the Panchayats are entitled to implement only such schemes (of the State Government) as may be entrusted to them? In that case, the Panchayat's role will be restricted to that of an agent of State Government only, so far as implementation of development schemes is concerned. But, that certainly is not the intention. The Constitution has certainly given to the Panchayats implementation responsibility of both types of schemes - schemes originally conceived by the Panchayats in the process of preparation of plan as well as schemes of the State Government implementation of which may be decentralised. Sub clause (ii) of clause (c) of article 243W is more explicit and refers to both 'original' and 'agency' functions of municipalities. Thus, article 243G read with the Eleventh Schedule provides that (a) the Panchayats will make plans for economic development and social justice, (b) implement schemes and perform other functions arising out of that plan, and (iii) implement schemes as may be entrusted by the State Government to execute.

5.3. It seems that by decentralising the developmental functions, the Constitution seeks to correct two types of weaknesses of the country's macro-level development planning. One relates to the mismatch between growth and equity resulting into unjust treatment to the weaker sections of the people. The other is related to the absence of inter-sectoral coordination for pursuing a common goal. The Panchayat-municipality system is expected to contribute towards removal of both of these types of weaknesses.

5.4. In the mandate given to the Panchayats and the municipalities, the concern for social justice is noteworthy. 'Economic development and social justice' has been set as the goal of their development plans. Read conjunctively, the mandate is to pursue the growth and the equity objectives simultaneously. How to make it happen at the micro-level of Panchayats and municipalities, when, with all the resources

at their command, the macro-level planners have failed to achieve this? The chances of promoting social justice brighten only when the victims of social injustice are themselves enabled to participate directly in the planning process. Participation of the weaker sections of people becomes easier at the micro-level of Panchayats/municipalities. But, even at these levels, the marginalised people may find it difficult to register their voice. Hence, the Constitution has provided for safeguards. Firstly, the gram sabha in the case of gram Panchayats and ward committees in the case of municipalities have been given Constitutional recognition and the State Legislatures have been empowered (and, perhaps, also advised) to devolve power and functions to them. Secondly, the Constitution has provided for reservation of seats and posts of chairpersons for women and members of SC and ST people, so that they can have access to the power-structure of the local government institutions. Thus, the Constitution intends to usher in a regime of participatory planning at different levels of Panchayats as well as at the municipalities to remove the hiatus between development and social justice which unfortunately has taken place in India's top-down planning process.

5.5. By mandating the Panchayats to perform planning functions the Constitution has also tried to ensure institutionalisation of the concept of 'area plan' at the micro-level which will form building blocks of the macro-level planning at the State or national level. The 'area plans' are holistic plans for given areas and they cut across the identities of individual sectors. Such plan aims at horizontal coordination of different sectors in order to pursue a common goal. This goal as determined by the Constitution is economic development with social justice. It is evident that along with the participatory nature of planning process, the Constitution also aims at 'area plans' for optimum inter-sectoral coordination. Both of these objectives are meant to remedy the shortcomings of the country's macro-level plans.

5.6. A question may arise as to whether planning at each of the three levels simultaneously will lead to duplication of efforts, since area of a Panchayat samiti overlaps with that of a gram Panchayat and similarly the jurisdiction of zilla parishad overlaps with that of Panchayat samiti. If the principle of subsidiary is applied also in the planning function, the danger of duplication may be avoided. Thus, a plan prepared at the level of Panchayat samiti would be consolidated plans of all gram Panchayats under it plus some additional features which can be conceived/performed only at that level. These additional features may consist of (a) interventions that cover more than one G.P.; (b) projects that require technical expertise of superior level not available at GP, and last, but not least, (c) intervention that requires an over-all view of an area larger than that of GP (for example, developing market facilities). The last point is important, because as planning area expands from village-level plan to gram Panchayat plan, gram Panchayat plan to Panchayat samiti plan, Panchayat samiti plan to zilla parishad plan, localist view has to gradually make space for taking a wider view. This is the way how peoples' perceptions and local needs or aspirations can be integrated with the technical requirements of plan through participatory multi-level planning process. It is felt that the intention of the Constitution is to institutionalise this process.

5.7. In construing the provisions relating to the planning function contained in article 243G in the manner shown above, certain inferences had to be drawn. But, such inferences, as will be seen, are quite logical and harmonious, if the various provisions relating to people's participation in decision-making through gram sabha, reservations for women and members of SCs/STs in Panchayats, assignment of planning function to the Panchayats, inter-linkage with different tiers of Panchayats, Constitution of State Finance Commission and inclusion of Panchayats/ municipalities in the terms of reference of the Federal Finance Commission - all are considered together. There is a definite pattern and this pattern has to be kept in mind for logical and harmonious construction of article 243G and 243W. Unfortunately, no State other than the State of Kerala has shown 'political will' to translate this Constitutional scheme into reality. They have taken refuge under the non-mandatory and, at times, vague nature of the provisions in which the Constitution has expressed its scheme of decentralisation of development functions.

District Planning Committee

5.8. The harmony in the planning process as noted above, however, breaks down when one considers the provisions relating to District Planning Committee (DPC) under article 243ZD. The very idea of a committee outside the institutions of self-government is incongruous with the scheme elaborated

in Parts IX and IX A of the Constitution. The anomalies it has created will be examined in the following paragraphs:

Non-elective character of DPC

5.9. DPC is the only body in the decentralisation scheme of the Constitution where at least one-fifth of the total members can be nominated. Since the manner of choosing the chairperson of the committee has been left to be decided by the State Legislature, there is no bar in making one of the nominated members also to be the chairperson. In fact, as many as six States have taken the liberty to nominate a minister to head the committee (see Table 5.1), thus undermining the position of the elected members of PRIs and municipalities, including the chairperson of zilla parishad. Nomination is a convenient tool which may be used by the regime in control of the State Government for political expediency and to load the committee with the political heavy weights to weaken the role and position of zilla parishad. DPC may thus emerge as a strong power-centre outside the PRI-municipality system. This cannot definitely be the intention of the Constitution. In Madhya Pradesh, DPC has been converted into what has been brandished as district Government - a Government of the district but not accountable to the people of the district. DPC has not been constituted everywhere. But, where it has been constituted, distortion of various kinds are coming to surface. In Tamil Nadu, for example, law provided that the collector would be the chairperson of DPC and the chairperson of district Panchayat its vice-chairperson. After protests were lodged against such a preposterous arrangement, the decision was reversed and the chairperson of zilla parishad was made the chairperson of the committee.

Table 5.1
Status of DPCs in different States

(As on January 2000)

Sl. No.	Name of the State	Status	Chairperson
1.	Andhra Pradesh	Not constituted	--
2.	Assam	Constituted	Zila Parishad (ZP) Chairperson
3.	Bihar	Not Constituted	--
4.	Gujarat	Constituted	Minister
5.	Himachal Pradesh	Constituted	ZP Chairperson
6.	Karnataka	Constituted	ZP Chairperson
7.	Kerala	Constituted	ZP Chairperson
8.	Madhya Pradesh	Constituted	Minister
9.	Maharashtra	Constituted	Minister
10.	Orissa	Constituted	Minister
11.	Punjab	No Provision in Earlier Act. Amendment is being considered	--
12.	Rajasthan	Constituted	ZP Chairperson
13.	Tamil Nadu	Constituted	Earlier District Collector, ZP Chairperson by recent amendment
14.	Tripura	Constituted	Minister
15.	Uttar Pradesh	To be Constituted	Minister
16.	West Bengal	Constituted	ZP Chairperson

Source: Network Update, January 2000.

Panchayat plan vis-à-vis DPC's plan

5.10. The task of DPC, as per article 243ZD, is "to consolidate the plans prepared by the Panchayats and the municipalities in the district and to prepare a draft plan for the district as a whole". The draft plan so prepared will have to be forwarded to the State Government, obviously for its consideration and approval. Apparently, there is a contradiction between this provision and that of article 243G and 243W that mandates Panchayats and municipalities respectively to prepare substantive plans for economic development and social justice. As noted earlier, these are final and actionable plans. There cannot be anything tentative about them. But, when these plans get consolidated at the DPC level, can that be the basis of a district plan which is not final, but only a 'draft'? If that is the meaning conveyed, then the huge exercise involving all the gram Panchayats, Panchayat samitis, municipalities including their wards upto zilla parishad become infructuous. Moreover, if the plan which is to be prepared from below through participatory process is not treated as final, but only, as 'draft' then this will amount to an assult on the democratic process itself. This cannot be the intention of the Constitution. It is contradictory to the letter and spirit of the various provisions of Parts IX and IXA of the Constitution.

5.11. A rational and harmonious construction of the provision would be that the plans prepared at the various levels of the PRI - municipality system are final and are also to be implemented by them. They would pass on to their respective higher level bodies those elements of the plan which could not be executed, because of the constraints in respect of jurisdiction, lack of technical expertise or financial/administrative resources. The so-called 'draft' status of the 'draft development plan for the district as a whole can then refer to only those residuary elements which the zilla parishad or the municipalities could nor execute for one reason or the other. These may be considered to be constituting the draft plan. The rest of the plan of the district consisting of locally actionable plans of the PRIs and the municipalities are final. To be authoritative, such a construction of article 243ZD has to wait for a judicial verdict. Till then, one has to live with this gross anomaly unless suitable Constitution amendment is made.

Jurisdictional conflict

5.12. DPC is to make plan (Draft or otherwise) for the district as a whole. Zilla Parishad's plan is also for the whole district, but restricted to the rural areas. Since in most districts more than three-fourth of the population reside in rural areas, the plan prepared by the zilla parishad will cover practically the whole district, barring a few urban pockets. Two authorities for the same function not only go against the canons of organisation principles, but also pose a constant source of dispute on account of nearly common jurisdictional boundary.

Doubtful legitimacy

5.13. Members of the DPC are partly nominated and partly indirectly elected. To whom it is accountable? It is not accountable to the local people. It is also not accountable to the PRI-municipality system. Yet, it has all the possibility of growing as an alternative power centre. The case of Madhya Pradesh is an instance. It has also the possibility of controlling the fund-flow to the Panchayats and the municipalities. It may also be given power to monitor the activities of elected Panchayats and municipalities, as has been done in the State of Tamil Nadu. In a democratic framework, such exercise of power by a non-elective body over the elected institutions is certainly not legitimate.

5.14. It requires to be noted that neither the national Planning Commission nor the planning boards of the States have been Constitutionalised. They remain as parts of the national and State Government respectively, even though they may have been given at certain times a measure of autonomy. If that is so, what was the urgency or necessity to give Constitutional status to the DPC? The logic is not clearly understood.

Institutional mechanism for rural-urban integration:

5.15. Only significant role that may be played by DPC in the existing framework of PRI-municipality system is one of rural-urban integration in the preparation of district plan. The Panchayats are for rural areas and the municipalities for urban areas. This institutional arrangement may work at the micro-level of village and town. But when it comes to the level of a district, the distinction disappears. A plan for the whole district has to combine both rural and urban areas. In Indian context, district is considered as meso-level, but there are many districts in the country, the population of which may be more than that of a small sovereign State. Planning technique applicable at the micro-level of village or small town will not suit planning exercise for the whole district. Many functions that towns perform as seats of industry, trade and commerce, provider of services, higher education, communication, etc. have to be taken into consideration, even while a district plan aims at economic and social sector development of the rural areas. Similarly, planning for urban areas has to take into consideration the situation of the rural hinterland they serve. In article 243ZD (3) (a) (i), the Constitution recognises this problem and gives the direction that in preparing development plan for the whole district, the DPC should give due regard to the "matters of common interest between the Panchayats and the municipalities". Since the zilla parishad which has a district-wise coverage caters only to the rural areas, necessity of DPC has arisen.

5.16. The problems with an institution like that of DPC have been discussed earlier and it has been shown that its position is, rather, incongruous with the pattern of decentralisation sought to be institutionalised through the PRI-municipality system. Its role in coordination, particularly in the matter of rural-urban integration in the district plan, is recognised. But, for this, an institution like DPC is not absolutely essential. This task can be performed at the level of zilla parishad by expanding its jurisdiction to the whole district. It may be conceived as the institution of self government for both rural and urban areas of a district. In that case, ZP's members would be elected by the people of the entire district-rural as well as urban. Under such a scheme, rural-urban distinction among local government institutions will remain for individual municipalities and the Panchayats upto the intermediate level. At the district level, this distinction will disappear and the local government institution at that level will represent rural as well as the urban people.

5.17. If the jurisdiction of zilla parishad covers the entire district, the mandate of preparing the district plan may be given to it. This plan will be an integrated plan for the district as a whole combining both rural and urban areas.

5.18. There will still be a need for a body like DPC. Firstly, experts' advice has to be made available to the elected representatives of ZP in order to enable them to make sound judgement on developmental policies and programmes. Secondly, involvement of State Government officials will be necessary in the preparation of district plan, because, even after decentralisation, the line departments will have to retain with themselves some functions to be executed fully or partially within a district. These relate mostly to the projects spread over more than one district or which require expertise and organizational strength of high degree or which have implications for the State as a whole. DPC may be formed with experts, Government officials and activists/social workers, but it should be constituted by the zilla parishad in accordance with guidelines in the State Act. Its tasks will be (i) to prepare draft district plan after consolidation of the individual plans of gram Panchayats, Panchayat samitis and municipalities for consideration of the ZP, (ii) to assist the Panchayats and municipalities to prepare their plans, (iii) to coordinate district planning exercise with that of the State Government. The details of the constitution of DPC may be left with the respective States. There may be an enabling provision in the Constitution. MPs and MLAs of the district may be associated with the DPC.

Constitutional reform:

5.19. The jurisdiction of zilla parishad should be the entire district combining both rural and urban areas

5.20. Planning shall be an obligatory function of Panchayat at all levels and the municipalities. District planning shall be the function of zilla parishad.

5.21. District Planning Committee should be constituted by the zilla parishad in accordance with such guidelines as may be provided in the State Acts. Members of the DPC may include experts, MPs/MLAs, officials in charge of State or Central Government functions within the district, representatives of Non-governmental Organisations and social workers.

CHAPTER 6

Gram Sabha

6.1 The significance of the concept of Gram Sabha as a body of all adult people of the village does not seem to have been fully grasped. It, therefore, receives a casual treatment in the State Acts.

6.2 The gram sabha is not conceived as an organization that is required to perform certain tasks in order to realise specific goals. It is a forum for registering 'voice' of individual citizens in the process of decision-making on matters that affect their lives. Herein lies its uniqueness. Our democracy — like democracies of all large countries — is based on the principle of representative government. Gram Sabha is the only forum where people can take part in 'direct democracy'. It can be used by the people for collective-thinking and over-seeing as well as participating in the activities of gram Panchayat. In a more practical sense, it may conduct social audit of gram Panchayat, take collective decisions on village-level plans, collaborate with gram Panchayat in implementing its programmes. A vibrant gram sabha has the potentiality of realising the vision of participatory governance at least at the level of the village.

6.3. Article 243A stipulates that "gram sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may by law provide". The State Legislatures have, by and large, provided it with only a peripheral role. In most of the State Acts, the jurisdiction of the gram sabha covers the following:

- To consider matters relating to the annual administration report, the annual statement of accounts, the budget, the report on development works, etc. of the gram Panchayat;
- To discharge such functions as raising voluntary contribution, promoting unity and harmony in the village, adult education, identification of beneficiaries, etc.

Some States are experimenting with the idea of giving wider powers and functions. An amendment of Madhya Pradesh Panchayat Act which came into force on 26th January, 2001 has given a range of functions to the gram sabha. To discharge these functions, there shall be eight standing and other *ad hoc* committees. Kerala has involved gram sabha in its people's plan campaign. West Bengal is considering introduction of a model of participatory planing under which the *gram sansads* (roughly wards of gram Panchayat) will play a substantial role in preparing gram Panchayat's plan. The gram sabhas of Orissa and Rajasthan have been given power to approve the GP's plan and budget.

6.4. Barring exceptions, the gram sabha in most States is treated as a recommendatory body. Common people naturally do not find interest in attending its meetings. In many States, the gram sabha meetings are not held regularly. Since they are given only the power to recommend and no power to approve what the gram Panchayat seeks to do, the Sarpanchs are under no compulsion to treat gram sabha seriously. Either the meeting would not be called or their recommendations would be ignored.

6.5. Experience of the last eight years of the post 73rd Constitution amendment phase shows that gram sabha is yet to emerge as a forum where common people can participate in the process of collective decision-making. A major reason for this is, of course, the nature of power-relations that operate in rural society under which large sections of people remain in a disadvantaged position because

of their lower social or economic status. At the same time, the political empowerment that a forum like gram sabha confers to the ordinary men and women can go a long way in removing caste, gender and class barriers that stand in the way of their participation in the process of collective decision-making. For this to happen, the gram sabha itself has to be made powerful. It has to play a vital role in the functioning of gram Panchayat. It should not be reduced to a decorative forum to make recommendations only. It has to be given substantial authority to influence the functioning of gram Panchayat effectively.

6.6. Since the practical situation differs from State to State, it is not possible to make Constitutional provisions on the specific functions and powers that should be given to the gram sabha, but *the Constitution should explicitly indicate its intention to allow the Gram Sabha to play substantive role in the functioning of gram Panchayat*.

CHAPTER 7

Personnel System

Self-Government and its Human Resource

7.1 An institution of self-government must have its clearly demarcated field of activities, free from outside interference, financial capacity and autonomy to perform these activities, as also the power to recruit and control the officers and other employees required for managing its functions. Staff is a resource that an organisation must possess to perform its day to day activities and execute its decisions. Access to and command over the human resources are therefore an essential element to measure the kind of autonomy that an institution of self-government enjoys. Judged from this point, the Panchayats present a disquieting picture. It is necessary to note that Part IX and Part IXA of the Constitution are totally silent about this vital aspect of institutional autonomy. **Failure to address the human resource issue has definitely affected the growth of Panchayats as self-governing institution**.

7.2 There are three varieties of personnel system for the local government institutions in India namely: (i) separate; (ii) unified; and (iii) integrated. Under the separate system, each local government unit has full control over matters concerning recruitment, control and discipline of its staff. Under the unified system, State-wise or region-wide common cadres of some or all categories of staff of local government are constituted. Such cadres are fully managed by the State Governments. In the integrated system, the State Government employees and the local government employees come from the common cadre managed by the State Government. It is only in separate system that the local government institution has total control over its staff. In the other two systems, it has no power to recruit or to dismiss its staff and even in the day-to-day management, its power to control personnel is severely limited in the unified system and negligible under the integrated system.

7.3 Ideally, a self-government should have separate personnel system. It is significant that even the local self-government institutions with limited powers that came into existence in the wake of Ripon Resolution of 1872, namely the Municipalities, District Boards and Union Boards, enjoyed practically full powers in respect of recruitment, control and discipline of their staff. The present day municipalities are, by and large, continuing that tradition, even though their autonomy in respect of personnel management has been seriously circumscribed by their dependence, in most States, on the State Governments which are paying staff salaries and allowances. The PRIs, on the other hand, have to depend upon the Government officials for staff support, whatever may be the organisational arrangement – unified or integrated. In some States, the Panchayats have been given power to create posts or to recruit their own staff upto a certain level. But in the absence of financial solvency this power remains grossly under utilised or non-utilised. Before we take up the issue of reforms in PRIs' personnel system, it will be worthwhile to take stock the situation as it obtains in different States.

An Overview of Panchayat's Personnel Structure in Different States

7.4 In West Bengal's gram Panchayat, there is a Secretary and a Job Assistant, both of whom are recruited, trained and controlled by the State Government. They enjoy government pay scales and their salaries are paid by the Government. The Panchayat samiti does not have separate staff excepting one clerk who is also appointed by the State Government. The rest are staff of Block Development Officer drawing salaries from the State Government. The services of none of the staff including that of the BDO have been transferred to the samiti. They remain full-fledged Government staff. In zilla parishad, the CEO is the collector who hardly finds time to the work of the parishad. There is an Additional Executive Officer, but he also is not a full-time officer, as he holds the *ex-officio* position as Additional District Magistrate. There are one Secretary, one Executive Engineer and one Accounts Officer all of whom come from the State Government cadres of different departments. There are some staff including one District Engineer and a few Engineering Officers as also some other subordinate staff who belong to the zilla parishad, but all vital matters in respect of them like creation of posts, fixation of pay and allowances, etc. are controlled by the State Government. Thus in matters concerning personnel, West Bengal's PRIs are totally dependent on the State Government.

7.5 In Orissa, the situation is highly unsatisfactory. Here zilla parishad is practically non-functional for lack of staff. Law provides that the staff of DRDA would work for zilla parishad, but they prefer to take orders from the Collector rather than from the chairperson of zilla pari-shad. In Panchayat Samiti, there are a number of Government officials including the teachers. But, the Samiti has no administrative control over such staff. They are controlled by the respec-tive departments to which they belong. The gram Panchayat has not been given any Government staff. Subject to the approval of the district bureaucracy and/or the Directorate of Panchayat, the gram Panchayats may recruit their Secretary and other staff. But since, they have to meet full or at least 50 per cent of the staff salary, the GPs are unable to recruit full-time quality staff. In a study it was noticed that GPs were paying their secretaries consolidated pay of a little over Rs.1000 per month. What service can be expected from such poorly paid staff? (ISS, 1998).

7.6 In Karnataka, the Panchayats have no power of recruitment, transfer and discipline over their staff. In this State, the zilla parishads and taluka Panchayats are packed by the State Government officials. This results in dual loyalties and needless friction in the day-to-day working of Panchayats. Only gram Panchayat have power to recruit their own employees, provided their salaries are paid from their own resources. Own resources being insufficient, this power remains grossly underutilised.

7.7 For the gram Panchayats of Andhra Pradesh there are executive officers who are State Government employees. In most cases, one Executive Officer serves 3-4 gram Panchayats. Gram Panchayats have power to recruit their staff, subject to various bureaucratic controls. But, because of financial weakness, they cannot pay adequate salaries to attract competent and full time staff. A study showed that a gram Panchayat was paying its own staff salaries ranging between Rs.500 and Rs.1500 per month. (ISS, 1998). At mandal parishad – the intermediate level Panchayat – there is one Mandal Development Officer, one Engineering Officer and one Education Officer. All are Government servants. The staff of various development departments like agriculture, industry, veterinary, cooperation, etc are outside the mandal parishad. The zilla parishad has considerable organisational capacity, particularly in respect of engineering personnel all of whom including the Chief Executive Officer are Government officers. There is, however, conspicuous absence in zilla parishad of the staff of various development departments.

7.8 Maharashtra has the distinction to create 'district service' (technical and general) of respective zilla parishads. The staff belonging to class III and class IV categories in different levels of Panchayat belong to such service which is controlled by the zilla parishad, subject to the rules framed by the State Government. All other members of staff are Government employees deputed to the Panchayats at different levels. Village Development Officer (erstwhile *gram sevak*) who act as Secretary to gram Panchayat is recruited by zilla parishad and belongs to the district service. In introducing the concept of zilla parishad cadres as early as the sixties, Maharashtra broke new grounds and opened up exciting possibilities of building up Panchayat buraucracy in a manner different from its counterparts in the Union

and the State Governments. But this did not happen. A powerful bureaucracy at zilla parishad level consisting of Government officials and headed by a senior IAS officer concentrated all administrative powers, leaving elected representatives with little control over their staff. Hence, even after working with the system of zilla parishad cadres for more than three decades, working relationship between the officials and elected representatives has not yet developed. There is a sense of distrust among the elected representatives. They feel that "decisions are thrust upon them by officials under the guise of laws and rules. As the power of recruitment, promotion, transfer and control over day-to-day work lie with the CEO [Chief Executive Officer of Zilla Parishad], the elected representatives feel powerless." (ISS, 2000: 194).

7.9 As in other States, the Chief Executives of zilla parishad and the janpad Panchayats (the intermediate level Panchayat) of Madhya Pradesh are Government officers. There is no separate cadre of Panchayat service in the State. The gram Panchayat secretaries (except a few gram sahayaks recruited earlier by the Government) are appointed by the gram Panchayat on a small monthly remuneration. Power and responsibilities of some functions of several departments of the State Government are stated to have been transferred to the PRIs, but the staff attached to them continue to remain with the Government. "The Government is reluctant to transfer any staff to the Panchayats due to likely resistance from them" (ISS, 2000: 178).

The Pattern of Personnel System

7.10 The pattern of personnel system that emerges from the brief survey given above is as follows. The separate system, that is to say Panchayats' power to recruit and control their own staff, has been allowed in a few States and that too mostly at the level of gram Panchayats. But gram Panchayats are financially weak and financial viability being the pre-condition for successful working of the separate personnel system, this power remains unutilised. Even if the power is used, the Panchayats can pay them absurdly low salaries and thus end up in recruiting substandard staff. Generally, the Panchayats at all the levels are manned by the staff belonging to the State Government. Either they are recruited specifically for Panchayat work – such as gram Panchayat secretaries – or they are recruited against posts of specific departments and posted to the Panchayat samitis or the zilla parishads. Such staff includes BDO who is generally Chief Executive Officer of Panchayat samiti or officers of the rank of Additional District Magistrate, and in some cases, of the rank of Collector (e.g., in Karnataka) who act as the Chief Executive Officers of zilla parishads. Officers of some development departments like agriculture, fishery, cooperative, industry, etc., are also posted to the Panchayats, especially, in the intermediate level Panchayats. Where intermediate Panchayats are smaller than blocks as in Andhra Pradesh, they are to serve a group of such Panchayats. The common feature of such arrangement is that all of them retain their departmental identities and their departmental superiors continue to exercise both administrative and functional control over them. In many States where the subject of primary education has been made over to the Panchayats, school teachers form the bulk of Panchayat employees. But, Panchayats' control over them is negligible, as their recruitment, posting, disciplinary matters – all are controlled by the State Governments in most States. In Kerala where serious efforts are being made for decentralisation, the staff of many departments and institutions has been transferred along with the devolution of function to different levels of Panchayats. Despite this, the Panchayats cannot exercise effective administrative control over them since they have been allowed to function under their respective departmental superiors.

Constitutional Reform

7.11 For governance at the third stratum, the Panchayats, with or without coordinate status, have to have autonomy over management of its personnel. That is to say, they must have the authority to create posts, make recruitment to such posts and control the employees. Some State laws provide this power to the Panchayats, subject, however, to strict bureaucratic control and subject to the condition that the staff should be paid out of their own resources. As noted earlier, even this power could not be utilised by the Panchayats properly, as they cannot pay their employees reasonable salaries. Assuming that the Panchayats will acquire, sooner or later, sufficient fiscal autonomy either through the devolution of taxing

powers or through transfer of State's revenue or both, details of operating such separate personnel system have to be worked out. These details include recruitment procedure, conditions of service, disciplinary matters, salary structures, etc. Much innovative thinking must precede before such details can be worked out, because a golden opportunity of developing an efficient, responsive and accountable bureaucracy for Panchayat will be lost if the same ingredients of governmental bureaucracy, namely, security, non-accountability, preference of seniority over efficiency and honesty, etc., are allowed to be a part of it. Models incorporating innovative operational details without sacrificing substantially autonomy of Panchayats over personnel matters are yet to emerge. The so-called unified system that is in operation in a few States is controlled totally by the State Governments through their bureaucracy. The model that is yet to evolve has to be one where the PRIs will substantially retain their autonomy, but will be subjected to certain well accepted codes of discipline and norms. As situation differs from State to State, working out of the models of separate personnel system for Panchayats has to be left to the States. It is, however, necessary that the enabling powers in this respect are provided in the Constitution, as has been done in matters relating to finance under article-243H. *A specific Constitutional provision on personnel will, if not anything else, legitimise the right of Panchayats to have their own staff and to have powers to control them, so that they are enabled to perform functions devolved upon them.*

7.12 Constitutional intervention is also necessary in another important field. For quite a considerable period of time, the Panchayats will have to depend upon persons who are presently employed by the State Government. This is so because for functions to be devolved to the Panchayats, the State Governments have their own cadres of employees. When functions go to the Panchayats, the staff earmarked for them become redundant for Government, but are considered essential for Panchayats. Hence, the logical step is to transfer the services of such staff to the Panchayats. Several problems are being encountered even by the State Governments who have demonstrated the political will to take such rational decision. The employees have resisted this on the ground that such en-bloc transfer of specific cadres amounts to violation of their service conditions guaranteed by the rules made under the proviso to article 309 of the Constitution and is therefore not legally valid. Sometimes the judiciary has lent tacit support to such kind of argument creating road blocks in placing the services of government staff with the Panchayats. The controversy persists in several States and no State has yet been able to transfer the services of Government employees effectively. Even where this has been done, (e.g., in Kerala and Madhya Pradesh), the cadres of the transferred staff have not been abolished, recruitment to the vacant posts of the cadres continues to be made by the State Government, the functional and administrative control over employees including their transfers, posting, promotion or disciplinary matters is being retained by the State Government. This kind of diarchy in respect of Panchayats' personnel management functions is going to serve nobody's purpose. **What is necessary is full-scale transfer of services of staff from the State Government to the PRIs**.

7.13 In order to remove any doubt over the legality of the aforesaid transfer policy, it is necessary that an enabling provision is made in Part IX of the Constitution ***permitting the State Legislature to make, by law, provisions that would empower the State Government to confer to the Panchayats full power of administrative and functional control over such staff as are transferred following devolution of functions, notwithstanding any right they may have acquired from Act/Rules made under article-309****.* The Constitutional provision may, however, protect certain financial entitlements of the employees (such as pay, allowances and terminal benefits) as on the day of such transfer.

7.14 In order to make provisions in the Constitution on Panchayat personnel, it will be necessary to remove a major inconsistency. In Part XIV of the Constitution that deals with public services, recognition has been given to only two levels of services namely 'services and posts in connection with the affairs of the Union or of any State' (article-309). With the advent of Panchayats and municipalities in the field of governance, ***the provision of article-309 has to be amplified to include posts and services under Panchayats/municipalities as public services***. This will have the effect of reinforcing the provisions on personnel matters proposed to be made in Part IX or Part IX-A of the Constitution.

7.15 While on the subject of Constitutional recognition of services and posts under Panchayats/municipalities, two dangers have to be carefully guarded. First, the rule-making power of the State or law-making power of the Legislature under article-309 should not be so absolute as to restrict

unduly the autonomous space of Panchayats. Secondly, article-310 (doctrine of pleasure) and article-311 (major punishments of Government servants) have been misused in various ways. On one extreme they have encouraged the Government servants to be rigid, unaccountable and uncaring for public they are supposed to serve. On the other extreme, article-311(2) (b) and (c) have been used, at times, by Government to victimise even innocent employees for political reasons. It would perhaps be better to exclude the local government personnel from the operation of these provisions. Instead, separate innovative procedures and rules may be devised for them to ensure discipline, efficiency, responsiveness and accountability.

Concluding Remarks

7.16 Major task to build up the structure, norms, procedural rules, etc. of local government personnel lies with the States. There is tremendous scope to try innovative ideas in this field, so that the local government bureaucracy acquires a culture that is different from the Union or State bureaucracy and is appropriate for responsible democratic governance. But, the Constitution has the duty to give a framework as also a direction. This is the rationale that prompted to make certain suggestions with regard to making new provisions on local government personnel in appropriate parts of the Constitution.

CHAPTER 8

Other Issues

Reservation of Seats and Posts for OBCs

8.1 Clause (6) of article 243D provides that nothing in Part IX shall prevent the legislation of a State from making any provision for reservation of "seats in any Panchayat or offices of chairpersons in the Panchayats at any level in favour of backward class of citizens." In terms of this provision, a large number of States have opted for reservation of seats for Other Backwaard Classes (OBCs). The position in respect of a few States is reflected in Table 8.1

Table 8.1

Reservation of OBCs in PRIs

States	Reservation of Seats	Reservation in the Posts of Chairpersons.
Andhra Pradesh	34 per cent in all tiers	34 per cent in all tiers
Bihar	No Limit. In proportion to Population in all tiers	No limit. In proportion to Population in all tiers.
Uttar Pradesh	In proportion to population but subject to the limit of 25 per cent in all tiers	In proportion to population, but subject to the limit of 25 per cent in all tiers
Gujarat	10 per cent in all tiers	10 per cent in all tiers
Madhya Pradesh	27 per cent in all tiers of non-tribal areas	27 per cent in all tiers of non-tribal areas.
Maharashtra	Not exceeding 27% seats	27 per cent by rotation
Rajasthan	15 per cent, but if the SC/ST population exceeds 70 per cent, no reservation for OBC	--
Haryana	One seat at every level	--
Karnataka	One-third seats in all tiers	One-third posts in all tiers
Orissa	27% in all tiers	--

8.2 OBC is a relative concept. In the first place, there is no way of estimating correctly the number of people in different caste categories in a given State, since census does not enumerate population on caste basis. Figures relating to number of people belonging to different castes are always a bone of contention. Secondly, within the OBCs themselves, there may be some categories of people who are relatively advanced than others. In a judgement delivered by Patna High Court, it was shown that certain castes within the OBCs of Bihar were over represented in the Union and State legislatures and hence providing them with the additional advantage of reserved seats or reserved posts in Panchayats was considered unjustified.

8.3 It is not our intention to go into the merit of reserving seats or posts for OBCs in Panchayats. But, it is necessary to point out certain problems associated with the implementation of the reservation policy for the OBCs. No State has been able to devise a transparent and rational procedure of determining population size of OBCs in different territorial constituencies of Panchayats at different levels. In most cases, dubious procedures have been adopted. And this had led to innumerable litigations in the States of Tamil Nadu, Karnataka, Bihar, Uttar Pradesh and Andhra Pradesh. One of the reasons for the delay in holding the first post-73rd amendment election in Tamil Nadu and Karnataka was court cases over the issue of reservation of OBCs. Bihar High Court has struck down, among other things, the provisions of the State Act on reservation for OBCs. The Government appealed to the Supreme Court where it is pending since 1996. In the process, Panchayat elections got held up for long six or seven years. Andhra Pradesh High Court had to decide on hundreds of writ petitions on the same question and had ultimately to devise a procedure for enumerating OBCs which according to its own admission was not fully satisfactory.

8.4 A national policy on reservation of seats for Other Backward Classes is yet to come.

Three-tier System

8.5 The Constitution has prescribed a uniform pattern of three-tier Panchayat for the entire country, except for small States having population below 20 lakhs. In some States where districts are large, the three-tier system is working well and appears to be quite appropriate (e.g., West Bengal). In some States where districts are small and communication system is well developed (e.g., Kerala), the intermediate tier does not serve much purpose. There are some States, such as Andhra Pradesh and Karnataka, where intermediate level Panchayat is not coterminous with Block. They face the problem of providing adequate staff to the intermediate level Panchayats. Leaving aside the problems created by the States themselves, the fact remains that some States are comfortable with a two-tier system (village and district) because of their long administrative traditions, but not with the three-tier system. Some States however, find three-tier system more useful and effective. It may be recalled that Asoka Mehta Committee recommended a two-tier system.

8.6 Since there are differences in the experiences of different States, *it may perhaps be worthwhile to examine the question as to whether constitution of the intermediate level Panchayat should be left to the discretion of the individual States*.

Panchayat at the Village Level: Its Size

8.7 For the purpose of Part IX of the Constitution, ‘village’ has been defined in article 243G as a village specified by the Governor by public notification to be a village for the purpose of Part IX of the Constitution and includes a group of villages so specified. Village is difficult to be defined. Sometimes, the ‘mouza’, which is the lowest unit of land revenue administration of the State, is referred to as village. But this unit may or may not coincide with the area that local people perceive to be a village. Hence, the Constitution took the correct step in recognising as village an area that may be specified by a public notification. The purpose of specifying such area is to determine the spatial jurisdiction of a village level Panchayat.

8.8 How big or how small should a gram Panchayat be? This issue is left to the discretion of the State Government. It will be worthwhile to look at the way how the States have chosen to respond to this. Table 8.2 provides State-wise information, among others, on the number of gram Panchayats, population covered on average by each gram Panchayat and number of people a gram Panchayat member represents on average. The figures relate to all States (except Bihar) having population of 10 million and above.

Table 8.2
Gram Panchayats in Selected States: Population and Elected Members

S. No.	State	Population (1991) Rural	Gram Panchayats (Nos)	Gram Panchayat (Total Elected Members)	Population per GP	Population/ GP Member	Year of Election/Remarks, if any
1	Andhra Pradesh	48620882	21943	230529	2216	211	1995 Elections to PRIs in Vth Scheduled areas were held in 1998
2	Assam	19926527	2489	24860	8006	802	1992
3	Gujarat	27063521	13316	123470	2032	219	1995
4	Haryana	12408904	5958	54159	2083	229	1994
5	Karnataka	31069413	5675	80627	5475	385	1993
6	Kerala	21418224	991	10270	21613	2086	1995
7	Madhya Pradesh (Undivided)	50842333	30922	474351	1644	107	1994
8	Maharashtra	48395601	27619	303545	1752	159	1997
9	Orissa	27424753	5261	81077	5213	338	1997
10	Punjab	14288744	12369	87842	1155	163	1998
11	Rajasthan	33938877	9185	119419	3695	284	1995
12	Tamil Nadu	36784354	12607	97398	2918	378	1996
13	Uttar Pradesh Undivided)	111506372	58805	682670	1896	163	1995, 1996
14	West Bengal	49370364	3330	50345	14826	981	1998

8.9 As will be evident from Table 8.2, most of the major States have opted for tiny village Panchayats. Population covered by an average gram Panchayat ranges between 1000-2000 in 4 States, between 2000 and 3000 in 4 States and between 3000 – 4000 in one State. In three States, population per gram Panchayat ranges between 5000 and 8000. Large gram Panchayats are to be found in West Bengal and Kerala which have population of around 15 and 21.6 thousand respectively. Between a gram Panchayat of Punjab covering a population of barely 1100 and that of Kerala catering to twenty times larger population size, there is hardly any element of commonality except that both are in the same category of Panchayat. It is not necessary to go into the reasons behind the growth of large-sized gram Panchayats either in Kerala or in West Bengal. What is necessary to learn from the experiences of both the States is that none of them found it uncomfortable with gram Panchayats catering to large population. Again, it is these two States which can claim some credit for promoting the cause of local democracy. Large size of gram Panchayats has not stood in their way in creating a strong base for Panchayat democracy.

8.10 Can the same thing be said with regard to the States having very small gram Panchayats? Are they quite comfortable with them? In all probability, the answer will be in the negative. Sheer number of gram Panchayats in these States is staggering. In the States of Andhra Pradesh, Maharashtra and Madhya Pradesh, the number of gram Panchayats range from around 22,000 to 31,000 and in undivided Uttar Pradesh, it was nearly 59,000. In the States like Rajasthan, Tamil Nadu, Gujarat and Punjab, the number of gram Panchayats vary between 9,000 and 14,000.

8.11 It is difficult to say as to what should be the optimum size of a gram Panchayat. The general principle is that it should not be too small to pose problems of viability and, again, it should not be too large to prohibit people's participation.

8.12 Let us consider first the issue of viability. **To be an institution of self-government, a gram Panchayat should, as far as possible, be a viable unit both financially as well as administratively. It should be capable of generating internal resources by using its own fiscal powers that include taxing power**. A small gram Panchayat which is too small cannot do this satisfactorily. Similarly, a gram Panchayat will remain deprived of the service of staff, if, because of its low income generation capacity, it cannot recruit staff of its own and on the other hand, the State Government also finds it difficult to give it full time staff. This is happening in the States like Rajasthan, Andhra Pradesh or Uttar Pradesh. Considered from these aspects smallnesss is more a curse than a blessing for gram Panchayats.

8.13 The Constitution mandates Panchayats at all levels, including gram Panchayats to prepare development plans. If the size of the gram Panchayat is too small, it cannot be a viable planning unit. Firstly, financial and human resources at the disposal of the gram Panchayat will be too small to plan and implement development schemes. Secondly, it is difficult for a small gram Panchayat to plan for infrastructure like roads, irrigation sources, health centres, schools, etc, since the areas they are expected to serve may in most cases stretch beyond its boundary.

8.14 It is for these reasons that we have strong reservations about too small gram Panchayats that have been set up in most of the major States. The kind of role we are envisaging for Panchayats including gram Panchayats cannot be performed by unviable institutions. We are therefore in favour of fixing a minimum population criterion in defining village under article 243G. Though somewhat arbitrary, *it seems that the minimum population of 'village' for the purpose of constituting a Panchayat may be 5000 which roughly corresponds to 1000 families*.

8.15 It may be argued that gram sabhas will be unworkable if gram Panchayats become large. This is true. Participation being one of the precious objectives of democratic decentralisation, effectiveness of gram sabha cannot be allowed to be sacrificed. In West Bengal and Kerala, each ward functions as gram sabha. Two meetings of these sabhas – are compulsory. In both the States, these ward level institutions have been given powers and functions. Obstacles to participation in large gram Panchayats may be avoided, if the patterns developed in Kerala and West Bengal are adopted. If found necessary, Constitutional provision may also be made along this line.

Direct Election of Chairperson of Gram Panchayat

8.16. Sub-clause (b) of clause (5) of article 243C of the Constitution specifically provides that the chairperson of the intermediate level Panchayat as well as district level Panchayat shall be elected by, and from amongst, the elected members thereof. This is perfectly in line with the practice of cabinet system of government that is prevalent in our country. However, under sub-clause (a), the power to decide the manner of electing chairperson of gram Panchayat has been left to the State Legislature. This means that the State Legislature has the option to adopt a presidential type system under which the chairperson of a gram Panchayat will be directly elected by the people. The logic behind this is not understood, unless the provision has been made only to leave an old practice undisturbed, without considering soundness of the system within the framework of governance the Constitution has given to us.

8.17. In a large number of States, namely, Andhra Pradesh, Orissa, Gujarat, Haryana, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh, Bihar and Tamil Nadu, the respective Panchayat Acts provide for election of the chairperson of gram Panchayat directly by the people. In a few States like West Bengal, Maharashtra, Kerala and Karnataka, however, the chairperson of gram Panchayat is elected by, and from amongst its elected members. Thus, in the latter case, there is uniformity among all the three-tiers in the manner of election of the chairperson.

8.18. There are several reasons to take a view that the practice of direct elections to the post of chairpersons is not sound for the democratic functioning of Panchayats. Firstly, in no other institution of government – Union, State, district or intermediate level Panchayat – such a system exists. To have a separate system for the gram Panchayat does not seem to have rationale. Secondly, under such a system all the executive powers of gram Panchayat get concentrated in the hands of its chairperson. It is nobody's case that the gram Panchayat should turn into chairperson-centric institutions. In that case, the ward members will have no role to play, even though they are also people's representatives. Developing a culture of collective responsibility within GP is, therefore, of absolute necessity. Unless the chairperson works in a team along with other members of the Panchayat, a culture of participative decision-making will not develop. Thirdly, there is an inherent contradiction in most of the State Acts where the chairperson is elected directly by the people, but a vote of no confidence against him or her can be passed not by the people but by two-third of the elected members. Advantage of such provision has been taken against many chairpersons of gram Panchayats, particularly Dalit Women Chairpersons. Data from two districts of Rajasthan (Alwar and Pali) show that as many as 61 no-confidence motions were brought for hearing between March 1997 and February 1998. Out of them as many as 56 cases related to gram Panchayat and only 5 to Panchayat samiti chairpersons or deputy chairpersons. Incidence of no-confidence motion is less in Panchayat samiti, because here chairperson is elected by the members themselves. It is also instructive that out of 61 victims of no-confidence motion, half were women[3]. This case study also highlights the point that in a system where chairperson is elected directly, he may not necessarily enjoy the confidence of majority of members of the gram Panchayat. In such a situation, gram Panchayat will turn into a hotbed of internal squabbles.

8.19. In view of the above, ***it is necessary to consider seriously as to whether the practice of direct election of Sarpanch of gram Panchayat should be dispensed with***.

MPs and MLAs in PRIs

8.20. In terms of sub-clauses (c) and (d) of clause (3) of article 243C, the State Panchayat Acts may make provision for *ex-officio* membership of the Members of the Parliament (house of the people as well as council of States) and Legislative Assemblies/Councils in the intermediate and district levels of Panchayat. Many State Acts have this provision. The Madhya Pradesh Act has even gone to the extent of enabling an MP or an MLA to have his nominee on the Panchayats. This is arbitrary and may be construed as unconstitutional. Some major States, on the other hand, have chosen to dispense with this non-mandatory provision of the Constitution. Maharashtra, for example, which has a long tradition of PRIs do not have such provision. Through a recent amendment, Kerala's Panchayat Act has repealed the earlier provision relating to the membership of MPs and MLAs in the district Panchayat and of MLAs in the Block Panchayat.

8.21. In fact, there is hardly any rationale behind the provision on *ex-officio* membership of MPs and MLAs in the Panchayats. It may be argued that as representatives of the people they have the responsibility to highlight the critical problems of the local areas at the State or national levels and, as such, they should have membership in the Panchayats. On the face of it, the argument does not have any strength. It is not necessary to be a member of the Panchayat to get acquainted with the local needs and problems. An MP or an MLA is also not required to represent his constituency in the Panchayats. For this, people have their separate set of representatives. The presence of MPs/MLAs in Panchayat is accordingly superfluous. Their presence in Panchayat quite often creates negative effect, because, they tend to dwarf the Panchayat members who are invariably less powerful politically. They may, thus, stand in the way of encouraging the growth of grassroots level leaders.

8.22. In view of the above, the ***enabling provision relating to the ex-officio membership of MPs and MLAs/MLCs as contained in sub-clauses (c) and (d) of clause (3) of article 243 deserve to be deleted. They may, however, be members of the District Planning Committee to be constituted by the Zilla Parishad***. (*see* Chapter 5).

Regulatory and Coordinating Machineries

8.23. The Constitution provides for a State Election Commission to conduct elections to the Panchayats in a systematic and impartial manner. Another important body is the State Finance Commission. *A few more bodies are needed for efficient functioning of the Panchayats, transparency in their functioning and promoting their accountability*.

Panchayat Tribunal

8.24. Election disputes go to munsiffs, subordinate judges or district judges. They are very busy functionaries and experience shows that election petitions are not disposed for an unduly long period and an environment of uncertainty hangs over the functioning of the concerned Panchayats affecting their work. To overcome this, **it would be useful to provide for the constitution of a *Panchayat Tribunal* in each State to deal with election disputes. An enabling provision may be made in the Constitution, leaving the details to the State Legislatures**.

State Panchayat Council

8.25. There is need for co-ordination among the Panchayats. They also need continued support from the State Government. It is, therefore, necessary that **there is a suitable machinery at the State level to bring about necessary co-ordination among them and between the Panchayats and the State Government**. Gujarat, Orissa and Karnataka Acts provide for such a body.

8.26. Keeping in view the necessity and importance of such a body, it may be considered whether a provision for Constitution of the ***State Panchayat Council under the chairmanship of the Chief Minister may be made in the Constitution on the analogy of the provision in article 263 of the Constitution relating to the Inter-State Council***. The leader of the opposition may be made ex-officio vice-chairman to provide a consensual approach to the development of Panchayats as fully democratic, efficient and responsible institutions.

State Audit Commission

8.27. Experience shows that there is considerable lack of accountability because of **inadequate provisions in law relating to audit of accounts of public bodies**. There is no time-frame to conduct the audit of accounts of a given year, submit the audit report or comply with the objections raised in the report. Delay in audit provides opportunity for misuse of fund, tardy implementation of projects and over-all weakening of the system. It is, therefore, necessary that **the provisions are made in this respect to ensure that all works related to audit (conduct of audit, submission of audit report and compliance with audit objections if any) are completed within a year of the close of a financial year.**

8.28. Provisions for audit of accounts of the Panchayats have been made in all Confirmity Acts. But the provisions differ from State to State. Conduct of audit is the responsibility of the Examiner of local accounts in some States. In others, it is done by an authority appointed for the purpose. A few State Acts provide for submission of audit report within a given period while there is no provision relating to completion of audit or compliance with audit objections in any Act.

8.29. It seems that there is necessity to make suitable provisions in the Constitution for introducing a uniform pattern throughout the country in-so-far-as matters relating to audit of Panchayat accounts are concerned. In this context ***there seems to be case for constituting an Audit Commission in each State with independent status. In the alternative, it is for consideration as to whether the Comptroller and Auditor-General of India may be either empowered to conduct the audit or lay down accounting standards for Panchayats.***

CHAPTER 9

Concluding Remarks

Integrating Part IX and IXA of the Constitution

9.1 The distinction between the 73rd and 74th Constitution Amendments appears to us artificial. The objective of both is the same: institutionalisation and empowerment of the institutions of self-government at the sub-state level for the purpose of decentralising the busines of governance and greater participation of people in the same. Rural and urban people do not constitute two separate categories. Both of them need transparent, participative and responsive local governments. What kind of functions the local governments in urban and rural areas should discharge may differ with each other in matters of detail. But, what is common in both the cases is that the local government should be capable of expressing the local will. Therefore conceptually, they belong to the same category and their basic features are common. So far as these basic features are concerned, they should be treated as one.

9.2 It is not surprising that as many as nine articles are identical or near identical in both Part IX and Part IXA of the Constitution. The provision relating to DPC finds mention in Part IX A, but is applicable to the Panchayats also. The institutions of SFC and SEC are common for both Panchayats and municipalities. Many subjects of 11th and 12th Schedules are also common.

9.3 In view of the above, it stands to reason that **Parts IX and IXA may be integrated into one part. All matters related to sub-state level institutions of self-government may be dealt in this part.**

Holistic View Decentralisation

9.4 A decentralised polity requires transfer of power and functions not only from State to the local level, but also from the Union to the State. It is acknowledged by everyone that in the matter of distribution of powers and functions of the State, bias of the Constitution is towards the Centre. There is much truth in the characterisation of Indian State as quasi-federal. Yet, the discourse on decentralisation gets concentrated in the sphere of State-local relations only. In order to pursue the goal of decentralised governance, one has to take a holistic view. The decentralisation discourse will remain incomplete if matters relating to Centre-State relations remain untouched. This issue, however, is beyond the scope of this Paper.

Note: The Commission is separately releasing Consultation Papers on “Empowering and Strengthening Local Self-Government in Cantonments” and “Decentralisation and Municipalities”.

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QUESTIONNAIRE
ON
REVIEW OF THE WORKING OF THE CONSTITUTIONAL PROVISIONS FOR DECENTRALISATION (PANCHAYATS)

[*Note*: Please attach additional sheets, if necessary]

1 (a) Do you consider that the implementation of the provisions of Part IX relating to Panchayats in the Constitution of India has been successful to achieve the desired objectives?

Yes ☐ No ☐

. (b) If your answer to part (a) above is in the negative, what, according to you, are the basic reasons for the failures in implementation?

(Not more than 200 words)

Reasons:

2. What, according to you, are the specific reasons for the State Governments in not holding elections to local bodies in time?

(Not more than 200 words)

Reasons:

3. (a) Do you consider that the powers of the State Election Commissions are adequate for their effective functioning or they are to be enhanced?

Adequate ☐ To be enhanced ☐

(b) Should the State Election Commissions be assigned the functions of:-

(i) delimitation of territorial constituencies of Panchayats and Municipalities

Yes ☐ No ☐

(ii) allotment of reserved seats to various electoral wards

Yes ☐ No ☐

(iii) rotation of reserved seats amongst the constituencies

Yes ☐ No ☐

4. Do you agree to the suggestion that in order to enhance the accountability of the State Government and the State Election Commission for holding elections to the Panchayats and Municipalities in time, suitable provisions should be made in the Constitution itself by making it mandatory for the State Election Commission to submit a report annually to the Governor in the

same manner as the Public Service Commission is required to submit report under clause (2) of article 323 of the Constitution and for the State Government to lay the same before the Legislature of the State with an Action Taken Report?

Yes ☐ No ☐

5. What, according to you, are the specific reasons for the State Governments in not giving full financial and administrative autonomy to the Panchayats and Municipalities in their functioning as units of self-government?

(Not more than 200 words)

Reasons:

6. (a) Do you consider that any amendments are required in article 243G of the Constitution for enabling the Panchayats to function as the third stratum of Government?

Yes ☐ No ☐

(b) If so, please give details:

(Not more than 200 words)

7. The Paper suggests the following options for the Panchayats and Municipalities:-

(a) that they should constitute the third stratum of governance, i.e., after the Centre and the State.

(b) that they should be the creatures of State Legislature with control by the State Government

(c) that they will continue to remain as local authorities as envisaged under entry 5 of List II of the Seventh Schedule to the Constitution.

What according to you is the best option:-

(a) ☐ (b) ☐ (c) ☐

8. (a) Do you consider it appropriate to vest legislative powers in Panchayats (and Municipalities)?

Yes ☐ No ☐

(b) Do you consider it appropriate to empower the Panchayats (and Municipalities) to make laws in certain areas of taxation only?

Yes ☐ No ☐

(c) If the answer to part (b) is yes, please state the extent of power to be given.

(not more than 200 words)

9. Should the Eleventh and Twelfth Schedules be restructured to rationalize and avoid duplication of provisions and also to provide more fiscal powers to the Panchayats and Municipalities ?

Yes ☐ No ☐

10. (a) Should a legislative list called the "Local List" be carved out of the State List and the Concurrent List ?

Yes ☐ No ☐

(b) If yes, please give details of your suggestion.

(Not more than 200 words)

11. (a) Do you consider that the institutional mechanism of State Financial Commissions needs any changes/ further strengthening ?

Yes ☐ No ☐

(b) If yes, please give your suggestions in this regard.

(Not more than 200 words)

12. Should a Constitutional obligation be created specifying laying of Action Taken Report on the recommendations of the State Finance Commission within a period of six months from the date of receipt of report of the Commission, before the appropriate Legislature?

Yes ☐ No ☐

13. Should the power to specify the maximum amount of annual tax on professions, trades, callings and employment as provided in clause (2) of article 276 of the Constitution be delegated to Parliament to specify by law?

Yes ☐ No ☐

14. It is noticed that one of the impediments in proper functioning of Panchayats (and Municipalities) is lack of adequate funds. Should it, therefore, be advisable to empower the Panchayats (and Municipalities) to borrow finances from-

(a) financial institutions

Yes ☐ No ☐

(b) capital markets

Yes ☐ No ☐

15. Should the jurisdiction of Zilla Parishad be the entire district, combining both rural and urban areas?

Yes ☐ No ☐

16. Should the district planning be the function of Zilla Parishad?

Yes ☐ No ☐

17. What, according to you, should be the composition of the District Planning Committee?

(Not more than 200 words)

18. What should be the role of Gram Sabha in the functioning of a Gram Panchayat?

(Not more than 200 words)

19. Should Panchayats (and Municipalities) have separate cadre of officers and other employees independent from the State cadres?

Yes ☐ No ☐

20. Do you agree to the suggestion that article 309 of the Constitution should be amplified to include the posts and services under the Panchayats (and Municipalities) within its ambit?

Yes ☐ No ☐

21. Do you consider that the employees of the Panchayats (and Municipalities) should be given Constitutional protection as available to persons appointed in connection with the affairs of the Union or of a State?

Yes ☐ No ☐

22. Please give details of your suggestions for making Gram Panchayat a viable unit of self-government, both financially as well as administratively?

(Not more than 200 words)

23. (a) Should a maximum population of a village for the purpose of constituting a Panchayat be prescribed?

Yes ☐ No ☐

(b) If yes, please specify the maximum population?
(i) 5,000 (ii) Any other maximum population, say : ____

24. (a) In certain States, the Chairperson of a Gram Panchayat is directly elected. Do you agree to the suggestion that the Chairperson of Gram Panchayats should be elected from amongst the members and not directly?

Yes ☐ No ☐

(b) Please give your suggestions supported by reasons:-

(Not more than 200 words)

25. (a) Should the Members of Parliament and Members of State Legislatures be allowed to function as members of Panchayats (and Municipalities)?

Yes ☐ No ☐

(b) Please give reasons for your view:-

(Not more than 200 words)

26. Should the Members of Parliament and Members of State Legislatures be allowed to function as members of District Planning Committees?

Yes ☐ No ☐

27. (a) Do you consider it necessary to constitute any new bodies for the efficient functioning of the Panchayats?

Yes ☐ No ☐

(b) If yes, please give details of your suggestions?

(Not more than 200 words)

28. It is found that regular courts are very busy and take long time in disposing of election petitions relating to Panchayats (and Municipalities). Hence, it is suggested that each State should constitute a Panchayat Tribunal to deal with such election disputes. For this, an enabling provision could be made in the Constitution leaving the State Legislature to make detailed law. Do you subscribe to this suggestion?

Yes ☐ No ☐

29. Should State Panchayat Councils with the Chief Minister as the chairperson be constituted on the lines of Inter-State Council constituted under article 263 of the Constitution for coordinating between Panchayats *inter se* and the State Governments?

Yes ☐ No ☐

30. (a) What should be the mechanism for auditing the accounts of the Panchayats (and Municipalities)?

(Not more than 200 words)

(b) Should the Comptroller and Auditor-General of India be empowered to-

(i) conduct the audit;
(ii) to lay down accounting standards;
(iii) or both (i) and (ii)?

31. Do you consider it necessary that Part IX relating to Panchayats and Part IXA relating to Municipalities in the Constitution be integrated by omitting the provisions which are a duplication of each other and rationalizing the other provisions?

Yes ☐ No ☐

32. Do you have any other suggestions to make on the issues relating to Panchayats dealt with in the Consultation Paper? If so, please give details.

(Not more than 200 words)

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[1] Probably, they are referring to the provisions of article 40.
[2] This section draws heavily on ISS, 2000 and ISS, 1998.
[3] Panchayati Raj Update