

**NATIONAL COMMISSION TO REVIEW THE
WORKING OF THE CONSTITUTION**

**A
Consultation Paper*
on**

DECENTRALIZATION AND MUNICIPALITIES

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CHAPTER – 1

CONSTITUTION OF MUNICIPALITIES, ELECTIONS AND STATE ELECTION COMMISSIONS

A. Constitution of Municipalities

1.1 Part IXA relating to Municipalities which contains articles 243P to 243ZG was inserted in the Constitution *vide* the Constitution (74th Amendment) Act, 1992. Article 243Q of the Constitution specifies, in broad terms, that a Municipal Corporation shall be constituted for a 'larger urban area', a Municipal Council for a 'smaller urban area' and a Nagar Panchayat for 'an area in transition from a rural area to an urban area'. The determination of such areas is left to the States taking into account some criteria like total population, density of population, non-agricultural employment, annual revenue generation, etc. A lot of variation exists amongst the States.

Criteria

1.2 To constitute a Municipality in Andhra Pradesh, the population criteria is 40,000 and above. In Uttar Pradesh and Rajasthan it ranges from one lakh to five lakhs, in Himachal Pradesh it is from 5,000 to 50,000 whereas in Tamil Nadu the population should not be less than 30,000. The definition of a Nagar Panchayat is equally varied and the interpretation of population and other criteria are often irrational and casual. Because of this, municipalisation of urban areas is resisted. There are also considerations like

lower tax liability, availability of more grants in the case of rural areas, etc., which act as a disincentive to municipalisation even though it may be justified. Recently it is seen that areas already municipalised are denotified and made into Panchayats once again as happened in 29 places in Haryana and in some parts of the Mumbai metropolitan area.

1.3 Another criteria is density of population per sq.km. Here also some State laws take cognizance but some others ignore it completely. In Andhra Pradesh for Corporations it is 10,000 and above, while in Karnataka it is 3000 and above. States like Uttar Pradesh, Himachal Pradesh, Madhya Pradesh, Tamil Nadu, Kerala and Rajasthan have not specified the required density range.

1.4 The third criterion is employment in non-agricultural activities. In Andhra Pradesh, to constitute a Corporation, 85% of the population should be in non-agricultural activities. In Karnataka, this should not be less than 50%. States like Kerala, Tamil Nadu and Rajasthan have not specified this criterion in their Acts.

1.5 The fourth criterion of annual revenue generation also varies from State to State. In Andhra Pradesh, annual revenue should be rupees four crore and above, in Himachal Pradesh it is rupees two crore and above, in Tamil Nadu it ranges from Rs. 5 lac to 30 crore, whereas in Karnataka it is not less than Rs. 6 crore per annum. States like Uttar Pradesh, Kerala, Rajasthan and Madhya Pradesh do not specify any criterion of this nature.

1.6 The 65th Constitution Amendment Bill, the precursor of the Constitution (74th Amendment) Act, 1992 had specified a population range of 10 to 20,000 for a Nagar Panchayat, 20,000 to 3 lakh for a Municipal Council and 3 lakh or above for a Corporation. The definition of an urban area is relied on the Census. These population criteria have been omitted in the 74th Amendment. They need to be reintroduced to bring about some uniformity.

Composition

1.7 Article 243R stipulates that all the seats in a Municipality shall be filled by persons chosen by direct election from territorial constituencies. Though a State can provide for the representation of MPs, MLAs, etc. a Municipality is regarded principally as an elected body. The determination of territorial constituencies referred to as municipal wards is a first and essential step for the composition of a municipality.

1.8 However, the number of wards within municipalities has been left to be determined by the States. Here again the range varies from State to State. Generally, State laws seek to limit the total number of wards based on population. In Uttar Pradesh it is 60-110, in Himachal Pradesh it is not more than 25, in Madhya Pradesh it varies between 40 to 70, in Karnataka it is between 30 to 100, in Rajasthan it is between 60 to 70 and in Punjab it is between 50 and 100 for Corporations. However, the population within each ward is the denominator and there has to be parity in the ratio between population and the seats. The table below shows a wide variation here. Within Maharashtra, for instance, the average population per ward is 45,000 in Mumbai, 22,000 in Nagpur and 14,000 in Pune. Within West Bengal, it is 31,000 in Calcutta, 19,000 in Howrah and 8,000 in Siliguri. Article 243C specifically stipulates such parity within a State so far as Panchayats are concerned. But there is no corresponding proviso in article 243R. Such parity is essential at least within the same State and the same class of municipalities such as Municipal Corporations, Municipal Councils or Nagar Panchayats.

Table 1

Average population per Councillor in some Municipal Corporations

Name of Corporation	Population 1991	No. of Corporators/Ward	Average Population per Councillor
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1.	Delhi	7206704	134	53700
2.	Pune	1566651	111	14000
3.	Mumbai	9925891	221	45000
4.	Nagpur	1624752	75	22000
5.	Calcutta	4399819	141	31200
6.	Howarah	950435	50	19000
7.	Asansol	435119	50	8700
8.	Siliguri	376592	47	8000
9.	Chandernagore	120379	33	3700
10.	Chennai	3841396	155	25000
11.	Bangalore	2660088	100	26600
12.	Ludhiana	1042740	70	15000
13.	Gwalior	690765	60	11500
14.	Bhopal	1062771	66	16000
15.	Indore	1091674	69	16000
16.	Ratlam	183375	49	3700
17.	Jabalpur	741927	60	13000
18.	Satna	156630	45	3500
19.	Raipur	438639	54	8100
20.	Durg	150645	51	3000
21.	Bilaspur	179833	55	3300
22.	Lucknow	1619115	110	14700
23.	Varanasi	929270	80	11600
24.	Kanpur	1874409	110	17000
25.	Agra	891790	80	11000
26.	Allahabad	792858	70	11000
27.	Moradabad	443701	60	7500
28.	Aligarh	480520	60	8000
29.	Dehradun	270159	25	11000
30.	Meerut	753778	70	11000
31.	Gorakhpur	505566	60	8500
32.	Gaziabad	511759	60	8500
33.	Bareilly	587211	60	10000
34.	Guntur	471020	50	9500
35.	Vijaywada	757141	50	15000
36.	Vishakapatnam	720024	50	15000
37.	Kurnool	274795	44	6500
38.	Warrangal	466877	50	9500
39.	Jaipur	1458483	70	21000

1.9 Regarding representation of persons having special knowledge or experience in Municipal administration, several States have made a provision and their numbers vary from State to State. It is interesting to note that in Haryana, due to political difficulties in nominating such persons, the Haryana Municipal (Second Amendment) Act, 2000, has removed the provision altogether. In Delhi, the provision for such nomination has also become the subject of litigation. Since an acceptable definition of knowledge and expertise appears to be elusive, it may be better to drop the provision altogether. Andhra Pradesh is the only State where one person belonging to the Minority Community is nominated to a Municipality, although without the right to vote.

1.10 Delimitation of municipal wards is an important step to elections and constitution of municipalities. Though article 243U confers on the Municipalities the "right to live" and a clear tenure of 5 years, political and other considerations have prompted some State Governments and individuals to delay the elections, usually by seeking the intervention of courts. Hyderabad amply illustrates the problem. Elections have not been held for the Hyderabad Corporation for several years. In 1998, the State Government proposed to extend the city boundaries by including 11 adjoining municipalities. Elections were deferred pending the reorganisation. Early in 2000, the decision to enlarge the boundaries was given up and elections were organised for the 11 surrounding municipalities later in the year. In the meantime a petition was moved before the High Court seeking delimitation of municipal wards on the basis of the 1991 population, though such delimitation has not been held anywhere else in the State. However, in the case of Hyderabad, the High Court has stayed elections till delimitation is done. The arguments made in this chapter on regularity of elections apply here as well. Fresh delimitation should not be a ground for delaying elections.

Election and Removal of Mayors / Chairpersons

1.11 Under article 243R the manner of election of Mayors/Chairpersons is left to be determined by the State. In Rajasthan, Himachal Pradesh, Haryana, Karnataka, Kerala, West Bengal, Maharashtra and Gujarat, the Mayors/ Chairpersons are elected from amongst the elected Councillors. In Andhra Pradesh, Uttar Pradesh, Madhya Pradesh and Tamil Nadu, Mayors/ Chairpersons are elected directly by the people. The term also varies. Table below contains the details:

Table 2
Mode of Election of Chairperson and Term

STATE	ELECTION	TERM
Andhra Pradesh	Direct	Five years
Assam	Indirect	One year
Bihar	Indirect	--
Delhi	Indirect	One year
Gujarat	Indirect	Two and Half years
Haryana	Indirect	One year
Himachal Pradesh	Indirect	One year
Karnataka	Indirect	One year
Kerala	Indirect	Five years
Madhya Pradesh	Direct	Five years
Maharashtra	Indirect	Two and Half years
Orissa	Indirect	One year
Rajasthan	Indirect	Five years
Tamil Nadu	Direct	Five years
Uttar Pradesh	Direct	Five years

1.12 It is to be considered whether the manner of electing a Mayor or a Municipal Chairperson should be uniform and even if that varies the term of office should be uniform or at least a minimum term should be prescribed. It stands to reason that the term of office of the head of a municipality should be the same as for the Municipality.

Removal of Mayor/Chairpersons

1.13 The provisions in State laws for removing a Mayor/Chairperson through a no confidence motion vary from State to State. The table below indicates the extent of variations. It may appear that some provisions limiting the frequency of such motions and requiring specified majorities for their passage may appear stringent in comparison to a Council of Ministers in a State. But these provisions in some State laws were inspired by proposed articles 243B and 243R of the 64th and in 65th Constitutional Amendment Bills introduced in 1989. Some States went ahead and changed their laws without waiting for the Bills to be enacted.

Table 3
Procedure for No-confidence Motion against Mayor

State	Tabling of Motion	Notice of Requisition	Passing of Motion	Repetition of last motion
Haryana			By a majority of not less than two-thirds	
Kerala	Not within six months of assumption of office	By not less than one-third of the Councillors.	By more than one-half of the elected Councillors.	Cannot be repeated before six months of the last motion
Madhya Pradesh	Not before two years of the assumption of office	By not less than half of the total number of elected councillors.	More than three-fourths of coun-cillors present and voting, such majority should be more than two-thirds of the total councillors.	Cannot be repeated before one year of the last motion
Himachal Pradesh	Not before six months of the assumption of office	By not less than majority of total elected Councillors	To be passed by majority of members pre-sent, the quorum of which should not be less than one half of its total elected members	Cannot be repeated before six months of the last motion
Rajasthan	Not before one year of the assumption of office	By not less than one-third of the Councillors	By a majority of two-thirds	Cannot be repeated before two years of last the motion
Uttar Pradesh	Not before two years of the assumption of office	By not less than one-half of the total number of Councillors.	By more than one-half of elected Councillors	Cannot be repeated before two years of last month
Maharashtra		By not less than one-third of the Councillor	Majority of the total number of members	
Tamil Nadu	Not before six months	By not less than one-	By three-fourth of the	Cannot be repeated

State	Tabling of Motion	Notice of Requisition	Passing of Motion	Repetition of last motion
	of assumption of office	half of the total number of elected Councillor	total strength of the elected Councillors	before six months.
West Bengal	Not before six months of assumption of office	By not less than one-third of the members.	By a majority of the total number of members.	

1.14 So far as the term of office is concerned, one year tenure makes the Mayor mainly ceremonial. The provision of two-and-a-half years in Maharashtra and Gujarat is an after thought brought about by a recent amendment and is really a compromise to give a chance of holding office to at least two people within a municipality's tenure of 5 years. Some political parties find even two-and-a-half years as too long and would like the Mayors to 'resign voluntarily' after one year. In April 2000, a lady mayor of Nagpur resigned after completing only 11 months in office in obedience to her party's decision and another lady Councillor from the party became the Mayor. The motive seems to be office rather than continuity in the interests of municipal administration.

1.15 It will be appropriate to elicit public opinion regarding the manner of elections and removal as well as tenure of the Mayor/Chairperson. Amendment Bills of 1989 which required a majority of the total House plus two-thirds majority of those present and voting for chairpersons of Panchayats and Municipalities to be removed by motion of no-confidence were intended to enable continuity in Municipal Administration and discourage frequent motions of no-confidence on flimsy grounds.

1.16 Another important aspect related to the election of Mayors and Municipal Chairpersons is who elects them. Where elections are indirect as in many States, the intention is that the Mayors will be elected by and from amongst the elected members of the municipality. In the case of the Panchayats, Clause (5)(b) of article 243C of the Constitution specifically states so. However, in the case of Municipalities, there is no such provision in article 243R. In States where MLAs and MPs are represented with voting rights a piquant situation arises as their votes have been the determining factor in the election and removal of chairpersons rather than the votes of the elected councillors. This is discussed in further detail in a subsequent chapter on MPs and MLAs.

Suggested Legal Changes

1.17 The suggested legal changes are:

- (1) Article 243Q provides for a Nagar Panchayat for a transitional area, Municipal Council for a smaller urban area and a Municipal Corporation for a larger urban area. While clause (2) allows the States to take into consideration various other factors, given the very wide variance, it is desirable that a population classification is provided in the Constitution itself. Given the increasing rate of urbanisation, its density and economic factors, a Corporation should have a minimum population of 5 lakhs, a Municipal Council 50,000 and a Nagar Panchayat 20,000. Provision can be made to preserve previously existing municipalities.
- (2) The proviso to article 243Q States that a municipality may not be constituted for an Industrial township under certain circumstances. This proviso did not figure in the Constitution Amendment Bill relating to the 73rd Amendment Act introduced in Parliament in July 91 or in the Bill as reported upon by the Joint Committee in July 92. This appears to be an after thought in response to some suggestions from certain quarters. The provision goes against the grain of decentralisation and local self-government. Hence, the proviso may be deleted.

- (3) Article 243U (1) contains a proviso that where a municipality is superseded "it shall be given a reasonable opportunity of being heard before its dissolution". There is no corresponding proviso in article 243E relating to Panchayats. Hence, a similar proviso may be inserted.
- (4) Whenever a Panchayat or a Municipality is superseded a report stating the grounds for such dissolution should be placed before the State Legislature. This will be a deterrent to treating supercession casually and resorting to it because of political expediency. This provision is on par with a report being placed before each House of Parliament in the event of a proclamation of President's rule in a State under article 356.
- (5) In determining the number of municipal wards and in delineating them, there should be parity in the ratio between a seat and the population and such ratio should be uniform within a State among any category of municipalities such as Corporations, Municipal Councils and Nagar Panchayats:
- (6) The term of the Mayors/Chairpersons should be co-terminus with the term of the municipality. Provision for this should be made in the Constitution itself.
- (7) The procedure for removal of Mayor/Chairperson through motion of no confidence should be uniform. Here again a provision should be made in the Constitution requiring majority of the House and two-thirds majority of those present and voting.
- (8) Municipal Chairpersons and Mayors should be elected only by and from amongst the elected members of the municipality.

B. Qualifications and Disqualifications for Membership in Municipalities

1.18 Article 243V of the Constitution provides that the disqualification for being chosen or for being a member of a municipality shall be the same as is applicable for the purposes of election to the Legislature of the State concerned. A State is free to stipulate other qualifications. All the States have made provisions in their respective Acts. Most States specify 21 years as the minimum age for contesting elections. The name should be in the electoral rolls and in the case of a reserved seat the candidate should belong to that category.

1.19 Regarding qualifications and disqualifications of candidates for elections to Parliament and State Legislatures, the Representation of the People Act, 1951 provides a general framework which has been broadly followed in most of the States for local elections also. Some additional qualifications prescribed by the States vary significantly as can be seen in the table in **Annexure 1.1**. In some States criteria like the two-child norm have been adopted and the impact of the same on candidates and voter reactions needs to be studied in detail. The Orissa evidence shows that the two child norm has not stood in the way of women candidates from contesting elections. Orissa's experience in the general elections for six urban local bodies in April 2000 confirmed this, wherein all seats reserved for women had multiple candidates contesting the seats.

1.20 Some disqualifications, as in Himachal Pradesh or Haryana barring all licensed architects, town planners, surveyors, etc., from contesting local elections merely because they are licensed by the Municipality may be carrying the notion of conflict of interest too far. It may be expected that the State laws will be modified in the context of experience.

1.21 Contesting simultaneously for a number of seats is a problem in some States. Rajasthan and Madhya Pradesh are two States where contesting for more than two seats is not allowed. This is in keeping with the stipulations for the Lok Sabha and Assembly polls. Failure to submit accounts of election expenditure is a disqualification in some States. The State Election Commissions have prescribed various norms in this regard as may be seen in **Annexure 1.2**. In Kerala, failure to submit accounts resulted in the disqualification of more than 12,000 candidates in the Panchayat polls.

1.22 Whatever may be the qualifications or disqualifications for contesting panchayat and municipal elections are, presently they are found to be scattered in different laws and regulations. A unified law for this purpose on the pattern of the Representation of the People Act of 1950 and 1951 is needed.

Suggested Legal Changes

1.23 The suggested legal changes are:

- (1) Articles 243T and 243V contain identical provisions so far as disqualifications for membership in a panchayat or a municipality is concerned. The main principle followed is that the grounds of disqualification should be the same as applied for elections to the State Legislatures. State laws may make additional provisions. State laws may compile all provisions regarding qualifications and disqualifications for elections in a single law and in the meantime, State Governments should prepare a manual compiling existing provisions for public information.
- (2) While SEC should have the authority to prescribe ceiling of expenses and code of conduct and while these may vary depending on the conditions of different States, State laws should clearly specify the powers of the SEC to disqualify candidates or set aside elections in the event of violations of those laws.

C. Regularity of Elections

1.24 The 73rd & the 74th Constitution Amendments clearly make elections to local bodies mandatory every five years. Two rounds of elections have already been held in the States of Andhra Pradesh, Madhya Pradesh, Haryana, Maharashtra, Gujarat, Kerala, Orissa, Andaman & Nicobar Islands, Rajasthan & Uttar Pradesh (See **Annexure 1.3**). In the States of Assam, Goa, Himachal Pradesh, Daman & Diu, Karnataka, Manipur, Tamil Nadu and Punjab and the National Capital Territory of Delhi and Union territory of Daman and Diu, elections were held once. Apart from the Union territory of Pondicherry, Bihar is the only State where local body elections have not been held so far. It has recently announced to hold Panchayat elections after 23 years. Jammu & Kashmir has recently adopted the 74th Amendment and has announced that the local body elections will be held in 2001. The 74th Constitution Amendment has not been applied to Mizoram, Nagaland and Meghalaya. There are no urban local bodies in the Union territories of Dadra & Nagar Haveli and Lakshadweep.

1.25 Elections to urban local bodies have returned about 73,000 representatives from about 3500 Corporations, Municipalities and Nagarpanchayats (See **Annexure 1.4**). The turnout during these elections has been in the range of 65 to 75 per cent which is much higher in comparison to the Lok Sabha and Assembly polls.

1.26 Though elections have been held in most States, their regularity continues to be a problem. In Uttar Pradesh, elections to over 58,000 Panchayats, 904 Intermediate Panchayats and 83 Zilla Panchayats were due in May 2000. Shortly before, the State Government promulgated an Ordinance postponing these elections to October 2000 on the plea that the delimitation process has not been completed due to creation of 12 new districts in the State. The Ordinance was challenged in the High Court through a Public Interest Litigation. The High Court quashed the Ordinance ruling that it violated the Constitutional provisions fixing a five year tenure and asked the Election Commission to hold elections as per Schedule. The State Government then challenged this ruling in the Supreme Court. Elections were then conducted in June 2000 only after the directions of the Supreme Court.

1.27 Similarly, in Haryana, Municipal elections which were due in February, 2000 were deferred due to the announcement of Assembly polls. In this case also the Supreme Court had to give directions to the State Government to hold elections to local bodies within a stipulated time. The elections could be held only in March and April 2000 after the Court's intervention.

1.28 In Andhra Pradesh, elections to Hyderabad and Rajahmundry Corporations and five Municipalities were not held as the exercise of delimitation of wards had not taken place. In the case of the Hyderabad Municipal Corporation, the High Court has directed to postpone elections till the Wards are delineated on the basis of the 1991 Census instead of 1981 Census (through WP No. 13097 of 1993 judgement on 29.12.1994). The Government of Andhra Pradesh has now issued a notification on

delimitation of wards in the twin cities of Hyderabad and Secunderabad on the basis of the 1991 Census even though the 2001 Census has already been completed.

1.29 Earlier, a Division Bench of the Andhra Pradesh High Court had struck down an Ordinance promulgated by the State Government in February, 2000 seeking postponement of elections to Mandal and Zilla Parishads and ordered that elections be completed before 30th June, 2000. The State Government's contention was that on the basis of an unanimous resolution of the Andhra Pradesh Legislative Assembly, a Bill to amend the Constitution to allow State Governments not to have territorial constituencies for Intermediate and District Panchayats had been introduced in Parliament. Therefore, elections to such levels at that stage would result in unnecessary expenditure and complications and hence the Ordinance had to be issued. A writ petition was then filed by the State Election Commission, later joined by some NGOs challenging the validity of the Ordinance. The Andhra Pradesh Government filed a Special Leave Petition in the Supreme Court against the High Court's order. The Supreme Court has subsequently dismissed the SLP (SLP (Civil) No.7979 – 7986/2000) filed by the Government and has directed the State Government to complete the election process by March, 2001.

1.30 However, it is still uncertain whether elections would be held. Recently another Writ Petition (W.P. No. 17501 of 2000) has been filed in the Andhra Pradesh High Court challenging the method of allotment of seats to the Backward Classes without their population being ascertained on scientific basis. The High Court on 13th December, 2000 directed the State Government to collect data of BC population once again on a scientific basis before 1st May 2001 and hold elections on 31st May 2001. The High Court asked the State Election Commission to hold elections to Panchayats only after this process was over.

1.31 It is thus evident that elections to local bodies continue to be a problem even though the 73rd and 74th Amendments to the Constitution make elections to these bodies mandatory. Time and again issues relating to reservation and delimitation have been cited as reasons for postponing local body elections by various States. In most cases, Public Interest Litigation and Court orders have been necessary to ensure elections. The Supreme Court in its judgement dated 12.08.1997 (W.P. Civil No.719 of 1995) clearly stated that articles 243E and 243U on Panchayat and Municipal elections respectively are mandatory and not discretionary. To quote "failure to hold elections except in case of genuine supervening difficulties amounts to flouting the Constitution. Supervening difficulties have been adequately described such as natural calamities like flood, earthquake or extremely urgent situation prevailing in the State for which election cannot be held within the time frame."

Delimitation of Constituencies

1.32 Delimitation of Panchayat and Municipal Constituencies has been cited as an excuse for delaying elections. This is because the responsibilities are not determined clearly. In Haryana, Madhya Pradesh, Uttar Pradesh, Rajasthan and Punjab, the task of delimitation of constituencies vests with the State Government. In Gujarat, Maharashtra, Kerala and West Bengal, the State Election Commission is the authority for delimitation of Constituencies.

1.33 The 73rd and 74th Constitution Amendments clearly vests the power to conduct local elections in the State Election Commission. The delimitation process forms an integral part of "conduct of elections". It is neither necessary nor appropriate for the State Governments to take up this responsibility. Besides, keeping in view that the process and outcome of delimitation has come into criticism in some States, it is better that this work is entrusted to the State Election Commissions, which are neutral and independent bodies.

1.34 It is also observed that in some States the delimitation exercise was taken up only when the local elections were due even though the process could have been initiated well before the elections. If the exercise is taken up only just before the elections, it also provides a reason for possible postponement of elections. The question that arises is that should not there be a provision to ensure that the delimitation process is conducted at least six months or one year before the expiry of the term of local bodies. The formation of new districts or changing of administrative boundaries is another factor requiring fresh

delimitation and resulting in possible delay. It is pertinent to mention that in the country as a whole delimitation of Lok Sabha and Assembly Constituencies has not been done since 1976 and elections have been held on the basis of the constituencies delimited at that time the insistence on fresh delimitation for local elections appears to be motivated in some cases and used as ploy for delaying elections.

Reservation

1.35 Reservation and rotation of reserved constituencies and the division of responsibilities in this regard is another reason for delays. The responsibility vests in the State Government in Madhya Pradesh, Rajasthan, Andhra Pradesh, Uttar Pradesh, Tamil Nadu, Karnataka, Haryana and Punjab and the State Election Commission has no role to play. On the other hand in Maharashtra, Gujarat, Kerala and West Bengal, the State Election Commission is responsible for the reservation arrangements.

1.36 In Gujarat, the State Government fixes the number of seats including those to be reserved for Scheduled Castes, Scheduled Tribes, Backward Classes and Women. After the seats have been quantified, allotment of reserved seats to various electoral wards is the responsibility of the State Election Commission. Seats are reserved on the basis of the percentage of population of Scheduled Castes and Scheduled Tribes in different constituencies in a descending order. The reserved seats are allotted by rotation to different constituencies. A note describing the arrangements in Gujarat in some detail is at **Annexure 1.5**. The procedure in Maharashtra is explained in **Annexure 1.6**.

1.37 In Rajasthan and Madhya Pradesh, the seats for Women and Backward Classes are allotted by lottery. In Uttar Pradesh, though seats are reserved by rotation, the procedure has been changed from one election to another. Rotation of seats during the first elections in 1995 was in descending order but in the later elections of 2000, this was done in the ascending order.

1.38 In Andhra Pradesh, it is the State Government which notifies the reservations and unless this is done, the State Election Commission is not able to issue the election notification. Because of this, the State Election Commission had to approach the Court to direct the State Government to notify the reservation. Apart from the issue of the Ordinance mentioned earlier, this was one of the important matters to be considered by the Court.

1.39 Whatever may be the procedure for reservation and rotation, its impact is also to be considered when the rotation takes place during every election. A person elected on the reserved seat does not get an opportunity of occupying the same seat for a second term. This proves to be a disincentive for members to work hard for their constituency. It is particularly disadvantageous to women and fresh entrants to build up their capacity and experience as elected representatives. The reserved seats of a constituency may be continued for a fixed period and linked to delimitation on a periodical basis such as the Census.

Suggested legal changes

1.40 The suggested legal changes are:

Ensuring regular elections

1.40.1 Articles 243E and 243U of the Constitution contain identical provisions. Clause (1) of article 243E states 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. Similarly, clause (1) of article 243U states that every municipality, 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. The provisions are clear and unambiguous and hence, there is no scope for any other interpretation. Clause (3) of article 243E and that of 243U further State that elections to constitute a Panchayat and a municipality respectively shall be "completed before the expiry of its duration specified in Clause (1)"

Both articles 243E and 243U, in sub-clause (1) respectively contain a provision for dissolution of panchayat or municipality. Here again sub-clause (b) of clause (3) in both the articles stipulate that elections have to be completed “before the expiration of a period of six months from the date of its dissolution.”

To reinforce the existing provisions in the Constitution, the following additional stipulations may be considered:

- (a) It shall be the duty of a State and the Union (in case of panchayats and municipalities located in Union territories) to ensure the completion of elections as stipulated.
- (b) It should also be duty of the State Election Commissioner to ensure this and in the event of possible delay make a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfill the requirements of the Commission.
- (c) Article 243K(l) and article 243ZA(l) State that the “superintendence, direction and control of the preparation of electoral roles and the conduct of all elections to the panchayats/municipalities shall be vested in a State Election Commission.” This is a composite set of responsibilities. The preparation of electoral roles and the conduct of elections involve several processes and actions which are closely inter-related. The words, “superintendence, direction and control” are comprehensive and unambiguous and do not permit any artificial division. Clause (4) of 243K and Clause (2) of 243ZA do provide for a State Legislature to make provisions with respect to all matters relating to interaction with these elections. However, this has to be subject to the provisions of the Constitution and can relate only to processes to be followed and guidelines for this purpose so that such processes serve public interest and ensure free and fair elections. They do not permit splitting up of the composite responsibilities as stated in articles 243K and 243ZA. However, as experience indicates, certain important parts of these responsibilities such as delimitation of territorial constituencies or reservation of seats or rotation of such reservation among constituencies have been assumed by some State Governments. The effect of this has been to enable these State Governments to intervene in the composite and integrated process of conducting elections and thereby hold up the same if they so chose to do. Articles 243K and 243ZA may, therefore, be suitably amended to specify that the responsibility for the conduct of elections shall include all preparatory steps for the same including the electoral roles, delimitation, reservation, rotation and matters connected therewith and the responsibility for the same shall vest with the State Election Commission.

Electoral Rolls and Delimitation

- 1.40.2 (a) Under articles 243K and 243ZA, the preparation of electoral rolls is the responsibility of the State Election Commission (SEC). The general practice has been for the SECs to adopt the electoral rolls available for the Assembly and Lok Sabha elections. In some cases, however, the electoral rolls for the local elections are prepared afresh and the two rolls may differ. The Constitution should specifically stipulate a common electoral roll. The processes for preparing the roll as also its periodical revision should be uniform throughout the country.
- (b) The Election Commission of India has been evolving over a period of time a system whereby each polling station in an Assembly constituency has a unique identity which is linked to the roll of electors using that polling station. It is possible that panchayat and municipal elections may require more polling stations. If so, these additional polling stations should be extensions or sub-units of the main polling station. This will ensure a ‘building block’ approach for elections in the country whereby the smallest unit will be a polling station on a sub-unit theory. A certain number of these will form a ‘panchayat ward’ or a ‘municipal ward’ which in turn will be grouped into panchayats and municipalities or Assembly segments and Lok Sabha constituencies. The voter is the same. The relevant R.P. Act and State laws should specify that common polling stations should be used for elections to local bodies, State Legislatures and Parliament.

- (c) While delimitation of the constituencies for panchayat and municipal elections should be under the control and direction of the SEC, the Constitution should stipulate that such delimitation should be adjusted after every census and not for every election. This will be in keeping with articles 82 and 170 of the Constitution requiring readjustment of Assembly and Lok Sabha Constituencies.
- (d) The State laws should provide guidelines for the delimitation work such as parity in the ratio between the population of a territorial constituency and the number of seats within the same class of panchayats or municipalities. The extent of permissible variations should also be mentioned. Parity as a requirement is already stipulated in the proviso to article 243C so far as Panchayats are concerned but is missing in article 243R relating to municipalities.
- (e) State laws should specify that changes in the administrative boundaries of districts, sub-divisions, taluks, police stations, etc., should not be made within six months prior to a panchayat or a municipal election.

Reservations

- 1.40.3 (a) Articles 243D and 243T contain identical provisions so far as reservation of seats in panchayats and municipalities for SC/STs and women are concerned. However, there are some ambiguities about the rotation of such reserved seats. The words used in both the articles are “may be allotted by rotation”. However, in the second proviso to article 243D regarding reservation of the offices of chairpersons the words used are “shall be allotted by rotation”. The Constitutional provisions also do not specify the frequency of rotation. Moreover, in clause (4) of article 243T there is no stipulation for rotation. To remove ambiguities, articles 243D and 243T should be suitably amended to provide for rotation and changes only at the time of delimitation and not in between.
- (b) State laws should, however, provide the guidelines for the process of reservation which should ensure transparency and adequate opportunities for eliciting voter response.
 - (c) Clause (6) of article 243D and clause (6) of article 243T enable a State Legislature to provide for reservation of seats as also offices of chairpersons in panchayats and municipalities in favour of backward class of citizens. Neither of the articles stipulate any ceiling for the total number of reserved seats and reserved offices. Since not less than one-third of total seats has been specified as the minimum for women; the reservation additionally made for backward classes can take a large proportion. To remove ambiguities the overall total of reserved seats and reserved offices should be specified in the Constitution.

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D. State Election Commissions

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1.41 Articles 243K and 243ZA stipulate that the “superintendence, direction and control for the preparation of electoral roles and the conduct of all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.” These articles further State that the SEC shall not be removed from his office except in like manner and on the like grounds as of a Judge of a High Court and the conditions of service shall not be varied to his disadvantage after his appointment. The provisions are similar to those contained in article 324 regarding the Chief Election Commissioner. Both the CEC and the SEC are viewed as Constitutional Authorities. While the process for their removal is indicated, the Constitution is silent on the process of appointment itself. In the case of the CEC and other Election Commissioners, the Parliament can make provisions by law regarding their appointment, the tenure of office and conditions of service. In the case of the State Election Commissioner, the State Legislature may make similar provisions.

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Setting up of SECs

1.42 There has been some debate in the country so far as the procedure for appointment of the CEC and terms and conditions of his service are concerned. There is no denying the fact that the office of the CEC has been filled by persons of high integrity successively. In particular, the former CEC, Shri T.N.

Seshan helped to establish in the public mind the potential strength of the Election Commission of India derived from its neutrality and integrity. The present CEC and his fellow commissioners have also helped considerably in widening public awareness about the role and scope of the Election Commission's responsibilities and have made important suggestions from time to time to focus attention and initiatives for electoral reforms.

1.43 Articles 243K and 243ZA have kept the Election Commission of India as an organisational model. The successful conduct of local elections which has been done twice in several States and at least once in several others in a fair and transparent manner has demonstrated the usefulness of these provisions in entrusting elections to a neutral and independent authority. The fact that the turnout of voters in the local elections in many States has been about 65 to 70% also demonstrates strong interest that the people have in local issues and local self-governance. The democratic structure of the country is no longer limited only to the Parliament and the State Legislatures. With more than three million elected representatives from the rural and urban local bodies, the number of elected representatives of the people has enormously increased. This is an important beginning of what can be a highly representative system of democratic governance in the country. It is, therefore, essential that the machinery for organising the local elections is adequately strengthened.

1.44 In case of appointments of the State Election Commissioner under the Constitution, the Governor of the concerned State has been made the appointing authority of the incumbent and the Legislature of the State has been authorised to make provisions by law regarding the conditions of service and tenure of office of the State Election Commissioner. There are wide variations regarding the qualifications laid down for the appointment of State Election Commissioners and service conditions like tenure of office, maximum age limit, etc., in different States. The position, as obtained in this regard in most of the major States in the country is can be seen in the following table:

Table 4

State Election Commissioners in Different States

Name of State	Tenure	Age limit	Qualifications	Status
Assam	4 years	62 Years	A person having put in minimum 25 years of service in administrative, judicial or legal service of the State or Central Government.	Status: Equal to that of the Chairman, Assam Public Service Commission. Scale: Last pay drawn in the Government minus pension
Bihar	3 years	62 Years	Not below the rank of the Additional Secretary to Government of India or equivalent post in the State Government.	Salary: Same as in Government service minus pension.
Haryana	5 years	65 Years (minimum age: not below the age of 55 years)	A Judge of High Court or a person who has served the Government in the rank of a Commissioner for at least 5 years.	Salary: Same as in government service minus pension
Himachal Pradesh	5 years	65 Years	Not below the rank of Additional Chief Secretary or equivalent position	Salary: of a Judge of a High Court minus pension
Karnataka	5 years	62 Years	No qualification is	Salary: Same as he was

Name of State	Tenure	Age limit	Qualifications	Status
			prescribed	drawing in the Government at the time of his appointment as State Election Commissioner or Rs.6500/- per month (old scale) which-ever is higher minus pension.
Kerala	4 years	62 Years	No qualification is prescribed.	Status: equal to the Chief Secretary of the State. Salary: Rs. 8000/- per month (old scale) minus pension.
Madhya Pradesh	6 years	62 Years	A person who has served at least for 2 years as Additional Secretary to Govt. of India or equivalent post.	Salary: Rs. 8000/- per month minus pension.
Maharashtra	5 years		A person who has held a post not lower in rank of a Principal Secretary to the State Government.	Salary: Rs. 7600/- p.m. (also a provision of pay protection)
Orissa	5 years	62 Years	Retired Judge of the High Court or retired District Judge or a serving civil servant.	Salary: Rs. 20,450/- per month minus pension or last salary drawn, which ever is higher, Other facilities as are made available to the Chairman, State Public Service Commission
Punjab	5 years	64 Years	Not below the rank of Financial Commissioner or Principal Secretary to Government who has served at least for 2 years on that post or a serving or a retired judge of a High Court	Salary: equal to that of a High Court Judge.
Tamil Nadu	2 years (eligible for re-appointment for two successive terms subject to a max. of 6 years)	62 Years	Not below the rank of Secretary to Government.	As admissible to a Serving Judge of a High Court
Uttar Pradesh	5 years	65 Years	Joint Secretary or 3 in the Central Government and must have held the post of District Magistrate or Divisional Commissioner and a senior administrative	A person appointed as State Election Commissioner shall be paid pay and allowances as admissible to him in his parent department.

Name of State	Tenure	Age limit	Qualifications	Status
West Bengal	5 years	65 Years	post in the Secretariat A person having sufficient experience in the affairs of Union or any State Government in an administrative post	Salary: Rs. 8000/- (old scale) minus pension.

It is evident from the above that there are great variations in the qualifications and service conditions of the State Election Commissioner from State to State. As regards the tenure of office, it is seen that it varies from 2 years (Tamil Nadu) to 6 years (Madhya Pradesh). However, most of the States have a tenure of five years.

Notification of elections

1.45 In Assam, Madhya Pradesh, Maharashtra, Andhra Pradesh and Gujarat the State Election Commission issues the notification for elections on its own. In Goa, the State Election Commission issues the notification in consultation with the State Government. In Uttar Pradesh, Rajasthan, West Bengal, Kerala and Orissa, the State Government issues the notification on the recommendation of the State Election Commission. In Haryana, for elections to the Urban Local Bodies the State Election Commission issues notification on its own, while for Panchayat elections the notification is issued in consultation with the State Government. In Rajasthan, for municipal elections, the State government on recommendation of SEC issues notification. Simultaneously, the SEC also issues the notification. For Panchayat elections, the District Election Officer issues the notification as per schedule fixed by the SEC. While in all cases some form of consultation takes place between the SEC and the State Governments. There is no reason why a uniform procedure cannot be followed.

Single election machinery

1.46 The preparation of electoral rolls in a unified manner using the Panchayat and the Municipal Wards as the basic building block has been discussed in the previous section. The need to emphasize and reinforce the composite nature of electoral tasks from preparation of rolls to the actual conduct of election has also been stressed. At present, the Election Commission of India is responsible for the conduct of all elections to Parliament and to the Legislature of every State and all elections to the offices of President and Vice-President held under the Constitution. Article 324(6) further provides that the President or the Governor shall make available to the Election Commission such staff as may be necessary for the discharge of its functions. The practice so far has been for every State to have a Chief Electoral Officer (CEO) who is appointed by the State government. Normally he may be entrusted with other works as well. But during the period of elections the CEO functions very much under the supervision and direction of the Election Commission.

1.47 In the case of local elections the State government likewise makes available to the SEC the staff necessary. It is common knowledge that the actual work relating to elections, whether it is preparation and revision of electoral rolls, dealing with nominations, setting up of polling stations or the actual conduct of the elections, a vast army of returning officers, police and other government personnel are deployed for the purpose. In effect, therefore, both the CEO and the SFC have to depend on the same personnel.

1.48 Since independence, general elections to the Lok Sabha have been held 13 times and elections to different State assemblies a few hundred times. Now the local elections have also to be added to this already large number. By-elections as also elections to various positions of chairpersons in different States will further add to what is already one of the largest set of electoral responsibilities anywhere in the world. Elections at different levels should, therefore, be regarded as a regular feature of democratic structure of the country.

1.49 It may, therefore, be considered that since we have in the SEC a replica of the Election Commission of India in every State, the responsibility for conducting all elections in the State both for the State Legislature and the Local Bodies should be vested in the SEC. This will enable an independent constitutional authority at the State level to attend to all matters relating to elections on a regular and continuous basis. The relationship between the SECs and the CEC, Election Commission of India can be developed through uniform procedures for preparation of electoral roles, delimitation of constituencies, rotation of reserved seats, dealing with nominations, conduct of polls, etc. In the past two to three years, the CEC has taken the initiative to meet the State Election Commissioners periodically and a process of active collaboration has already begun. The establishment of a common electoral machinery with the Election Commission of India providing over all direction and control at the time of elections within which the SECs will carry out that tasks appears to be a logical outcome. The matter deserves debate and consideration.

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Suggested Legal Changes

1.50 Some specific provisions should be added to the Constitution as follows:

- (a) The State Election Commissioner should be appointed by the Governor on the recommendations of a group comprising the Chief Minister, the Speaker of the State Assembly and the Leader of the Opposition. This would make the selection impartial in the eyes of all concurred.
- (b) The State Election Commissioner should have a fixed term of 5 years.
- (c) In rank and status the State Election Commissioner should be equal to a Judge of the High Court.
- (d) The broad qualifications for position of State Election Commissioner may be specified in the Constitution itself or in the laws of the State. Since the conduct of elections is a major logistical exercise, administrative experience should be stressed.
- (e) Notification for all elections to Panchayats and Municipalities should be issued by the SEC.
- (f) SEC should be the single and common electoral authority in the State for all local body elections and elections to the State Legislatures. The SEC will also carry out the elections to Parliament under the supervision and control of the Election Commission of India. What is envisaged is a strong link between the State Election Commissions and the Election Commission of India so that the Election Commission of India can reinforce the autonomy of the State Election Commissions, support their functioning with expertise and technical help and enable the whole election machinery of the country to emerge as an integrated system.

E. Wards Committees and Proximity to Citizens

1.51 Existing provisions in most State laws do not facilitate any effective participation of the people themselves in the governance of their cities. Proximity between the people and their representatives is essential for securing accountability. The provision for Wards Committees in the 74th Constitutional Amendment is designed to meet this need. In the 65th Constitutional Amendment Bill of 1989, passed by the Lok Sabha but defeated in the Rajya Sabha, it was provided that for Municipal Councils (with a population range of twenty thousand to three lakhs), a Wards Committee should be constituted comprising two or more Wards. In a Municipal Corporation (with a population of more than three lakh), the Wards Committee shall consist of one or more Wards. It was clear that grouping of wards would be needed only in Municipal Council areas. The Bill introduced by the government of V.P. Singh left the entire matter to the discretion of the State government. The Bill introduced by the Narasimha Rao government also remained silent on the issue. But when the Joint Parliamentary Committee considered the Bill it argued that "in the larger municipal bodies the citizens do not have easy access to the elected representatives since the ward size is very large. The Committee, therefore, is of the view that in

Municipalities having a population of 3 lakhs or more, Wards Committees should be constituted". The JPC also recommended that while the Councillor representing the ward should be the chairperson of such a committee, the details regarding its composition, territorial area and the manner of filling the seats can be left to the State legislatures.

Provision in the 65th Constitution Amendment Bill

1.52 The 65th Constitution Amendment Bill had also provided that in Municipal Corporations a Zonal Committee should also be provided at an intermediate level, between the Wards Committees and the corporation. The Bill left it to the States to determine the territorial area of a Zonal Committee but stipulated that the Chairpersons of all the Wards Committees within that area should be members of the Zonal Committee. The 65th Constitution Amendment Bill thus envisaged a two-tier set up of Wards Committees and a Municipal Council for smaller urban areas and a three tier set up of Wards Committees, Zonal Committees and Corporation for larger urban areas. This was to ensure decentralisation not only at the city level but within the city as well. The provision also enabled greater proximity between the citizens and the elected representatives and was similar to the three tier arrangements envisaged for the Panchayat in the 64th Constitution Amendment Bill.

1.53 The JPC recommendations, while leaving considerable discretion for the State Governments in regard to the number and composition of the Ward committees also left it open to the States to constitute committees at any other level. Though the JPC did not name this as a Zonal Committee as the 65th Amendment Bill did, it was expected that this would be so. However, what has happened is that many States have taken advantage of the ambiguity in the provisions and have set up Wards Committees for groups of many wards which in effect are Zonal Committees. In effect, a two tier set up has been provided even in large corporation areas requiring a three tier arrangement.

Varied Arrangements in the States

1.54 At one end of the spectrum, in Kerala, there is a Wards Committee for every Ward. The elected Councillor of the Ward concerned is the Chairman of the Wards Committee. The Committee consists of not more than 50 persons nominated by the Chairperson of the Municipality in consultation with the Councillor. The members of the Ward Committee are drawn from various categories such as residents associations, doctors, teachers, etc. and these categories are mentioned in the Act. The Wards Committee will meet at least once in three months. The Secretary and the Heads of Departments in the Municipality shall attend the meetings of the Wards Committee. The Committee will prepare and supervise the development schemes for the Ward, encourage harmony and unity among various groups, mobilise voluntary labour for social welfare programmes, give assistance for identifying beneficiaries for the implementation of welfare and development schemes related to the Ward. This is besides assisting timely collection of taxes, fees and rents for the Council. The duration of the Wards Committee shall be for five years.

1.55 In Maharashtra, on the other hand, Wards Committees have been set up for groups of wards. In the Greater Mumbai Corporation there are 221 municipal wards. These wards have been grouped into 16 Wards Committees. Similarly, in Pune, Navi Mumbai and Pimpri Chinchwad, wards have been grouped. The wards committee comprises all the councillors from the concerned wards and one to three representatives of NGOs in the area as nominated by the Corporation.

1.56 West Bengal is one other State where, like Kerala, Wards Committees have been set up for each municipal ward. In the case of the Calcutta Corporation, in addition to the Wards Committees, the Borough Committees which are for groups of contiguous wards have been in existence for a long time. These are in effect a substitute for the Zonal Committees. Calcutta thus has a three tier, decentralised arrangement. Though the actual work of Wards Committees has been hampered due to political problems, West Bengal has accepted the need for decentralisation within a city administration and enhancing proximity to the citizens. It has, therefore, provided that apart from the Calcutta Corporation, Wards Committees may be formed in the Municipalities as well even though the population of such municipalities may be less than three lakhs. The Ward committees will consist between 4 to 14 members depending on the population of the ward. The West Bengal Municipal Act, 1993 has been amended to

incorporate a provision regarding composition and functions of a Wards Committee for each ward of a Municipality.

1.57 In the other States the provisions vary considerably. In Chennai, the 155 municipal wards are grouped into ten Wards Committees, each representing a population of close to four lakhs. Bangalore's Wards Committees cover an average population of about two lakhs. In effect, these are Zonal Committees and not Wards Committees. Similarly, in the States of Andhra Pradesh & Uttar Pradesh, every Wards Committee is to contest in not less than five Wards in a Municipality. In Himachal Pradesh, Wards Committees are to be constituted for not less than ten Wards in the Municipal Corporations. The Madhya Pradesh, Haryana and Tamil Nadu legislations only specify that Wards Committee shall be constituted for Municipalities with a population of three lakh or more.

Proximity as an Issue

1.58 A major objective of providing for Wards Committees in the 74th Constitution Amendment is that it enables closer interaction between the people and their elected representatives and thereby more sensitive responses to local needs and accountability of the elected persons to their Constituencies could be obtained. The setting up of Committees for groups of wards with large populations but calling them as Wards Committee in name only, defeats the basic purpose of proximity and accountability. By restricting the membership only to elected councillors as in Andhra Pradesh or allowing a sprinkling of NGOs as in Bangalore or Mumbai the representative character of these committees is further vitiated. Even in Kerala and West Bengal where provisions have been made for a committee for each ward, the principle of election has not been accepted. The preference appears to be for selection or nomination rather than election.

1.59 This is in sharp contrast to the arrangement for the Panchayats. Whether at the Gram Sabha, Village Panchayat or Intermediate level Panchayat, the emphasis in the 73rd Amendment is on increasing the number of elected representatives from territorial constituencies at different levels so that locally elected people can participate better in locally relevant matters. In the urban areas, on the other hand, there appears to be a strong fear of allowing such elective arrangement. If an urban citizen can be trusted to elect an MP, an MLA and a Councillor can't he be trusted to elect members of a committee for his ward or neighbourhood?

1.60 While the setting up of Wards Committees is an important requirement of the 74th Constitution Amendment, the responsibilities and resources assigned will be the real measure of implementation. In the case of Kerala and West Bengal the tasks to be performed by these committees have been elaborated in the Rules. Orders have also been issued for the Corporation/Municipal staff to be involved in their work in addition to some financial allocations within the city budget. In the case of Maharashtra, though the Wards Committees are in effect Zonal Committees some specific functions have been assigned. Accordingly, Section 50(TT) and Section 29A have been inserted in the Mumbai Municipal Corporation Act and Mumbai Provincial Municipal Corporation Act applicable to the municipal Corporations of Mumbai, Pune, Navi Mumbai and Pimpri Chinchwad. The Committees are to deal with grievances of local residents regarding supply of water, disposal of sewage and solid waste, repairs of roads, maintenance of street lights, public sanitation, etc. The Corporations have also made arrangements for Municipal staff with necessary powers and funds to implement the decisions of the Wards Committees.

1.61 While some beginnings have been made, it is clear from the evidence available that the Constitutional provisions regarding Wards Committees have been acted upon only to a very limited extent. Even in the nation's capital of Delhi, only Zonal Committees for groups of 10 to 12 municipal wards have been formed comprising exclusively of the Councillors of the Wards. The Government of National Capital Territory of Delhi under the initiative of the Chief Minister has commenced a scheme called 'Bagidari' seeking to mobilise in the city's neighbourhoods, support and participation of NGOs and individuals. But the programme remains informal and by and large outside the structure of the Municipal Corporation of Delhi.

Suggested Legal Changes

1.62 The suggested legal changes are:

- (a) Wards Committees should be mandatory for each of the ward in all Municipal Corporations with a population of three lakhs or more, to comprise of persons chosen by direct election from the territorial area of the Ward. The Chairman of the Committee will be the Councillor elected from the Ward.
- (b) The State laws may determine the number of persons to be so elected but there should be parity, within the city in the ratio between that number and population of a ward.
- (c) State laws may also enable Wards Committees to co-opt such residents of a ward who are knowledgeable and can assist the work of the Committee.
- (d) In all Corporations with a population of six lakhs and more, Zonal Committees at a level between the Wards Committees and the Corporation Council should be formed. State laws may determine the number and area of such Zonal Committees. The Councillors of all the municipal wards represented in that area shall be members. In addition, one other person from each of the Wards Committees elected by and from amongst the elected members of that Committee shall be a member of the Zonal Committee.
- (e) State laws may determine the manner in which elections to the Ward and Zonal Committees are to be held, their functions and responsibilities and the allocation of funds to carry out the same.
- (f) Article 243S should be amended suitably to incorporate the proposals made in items (a) to (e) above.

CHAPTER 2

FUNCTIONAL AND FINANCIAL DOMAIN

A. Functional Domain

2.1 The various reports on the progress of implementation of the 73rd and the 74th Constitutional Amendments as well as some scholars have commented that the position in regard to the functional domain of the local bodies particularly that of the municipalities, has become worse after the Amendment rather than earlier. In the pre-independence period the functions assigned to the Municipalities were broadly similar in different States. Laws in almost all States envisaged functions such as water supply, drainage, sanitation, building control, municipal road and street lighting, municipal markets, etc as falling within the domain of a Municipality. In some States public health functions like hospitals as also primary education were included. There was also a general recognition that a Corporation or a Municipality was “in-charge” of the city or the town concerned.

2.2 In the period after independence, however, there has been a steady diversion and diminution of responsibilities in the sphere of municipal functions. Many of the functions were transferred to Development Authorities and parastatal organisations. The phenomenon of frequent supersession of elected municipalities added to the problem. By the end of the 1970s, State level water and sanitation boards as in Uttar Pradesh, Tamil Nadu, Maharashtra, Gujarat and Andhra Pradesh had come into existence. City development or special authorities were also established in most large cities of the country. However, in course of time most of these non-municipal bodies became afflicted with the same maladies such as corruption, unresponsiveness, financial mismanagement, lack of accountability, political interference, etc. which have been viewed in the past as problems exclusive to municipalities. Barring a few most municipalities and corporations in the country, the municipal bodies were left to deal with non-remunerative and routine functions like sanitation and garbage removal. The course of all these events and consequent decline of the Municipalities and Corporations has been extensively documented elsewhere. Suffice it to say that a widely held perception in the public mind is that ‘what is urban is municipal and what is municipal is not worthy of attention’.

2.3 It was expected that the 74th Amendment would reverse this trend and once again entrust the range of responsibilities for the upkeep and development of towns and cities to municipalities and corporations. Articles 243G and 243W of the Constitution provide for the State laws to endow the Panchayats and Municipalities “with such powers and authority as may be necessary to enable them to function as Institutions of self government”. The 11th and the 12th Schedules listing 29 and 18 items respectively were added to the Constitution. It is important to note that neither of these Schedules are exhaustive; nor can they be. They are broad headings signifying a whole variety of functions. In essence, therefore, the Schedules are illustrative.

2.4 However, it has been argued that they are restrictive, they are not mandatory and it is not incumbent on the States to entrust the functions and responsibilities under these Schedules to the local bodies. At best, this is a superficial view and at worst a ploy to deflect or circumvent the intent of the Constitution. The 11th and the 12th Schedules are an integral part of the Constitution and have the same status and force as other Schedules. Further more, as part of the 73rd and 74th Amendments they have also been ratified by the required number of States. The country need not have gone through the elaborate process of amending the Constitution and ratifying the same if the Schedules are regarded as decorative elements to be observed only as per convenience.

2.5 Having said this, however, it is pertinent to note that in content and description the 12th Schedule leaves much to be desired. It may also be mentioned that in the 65th Amendment Bill of 1989, the 12th Schedule was a larger list incorporating the obligatory as well as several of the discretionary functions already assigned to municipalities in the various State laws. Several new items like welfare of the weaker sections, women and child development, family welfare, urban electrification, non-conventional energy, urban poverty alleviation, public distribution, etc. were also included. In the case of the 73rd Amendment relating to panchayats the 11th Schedule which had been prepared earlier as part of the 64th Amendment Bill was retained. However, in the case of the Municipalities the 12th Schedule was prepared afresh. Some items such as urban housing, heritage conservation, city passenger transport, etc. were removed. Some items such as non-conventional energy, adult education, family welfare or women and child development which were considered legitimate activities for panchayats and included in the 11th Schedule were excluded in the case of municipalities. The anomalies between the two Schedules should be recognised and their existence as two separate Schedules needs to be reviewed. Most of the items are similar and it will be far more forceful and useful if a common schedule applicable to both rural and urban local bodies is formulated.

2.6 It was expected that after the 74th Amendment the different State laws would be modified or replaced to bring them into conformity with the constitutional provisions especially in regard to the functional domain as indicated in the 12th Schedule. . But only a few States have taken the opportunity to go through this exercise. The Kerala Act is by far the most elaborate list of functions assigned to the Municipalities. Under Section 30 of the Kerala Municipality Act, 1994, 165 functions into 29 groups of items have been transferred to the local bodies through the First Schedule to the Act. To ensure clarity, the functions have been classified as mandatory, sector wise and general functions. All urban local bodies have been given greater responsibilities in their traditional areas of work such as all educational institutions upto the high school, all health institutions upto the level of block hospitals, the entire ICDS system in urban areas, roads other than highways and major district roads, SC/ST hostels, etc. In addition, economic development functions like improvement of agriculture and animal husbandry, development of small-scale industries, anti-poverty programmes, etc. have also been entrusted to the Municipalities. They are also responsible for selecting beneficiaries for the various social welfare pension schemes of government covering agricultural labour, unemployed youth, widows, old age destitute, handicapped, etc. A major function entrusted to the Municipalities in Kerala is planning and implementation of various developmental projects in the productive, infrastructure and social service sectors.

2.7 West Bengal, Tamil Nadu, Maharashtra and Gujarat are some other States where previous municipal laws were comprehensively amended. Haryana, MP and Punjab have also followed suit recently. However, changes in the laws alone do not ensure the transfer of functions and responsibilities.

The table below presents an overview of the position in 13 States. It is important to mention that this table alone will not give the complete picture. This is because where a particular function listed in the 12th Schedule is shown as 'Y' meaning yes and therefore, assigned to the Municipality, there could still be several restrictions in the exercise of that function. Similarly where another item is shown as 'N' and therefore, not assigned to a Municipality, there could still be some part of that function discharged by a Municipality. The overall situation, therefore, reflects considerable variation in detail.

Table 5

Functional Domain of Nagarpalikas – A Comparison

12 th Schedule Items	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Andhra Pradesh	N	N	N	Y	N	Y	N	Y	Y	N	N	Y	N	Y	N	Y	N	Y
Gujarat	N	N	N	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y
Haryana	N	N	N	Y	Y	Y	Y	N	N	Y	N	Y	N	Y	Y	Y	Y	Y
Himachal Pradesh	N	N	N	Y	Y	Y	Y	N	N	N	N	Y	N	Y	Y	N	Y	N
Karnataka	Y	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Kerala	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Madhya Pradesh	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y
Maharashtra	N	N	N	Y	Y	Y	Y	N	N	N	Y	N	Y	Y	Y	Y	Y	Y
Rajasthan	N	N	N	Y	Y	Y	Y	N	N	N	N	N	N	Y	Y	Y	Y	Y
Tamil Nadu	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Uttar Pradesh	Y	N	N	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
West Bengal	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Delhi	N	N	Y	N	N	Y	N	N	N	N	N	Y	N	Y	Y	Y	Y	Y

Y – Yes, assigned to Municipalities

N – No, not assigned to Municipalities

Items listed in the 12th Schedule to the Constitution:-

1. Urban planning including town planning.
2. Regulation of land use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation, conservancy and solid waste management.
7. Fire Services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of the weaker sections of the society including the handicapped and the mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremation grounds and electric crematoriums.
15. Cattle Pounds, Prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, bus stops, public conveniences.
18. Regulation of slaughterhouses and tanneries.

2.8 The process of assigning various functions thus becomes as important as the substance. The Kerala Act clearly says that functions are to be assigned by law and once so assigned can be withdrawn or modified only by a similar law. This is an important aspect because in many States, the assignment of functions is done by regulations or Government Orders and even if the initial assignment is by a State law, they are made subject to the rules and regulations as may be specified by the Government. The functional domain, therefore, becomes uncertain and variable at the discretion of the Government in power. It is interesting to note that while moving the 73rd Amendment Bill in December, 1992, the then Rural Development Minister stated in the Lok Sabha, "we intend to inscribe in the Constitution certain core elements of grassroots democracy to take them beyond the pale of changing political expediency.". But this has not happened. Even in the limited experience since the 73rd and the 74th Amendments became law, there have been several agitations on behalf of both the panchayats and urban local bodies demanding from the State Governments the functions listed in the 11th and 12th Schedules to be assigned to them. Very recently, the All India Council of Mayors has also moved the Supreme Court seeking a direction to the State Governments in this regard.

2.9 **Functions, functionaries and finances have to go together for any process of devolution to be meaningful.** Here again, except in Kerala where elaborate arrangements have been made to transfer the Institutions, and staff along with functions, in other States the process has been halting. The issue of finances is dealt with in some detail in the subsequent chapter.

Suggested legal changes

2.10 The suggested legal changes are:

- (a) A common Schedule of functions for both rural and urban local bodies is desirable. The existing 11th and the 12th Schedules which have several common items should be integrated. (see **Annexure 2.1**)
- (b) This integrated Schedule should not be illustrative only, but should be mandatory. It should be on par with the lists in the Seventh Schedule in status and in the exercise of Legislative and Executive powers, which should be co-extensive with the subject, listed in the Schedule.
- (c) The assignment of functions should be by substantive law rather than by rules and regulations.
- (d) The laws should also provide for the transfer to the Municipalities of organisations, funds and staff who were previously responsible for discharging the functions being assigned. The local bodies should have full control over its staff including those transferred to them. Functions, functionaries and funds should go together.

B. Financial Domain

2.11 It has been observed that the mismatch between functions and finances and near bankruptcy in many situations have been recurring features of municipal body finances in the country. The Constitution, even after the 74th Amendment does not provide for an autonomous domain of tax or revenue raising powers to municipalities. These continue to be determined and regulated by the State Governments. The State Governments specify the taxes that the Municipalities can levy and collect which are taken from the State List in the 7th Schedule. Historically these taxes have included taxes on lands and buildings, taxes on entry of goods into a local area for consumption, taxes on animals and boats, taxes on entertainment, taxes on professions, trades, etc. There are significant variations between the States. Since there is no distinct tax domain of the Municipalities as such, the control of the State Governments in determining the tax, tax rates or even tax exemptions is significant. The Punjab Government has recently abolished the

levy of taxes on properties for domestic use. Within Rajasthan, several municipalities do not levy property taxes.

Background

2.12 Though the Constitutional Amendment exercise provided an opportunity, neither the 73rd nor the 74th Amendment attempted any new formulation of the financial domain of the local bodies. Article 243X merely reconfirms the previously existing position by stating that the Legislature of a State may, by law, authorise a municipality to levy and collect property taxes, duties, tolls and fees in accordance with such procedures and subject to such limits as may be specified in the law. The other provisions in the article regarding the assignment of taxes, grants-in-aid from the Consolidated Funds of the State or Constitution on behalf of the Municipalities are also not new.

2.13 However, the stipulation for mandatory State Finance Commissions (SFCs) under article 243Y to review the financial position of the Municipalities and make recommendations regarding distribution between the States and the Municipalities of the proceeds of the taxes, criteria for grants-in-aid, measures needed to improve the financial position of the Municipalities, etc. may be regarded as an innovative and significant feature of the Amendment. Unfortunately the provision lacks teeth and substance because there is no divisible pool of tax resources between the States and the Municipalities. Articles 268 to 275 of the Constitution contain various provisions about the distribution of revenues between the Union and the States. Distinct categories such as duties levied by the Union but collected and appropriated by the State (article 268), taxes levied and collected by the Union but assigned to the States (article 269), taxes levied and collected by the Union and distributed between the Union and the States (article 270), grants-in-aid in lieu of export duty (article 273), etc. provide a comprehensive framework. No similar attempt was made to devise such an arrangement so far as the States and the Municipalities are concerned. It was left to the State Finance Commissions to suggest such a divisible pool if the SFC was so inclined and if at all its terms of reference given by the State government allowed it.

First Generation SFCs

2.14 After the 74th Amendment between 1994 and 1997, a total of 22 SFCs were set up. The composition of the State Finance Commissions itself did not follow any specific pattern nor was there any criteria provided for in a separate Act. as in the case of the Finance Commissions set up by the Government of India under article 280. The terms of reference of the SFCs were also in most cases a mere repetition of the provisions of article 243Y of the Constitution. Since funds and functions were to go together there was an opportunity for the SFCs to review the existing situation and recommend a functional domain which would better serve public interest and also be financially viable. But most of the SFCs did not touch on the subject at all. The table below summarizes the recommendations of 15 SFCs.

Table 6

Recommendations Regarding Transfer of Funds State to Urban Local Bodies

Andhra Pradesh	39.24% of State tax and non-tax revenue to all local bodies
Assam	2% of State tax for local bodies, both rural and urban
Himachal Pradesh	An amount equal to Rs.12.2 crore as grants in lieu of octroi for 1996/97, to rise to Rs.17.9 crore in 2000/01.
Delhi	9.5 per cent of the total tax revenue of the State with MCD getting 96.85 per cent and NDMC 3.15 per cent.
Karnataka	5.4% of the total non-loan revenue receipt for meeting the plan and non plan expenditure
Kerala	40% of State plan funds for plan scheme and 1% of State revenue be transferred to the rural and urban local bodies in proportion to their

	population
Madhya Pradesh	8.67% of the tax and non-tax revenues of State government
Maharashtra	25% to 100% of entertainment taxes collected from municipalities of different grades, 25% of vehicle tax and 10% of professional tax are recommended shares for local bodies
Manipur	Maintenance grant equal to Rs.88.3 lakhs to accrue to municipalities in 1996/97.
Orissa	Rs.179.5 crore is the projected transfer (grant) to urban local bodies between 1998/99 and 2004/5
Punjab	20 per cent of the net proceeds of five State taxes, to be shared with the Panchayats and Municipalities
Rajasthan	2.18 per cent of the net proceeds to the local bodies. The division of these proceeds between rural and urban should be in the ratio of 3:4:1
Tamil Nadu	8 per cent of the total revenue from all State taxes excluding the entertainment tax, of which 15 per cent as equalisation and incentive fund in the ratio of 60 : 40 and 85 per cent in the ratio of 55 : 45 among rural and urban local bodies.
Uttar Pradesh	7% of the net proceeds of State's total tax revenue should be transferred to urban local bodies
West Bengal	16% of the net proceeds of all taxes collected by the State should be transferred to local bodies

2.15 Out of the 22 reports submitted by the SFCs only 4 have been accepted without modifications, 10 with modification, 3 are still under consideration and in 5 no action has been taken. Though article 243Y requires the recommendations of the SFC to be laid before the Legislature of the State with the Action Taken Report in most cases acceptance has been limited only to a few items. Most of the Commissions have dealt with the expenditure needs and forecast on the basis of current practice. Very few have taken a total view of development needs and financial requirements. Regarding revenue assignments, the SFCs have generally supported more autonomy for the local body in determining the rates. With regard to plan funds, however, some States like Kerala and West Bengal have recommended an allocation from 40 to 60% of State plan to rural and urban local bodies.

11th Finance Commission

2.16 Against this background, the setting up of the 11th Finance Commission in July, 1998 under the Chairmanship of Dr. A.M. Khusro and the terms of reference specified for the same acquire significance. It is very important to note that until the 73rd and the 74th Amendments the Finance Commission set up by the President was not required to enter into the area of local body finances at all. The Finance Commission had its mandate and its hands were full in dealing with the distribution of tax proceeds between the Union and the States and related matters. The provision for setting up State Finance Commissions was no doubt inspired by the model of the Central Finance Commission. However, neither the 64th nor the 65th Amendment Bills which were the pre-cursors of the 73rd and the 74th Amendments provided for any links. That the reports of the SFCs could be used as an input by the CFC was an idea inspired by the Joint Parliamentary Committee.

2.17 The Committee took note of the fact that though the 8th and the 9th Finance Commissions set up by the Centre had deliberated on the nature and magnitude of the problem and also came to the conclusions that local bodies needed financial support no recommendations were made as, in their view, the Planning Commission was the appropriate body to deal with these problems. The JPC, therefore, reached the conclusion that while the Planning Commission and the Finance Commission were seized of the problem intellectually, in the absence of a constitutional mechanism, recommendations for assistance would continue to be sporadic and *ad hoc*. The Committee therefore, wanted the mandate of the Central Finance Commission to specifically include consideration of measures for augmenting the Consolidated Funds of the State to supplement the resources of the Municipality. Accordingly the Committee recommended a new clause to be added to amend article 280 of the Constitution. This amendment

suggested by the JPC for urban local bodies was considered relevant for the rural local bodies as well. Accordingly sub-clause (bb) and sub-clause (c) were added to clause (3) of article 280 requiring the Finance Commission at the Centre to take note of the recommendations of the SFCs in recommending measures needed to augment the Consolidated Fund of States to supplement the resources of local bodies.

2.18 However, when the 10th Finance Commission was set up in June 1997 chaired by Shri K C Pant, no SFC had been set up. The Commission felt that there was no duty cast upon it to make recommendations in terms of article 283 (bb) and (c). Nevertheless, the Commission recommended an *ad hoc* award of about Rs.4400 crores for Panchayat and Rs. 1000 crore for Municipalities. In the case of the 11th Finance Commission chaired by Dr A M Khusro, the terms of reference were sufficiently large. The Commission also authorised major studies about local body finances by the National Institute of Rural Development and the National Institute of Public Finance and Policy (NIPFP).

Present Situation

2.19 The NIPFP study presents by far the latest picture in regard to municipal revenues and expenditure. The salient features are given below:

- Per capita revenue receipts of municipalities in 1997-98 was estimated at Rs.821.5. However, this figure drops down to Rs.421 if the income of large municipalities with over one million population is considered.
- The total resources generated by all municipalities in the country was Rs.17785 crores. This, however, amounted to less than 17% of the own resources of all the States put together.
- Of the total municipal revenues, nearly 82% were internally generated revenues. This belies the popular perception that municipalities across the country depended overwhelmingly on grants.
- On the expenditure side per capita municipal spending was Rs.747. Here again the figure would drop down to Rs.372 if the million plus cities are excluded.
- The total municipal spending was approximately Rs.19542 crores which amounted to only 10.2% of the total revenue expenditure of all the States combined. Here again the large city overshadows the rest.
- The revenue expenditure of Bombay Corporation alone represents 13% of the total municipal expenditure of the country.

The overall position in regard to the country, however, does not convey very large and serious interState differences in regard to both revenue and expenditure. The tables below on the Composition of Revenue and Expenditure indicated the position in respect of 19 States covered in the NIPFP study.

Table 7

Composition of Municipal Revenues (%) (1997/98)

State	Own resources	Tax Receipts	Non-tax Receipts	Shared revenue	Grants	Others
Andhra Pradesh	51.17	36.37	14.80	33.56	13.03	2.25
Assam	59.08	23.24	35.84	0.00	23.37	17.55
Bihar	52.77	36.86	15.91	2.99	40.31	3.93
Gujarat	87.45	79.74	7.71	0.18	11.10	1.27
Haryana	80.51	42.80	37.71	13.44	3.95	2.09
Karnataka	43.18	18.12	25.06	5.67	43.62	7.53
Kerala	70.32	44.69	25.63	20.65	4.74	4.29
Madhya Pradesh	47.34	22.61	24.73	11.88	39.90	0.88
Maharashtra	95.40	65.44	29.96	0.53	3.84	0.23
Orissa	67.12	46.92	20.20	0.93	28.59	3.36
Punjab	89.02	69.60	19.42	6.14	3.81	1.03

Rajasthan	89.80	62.90	26.90	0.17	9.30	0.74
Tamil Nadu	44.34	21.21	23.13	21.93	29.49	4.24
Uttar Pradesh	19.44	13.50	5.95	0.36	79.14	1.06
West Bengal	59.33	36.51	22.82	5.05	30.53	5.10
Himachal Pradesh	25.86	15.27	10.59	0.00	72.04	2.09
Manipur	98.29	90.42	7.87	0.20	0.15	1.35
Meghalaya	46.27	37.66	8.62	0.00	40.09	13.63
Tripura	42.92	27.31	15.61	0.00	33.74	23.34
	82.78	56.40	26.38	4.05	11.99	1.19

Table 8

Composition of Revenue Expenditure (%) (1997/98)

State	Wages and salaries	Operation and maintenance	Interest and Debt	Others
Andhra Pradesh	49.21	49.60	0.24	0.95
Assam	42.43	54.14	1.90	1.53
Bihar	1-77.21	21.13	1.03	0.63
Gujarat	53.20	30.02	6.30	10.48
Haryana	48.76	44.49	0.00	6.75
Karnataka	20.93	78.11	0.48	0.48
Kerala	55.04	34.57	5.19	5.20
Madhya Pradesh	51.01	37.67	0.61	10.71
Maharashtra	61.50	13.29	9.89	15.31
Orissa	38.30	21.61	0.00	40.09
Punjab	52.46	28.68	4.27	14.59
Rajasthan	-	-	-	-
Tamil Nadu	49.13	47.49	2.53	0.86
Uttar Pradesh	69.18	29.62	0.00	1.20
West Bengal	71.09	18.52	1.01	9.38
Himachal Pradesh	46.98	52.32	0.00	0.71
Manipur	70.69	8.73	0.00	20.58
Meghalaya	52.28	30.37	0.00	17.35
Tripura	56.64	1.15	2.26	39.95
	60.34	20.00	7.17	12.51

2.20 Though such detailed and comprehensive data was available before the 11th Finance Commission and its terms of reference were wide enough to address the subject, the Commission has chosen to make only an *ad hoc* awards of Rs. 1600 crores for rural local bodies and Rs. 400 crores for urban bodies. This is a much lower figure than whatever the 10th Finance Commission made on an *ad hoc* basis. However, the Commission has made a number of other recommendations which are of significance to municipal finances. These are identified below:

- (a) The levy of taxes on land/farm income to strengthen the resource base of the local bodies and also to augment the Consolidated Fund of the States.
- (b) Surcharges and cess on State taxes.
- (c) Profession tax under article 276 to be levied by all the States and the rates to be revised upwards.

- (d) The ceiling of Rs.2500 per annum fixed by a Constitutional Amendment in 1988 to article 276 (2) should also be revised. Parliament should be empowered to fix this ceiling on the basis of prevalent economic situation without going in for a Constitutional Amendment every time.
- (e) Property and house tax laws, assessment and collection of machinery to be substantially improved. (The wide variance in levels of property tax may be seen in **Annexure 2.2**)
- (f) User charges to be revised periodically with local bodies being given the power to fix the rates.
- (g) Transfer of funds and functions to local bodies should be made by law and changed only by law rather than by regulations and government orders.
- (h) The number of centrally sponsored or State sponsored schemes in matters usually dealt with by local bodies should be reduced and the implementation machinery for the same integrated with the set up of the local bodies.
- (i) The setting up of the SFCs should be so timed as to make their inputs available in time to the CFC. The Finance Commission should be empowered to make its own assessment in cases where SFC reports were not forthcoming or SFCs had not been set up.

2.21 The 11th Finance Commission has also suggested that the C&AG should be involved in setting up an Accounts system for the local bodies as also the audit of the same. Given the existing work load of the CAG and the considerable variance in the internal structure and staff of rural and urban local bodies it is to be considered whether this is feasible. Besides articles 243J and 243Z envisage that State laws should make the provisions for maintenance and audits of accounts. The CAG's involvement at all levels in this regard may be construed as centralisation rather than decentralisation.

Suggested Legal Changes

2.22 The suggested legal changes are:

- (a) The concept of a distinct and separate tax domain for municipalities should be recognised. This concept should be reflected in a list of taxes and should form part of the common schedule of functions and responsibilities for local bodies or in the event it is decided to continue with the 11th and 12th Schedules as separate, the tax domain should figure in the relevant schedule. Carving out items from the existing State lists such as item 49 (taxes on land and buildings) and item 52 (taxes on entry of goods into a local area for consumption) should not be difficult.
- (b) Similarly, the concept of a divisible pool of taxes which can be shared between the Union, the States and the Municipalities should also be recognised similar to the provisions in articles 268 to 274. There should be categories of taxes and other levies specifying who will collect the same and how it will be distributed between the 3 levels.
- (c) In case of taxes and levies, the proceeds of which are to be shared with municipalities, prior consultation will be required before any modification is made in the scope of the tax or its rates.
- (d) Article 276 on taxes on professions, trades and employment should be amended as suggested by the 11th Finance Commission. The ceiling should be specified by Parliament from time to time rather than requiring amendments to the Constitution.
- (e) State laws should provide for composition of the State Finance Commission and the criteria for its membership similar to the provisions in the case of the Finance Commission set up by the President under article 280.
- (f) State laws should provide for the establishment of the SFCs in a periodical manner and determine a time schedule for the same so that the work and output of the SFCs are synchronised suitably with the Central Finance Commission.
- (g) Articles 243-I and 243Y should be amended to ensure that the Action Taken Report by the Government is laid before the State Legislature within six months of the submission of the SFC recommendations.
- (h) Sub-clauses (bb) and (c) of clause (3) of article 280 should be amended so that the Central Finance Commission while taking into consideration the recommendation of the SFCs, is not circumscribed by the same.

- (i) State laws should also provide for establishing and maintaining a financial database as suggested by the 11th Finance Commission.
- (j) State laws should specifically empower municipalities to borrow.
- (k) State laws should also provide for the preparation and adoption of municipal budgets in a transparent manner in keeping with the public right to information.

CHAPTER 3

DISTRICT PLANNING COMMITTEES, METROPOLITAN PLANNING COMMITTEES AND ORGANIC LINKS BETWEEN MUNICIPALITIES AND PANCHAYATS

A. District Planning Committees

3.1 The constitution of District Planning Committees (DPCs) is mandatory under article 243ZD of the Constitution and is a common item for both Panchayats and Municipalities. The District Planning Committees are to take up integrated planning for urban and rural areas in the District. As urbanisation increases, the need for such an integrated planning will become more important. Town and the country have to share the various physical and economic resources of the district such as communications, water resources and market places. Allocation of water for irrigation, drinking or industry is already a contentious issue in many districts. Dealing with each other's wastes is another serious problem. The sugar mill and distillery wastes of numerous small, medium and large units in western Uttar Pradesh, or the textile and dyeing units in Rajasthan, Gujarat or Andhra Pradesh fouling and poisoning water courses are a well known phenomenon. Municipal solid wastes-be they chemicals, plastics, hospital wastes or other debris-spill over into the countryside and find their way into neighbouring streams. Agricultural lands at the fringe of towns, large or small, are increasingly prone to conversion. These are problems that need understanding and response, not in a distant State headquarter but within the local area. The district needs a platform to umpire and resolve these issues. The Zilla Parishad and District Planning are an important process for this purpose. Planning should be an obligatory function of panchayats and municipalities. Such plans at the local level are the building blocks for a district plan. District Planning itself should be an integrating process.

Composition

3.2 While the composition of the DPC and the manner in which the seats are to be filled have been left to the States, article 243ZD stipulates that four-fifths of the total number of members of DPC will be elected by, and from amongst, the elected members of the Panchayat at the district level and of the municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district. The rest are to be nominated.

3.3 While most States have made enabling acts to constitute District Planning Committees, very few have actually constituted them. This is because of both political apprehensions and bureaucratic problems. First is the fact that the provisions on District Planning are to be found in the 74th rather than in the 73rd Constitutional Amendment. Rural Development departments in the various State Governments have traditionally regarded district level planning as falling in their domain but since they find that the provisions for the DPC are now a part of the 74th Constitutional Amendment, under the Part IXA relating to Municipalities, their reaction sometimes has been that these Committees are the concern of the Urban Development or Municipal Affairs department in the State. These departments, on the other hand, do not have a clue about the objectives and purposes of the District Planning Committee and expect that some other department like Planning, will take care of it. The result is that the item often became orphaned between disinterested departments. The political apprehension is about the DPC emerging as a dominant

body deciding on public investments and thus reducing the influence and patronage of State level political leaders.

DPC and Zilla Parishad:

3.4 A second unresolved issue has been the relationship between the Zilla Parishad and the DPC. The amended Constitution envisages the DPC as a stand alone entity. While article 243ZD provides for members of a DPC to be elected by and from amongst the elected members of the Zilla Parishad and of the municipalities in the district, it does not specify the relationship between the Zilla Parishad and the DPC. It is pertinent to mention here that this aspect was well understood and specifically addressed in the 65th Amendment Bill, 1989. Article 243Y proposed in that Bill stipulated that the DPC should be constituted “in every Panchayat at the District level”. Proposed clause (3) of the article also laid down that the “Chairperson of the Panchayat at the district level shall be the chairperson of the Committee”. The locus and stewardship of the DPC as part of the district panchayat or Zilla Parishad was thus established beyond doubt. Unfortunately, article 243ZD of the Constitution as enacted has allowed serious ambiguities to persist.

3.5 The State Governments have, therefore, been left to draw their own interpretations. In Assam, Karnataka, Kerala, Rajasthan and West Bengal the State laws envisage the DPC as a part of the Zilla Parishad. The Chairperson of the Parishad is also designated as Chairperson of the DPC. In Madhya Pradesh, a Minister of the State Government is the Chairperson of the DPC and is expected to lead and guide district planning with the help of the district administration. The Chairperson of the Zilla Parishad is a Vice-Chairman. Gujarat and Maharashtra have long had District Planning and Development Committees with a minister of the State Government as the Chairperson. The view of these two Governments has been that these district committees are an adequate substitute for the DPCs. The table below indicates the varied arrangements in different States.

Table 9
Composition of District Planning Committees in various States

State	Total Members	Elected Members	Nominated Members	Chairperson	Secretary
Kerala	15	12	03	President of the Zilla Parishad	District Collector
Madhya Pradesh	15-25	Four-fifths	One-fifth	Minister nominated by the State Govt.	District Collector
Maharashtra	30-50	Four-fifths	One-fifth	Minister nominated by the State Govt.	District Collector
West Bengal	10-100 depending on size of the district	Four-fifths	One-fifth	President of the Zilla Parishad	District Magistrate
Rajasthan	25	20	5	President of the Zilla Parishad	Chief Planning Officer of ZP
Uttar Pradesh	20-40	Four-fifths	One-fifths	Minister nominated by the State government	Chief Development Officer of the District
Karnataka		Four-fifths	One-fifth	President of the Zilla Parishad	CEO of Z.P.

State	Total Members	Elected Members	Nominated Members	Chairperson	Secretary
				Mayor/Municipal President of District Hq. Vice Chairman	
Tamil Nadu		Fourth-fifth	One-fifth	Collector; ZP President Vice Chairman	CEO of District Panchayat

3.6 The designation of a Minister as the President of the DPC virtually makes it an extension of the State Government and goes against the intent of the Constitution. It also defeats the principle of decentralisation. Even before independence District Boards were perceived and set up as important centres of decentralisation. In Karnataka, Maharashtra, Gujarat and Rajasthan, the Zilla Parishads set up during the first initiatives of decentralisation enjoyed considerable autonomy and powers. The District is the first major level where the demand for local autonomy and the desire for State control are likely to come into conflict. Similar fears surfaced during the 1970s when the Zilla Parishad became prominent and powerful in Karnataka, Gujarat and Rajasthan. These fears and apprehensions continue to hold sway and if the highly varied arrangements in the different States continue to prevail, the Constitutional intent in establishing district level panchayats and district planning process will be defeated. To quote "Panchayati Raj without district planning might be a somewhat hollow shell, even as district planning without Panchayati Raj would be unrepresentative". This observation of Late Rajiv Gandhi was only a reflection of the consensus held by stalwarts of the panchayat movement like Ashok Mehta, Abdul Nazir Sab. Ramkrishna Hegde or Nirmal Mukherji.

3.7 In the case of Madhya Pradesh it has been claimed that the District Planning Committee is really a step forward towards the establishment of a district government. The DPC has been given the powers to supervise and monitor district level schemes undertaken by different departments of the Government. Amended in 1999, the DPC Act of 1995 has also given to it the powers of administrative approval and financial sanctions subject to some limits. The DPCs have also been entrusted some other functions previously performed by the State Government in respect of urban areas such as delimitation of municipal wards, land acquisition, etc. However, in keeping a Minister of the Government as the Chairman of the DPC and the District Collector as the Secretary, the DPC has emerged as a body distinct from the Zilla Parishad exercising more powers on behalf of the State Government. It is not the intent of the Constitution that the DPC should emerge as a super body at the district level dominating even the Zilla Parishad. To that extent the intent and working of the DPC in MP needs careful watching.

District Planning Process

3.8 The extensive arrangements for decentralised planning which have been made in Kerala particularly in the case of Panchayats at different levels have been well documented and discussed in various sources. So far as the DPC is concerned the State Planning Board and the NGOs have also helped to identify and provide district level resource persons with the required professional background. The DPCs guide the intermediate and village level panchayats in the preparation of their own plans and the approval of the plan is the responsibility of the DPC though it cannot change the priorities determined by the PRIs in the district.

3.9 In October 1998 Maharashtra enacted a separate District Planning Committee Act. The Act provides for a Minister of the State Government to be the Chairperson of the DPC with the President of the Zilla Parishad, its CEO, the Divisional Commissioner and the Collector of the District as ex-officio members. The Act also stipulates that the Collector shall be the Member Secretary. The Maharashtra Government has thus confirmed its past approach prior to the Constitutional Amendment, of treating Zilla Parishads as just one of the local bodies rather than a body which should take the lead in district planning.

3.10 In West Bengal, the organisational arrangements are similar to those in Kerala though there has been no supporting programme for identifying resource persons and training PRI and Municipal staff in planning. West Bengal has also revived a previous practice of District Planning and Development Co-ordination Committee (DPDCC) presided over by a Minister of the State Government. Though the President of the Zilla Parishad continues to be the Chairman of the DPC, the DPC is expected to consult the DPDCC. Here again the arrangement appears to be a dilution of the position of the Zilla Parishad.

3.11 In Rajasthan, DPCs have been formed in all the districts with the President of the Zilla Parishad as the Chairperson and the Chief Planning Officer of the District who is a functionary of the Zilla Parishad as the Secretary. In UP and Karnataka the DPCs have been set up but they are not functional. In Tamil Nadu until recently the DPC was perceived and operated as a non PRI body with the Collector as the Chairman and the Zilla Parishad President as the Vice Chairman. Recently, the position has been changed with the President of the District Panchayat designated as the Chairman of the DPC.

3.12 The highly varied organisational and operational arrangements for the DPC confirm the fact that the provisions of the Constitution have remained very poorly understood and very badly implemented. Where the DPC has not been located within a Zilla Parishad the ownership of the process itself has been left to doubt. The induction of a State Government Minister appears to be a deliberate attempt to dilute the position of the district level panchayat and forestall possible attempts of that panchayat to assert its preeminence as a distinct body of elected representatives. The operational arrangements for the preparation of a district development plan and merely forwarding it to the State Government also reduces it to a paper exercise. If, on the other hand, district level planning becomes multi sectoral and inter-departmental and also covers project allocation, monitoring and supervision and if that district level planning becomes a part of the Zilla Parishad's responsibilities it would undoubtedly enhance the Parishad's power and influence.

3.13 As presently worked, the Panchayat at the District level or the Zilla Parishad is construed as a Zilla Rural Parishad. The reality is that a District is an important administrative entity and its jurisdiction covers both the rural and the urban. Its composition should reflect the character of the district as a whole. Its territorial constituencies should, therefore, comprise all parts of the district. Such a Parishad will truly be a Panchayat representing the district as a whole. District Planning has to be one of its firm and continuing responsibilities.

3.14 The Panchayats at the district level, in other words, the Zilla Parishad is to be composed principally of representatives elected from territorial constituencies. As suggested above these territorial constituencies should cover the district as a whole. We have suggested in an earlier section [see para 1.40.2 (b) above] the need to adopt a building block approach in the preparation of the electoral rolls as well as the composition of both panchayats and municipalities. The basic electoral unit will, therefore, be the territorial wards which elect representatives to the village panchayat. A certain number of these panchayat wards can then be grouped into wards for intermediate level panchayats i.e. panchayat samitis. For urban areas we have urged earlier, the formation of Wards Committees for each municipal ward or groups of wards to comprise representatives elected from territorial constituencies into which a municipal ward area will be devised. This will be the basic building block. A certain number of these blocks can then be grouped into a municipal ward. If there are no Wards Committees comprise of representatives elected for this purpose, then the municipal ward itself becomes the building block. The territorial constituencies of the Zilla Parishad will then be a grouping of panchayat samiti as well as municipal wards. In delimiting the panchayat samiti wards the State laws should provide that any given village panchayat should form part of a panchayat samiti wholly and not be split. Similarly the constituencies for Wards Committees will be grouped in their entirety within a given municipal ward. By the same principle a panchayat samiti ward or a municipal ward should form part of a Zilla Parishad constituency wholly and not be split. A schematic diagram is placed below to illustrate the suggested arrangement.

SUGGESTED ARRANGEMENT OF ZILLA PARISHAD

Note:

Some explanation about the arrangement may be useful. At the basic level there are voters in the rural and urban areas. A certain number of rural voters usually ranging from 500 to 1000 are listed in the electoral roll organised for each panchayat ward. This is the territorial constituency from which a representative is elected for the Village Panchayat. We may call this constituency as Level I. This is the basic building block in the electoral system. A certain number of these Level I constituencies will be grouped into another territorial constituency for the panchayat at the intermediate level usually called the Panchayat Samiti, the Block Panchayat or the Kshetra Panchayat. The ward of a Panchayat Samiti which may be called as Level II will be much larger and will comprise several Level I panchayat wards. Similarly in the case of urban areas, the urban voters will be grouped into a Level I territorial constituency. In small towns this may be a Municipal Ward from which a councillor is elected by the voters. In larger cities where Wards Committees are set up whose members are elected from different areas of the municipal ward, each of this area will be a portion of the ward. Thus, the Level I constituency may be either the territorial constituency for a wards committee or a municipal ward itself.

According to the present proposal the Zilla Parishad should be composed of representatives from territorial constituencies organised for this purpose. These constituencies may be called Level III. These constituencies will be even larger than Level II and will comprise several of them. A level III Zilla Parishad constituency in some cases may consist entirely of level II Panchayat Samiti Constituencies or in some cases Level II Municipal Ward constituencies or in some cases a combination of the two. The main principle will be a broad parity in the population seat ratio between the various Zilla Parishad constituencies.

A Zilla Parishad set up by such an arrangement will obviously reflect the character of the district. In a predominantly rural district the Zilla Parishad ward will be mainly rural. In a predominantly urban district, they will be otherwise. In districts which are partly urban the number and character of the Zilla Parishad wards will also reflect this partly rural character.

MPs/MLAs and DPC

3.15 The representation of MPs and MLAs is a related item. Both the 73rd and the 74th Amendments specifically enable State Legislatures to provide for their representation in Municipalities and Panchayats. It makes far more sense and can be of much more value if the participation of MLAs and MPs is secured in District Planning. Two alternatives can be considered in this regard. One is for the MPs and MLAs to be the honoured invitees of the DPC and contribute to its deliberations without having to be its formal members. The alternative is to provide for their representation in the DPC by specifying its composition.

3.16 At present under article 243ZD, four-fifths of the total number of members of DPC are to be elected by, and from amongst, the elected members of the Panchayat at the district level (the Zilla Parishad in other words) and of the Municipalities in proportion to the ratio of the rural and urban populations. This component can be changed to three fifth of the total number. One fifth can be elected by and from amongst the MLAs and MPs from the district. Out of these the number of MPs can be fixed as two. The participation of the MPs and MLAs should be in person and not through agents as allowed in M.P. The remaining one fifth of the DPC members should be the representatives of such organisations and institutions as the State Government may consider necessary for carrying out the functions assigned to the DPC. This is important because within a district there will be important institutions representing industry, trade and commerce, NGOs, professionals, etc., who will be in a position to make valuable contributions to the process of district planning. At present, article 243ZD does not contain a provision for this purpose. So far as officials of the Government and Government's agencies are concerned, they

should be nominated by the State Government, ex-officio, to participate in the DPC but without being formal members.

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Suggested Legal Changes

3.17 The suggested legal changes are:

- (a) As per the definitions given in article 243, 'district' means a district in a State while 'Panchayat area' means the territorial area of a Panchayat. The Panchayat at the district level should, therefore, be for the district as a whole instead of the rural areas only. The definitions under article 243 should be amended accordingly. Clause (1) of article 243 ZD should be amended to stipulate that the District Planning Committee shall be constituted within the Panchayat at the district level or Zilla Parishad.
- (b) Sub-clause (d) of clause (2) of article 243 ZD should be amended to provide for the Chairperson of the Panchayat at the district level to be the Chairperson of the District Planning Committee. The Chairperson of the largest Municipality in the District should be the Vice-chairman.
- (c) In clause (1) of 243ZD, the words "consolidate the plans prepared by the Panchayats and Municipalities in the district" should be omitted so that the DPC's main task of preparing a draft development plan for the district is not contingent or dependent on individual plans prepared by the Panchayats and the Municipalities. However, clause (3) of article 243ZD can provide that in preparing the development plan the DPC will have regard to such plans as are prepared by the Panchayats and the Municipalities. Zilla Parishad should help panchayats and municipalities to prepare these plans which will serve as building blocks for preparation of Development Plan for the district.
- (d) Article 243ZD should also contain a provision to enable the State laws and State Governments to entrust additional responsibilities as monitoring of development schemes and programmes in the district, co-ordination of their implementation including powers to modify sanctions to ongoing schemes subject to limits.
- (e) The Zilla Parishad should be the technical and administrative secretariat for the DPC independent of and distinct from the District Collector or the District Magistrate.
- (f) The State laws should provide for association and involvement of government and non-government agencies and professionals in the DPCs. MPs, MLAs and Ministers desiring to participant in the District Planning Committee should be welcome as invitees.
- (g) State agencies, district agencies and district administration should assist the DPC with data and technical know-how in preparation of the development plan for the district. State laws should provide for this.
- (h) Where Metropolitan Planning Committees (MPCs) are required to be set up, State laws and regulations should determine the functional and territorial jurisdiction of the DPCs as distinct from the MPCs. Where Metropolitan Planning Committees exist for predominantly urban districts, they should be deemed as DPCs, as no separate DPC is necessary.

B. Metropolitan Planning Committee

The rationale

3.18 According to the 1991 Census, we have 23 metropolitan areas in this country each with a population of 10 lakhs or more. When the Census figures 2001 are released, the number of such cities is likely to exceed 40. These areas are agglomerations administered by several municipalities. Even Greater Mumbai though it is called by that name does not cover all of the Mumbai Metropolitan area. Thane. Bhiwandi, Ulhas Nagar or Navi Mumbai are all different Corporations. These multi-municipal

urban agglomerations have reached their present dimension and configuration over a period of time. Growth has overrun traditional boundaries. Initially the boundaries of the central city could be extended two or three times as in the case of Mumbai but after that, such extensions were resisted. Surrounding municipalities were not prepared to give up their jurisdictions. The Calcutta Metropolitan area now comprises three corporations, thirty-four municipalities and numerous non-municipal urban localities. The metropolitan areas of Chennai, Bangalore, Mumbai and Hyderabad cover ten to thirty municipal jurisdictions. In Delhi, nominally there are only three—the Cantonment, the NDMC and the Delhi Municipal Corporation (MCD). But the MCD itself is a leviathan covering nearly 1600 sq. km and stretching across vastly different localities such as Shakur Basti, Rohini and Greater Kailash. World experience has shown that devising a system of governance reconciling local autonomy with a metropolitan perspective has not been easy. Their size, the scale and complexity of problems, are formidable. Because the tasks are numerous, multiple organisations for their discharge become inevitable. Besides many of these mega cities are also the seat of Central or State Governments and their presence is conspicuous.

3.19 While the municipal corporations or the municipalities comprised in these agglomerations may be zealous of their respective domain, the agglomeration itself needs a metropolitan wide perspective, planning, advocacy and action. Sources of water, disposal of waste, traffic and transport, drainage, abatement of air pollution, etc., are examples of items where one city corporation or the municipality alone cannot achieve much in isolation. The B.E.S.T which is part of the BMC for instance, however, competent it may be, cannot do much about public transport in Mumbai if the Ministry of Railways handling the suburban system does not subscribe to a common plan. The Government of India's Ministry of Environment or Maharashtra's State Pollution Control Board cannot do much to mitigate pollution without BMC's active collaboration. Above all, the maintenance of the infrastructure to keep the mighty economic machine of Mumbai going is a task requiring much interaction and collaboration between the Central, State and local governments, the public and the private sector, industry, commerce and the citizenry. The Metropolitan Planning Committee was envisaged as an inter-institutional platform for similar purposes.

3.20 Metropolitan areas are also the main engines of growth and economy in the country. Urban transport, water supply, waste management, police, public health, etc., require metropolitan level planning, implementation and coordination. Besides the scale of services needed in these metropolitan areas is huge and it is not possible for City corporations or Municipalities to address all of them. The suburban railways or metropolitan transport systems as in Calcutta, Mumbai or Chennai are handled by the Ministry of Railways. The ports in these cities have a separate set-up. Metropolitan Development Authorities or Departments of Metropolitan Development in the State Government cannot be an adequate answer for these multi-municipal problems. Since the 74th Constitution Amendment, Mayors and Municipal Chairpersons are moving increasingly to assume executive leadership for managing their respective areas. A bureaucratic set up cannot bring these elected representatives and leaders together at the metropolitan level.

Background to the Constitutional provision

3.21 That is why, article 243ZE in the 74th Constitution Amendment provides for the Metropolitan Planning Committee (MPC). It is pertinent to mention that while the 65th Amendment Bill contained this provision, the Bill relating to 73rd Constitution Amendment introduced by the Narasimha Rao government did not do so. It was the Joint Parliamentary Committee, which revived the provisions for a Metropolitan Planning Committee and based on its recommendation, Article 243 ZE became a part of the 74th Amendment. The rationale is well expressed in the Report of the Joint Committee and is reproduced below:

"There are twenty-three metropolitan cities in the country where the metropolitan area would encompass not only the main City Corporation but also a number of other local bodies, both urban and rural, surrounding the main City Corporation. By the end of the century, this number may rise to about forty-five. To ensure that there is an orderly development of the vast area, proper plans need to be drawn up in association with the plan of the main city. Considerable investments in these cities are also undertaken by

Central and State government agencies. It is necessary to coordinate these investment plans with the development plans and requirements of the metropolitan city."

"There is, therefore, need for a suitable planning mechanism which would take care of the interaction between the various local bodies, both rural and urban in such metropolitan areas. At present, the system that is adopted in many metropolises is the creation of a metropolitan development authority. The functions assigned to the metropolitan development authority differ from case to case. In some cases, they are only planning bodies while in some cases they take on executive function, particularly of major schemes. Further, at present, these bodies are not democratic institutions. The Government nominates them. The Committee therefore, feels that there should be a provision for constitution of a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole. In order to impart a democratic character to the said Committees not less than two-thirds of the members of such Committees should be elected by, and from amongst, the elected members of the municipalities and Chairpersons of the Panchayats in the metropolitan area in proportion to the ratio between the population of the municipalities and of the Panchayats in that area. The other details relating to composition of the said Committees, the manner of filling the seats therein, the representation in such Committees of Government of India and the Government of the State and other organisations and institutions, the functions relating to planning and co-ordination for the Metropolitan area to be assigned to such Committees and the manner in which the Chairpersons of such Committees shall be chosen may be left to the State Legislatures."

3.22 The Joint Parliamentary Committee accordingly recommended the insertion of a new provision-article 243ZE for establishing an MPC and a new clause in article 243P which defines a metropolitan area as 'an area having a population of ten lakhs or more. comprised in one or more districts and consisting of two or more municipalities'. The multi-municipal character is, therefore, an essential requirement of a metropolitan area. Prima facie there are twenty-five such urban agglomerations according to the 1991 census. With a population of ten lakhs or more located in the States of Andhra Pradesh, Tamil Nadu, Kerala, Gujarat, Maharashtra, Rajasthan, Madhya Pradesh, Punjab, Uttar Pradesh, Bihar and West Bengal. So far as these States are concerned, the MPC is a constitutional requirement. However, as in the case of the DPC, while conformity legislation or enabling laws have been passed by more or less reproducing the language of the Constitutional Amendment not a single State has set up an MPC so far.

Failure to set up MPCs.

3.23 The reasons for this sorry State of affairs are a mixture of bureaucratic confusion about the purpose and role of the MPC, lack of political interest and, most importantly, the fear of the Development Authorities, which exist in most of these twenty-three cities that their domain will be undermined. While the Calcutta Metropolitan Development Authority itself was brought about in special circumstances-more for mobilizing funds and coordinating implementation-most of the development authorities in the other cities were inspired by the Delhi Development Authority model of large scale land acquisition, real estate development and housing construction. Eventually these bodies became conspicuous empires of public works and patronage as in Bangalore, Hyderabad or Jaipur. The creation of these authorities was no doubt facilitated by the fact that most of the city corporations concerned were under supercession as was the case in Chennai and Calcutta. In the case of greater Bombay consistent opposition from the Corporation limited the BMRDA mandate to some broad areas of planning control and coordination and selected real estate activities. The Calcutta Authority also eventually became a huge amalgam of public works. State Governments have been rather apprehensive about the large staff which these development authorities have acquired over a period of time, which would become surplus in the event separate Metropolitan Planning Committees are established. This is a totally mistaken perception. The Metropolitan Planning Committee is expected to be a high level, democratically set up body, which will bring a constitutional mandate to the whole exercise of metropolitan development planning. The development authorities could serve these Metropolitan Planning Committees as their technical secretariat.

3.24 Another misconception is about the possible conflict of jurisdiction between MPCs and DPCs. Since metropolitan areas are predominantly urban, the rural or the Panchayat component in the MPCs would be rather small. Where the urban areas are co-terminus with revenue districts, such as Bangalore, Chennai or the Calcutta urban district, the problem does not arise at all. In such cases a DPC is not necessary. Where a part of a revenue district is included in a metropolitan area, State Governments can suitably redefine the boundaries for the purpose of DPC and MPC work. Alternatively, a functional delineation is also possible. The Tamil Nadu Government attempted to do this by providing that the MPC for the Chennai metropolitan area will be deemed to be a DPC for those portions of the revenue districts which are included in the metropolitan area. Under the Constitution it is up to the State Governments to determine the jurisdiction of the DPC and the MPC to avoid conflicts, if any.

3.25 In the composition for MPC it is envisaged that one-third of its members are to be elected by and from amongst the elected representatives of urban and rural local bodies in the metropolitan areas. The others are to be nominated, representing Central Government agencies and various State Government agencies, other organizations and institutions responsible for various services in the metropolitan areas. More importantly, the nomination also enables representatives of the private sector and community at large to be mobilised. The manner of choosing the Chairperson of the MPC, and the planning and coordination functions to be entrusted to it, is left to the State Legislature. In preparing the draft development plan the MPC should have due regard to the plan prepared by the Municipalities and the Panchayat, matters of common interest to them, objectives and priorities of the Government of India and the State Government, available financial and other resources for integrated development of infrastructure, environmental conservation, etc. The MPC is expected to hold wider consultations with different institutions and organisations. The Metropolitan Planning Committee is envisaged as an Inter-governmental. Inter-organizational forum for providing a vision, a strategy and a metropolitan wide development plan.

The Maharashtra Act

3.26 Though several States have passed enabling laws to set up an MPC, none has been constituted so far. Recently the Maharashtra Government passed a similar enabling law, responding to a P.I.L. challenging the Government's failure to set up an MPC. Earlier the Government promulgated an Ordinance in June, 1999 to enable the creation of a 45-member Metropolitan Planning Committee in Mumbai, Pune and Nagpur metropolitan areas. Thirty of the members are to be elected from among the elected members of the municipalities and panchayats in the area in proportion to their population. The other fifteen including the chairperson, representatives of trade, industry and other walks of public life are to be nominated by the State Government. One very useful feature of the law is that the Mumbai Metropolitan Region Development Authority is to assist the MPC and in effect function as its technical arm. This is in keeping with the approach recommended by the Central Government and expert bodies so that technical resources of the development authorities can be utilized in a more effective and accountable manner by a politically representative body like the MPC. The MPC itself has not been set up so far.

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Political Fears

3.27 Though the rationale for setting up the MPC is clear one other reason for the reluctance of the State Governments in setting them up appears to be that such an MPC may acquire a political identity of its own and may become a counter point to the State government itself. This is a totally mistaken perception. The Constitution itself clearly recognises the role of the Government of India and the Government of the State in metropolitan planning and that is why clause (c) of article 243ZE provides for representation of Government of India and State Government agencies. Clause (3) also requires that while preparing the plan the MPC should have regard to the overall objectives and priorities set by the

Government of India and the Government of the State, the nature and extent of investments likely to be made by their agencies and the involvement of other institutions and organisations. The MPC should, therefore, be regarded as a politically representative platform in which the Central and the State Governments will have the clear opportunity of translating their overall objectives and priorities through a metropolitan development plan.

3.28 As far the political aspect, it must be understood that the different municipalities and the panchayats in a metropolitan area need not always have the same political complexion. In fact they will be held by different parties. This is already the case in Calcutta, Hyderabad, Mumbai or Bangalore. Experience also shows that the Chief Ministers of all the States where these multi municipal metropolitan areas are located are in fact taking an active interest in metropolitan development. The examples of the Chief Ministers of Karnataka and Andhra Pradesh and their interest in the development and futures of Bangalore and Hyderabad confirms this. The MPC offers good platform for the Chief Minister of the State to articulate his vision for the metropolitan area and guide its policies and strategies. It is, therefore, appropriate that instead of leaving all items of composition of the MPC open, the Chief Minister of the State is designated as the Chairman of the Committee. The Mayor of the main city can be the Vice-Chairman. The State laws should also specify the agency which will be the technical secretariat of the MPC which will function under its control.

3.29 Another item of importance is the representation of the Members of Parliament and MLAs in the MPC. Here again the rationale for their participation is more than in individual municipalities or Panchayats. Under article 243ZE two-thirds of the members of the MPC are to be elected by and from amongst the elected members of the Municipalities and Chairpersons of the Panchayats in the metropolitan area in proportion to the population ratio. Since the MPC itself is conceived as an inter-sectoral and an inter-governmental platform bringing together the concerns and interests of local, State and Central Governments within a metropolitan perspective, it stands to reason that provisions should be made to secure the participation of MPs and MLAs. This can be done by determining the composition of the MPC in the Constitution itself. As suggested in the case of the DPC earlier, three-fifths of the total number of members can be elected by and from amongst the elected members of the Municipalities and Panchayats. The remaining two-fifths should be representatives of organisations and institutions, as the State Governments may consider necessary for carrying out the functions of the MPC. As in the case of DPC, MPs can be invitees.

3.30 Given the fact that MPCs have not been set up so far, it may also be considered whether they should be limited to metropolitan areas with a population of 20 lakhs and more, rather than 10 lakhs as at present. This will limit the number of such areas to 9 as per 1991 census and possibly 15 as per the likely population of 2001. Apart from population this will also limit the MPC exercise to those situations where the policies, priorities, investments and involvement of both the Central and the State Governments are a significant phenomenon.

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Suggested legal changes

3.34 The suggested legal changes are:

- (a) Metropolitan Planning Committees should be limited to metropolitan areas with 20 lakh population or more. Clause (c) in article 243P may be amended accordingly.
- (b) The composition of the MPC should be as suggested in para 3.29 of the Paper. Article 243ZE should be amended accordingly.
- (c) State laws should specify the organisation which will function as the technical and administrative secretariat of the MPC under its control.

- (d) Where MPCs exist, their functional and territorial jurisdiction should be distinct and separate from the DPC.

C. Organic Links between Municipalities and Panchayats

3.32 The 73rd and the 74th Constitution Amendments do not address the issue of organic links adequately so far as the Panchayats are concerned. Sub-clause (a) of clause (3) of article 243C enables State laws to provide for representation of Chairpersons of Village Panchayats in the Panchayats at the intermediate level and the Chairpersons of the intermediate level panchayats in the panchayat at the district level. This way some links can be provided between the Village, Taluk and District Panchayats. However, all the States have not made the necessary provisions. Because the Panchayat at the three levels do share commonality of interest. It may, therefore, be considered whether the provisions in this regard should be mandatory.

3.33 However, between the Panchayats and Municipalities there is no link at all. This is partly due to the historical approach of the administration in the pre-independence days when supervision and control over municipalities was exercised by the District Collector and the Municipalities were expected to report to him. The District Planning Committee under article 243 ZD is the only platform where some of the elected representatives of municipalities and those of the district panchayats can come together. This, however, is a tenuous, discontinuous and limited arrangement. It is important that the rural-urban character of any district is reflected in the district level panchayat itself. It can be argued that since the district level panchayat is to be composed principally of representatives elected from territorial constituencies this can be taken care of. However, the Division of district territorial constituencies for the District Panchayat may or may not follow the jurisdictional boundaries of a panchayat or a municipality. It may therefore, be considered whether representation should be provided for Presidents of the Nagar Panchayats, Municipalities and Mayors of the Corporations situated in a district. This will be in addition to the members serving in the District Planning Committee.

3.34 The organic links should not stop at the district level and should be carried forward. A major outcome of the 73rd and the 74th Constitution Amendments is the enormous increase in the number of elected representatives from the rural and urban local bodies as a distinct level of representative bodies. Their needs and views should be adequately reflected in the policies and programmes of the State itself. In the States of Bihar, MP, Maharashtra, Karnataka and UP which have bicameral Legislature a fair number of seats are filled by persons elected by the local authorities.constituencies. Sub-clause (a) of clause (3) of article 171 of the Constitution specifically provides that one third of the members of the Legislative Council of a State should be elected by an electorate consisting of members of Municipalities, District Boards and such other local authorities in the State. In the context of the 73rd and the 74th Amendments it is appropriate that panchayats and municipalities are specified as local authorities. In the States where bicameral legislatures exist a channel for representation is available. For instance, the number of such representatives in the Bihar Legislative Council is 34. In MP it is 31, Maharashtra 22, Karnataka 26, and UP (including Uttaranchal) 39.

Representative democracy and multi level governance as envisaged in the 73rd and 74th Amendments requires that organic links are provided between the different elected bodies. Bicameral Legislatures in the States appear to be a good mechanism for doing this.

The matter merits public debate and consultation.

D. Representation and rights of MPs and MLAs in Municipalities

3.35 In multi level governance as envisaged by the 73rd and 74th Amendments, organic links between the different levels have both structural and political implications. Representation of the MPs and MLAs in Panchayats and Municipalities has been a controversial issue since the beginning of the exercise of constitutional amendments. In the 64th and the 65th Amendment Bills considered in 1989 the agreed position was that the MPs and MLAs should stay out of Village Panchayats. It was left to the States to provide for their representation in Panchayats at the Intermediate level and the District Panchayats. The

64th Amendment Bill also allowed the States to provide for this representation in such manner and subject to such conditions as the State Legislature may decide. This provision would have permitted State laws to determine the number and manner of representing MPs and MLAs as also their voting rights, if any.

3.36 In regard to Municipalities, the 1989 draft Bills contained no provision at all for representation of MPs and MLAs. When a similar exercise was initiated by the V.P. Singh Government, the entire composition of both panchayats and municipalities was left to the States and there was no specific reference to MPs or MLAs. In the Bill introduced in 1991 by the Narasimha Rao Government the provisions of the 64th and the 65th Amendment Bills were repeated. However, the Joint Parliamentary Committee dealing with the Panchayat Bill was of the view that representation of MPs and MLAs should have voting rights. Eventually it was recommended that voting right would be allowed except in the election of the chairperson of the panchayat. Clause 5(b) of article 243C accordingly stipulates that the chairperson of a panchayat at the intermediate level or district level shall be elected "by and from amongst the elected members thereof". The participation of MPs and MLAs in such elections was thus precluded.

3.37 In the case of the 74th Amendment, the concerned Joint Parliamentary Committee added a provision to article 243 R for representation of MPs, MLAs and MLCs. However, unlike the Panchayat Bill, the JPC did not stipulate any restriction on the voting powers relating to the election of the Chairperson or any other matter. This patent anomaly has led to some controversies and court cases as well.

3.38 In 1995, in the case of a few Municipalities in Rajasthan, including Alwar the Chairpersons were removed by votes of no confidence. These Chairpersons moved the Rajasthan High Court for redressal on the ground that MPs and MLAs had not participated in the motion. A single Judge of the Rajasthan High Court held that since MPs and MLAs were not 'elected members' of the Municipalities, their non-participation did not vitiate the motion of no confidence. The Petitioners went in appeal. A Division Bench of the Rajasthan High Court later held that though MPs and MLAs were not 'elected members' of the municipalities, Votes of confidence would have to be carried by a two-third majority of the 'whole house'. The MPs and MLAs should be taken as part of the 'whole house' for the purpose. Since they did not participate, the Division Bench held that the motions of confidence in the instant cases would fail. It was ordered accordingly that the Petitioners should be reinstated as Chairpersons. (Yogesh Saini and others Vs State of Rajasthan and others. D.B. Civil Special Appeal (Writ) Numbers 794, 799, 800 and 801 of 1998: Judgement dated July 15, 1999).

3.39 In another case from Haryana, a decision of the Punjab and Haryana High Court went even further. The Haryana Municipal Act while providing for representation of MPs and MLAs specifically States that they shall neither have the right to contest nor the right to vote in the election or removal of Presidents or Vice Presidents of Municipal Committees or Municipal Councils as the case may be. The Punjab and Haryana High Court has held that article 243R gives only limited delegation to the State Governments i.e., either to provide for representation of MPs and MLAs or not and does not give the State any right to restrict the voting powers of the MPs and MLAs so represented. The High Court has also held that since MPs and MLAs who are nominated to municipal bodies "being elected members from a much larger constituency, of which the Municipality itself forms a part, would have the right to vote while considering a no confidence motion in the Municipal Committee". This decision almost confers an inalienable right on MPs to vote in any Panchayat or Nagarpalika even though they are not elected members of these bodies. (Rajpal Chabra Vs State of Haryana and others: Civil Writ petition 1016 of 1995). It is also pertinent to mention that the 64th Amendment Bill of 1989 as well as the 72nd Amendment Bill of 1991 allowed the States to stipulate the manner of representation "subject to such conditions as may be specified". Presumably this would have enabled restriction on voting rights but the words have been omitted in the 73rd and the 74th Amendments.

3.40 The patent contradiction between articles 243C in the 73rd Amendment and 243R in the 74th Amendment cannot continue. The situation is further compounded by the lack of uniformity in the provisions made by the different State Governments in regard to the representation of MPs and MLAs in municipalities. In Madhya Pradesh, Haryana and Tamil Nadu, MPs and MLAs are represented in

municipalities but have either no voting rights or restricted voting rights. In Andhra Pradesh, Assam, Karnataka, Rajasthan and Uttar Pradesh, representation with voting rights has been provided. Gujarat, Kerala, Maharashtra, Orissa and West Bengal have not provided for such representation at all. In the case of Punjab, representation with voting rights is limited only to MLAs. Table 10 below provides an overview of the position. It is also interesting to recall that in the case of Tamil Nadu the initial amendment of the Municipalities Act carried out in 1994, provided for membership of the MPs and MLAs with voting powers. Subsequently, a second amendment was brought out in 1996 which limited the membership of MPs and MLAs only to corporations, Municipalities and district-level Panchayats but without the power to vote. The conformity laws thus indicate the continued ambivalence and confusion in the thinking of different States as reflected in the Table below:

Table 10
MPs/MLAs in Municipalities

State	MP	MLA
Andhra Pradesh	Yes(NV)	Yes(NV)
Assam	Yes(V)	Yes(V)
Bihar	Yes(V)	Yes(V)
Haryana	Yes(V)	Yes(V)
Himachal Pradesh	No	Yes(V)*
Kerala	No	No
Karnataka	Yes(V)	Yes(V)
Madhya Pradesh	Yes(NV)	Yes(NV)
Rajasthan	Yes(V)	Yes(V)
TamilNadu	Yes(NV)	Yes(NV)
Uttar Pradesh	Yes(V)	Yes(V)
Gujarat	No	No
Maharashtra	No	No
Orissa	No	No
Tripura	No	No
Punjab	No	Yes(V)
West Bengal	No	No

NV: Non -Voting Member/// V: Voting Member///*In Municipal Corporation only

3.41 The provision for the representation of MPs and MLAs in Panchayats and Municipalities appear to go against the spirit of the Constitution and its overall scheme of elected bodies at different levels. Clause (1) of article 101 of the Constitution specifically States that no person shall be a member of both of Parliament and Clause (2) States that no person shall be a member of both of Parliament and of a House of the Legislature of a State. Similarly, article 190 of the Constitution States that no person shall be a member of both Houses of a State Legislature. In pursuance of articles 101 and 190, the Prohibition of Simultaneous Membership Rules, 1950 has also been issued as Rules by the President. The Houses of Parliament and the Houses of State Legislatures are all constitutionally recognised bodies and dual membership in any two of them was clearly frowned upon by the founding fathers of the Constitution and thus specifically prohibited.

3.42 The Panchayats and Municipalities by virtue of the 73rd and 74th Amendments are also elected bodies recognised by the Constitution. However, clause (3) of article 243C empowers the Legislature of a State to provide for the representation of MPs and MLAs and MLCs in panchayats at the intermediate and district levels. Similarly, clause (2) of article 243R enables the Legislature of a State to make laws to provide for MPs, MLAs and MLCs to be represented in the municipalities. *Prima facie*, these provisions under articles 243C and 243R are against the grain and spirit of articles 101 and 190. It is a moot point whether the prohibition of dual membership in Legislatures is a Basic Feature of the Constitution and if so the membership of MPs, MLAs and MLCs in Panchayats and Municipalities goes against this Basic Feature. It may also be argued that if Panchayats and Municipalities had been given a constitutional

status when it was first enacted in 1949, provisions would have been made similar to articles 101 and 190 prohibiting such membership. It is well known that Members of Parliament and Members of State Legislatures zealously guard their respective domain and do not tolerate transgression. It is, therefore, inexplicable as to why both would seek to enter the domain of panchayats and municipalities which are also constituted by representatives elected by the people. It therefore, merits consideration and debate as to whether members of Parliament and State Legislatures should be represented at all in panchayats and municipalities.

3.43 All the States have not provided for such representation. In MP, Haryana and Tamil Nadu MPs and MLAs are represented in municipalities but have either no voting rights or restricted voting rights. In Andhra Pradesh, Assam, Karnataka, Rajasthan and UP representation with voting rights has been provided. Gujarat, Kerala, Maharashtra, Orissa and West Bengal have not provided for such representation at all. There needs to be some uniformity if representation is considered necessary and appropriate.

3.44 Even in cases where representation has been provided with voting rights such voting rights should not cover the right to vote in the election or removal of the Chairperson of a panchayat or a municipality. Sub-clause (5)(b) of article 243C stipulates that the Chairperson of a panchayat at the Intermediate or district level shall be elected "by and from amongst the elected members thereof." The participation of MPs and MLAs in such elections is thus precluded. There is no such stipulation in 243R. As already indicated in the notes this had led to controversies and litigations. The preclusion of MPs and MLAs in the election and removal of chairpersons should be made uniform for both panchayats and municipalities.

MP LADS and MLA LADS

3.45 Apart from representation there is another serious matter requiring attention which is the programme of Local Area Development Schemes, introduced in 1993. Under the scheme an amount of Rs. 1 crore, increased later to Rs. 2 crores is allocated to every MP to be spent on so called Local Area Development Schemes of his or her choice and executed through the District Collector. Construction of building for schools, hostels, libraries and educational institution belonging to government or local bodies, construction of tubewells, roads, bridges, drains, public toilets, cremation grounds, etc., are LAD schemes taken up. The allocation total about Rs. 1600/- crores every year. The 1998 Report of the Comptroller and Auditor General of India (C.A.G.) has brought out several irregularities and lapses in the implementation of this scheme. Notwithstanding, the scheme has been picked up by several States which provide similar allocations to MLAs as well. Delhi allows each of its MLAs to spend Rs.50 lakh on schemes of their discretion. In Tamilnadu it is as high as Rs.70 lakhs per year. Several other States have similar arrangements.

3.46 All these schemes are operated outside the prescribed budgetary processes of voting, financial sanctions and procedures for execution and accounting. Taking the allocations for the MPs and the MLAs together, the amount runs to a few thousand crores every year and are financed out of the public exchequer and diverting funds which would otherwise be available to rural and urban local bodies. Apart from the financial aspects, the LADS violates the Constitution in spirit and substance.

- (a) The Constitution has a clear scheme of separation of domain and responsibilities between the Legislature and the Executive. MPs and MLAs receiving government funds, determining so called development schemes of their choice and getting them executed under their aegis is a patent encroachment on the executive domain.
- (b) Most of the schemes being funded and executed do not fall within the Union list at all. In fact several of them are part of the 11th and the 12th Schedules to the Constitution which are part of the financial domain of the Panchayats and the Municipalities. In many States they are not within the purview of the State Governments either. MPs and MLAs exercising their personal choice and decision in funding and executing the scheme is an usurpation of the power and responsibilities of the Panchayats and Municipalities.

- (c) In many instances the choice of schemes and the amounts expected can significantly alter or distort local priorities as may be desired or decided by the Panchayats and the Municipalities. However, they may be helpless to rectify the situation as their own fund may be very limited in comparison to what an MP or an MLA can bring as largesse.
- (d) The provision of public funds to an MP to be spent on his or her choice in their constituency is in fact helping the MP to 'nurse' that constituency and increase his or her own political clout and influence at public expense. In a five year time frame a sitting MP will have had as much as Rs.10 crores for this purpose. It also provides a grossly major advantage to the sitting MP to strengthen his influence in comparison to others by using "money power", arranged in the case in contravention of the spirit and substance of the Constitution. A Public Interest Litigation is already pending before the Supreme Court seeking to declare the MPLADS *ultra vires*.

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Suggested Legal Changes

3.47 The suggested legal changes are:

- (a) In keeping with the spirit and substance of the 73rd and 74th Amendments envisaging Panchayats and Municipalities as institutions of self-government, the provision for representation of MPs, MLAs and MLCs in articles 243C and 243R should be deleted.
- (b) If such representation is considered necessary, it should be without voting rights and as invitees.
- (c) Representation, if allowed at all, should be in District Planning and Metropolitan Planning Committees.
- (d) Dual membership in a Panchayat or a Municipality on the one hand and a State Legislature or Parliament on the other should be specifically prohibited.

CHAPTER 4

INTEGRATING THE 73RD AND THE 74TH AMENDMENTS

4.1 The 74th Constitutional Amendment commonly known as the Nagarpalika Amendment is an after thought. The circumstances under which the pre-cursors of the 73rd and the 74th Amendments, namely the 64th Constitutional Amendment Bill which was introduced in May, 1989 and the 65th Amendment Bill which was introduced in August, 1989 have been described in detail in the book "Power to the People? The Politics and Progress of Decentralisation". After the defeat of the 64th and the 65th Amendment Bills the successor Government of V.P. Singh introduced a composite Bill for constitutional recognition of Panchayats and municipalities which lapsed after the V.P. Singh Government. The background to the revival of separate amendment initiatives by the Narasimha Rao government, their consideration by two separate Joint Parliamentary Committees and their eventual adoption by the Parliament have also been described in detail and analysed in the afore mentioned book.

4.2 Though the 73rd and the 74th Amendments as they presently stand are considered companion pieces in many respects, they are a duplication. Part IX entitled "Panchayats" and Part IX A entitled "Municipalities" have a total of 16 and 18 articles respectively. Out of these as many as 9 relating to definitions, reservations, duration of the local bodies, disqualifications, State finance commissions, elections, applications to Union territories, continuance of existing laws and bar to jurisdictions of courts are either identical or nearly identical between the two parts. The other provisions are closely similar. Article 243ZD on District Planning Committees is applicable to both Panchayats and municipalities. The 11th and the 12th Schedules containing the list of functions for Panchayats and municipalities are again very similar.

4.3 The objectives of both these amendments are decentralisation and empowerment of self governing local bodies. There cannot be and in fact there is no distinction made by the Constitution

between rural and urban areas so far as these main objectives are concerned. There cannot be rural empowerment of the people and urban disempowerment nor vice-versa.

4.4 Unfortunately the enactment of constitutional provisions in two parts has created a needless and artificial dichotomy in the minds of many people particularly Departments and Ministries of the State and the Union Government. This itself has been an important reason for the tardy and uneven progress in the implementation of these constitutional provisions. The discussions regarding the setting up of District Planning Committees in this paper is an apt illustration of how the implementation of this very important provision to understand the rural urban continuum and secure the integration of its development has been affected because the responsibilities fall between two stools and are lost.

4.5 While suggestions have been made in this paper for changes in the existing constitutional provisions in Part IX and Part IXA, serious consideration should also be given on whether these two Parts can be integrated by omitting the provisions which are a duplication of each other and rationalising the arrangement of the other provisions.

CHAPTER 5

SUMMARY OF SUGGESTED LEGAL CHANGES

I. Constitution of Municipalities, Elections and State Election Commissions

A. Constitution of Municipalities

- (1) Article 243Q provides for a Nagar Panchayat for a transitional area, Municipal Council for a smaller urban area and a Municipal Corporation for a larger urban area. While clause (2) allows the States to take into consideration various other factors, given the very wide variance, it is desirable that a population classification is provided in the Constitution itself. Given the increasing rate of urbanisation, its density and economic factors, a Corporation should have a minimum population of 5 lakhs, a Municipal Council 50,000 and a Nagar Panchayat 20,000. Provision can be made to preserve previously existing municipalities.
- (2) The proviso to article 243Q States that a municipality may not be constituted for an Industrial township under certain circumstances. This proviso did not figure in the Constitution Amendment Bill relating to the 73rd Amendment Act introduced in Parliament in July 91 or in the Bill as reported upon by the Joint Committee in July 92. This appears to be an after thought in response to some suggestions from certain quarters. The provision goes against the grain of decentralisation and local self-government. Hence, the proviso may be deleted.
- (3) Article 243U (1) contains a proviso that where a municipality is superseded "it shall be given a reasonable opportunity of being heard before its dissolution". There is no corresponding proviso in article 243E relating to Panchayats. The same proviso should be inserted.
- (4) Whenever a Panchayat or a Municipality is superseded a report stating the grounds for such dissolution should be placed before the State Legislature. This will be a deterrent to treating supercession casually and resorting to it because of political expediency. This provision is on par with a report being placed before each House of Parliament in the event of a proclamation of President's rule in a State under article 356.
- (5) In determining the number of municipal wards and in delineating them, there should be parity in the ratio between a seat and the population and such ratio should be uniform within a State among any category of municipalities such as Corporations, Municipal Councils and Nagar Panchayats:
- (6) The term of the Mayors/Chairpersons should be co-terminus with the term of the municipality. Provision for this should be made in the Constitution itself.

- (7) The procedure for removal of Mayor/Chairperson through motion of no confidence should be uniform. Here again a provision should be made in the Constitution requiring majority of the House and two-thirds majority of those present and voting.
- (8) Municipal Chairpersons and Mayors should be elected only by and from amongst the elected members of the municipality.

B. Qualifications and Disqualifications for Membership in Municipalities

- (1) Articles 243T and 243V contain identical provisions so far as disqualifications for membership in a panchayat or a municipality is concerned. The main principle followed is that the grounds of disqualification should be the same as applied for elections to the State Legislatures. State laws may make additional provisions. State laws compile all provisions regarding qualifications and disqualifications for elections in a single law and in the meantime prepare a manual compiling existing provisions for public information.
- (2) While SEC should have the authority to prescribe ceiling of expenses and code of conduct and while these may vary depending on the conditions of the different States, State laws should clearly specify the powers of the SEC to disqualify candidates or set aside elections in the event of violations.

C. Regularity of Elections

Ensuring regular elections

Articles 243E and 243U of the Constitution contain identical provisions. Clause (1) of article 243E states 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". Similarly, clause (1) of article 243U states that every municipality, 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. The provisions are clear and unambiguous and hence, there is no scope for any other interpretation. Clause (3) of article 243E and that of 243U further State that elections to constitute a Panchayat and a municipality respectively shall be "completed before the expiry of its duration specified in Clause (1)"

Both articles 243E and 243U in sub-clause (1) contain a provision for dissolution of panchayat or municipality respectively. Here again sub-clause (b) of clause (3) in both the articles stipulate that elections have to be completed "before the expiration of a period of six months from the date of its dissolution."

To reinforce the existing provisions in the Constitution the following additional stipulations may be considered:

- (a) It shall be the duty of a State and the Union (in case of panchayats and municipalities located in Union territories) to ensure the completion of elections as stipulated.
- (b) It should also be duty of the State Election Commissioner to ensure this and in the event of possible delay make a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfill the requirements of the Commission.
- (c) Article 243K(l) and article 243 ZA(l) State that the "superintendence, direction and control of the preparation of electoral roles and the conduct of all elections to the panchayats/municipalities shall be vested in a State Election Commission." This is a composite set of responsibilities. The preparation of electoral roles and the conduct of elections involve several processes and actions which are closely inter-related. The words, "superintendence, direction and control" are comprehensive and unambiguous and do not permit any artificial division. Clause (4) of 243K and Clause (2) of 243 ZA do provide for a State Legislature to make provisions with respect to all matters relating to interaction with these elections. However, this has to be subject to the provisions of the Constitution and can relate only to processes to be followed and guidelines for this purpose so that such processes serve public interest and ensure free and fair elections. They

do not permit splitting up of the composite responsibilities as Stated in article 243K and 243ZA. However as experience indicates certain important parts of these responsibilities such as delimitation of territorial constituencies or reservation of seats or rotation of such reservation among constituencies have been assumed by some State Governments. The effect of this has been to enable these State Governments to intervene in the composite and integrated process of conducting elections and thereby hold up the same if they so chose to do. Articles 243K and 243 ZA may, therefore, be suitably amended to specify that the responsibility for the conduct of elections shall include all preparatory steps for the same including the electoral roles, delimitation, reservation, rotation and matters connected therewith and the responsibility for the same shall vest with the State Election Commission.

Electoral Rolls and Delimitation

1.40.2 (a) Under articles 243K and 243ZA, the preparation of electoral rolls is the responsibility of the State Election Commission (SEC). The general practice has been for the SECs to adopt the electoral rolls available for the Assembly and Lok Sabha elections. In some cases however the electoral rolls for the local elections are prepared afresh and the two rolls may differ. The Constitution should specifically stipulate a common electoral roll. The processes for preparing the roll as also its periodical revision should be uniform throughout the country.

(b) The Election Commission has been evolving over a period of time a system whereby each polling station in an Assembly constituency has a unique identity which is linked to the roll of electors using that polling station. It is possible that panchayat and municipal elections may require more polling stations. If so, these additional polling stations should be extensions or sub-units of the main polling station. This will ensure a 'building block' approach for elections in the country whereby the smallest unit will be a polling station or a sub unit theory. A certain number of these will form a 'panchayat ward' or a 'municipal ward' which in turn will be grouped into panchayats and municipalities or Assembly segments and Lok Sabha constituencies. The voter is the same. The relevant R.P. Act and State laws should specify that common polling stations should be used for elections to local bodies, State Legislatures and Parliament.

(c) While delimitation of the constituencies for panchayat and municipal elections should be under the control and direction of the SEC, the Constitution should stipulate that such delimitation should be adjusted after every census and not for every elections. This will be in keeping with articles 82 and 170 of the Constitution requiring readjustment of Assembly and Lok Sabha Constituencies after every Census.

(d) The State laws should provide guidelines for the delimitation work such as parity in the ratio between the population of a territorial constituency and the number of seats within the same class of panchayats or municipalities. The extent of permissible variations should also be mentioned. Parity as a requirement is already stipulated in the proviso to article 243C so far as Panchayats are concerned but is missing in article 243R relating to municipalities.

(e) State laws should specify that changes in the administrative boundaries of districts, sub-divisions, taluks, police stations, etc., should not be made within six months prior to a panchayat or a municipal election.

Reservations

1.40.3 (a) Articles 243D and 243T contain identical provisions so far as reservation of seats in panchayats and municipalities for SC/STs and women are concerned. However there are some ambiguities about the rotation of such reserved seats. The words used in both the articles are

“may be allotted by rotation”. However in the second proviso under article 243D regarding reservation of the offices of chairpersons the words used are “shall be allotted by rotation”. The Constitutional provisions also do not specify the frequency of rotation. Moreover, in clause (4) of article 243T there is no stipulation for rotation. To remove ambiguities, articles 243D and 243T should be suitably amended to provide for rotation and changes only at the time of delimitation and not in between.

(b) State laws should however provide the guidelines for the process of reservation which should ensure transparency and adequate opportunities for eliciting voter response.

(c) Clause (6) of article 243D and clause (6) of article 243T enable a State Legislature to provide for reservation of seats as also offices of chairpersons in panchayats and municipalities in favour of backward class of citizens. Neither of the articles stipulate any ceiling for the total number of reserved seats and reserved offices. Since not less than one-third of total seats has been specified as the minimum for women; the reservation additionally made for backward classes can take a large proportion. To remove ambiguities the overall total of reserved seats and reserved offices should be specified in the Constitution.

D. State Election Commissions

1.50 Some specific provisions should be added to the Constitution as follows:

- (a) The State Election Commissioner should be appointed by the Governor on the recommendations of a group comprising the Chief Minister, the Speaker of the State Assembly and the Leader of the Opposition. This would make the selection impartial in the eyes of all concurred.
- (b) The State Election Commissioner should have a fixed term of 5 years.
- (c) In rank and status the State Election Commissioner should be equal to a Judge of the High Court.
- (d) The broad qualifications for position of State Election Commissioner may be specified in the Constitution itself or in the laws of the State. Since the conduct of elections is a major logistical exercise, administrative experience should be stressed.
- (e) Notification for all elections to Panchayats and Municipalities should be issued by the SEC.
- (f) SEC should be the single and common electoral authority in the State for all local body elections and elections to the State Legislatures. The SEC will also carry out the elections to Parliament under the supervision and control of the Election Commission of India. What is envisaged is a strong link between the State Election Commissions and the Election Commission of India so that the Election Commission of India can reinforce the autonomy of the State Election Commissions, support their functioning with expertise and technical help and enable the whole election machinery of the country to emerge as an integrated system.

E. Wards Committees and Proximity to Citizens

1.62 The suggested legal changes are:

- (a) Wards Committees should be mandatory for each of the ward in all Municipal Corporations with a population of three lakhs or more, to comprise of persons chosen by direct election from the territorial area of the Ward. The Chairman of the Committee will be the Councillor elected from the Ward.
- (b) The State laws may determine the number of persons to be so elected but there should be parity, within the city in the ratio between that number and population of a ward.

- (c) State laws may also enable Wards Committees to co-opt such residents of a ward who are knowledgeable and can assist the work of the Committee.
- (d) In all Corporations with a population of six lakhs and more, Zonal Committees at a level between the Wards Committees and the Corporation Council should be formed. State laws may determine the number and area of such Zonal Committees. The Councillors of all the municipal wards represented in that area shall be members. In addition, one other person from each of the Wards Committees elected by and from amongst the elected members of that Committee shall be a member of the Zonal Committee.
- (e) State laws may determine the manner in which elections to the Ward and Zonal Committees are to be held, their functions and responsibilities and the allocation of funds to carry out the same.
- (f) Article 243S should be amended suitably to incorporate the proposals made in items (a) to (e) above.

II. Functional and Financial Domain

A. Functional Domain

The suggested legal changes are:

- (a) A common Schedule of functions for both rural and urban local bodies is desirable. The existing 11th and the 12th Schedules which have several common items should be integrated.
- (b) This integrated Schedule should not be illustrative only, but should be mandatory. It should be on par with the lists in the Seventh Schedule in status and in the exercise of Legislative and Executive powers, which should be co-extensive with the subject, listed in the Schedule.
- (c) The assignment of functions should be by substantive law rather than by rules and regulations.
- (d) The laws should also provide for the transfer to the Municipalities of organisations, funds and staff who were previously responsible for discharging the functions being assigned. The local bodies should have full control over its staff including those transferred to them. Functions, functionaries and funds should go together.

Financial Domain

2.23 The suggested legal changes are:

- (a) The concept of a distinct and separate tax domain for municipalities should be recognised. This concept should be reflected in a list of taxes and should form part of the common schedule of functions and responsibilities for local bodies or in the event it is decided to continue with the 11th and 12th Schedules as separate, the tax domain should figure in the relevant schedule. Carving out items from the existing State lists such as item 49 (taxes on land and buildings) and item 52 (taxes on entry of goods into a local area for consumption) should not be difficult.
- (b) Similarly, the concept of a divisible pool of taxes which can be shared between the Union, the States and the Municipalities should also be recognised similar to the provisions in articles 268 to 274. There should be categories of taxes and other levies specifying who will collect the same and how it will be distributed between the 3 levels.
- (c) In case of taxes and levies, the proceeds of which are to be shared with municipalities, prior consultation will be required before any modification is made in the scope of the tax or its rates.
- (d) Article 276 on taxes on professions, trades and employment should be amended as suggested by the 11th Finance Commission. The ceiling should be specified by Parliament from time to time rather than requiring amendments to the Constitution.
- (e) State laws should provide for composition of the State Finance Commission and the criteria for its membership similar to the provisions in the case of the Finance Commission set up by the President under article 280.

- (f) State laws should provide for the establishment of the SFCs in a periodical manner and determine a time schedule for the same so that the work and output of the SFCs are synchronised suitably with the Central Finance Commission.
- (g) Articles 243 I and 243Y should be amended to ensure that the Action Taken Report by the Government is laid before the State Legislature within six months of the submission of the SFC recommendations.
- (h) Sub-clauses (bb) and (c) of clause (3) of article 280 should be amended so that the Central Finance Commission while taking into consideration the recommendation of the SFCs, is not circumscribed by the same.
- (i) State laws should also provide for establishing and maintaining a financial database as suggested by the 11th Finance Commission.
- (j) State laws should specifically empower municipalities to borrow.
- (k) State laws should also provide for the preparation and adoption of municipal budgets in a transparent manner in keeping with the public right to information.

III. District Planning Committees, Metropolitan Planning Committees and Organic links between municipalities and Panchayats

A. District Planning Committees

3.17 The suggested legal changes are:

- (a) As per the definitions given in article 243, 'district' means a district in a State while 'Panchayat area' means the territorial area of a Panchayat. The Panchayat at the district level should, therefore, be for the district as a whole instead of the rural areas only. The definitions under article 243 should be amended accordingly. Clause (1) of article 243 ZD should be amended to stipulate that the District Planning Committee shall be constituted within the Panchayat at the district level or Zilla Parishad.
- (b) Sub-clause (d) of clause (2) of article 243 ZD should be amended to provide for the Chairperson of the Panchayat at the district level to be the Chairperson of the District Planning Committee. The Chairperson of the largest Municipality in the District should be the Vice-chairman.
- (c) In clause (1) of 243ZD, the words "consolidate the plans prepared by the Panchayats and Municipalities in the district" should be omitted so that the DPC's main task of preparing a draft development plan for the district is not contingent or dependent on individual plans prepared by the Panchayats and the Municipalities. However Clause (3) of article 243ZD can provide that in preparing the development plan the DPC will have regard to such plans as are prepared by the Panchayats and the Municipalities. Zilla Parishad should help panchayats and municipalities to prepare these plans which will serve as building blocks for preparation of Development Plan for the district.
- (d) Article 243ZD should also contain a provision to enable the State laws and State Governments to entrust additional responsibilities as monitoring of development schemes and programmes in the district, co-ordination of their implementation including powers to modify sanctions to ongoing schemes subject to limits.
- (e) The Zilla Parishad should be the technical and administrative secretariat for the DPC independent of and distinct from the District Collector or the District Magistrate.
- (f) The State laws should provide for association and involvement of government and non-government agencies and professionals in the DPCs. MPs, MLAs and Ministers desiring to participant in the District Planning Committee should be welcome as invitees.
- (g) State agencies, district agencies and district administration should assist the DPC with data and technical know-how in preparation of the development plan for the district. State laws should provide for this.

- (h) Where Metropolitan Planning Committees (MPCs) are required to be set up, State laws and regulations should determine the functional and territorial jurisdiction of the DPCs as distinct from the MPCs. Where Metropolitan Planning Committees exist for predominantly urban districts, they should be deemed as DPCs, as no separate DPC is necessary.

B. Metropolitan Planning Committees

3.34 The suggested legal changes are:

- (a) Metropolitan Planning Committees should be limited to metropolitan areas with 20 lakh population or more. Clause (c) in article 243P may be amended accordingly.
- (b) The composition of the MPC should be as suggested in para 3.29 of the Paper. Article 243ZE should be amended accordingly.
- (c) State laws should specify the organisation which will function as the technical and administrative secretariat of the MPC under its control.
- (d) Where MPCs exist, their functional and territorial jurisdiction should be distinct and separate from the DPC.

C. Organic links between Municipalities and Panchayats

3.47 The suggested legal changes are:

- (a) In keeping with the spirit and substance of the 73rd and 74th Amendments envisaging Panchayats and Municipalities as institutions of self-government, the provision for representation of MPs, MLAs and MLCs in articles 243C and 243R should be deleted.
- (b) If such representation is considered necessary, it should be without voting rights and as invitees.
- (c) Representation, if allowed at all, should be in District Planning and Metropolitan Planning Committees.
- (d) Dual membership in a Panchayat or a Municipality on the one hand and a State Legislature or Parliament on the other should be specifically prohibited.

QUESTIONNAIRE ON DECENTRALISATION AND MUNICIPALITIES

CONSTITUTION OF MUNICIPALITIES

-

1. Do you agree to the suggestion that a population classification for a Nagar Panchayat, Municipal Council and a Municipal Corporation is to be provided in the Constitution itself?

Yes ☐ No ☐

2. The proviso to article 243Q states that a Municipality may not be constituted for an Industrial township. As this is not in tune with decentralisation and local self-government, do you agree to the suggestion that the said proviso should be deleted?

Yes ☐ No ☐

3. Article 243U (1) contains a proviso that where a Municipality is superseded "it shall be given a reasonable opportunity of being heard before its dissolution". Should a similar proviso be inserted in Article 243E relating to Panchayats?

Yes ☐ No ☐

4. Do you agree that whenever a Panchayat or a Municipality is superseded a report stating the grounds for such dissolution should be placed before the State Legislature?

Yes ☐ No ☐

5. Do you agree that in determining the number of municipal wards and in delineating them, there should be parity in the ratio between a seat and the population and such ratio should be uniform within a State among any category of Municipalities?

Yes ☐ No ☐

6. Should a provision be made in the Constitution stipulating that the terms of office of the Mayor/Chairpersons should be coterminus with the term of the Municipality?

Yes ☐ No ☐

7. Should the procedure for removal of Mayor/Chairperson through motion of no confidence be uniform?

Yes ☐ No ☐

8. Should the Municipal Chairpersons and Mayors be elected only by and from amongst the elected members of the Municipality?

Yes ☐ No ☐

QUALIFICATIONS AND DISQUALIFICATIONS FOR MEMBERSHIP IN MUNICIPALITIES

9. Should the main principle to be followed for disqualifications for membership in a Panchayat or a Municipality be the same as applied for elections to the State Legislatures?

Yes ☐ No ☐

10. (a) Should the State Election Commissions have the authority to prescribe ceiling of expenses and code of conduct?

Yes ☐ No ☐

- (b) Do you think that the State laws should clearly specify the powers of the State Election Commissions to disqualify candidates or set aside elections in the event of violations?

Yes ☐ No ☐

REGULARITY OF ELECTIONS

-

11. Do you subscribe to the view that it shall be the duty of a State and the Union (in case of Panchayats and Municipalities located in Union territories) to ensure the completion of elections as stipulated?

Yes ☐ No ☐

12. Do you subscribe to the view that it should also be the duty of the State Election Commissioner to ensure the above and, in the event of possible delay, make a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfill the requirements of the Commission?

Yes ☐ No ☐

13. Do you agree that Articles 243K and 243 ZA may be suitably amended to specify that the responsibility for the conduct of elections shall include all preparatory steps for the same including the electoral roles, delimitation, reservation, rotation and matters connected therewith and the responsibility for the same shall vest in the State Election Commission?

Yes ☐ No ☐

14. Do you agree that the Constitution should specifically stipulate a common electoral roll and the processes for preparing the roll as also its periodical revision should be uniform throughout the country?

Yes ☐ No ☐

15. Should the Representation of the People Act and State laws should specify that common polling stations be used for local, State and Parliament elections?

Yes ☐ No ☐

16. Do you agree that while delimitation of the constituencies for Panchayat and Municipal elections should be under the control and direction of the State Election Commission, the Constitution should stipulate that such delimitation should be adjusted after every census and not for every elections?

Yes ☐ No ☐

17. (a) Do you agree that the State laws should provide guidelines for the delimitation work such as parity in the ratio between the population of a territorial constituency and the number of seats within the same class of Panchayats or Municipalities and the extent of permissible variations?

Yes ☐ No ☐

(b) Should Article 243R relating to Municipalities should be amended to provide parity as a requirement on the lines already stipulated in the proviso to article 243C relating to Panchayats?

Yes ☐ No ☐

18. Do you agree that State laws should specify that changes in the administrative boundaries of districts, sub-divisions, taluks, police stations etc., should not be made within six months prior to a Panchayat or a municipal election?

Yes ☐ No ☐

19. Articles 243D and 243T contain common provisions so far as reservation of seats in Panchayats and Municipalities for SCs/STs and women are concerned. However, there are some ambiguities about the rotation of such reserved seats. The words used in both the articles are "may be allotted by rotation". However, in the State Election Commissions and proviso to article 243D regarding reservation of the offices of chairpersons the words used are "shall be allotted by rotation". The Constitutional provisions also do not specify the frequency of rotation. Furthermore, in clause (4) of article 243T there is no stipulation for rotation. To remove ambiguities, it is suggested that articles 243D and 243T should be suitably amended to provide for rotation and changes only at the time of delimitation and not in between? Do you agree with the suggestion?

Yes ☐ No ☐

20. Should the State laws provide the guidelines for the process of reservation for ensuring transparency and adequate opportunities for eliciting voter response?

Yes ☐ No ☐

21. Clause (6) of article 243D and clause (6) of article 243T enable a State legislature to provide for reservation of seats as also offices of Chairpersons in Panchayats and Municipalities in favour of backward class of citizens. Neither of the articles stipulate any ceiling for the total number of reserved seats and reserved offices. Since one-third has been specified as the minimum for women; the reservation additionally made for backward classes can take a larger proportion. Do you agree that for removal of the ambiguities, the overall total of reserved seats and reserved offices should be specified in the Constitution?

Yes ☐ No ☐

State Election Commissions

22. Do you agree that the State Election Commissioner should be appointed by the Governor on the recommendations of a group comprising the Chief Minister, the Speaker of the State Assembly and the Leader of the Opposition and the Chief Justice of the High Court?

Yes ☐ No ☐

23. Do you agree that the State Election Commissioner should have a fixed term of 5 years?

Yes ☐ No ☐

24. Do you agree that, in rank and status, the State Election Commissioner should be equal to a Judge of the High Court?

Yes ☐ No ☐

25. (a) Whether the broad qualifications for position of State Election Commissioner may be specified in the Constitution itself or in the laws of the State?

Constitution ☐ State Law ☐

(b) Since the conduct of elections is a major logistical exercise, should administrative experience be stressed?

Yes ☐ No ☐

26. Should Notification for all elections to Panchayats and Municipalities be issued by the State Election Commission?

Yes ☐ No ☐

27. (a) Should the State Election Commission be the single and common electoral authority in the State for all local body elections and elections to the State Assemblies?

Yes ☐ No ☐

(b) Whether the State Election Commission should also carry out the elections to Parliament under the supervision and control of the Election Commission of India?

Yes ☐ No ☐

WARD COMMITTEES AND PROXIMITY TO CITIZENS

28. (a) Should Wards Committees be mandatory for each of the ward in all Municipal Corporations with a population of 3 lakhs or more, to comprise of persons chosen by direct election from the territorial area of the Ward?

Yes ☐ No ☐

(b) Whether the Chairman of the Committee should be the Councillor elected from the Ward?

Yes ☐ No ☐

29. Do you agree to the suggestion that the State laws may determine the number of persons to be so elected but there should be parity, within the city in the ratio between that number and population of a ward?

Yes ☐ No ☐

30. Whether the State laws may also enable wards committees to co-opt such residents of a ward who are knowledgeable and can assist in the work of the Committee?

Yes ☐ No ☐

31. (a) Whether in all Corporations with a population of 6 lakh and more, Zonal Committees at a level between the Wards Committees and the Corporation Council should be formed?

Yes ☐ No ☐

(b) Whether the State laws may determine the number and area of such Zonal Committees?

Yes ☐ No ☐

(c) Should the Councillors of all the municipal wards represented in that area be members?

Yes ☐ No ☐

(d) Whether, in addition, one other person from each of the Wards Committees elected by and from amongst the elected member of that Committee should be a member of the Zonal Committee?

Yes ☐ No ☐

32. Do you agree that the State laws may determine the manner in which elections to the Ward and Zonal Committees are to be held, their functions and responsibilities and the allocation of funds to carry out the same?

Yes ☐ No ☐

-

FUNCTIONAL DOMAIN

33. (a) Do you agree that there should be a common schedule of functions for both rural and urban local bodies?

Yes ☐ No ☐

(b) If so, whether the existing the Eleventh and the Twelfth Schedules which have several common items should be integrated?

Yes ☐ No ☐

34. Do you consider that this common schedule should be treated as the Local Bodies List and be incorporated in the Seventh Schedule itself after the Union, State and Concurrent lists?

Yes ☐ No ☐

35. (a) Do you consider as to whether the process of assigning the functions and responsibilities should be made mandatory?

Yes ☐ No ☐

(b) Do you suggest that the State Governments should exercise the above functions and responsibilities on a State wide basis only for any exceptional reasons?

Yes ☐ No ☐

36. Do you consider that the assignment of functions should be by law rather than by rules and regulations?

Yes ☐ No ☐

37. The laws should also provide for the transfer to the Municipalities of organisations, funds and staff who were previously responsible for discharging the functions being assigned. The local bodies should have full control over its staff including those transferred to them. Functions, functionaries and funds should go together. Do you agree to the above suggestions?

Yes ☐ No ☐

FINANCIAL DOMAIN

38. The concept of a distinct and separate tax domain for Municipalities should be recognised. This concept should be reflected in a list of taxes and should form part of the common Schedule of functions and responsibilities for local bodies or in the event it is decided to continue with the Eleventh and the Twelfth Schedules as separate, the tax domain should figure in the relevant Schedule. Do you agree with the above suggestions:-

Yes ☐ No ☐

39. It is suggested that the concept of a divisible pool of taxes which can be shared between the Union, the States and the Municipalities should also be recognised similar to the provisions in Articles 268 to 274. There should be categories of taxes and other levies specifying who will collect the same and how it will be distributed between the 3 levels.? Please give your comments on the above suggestions.

Suggestions

40. Do you agree that in case of taxes and levies the proceeds of which are to be shared with Municipalities, prior consultation will be required before any modification is made in the scope of the tax or its rates?

Yes ☐ No ☐

41. (a) Should Article 276 on taxes on professions, trades and employment be amended as suggested by the 11th Finance Commission?

Yes

☐

No

☐

(b) Should the ceiling be specified by Parliament, by law, from time to time, rather than requiring amendments to the Constitution?

Yes

☐

No

☐

42. Should the State laws provide for composition of the State Finance Commission and the criteria for its membership similar to the provisions in the case of the Finance Commission set up by the President under Article 280?

Yes

☐

No

☐

43. Should State laws provide for the establishment of the State Finance Commissions in a periodical manner and determine a time schedule for the same so that the work and output of the State Finance Commissions are synchronised suitably with the Central Finance Commission?

Yes

☐

No

☐

44. Should Articles 243 I and 243Y be amended to ensure that the Action Taken Report by the Government is laid before the State Legislature within six months of the submission of the State Finance Commission recommendations?

Yes

☐

No

☐

45. Should Article 280 (3) (bb) and (c) be amended so that the Central Finance Commission while taking into consideration the recommendation of the State Finance Commissions, is not circumscribed by the same?

Yes

☐

No

☐

46. Should State laws also provide for establishing and maintaining a financial database as suggested by the 11th Finance Commission.?

Yes

☐

No

☐

47. Should the State laws specifically empower Municipalities to borrow.?

Yes

☐

No

☐

48. Should the State laws also provide for the preparation and adoption of Municipal Budgets in a transparent manner in keeping with the public right to information?

Yes

☐

No

☐

DISTRICT PLANNING COMMITTEES

-

49. Should Clause (1) of Article 243 ZD be amended to stipulate that the District Planning Committee shall be constituted within the Panchayat at the district level or Zilla Parishad?

Yes ☐ No ☐

50. (a) Should sub-clause (d) of clause (2) of Article 243 ZD be amended to provide for the Chairperson of the Panchayat at the district level to be the Chairperson of the District Planning Committee?

Yes ☐ No ☐

- (b) Should the Chairperson of the largest Municipality in the District be the Vice-chairman?

Yes ☐ No ☐

51. (a) Should the words "consolidate the plans prepared by the Panchayats and Municipalities in the district" occurring in clause (1) of 243 ZD be omitted so that the District Planning Committee's main task of preparing a draft development plan for the district is not contingent or dependent on individual plans prepared by the Panchayats and the Municipalities?

Yes ☐ No ☐

- (b) Whether Zilla Parishad should help Panchayats and Municipalities to prepare these plans which will serve as building blocks for preparation of Development Plan for the district?

Yes ☐ No ☐

52. Should Article 243 ZD also contain a provision to enable the State laws and State governments to entrust to Zilla Parishad additional responsibilities as monitoring of development schemes and programmes in the district, co-ordination of their implementation including powers to modify sanctions to ongoing schemes subject to limits?

Yes ☐ No ☐

53. Should the Zilla Parishad be the technical and administrative State Election Commissionsretariat for the District Planning Committee independent of and distinct from the District Collector or the District Magistrate?

Yes ☐ No ☐

54. Should the State laws provide for association and involvement of government and non-government agencies and professionals in the District Planning Committees? Should participation of MPs, MLAs and Ministers in the District Planning Committee as invitees is desirable?

Yes ☐ No ☐

55. Whether the State law should provide that State agencies, district agencies and district administration assist the District Planning Committee with data and technical know-how in preparation of the development plan for the district?

Yes ☐ No ☐

56. (a) Where Metropolitan Planning Committees are required to be set up, whether the State laws and regulations should determine the functional and territorial jurisdiction of the District Planning Committees as distinct from the Metropolitan Planning Committees.?

Yes ☐ No ☐

(b) Where Metropolitan Planning Committees exist for predominantly urban districts, whether they should be deemed as District Planning Committees, as no separate District Planning Committee is necessary?

Yes ☐ No ☐

METROPOLITAN PLANNING COMMITTEE

-

57. Whether clause (c) of article 243P of the Constitution be amended so as to provide that the Metropolitan Planning Committees should be limited to metropolitan areas with 20 lakh population or more?

Yes ☐ No ☐

58. (a) Should the Chief Minister of the State be the Chairman of the Metropolitan Planning Committee?

Yes ☐ No ☐

(b) Should the Mayor of the main city be a Vice Chairman?

Yes ☐ No ☐

59. Should Article 243ZE be amended so as to specify the composition of the Metropolitan Planning Committee as suggested in para 3.27 of the Paper?

Yes ☐ No ☐

60. Should the State laws specify the organisation which will function as the technical and administrative State Election Commissionsretariat of the Metropolitan Planning Committee under its control?

Yes ☐ No ☐

61. Should the functional and territorial jurisdiction of Metropolitan Planning Committees be distinct and separate from the District Planning Committee?

Yes

No



ORGANIC LINK BETWEEN MUNICIPALITIES AND PANCHAYATS

62. Should the provision for representation of MPs, MLAs and MLCs in Articles 243(C) and 243R be deleted?

Yes



No

☐

63. If such representation is considered necessary, should it be without voting rights and as invitees?

Yes

No

64. If representation is allowed, should it be in District Planning and Metropolitan Planning Committees only?

Yes

No

65. Should dual membership in a Panchayat or a Municipality on the one hand and a State Legislature or Parliament on the other hand be specifically prohibited?

Yes

No

66. Should MPs and MLAs be debarred from performing executive functions such as the financing or implementation of schemes which are within the functional domain of Panchayats or Municipalities?

Yes

No

67. Please give details of any other suggestions/comments which you would like to make on Decentralisation and municipalities (in not more than 300 words).

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Annexure 1.1
(See Para 1.19)

Qualifications for members of Municipalities

Name of the Act	Disqualifications
UP Municipalities Act, 1957	<ul style="list-style-type: none"> a) Has been convicted and sentenced to imprisonment for not less than two years (unless five years has relapsed since his release). b) Undischarged insolvent c) Holds any office of profit d) Is in the services of State, Central or Local government e) Any share or interest in a contract for supply of goods in services undertaken by the municipality f) In arrears in excess of one years demand of any tax payable to the municipality g) Within six years of dismissal for corruption or disloyalty to the State h) Is debarred from practicing as a legal practitioner
Andhra Pradesh Municipalities Act,	<ul style="list-style-type: none"> a) A person having more than two children. b) A person holding an office of profit under a municipality, the Central Government and State government c) To imprisonment for an offence under the Untouchability d) For offence other than an offence of political character e) Or any offence not involving moral delinquency f) Of unsound mind and stands so declared by a competent court, a deaf-mute or suffering from leprosy g) An applicant to be adjudicated an insolvent or undischarged insolvent h) Interested in subsisting lease or contract entered into with or any work being done for, the council except as a shareholder, other than a director in a company.
Madhya Pradesh Municipal Corporation Act	<ul style="list-style-type: none"> a) Has been convicted of any offence unless a period of six years has elapsed b) Has been convicted by a court in India c) Sentenced to imprisonment for a period of not less than two years d) Undischarged insolvent e) Is of unsound mind f) Is in the-service of the government of any local authority g) Has directly or indirectly share or interest in any work done by the municipality h) Has not paid taxes or charges due to a municipality
Kerala Municipalities Act	<ul style="list-style-type: none"> a) Officer and employees of Government, local authorities, etc. b) Person convicted for certain offences including corrupt practices

	<ul style="list-style-type: none"> c) Adjudged to be of unsound mind d) Voluntarily acquired the citizenship of foreign State e) Sentenced by a criminal court. f) Adjudged as insolvent or is an undischarged insolvent g) Is interested in a subsisting contract made with, or any work being done for the government or the Municipality concerned
Himachal Pradesh Municipal Corporation Act, 1994	<ul style="list-style-type: none"> a) If he is of unsound mind c) Undischarged insolvent d) Acquired a foreign citizenship e) Found guilty of any corrupt practice f) Sentenced or convicted by any criminal court g) Holds office of profit under the municipality h) Licensed Architect, Draftsmen, Engineer, Plumber, Surveyor or Town Planner i) Holds any office of profit under government or Municipal Corporation j) Interested in any subsisting contract with a work being done for the Corporation k) If registered as a habitual offender l) If he is under employment under any Panchayat or the local authority or cooperative society or State and Central Government including PSUs
Rajasthan Municipalities Act	<ul style="list-style-type: none"> a) sentenced by criminal court to imprisonment exceeding six months b) has been dismissed from the service of the Central or State government or any local authority for misconduct c) having been a legal practitioner and debarred from practicing d) holds any place of profit in the municipality e) holds a salaried or part time appointment under the central / State or a local authority f) undischarged insolvent g) suffering from leprosy h) adjudged by competent court to be of unsound mind i) one who has more than two children j) share or interest in any work done by the board
Karnataka Municipal Corporation Act	<ul style="list-style-type: none"> a) Imprisonment for a term exceeding six months b) Convicted under Untouchability offence Act and prevention of food alteration act c) Holds office of profit under the govt. d) Dismissed from service under local authority or govt e) Legal practitioner dismissed from practice f) Deaf-mute g) Unsound mind h) Undischarged insolvent i) Not citizen of India j) Disqualified for standing to election of State Legislature k) Directly or indirectly share or interest in any contract or employment with municipality l) employed as legal practitioner on behalf or against municipality m) licensed surveyor or plumber or water supply contractor of the Corporation or partner of such a firm n) fails to pay all arrears to municipality
Tamil Nadu Urban Local Bodies Act	<ul style="list-style-type: none"> a) officer or employee of central/State/local authority b) no share or interest in any contract or employment with municipality c) Paid all arrears to municipality. d) sentenced for life or imprisonment for more than six months e) convicted under protection of civil rights Act 1955 f) unsound mind g) undischarged insolvent h) employed as legal practitioner on behalf of or against municipality

	i) Representative of any association or union representing any municipal establishment j) Already a Councillor whose term of office will not expire before fresh elections k) Dismissed for corruption or disloyalty to State
Haryana Municipalities Act, 1973	a) Disqualified under any law for the time being b) If he is of unsound mind c) Undischarged insolvent d) Acquired a foreign citizenship e) Found guilty of any corrupt practice f) Sentenced or convicted by the criminal court g) Holds office of profit under the Corporation h) Licensed Architect, Draftsmen, Engineer, Plumber, Surveyor or Town Planner i) Holds any office of profit under government or municipal Corporation j) Interested in any subsisting contract with a work being done for the Corporation k) Fails to pay any arrears of any kind due to him l) He has more than two living children

Annexure 1.2
(See Para 1.21)

Maximum Election Expenditure Norms

ANDHRA PRADESH

Post	Maximum Election Expenditure Prescribed earlier during ordinary Elections 1995	Maximum Election Expenditure Prescribed for Ordinary Elections, 2000
Mayor, Municipal Corporation of Hyderabad	2,50,000	10,00,000
Ward Member, Municipal Corporation of Hyderabad	8,000	20,000
Mayor, Municipal Corporations Vijayawada and Vishakapatnam	2,50,000	5,00,000
Ward Member, Municipal Corporations of Vijayawada and Vishakhapatnam	8,000	15,000
Mayor, Municipal Corporations of Guntur, Kurnool, Warrangal and Rajahmundry	2,50,000	3,00,000
Ward Member, Municipal Corporations of Guntur, Kurnool, Warrangal and Rajahmundry	8,000	15,000
Chairperson, Selection Grade Municipality	50,000	2,50,000
Ward Member, Selection Grade Municipality	8,000	15,000
Chairperson, Special Grade Municipality	50,000	2,00,000
Ward Member, Special Grade Municipality	8,000	15,000
Chairperson, Grade I Municipality	50,000	1,50,000
Ward Member, Grade I Municipality	8,000	15,000
Chairperson, Grade II Municipality	50,000	1,25,000
Ward Member, Grade II Municipality	8,000	12,000
Chairperson, Grade III Municipality	50,000	1,00,000
Ward Member, Grade III Municipality	8,000	12,000

Chairperson, Nagar Panchayat	50,000	75,000
Ward Member, Nagar Panchayat	8,000	10,000
Member, Zilla Parishad	50,000	1,00,000
Member, Zilla Parishad	25,000	50,000
Sarpanch, Non-notified Gram Panchayat	10,000	40,000
Ward Member, Non-notified Gram Panchayat	2,500	5,000
Sarpanch, Non-Notified Gram Panchayat	10,000	20,000
Ward Member, Non-notified Gram Panchayat	2,500	3,000

ASSAM

Post	Maximum Election Expenses Prescribed
Zilla Parishad Member	40,000
Anchalik (Mandal) Panchayat Member	20,000
President Village Panchayat	20,000
Member Village Panchayat	20,000
Ward Member, Municipal Corporation	10,000
Ward Commissioner, Municipal Ward	5,000
Ward Commissioner, Town Committee	2,000

GUJARAT

Post	Maximum Election Expenses Prescribed
Member, Municipal Corporation	1,25,000
Member, Municipalities	60,000
Member, Nagar Panchayats	25,000
Member, Zilla Panchayats	75,000
Member, Taluka Panchayat	35,000

No Limit has been fixed for Village Panchayat Elections

HARYANA

Post	Maximum Election Expenses Prescribed
Member, Zilla Parishad	75,000
Member, Municipal Corporation	40,000
Member, Municipal Council	30,000
Member, Panchayat Samiti	30,000
Member, Municipal Committee	20,000
Sarpanches	8,000
Panches	3,000

MADHYA PRADESH

Local Body	Population as per 1991 Census	Maximum Limit of Election Expenses
Municipal Corporation	More than 5 Lakh	4,00,000
	Between 3 Lakh and 5 Lakh	3,00,000

	Less than 3 Lakh	2,00,000
Municipal Council	More than 1 Lakh	1,50,000
	Between 50,000 and 1 Lakh	1,00,000
	Upto 50,000	50,000
Nagar Panchayat		25,000

MAHARASHTRA

Post	Maximum Election Expenses Prescribed
Councillor, Municipal Corporation	40,000
Councillor, Municipal Council	30,000
Councillor, Zilla Parishad	30,000
Member, Panchayat Samiti	20,000
Member, Village Panchayat	5,000

RAJASTHAN

Post	Maximum Election Expenses Prescribed
Member, Zilla Parishad	20,000
Member, Panchayati Samiti	10,000
Sarpanch	5,000

GOA

Post	Election Expenses
Member, Village Panchayat	2,500
Member, Taluka Panchayat	10,000
Member, Zilla Panchayat	25,000
Member, Municipal Council	15,000

Annexure 1.3
(See Para 1.24)

Elections in Urban Local Bodies held after 1994

State/UT	Nagar Panchayat	Municipal Council	Municipal Corporation
Andhra Pradesh	1995, 2000	1995,2000	1995,2000
Assam	1997-2000	1996-1997	1995

Delhi	*	#	1997
Goa	*	1995	*
Gujarat	1994-95	1994-95, 2000	1994-95, 2000
Haryana	1994, 2000	1994, 2000	1994, 2000
Himachal Pradesh	1995	1995	1995
Karnataka	1996	1996	1996-97
Kerala	1995, 2000	1995, 2000	1995, 2000
Madhya Pradesh	1994, 1999	1994, 1999	1994, 1999
Maharashtra	1997-98,	1997-98,	1997-98,
Manipur	1995	1995	*
Orissa	1995, 2000	1995, 2000	1995, 2000
Punjab	1998	1998	1998
Rajasthan	1994-95, 1999	1994-95, 1999	1994-95, 1999
Tamil Nadu	1996	1996	1996
Uttar Pradesh	1995-97, 2000	1995-97, 2000	1995, 2000
West Bengal	1993-94, 1999-2000	1993-94, 1999-2000	1993-94, 1999-2000
A&N Islands	*	1995, 2000	*
Chandigarh	*	*	1996
Daman&Diu	*	1996	*

- Denotes, does not exist

NDMC is not elected

Annexure 1.4
(See Para 1.25)

Number of Urban Local Bodies and elected Representatives

State/U.T.	Municipal Corporations	Municipal Councils	Nagar Panchayats	Total
Andhra Pradesh	07(395)	94(2833)	15(314)	116(3542)
Assam	01	25(353)	42(204)	68(557)
Bihar	06	70	93	169
Goa	-	13(155)	-	13(155)
Gujarat	06(468)	86(2745)	60(1260)	152(4473)
Haryana	01	20	32	53(1359)
Himachal Pradesh	01(25)	19(183)	29(221)	49(429)
Karnataka	06(410)	122(3196)	89(1355)	214(4961)
Kerala	05(298)	53(1597)	-	58(1895)
Madhya Pradesh	20(1067)	106(2527)	283(4537)	409(8131)
Maharashtra	15(1417)	228(4901)	-	243(6318)
Manipur	-	07	20	27
Orissa	02(70)	29(560)	72(1056)	103(1686)
Punjab	03	97	34	134(1699)
Rajasthan	03	11	169	183(4412)
Tamil Nadu	06(480)	102(3494)	611(9794)	719(13768)
Tripura	-	01	12	13

Uttar Pradesh	11(841)	226(5970)	444(5518)	681(12329)
West Bengal	06	112	4	122(2706)
A&N Islands	-	01	-	01
Chandigarh	01	-	-	01
Delhi	01	01	-	02(134)
Pondicherry	-	05	-	05
Daman & Diu	-	02	-	02
TOTAL	101	1430	2009	3540(68554)

Note: figures in brackets indicate number of elected representatives.

Annexure 1.5 (See Para 1.36)

PROCEDURE OF RESERVATION FOLLOWED BY STATE ELECTION COMMISSION OF GUJARAT

Under this subject it is understood that the item relates to Allotment of Reserved Seat

In Gujarat, under the relevant statutes, the State Government has authority to fix the number of seats including reserved seats for SC / ST / SEBC, Woman. After the seats have been quantified, allotment of reserved seats to various Electoral Divisions / Ward having highest percentage of population of SC / ST will be allotted the seat for SC / ST in the event of conflict between SC / ST, it is the SC which will have the precedence.

So far as SEBC is concerned, the Urban Local Self Government Authorities Acts and Gujarat Panchayats Act provide for different criteria. In respect of Municipal Corporations and Municipalities, it has been left to the State Elections Commission to evolve a formula for allotment of seat for Backward Classes. Under Panchayats Act, the seats reserved for Backward Classes are to be allotted, under the Rules to the Electoral Divisions as per the serial number of Electoral Divisions given as per English alphabets.

While the figures of population of SC and ST are available from Census Directorate, the figures of population of SEBC are not available. Commission therefore, initially issued an Order allotting seat as per the serial number of the Ward of a Municipal Corporation / Municipality. In course of consultation with the political parties, this issue was posed and the views of the political parties were solicited. On the basis of the views expressed in the meeting with the political parties, Commission could concretise a formula for allotment of seats for Backward Classes. The formula is as follows:-

- a) Apriori to allot seat to Wards from where in the past elections, even in the absence of statutory reservations, the persons belonging to Backward Class were elected.
- b) If on the basis of the past election result, the number of seats to be allotted to SEBC can not be allotted, the information as to population of SEBC be obtained from the Municipal Commissioners and Chief Officers of the Municipalities Commission took a conscious view that Municipal Commissioners and Chief Officers are also responsible Officers and information furnished by them will not be imaginary or distorted. The Wards having highest percentage of population of Backward Class were the wards to which the remaining seats be allotted. The seats are not allotted either by lottery or by any other mode. While in Palchayats, reserved seats are being rotated as per Rules to differed Wards, in Municipalities and Municipal Corporations, the seats will be rotated not every five years but every 10 years. The Rules earlier framed by the State Government envisaged rotation of reserved seats every 5 years.

Annexure 1.6 (See Para 1.36)

PROCEDURE OF RESERVATION FOLLOWED BY STATE ELECTION COMMISSION OF MAHARASHTRA

Articles 243D and 243T of the Constitution provide for reservation of seats for the Scheduled Castes, the Scheduled Tribes and the number of seats so reserved shall bear as nearly as may be, the same proportion to the total number of seats to be filled by direct election in the Panchayat or Municipality area or of the Scheduled Tribes in the Panchayat or Municipal area bears to the total population of that area and such seats may be allotted by rotation to different Constituencies in a Panchayat or a Municipality. These articles also provide that not less than 1/3 (including 1/3 of the total number of seats reserved for women belonging to the Scheduled Castes and Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat or Municipality shall be reserved for such women and such seats may be allotted by rotation to different constituencies in a Panchayat or a Municipality. It is also provided in these articles that it shall be competent for the State Legislature to make provision for reservation of seats in any Panchayat or any Municipality at any level in favour of Backward Class of Citizens. In Maharashtra, the State Legislature has made provision by law to provide for reservation for Backward Class of Citizens at 27% of the total number of seats and 1/3 of seats so reserved shall be reserved for women belonging to the Backward Class of Citizens.

In Maharashtra State, there are three different Acts for Corporations, one for Municipal Councils and Nagar Panchayats, one for Zilla Parishads & Panchayat Samitis and one for Village Panchayats. The names of the Acts and the Local Bodies governed by them are as under:-

S.No.	Name of the Local Body	Name of Act
1.	Brihan Mumbai Municipal Corporation	Mumbai Municipal Corporation Act, 1888
2.	Nagpur Municipal Corporation	The City of Nagpur Corporation Act, 1948
3.	13 Municipal Corporation (except B.M.C. & Nagpur)	Bombay Provincial Municipal Corporation Act, 1949
4.	33 Zilla Parishads & 331 Panchayat Samitis	Maharashtra Zilla Parishads & Panchayat Samitis Act, 1961
5.	27,571 Village Panchayats	Bombay Village Panchayat Act, 1958

The reservation Policy in all the above Acts is uniform and applicable to all Panchayats and Municipalities.

Actual seat fixation for various categories under reservation

The seats for Scheduled Castes shall be calculated by the formula given below:-

$$SC = \frac{\text{Total number of seats} \times \text{SC population}}{\text{Total Population}}$$

Seats for Scheduled Tribes shall be calculated as under:-

$$ST = \frac{\text{Total number of seats} \times \text{ST population}}{\text{Total Population}}$$

Seats for the Backward Class of Citizens shall be calculated as under:-

$$BCC = \frac{\text{Total number of seats} \times 27}{100}$$

Seats for Women to be calculated as under:-

$$\frac{\text{Total number of seats}}{3}$$

The procedure of actually reserving the seats for Scheduled Castes, Scheduled Tribes, backward Class of Citizens and Women

After the number of seats admissible to the categories of Scheduled Castes, Scheduled Tribes, backward Class of Citizens and Women are calculated and the delimitation draft is prepared, the seats are actually reserved in the following manner:-

- i) The percentage of population of Scheduled Castes & Scheduled Tribes from newly formed electoral wards is calculated.
- ii) Taking into consideration, the number of seats admissible to the Scheduled Castes and Scheduled Tribes, the wards are reserved beginning from the highest percentage of Scheduled Caste in descending manner. The same procedure is adopted for Scheduled Tribes where the ward which has highest percentage of Scheduled Tribe is reserved for Scheduled Tribe and so on, depending on the number of seats admissible for each category.
- iii) 27 % of the total number of seats are admissible for Backward Class of Citizens. These wards are reserved by drawing lots. So also 1/3 of total number of seats are reserved for women which are also reserved by drawing lots.
- iv) Reservation of wards for Scheduled Caste, Scheduled Tribe & Backward Class of Citizen Women is done in the following manner, in the presence of the residents of that area. Initially, the lots are drawn from amongst the wards which are reserved for Scheduled Caste for reserving seats from Scheduled Caste Women. Then the lots are drawn from amongst the seats reserved for Scheduled Tribes only for reserving seats for Scheduled Tribe Women. Thereafter, from the remaining wards the lots are drawn for Backward Class of Citizen (Women). The seats reserved for Scheduled Caste (Women) + Scheduled Tribe (Women) + Backward Class of Citizen (Women) are subtracted from the total number of seats reserved for Women. So that the remaining number of seats are reserved for general Women category. Hence, the seats for general Women are reserved by drawing lots from amongst the wards which remain after reserving the seats for Scheduled Caste, Scheduled Tribe and Backward Class of Citizens.

This procedure is adopted for actually reserving seats in the elections of Panchayats and Municipalities. After showing reservation of each ward, if any, the draft delimitation order is published for calling suggestions/objections from residents of the area.

The experiences of the State Elections Commission in implementation of Reservation policy

- 1) The number of members of the Panchayat Samitis, Zilla Parishads, Municipal Councils or Municipal Corporations is determined on the basis of population except in the case of Greater Bombay Municipal Corporation and the City of Nagpur Corporation in respect of which there is a fixed number of seats. Accordingly, the area of a Panchayat or a Municipality is delimited. If at any time, the State Legislature alters the criteria of population of determination of number of members of Councillors, resulting into increase or decrease of such or Councillors, it would naturally alter the boundaries and also the number of wards while delimiting the Panchayat or a Municipal area at the time of next general election. If such a situation arises, then although the Constitution provides for allotment of reserved seats by rotation to different constituencies in Panchayat or Municipality. It would be difficult to bring about such rotation. Hence, it is seen that the rotation cannot be followed when there is fresh delimitation.
- 2) In case of Village Panchayats, it is found that at the time of Census, people give incorrect information to the census regarding their caste e.g. the people belonging to Koli Community at the time of census say that they belong to Mahadeo Koli Community which falls under the Scheduled Tribe Category. Hence, as per the census figures, the population of Koli Community is shown under the Scheduled Tribe population. On the basis of that population, seats are reserved for Scheduled Tribes. But it is found at the time of elections that people belonging to Koli Community fail to get the caste certificate of Scheduled Tribe. As a result, the seats reserved for Scheduled Tribes remain vacant. The State Election Commission declares bye-elections from time to time but since no population of Scheduled Tribe exists in the village, the seats remain vacant in such cases, if the vacant seats are more than 50 % then the Village Panchayat is not deemed to be established as per the provisions of Bombay Village Panchayat Act, 1958. To overcome this difficulty, the State Election Commission has proposed an Amendment to the

election rules so that if it is found after three consecutive elections that the population of certain caste is not available and no nominations are received for a particular category of reservation then such seats shall be reserved for the remaining categories by drawing of lots. If it is found that no population of any category exists in the village, then such seats shall be treated as unreserved seats.

3. It is sometimes found that women of certain category of reservation do not contest elections and such seats remain vacant. To avoid this contingency the State Election Commission has proposed an arrangement to the election rules that if seats reserved for certain categories of Women are not filled up then such seats shall be made available to the male persons of that category e.g. if seats reserved for Schedule Castes Women are not filled up, then the seats shall be made available for Scheduled Caste (General) so that a Scheduled Caste male who then will be able to contest the elections.

Annexure 2.1

[See Para 2.10(a)]

LOCAL GOVERNMENT LIST

(Common schedule of functions for Panchayats and Nagar Panchayats)

For some of the following items, the States and the Panchayats/ Nagar Pallikas can have concurrent jurisdiction.

1. Agriculture, including agricultural extension and research.
2. Minor irrigation, water management and watershed development.
3. Animal husbandry, dairying and poultry.
4. Fisheries.
5. Cattle ponds; prevention of cruelty to animals.
6. Social forestry, farm forestry and urban forestry.
7. Minor forest produce.
8. Fuel and fodder.
9. Land improvement, implementation of land reforms, land consolidation and soil conservation.
10. Housing.
11. Small scale industries, including food processing industries.
12. Khadi, village and cottage industries.
13. Regulation of slaughter houses and tanneries.
14. Licensing of dangerous and offensive trade.
15. Planning for economic and social development.
16. Town and country planning
17. Regulation of land-use and construction of buildings.
18. Water including water supply for domestic, industrial and, commercial purposes.
19. Roads, culverts, bridges, ferries, waterways and other means of communication.
20. Electrification, including distribution of electricity.
21. Setting up micro power projects and distribution
22. Non-conventional energy sources.
23. Public Health and sanitation, conservancy and solid waste management.
24. Hospitals, primary health centres, dispensaries, maternity homes and child welfare centres.

25. Health education programmes and preventive measures including vaccination against epidemic diseases.
26. Education, including primary and secondary schools.
27. Technical training and vocational education.
28. Adult and non-formal education.
29. Fire services.
30. Provision of amenities and facilities such as parks, gardens, playgrounds, street lighting, parking lots, bus stops and public conveniences.
31. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
32. Markets and fairs.
33. Libraries and museums.
34. Cultural activities.
35. Pilgrimages.
36. Family welfare.
37. Women and child development.
38. Social welfare, including welfare of the handicapped and mentally retarded.
39. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
40. Protection of environment and promotion of ecological aspects, and heritage
41. Slum improvement and upgradation.
42. Poverty alleviation programme.
43. Public distribution system.
44. Maintenance of community assets.
45. Vital statistics including registration of births and deaths.

In addition to the above, the following items from the existing List II (State List) Schedule 7 may be added to the Local Government List with concurrent jurisdiction with the States.

46. Regulation of mines and mineral development.
47. Taxes on agricultural income.
48. Land, i.e. right in or over land, land tenures, collection of rents, and tenures, transfer and alienation of agricultural land.
49. Land revenue, collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.
50. Duties in respect of succession to agricultural land.
51. Estate duty in respect of agricultural land.
52. Taxes on lands and buildings.
53. Taxes on mineral rights subject to any limitations imposed by parliament by law relating to mineral development.
54. Taxes on entry of goods into a local area for consumption, use or sale therein.
55. Taxes on advertisement other than advertisements published in the newspapers.
56. Taxes on goods and passengers carried by road or on inland waterways.
57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars.
58. Taxes on animals and boats.
59. Tolls.
60. Taxes on profession, trades, calling and employments.

61. Taxes on luxuries, including taxes on entertainment, amusements, betting and gambling.

Annexure 2.2
[See Para 2.20(c)]

Property Tax to Municipal Revenue

	% of PT in Municipal Revenue		Per Capita Property Tax (Rs)	
	1992/93	1997/98	1992/93	1997/98
Andhra Pradesh	35.27	34.54	86.94	141.79
Assam	20.65	14.72	9.52	11.75
Bihar	28.10	26.11	12.00	29.53
Gujarat	20.21	23.46	77.19	165.97
Haryana	11.72	11.41	44.41	60.60
Karnataka	18.62	15.10	37.17	57.62
Kerala	27.47	22.78	42.41	62.74
Madhya Pradesh	12.69	9.85	22.82	29.64
Maharashtra	8.68	7.65	83.34	146.64
Orissa	1.06	1.10	2.05	2.54
Punjab	7.67	5.14	19.83	25.06
Rajasthan	4.96	6.28	13.58	30.10
Tamil Nadu	39.99	20.84	86.32	88.43
Uttar Pradesh	12.78	12.14	21.65	27.33
West Bengal	33.39	36.30	132.50	206.30
Himachal Pradesh	38.06	15.27	208.89	237.41
Manipur	0.35	2.08	0.22	2.23
Meghalaya	16.85	19.00	37.41	51.09
Tripura	42.54	27.31	16.57	27.69
	14.74	12.87	65.79	105.68

* The Government of Punjab has recently abolished the levy of taxes on domestic properties. In Imphal (Manipur), property taxes are levied in only two wards of the city.