

CHAPTER 9

DECENTRALISATION AND DEVOLUTION

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CHAPTER 9

DECENTRALISATION AND DEVOLUTION

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A. Panchayats

Background

9.1 The search for ways to rebuild India free from the yokes of deprivation, disparities, discrimination proceeded along with the struggle against foreign rule. It was recognized that political, economic, social and cultural spheres of life were interdependent. Gandhiji had advocated the concept of village republics and village self-government. His vision was that of each village being a republic, self sufficient for its own vital needs, and yet inter-dependent. In this model, the village was the centre of a super-structure of concentric circles of governance with a bottom up approach.

Vision of the Founding Fathers

1[1] See also the Consultation Papers on “Review of the Working of the Constitutional Provision for Decentralisation (Panchayats)”, Decentralisation and Municipalities” “Empowering and Strengthening of Local Self-Government in Cantonments” and “Empowerment and Strengthening of Panchayati Raj Institutions/ Autonomous District Councils/Traditional Tribal Governing Institutions in the North East India” issued by the Commission, in Volume II (Book 2).

9.2 The Draft Constitution came under sharp criticism in the Constituent Assembly as the popularly elected Panchayats of Gandhiji's dreams did not find a place therein. The only concession made to the Gandhian sentiment, however, was addition of article 40 (as added to draft Constitution by way of amendment) among the Directive Principles of State Policy. The article provides that the State shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. Entry 5 of List II (State List) of the Seventh Schedule empowers the State Legislatures to make laws with respect to local self-government or village administration. K. Santhanam put on record the intent of the Constituent Assembly in unambiguous terms:

“What is attempted to do here is to give a definite and unequivocal direction that the State shall take steps to organize Panchayats and shall endow them with necessary powers and authority to enable them to function as units of self-government. That the entire structure of self-government, of independence in this country should be based on organized village community life is the common factor of all the amendments tabled and that factor has been made the principal basis of this amendment. I hope it will meet with unanimous acceptance.”

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Record of Implementation

9.3 The sad fact is that only some sporadic initiatives were taken during 1950-1980. The most serious attempt was in the late 1950s following the review of the working of the community development programme by the Balwant Rai Mehta Committee. The Committee held that in the absence of democratic decentralization, no meaningful and sustained development could be expected. Following the Mehta Committee Report, States like Andhra Pradesh, Rajasthan,

2[1] See Debates dated 22nd November, 1948 in ‘Constituent Assembly Debates’ Volume 7 (Book No. 2), Lok Sabha Secretariat Reprint (1999 Edition) p. 520.

Maharashtra and Gujarat took some legislative and administrative initiatives to set up Panchayat Raj Institutions. But it was only in the late 1980s that the first ever effective initiative was taken.

Constitutional Provisions

9.4.1 The Constitution (73rd Amendment) Act, 1992 relating to Panchayats containing articles 243 to 243-O and the Constitution (74th Amendment) Act, 1992 relating to Municipalities (articles 243P to 243ZG) imparted some basic features of certainty, continuity and strength to Panchayat Raj institutions all over the country.

9.4.2 The main features of the 73rd Amendment are - (i) a three-tier system of Panchayat Raj for all States having a population of over twenty lakhs; (ii) Panchayat elections to be held regularly every five years; (iii) reservation of seats for the Scheduled Castes and Scheduled Tribes and for women (not less than one-third of seats), (iv) constitution of State Finance Commissions; (v) constitution of District Planning Committees to prepare development plans for the district as a whole; (vi) establishment of State Election Commissions; and (vii) establishment of Gram Sabhas.

The Problems

9.5.1 With a view to generating a debate and eliciting public opinion before examining the problems and suggesting remedial measures, the Commission released Consultation Papers on (i) Panchayats, (ii) Municipalities, (iii) Cantonments and (iv) Panchayat institutions/Autonomous District Councils/ traditional tribal institutions in the North-eastern India. The Commission heard the views of a delegation of representatives of Panchayat Raj Institutions [PRIs] and representatives of traditional tribal institutions in the North-East region. It also considered the responses to the Questionnaires and the general memoranda received by it.

9.5.2 In the process of implementation of the 73rd and 74th Amendments, considerable gaps have been noticed. The Union Government and the State Governments continue to exercise powers in planning and the Panchayats and Municipalities do not enjoy autonomy – financial or administrative – as institutions of local self-government. While today Panchayats elect some three million members of whom one-third are women, the objectives envisaged in the Amendments have not been fully achieved even after more than eight years.

Elections

9.6.1 The State Governments often delay Panchayat elections on purely political considerations. They can do so, because they retain some powers relating to the conduct of elections under the State Acts/Rules. The State Election Commission (SEC) has to depend upon the State Government for logistic support that includes staff and finances. Besides, certain important powers like issuance of election notification, delimitation of constituencies, earmarking of reserved seats, etc. are retained by the State Governments in many States. Considering all these, the Commission feels that there is strong case for further strengthening the hands of the SEC by making specific provisions in the Constitution itself.

9.6.2 Sometimes, the SECs have to fight long battles against the State Governments in order to fulfil their constitutional duty to hold elections as per the provisions of law. In order to ensure the accountability of the States in timely conduct of Panchayat and Municipal elections, it is felt that the SECs should function independent from the State Governments and draw expertise and guidance from the Election Commission of India.

The Commission, therefore, recommends that article 243K and 243ZA should be amended on the following lines:

1. Amendment of article 243K.-

In article 243K of the Constitution,-

(a) for clause (1), the following clauses shall be substituted, namely:-

“(1) Subject to the provisions of clause (1A), the superintendence, direction and control of the preparation of electoral rolls for, 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.

(1A) The Election Commission shall have the power to issue any directions or instructions to the State Election Commission for the discharge of its functions under clause (1).”.

(b) after clause (4), the following clause shall be inserted, namely:-

"(5) The State Election Commission shall submit its annual report to the Election Commission and to the Governor, every year and it may, at any time, submit special reports on any matter which in its opinion is of such urgency or importance that it should not be deferred till the submission of its annual report.".

2. Amendment of article 243ZA.-

In article 243ZA of the Constitution, for clause (1), the following clauses shall be substituted, namely:-

“(1) Subject to the provisions of clause (1A), the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.

(1A) The Election Commission shall have the power to issue any directions or instructions to the State Election Commission for the discharge of its functions under clause (1).”.

Functional Domain

9.7.1 Article 243G along with the Eleventh Schedule indicates the kind of functions to be discharged by the Panchayats. It does not guarantee assignment of a set of exclusive functions to the Panchayats. Hence the kind of role they would be expected to play in governance depends on the regime that controls the government of a State.

The Commission recommends that Panchayats should be categorically declared to be 'institutions of self-government' and exclusive functions be assigned to them.

Even in the States which have shown political will to decentralise, devolution has not gone beyond entrusting to them responsibility for implementation of the schemes/projects conceived by the State or Union government. As a result, Panchayats have not blossomed into institutions of self-government. Instead they have been reduced to an implementing arm of the State Government.

9.7.2 Article 243G alongwith the Eleventh Schedule indicates the kind of functions to be discharged by the Panchayats. It does not guarantee assignments of a set of exclusive functions to the Panchayats. Hence the kind of role they would be expected to play in governance depends on the regime that controls the government of a State.

The Commission, therefore, recommends that Panchayats should be categorically declared to be "institutions of self-government" and exclusive functions should be assigned to them. For this purpose, article 243G should be amended to read as follows:

Substitution of article 243G.- For article 243G, the following article shall be substituted, namely:-

"Powers, authority and responsibility of Panchayats

243G. Subject to the provisions of this Constitution, the Legislature of a State shall, by law, vest the Panchayats with such powers and authority as are necessary to enable them to

function as institutions of self-government and such law shall contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as shall be specified therein, with respect to-

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

Similar amendments should be made in article 243W relating to the powers, authority and responsibilities of Municipalities, etc.

Financial Domain

9.8.1 As an institution of self-government, the Panchayats should have adequate fiscal capability. To be an institution of self-government, a Gram Panchayat should, as far as possible, be a viable unit. It should be capable of generating internal resources by using its own fiscal powers that include taxing power commensurate with the functions assigned to it. The PRIs at present are principally grant-fed and their dependence upon the State Government even for carrying out their routine functions is heavy. Among the three-tiers of Panchayats, the Gram Panchayats (GPs) are comparatively in a better position. This is so because the GPs have some taxing power of their own, while the other two tiers are dependent only on tolls, fees and non-tax revenue for generating internal resources. The Commission feels that major fiscal restructuring and financial resources are necessary to enable the Panchayats to function as viable local self-government institutions. Some of the measures necessary for such reforms may be taken even within the framework of existing constitutional provisions.

9.8.2 Articles 243H and 243X are enabling provisions that give authority to the State Legislature to authorise the Panchayats and Municipalities in respect of levy, collection and appropriation of taxes, duties, fees and tolls as well as for the creation of a fund within the Panchayat and Municipal institutions to regularise and control inflow and outflow of financial resources. The said articles do not serve their purpose since some State Governments appear to be reluctant to share their fiscal powers with the local self-government institutions. The Commission, therefore, feels that the only way out is to introduce the concept of a separate tax domain for the local bodies. The Commission considered the suggestion to provide a Local List in the Seventh Schedule for giving fiscal autonomy to the local-self government institutions. However, the Commission feels that it would be too early to consider such a proposal.

The Commission, therefore, recommends that the Eleventh and the Twelfth Schedules should be restructured in a manner that creates a separate fiscal domain for Panchayats and Municipalities. Accordingly articles 243H and 243X should be amended making it mandatory for the Legislature of the States to make laws devolving powers to the Panchayats and Municipalities.

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

9.8.4 In order to enable the Finance Commission to give due weight to the reports of SFCs for assessing the situation in each State, it is necessary to synchronize the periods covered by the reports of both of them. **In the part of clause (1) of article 243-I which calls for constitution of SFC at the expiration of every fifth year, in line with article 280(1), the words “or at such earlier time as the Governor considers necessary” may be added after the words ‘fifth year’.** While it is for the State Legislature to ensure that the Government implements fully its assurances, there should be constitutional obligations for placing the Action Taken Report (ATR) before the legislature within ‘six months’ after the submission of the report. **Clause (4) of article 243-I may need to be amended accordingly.**

9.8.5 Taxes on professions, trades, callings and employment under article 276 have been a traditional source of revenue for the local bodies. (Of late, there is, however, a tendency for the State Governments to take over such powers from the local bodies). One of the impediments in generating substantial revenue from the levy and collection of this tax is that the upper ceiling (presently, Rs. 2500 per annum) has been constitutionally fixed [*see* article 276(2)]. While there is a need for fixing the upper ceiling of the tax centrally in order to avoid the charge of double taxation on ‘income’, constitutional provision introduces unnecessary rigidity. **It would be better to vest in Parliament the necessary legislative power of fixing upper limit of taxes on professions, trades, callings and employment under article 276.**

9.8.6 Now-a-days, the local governments are being encouraged to take recourse to borrowing for financing asset-building and/or remunerative projects. Some Municipal Corporations have been given power even to go to the capital market. The Panchayats of West Bengal are permitted to borrow from the financial institutions, subject to Government approval. With the role we are envisaging for PRIs in the governance structure, there is no reason as to why the borrowing power should not be constitutionally given to the Panchayats, especially, the Zilla Parishads. **All local authorities may be allowed to borrow from the State Government and financial institutions.**

Personnel System

9.9.1 An institution of self-government must have the power to recruit and control the officers and other employees required for managing its functions. The Constitution is totally silent about this vital aspect of institutional autonomy. The Commission feels that failure to address the human resource issue has definitely affected the growth of Panchayats as self-governing

institutions. It is necessary that an enabling provision is made in Part IX of the Constitution permitting the State Legislature to make, by law, provisions that would empower the State Government to confer on the Panchayats full power of administrative and functional control over such staff as are transferred following devolution of functions, notwithstanding any right they may have acquired from State Act/Rules. They should also have the power to recruit certain categories of staff required for service in their jurisdiction.

Dissolution of Panchayats

9.10 Clause (1) of article 243E provides 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. However, the corresponding provision, namely, clause (1) of article 243U relating to Municipalities makes a specific proviso to the effect that a municipality shall be given a reasonable opportunity of being heard before its dissolution. It has been noticed that there is no corresponding proviso in article 243E relating to Panchayats.

The Commission recommends that a proviso to clause (1) of article 243E may be inserted to the effect that a reasonable opportunity of being heard shall be given to a Panchayat before it is dissolved.

Coordination Machinery

9.11 There is need for coordination among the Panchayats. They also need continued support from the State Government. Gujarat, Orissa and Karnataka Acts provide for a coordination body.

The Commission recommends that a provision for constitution of a State Panchayat Council under the chairmanship of the Chief Minister [on the pattern of Gujarat State Council for Panchayats as provided in the Gujarat Panchayats Act, 1993] may be made in the Constitution on the analogy of the provision in article 263 of the Constitution relating to the Inter-State Council. The leader of the opposition may be made *ex-officio* vice-chairman of the Council to provide a consensual approach to the development of Panchayats as fully democratic, efficient and responsible institutions.

Audit of Accounts

9.12 The Commission noted with concern that there is considerable lack of accountability of Panchayats because of inadequate provisions in law relating to audit of accounts of public bodies. There is no time frame to conduct the audit of accounts of a given year, submit the audit report or comply with the objections raised in the report. Delay in audit provides opportunity for misuse of funds, tardy implementation of projects and over-all weakening of the system.

The Commission recommends that necessary provisions may be made for audit of Panchayat accounts to ensure that all works related to audit (conduct of audit, submission of audit report and compliance with audit objections if any) are completed within a year of the close of a financial year. To ensure uniformity in the practice relating to audits of accounts, the Comptroller and Auditor-General of India be empowered to conduct the audit or lay down accounting standards for Panchayats.

B. Municipalities

Dissolution of Municipalities

9.13 **The Commission recommends that whenever 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 supersession casually and resorting to it because of political expediency.

Qualifications and Disqualifications for Membership

9.14 Articles 243F and 243V contain identical provisions so far as disqualifications for membership in a Panchayat or a Municipality are concerned. The main principle followed is that the grounds of disqualification should be the same as applied for elections to the State Legislatures. But since the State laws may make additional provisions, these are spread over several State laws. 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. **The Commission recommends that all provisions regarding qualifications and disqualifications for elections to local authorities should be consolidated in a single law and until that is done, each State should prepare a manual of existing provisions for public information.**

Election expenses and code of conduct

9.15 Having regard to the population, topography, etc., election expenses may vary from State to State.

The Commission recommends that the State Election Commission (SEC) should have the authority to prescribe ceiling of expenses and code of conduct in elections. Further, the State

laws should clearly specify the powers of the SEC to disqualify candidates **in the event of violation of these laws.**

Ensuring regular elections

9.16.1 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 the articles 243E and 243U, in sub-clause (1) thereof contains 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."

9.16.2 The Commission recommends that it should 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 within the stipulated limits. 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 Constitution. Article 243K(I) and article 243 ZA(I) state that the "superintendence, direction and control of the preparation of electoral rolls 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 rolls 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 or in connection 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, experience indicates that 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.

The Commission, therefore, recommends that article 243K and 243ZA should be suitably amended to specify that the responsibility for the conduct of elections shall include all preparatory steps for the same including preparation of electoral rolls. The Commission further recommends that the functions and responsibilities of delimitation, reservation and rotation of seats and matter connected therewith should be vested in a delimitation commission constituted by law made by the appropriate Legislature and not in the SEC.

Electoral Rolls and Delimitation

9.17.1 (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. As recommended by the Commission earlier, the Constitution should specifically stipulate a common electoral roll both for local elections to Panchayats and Municipalities and to the Parliament and State Legislative Assemblies. In other words, the electoral roll for the Panchayat/Municipal elections should be the same electoral roll prepared by the Election Commission of India under article 327 of the Constitution read with the Representation of the People Act, 1950 and as updated by the SECs. The processes for preparing the roll as also its periodical revision should be uniform throughout the country.

9.17.2 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 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 R.P. Act and State laws should specify that common polling stations should be used for elections to local bodies, State Legislatures and Parliament.**

9.17.3 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. **The State laws should provide guidelines for the delimitation work such as parity, as far as possible, 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 stipulated in the proviso to article 243C so far as panchayats are concerned but is missing in article 243R relating to municipalities.

9.17.4 **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

9.18.1 Reservation and rotation of reserved constituencies and division of responsibilities in this regard is another cause for delay in holding elections in time. If 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.

9.18.2 Articles 243D and 243T contain identical 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 third proviso to clause (4) of 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. State laws should provide the guidelines for the process of reservation which should ensure transparency and adequate opportunities for eliciting voter response.**

9.18.3 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 clarify the precise position, the overall total of reserved seats and reserved offices in Panchayats and Municipalities should be specified.**

State Election Commissions

9.19.1 It is essential that the machinery for organizing the local elections is adequately strengthened. For this purpose, **the Commission recommends that the State Election Commissioner should have a fixed term of 5 years. He/she should be equal to a Judge of the High Court. The broad qualifications for a State Election Commissioner may be specified under the State law.** Since the conduct of elections is a major logistical exercise, administrative experience should be stressed.

9.19.2 Notification for all elections to Panchayats and Municipalities should be issued by the SEC.

Functional Domain

9.20 In the period after independence, there has been a steady diversion and diminution of responsibilities in the sphere of municipal functions. There has been a growth of development activities of Municipalities and they have become afflicted with maladies such as corruption, unresponsiveness, financial mismanagement, lack of accountability, political interference, etc. It was expected that the Constitution 74th Amendment would reverse this trend and once again entrust the responsibilities for the upkeep and development of towns and cities to Municipalities and corporations. Article 243G and 243W of the Constitution provide for the State laws to

endow the Panchayats and Municipalities respectively with such powers and authority as may be necessary to enable them to function as institutions of self-government. The Eleventh and Twelfth Schedules to the Constitution Lists 29 and 18 items respectively for Panchayats and Municipalities. It is important to note that neither these Schedules are exhaustive nor they signify a variety of functions. In essence, these Schedules are illustrative only. The Commission reiterates its recommendations made in para 9.8.2 above.

Financial Domain

9.21 The functions, functionaries and finances have to go together for any process of devolution to be meaningful. 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 Commission recommends that the concept of a distinct and separate tax domain for municipalities should be recognised. This concept should be reflected in a list of taxes 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. The Commission also reiterates its recommendations in para 9.8 above.

C. Cantonments

Administration of Cantonments

9.22 After considering the suggestions in regard to cantonments, the Commission decided that it was not necessary to make any recommendations in that regard.

D. Institutions in North East India

Background and Objective

9.22.1 The North Eastern region of India is one of its richest regions in terms of natural resources. It is also one of the most beautiful parts of India. However, a sense of alienation, misgovernance, corruption and under development are pervasive features of the region. To tackle the problems of this unique area and to preserve the democratic traditions and cultural diversity of its people, the framers of the Constitution conceived of the instrument of tribal self-rule. This stands embodied in the Sixth Schedule to the Constitution. The drafting of this Schedule was done by a Sub-Committee on North East Frontier (Assam Tribal and excluded areas) of the Constituent Assembly headed by Shri Gopinath Bardoloi, the then Premier of Assam. The effort was to accommodate the collective aspirations of tribal communities within the broader framework of a democratic political system.

9.22.2 The provisions of the Sixth Schedule are applicable to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. Arunachal Pradesh (earlier known as North Eastern Frontier Agency) was also part of the Sixth Schedule and was administered by the Governor of Assam. Assam (barring two districts covered by the Sixth Schedule), Arunachal Pradesh, Manipur and Sikkim have passed legislation bringing the local bodies under the provisions of the 73rd and 74th Amendments to the Constitution.

9.22.3 The North Eastern part of India with its large number of tribal communities and emerging educated elites has self-governing village councils and organized tribal chiefdoms. Efforts are to be made to give all the States in this region the opportunities provided under the 73rd and 74th Constitution Amendments. However, this should be done with due regard to the unique traditions of the region and the genius of the people without tampering with their essential rights and giving to each State the chance to use its own nomenclature for systems of governance which will have local acceptance.

9.22.4 The Commission feels that our efforts must be to develop those instruments of political government to bring self-governance to the region and to calm the passions of divisive trends. The future of the North Eastern States hinges on choosing self-governance. During the last few decades, the system of local-governance promoted under the provisions of the Sixth Schedule has been seeking to guarantee political dominance for backward groups, better local governance at the community level, better economic development and ethnic security for those who feel threatened by large scale influx of illegal migrants and even settlers from other parts of India.

9.22.5 The other regions of the country where there are large population of tribals are covered by the provisions of the Fifth Schedule. This is totally different from the Sixth Schedule States where the emphasis is on self-rule because many of the communities inhabiting these areas had ruled themselves until the British subjugated them in the 19th century. The issues of emotional, physical and political distance and alienation still remain.

General Recommendations

9.23 After carefully studying the existing position of local self- governance in the various North-eastern States, the Commission makes the following general recommendations:-

- (i) Careful steps should be taken to devolve political powers through the intermediate and local-level traditional political organisations, provided their traditional practices carried out in a modern world do not deny**

legitimate democratic rights to any section in their contemporary society.
The details of state-wise steps to devolve such powers will have to be carefully considered in a proper representative meeting of traditional leaders of each community, opinion builders of the respective communities and leaders of state and national stature from these very groups. A hasty decision could have serious repercussions, unforeseen and unfortunate, which could further complicate and worsen the situation. To begin with, the subjects given under the Sixth Schedule and those mentioned in the Eleventh Schedule could be entrusted to the Autonomous District Councils (ADCs).
The system of in-built safeguards in the Sixth Schedule, should be maintained and strengthened for the minority and micro-minority groups while empowering them with greater responsibilities and opportunities, for example, through the process of Central funding for Plan expenditure instead of routing all funds through the State Governments. The North Eastern Council can play a central role here by developing a process of public education on the proposed changes, which would assure communities about protection of their traditions and also bring in gender representation and give voice to other ethnic groups.

- (ii) **Traditional forms of governance must be associated with self-governance because of the present dissatisfaction. However, positive democratic elements like gender justice and adult franchise should be built into these institutions to make them broader based and capable of dealing with a changing world.**
- (iii) **The implementation of centrally funded projects from various departments of the Union Government should be entrusted to the ADCs and to revived village councils with strict audit by the Comptroller and Auditor-General of India.**
- (iv) **The process of protection of identity and the process of development and change are extremely sensitive. These twin processes need to be understood in the framework of a changing world and the role of all communities, small**

and large, in that world. Therefore, the North Eastern Council should be mandated to conduct an intensive programme of public awareness, sensitization and education through non-government organizations, State Governments, and its own structure to help bring about such an understanding of the proposals given below.

- (v) The provisions of the Anti-Defection Law in the proposed revised form as now recommended by the Commission, vide paragraph 4.18.2 shall be made applicable to all the Sixth Schedule areas.
- (vi) Given the demographic imbalance which is taking place in the North-East as a result of illegal migration from across the borders, urgent legal steps are necessary for preventing such groups from entering electoral rolls and citizenship rolls of the country. The recommendations of this Commission for issuance of multi-purpose identity cards to all Indian citizens be made mandatory for all Indian residents in the North East on a *high-priority basis* and the Citizenship Act should be reviewed to plug the loopholes which enable illegal settlers to become ‘virtual’ citizens in a short span of time, using a network of touts, politicians and officials.
- (vii) A National Immigration Council be set up under law to examine and report on a range of issues including Work Permits for legal migrants, Identity Cards for all residents and the enactment of a National Migration Law and a National Refugee Law, review of the Citizenship Act, the Illegal Migrants Determination by Tribunal Act and the Foreigners Act.
- (viii) Local communities be involved in the monitoring of our borders, in association with the local police and the Border Security Force.

Specific State-wise Recommendations

9.24 In addition to the above, some specific reforms are recommended by the Commission in regard to individual States in the North Eastern region of India.

9.25 **Nagaland:** The case of Nagaland is quite different from the position of other North Eastern States in view of the provisions of article 371A of the Constitution inserted by the Constitution (Thirteenth Amendment) Act, 1962 and the Nagaland Tribe, Area, Range and Village Council Act, 1966. Article 371A specifically provides that no Act of Parliament in respect of (i) religious or social practices of the Nagas, (ii) Naga customary law and procedure, (iii) administration of civil and criminal justice involving decisions according to Naga customary law; and (iv) ownership and transfer of land and its resources shall apply to the State unless the Legislative Assembly by a resolution so decides. In addition, the Governor of Nagaland has special powers to act with regard to internal disturbances, powers which are virtually unchallengeable. The Nagaland Tribe, Area, Range and Village Council Act, 1966 provides for the creation of a tribal council for each tribe, an Area Council for Kohima and Dimapur, a Range Council where there is a recognized range in the Mokukchung and Kohima Districts and Village Councils for one or more villages in Kohima and Mokukchung, wherever they may be deemed necessary by the Deputy Commissioner. The Village Development Board scheme was started in 1970s to enable village councils to function effectively and with autonomy. The Village Development Boards are now receiving central funds and about 1000 village development boards are functioning with assets totalling about twenty crores of rupees. The Commission elicited views of the State Government and the general public as to how a long term settlement of the political issues of the Naga leadership could be arrived at and as to how much autonomy could be given to the local communities to promote self-governance and a sense of ownership. The Commission notices the efforts being made by the Government to arrive at a political solution. It is to be hoped that this process would contribute to peace and stability.

The Commission recommends that in Nagaland -

- (1) Naga Councils be replaced by elected representatives of various Naga society groups with an intermediary tier at the district level.**
- (2) Village Development Boards be less dependent on State and receive more Centrally-sponsored funds.**

9.26 **Assam:** The division of the composite State of Assam led to the drawing of new boundaries. The North Cachar hills sub-division of the United Mikir and Cachar Hills District was upgraded to a district in 1970. The Mikir Hills District section was renamed as Karbi

Anglong in 1976. Both the districts have Autonomous Councils. For each autonomous district, the Sixth Schedule provides for a District Council consisting of not more than 30 members for a term of five years. The Governor nominates not more than four members to the Council while the others are elected on the basis of adult suffrage. The Chief Executive Member (CEM), the chairman and the deputy chairman (equivalent to Speaker and the deputy Speaker) are elected from among the Members and the CEM selects the other executive members.

9.27 There are different internal rules for different Autonomous District Councils. In some Councils like Mara in Mizoram, the electorate are eligible adults and in certain others like Karbi Anglong right to access to traditional lands and length of stay in the region are regarded as qualifying criteria for being included in the voters' list for the ADCs.

9.28 As regards Assam, the Commission recommends that (1) the Sixth Schedule should be extended to the Bodoland Autonomous Council with protection for non-tribal, non-Bodo groups, (2) other Autonomous Councils be upgraded to Autonomous Development Councils with more Central funds for infrastructure development; within the purview of the 73rd Amendment but also using traditional governing systems at the village level.

9.29 ***Meghalaya:*** In Meghalaya, the District Councils are dominated by the tribal communities. The major tribes of the State are Khasi, Jaintia and Garo. Besides District Councils, there are traditional ruling systems, namely, the Syiems (rajas) of the Khasi Hills. The Dolois of the Jaintia and the Nokmas of the Garos. Of these three, the Khasi traditional polity was regulated under a three tier system with the Durbar Shnong *i.e.*, Village Council presided by the Rangbah Shnong (headman) at the base, the Durbar Hima *i.e.*, State Assembly presided by the Syiem or the equivalent of a king at the apex. The Dolois of the Jaintia Hills and the Nokmas or traditional headmen of the Garos are not as well organized as the Syiemships. There are at present competing systems of authority each of which is seeking to serve or represent the same

constituency and the system therefore requires streamlining as per the aspirations of the people. Trends towards militancy in the State can be discouraged through measures leading to self-governance. For this to happen, the traditional systems of governance will have to be included and given specific roles and opportunities instead of being marginalized.

As regards Meghalaya, the Commission makes the following recommendations:-

- (1) **A tier of village governance to be created for a village or a group of villages in the Autonomous District Councils, comprising of elected persons from the traditional systems plus from existing village councils with not more than 15 persons at each village unit.**
- (2) **At present, each of the Autonomous District Councils in Meghalaya consists of 30 seats. It is recommended that this number may be increased by 10 seats, *i.e.*, to a total number of 40 seats. Of the 10 additional seats, having regard to the non-representation of women and non-tribals, the Governor may nominate up to five members from these categories to each of the ADCs. The other five may be elected as follows:-**
 - **By Syiems and Myntris, from among themselves to the Khasi Autonomous Council.**
 - **By Dolois from among themselves to the Jaintia Autonomous District Council; and**
 - **By Nokmas from among themselves to the Garo Autonomous District Council.**

9.30 **Tripura:** In Tripura, the Tripura Tribal Areas Autonomous District Councils were formed in 1985 and every such Council has 28 elected members and two members nominated on the

basis of the Chief Executive Member's recommendation by the Governor from among the Tribals.

As regards Tripura, the Commission makes the following recommendations:-

- (1) **The recommendations made by the Commission for other Autonomous Councils should also apply in respect of the Autonomous District Council(s) in Tripura.**
- (2) **The number of elected members in the Council should be increased from 28 to 32.**
- (3) **The number of nominated members should be increased to six from the current two. The existing non-tribal seats (currently, they have three elected seats) be converted to tribal seats. Three non-tribals may be nominated by the Governor and three tribal women may be nominated by the Chief Executive Member.**

9.31 **Mizoram:** In Mizoram, there are three Autonomous District Councils (ADCs), namely, the Lai, Mara and Chakma. The Chakma ADC has 13 elected members and 3 nominated members. The Lai ADC has 23 elected and 4 nominated members. The Mara ADC has 19 elected and 4 nominated members.

As regards Mizoram, the Commission makes the following recommendations:-

- (1) **An intermediary elected 30-member tier be developed at the district level in areas not covered by the Sixth Schedule, *i.e.*, excluding the Chakma, Lai and**

Mara District Autonomous Councils. There would thus be two tiers below the State Legislature: the District and the Village.

- (2) **Village Councils in non-Scheduled areas be given more administrative and judicial powers; two or more villages be combined to form one village council, given the small population in the State.**
- (3) **Consideration be given to groups seeking Sixth Schedule status, depending on viability of the demand, including size of population, territorial and ethnic contiguity.**
- (4) **Central funding as outlined in general recommendations be provided to the ADCs.**
- (5) **Nominated seats for women, non-tribals and Sixth Schedule tribes in non-scheduled area (not to exceed six over and above the size of the Councils, making a total of 36 members); current size of ADCs be increased to 30 with a similar provision for women and non-scheduled tribes.**

9.32 **Manipur:** Manipur has been seeking Sixth Schedule status for its hill areas and this request needs serious consideration. The 73rd and 74th Amendments are applicable to only those areas of Manipur which are in plains and these provisions are yet to be fully implemented.

As regards Manipur, the Commission recommends that the provisions of the Sixth Schedule be extended to hill districts of the State. Also, the 73rd Amendment be implemented vigorously in the areas of the plains where, despite elections, the system is virtually non-existent.

9.33 **Arunachal Pradesh:** Since the Government of Arunachal Pradesh has already implemented the provisions of the Constitution 73rd Amendment *in toto*, the Commission does not propose to make any recommendation in this regard.
