COMMISSION ON CENTRE-STATE RELATIONS

REPORT

VOLUME - IV

LOCAL SELF GOVERNMENTS AND DECENTRALIZED GOVERNANCE

MARCH 2010

REPORT OF THE COMMISSION ON CENTRE-STATE RELATIONS. MARCH 2010
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MARCH 2010

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Former Director,
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Dr. Amaresh Bagchi was a Member of the Commission from 04.07.2007 to 20.02.2008, the date he unfortunately passed away. The Commission expresses its deep gratitude to late Dr. Bagchi for his signal contribution during his tenure as a Member.

SECRETARIES

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Shri Ravi Dhingra	(25.06.2008 - 31.03.2009)
Shri Mukul Joshi	(01.04.2009 - 31.03.2010)

The Commission on Centre-State Relations presents its Report to the Government of India.

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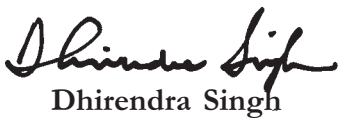

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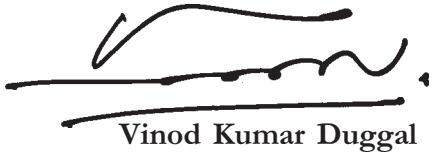

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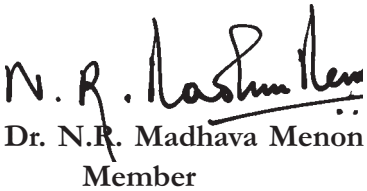

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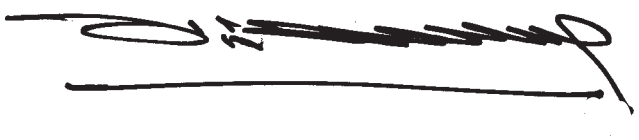

Vijay Shanker
Member

New Delhi
31 March, 2010

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CHAPTER 1

INTRODUCTION

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1

INTRODUCTION

1. 1 Introduction

1.1.01 We have seen earlier how federalism has assumed contemporary importance, having become the most effective means to reconcile differences in the polity arising out of the need to unify on the one hand and giving full scope to the forces of diversity on the other. Whereas reconciliation between unity and diversity can very well be effected by adopting a two tier structure of a federal constitution with power and governance being shared between the Union and States, and indeed the Constitution makers did adopt this model, contemporary trends have highlighted the inefficiencies of continuing with this system.

1.1.02 If democracy is the cornerstone on which modern constitutions are built then enhancement of democracy must be inbuilt in the system to ensure its continued vitality. This enhancement can be achieved by (a) making it more participatory or as it is sometimes said "maximize citizen preferences" (b) by making it more responsive to peoples needs and aspirations; (c) by rendering it possible to use the creative genius of a larger number of people; (d) by making it more inclusive and (e) by making it more accountable and hence a better instrument of governance and development. Many modern Constitutions have hence opted for a third tier of Government to achieve the above objectives.

1.1.03 It is not as if grass root institutions have suddenly emerged. On the contrary a historical evolution has come full circle. Societies were earlier organized around small groups, tribes and clans with their own systems of governance. These were superseded by the advent of the Nation State which was a centralized institution for wielding power, and in most cases with minimum of peoples participation. The spread of democracy, grant of adult franchise; the involvement of masses of people in freedom movements, and the appreciation of diversity, all have led to greater participation of people in the

various instrumentalities of governance at the national and subnational levels and it is this quest to strengthen the democratic ideal for the good of the people that has led to an increased interest in grass roots democracy. Although the Constitution of India mandated the State to foster Panchayati Raj, the turning point came in 1993 when the Constitution 73rd and 74th Amendment Acts clothed Panchayati Raj with Constitutional status. This has brought about a multi-tiered complex federal system, wherein different tiers operate at different scales of activity, and where the activities of one impact on the others. It is our endeavour in this volume to examine the relevance and working of these institutions and to see to what extent the wishes of the Legislature (indeed the nation) have found fulfillment.

1.1.04 Within the three tier structure (National, State and Local) Panchayati Raj Institutions would, if properly organized, come closest to the concept of direct democracy as distinct from the representative democracy of the other tiers, owing to their size and closeness to the communities they serve. The relationship of local bodies, a term that we shall be using to connote urban and rural institutions of the third tier unless the context relates primarily to one of them, with other tiers of Government and with the community becomes crucial as this to a large extent impacts on the manner of their functioning and determines the success they achieve in realizing their objectives.

1.1.05 This relationship with the other tiers of Government and division of powers and responsibilities are highly formalized and governed by Constitutional provisions, statutes, and administrative procedures. They relate to (a) the legislative domain, which in the case of the third tier has not been conferred and stops at the State level, (b) the administrative domain (whereas in most cases this is coterminous with the legislative power, there is also provision to confer administrative jurisdiction to another tier) and (c) the financial domain whether given directly or through constitutional provisions mandating transfers, or by evolution of practices whereby transfers are directly affected in order to influence lower tiers to perform desired tasks. But there can also be a symbiotic relationship. Scholars distinguish between decentralization of jurisdiction which relates to functions and responsibilities exercised by each tier and decentralization of decision making wherein policy making at higher levels allows for participation of lower level tiers. Examples are given of instances where large number of functions are given (let us say for implementation) but a strict control is maintained by a higher level on content. As against this there are others where only a few functions have been given but greater

autonomy conferred. In the case of decentralized decision making, we need to see the institutional mechanisms devised to ensure participation.

1.1.06 As regards relationship with the community, present day thinking has veered towards linking local bodies more with civil society rather than with the community. The latter is considered to be patriarchal, restrictive and conformist wherein individual activities were tightly controlled in the name of the common good. Civil society on the other hand is an intermediate area of association distinct from the private sphere, the economy and the State. It is an area of social interaction which aims at fostering the diffusion of power; uses peaceful means to work for gender equality and social equity; seeks to build horizontal solidarity rather than vertical loyalties and encourages debate and autonomy of judgement rather than conformity and obedience. We need to see in what manner linkages have been established with civil society and whether there is need to formalize it.

CHAPTER 2

HISTORICAL EVOLUTION OF LOCAL BODIES

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2

HISTORICAL EVOLUTION OF LOCAL BODIES

2.1 The Choice

2.1.01 The choice before the Constituent Assembly was either to follow the Euro-American constitutional tradition (already introduced in India in a rudimentary form by the colonizing power) or to look for solutions embedded in India's history and culture. The former tended to provide for centralized direct democracy and the latter a decentralized indirect democracy. It was also not merely a question of form. The instrument had to be suitable to bring about a social and economic revolution, once political independence had become a reality. The former was being practiced in the Western world and many of the colonized countries saw a model of development which could be reached by following the same instrumentalities. The latter model rejected the basic concepts of an urban oriented, nation state centred, configuration and propagated a village oriented life style in which the basic unit of representative Government was the village panchayat at the base. The rest was a hierarchy of indirectly elected bodies right upto the national level.

2.1.02 The strongest proponent of the Indian model was Mahatma Gandhi and his was an all encompassing view of how India should organize its polity and the values which should permeate all sections of society. This view was concretized by his follower Shriman Narayan Agarwal in a draft entitled "Gandhian Constitution for free India" and sent to the President of the Constituent Assembly.

2.2 Constituent Assembly Decides

2.2.01 In the end however the Constituent Assembly chose to adopt the Euro-American model with direct elections to provinces and the Central Legislature, as most suited to meet India's requirements in the context of the modern world and its challenges

and opportunities. The draft Constitution introduced in the Constituent Assembly in November 1948 did not contain any provision relating to local bodies. It is not as if the matter had been ignored. There was a strong undercurrent which called for bringing them in. Making a reference to them B.N. Rau, the Constitutional Adviser to the Constituent Assembly stated that details of local Government were to be left to "auxiliary legislation". However during the debate on Directive Principles of State Policy (Part IV) the first of the five amendments, which were accepted, related to Panchayats. The amendment moved by K. Santhanam sought to add a new Article:

"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".

2.2.02 This amendment was accepted and incorporated as Article 40. Once this was done the basic principles underlying the Directive Principles as elaborated in Article 37 became applicable to it. Thus organization of village panchayats became fundamental in the governance of the country and it became incumbent on the State to make laws to operationalise this ideal. The primary responsibility was cast on the States as legislative power was to be found in item 5 of List II (State List) of the Seventh Schedule to the Constitution.

2.3 Pre-Independence Initiatives

2.3.01 The idea of village level functional units of self-government was not new to India. They have an ancient tradition. The western civilization model of the Greek polis, in fact has closer affinity to Indian Panchayats and similar other institutions in the eastern world including in Persia and Ethiopia than with its contemporary western world. However, because of the long intervening period of domination by external powers the idea was lost and found a resurgence ironically through the eyes of the colonizing power, and we considered it appropriate to delve into the evolution of the idea from that point in our history.

2.3.02 The coming into power of a Liberal Government in Britain in 1880 had a major impact on local Government in India. Lord Ripon's appointment as the Viceroy was with instructions to foster "free institutions". The Ripon Resolution of 1882 provided for local boards with two-thirds of memberships to be composed of

elected, non-official persons and presided over by a non-official Chairman. These institutions of local self-government were to be in districts, sub-divisions and municipalities. Although in most cases they were bullied into submission by the British ICS officers who eventually presided over them, it did not unduly distress Ripon who believed that his intentions were not only to utilize the services of public spirited men to improve administration but more importantly to render "a measure of political and popular education". The Bengal Local Self Government Act, 1885 led to establishment of district boards in the province of Bengal. Others followed in other parts of the country. Similarly, urban municipal bodies had a predominance of elected representatives in a number of cities and towns, including the Presidency cities. Progress was however slow and when the Royal Commission on decentralization released its report in 1909 it highlighted this point and reiterated the importance of self-government through panchayats. Another step forward was taken with the 1919 Montagu-Chelmsford Reforms which made local self-government a transferred subject in the scheme of Dyarchy, bringing it under the control of Indian Ministers. The reforms called for strengthening the popular control over local bodies and a greater "measure of responsibility leading to complete responsibility as soon as conditions permit".

2.3.03 The period after 1919 was however one of great fervent in the political history of India and the nation's sole objective henceforth was only to obtain full freedom from Britain. Issues of local Government were relegated to the background. The position continued till India gained its independence.

2.4 Post Independence Initiatives

2.4.01 The initiative which soon after independence, heralded the Government of India's commitment to rural uplift was the Community Development Programme launched in 1952. The emphasis was on peoples' direct participation by monetary contributions and otherwise and indirectly in its management through panchayats. Technical support was provided by Government which also launched the National Extension Service in 1953 for the purpose. The primary administrative unit was the Community Development (CD) Block and the Block Development Officer (BDO) became the most visible face of Government in matters concerning rural development and community uplift. As was to be expected Government involvement became so intense and schemes so numerous that participation of elected local bodies in their management became superficial. The Second Five Year Plan attempted to correct the imbalance by recommending the drawing up of village plans with peoples participation

and the gradual transfer of implementation of Government programmes to the control of elected bodies at the district and sub-district levels.

2.4.02 The Balwant Rai Mehta Committee appointed in 1957 looked into such linkages and concluded that the community development programme although so named did not evoke the desired popular initiative. To achieve this aim it was necessary to "create a representative and democratic institution which will cite local interest, supervision and care, necessary to ensure that expenditure of money upon local objects conforms with the needs and visions of the locality" and to entrust it "with adequate power and assign to it appropriate finances ….". The Committee recommended the establishment of a three-tier system with village panchayats, a Panchayat Samiti coterminous with the community development block and a district level panchayat. The Committee considered the Panchayat Samiti (i.e. the intermediate level) to be crucial to the system. The recommendations of the Committee were accepted by the National Development Council and Panchayati Raj legislations were enacted in a number of States to give effect to the recommendations. However there were variations in State legislations on the number of tiers as well as on devolved functions. By the end of the 1980s except Meghalaya, Nagaland, Mizoram and the Union Territory of Lakshadweep, all other States and Union Territories had enacted the requisite legislation. In 14 States/UTs there was a three-tier structure, in 4 States/Union Territories it was a two-tier structure and in 9 States only one tier functioned.

2.4.03 The initial euphoria soon waned and the hold of government over the development programmes not only continued but also intensified and consequently the element of community participation decreased or was eliminated. Highly technical programmes requiring quick results like the Intensive Agricultural District Programme needed specialized bodies and these were created outside the panchayats. Concerns of achieving growth with equity shifted the focus away from the community as a whole to the marginalized and vulnerable sections of society. The voice of such sections of society was never very strong in the local bodies and the special institutions devised for poverty alleviation schemes took the matter still further away from them. Such parallel programmes and institutions rivalled the Panchayats and since State Governments had direct control over them it suited the States also. The 1970s accordingly saw the decline of the panchayats.

2.4.04 Once again in 1979 a Committee chaired by Ashok Mehta was constituted to look into the panchayat system. This Committee reiterated the need to see panchayats

not merely as agencies of development but also as representative institutions. The panchayats were to be visualized as the base of the democratic pyramid. The First Administrative Reforms Commission had commended the Maharashtra-Gujarat model which centred on the district and the Ashok Mehta Committee endorsed it. The middle tier was seen as a support body working to enhance the efficiency of the district body. The concept of district level planning was brought in and the Committee recommended that professionally qualified personnel should be stationed at the district level for the purpose. The second wave of panchayat reforms was hence initiated and many States, West Bengal, Karnataka and Andhra Pradesh amongst others, brought in new legislation.

2.4.05 However in spite of this the problems of supersession, and not holding regular elections remained. This was true for both rural as well as urban bodies. Even Metropolitan Corporations which had a long history were superseded. The second wave of reforms also petered out. Neither the structure was allowed to stabilize, nor was it endowed with enough powers.

2.4.06 The third wave of reforms was initiated in June 1986 with the setting up of a Committee under the chairmanship of the jurist Dr. L.M. Singhvi. The Committee noting the continued structural weaknesses and reluctance of many States to conduct timely elections recommended that it was time that local self-government should be constitutionally recognized, protected and preserved by inclusion of a new chapter in the Constitution. The First Commission on Centre-State Relations had also recommended legislative measures to stabilize the system of local Government. The 64th and 65th Constitution Amendment Bills were introduced in July 1989 by the Government of Shri Rajiv Gandhi. These however could not be passed in the Rajya Sabha. A combined Constitution Amendment Bill covering rural and urban bodies could also not go through because of dissolution of the Parliament. However, the political determination remained strong and finally in 1992, Government drafted and introduced the 73rd and 74th Amendment Bills which were passed in December 1992 and after ratification by the requisite number of States came into force in mid-1993. These introduced Parts IX and IXA in the Constitution containing Articles 243 to 243 ZG and added the Eleventh and Twelfth Schedules.

CHAPTER 3

SPECIAL PROVISIONS FOR THE FIFTH AND SIXTH SCHEDULE AREAS AND THE NORTH-EASTERN REGION

CONTENTS

3

SPECIAL PROVISIONS FOR THE FIFTH AND SIXTH SCHEDULE AREAS AND THE NORTH-EASTERN REGION

3.1 Tribal Rights

3.1.01 The Constituent Assembly on January 24, 1947 set up the Advisory Committee on the Rights of citizens, minorities and tribal and excluded areas. The motion setting up the Committee required it to set up sub-committees to prepare schemes for the administration of, *inter alia* the North-Eastern tribal areas and the excluded and partially excluded areas. Accordingly, the Advisory Committee set up two sub-committees on tribal matters one of which, chaired by Shri G.N. Bardoloi, was to report on the North-East Frontier (Assam) tribal and excluded areas, and the other chaired by Shri A.V. Thakkar was to look into the excluded and partially excluded areas in the Provinces other than Assam. The Bardoloi sub-committee gave its report in July 1947 and the Thakkar sub-committee in August 1947 and September 1947 respectively. The two sub-committees also met in a joint session in August 1947 and recommendations arising out of this joint session were also given to the Advisory Committee. The Advisory Committee chaired by Sardar Vallabh Bhai Patel was hence well placed to take a holistic look at the requirements of the people and region comprising the tribals of India together with the requirements of other citizens and minorities.

3.2 The Assam Tribal Areas

3.2.01 The report of the Sub-Committee on Assam and the recommendations of the joint meeting spelt out the distinctive features of the region, its people, history and culture which had a distinct bearing on the administration and the representative structures which emerged in the North-East (NE) region. It would be worthwhile to revisit these findings:

(i) There were considerable differences between the tribal areas (frontier tracts), the excluded areas and the partially excluded areas. In the case of the frontier tracts there were large areas which were partially explored and virtually unad-

ministered. These were under the direct charge of the Governor as Agent to the Governor General. All expenditure for administration was borne by the Government of India. The excluded areas had a modicum of administration. The Provincial Ministry had no control over them and revenues expended were not voted by the Legislature. The Governor had wide discretionary powers and administered directly. The partially excluded Areas were administered by the Provincial Government subject to the powers of the Governor to withhold or apply the laws of the Provincial Legislature with or without modification or to make special rules;

(ii) The areas were inhabited by a large number of tribes which differed widely in their language, customs and practices;

(iii) There were variations in the degree of development. The frontier tracts were the worst of. Development was somewhat better in areas close to provincial capitals (Khasi Hills) or areas where there was more contact with people in the plains. Literacy rates were better where Christian missions were active. Agriculture was generally primitive relying on Jhum (shifting) cultivation. The partially excluded areas which would be expected to do better, did not, because of the dual responsibility of the Governor and the Provincial Government, each disclaiming responsibility;

(iv) There was inner democracy amongst the tribes as their village councils are created by general assent or election, but except for the municipality of Shillong there are no statutory local self governing bodies. There was however representation of the partially excluded areas in the Provincial Legislature;

(v) Whatever be the differing capacities of the areas and the people the principles which should guide the administration of these areas must take into account:-

(a) The distinct social customs and tribal organizations of the different peoples as well as their religious beliefs. Some have a matriarchal system; some have hereditary chiefs; some have elected council of elders; laws of succession vary widely and so on;

(b) Universal belief that they would be exploited by the plains people because of their superior organization and experience of business, more so if they were to acquire land in the hill areas; and

(c) The provincial Government would not, because of the pressure of the plains people, provide adequate funds to the local councils.

3.3 Recommendations of the Bardoloi Committee

3.3.01 The Sub-Committee accordingly recommended:

(i) The distinction between 'excluded' areas and 'partially excluded' areas be discontinued. The principle of Governance should be autonomy but legislative, financial and administrative links be established with the Provincial Administration;

(ii) The special case of the 'tribal areas' (frontier tracts) would remain with the Central Government having direct responsibility, with the Government of Assam as its Agent. As and when the administration in these areas improves and gets established the control should shift to the Provincial Government;

(iii) Assimilation should be a gradual process the pace of which should be left to the better judgment of the hill people themselves. Except for the frontier tracts all the excluded areas should be represented in the Provincial Legislature and the Ministry;

(iv) A special role needs to be given to the Governor (following the 1935 Act) to "filter" Provincial legislation and decide whether to apply or not apply such legislation to these areas on the ground of 'suitability'. No such plenary powers should be given to the Councils but there should be a restriction on the Provincial Legislature on matters exclusively in the 'legislative' domain of the Councils;

(v) The Hill Districts should have powers of legislation over occupation or use of land including management of forests (except reserved forests); controlling Jhum cultivation; establishing village councils; and other functions related to village and town management; inheritance; marriage etc.;

(vi) The District Councils to have powers to manage schools, dispensaries, markets, forests, roads etc.,

(vii) The Councils also to have powers to set up Courts to try cases (civil and criminal) except specified cases powers of which would need to be specifically conferred by the Provincial Government;

(viii) Adequate financial powers to be given at least on par with local bodies in the plains districts in matters of taxation. Funds would also need to come from the Provincial Government as these areas would be 'deficit areas'. The amounts set apart by the Provincial Legislature would need to be voted upon although no ratio can be fixed. However, a separate financial statement for these areas needs to be prepared as also a suitable programme of development. The Provincial Government must also share the revenues arising out of mineral wealth exploitation. The development of these districts should be as much the concern of the Central government as the Provincial Government and the Central Government must make good the deficit. The Government of India also to provide funds to meet the schemes of development to raise the level of administration. A special fund to be created for all sums accruing to the District Councils;

(ix) The Governor should also have special powers to act in emergencies to restrict the use of authority by the Councils. This is because experience indicates that local bodies do sometimes exceed their authority. This can have a more serious effect in the border areas if the acts of the Councils have a prejudicial effect on the safety and security of the country. In extreme cases the Governor should, subject to the approval of the Legislature 'have the power to dissolve a Council;

(x) There should be no separate service for the hill areas and there should be an inter-change between hill and non-hill and Provincial and All India Service officers all of whom must be available to work in these areas;

(xi) To take stock of the progress of development the Governor should appoint a Commission from time-to-time to assess and report on the state of affairs and suggest remedial measures; and

(xii) District Councils to have representation in the Provincial Legislature.

3.4 Joint Report of the Committees

3.4.01 As mentioned earlier the two Sub-committees gave a joint report also. This report came on August 25, 1947 by which time the Indian Independence Act and the adapted Constitution of 1935 had come into operation. This is interesting as the joint meeting made an important change in the recommendations made by the Bardoloi

Committee in its earlier report of July 1947. Because of the changes, said the joint report, "so much of the provisions of the Government of India Act, 1935 as requires a Governor to act in his discretion or exercise his individual judgment ceases to have effect from the 15th of August". The joint report went on to consider the implications of this especially in the case of the excluded areas which hitherto had no representation in the Legislature. If the Governor's powers were to go and there was no representation in the Legislature these would result in a situation where there would be no responsible authority in charge of these areas. The joint report exhorted the Legislature to take note of this and quickly lay down a statutory basis for establishment of District Councils and Tribal Advisory Councils. Considering that the "tribal areas" (frontier tracts) were to be the direct responsibility of the Government of India no such cautionary note was expressed as regards their administration.

3.4.02 The second important recommendation was with regard to the differential treatment of the two sets of tribal areas i.e., those of Assam and those in the rest of India. The circumstances of the NE Region were radically different from the rest of India. In the NE the areas were fairly large and inhabited by single tribes or fairly homogenous groups. They had their own tribal representative organizations and maintained a distinct culture. This was not so in the rest of India where assimilation had occurred to a greater degree. However, in many ways the plight of the peoples was the same. This was in the sphere of under development, illiteracy, lack of medical care and poor communications. All of them needed protection from exploitation especially in matters of land.

3.5 Link with the Past

3.5.01 The recommendations of the Bardoloi sub-committee can be said to follow a continuum wherein distinct policies have been formulated and acted upon for these areas and the people who inhabit them. The Scheduled Districts Act of 1874 was the first measure to deal with tribal areas. The principle adopted was that the executive had power to exclude these areas from the operation of laws for the general population, if this was necessary to give protection to the people living in these areas. The protection was in the matters of their way of life, customs, traditions and livelihood, and to prevent exploitation by outsiders. The Government of India Act of 1919 divided the tribal areas into two categories. One was "totally excluded" and the power to make laws was with the Governor-in-Council and the other where a "modified exclusion" was practiced where authority was with the Provincial Government but it was subject to the reserved half of the dyarchical

Government's power to apply, or to refrain from applying any new provincial enactment to tribal areas. The aim was still to maintain tribal identity and to protect them from outsiders but its downside was that it inhibited political advancement and greater assimilation with mainstream governance. The Government of India Act 1935 followed the same principles but categorized the areas formally as "excluded" and "partially excluded" with the Governor having personal and discretionary responsibility in excluded areas and supervisory control over the partially excluded areas, the Ministers and the Legislature having primary responsibility for administration and legislation. This Act also formally defined a third category designated as "tribal areas". These areas were directly administered by the Governor as Agent to the Governor-General in terms of sub-section (1) of Section 123 read with sub-section (3) of Section 313 of the Government of India Act, 1935.

3.6 Consideration by the Constituent Assembly

3.6.01 When the broad principles of the Constitution were considered in July 1947, the report of the Advisory Committee was not available and so the Constitutional provisions relating to the tribal areas were taken up directly by the Drafting Committee which finalized the Draft Constitution in February 1948 providing a specific Article and the Sixth Schedule. The recommendations of the Advisory Committee were accepted. The Constituent Assembly considered the proposals in September 1949. The thrust of the debate was on the following lines:

(i) The problems of the tribal areas were extremely complicated, more so because they bordered a number of countries. There were a number of conflicts based on differences in the language, culture and religion of the various people in the Province. The Provincial Government would not be able to handle these complex matters and the Central Government should assume direct responsibility for their administration through the Governor;

(ii) Others wanted a greater role of the State Legislature and were wary of so much authority being given to the district councils. Such autonomy would delay assimilation. Hence the autonomy should be more on the lines of the then existing local bodies; and

(iii) However the majority opinion favoured the scheme of the Bardoloi sub-committee. The Acts of Parliament and the State Legislature would generally apply and the non-application decisions of the Governor would be exceptions. The enfranchisement of the people and their representation in Parliament and the State Legislature would be a binding force.

3.6.02 The majority view was adopted with some significant amendments. The provisions relating to the discretionary role of the Governor were to be in line with the recommendations of the joint meeting and it was clarified that such powers were to be exercised on the advice of the State's Council of Ministers except when he was acting as an Agent of the Central Government in the "tribal areas" (frontier tracts). The High Court would have appellate jurisdiction over the cases decided by the Councils. And very significantly the laws of the Councils and the regulations made by them would in all cases require the assent of the Governor. It was laid down that amendments to the Schedule would be by an ordinary Act of Parliament and not by the complicated procedure of a Constitutional Amendment so that there is no apprehension that there is a State within a State.

3.7 The VI Schedule Areas

3.7.01 The original list included in the Sixth Schedule read as follows:

Part A

1. The United Khasi-Jaintia Hills District.
2. The Garo Hills District.
3. The Lushai Hills District.
4. The Naga Hills District.
5. The North Cachar Hills.
6. The Mikir Hills.

Part B

1. The North East Frontier Tract including Balipara Frontier Tract, the Tirap Frontier Tract, Abor Hills District and Misimi Hills District.
2. The Naga Tribal Area.

Significant political developments since then have resulted in the political map of the North-Eastern region being radically altered.

3.7.02 As it stands today the Sixth Schedule is applicable to Tribal Areas in Assam, Meghalaya, Tripura {The Constitution (Forty-ninth) Amendment Act, 1984 added the

Tripura Tribal Areas District to the Schedule} and Mizoram. Theoretically the entire area of what is now the State of Nagaland was part of the Sixth Schedule. However, no notification (which was required to be issued by the Governor) was issued applying the Schedule to that area. When the new State was formed in 1962 this area was taken out of the purview of the Sixth Schedule. Similarly for the areas which now comprise the State of Arunachal Pradesh no notification was issued. With the passing of the North-Eastern Areas (Reorganisation) Act 1974, Arunachal Pradesh became a Union Territory and ceased to be part of the Sixth Schedule. The position continued even after Arunachal Pradesh became a State in 1987. The State of Manipur is the only State in the North-East Region to which the provisions of the Sixth Schedule have never been applied. However, when Manipur became a State as a result of the North-Eastern Areas (Reorganisation) Act 1971, Parliament passed the legislation providing for constitution of the District Councils for the Hill Areas of the State. The Constitution (Thirteenth Amendment) Act, 1962 inserted Article 371A with respect to the State of Nagaland and the Constitution (Fifty-fifth Amendment) Act, 1986 inserted Article 371H relating to the State of Arunachal Pradesh and these articles relate to the special dispensation given to the two States. Two other significant developments need to be highlighted. Areas have also been added as a result of settlement memoranda entered into with specified tribes to give fulfillment to their aspirations. The Bodoland Territorial Areas District in Assam came into being in this manner and has been included in the Schedule by the Constitution (Amendment) Act, 2003(44 of 2003). Secondly because of local demands Councils have also been created through State laws in Assam and Manipur.

3.7.03 The Sixth Schedule areas as it stands today are as follows:

Part I

1. The North Cachar Hills District.
2. The Karbi Anglong District.
3. The Bodoland Territorial Areas District.

Part II

1. Khasi Hills District.
2. Jaintia Hills District.
3. The Garo Hills District.

Part II A

1. Tripura Tribal Areas District.

Part III

1. The Chakma District.
2. The Mara District
3. The Loi District.

3.7.04 Autonomous District Councils (ADCs)

Structurally at present the following ADCs have been instituted in the North-East Region :

(a) In the Sixth Schedule Areas

(1) Assam

(i) North Cachar ADC with HQ at Haflong (NCHAC)

(ii) Karbi Anglong ADC with HQ at Diphu (KAAC)

(iii) Bodoland Territorial Council with HQ at Kokrajhar (BTC)

(2) Meghalaya

(i) Khasi Hills ADC with HQ at Shillong

(ii) Jaintia Hills ADC with HQ at Jowai

(iii) Garo Hills ADC with HQ at Tura

(3) Tripura

(i) Tripura Tribal Areas ADC with HQ at Khumulwng

(4) Mizoram

(i) Lai ADC with HQ at Saiha

(ii) Marar ADC with HQ at Lawngtlai

(iii) Chekwa ADC with HQ at Chawngte

(b) In States covered by the Sixth Schedule but areas outside by State Laws.

(1) Assam (for plains tribes)

(i) Rabba Hasong Autonomous Council (AC)

(ii) Lalung AC

(iii) Mising AC

(iv) Thengal Kochari Hills Council

(v) Sonowal Kochari Council

(vi) Deori Council

(c) In States not covered by the Sixth Schedule under the provisions of the Constitution, by State Law :

(1) Manipur

(i) Sardar ADC

(ii) Sardar Hills ADC

(iii) Churachandpur ADC

(iv) Ukhrul ADC

(v) Tamenglong ADC

(vi) Chandel ADC

3.7.05 Regional Councils

The following Regional Councils exist:

(i) In the Sixth Schedule Areas: None at present. A few were constituted but all converted into ADCs.

(ii) Under the provisions of Article 371A for the State of Nagaland: None exist, laws have progressively been amended to provide for village councils only.

3.7.06 Village Councils (Elected)

1. Within the Sixth Schedule Areas:

(i) Assam - Village level development committees have been constituted in the Bodoland Territorial Council but are not functioning.

(ii) Meghalaya - None at present

(iii) Tripura - Constituted

(iv) Mizoram - Constituted

2. Outside the Sixth Schedule Areas:

(i) Manipur – Constituted

(ii) Nagaland - Constituted under law but in accordance with prevailing customary practices.

3.7.07 The broad picture which emerges is that in no state do three sets (not necessarily in tiers) of Councils exist. In Tripura, Mizoram and Manipur there are ADCs as well as elected Village Councils. In the case of Assam and Meghalaya only ADCs exist. In the case of Nagaland a three tier system was provided for. However, the State laws have been progressively changed and now only Village Councils exist under the Nagaland Village Council Act, 1978.

3.8 Traditional Institutions

3.8.01 The formal structure described above has been overlaid by a traditional system of councils which are found all over the region and the interaction between the two impacts on local body administration and the development process in the region. Their continued existence was ensured as they served as guardians of tribal culture and systems. Since they originated amongst pre-literate communities and all in pre-colonial times there are no written laws or working rules. However, they have a strong oral tradition establishing their rights over the lands they inhabit. The tenure varies from one tribe to another, and so do the customary rules laying down the number of traditional institutions, the manner of constituting them, and their powers and functions.

These nuances become important when need arises to involve them in the planning and development process.

3.8.02 In the scheduled areas of Meghalaya are found the most elaborate traditional institutions organized in three tiers. In communities which are small and scattered and sometimes also migratory because of their dependence on 'Jhum' cultivation, the institutions are less elaborate. Their functions include administration of justice according to customary laws and practices; keeping watch and ward; arranging the cycle of Jhum fields; overseeing the use and distribution of water and other resources and so on.

3.8.03 Judged from present day standards these institutions are inadequate as they do not provide avenues for the youth and are particularly unfair to women. They cannot aspire for positions of leadership and are denied entry into councils and generally not heard or consulted.

3.8.04 It is quite obvious that if, over such institutions, another system based on laws, and written regulations; one which aspires to provide equality to all; aims at giving special attention to women; which is part of a more elaborate system which is linked to other tiers of the federal system, is overlaid, there would be mistrust and conflicts over power sharing. Since the formal system aims at empowerment especially at the Autonomous District Level, a reaction sets in and the rights, powers and privileges of the traditional institutions and their leaders is asserted.

3.8.05 In 2000 there began a development in the Khasi Hills and particularly in Shillong to revive the position of the Syiems. The Federation of Khasi States (Himas) was revived under a different nomenclature. Efforts were made to involve the Nokmas of the Garos and the Dollois of the Jaintia Hills. The Garo Nokmas have subsequently set up a Nokma Council in Tura.

3.9 Impact of the 73rd and 74th Amendments

3.9.01 The existence of traditional institutions did have a bearing on the provisions of the Sixth Schedule. Likewise the considerations which led to the differential treatment of these areas, continued to guide the Constitutional arrangement which came about as a result of the 73rd and 74th Amendments to the Constitution and incorporation of Parts IX and IX-A in the Constitution providing for Panchayats and Municipalities. Provisions in

these parts exempt certain areas from the applicability of these parts and are contained in Articles 243M and 243ZC.

3.9.02 The resulting situation in the NE can be expressed as follows:

Article 243 M (Exemptions from the provisions relating to Panchayats contained in Part IX of the Constitution).	Article 243 ZC (Exemptions from the provisions relating to Municipalities contained in Part IX-A of the Constitution).
Part not to apply to certain areas	Part not to apply to certain areas
(1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in Clause (2), of Article 244.	(1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in Clause (2), of Article 244.
(2) Nothing in this Part shall apply to -	No corresponding provision exists. Thus the provisions relating to Municipalities are applicable to Nagaland, Cantonment and Municipality of Shillong in Meghalaya, parts of Mizoram (outside the Sixth Schedule areas), Manipur and parts of Tripura (outside the Sixth Schedule areas).
(a) the States of Nagaland, Meghalaya and Mizoram.	
(b) the hill areas in the State of Manipur for which District Councils exist under any law for the time being in force.	
210A {(3A) Nothing in Article 243D, relating to reservation of seats for the scheduled castes, shall apply to the State of Arunachal Pradesh.}	No corresponding provision.

3.9.03 To sum up the areas to which the provisions of Parts IX do not apply are as follows:

State / Area within a State	Provisions under which exempt.
Nagaland Hill areas of Manipur	Exempt under Article 243M and not covered under Sixth Schedule.
Meghalaya	Exempt under Article 243M and covered by the provisions of the Sixth Schedule.
Mizoram	Exempt under Article 243M, with some areas of the State covered by the provisions of the Sixth Schedule.
Bodoland, North Cachar, Karbi Anglong districts of Assa and Tripura Tribal Areas District.	Covered under Sixth Schedule.

3.9.04 The areas to which the provisions of Part IXA do not apply are:

State/Area within a State	Provisions under which exempt
Sixth Schedule areas of – Meghalaya Mizoram Assam Tripura	Article 243 ZC

3.10 Functions

3.10.01 The range of functions assigned to the Councils under various paragraphs of the Sixth Schedule include legislative, judicial, executive and financial. They are as follows:

Legislative

3.10.02 Legislative powers of District and Regional Councils: Under Paragraph 3, District and Regional Councils are empowered with the assent of the Governor, to make laws with respect to:

(i) The allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town;

(ii) The management of any forest not being a reserved forest;

(iii) The use of any canal or water-course for the purpose of agriculture;

(iv) The regulation of the practice of jhum or other forms of shifting cultivation;

(v) The establishment of village or town committees or councils and their powers;

(vi) Any other matter relating to village or town administration, including village or town police and public health and sanitation;

(vii) The appointment or succession of Chiefs or Headmen;

(viii) The inheritance of property;

(ix) Marriage and divorce;

(x) Social customs.

3.10.03 Under Paragraph 2(7), the District or the Regional Council is empowered to make rules *inter alia*, regarding formation of subordinate local Councils or Boards and their procedure and the conduct of their business, with the approval of the Governor.

3.10.04 In addition, Paragraph 10 empowers District Councils to make regulations for the control of money-lending and trading by non-tribals. KAAC and NCHAC in Assam have powers to legislate on additional twenty subjects, which were agreed in an MOU signed in 1995. Likewise BTC has powers to legislate on additional forty subjects as per the settlement of 2003.

Judicial Powers of District and Regional Councils

3.10.05 Paragraph 4 provides for Regional and District Councils to constitute village councils or courts to the exclusion of any court in the State for the trial of suits and cases between Scheduled Tribes within such areas, with certain exceptions. The Regional or District Council are also empowered to act as, or constitute separate courts of appeal. The BTC however has not been conferred with judicial powers.

Executive Functions of District Councils

3.10.06 The range of executive functions of District and Regional Councils vary from Council to Council, based on several amendments made to the Sixth Schedule. The common range of executive functions are laid out in Paragraph 6, under which District and Regional Councils are empowered to establish, construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways in the district and may make regulations for their regulation and control. They are also specifically empowered to prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district. Functions relating to agriculture, animal husbandry, community projects, cooperative societies, social welfare, village planning or any other matter to which the executive power of the State extends can also be entrusted to Councils.

Financial Powers of District and Regional Councils

3.10.07 Paragraph 7 constitutes for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the said District and Regional Councils. The accounts of the District and Regional Councils are to be maintained as prescribed by the Comptroller and Auditor General of India, who is also entrusted with their audit.

Powers to Collect Taxes and Fees

3.10.08 Paragraph 8 gives powers to Regional and District Councils to assess and collect land revenue and to impose taxes within their jurisdictions such as on lands and buildings, on professions, trades, callings and employments, animals, vehicles and boats, on the entry of goods into a market, tolls on passengers and goods carried in ferries and for the maintenance of schools, dispensaries or roads.

Entitlement to Royalties

3.10.09 Paragraph 9 entitles the District Council to receive a share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of minerals granted by the State Government in respect of any area within an autonomous district as agreed upon with the Government. Disputes in this regard are to be referred to the Governor for settlement.

Indication of Resources to be Credited to Councils

3.10.10 Under paragraph 13, estimated receipts and expenditure pertaining to autonomous districts which are to be credited to, or is to be made from the State Consolidated Fund shall be first placed before the District Council for discussion and then shown separately in the annual financial statement of the State to be laid before the Legislature of the State under Article 202.

3.11 Powers of Governors

3.11.01 The Governors of the Sixth Schedule States historically had played a big role and the recommendations of the Bardoloi Sub-Committee and consequent debate in the Constituent Assembly have been referred to earlier. Since this remains a debatable issue it is considered appropriate to list out the powers assigned to the Governor.

3.11.02 These powers are classified and described below:

Description of the power Entrusted to the Governor	Para	**Details of the provision in the Sixth Schedule** Brief Content
Powers to constitute district and regional Councils	19	To constitute district councils for each autonomous district as soon as possible and until constitution of district council, to be the head of the administration of the district.
	1(2)	Divide areas of district council into autonomous regions.
	1(3)	Issue notification for inclusion, exclusion, creation, increase, decrease unite or define areas of district council or alter the name of any district council.
	2(6)	Frame rules for the first constitution of district council or regional council.
	14(3)	Place one of the Ministers in charge of the welfare of the autonomous district region.
Powers to dissolve and supersede councils	2(1) & 2(6A)	Nominate four members in each district council who hold office at his pleasure.
	17	For the purposes of elections to the legislative assembly of the State, declare that any area within an autonomous district shall not form part of any constituency to fill a seat or seats in the assembly reserved for any such district, but shall form part of a constituency to fill a seat or seats in the assembly not so reserved to be specified in the order.
	4(3)	Extent of jurisdiction of the High Court over suits and cases tried by District Council Courts.
	5	Confer power under CPC and CrPC on district council courts for trial of specified nature of cases and withdraw or modify the same.

	6 (2)	Entrust conditionally or unconditionally all or any of the executive powers available to the State to the District Council or its officers with the consent of the District Council.
	15 (1)	Annul or suspend acts and resolutions of the district and regional council if such act or resolution is likely to endanger the safety of India or is prejudicial to the public order.
	3(3)	Assent to laws made by the District and Regional Councils, without which they have no force of law.
	2(7).	Approve the rules made by the District and Regional Council for composition and delimitation of the Councils, qualification terms of office etc., of its members and generally for all matters regulating the transaction of business pertaining to the administration of the district.
	6(1)	Give prior approval for the framing of regulations by the District Council for
		the regulation and control of primary schools, dispensaries, markets, road transport, waterways, etc.
	4(4)	Approve rules regarding constitution procedure etc. of village council and

	10(3)	Give prior assent to regulations framed by the district council for the control of money lending, without which they do not have the force of law.
	9(2)	Give the final decisions in respect of disputes between district council and regional council in cases of royalty for extraction of minerals, which shall be referred to the Governor for resolution.
	14(1)	Appoint a commission to ensure into the administration of autonomous district regions.
	14(2)	Report of commission appointed under paragraph 14 is required to be laid before the State legislature with the recommendations (except in the case of State of Assam) with respect thereto.

3.11.03 In addition to the above powers, special powers have been conferred in respect of the Governor of Assam, Tripura and Mizoram, as described below:

State concerned	Para	Details of the provisions in the Sixth Schedule Brief content
Tripura and Mizoram	9(3)	Prescribe the period within which the royalty acquiring from grant of lease for extraction of minerals is to be shared between the State Government and the District Council.
	12AA(b) 12B (b)	Direct that any act of the State legislature other than matters specified in paragraph 3 and legislation prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall not apply to any autonomous district or an autonomous region or shall apply subject to such exceptions or modifications as may be notified.

Assam	12(1)(b)	Direct that any act of Parliament or of the State Legislature other than matters specified in paragraph 3 and legislation prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall not apply to an autonomous district or an autonomous region or shall apply subject to such exceptions and modifications as may be notified.

3.12 Recommendations of the Thakkar Committee

3.12.01 Whereas the Bardoloi Sub-Committee concerned itself with the 'excluded' and 'partially excluded' areas of Assam, the Sub-Committee for the 'excluded' and 'partially excluded' areas for the rest of the country was chaired by Shri A.V. Thakkar. It gave its report in two parts in August and September, 1947.

3.12.02 The Sub-Committee noted –

(i) That historically exclusion was determined strictly on necessity and kept to the minimum. 'Partially excluded' areas were those where there was preponderance of tribal people in areas whose size was sufficient to ensure special administrative and legislative treatment;

(ii) The 'excluded' and 'partially excluded' areas did not cover the entire tribal population and that there was a sizeable population scattered in the non-excluded areas. The Sub-Committee therefore felt that merely confining their recommendations to the 'excluded' and 'partially excluded' areas would leave out of consideration a sizeable population who were in a backward condition. Consequently it decided "that the whole tribal population should be treated as a minority community for the welfare of whom certain special measures are necessary";

(iii) The tribals of the 'excluded areas' had no experience of local self-governing institutions and are not represented in the legislature. The people of the 'partially excluded' areas were included in the electoral constituencies and also covered in most areas by local boards;

(iv) In both cases however development lagged woefully behind the 'non-excluded' areas. In many cases there were small pockets of under development surrounded by better developed areas;

(v) The people of these areas believed that with better education and contacts with others their plight would improve.

3.12.03 The Sub-Committee made the following important recommendations:

(i) In the matter of representation the tribes should be treated as a minority taking them together. They should have reserved seats in a joint electorate based on adult franchise. In this respect the case of tribals is not essentially different from that of the scheduled castes;

(ii) In the matter of applicability of laws, because of the need to consider the tribal culture and way of life, it is necessary to provide that in certain areas laws of the Legislature which are likely to be based largely on the needs of the majority of the population should not apply automatically. This could be achieved by delimitation of these areas; the Sub-Committee said that they should be given the nomenclature "Scheduled Areas";

(iii) The mechanism to apply this principle of selectivity would be by taking the advice of a Tribes Advisory Council. Such a Council should be set up under a statute;

(iv) Although the primary responsibility for the development of these areas is that of the Provincial Government, it would be necessary for the Central Government not only to provide funds for their development but also take a special interest by setting up a Commission to inquire into the plans for these areas and their development. There should also be a Central Department to watch the development of the areas and tribes;

(v) Such special attention would necessitate the appointment of a separate Minister to look after the interests of the tribals;

(vi) The primary responsibility being that of the Provincial Governments, the Governors should not have any special reserved or discretionary powers in regard to these areas;

(vii) All protective laws to prevent alienation of land should remain.

3.13 Consideration by the Constituent Assembly

3.13.01 Just as in the case of the Bardoloi Committee the Drafting Committee considered the report of the Thakkar Committee at the stage of drafting. The recommendations of the Sub-Committee were accepted. The 1948 draft however contained two general provisions. The first extended the executive power of the State to the Scheduled Area and the second required the State Government to report to the Union Government regarding the administration of the Scheduled Areas and gave power to the Central Government to give directions to that State as to the administration of these areas.

3.13.02 However, the draft turned out to be too complicated. The integration of Indian States had taken place by then and new areas had come into the Union, which were earlier not part of the "excluded" or "partially excluded" areas of existing provinces but part of the Indian States. The detailed Schedule was abandoned and it was left to the Central Government to declare Scheduled Areas by an order. The powers of the Tribal Council (as suggested) were considered too wide. It was not mandatory to constitute them where there were tribes but no Scheduled Areas. Also and very significantly whether or not to apply any law to the Scheduled Areas was left to the discretion of the State Government without involving the Tribes Advisory Council. In substance the responsibility for the welfare of the Scheduled Areas was made squarely that of the State Government subject to the control of the Centre.

3.13.03 Impact of the 73rd and 74th Amendments

Just as in the case of the Sixth Schedule Areas Acts 243M and 243 ZC provided that these parts were not applicable to the Fifth Schedule Areas. However unlike in the case of the Sixth Schedule Areas Parliament has by virtue of clauses (b) of Section (4) of Act 243M enacted legislation to extend the provisions of Part IX to the Fifth Schedule areas. We have examined the implications of this enactment in Chapter VIII of our report.

CHAPTER 4

SITUATION TODAY

CONTENTS

4

SITUATION TODAY

4.1 Core Features

4.1.01 The motivating factor behind the 73rd and 74th Amendments was the need to give a Constitutional status to the panchayat structure, to take it away from the legislative discretion of the States where it lay and to give it a distinct life and composition which could not be attained by ordinary statute. Only by this method could the objective enshrined in Article 40 of the Directive Principles be achieved and units of self-government created. The Statement of Objects and Reasons to the Amendment Bill accordingly said that "there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj Institutions to impart certainty, continuity and strength to them."

4.1.02 The essential features which emerged were –

(i) Incorporation of new Parts in the Constitution; (Parts IX and IXA)

(ii) A Gram Sabha in a village or groups of villages; (Article 243A)

(iii) A three-tier (with a few exceptions) system of elected bodies; (Article 243B)

(iv) Direct elections to all seats and to offices of chairpersons at the village levels; (Article 243C)

(v) Reservation of seats for SC/STs in proportion to their population and to office of chairpersons at each level; (Article 243D)

(vi) Reservation of at least one-third of the seats for women; (Article 243D)

(vii) A fixed tenure of five years and elections within six months in case of supersessions; (Article 243E)

(viii) Disqualification of membership; (Article 243F)

(ix) Devolution of powers and responsibilities by the State legislature; (Article 243G)

(x) Sound finance including grants-in-aid and powers of taxation, duties tolls and fees; (Article 243H)

(xi) Setting up of Finance Commissions every five years to review the financial position; (Article 243 I)

(xii) Auditing of accounts of panchayats; (Article 243 J)

(xiii) Conduct of elections by a State Election Commission; (Article 243K)

(xiv) The part not to apply to Scheduled areas, tribal areas and to a few States. (Article 243M)

4.1.03 The detailed provisions in parts IX and IXA are more or less similar.

4.1.04 It was enjoined on the States to devolve power and responsibilities upon local bodies with respect to the implementation of schemes for economic development and social justice and that these schemes should be inclusive of those enumerated in the Eleventh Schedule (in the case of Panchayats) and in the Twelfth Schedule (in the case of Municipalities). (Annexures 4.1 and 4.2).

4.2 Institutional Structure

4.2.01 The process of conduct of elections and establishment of the three tier structure has been put in place. Panchayat elections have been held regularly in all the States and Union Territories, except in Jharkhand. There are today in the country (in round figures) 23,000 village panchayats, 6000 intermediate level panchayats and 500 district panchayats. The total elected members would be 28 lakhs of which 19 per cent are Scheduled Castes and 11 per cent Scheduled Tribes. Reservations have been provided for the Scheduled Castes, the Scheduled Tribes and other Backward Classes (in some of the States). State Election Commissions and State Finance Commissions have been set up in all the States.

4.2.02 What differentiates them from other elected bodies at the Central and State levels are the reservation provided for women. Of the 28 lakh elected Panchayat representatives around 10 lakh are estimated to be women. The average of women representation in Panchayats across the country is nearly 37 per cent. Considering that a few States have gone beyond the mandated 33 per cent (Bihar, Madhya Pradesh and Uttarakhand have reserved 50 per cent and Sikkim 40 per cent) the Centre is considering a further Constitutional Amendment to increase the reservation to 50 per cent. The presence of women has positively impacted on the functioning of the Panchayats. This has been brought out by studies conducted under the aegis of the Ministry of Panchayati Raj of the Government of India (Study Report on Elected Women Representatives in

Panchayati Raj Institutions). Emboldened by these findings the Ministry has sought to encourage further political participation of women through a centrally funded scheme titled Panchayat Mahila Evam Yuva Shakti Abhiyan (PMEYSA). In addition special attention is being accorded to those women who have been elected more than once.

4.2.03 However a disturbing feature is the increasing trend towards politicization of local body elections which are being conducted on party lines. This seriously prevents these institutions from concentrating on local issues. Party loyalties at times override local concerns and force individual local bodies to conform to rather than pursue independent action on local matters or to seek deviations from plans and priorities conceived at higher levels.

4.3 Devolution of Powers and Responsibilities

4.3.01 The structure though important is a means towards an end i.e. establishment of self-governance at the local level. This can only be achieved by meaningful and effective devolution of functions, funds and functionaries (3Fs) to the PRIs. Progress in this direction was in fits and starts. There was unevenness in the devolutions made between States and within States in sectors of development. The transfer of funds and functionaries did not match devolutions. Government of India Ministries did not also reorient their Centrally Sponsored Schemes to provide a distinct role for local bodies. However gradually these shortcomings are being attended to. Concerned with the slow pace and prevalence of wide disparities attempts are being made to build consensus and a series of conferences and round tables with the Centre and States participating have been organized. The objectives are:

(a) To ensure that there is role clarity between various levels of Government including local bodies through 'activity mapping';

(b) To match funds with functions and to show them clearly in the budget;

(c) To ensure that plans are prepared at each level which are then consolidated at the district level;

(d) To strengthen the capabilities of local bodies to enable them to manage their affairs; and

(e) To deepen the accountability of local bodies to citizens and review of their activities by Gram Sabhas.

4.3.02 Based on the information furnished by the State governments the Ministry of Panchayati Raj has provided information on the status of devolution in its Annual Report for 2008-09. The details may be seen at Annexure 4.3. The National Council of Applied Economic Research (NCAER) has compiled information on the parameters constituting the Devolution Index (DI). It is based on a two-stage assessment. The first stage is called the Framework Criteria which is based on the four fundamental structural requirements namely establishment of State Election Commission; holding of elections; setting up State Finance Commissions, and constitution of the District Planning Committees (DPCs). Once these criteria are in place the States are judged for the level of devolution. In all there are 34 indicators, of which 5 relate to 'Functions', 15 to 'Finances' and 14 to 'Functionaries'(Annexure 4.4). Based on this two stage process the States (21) have been evaluated and their performance is as below:

S. No	State	Score of functions	Score of funds	Score of functionaries	Overall score
1	Madhya Pradesh	4.52	4.08	4,71	4.44
2.	West Bengal	5.00	3.68	4.43	4.37
3	Tamil Nadu	5.00	3.62	4.29	4.30
4	Kerala	5.00	2.82	4.29	4.04
5	Karnataka	5.00	3.29	3.64	3.98
6	Sikkim	5.00	3.20	3.29	3.83
7	Himachal Pradesh	3.83	2.97	4.14	3.65
8	Haryana	4.45	2.53	3.29	3.42
9	Chhattisgarh	4.31	2.89	2.86	3.35
10	Assam	4.60	2.47	2.64	3.24
11	Andhra Pradesh	3.72	3.29	2.14	3.05
12	Uttar Pradesh	3.83	3.01	2.00	2.95
13	Maharashtra	2.52	2.69	3.57	2.93
14	Arunachal Pradesh	5.00	1.53	1.93	2.82
15	Rajasthan	3.30	2.80	2.00	2.70
16	Goa	3.42	3.34	1.29	2.68
17	Tripura	3.86	0.93	2.21	2.34
18	Orissa	2.69	1.92	2.29	2.30
19	Bihar	3.60	0.73	2.43	2.25
20	Punjab	1.10	1.51	2.21	1.61
21	Manipur	0.54	2.20	1.64	1.46
	Average	3.82	2.64	2.92	3.13

4.3.03 However, even at the stage of second generation reforms (the first being putting the structure in place) there is much to be done. The Commission had visited the Karakulam Grama Panchayat in Thiruvananthapuram district and saw their work. The quality of the work being done and especially their publications would be the envy of many state level instituions. In spite of this, studies conducted by the Centre for Development Studies at Thiruvananthapuram bring out that attendance at Gram Sabhas is thin, attendees expect direct benefits and meetings are dominated by activists of dominant political groups. Not much time is spent on debating the merits of different schemes or the options available. The citizens committees soon peter out and many a time become mouth pieces of contractors. There is no transfer of functionaries and this is not only because of reluctance of State Governments but also because of resistance of State Cadres to work under local bodies. A holistic approach towards development is not taken and there is competition amongst representatives to take a 'share of the cake' rather than looking at the collective good. Because of the weak governance basic activities of local bodies like water supply, control over construction, sewerage, house tax collection etc. suffer.

4.3.04 On the positive side it has been noted that around 25-30 per cent of plan resources are spent through local bodies. A cadre of local leadership has emerged and there is evidence that money spent on poverty eradication is actually reaching the needy people because resource allocations are being made locally and not by a department driven delivery system.

4.3.05 On balance the conclusion is that even after so many years even in a State which is high up in the index the local bodies must concentrate initially on (a) basic infrastructure (b) provision of basic public goods and increasing efficiency of delivery and (c) poverty alleviation programmes. Taking on responsibility for all development schemes would still be difficult for some time to come.

4.4 Local Body Planning

4.4.01 Another significant aspect in which local bodies differ is on the Constitutional mandate to pay attention to the structure and process of district and metropolitan level planning. By 2008-09, 21 of the 24 States covered by Part IX had

constituted the DPCs. The Planning Commission has taken a lead in issuing guidelines on preparation of district plans and a Manual on Integrated District Planning was released on January 16, 2009 at the National Conference of Chairpersons of District Planning Committees. We have also noted that to encourage the practical aspects of district planning a Backward Regions Grant Fund (BRGF) has been initiated in which considerable sums are placed directly with panchayats as 'untied' funds to fill development gaps and the identification of the work is decided with peoples participation. This is in contrast to other centrally sponsored schemes where schemes are prepared with detailed guidelines and are implemented in exclusion to others, leaving no room for convergence at local levels. The BRGF also has a component for capacity enhancement at district and lower levels to foster participative planning.

4.5 Fund Position

4.5.01 Self-governance cannot be actualized without adequate funds. This has been one of the weakest links in the system. Article 243H in the case of Rural local bodies (RLBs) and Article 243X in the case of Urban local bodies (ULBs) provide the constitutional basis for State enactments laying down the financial management of the local bodies. Such State legislation could authorize the local bodies to levy, collect and appropriate taxes, duties, tolls and fees; provide for assignment to them of taxes, duties, tolls and fees levied and collected by the States as also to make grants-in-aid from the Consolidated Fund of the State. Article 243-I and Article 243Y provide for the constitution of Finance Commissions by the States every five years to review the financial position of the local bodies and to make recommendations on the principles which should govern the distribution between the States and local bodies of the net proceeds of the taxes etc. leviable by the States and the inter se allocation between the local bodies at different levels, the taxes etc. which may be assigned to or appropriated by the local bodies and the grants-in-aid to the local bodies from the Consolidated Fund of the States. It may also suggest measures to improve the financial position of the local bodies. Article 280(3)(bb) and Article 280(3)(c) requires the Finance Commission set up by the Central Government, to make recommendations on the measures needed to augment the Consolidated Fund of a State to supplement the resources of the local bodies in the State on the basis of

recommendations made by the Finance Commission of the State. Article 243G and Article 243W enable States to entrust implementation of schemes of economic development and social justice to local bodies and also to provide the requisite funds.

4.5.02 In spite of these elaborate provisions, in actual fact central funds constitute the bulk of the funding to local bodies through the Centrally Sponsored Schemes and Additional Central Assistance. However, they have sector specific conditionalities and tie the hands of those who receive them.

4.5.03 The clear and precise provisions of the Constitution relating to transfer of funds to the local bodies as a result of the recommendations of the State Finance Commissions (SFCs) and the Central Finance Commissions have not taken effect, owing to a number of operational and synchronizational problems. The intent of Article 243-I was to ensure that State Government transfers to local bodies should be on the basis of the recommendations of the SFC which is currently in position. However, in actual practice the reports of the SFCs for a particular five year period are available practically at the end of the period. The State Governments therefore utilize the recommendations of the previous SFC. The Central Finance Commission is required to take into consideration the recommendations of the SFCs. However they have been unable to come up with an all India picture of recommendations of SFCs for a period of five years for which its mandate exists. The ad-hocism of the SFCs therefore gets translated into ad-hoc grants recommended by the Central Finance Commisison also. The FC-X had been constituted before the 73rd and 74th Amendments took effect. However before the expiry of its term the position had changed. Feeling obliged to deal with the issue of local body finances owing to the amendment of Article 280, the Commission recommended ad-hoc grants. There were no reports of SFCs for that period. The position however had changed by the time the FC-XI had been constituted and its terms of reference included specific reference to local bodies. However, FC-XI noted the lack of synchronization in the periods covered by the reports of the SFCs and the Central Finance Commission; diversity in the reports of the SFCs as regards their approach and content; and the mismatch between periods for which the SFC reports were available. There was delay on the part of the State Governments in finalizing the Action Taken Reports (ATRs). FC-XI hence also

had to content itself with ad-hoc grants on the basis of five parameters. The FC-XII continued with the same handicap and noted that the data furnished by the States as well as by the SFC reports did not provide it with a sound basis for estimation of the requirements of local bodies. Ad-hoc grants therefore continued with FC-XII also which used more or less the same parameters. The Thirteenth Finance Commission continues to lament the fact that SFCs are not appointed on time and that the period covered by the SFCs does not synchronise with the period covered by the Central Finance Commission. ATRs by the State Governments are still not available on time. FC-XIII also notes that the SFC reports continue to be patchy and that they do not follow a uniform pattern.

4.5.04 SFCs have recommended sharing of both tax and non-tax revenues (Andhra Pradesh), and only tax revenues (Assam). The inter-se distribution between tiers have been recommended on the basis of criteria recommended from very simple ones to those which are quite complicated. Panchayati Raj rural institutions have been categorized as advanced, ordinary and backward and weightages assigned. Special grants have been recommended for weak PRIs and incentive grants to those performing well. SFCs have also not clearly identified the issues requiring action by the Central Government to augment the Consolidated Fund of the State. The lack of quality of SFC reports has been ascribed to lack of data and limited capacity of the Commissions. State Governments also have been lax in accepting the reports and this has led to a vicious circle as the SFCs are also not enthused to produce good reports. Details of the SFC reports are at Annexure 4.5.

4.5.05 FC-X recommended an ad-hoc grant of Rs.100 per capita, based on the rural population as per the 1971 Census, to the rural local bodies, which worked out to Rs.4380.93 crores. In the case of urban local bodies the Commission recommended an amount of Rs.1,000 crores. The total amount for local bodies representerd 1.38 per cent of the divisible pool. The FC-XI recommended a grant of Rs.8000 crores for rural local bodies and Rs.2000 crores for urban local bodies totaling Rs.10,000 crores. This represented 0.78 per cent of the divisible pool. The amounts allocated by FCs (upto FC-XII) and amounts drawn may be seen in the table below.

(Rs. crores)

Commission	Amount allocated		Amount Drawn		Amount not Drawn	
	PRIs	ULBs	PRIs	ULBs	PRI	ULBs
FC-X (1995-2000)	4380.93*	1000	3576.35	833.88	804.58	166.12
			(66.46%)	(83.39%)	(33.54%)	(16.61%)
FC-XI (2000-05) 8000	2000		6601.85	1751.89	1398.15	248.11
			(82.52%)	(87.59%)	(17.48%)	(12.41%)
FC-II**(2005-09) 18000	4500		16664.77	4024.54	1335.23	475.46
			(92.58%)	(89.43%)	(7.42%)	(10.57%)

*Note : * Rs.100 per capita of rural population*
*** From 1 April 2005 to 6 November 2009.*
Source : Ministry of Finance, Government of India.

4.5.06 The Thirteenth Finance Commission (FC-XIII) observed that there is an undisputed need to bolster the finances of the rural as well as urban local bodies considering the present deficiencies in the provision of basic services. Taking into account the demand of the local bodies that they be allowed to benefit from the buoyancy of Central taxes FC-XIII recommended that local bodies be transferred a percentage share of the divisible pool of taxes over and above the share of the States. The Commission recommended that the divisible pool of Central taxes of the previous year may be used as a base for computing the grant eligibility of local bodies in the following year. The Commission suggested suitable adjustments in the grants after the actual figures of divisible pool of the previous year are available. The grant recommended by FC-XIII has two components. The basic grant effective from 2010-11 will be equivalent to 1.50 per cent of the divisible pool of Central taxes of the previous year after converting this share into grants-in-aid under article 275. This basic grant will be released to all States without any conditionalities. The performance grant effective from 2011-12 will be equivalent to 0.50 of the divisible pool for the year 2011-12 and 1 per cent thereafter. Only those States which meet the prescribed stipulations will have access to the performance grant. The main stipulations are that the state must put in place a supplement to the budget documents for local bodies furnishing

transfers under plan and non-plan to urban and rural local bodies separately and an audit system for the local bodies. The other stipulations are appointment of an independent local body ombudsman, electronic transfer of local body grants received from the Central Government enabling all local bodies to levy property tax, prescription through an Act of the qualifications of persons to be appointed as members of the State Finance Commission and laying down standards for delivery of all essential services by local bodies. FC-XIII recommended grants aggregating to Rs.87519 crore to local bodies during the five-year period 2010-15. This works out to 2.28 per cent of the divisible pool of Central taxes for the years 2009-14 and 1.93 of the estimated divisible pool for the period 2010-15. The distribution of the local body grants across States is based on the following criteria and weights.

Table : Weights Allotted to Criteria to Local Bodies

Criterion	Weights Allotted (%)	
	Panchayati Raj Institutions	Urban Local Bodies
Population	50	50
Area	10	10
Distance from highest per capita sectoral income	10	20
Index of devolution	15	15
SC/ST proportion in the 2001 population	10	---
FC-XII local body grants utilization	5	5
Total	100	100

Source: Report of the Thirteenth Finance Commission

FC-XIII recommended distribution of local body grants across PRIs and Ulocal bodies in proportion to their respective population as per 2001 census (73.18 per cent for PRIs and 26.82 per cent for ULBs).

FC-XIII has carved out a small portion of the basic grant equivalent to Rs.20 per capita per annum and allocated it exclusively to Schedules-V and VI and excluded areas. In addition a special performance grant of Rs. 10 per capita per annum from 2011-15 has been recommended for these areas. Stipulations have been laid down on the fulfillment of which only the States will be entitled to draw the special performance grant for these areas. Rs.1357 crores have thus been earmarked for these areas which the Commission has termed "special areas".

4.5.07 The concern for proper accounting and audit has been voiced continuously by the Central Finance Commissions. The FC-XI recommended a grant of Rs. 2000 crores to build a data base and Rs.483 crores for management of accounts. It also suggested that to ensure proper utilization, the Comptroller and Auditor General of India (C&AG) be entrusted with the responsibility of exercising control and supervision over the maintenance of accounts and the audit of all the local bodies. The C&AG has been given this task (technical guidance and support) under Section 20(1) of the C&AG's DPC Act. Arunachal Pradesh. Chhattisgarh and Punjab are yet to entrust this task to the C&AG. In Karnataka audit of urban local bodies and grampanchayats has not been entrusted to the C&AG. In Maharashtra the Municipal Council remains outside the purview of the C&AG. In Tamil Nadu audit of gram panchayats has not been entrusted to the C&AG. FC-XII however noted that only 30 per cent of those allocations were utilized and stressed upon the need to have a permanent State Finance Commission Cell in the Finance Department of States to collect and collate data of local body finances. FC-XIII has also stressed on the need for proper audit and has included this as one of the criteria for the performance portion of the grants it has recommended.

4.6 Own Resources

4.6.01 When it comes to raising own resources the picture is very dismal. Having untied funds locally raised would not only have imparted fiscal strength but also independence of action. It would also have provided funds to meet administrative expenditure and for basic services. The First Round Table of State Ministers held at Kolkata dwelt on the importance of raising own resources. The Empowered

Committee of the National Development Council (NDC) (June 12, 2006) suggested that measures be taken to evolve a national policy on guidelines for local body taxation. Various opinions have been voiced. There are those who believe that local bodies are disinterested in tax collection as it is politically inadvisable. Others hold firm that people would pay if they observe that money is well spent and commensurate services are provided. The studies conducted by the XIIth Finance Commission showed that own resources raised by Panchayats in 2002-03 were 0.07 per cent of GDP and 0.35 per cent of total revenues (of the Centre, State and local bodies). Even if one were to consider the rural agricultural income the tax percentage was only 0.37. The All India average for per capita tax was Rs.23.70 the highest being in Goa with Rs.118.50 followed by Kerala with Rs.94.96. The potential remains large as under various State legislations nearly 66 different types of taxes, fees and other charges have been listed out. Property tax, Octroi, Professional tax and Entertainment Tax remain the major sources. But here again States are hobbling the local bodies by prescribing ceilings and laying down conditions. In a few States the house tax has even been abolished. Ideas for raising own resources are becoming scarce.

4.7 Urban Local Bodies (ULBs)

4.7.01 The urban population according to the 2001 census stood at 286 million and accounts for nearly 28 per cent of the total population. However, it accounts for nearly 60 per cent pf the GDP. It is estimated that at current rates of growth the urban population will reach a figure of 575 million by 2030. The number of urban local bodies as in July 2004 was 3723. Of these 109 were Municipal Corporations, 1432 were Municipalities and 2182 were Nagar Panchayats. According to the 2001 Census there are 35 cities which have a population of 10 lakhs or more and hence are metropolitan in nature. They are spread over 15 States/UTs.

4.7.02 This growth in urban society has not been matched by increase in availability of basic services like water supply, sewerage, drainage, disposal of solid waste, construction of roads and an urban transport system. Only 70 per cent households are served water through taps. 26 per cent of households have no latrines, and sewerage connections varied from 48 per cent to 78 per cent. Nearly 1, 15,000 MT of solid waste are generated every day. The challenges facing urban areas are hence mainly those of meeting the basic needs of housing, health (arising out of overcrowded and unhygienic living conditions, pollution, migration leading to communicable diseases) safe drinking

water, sanitation, sewerage and treatment. Here again, in the first instance of the existing population and thereafter for the estimated growth.

4.7.03 The funds available to Ulocal bodies are grossly inadequate. In spite of the high contribution of urban areas to the GDP, the total revenues of Ulocal bodies are only 0.75 per cent of the total GDP (Rs.15149 crores for 2001-02). The total expenditure (Rs.15914 crore for 2001-02) was only 2.2 per cent of the expenditure of the Centre and States. That resource requirements are large can be gauged from the City Development Plans submitted by the 65 Mission cities under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) which for basic services alone totals Rs.2, 76,822 crores for the Mission period (2005-12).

4.7.04 If to this is added the responsibilities cast on the Ulocal bodies under the Twelfth Schedule the burden increases manifold. Another feature which needs to be taken into consideration is the rise in urban poverty. According to the 61st National Sample Survey Organisation (NSSO) Round 80.7 million urban dwellers were below the poverty line. The ratio of urban poor to the rural poor was up from 1:4.45 in 1993-94 to 1:2.73 in 2003-04. Almost 25 per cent of the urban population lives in slums. (For Mumbai the figure is 54.1).

4.7.05 At the same time the concentration of the population in urban agglomerations can also be turned into an advantage as it lends itself to easier spatial planning, economies of scale in provision of services and better supervision because of a lesser geographical spread.

4.7.06 Just as in the case of rural areas the Finance Commissions have contented themselves by giving ad-hoc grants (Rs.1000 crores by the Xth Finance Commission; Rs.2000 crores by the XIth Finance Commission and Rs.5, 000 crores by the XIIth Finance Commission). Since own revenues account for only 52 per cent (2002-03) of the total expenditure of Ulocal bodies there is little flexibility. On behalf of Ulocal bodies, the Ministry of Urban Development, Government of India, has been pleading for a regime of regular transfer arrangements through the Finance Commissions rather than ad-hoc grants.

4.7.07 Although the provisions of Part IX and IXA are similar, important distinguishing features of Part IXA are the concept of Metropolitan Areas and Metropolitan Planning Committees (MPCs). According to the Amendment Act, a

metropolitan area means "an area having a population of 10 lakhs or more, comprised in one or more districts and consisting of two or more municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be Metropolitan Area for the purposes of this Part". The Amendment envisages that the Metropolitan Planning Committee, to be constituted in every Metropolitan Area, will prepare a draft development plan having regard to –

(i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan Area;

(ii) matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning to the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(iii) the overall objectives and priorities set by the Government of India and the Government of the State;

(iv) the extent and nature of investments likely to be made in the Metropolitan Area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise.

4.7.08 A significant requirement as regards composition of the Metropolitan Planning Committees is that they shall have representation, *inter-alia,* of the Government of India, recognizing the crucial importance of such cities in the national economy as well as the role of the Government of India in assisting them in managing their affairs. As an institution created by the Constitution it is unique as it provides for a direct role of all the three tiers of governance to interact with each other in one Committee and to work in unison under a single chairperson.

4.7.09 Unfortunately even after so many years of Part IXA having come into effect, as in March 2009 only 2 MPCs have been constituted for Kolkata and Mumbai. In addition the States of Andhra Pradesh and Gujarat have enabling legislation to constitute MPCs. However even these enabling legislations have more or less reproduced the language of the 74th Constitution Amendment Act. Details have yet to be prescribed.

4.7.10 A recent report by an Expert Committee chaired by Dr. K. Kasturirangana, on Governance in the Bangalore Metropolitan Region and Bruhat Bangalore Mahanagara Palika has brought out very succinctly the unsatisfactory state of urban planning. There are a confusing array of laws, institutions and authorities involved in the administration of and planning for these urban agglomerations. The Constitution confers planning jurisdiction to the Centre and the States vide entry 20 of List III of the Seventh Schedule. Article 243W allows conferment of powers of planning to Municipalities by the States. Entries 1, 2 and 3 of the Twelfth Schedule all relate to aspects of planning. Article 243ZE relates to the constitution and powers of Metropolitan Planning Committees.

4.7.11 The Courts have upheld the validity of the Town and Country Planning Acts under which States have traditionally exercised planning functions. Master Plans which are in most cases spatial plans to cater to urban growth have been prepared exercising powers under this Act, sometimes by State Departments of Town Planning or by Metropolitan Development Authorities set up under these Acts. With the expansion of these agglomerations, Regional Planning Authorities have also been constituted which straddle both Municipalities (local planning authorities) and Corporations (metropolitan planning authorities). In spite of the existence of these statutory bodies traditional control over land use (especially conversion of agricultural land for non-agricultural purposes) by the State Revenue Departments and the local revenue administration has not been abandoned, and continues to be exercised under the State Land Revenue Acts (The Karnataka High Court has however held that in certain circumstances the powers of Planning Authorities under the Town and Country Planning Act would override the State Governments powers under the Land Revenue Act). The Central Government has also directly entered the arena under the JNNURM which envisages contractual arrangements between Ulocal bodies and the Central Government calling for preparation of City Development Plans. Thus the picture which emerges is of considerable overlap, the existence of a variety of plans, leading to inconsistencies and adding up to large resource gaps.

ANNEXURE 4.1

ELEVENTH SCHEDULE

[Article 243 G]

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.

20. Libraries.

21. Cultural activities.

22. Markets and fairs.

23. Health and sanitation, including hospitals, primary health centres and dispensaries.

24. Family welfare.

25. Women and child development.

26. Social welfare, including welfare of the handicapped and mentally retarded.

27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.

28. Public distribution system.

29. Maintenance of community assets.

ANNEXURE 4.2

TWELFTH SCHEDULE

[Article 243W]

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 weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, play-grounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds, cremations, cremation grounds and electric crematoriums.
15. Cattle ponds, prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

ANNEXURE 4.3

Devolution of Functions through Legislations and Activity Mapping
(Based on the information furnished by the State Governments and records of the Ministry)

Sl. No.	State	Transfer of matters listed in the Eleventh Schedule to the Panchayats through Legislation			Subjects Covered under Activity Mapping/State Government Orders			Comments
		Zila Parishad	Mandal Parishad	Gram Panchayat	ZP	MP	GP	
1.	**Andhra Pradesh**	1	23	21	12	10	12	**On the State Panchayati Raj Act**: The AP Panchayat Raj Act has established the Panchayat system as a hierarchy, with the ZP at the top. Therefore, although only one clear original power relating to a matter listed in the Eleventh Schedule has been given to the ZP (to establish, maintain or expand secondary, vocational and industrial schools), it has also been given approval coordination, planning and supervision powers over Mandals and powers to advise the government. **Comments on activity mapping:** Government issued 9 Orders between January-March, 2008, devolving activities to the three levels of Panchayats as indicated
		The State act also contains general provisions that enables it to entrust through rules, powers and functions relating to all matters in the Eleventh Schedule						

2.	Assam	Zila Parishad	Anchalik Panchayat	Gram Panchayat	ZP	AP	GP	The State undertook a revised activity mapping exercise and published it vide its Notification bearing number PDA336/2001/Pt-III/32 dated June 25, 2007. As per this notification, 21 functions listed in the 11th Schedule have been devolved to the 3 tier PRIs. It has also made provision in the State Budget to provide substantial funds to PRIs through a new budget line.
		25	27	28	21	21	21	
3.	Arunachal Pradesh	Zila Parishad	Anchal Samiti	Gram Panchayat	29			The Arunachal Pradesh Panchayat Raj Act, 1997 devolves all the 29 subjects, listed in the Eleventh Schedule, to at least one of the tiers of Panchayats in the State. The executive order for devolution of 29 subjects of Activity Mapping was issued on October 21, 2008 for devolution of 29 subjects covering 20 departments. There is overlap of some of the functions devolved to different tiers of Panchayats.
		25	27	28				

<table>
<tr><td rowspan="3">4.</td><td rowspan="3">Bihar</td><td>ZP</td><td colspan="2">PS</td><td>GP</td><td>ZP</td><td>PS</td><td>GP</td><td rowspan="3">As per the Bihar Panchayati Raj Act, 2006, all the functions of the Eleventh Schedule have been devolved to either of the tiers of Panchayats.

The State Government had issued executive orders in respect of 28 matters and only the subject “Technical training and vocational education has been excluded”. The State propose to revisit the activity mapping aimed at greater devolution of Functions, Functionaries and Funds to the Panchayat.</td></tr>
<tr><td>25</td><td colspan="2">26</td><td>25</td><td>23</td><td>24</td><td>27</td></tr>
<tr><td colspan="9"></td></tr>
<tr><td>5.</td><td>Chhattisgarh</td><td colspan="4">29</td><td colspan="3">27</td><td>The Activity Mapping has been prepared for 27 subjects excluding drinking water supply and forests. The executive orders with respect to operationalizing Activity Mapping are yet to be issued in Chhattisgarh.</td></tr>
<tr><td rowspan="3">6.</td><td rowspan="3">Goa</td><td colspan="2">Zila Panchayat</td><td colspan="2">Village Panchayat</td><td colspan="3" rowspan="3">18</td><td rowspan="3">Out of 29 subjects to be devolved to Panchayts, 6 subjects have been transferred through legislation and 18 subjects have covered under Activity Mapping. 18 matters are devolved to the Gram Panchayats while seven matters are devolved to the Zila Panchayats. There is an overlap in assignment of responsibility between the two tiers.</td></tr>
<tr><td colspan="2">17</td><td colspan="2">18</td></tr>
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<tr><td>7.</td><td>Gujarat</td><td colspan="3">15</td><td colspan="3">19</td><td>Following the process of Activity Mapping in Gujarat, out of 29 matters listed in the 11th Schedule, 14 have been fully transferred, 5 matters have been partially transferred.</td></tr>
<tr><td rowspan="2">8.</td><td rowspan="2">Haryana</td><td>Zila Parishad</td><td>Panchayat Samiti</td><td>Gram Panchayat</td><td>ZP</td><td>PS</td><td>GP</td><td rowspan="2">On the State Panchayati Raj Act: The Haryana Panchayat Raj Act has established the Panchayt system as a hierarchy, with the ZP at the top. It states, inter alia that ZP shall advise, supervise and co-ordinate the functions of the Panchayat Samitis in the district.

On Activity Mapping: In February 2006, an activity mapping was released by the Government through which activities of 10 departments, namely, Irrigation, Food and Supplies, Education, Public Health Department, Women and Child Development, Social Justice and Empowerment, Health Department, Animal Husbandry, Agriculture, and Forest department. The ten departments cover ten matters listed in the Eleventh Schedule.</td></tr>
<tr><td>Only advisory, supervision and coordination powers</td><td>27</td><td>25</td><td>10</td><td>9</td><td>8</td></tr>
<tr><td rowspan="2">9.</td><td rowspan="2">Himachal Pradesh</td><td>Zila Parishad</td><td>Panchayat Samiti</td><td>Gram Panchayat</td><td>ZP</td><td>PS</td><td>GP</td><td rowspan="2">On the State Panchayati Raj Act: In respect of ZPs and PSs, the Act gives specific powers to the General body and its Standing Committees. Both have been reckoned in the overall devolution to the body.</td></tr>
<tr><td>17</td><td>16</td><td>11</td><td>22</td><td>23</td><td>24</td></tr>
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								On Activity Mapping: A general notification on devolution of functions issued for 15 departments in July, 1996. However, only 8 departments have issued orders in 2001-02.
10.	Jharkhand	Zila Panchayat	Intermediate Panchayat	Gram Panchayat				No elections held to Panchayats.
		27	27	27				
11.	Karnataka	Zila Panchayat	Tulak Panchayat	Gram Panchayat	ZP	PS	GP	Activity Mapping has been completed in accordance with the recommendations of the GOI task force, in August 2003.
		26	27	25	29	29	29	
12.	Kerala	Distt. Panchayat	Block Panchayat	Gram Panchayat	DP	BP	GP	Activity mapping (Responsibility mapping) has been incorporated into the law through an amendment and matches legislative devolution. The responsibility mapping undertaken is now being revisited by the State.
		21	18	26	21	18	26	
13.	Madhya Pradesh	Zila Parishad	Janpad Panchayat	Gram Panchayat	25			On the State Panchayati Raj Act: The MP Act, apart from devolving powers and responsibilities to the three Panchayat levels, has also devolved 18 matters to Gram Sabhas. **On activity mapping:** Executive orders have been issued for 25 matters. The State is revisiting activity mapping.
		25	27	28				

14.	Maharashtra	28	28	Devolution in Maharashtra is derived from The Bombay Village Panchayats Act, 1958 and The Maharashtra Zila Parishads and Panchayat Samitis Act, 1961. Except the subject Non-Conventional Energy Sources, all other subjects of XIth Schedule are broadly covered in these legislations. It was reported that activities devolved to Panchayats are listed in the legislations itself.
15.	Manipur	29	16	The State Panchayati Raj Act of 1994 details the devolution of functions to the PRIs, all the subjects listed in Schedule 11 of the Constitution have been devolved to the PRIs. The Activity Mapping approved by the State Cabinet in September 2005 lists only 16 of these subjects. The State Government issued orders on Activity Mapping in September, 2005. Subsequently, funds were also transferred in respect of only 5 departments.

16.	Orissa	Zila Parisad	Panchayat Samiti	Gram Panchayat	ZP	PS	GP	Activity Mapping document was issued in October 2005. It covers activities relating to 11 departments. Subsequently, the schemes of water supply and sanitation have also been devolved to PRIs.
		16	5	21	18	18	18	
17.	Punjab	Zila Parisad	Panchayat Samiti	Gram Panchayat	13			Various notifications were issued by the State Government between 2003 and 2006 for devolving 13 subjects pertaining to 7 Departments.
		27	27	26				
18.	Rajasthan	Zila Parisad	Panchayat Samiti	Gram Panchayat	24			Executive Orders have been issued between 2001 and 2003 devolving subjects, however, these have been held in abeyance for one subject, i.e., roads, culverts, bridges, waterways and other means of communication. The State Government has revisited the issue and has finalized its report on activity mapping. A final decision is awaited.
		22	25	26				
19.	Sikkim	Zila Panchayat	Gram Panchayat		ZP	GP		Executive Orders have been issued between 2001 and 2003 devolving subjects, however, these have been held in abeyance for one subject, i.e., roads, culverts, bridges, waterways and other means of communication. The State Government has revisited the issue and has finalized its report on activity mapping. A final decision is awaited.
		15	18		17	19		

		Distt. Panchayat	Panchayat Union	Gram Panchayat	ZP	PU	GP	
20.	Tamil Nadu	2	11	12	29	29	29	On the State Panchayati Raj Act: There is no unequivocal mandate contained in The State PR Act regarding functional devolution. The act only enables the State Govt. to do so by official notification. Concrete and definite powers have been devolved in respect of 2, 11, and 12 matters in case of District Panchayat, Intermediate Panchayat and Gram Panchayat, respectively in the Act. The Govt. had issued orders for devolution of functions pertaining to all 29 matters, but these are largely restricted to planning and promotional responsibilities.
21.	Tripura	29			29			Activity Mapping was completed in 2005. This covers 29 subjects mentioned in the 11th Schedule of the Constitution and applies to 21 departments. The Government of Tripura has taken a decision to implement the Activity mapping in phases. Till now, Irrigation Schemes, Primary School, Institutions relating to WCD have been transferred to the Panchayats through executive orders.

22.	Uttar Pradesh	Zila Panchayat 29	Panchayat Samiti 29	Gram Panchayat 26	16	The UP Panchayati Raj Act 1947 and The UP Kshetra Panchayats and Zila Panchayats Act, 1961 provide for devolution of functions. Functions relating to 12 departments have been transferred to Panchayats. Activity Mapping is still under the consideration of the Government.
23.	Uttarakhand	Zila Panchayat 29	Panchayat Samiti 29	Gram Panchayat 26	16	The UP Panchayati Raj Act 1947 and the UP Kshetra Panchayats and Zila Panchayats Act, 1961 providing for devolution of functions are applicable in the State as the State legislation on Panchayati Raj is under preparation. The Activity Mapping of 11 departments related to 14 subjects was released in August 2005. However, the Government has not issued the necessary notifications to operationalize the Activity Mapping. Cabinet Sub-Committee has been constituted to consider the Activity Mapping and the outcome is awaited
24.	West Bengal	Zila Panchayat 18	Panchayat Samiti 29	Gram Panchayat 28	18	The State Govt. has devolved all 29 functions included in the 11th Schedule to the 3 tier PRIs. Activity Mapping has been completed for 28 subjects accepting technical and vocational education. As per orders dated November 07, 2005, July 25, 2006 and October 29, 2007, 9 departments have so far issued necessary matching orders. 3 departments have opened separate Panchayat Window for transferring

ANNEXURE 4.4

Indicators for Devolution Index Survey 2008-09

Functions	Finances	Functionaries
1. De facto transfer of 29 functions listed in 11th Schedule.	6. Authorisation of PRIs to collect taxes, duties, tolls etc.	21. Expert Institutions and entities to support PRIs for the preparation of their Annual Plans specified.
2. Detailed Activity Mapping conducted for these 29 functions.	7. PRIs own revenue as % of PRIs expenditure.	22. Expert institutions and entities to support capacity building/ training of elected officials of PRIs specified.
3. Whether DPC is involved in the preparation of District Plan?	8. Timely action on latest SFC's major recommendations.	23. Amount of money provided for the capacity building/training of elected officials of PRIs.
4. Are GP implementing the major Flagship Programmes?	9. Percentage of Funds devolved to PRIs that are untied (Plan).	24. Amount of money provided for the capacity building / training of appointed officials of PRIs.
5. Are GP fully empowered to prepare plans for expenditure?	10. Percentage of funds devolved to PRIs that are untied (Non-plan).	25. Annual Report for last fiscal year released.
	11. Promptness with which Twelfth Finance Commission Funds transferred to PRIs.	26. Functionary wise accountability to PRIs: GP.
	12. Allocation of funds to PRIs based on apportionment formula.	27. Functionary wise accountability to PRIs: IP.
	13. Are GP fully empowered to sanction expenditure?	28. Functionary wise accountability to PRIs: DP.
	14. Whether there is a separate budget line for PRIs in the State Budget for 2007-08?	29. Average days of training of Functionaries: Elected Officials; GP

	15. Devolution of Finances corresponds to functions?	30. Average days of training of Functionaries: Appointed Officials; GP
	16. Percentage of PRIs whose accounts are audited (GP).	31. Average days of training of Functionaries: Elected Officials; IP
	17. Percentage of PRIs whose accounts are audited (BP).	32. Average days of training of Functionaries: Appointed Officials; IP
	18. Percentage of PRIs whose accounts are audited (DP).	33. Average days of training of Functionaries: Elected Officials; DP
	19. Specify the registers in which the accounts of GP are updated.	34. Average days of training of Functionaries: Appointed Officials; DP
	20. Do any funds directly go to the GP with respect to the functions?	

Annexure 4.5

SFC-I Reports – Constitution and Submission

Sl. No.	State	Date of Constitution of SFC	Date of Submission of SFC report	Date of Submission of ATR	Period Covered	Devolution Recommendation
1.	Andhra Pradesh	22.6.1994	30.5.1997	29.11.1997	1997-98 to 1999-2000	39.24% of state revenue from tax and non-tax, 10% of betting tax to MC Hyderabad, 95% of profession tax, Rs. 25 lakh grant to newly formed municipal corporations
2.	Arunachal Pradesh	21.5.2003	Report submitted on April 2008	Under consideration	Not available	Data Not available
3.	Assam	23.6.1995	29.2.1996	18.3.1996	1996-97 to 2000-01	2% per annum of tax revenue of the state; Grants-in-aid: 1996-97: Rs. 36.89 crore; 1997-98: Rs. 37.15 crore; 1998-99: Rs. 37.02 crore
4.	Bihar	23.4.1994	Not submitted	Not submitted		
5.	Chattisgarh	22.8.2003	15.05.2007	Under consideration	2005-06 to 2009-10	**1. Global sharing of 0.514% of the gross tax revenue of the state government 2. The proceeds from the following are devolved in the ratio given below: stamp duty 1%; motor vehicle tax 10%; entry

						tax 98%, surcharge on sales tax 10%; passenger tax - as per actuals
6.	Goa	1.4.1999	5.6.1999	12.11.2001	2000-01 to 2004-05	1. 27% of SOTR and share in central taxes for devolution of zilla panchayats under non-plan and 13% of annual state plan under plan head 2. 9% of SOTR to municipal councils under non-plan head and 3% of annual state plan under plan head
7.	Gujarat	15.9.1994	RLBs-13.7.1998 ULBs Oct.,1998	28.08.2001	1996-97 to 2000-01	Additional taxation of Rs. 293.09 crore per annum Profession tax 50%; entertainment tax 75%; other grants
8.	Haryana	31.5.1994	31.3.1997	5.9.2000	1997-98 to 2000-01	1. 20% of royalty on monor mineral be devolved to the ULBs and Gram Panchayats 2. 7.5% of net receipts under 'stamp duty and registration fees' be devolved to PRIs 3. Tax on motor vehicle 20%; entertainment tax 50% to ULBs
9.	Himachal Pradesh	23.4.1994	30.11.1996	5.2.1997	1996-97 to 2000-01	Rs. 138.75 crore devolved to LBs
10.	Jammu & Kashmir	15.1.2008		Not submitted	2009-10	
11.	Jharkhand	28.1.2004			Not Available	

12.	Karnataka	10.6.1994	RLBs July 1996 ULBs 30.1.1996	31.3.1997	1996-97 to 2000-01	36% of non-loan gross own revenue receipts to the LBs
13.	Kerala	23.4.1994	29.2.1996	26.2.1997	1996-97 to 2000-01	1. 25% surcharge on stamp duty be levied on behalf of ULBs. The surcharge on stamp duty as well as basic tax collected from Corporation area be transferred to them on collection basis 2. Land tax be doubled and 60% of the additional income generated therefrom be given to block panchayats and balance to district panchayats
14.	Madhya Pradesh	25.2.1995	20.7.1996	20.7.1996	1996-97 to 2000-01	2. 91% of total tax and non-tax to PRIs and 0.514% share of the divisible pool to ULBs; specific grant Rs. 67.66 crore to PRIs
15.	Maharashtra	23.4.1994	31.1.1997	5.3.1999	1994-95 to 1996-97#	1. 10% of the professional tax collected by the state should be given to LBs 2. 66.67% of the demand of land revenue and cess thereon should be given to PRIs as advance grants 3. Irrigation cess grant equal to 66.67% of the demand should be given to zilla parishads as advance grants

						4. 25% of net income from motor vehicle tax be given to ULBs
16.	Manipur	22.4.1994	December 1996	28.7.1997	1996-97 to 2000-01	1. 5.229% of the state share in the Union taxes to LBs was suggested for the first year of SFC recommendations i.e. for the year 1996-97. Thereafter a fixed sum of Rs. 8.67 crore per annum was to be devolved to LBs for the remaining period 2. 50% of land revenue to PRIs
17.	Meghalaya	Exempt under Article 243 M				
18.	Mizoram	Exempt under Article 243M				
19.	Nagaland	1.8.2008	22.10.2009	Under consideration	2010-15	Exempt under Article 243M. SFC constituted under state Act. No specific devolution has been recommended for LBs
20.	Orissa	21.11.96/ 24.8.1998*	30.12.1998	9.7.1999	1998-99 to 2004-05*	Government is bearing the full salary and other recurring and non-recurring cost of staff deployed by various line departments in PRIs. The quantum of money to be provided for salary of the staff of panchayat samities should be treated as direct devolution of funds to PRIs
21.	Punjab	22.4.1994	31.12.1995	17.9.1996	1996-97 to 2000-01	20% of 5 taxes i.e. stamp duty; motor vehicle tax; electricity duty; entertainment tax;

						cinema shows be devolved to the LBs (both urban and rural)
22.	Rajasthan	23.4.1994	31.12.1995	16.3.1996	1995-96 to 1999-2000	2.18% of net tax proceeds of the state to be devolved to the local bodies
23.	Sikkim	22.7.1998	16.8.1999	June 2000	2000-01 to 2004-05	1% of the state annual tax revenue to the panchayats
24.	Tamil Nadu	23.4.1994	29.11.1996	28.4.1997	1997-98 to 2001-02	Data Not Available
25.	Tripura	RLBs-23.4.1994 ULBs - 19.8.1996	RLBs-12.1.1996 ULBs - 17.9.1999	Feb.1997 ULBs - 27.11.2000	RLBs-Jan. 1997 to till date ULBs - 1999-00 to 2003-04	1. 25% of the revenue earned from sales tax, additional sales tax, purchase tax and luxury tax; 35% of professional tax; 15% of forest revenue be devolved to PRIs 2. Rs. 200/- per head per annum should be given as grant to PRIs 5.5% of state tax revenue to ULBs; 90% of this to ULBs till 2001-02 and 10% after reviewing their performance
26.	Uttar Pradesh	22.10.1994	26.12.1996	20.1.1998	1997-98 to 2000-01	4% of net tax proceeds to PRIs; discontinued grants-in-aid; 7% of net tax proceed to ULBs
27.	Uttarakhand	31.3.2001	29.6.2002	3.7.2004	2001-02 to 2005-06	11% of state's net tax revenue to LBs at the ratio of 42.23:57.77 to PRIs and ULBs
28.	West Bengal	30.5.1994	27.11.1995	22.7.1996	1996-97 to 2000-01	Entertainment tax:90%; road & PW cess:80%

Note: Date of reconstitution.*

In case of Gujarat, the ULB report was submitted after reconstitution of the SFC.

*** Chhattisgarh. Devolution is on the basis of recommendation of the SFC report of erstwhile Madhya Pradesh.*

 # As per the ATR, the SFC recommendations shall be effective from 1.4.1999.

$ Though SFC was asked to submit the report covering a period of five years w.e.f. 1.4.1998, its report covers the period from 1998-99 to 2004-05.

Source:State Government and SFC reports.

SFC-II Reports – Constitution and Submission

Sl. No.	State	Date of Constitution of SFC	Date of Submission of SFC report	Date of Submission of ATR	Period Covered	Devolution Recommendation
1.	Andhra Pradesh	8.12.1998	19.8.2002	31.3.2003	2000-01 to 2004-05	40.92% per annum of the tax and non-tax revenues of the Government including the share of central taxes to LBs
2.	Arunachal Pradesh	Not constituted				
3.	Assam	18.4.2001	18.8.2003	7.2.2006	2001-02 to 2005-06	1. 3.5% per annum of aggregate tax revenue of the state to LBs 2. Grant-in-aid of Rs. 10 crore per annum for ULBs
4.	Bihar	20.6.1999	Nov. 2003	N. A.	June 1999-Nov. 2003	Not available
5.	Chattisgarh	Not constituted				
6.	Goa	16.8.2005	31.12.2007	N. A.	2007-08 to 2011-12	2% of state's own revenue to PRIs out of which 25% to ZPs and the rest 75% to the GPs and PSs.
7.	Gujarat	19.11.2003	June 2006	Under consideration	2005-06 to 2009-10	Data not available
8.	Haryana	6.9.2000	30.9.2004	13.12.2005	2001-02 to 2005-06	1. 20% of annual income from royalty on minor minerals to gram panchayats and municipalities 2. 3% of the net receipts from 'stamp duty and registration fees' to PRIs

						3. 65% of the net proceeds of LADT to PRIs 4. 50% of the entertainment tax, 20% of motor vehicle tax and 35% of LADT to ULBs.
9.	Himachal Pradesh	May 1999	24.10.2002	24.06.2003	2002-07	Rs. 253.19 crore devolved to the LBs.
10.	Jammu & Kashmir	Not constituted				
11.	Jharkhand	Not constituted				
12.	Karnataka	25.10.2000	December 2002	Not submitted	2005-06 to 2009-10	40% of non-loan net own revenue receipts to the local bodies; Rs. 5 crore to be common purpose fund each year .
13.	Kerala	23.6.1999	8.1.2001	7.1.2004	2001-02 to 2005-06	1. Government may devolve to the LSGIs, plan funds (excluding state sponsored schemes) not less than one-third the annual size of state plan as fixed by government from time-to-time 2. 5.5% of the annual own tax revenue of the State Government may be devolved to the LSGIs as Grant-in-aid for maintenance of assets under control of the LSGIs including the transfer of assets 3. 3.5% of the own tax revenue of the State Government based on the figures certified by the

						accountant general could be devolved to LSGIs as general purpose grant, in lieu of assigned taxes, shared taxes and varios statutory and non-statutory grant-in-aid, both specific purpose and general purpose.
14.	Madhya Pradesh	17.6.1999	July 2003 (1st Report); August 2003 (2nd Report); December 2003 (3rd Report)	14.3.2005	2001-02 to 2005-06	2.93% of total tax and non-tax to PRIs and 1.07% to ULBs. Assignment of taxes to LBs after deduction of 10% collection charges; establishment grant Rs. 28.40 crore to PRIs and Rs. 5 crore to ZPs for training
15.	Maharashtra	22.6.1999	27.3.2002	29.3.2006	1999-2000 to 2001-02	40% of state's tax, duties, tolls proceeds to the LBs.
16.	Manipur	03.01.2003	Nov. 2004	2.12.2005	2001-02 to 2005-06 (award period extended to 31.3.2010)	10% of tax and non-tax and state's share in central taxes of state; PRIs: 34.38% and 20.60% to ULBs.
17.	Meghalaya	Exempt under Article 243 M				
18.	Mizoram	Exempt under Article 243M				
19.	Nagaland	Exempt under Article 243M				
20.	Orissa	5.6.2003	29.9.2004	11.8.2006	2005.06 to 2009-10	10% of average of state's gross own tax revenue from 1999-2000 to 2001-02 be devolved to LBs. 10% of the state's gross own tax revenue for the year 2002-03 minus devolvable

						amount was recommended as grants-in-aid for various specific purposes.
21.	Punjab	21.9.2000	15.2.2002	8.6.2002	2001-02 to 2005-06	4% of net proceeds from all state taxes be devolved to the LBs.
22.	Rajasthan	7.5.1999	29.8.2001	26.3.2002	2000-01 to 2004-05	2.25% of net tax proceeds to the LBs; entertainment tax 15%; royalty on minerals 1%.
23.	Sikkim	05.7.2003	30.9.2004	25.2.2006	2005-06 to 2009-10	Grants-in-aid of Rs. 525 lakhs to PRIs for 2004-05; for sub-sequent years a growth of 5-7% to be allowed each year. Local area development fund Rs. 3 lakh per annum.
24.	Tamil Nadu	3.3.2000	21.5.2001	8.5.2002	2002-03 to 2006-07	The share of SOTR after excluding entertainment tax of local bodies has been recommended as under: i) 2002-04: 8%; ii) 2004-06: 9%; and iii) for 2006-07: 10%; 5% of the central devolution should also be passed on to the local bodies; 10% of SFC devolution may be used for capital works in municipalities and corporations, 15% by town panchayats and 20% by village panchayats

25.	Tripura	29.10.1999	10.4.2003	June 2008	2003-04 to	Devolution as per 1st
					2007-08	SFC continued.
26.	Uttar Pradesh	25.2.2000	30.6.2002	30.4.2004	2001-02 to 2005-06	5% of divisible pool to PRIs; 7.50% of state's net proceeds of tax revenue to ULBs; grants-in-aid: nil.
27.	Uttarakhand	30.4.2005	06.6.2006	5.10.2006	2006-07 to 2010-11	10% of tax and non-tax of state; grants-in-aid: Rs. 6.24 lakh to ZP per annum; Rs. 42.75 lakh per annum to BP; Rs. 737.15 lakh per annum to GP; Buildings of Almora and Pauri Rs. 105 lakh; Bhagirathi river front: Rs. 50 lakh.
28.	West Bengal	14.7.2000	6.2.2002	15.7.2005	2001-02 to 2005-06	Annual untied funds of Rs. 350 crore; entertainment and amusement tax 90% to LBs; cess on road and public works 80%.

Source: Information submitted by State Governments.

SFC-III Reports – Constitution and Submission

Sl. No.	State	Date of Constitution of SFC	Date of Submission of SFC report	Date of Submission of ATR	Period Covered	Devolution Recommendation
1.	Andhra Pradesh	29.12.04	31.1.2009	in process	2005-06 to 2009-10	Data not available
2.	Arunachal Pradesh	Not constituted				
3.	Assam	6.2.2006	27.3.2008	25.9.2009	2006-07 to 2010-11	1. No devolution for the year 2006-07 2. 10% of non-loan gross own tax revenue receipts after deducting actual collection charges for the year 2007-08 3. 25% of non-loan gross own tax revenue receipts after deducting actual collection charges for the year 2008-11.
4.	Bihar	20.7.2004	Nov. 2007	26.3.2007	July 2004 to 24.6.2007	3% of net proceeds from state.
5.	Chattisgarh	Not constituted				
6.	Goa	Data not available				
7.	Gujarat	Not constituted				
8.	Haryana	22.12.2005 22.12.2005	28.2.2008 (Interim report) 31.12.2008 (Final report)	28.8.2008 The final report submitted by	2006-2009 2006-2011	4% of the net tax revenue to LBs.

				Third SFC is under consideration of State Government		
9.	Himachal Pradesh	26.5.2005	2.11.2007	4.6.2008	2007-08 to 2011-12	Cess on liquor to be transferred to LBs; incentive fund at the rate of Rs. 10 crore to LBs; Gap filling grant of Rs. 228.28 crore. Grant-in-aid to LSGIs; and maintenance expenditure for roads.
10.	Jammu & Kashmir	Data not available				
11.	Jharkhand	Data not available				
12.	Karnataka	28.8.2006	31.12.2008	Yet to be submitted	2010-11 to 2014-15	1. 33% of state's own revenue receipts to be devolved to PRIs and ULBs in the ratio of 70:30 2. Salary component of officials working in the PRIs should be delinked while working out the total share of PRIs and ULBs.
13.	Kerala	20.9.2004	23.11.2005	16.2.2006	2006-07 to 2010-11	25% of the total state tax revenue of the year 2003-04 be transferred to LBs during the year 2006-07. For subsequent years, annual growth rate of 10% may be applied for transfer of funds to the LBs.
14.	Madhya Pradesh	19.7.2005	Submitted on 1.11.2008	Under process	2006-07 to 2010-11	Data not available

15.	Maharashtra	15.1.2005	3.6.2006	Under consideration	2006-07 to 2010-11	Data not available
16.	Manipur	Under process of being constituted				
17.	Meghalaya	Exempt under Article 243 M				
18.	Mizoram	Exempt under Article 243M				
19.	Nagaland	Exempt under Article 243M				
20.	Orissa	10.9.2008	6.2.2009 (Interim report)	Under process	2010-11 to 2014-15	15% of the average gross tax revenue of the state for the years 2005-06 to 2007-08 at the rate Rs. 896.17 crore per annum be devolved to the LBs.
21.	Punjab	17.9.2004	28.12.2006	22.5.2007	2006-07 to 2010-11	4% share of net proceeds of all state taxes be devolved to the LBs.
22.	Rajasthan	15.9.2005	27.2.2008	17.3.2008	2005-06 to 2009-2010	3.50% of net own tax proceeds of the state; entertainment tax 100%; royalty on minerals 1%.
23.	Sikkim	4.03.2009	Due date of submission is 30.11.2009		2010-11 to 2014-15	Report yet to be submitted.
24.	Tamil Nadu	14.12.2004	30.9.2006	10.5.2007	2007-08 to 2011-12	10% of the state's own tax revenue be devolved to the LBs; Specific purpose grant shall be at 0.5% to 1% of the state's own tax revenue.
25.	Tripura	28.3.2008	awaited			
26.	Uttar Pradesh	23.12.2004	29.8.2008	Under consideration	2006-07 to 2010-11	6% of net tax proceeds to PRIs and 9% to ULBs which is under consideration.
27.	Uttarakhand	Not Constituted				
28.	West Bengal	22.2.2006	31.10.2008	16.7.2009	2008-09 to 2012-13	United fund of Rs. 850 crore from 2009-10 with annual increase of 12% on a cumulative basis for the subsequent years

Source: Information submitted by State Governments.

Source: Report of the Thirteenth Finance Commission, 2009.

CHAPTER 5

DISTRICT PLANNING

CONTENTS

5

DISTRICT PLANNING

5.1 Historical Evolution

5.1.01 The path to be taken for social and economic transformation by independent India had been clearly marked out by the time the Constitution was framed. India would follow the principles of a planned economy with primacy to the public sector in many important activities. However, it would not be a strictly centrally planned economy like those of the socialist countries. There would be scope for private enterprise, agriculture being the most important sector in this regard. The idea of an institutional mechanism had already been thought of and the Planning Commission was set up by an executive order in March 1950. The States followed by having separate Departments of Planning and State Planning Boards.

5.1.02 Whilst planning as a concept was applied initially only at the National and State levels, the district had always been the bedrock of administration in the country and the office of the Collector or Deputy Commissioner epitomized the 'State' at the cutting edge level. Most schemes of development were implemented at that level and many innovations came out of the experiences of district level officers. District Boards had already been invested with many powers and so had the Municipalities and Metropolitan Corporations. In fact these bodies (especially the urban local bodies) were, where many of our freedom fighters and Statesmen, cut their teeth in parliamentary democracy. It was only a matter of time therefore that attention shifted to the district as a planning unit.

5.1.03 The First Five Year Plan (1951-56) had recognized the need to decentralize planning at the National, State, District and Local community levels. However beyond stating the requirement, the planners preoccupied with development issues at the national level did not go into details to operationalise the concept. Although the concept of community participation in development schemes had been spelt out they had yet to be linked to the Panchayati Raj Institutions.

5.1.04 The Second Five Year Plan (1956-61) witnessed the establishment of the District Development Council and it was envisaged that this body would not only plan for the district but also guide village level plans and encourage peoples' participation in the planning process. However, no competent institutional set up was either envisaged or set up. The acceptance of the recommendations of the Balwant Rai Mehta Committee in 1957 ushered in a three-tier Panchayati Raj system in the country and provided the institutional base for linking planning and development with representative bodies at the district and sub-district level.

5.1.05 The First Administrative Reforms Commission (1967) looked into the weaknesses of the institutional set up for Planning at the District level and recommended that district plans could lead to quick results if they focused on local variations and strengths. It recommended that local authorities be given a clear indication of the resources available to them. The Planning Commission followed up in 1969 with guidelines on preparation of district plans within the framework of annual, medium term and perspective plans. However integration of these plans with that of the State turned out to be difficult with only Maharashtra, Gujarat and Karnataka making some headway. A Central Scheme was also launched in the Fourth Five Year Plan (1972-73) to assist States for strengthening their planning machinery.

5.1.06 With social control over banking, followed up with nationalization of major banks, vast sums became available for funding the agricultural, rural and priority sectors. Institutional finance was recognized as an area which needed to be integrated with the district plans. A lead bank for every district was nominated and Regional Rural Banks with focus on field level activities were specially constituted. The Reserve Bank of India directed the lead bank of the district to prepare district credit plans. Wherever the cooperative sector banking was weak and the District Cooperative Banks were unable to provide the finances, they were linked to commercial banks. NABARD encouraged 'potential linked plans'. However integration of the credit plans with the district development plans remained weak.

5.1.07 Other parallel attempts at decentralized planning have been made. When Bengali refugees from East Bengal were settled in Central India, the Dandakaranya Development Authority was set up and a region in Madhya Pradesh (now Chattisgarh) and Orissa was the object of the Planning exercise. Attempts at industrialization have led to plans centred around district industries centres. In the 1990s, the Department of Science

and Technology launched its Natural Resources Development and Management Scheme (NRDMS) which was implemented in a number of districts. This was based on a detailed natural resource survey which was computerized, and then fed to various departments via the Nicnet as an input into local planning. Various Command Area Development Authorities prepared plans for integrated development of the areas served by major irrigation projects. Backward Area Development Authorities similarly prepared plans for groups of districts within States declared backward on the basis of certain parameters.

5.1.08 Simultaneously, attempts were made to strengthen the sub-district level units. The Block was the obvious choice. The Working Group on Block Level Planning headed by Prof. M.L. Dantwala (1978) concluded that the block being closer to the implementation level was the appropriate level at which to attempt an integration of localized and specific needs and financial allocations. The Block was also the link between the village level panchayats and the district. The Planning Commission accordingly issued guidelines for Block Level Planning.

5.1.09 However, as we have observed earlier the decline of the Panchayati Raj Institutions also led to a slowing down of the process of planning at the district and sub-district levels. A revival was attempted by the Ashok Mehta Committee. A comprehensive review was undertaken in 1984 by the Planning Commission's Working Group on District Planning headed by C.H. Hanumantha Rao. Integration of the various efforts and streams of funding at the district level was always a weak point and this was highlighted by the Working Group. It also observed that the rigid guidelines prescribed by the States (which in turn were guided by Government of India guidelines) left little flexibility to the district level planners. The State Level line departments were reluctant to loosen controls and each scheme was planned in detail and rigid implementation guidelines issued. The Working Group hence recommended that powers and functions required to be decentralized and the State Plan needed to be disaggregated and plan outlays earmarked for the districts based on their population, geographical area and level of development. The Group made concrete suggestions on the strengthening of the technical competence of district level planning bodies. The G.V.K. Rao Committee (1985) following the Karnataka pattern recommended a high level administrative structure for the district level panchayat in which the Chief Executive Officer had more years of experience and was a senior colleague of the Collector. The First Commission on Centre-State Relations (Sarkaria Commission,

1988) called for participation of peoples' representatives in the planning and administrative machinery at the local level. It also recommended the creation of a body like the Finance Commission at the State level for devolution or transfer of resources to the districts on an objective basis.

5.2 Devolution of Functions and Planning

5.2.01 Operationally many Schemes launched during the Sixth and Seventh Plan periods called for greater involvement of PRIs the most notable being the Jawahar Rozgar Yojana launched in 1989-90. There was a substantial flow of funds under this scheme to village level panchayats. The Gram Sabha had an important role to play.

5.2.02 But PRIs were not seen as the only mechanism for development. Schemes continued to be formulated in which the responsibility for implementation was given to the specialized agencies bypassing the PRIs. The development scenario at the implementation level became very complex with schemes (with strict guidelines) emanating from the Centre and the States; departmentally implemented schemes; schemes operated by parallel bodies and those by PRIs. Funding patterns differed widely and so did the channels used to provide the funds. This complexity had a deleterious effect on the planning process and district level institutions were unable to cope with them. The coming into force of the 73rd and 74th Amendments has not substantially altered the position in spite of District and Metropolitan planning having been constitutionally mandated, something never done for the national level.

5.3 Recent Initiatives

5.3.01 The matter is required to be addressed jointly by the Centre and the States. The Ministry of Panchayati Raj has been convening a series of Round Tables of State Ministers of Panchayati Raj. The second Round Table held in August 2009 considered the issue of decentralized planning and exhorted the Planning Commission to ensure that District Plans prepared in accordance with Parts IX and IXA of the Constitution become the foundations of the Eleventh Five Year Plan. An expert Group under the Chairmanship of Shri V. Ramachandran was also set up to study and make recommendations *inter alia* on strengthening the planning machinery at the district and sub-district levels, including formulation of guidelines for the functioning of District Planning Committees, keeping in mind that the success of Panchayati Raj Institutions would depend on the efficacy with which they could deliver basic minimum needs to the citizens at the grassroot level

and the manner in which they could participate and implement core centrally sponsored and central sector schemes.

5.3.02 The main recommendations of the Expert Group were –

(i) All the tiers of PRIs should be treated as planning units and the district plan should be built up through consolidation and interaction in an interactive process;

(ii) To guard against the tendency of departmental schemes being also termed as 'plans', they should be invariably called 'programmes'. The plan would reinforce sectoral programmes and save on costs and infrastructure;

(iii) The process (at each level) should involve preparation of a vision document and simultaneously conducting a stock taking exercise of resources and assets; issuance of guidelines by the DPC to sub-district levels (model guidelines were part of the Group report); preparation of the plans *per se*; and consolidation and integration of the plan at the district level (which would involve spatial, sectoral, cross-sectoral, rural-urban and vertical integration on the one hand and integration with the State Plan on the other);

(iv) Strengthening of the District Planning Committees;

(v) Need to carry out clear and unambiguous activity mapping for each of the devolved functions and for each of the tiers on the principle of subsidiarity;

(vi) Need to establish a proper regime for transfer of funds;

(vii) Building up capacity at each level and building up of a management and statistical information system; and

(viii) Ensuring the centrality of local bodies in important schemes like the eight flagship programmes of Sarva Shiksha Abhiyan, Mid-day Meal scheme, Drinking Water Mission, Total Sanitation Campaign, National Rural Health Mission, Integrated Child Development Services, National Rural Employment Guarantee Programme, and Jawaharlal Nehru Urban Renewal Mission as also certain other important programmes like Swarnajayanti Grameen Swarozgar Yojana, Rural Housing, Indira Awas Yojana, Pradhan Mantri Gram Sadak Yojana, Adult Education, Rajiv Gandhi Grameen Vidyuthikaran Yojana, and Remote Village Electrification Programme.

5.3.03 In addition to the above, the Group also made recommendations on proper implementation of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and preparation of Tribal sub-plans.

5.4 Ground Realities

5.4.01 The Commission had requested the Institute of Social and Economic Change at Bangalore to conduct a field study in a few districts in Karnataka on the actual position regarding working of the planning process at the district and sub-district level. The results of the study confirmed the wide spread impression that there is a considerable gap between expectations and the reality. The study brought out the following shortcomings:

(i) The District Planning Committee was constituted as late as in 2007-08 but has not met since;

(ii) Two different sets of Plans are being prepared – one for the normal programme (common throughout the country) and another for a World Bank Funded rural development plan specific to the State. (The Karnataka World Bank assisted project was started in 2006. It consists of an IDA loan of US $ 133.33 million and the segments are block grants to panchayats; awareness creation amongst constituents; capacity building amongst Panchayats; training of functionaries and capacity building at the State level to usher in decentralization). In the latter case the plan is integrated at the Intermediate (Tahsil/Taluka) level and sent directly to the State Government bypassing the District Panchayat;

(iii) There is virtually no sectoral integration at any level. Planning and budgeting is done separately for each development scheme or programme. More than two dozen line departments are functioning at the district level;

(iv) Most of the planning and budgeting is done for civil construction works of small scale such as roads, buildings, drainage works etc. Not much attention is given to the social sector plans concerning health and education;

(v) There is no integration of rural and urban plans. Municipalities even though located at the Tehsil headquarters send their plans directly to the Collector who in turn sends them (after consolidation) to the State department of Urban Development;

(vi) A number of parallel bodies continue to function at each level with little contact with the PRIs;

(vii) The Gram Sabhas are functional but attendance of residents of villages at a distance from the Gram Panchayat headquarters is poor. They meet twice a year;

(viii) Gram Panchayat plans are being prepared, got approved by the Gram Sabha and then transmitted to the intermediate level from whence after consolidation it goes to the district level;

(ix) The Gram Panchayats have constituted standing committees for different sectors with active involvement of the elected representatives;

(x) Not all funds go through the District Panchayat (the seat of the DPC) and many go straight to Gram Panchayats;

(xi) The Gram Sabha meetings are not attended by personnel of the line departments;

(xii) Most of the functionaries are on deputation and most of them not trained in the skills of planning and integration; No separate cadre of planning personnel exists;

(xiii) The marginalized sections like Scheduled Castes, Scheduled Tribes and women still do not get the attention which is mandated; and

(xiv) There is jockeying for funds and schemes within the three tiers.

5.4.02 The Expert Group (Ramachandran Committee) had also after an analysis of the situation, then prevailing, listed out some of the major shortcomings. It is interesting to compare them with the above. We list them hereunder :

(i) In most States DPCs are yet to function as envisaged in the Constitution. They neither consolidate nor prepare draft developmental plans;

(ii) Very few States are preparing district plans even though some of them allocate funds to the district sector;

(iii) In several States, where there is no separation of the budget into District and State sectors, allocation of funds to Panchayats does not match the legislative devolution of functions to them;

(iv) Funds given to Panchayats are tied down to schemes, thus limiting the scope for determining and addressing local priorities through a planning exercise. In this regard Central Sector Schemes (CSSs) pertaining to functions devolved to Panchayats now constitute the largest element of such tied funds;

(v) Actual provision in State budgets also differs from the gross outlays communicated. Some States do not provide matching funds to Centrally Sponsored Schemes, reducing the actual flow of funds for such Schemes to local governments;

(vi) 'Planning' is of poor quality and is generally a mere collection of schemes and works. Many of the works suggested by elected panchayat members themselves is in an ad-hoc manner. Integration of Gram and Taluk Panchayat plans into the District plan, even when done, also tends to be an exercise in mere summation and not a synergistic integration. This is further distorted by placing funds with MPs and MLAs, the utilization of which falls outside the pale of any planning;

(vii) Since the so-called planning exercise follows finalization of budgets and plans at the State level, its quality suffers seriously for lack of sufficient time. Thus detailed guidelines regarding consultation, consideration and decision making at different levels remain largely on paper and the planning process does not stir meaningful debates in the Panchayats;

(viii) In the absence of a well functioning District Planning machinery, prioritization of schemes within a district is often left to district level officials and to district development committees, which consist largely of elected representatives of legislatures and Members of Parliament and some nominated members, and not many elected representatives of Panchayats.

5.4.03 The Second Administrative Reforms Commission (ARC) in its report on Local Governance (October 2007) concluded that of all the institutions created by the 73rd and 74th Constitutional Amendments the DPC is one which in most States has so far failed to emerge as an effective institution and consequently the Constitutional scheme of institutionalizing decentralized planning at the level of the Panchayats has not been realized. It noted that many State Acts do not contain provisions relating to the actual task of preparing development plans at all the levels of Panchayats as envisaged in Article

243G. Since no real devolution of functions has taken place nor substantial untied funds made available the preconditions for effective planning have not been met. Under such circumstances it would not be fair to put the blame on the panchayats. The 2nd ARC also noted that the Planning Commission at the Centre and the State Planning Boards have also not evinced much interest in integrating State and local plans.

5.4.04 It would be quite apparent that the situation is basically unchanged. This is not to say that there would not be exceptions, but since Karnataka has been generally considered as one of those States where district planning took roots early, the situation in most States would not be much better. The Commission had made a field visit to Karakulam Grama Panchayat in Thiruvananthapuram district, Kerala and the quality of the work (including publications brought out by them) would be the envy of many State level institutions. Panchayats like Karakulam would be found in other States also but they would be exceptions. Clearly there is a vast potential waiting to be tapped.

CHAPTER 6

PERSPECTIVE FROM THE HIGHER JUDICIARY

CONTENTS

6

PERSPECTIVE FROM THE HIGHER JUDICIARY

6.1 The Constitutional Provisions

6.1.01 In this section we examine the working of the Local Body institutions as brought out by a large number of cases which have been adjudicated. Part IX entitled Panchayats and Part IXA entitled Municipalities have 16 and 18 Articles respectively. A majority of these relate to the formal structure viz. constitution of Panchayats; their composition which includes number of seats, manner of election of members and chairpersons; reservation of seats including that of the office of Chairperson, the term of the bodies; and disqualification for membership. In addition there is the constitutionally mandated support system which comprises the State Election Commission which would superintend, direct and control the electoral process and the State Finance Commissions which would review the financial position and suggest ways to improve it. There are also provisions for audit of the accounts. Two of the articles relate to the functional aspects, which is the third element and lay down the powers, authority and responsibility of the Panchayat and their financial powers. The structural and functional aspects get combined in Article 243 ZD which provides for a District Planning Committee whose jurisdiction extends to both Panchayats and Municipalities. Since Metropolitan Areas have their own special problems Article 243 ZE provides for a Metropolitan Planning Committee. As regards judicial oversight Article 243-O (and 243G – in case of Municipalities) seek to bar the interference by Courts in electoral matters.

6.2 The Electoral Process

6.2.01 The most important aspect is that of conduct of elections as on its success rests the edifice of grass-roots democracy. The laws and procedures governing elections to Panchayats and municipalities generally follow the pattern established for Assembly and Parliament elections. However, differences do arise from State to State as it is the State Legislatures which have the authority to provide for all matters relating to, or in connection with elections to Panchayats. Regardless of these differences in keeping with

the tenets of democracy the High Courts have avoided interference once the election process has started even though some of the actions in that process might be flawed. These could relate to defects in the electoral rolls *(Medisetty Chennakesavalu* 2002(1) ALT 94 decided by the Andhra Pradesh High Court; *Basanagowda and Another vs. State of Karnataka and Others* 2000 (6) Kar L.J. 526; *State Election Commission vs. Krishnan* WA 2067 of 2000 of the Kerala High Court); or multiple deficiencies including exclusion of large number of voters, location of booths, reconstitution of constituencies *(Chand Prasad and others vs State of Bihar* WP 2242, 2276, 2280 of 2001). The Supreme Court has stepped in when the High Courts have deviated from such practice of non-interference. *(Bodula Krishnaiah vs. SEC* 1996(3) SCC 416), generally holding that elections should be concluded as early as possible, following a time schedule and controversial issues if they do arise should be postponed till after the elections are concluded.

6.3 Disqualifications

6.3.01 As regards eligibility for membership if a person is disqualified for contesting elections to the State Legislature he will be disqualified to contest election to Panchayats and Municipalities. The State Legislature is also empowered to stipulate other disqualifications. In addition to these statutory disqualifications, public interest in their representatives has resulted in judicial pronouncements mandating disclosures by candidates about their antecedents relating to educational background, finances and criminal antecedents. The land mark decision in this matter is that of the Supreme Court in *People's Union for Civil Liberties and others vs. Union of India* decided on March 13, 2003. For the elections to Panchayats and Municipalities similar disclosures have been prescribed either by the State Law or by the State Election Commissions. There is a vast body of case law which has relevance to the financial interest of candidates, office of profit, and criminal convictions. However, where the disqualification norm breaks new ground is in the stipulation relating to the maximum number of children a contestant could have. This stipulation raises the bar for contestants, in as much as their commitment to certain national goals becomes a necessary benchmark. As leaders of society they must be standard bearers. The two-child norm stipulated in various State laws and its constitutional validity came up before the Supreme Court in *Javed and Others vs. State of Haryana and others,* 2003 8 SCC 369, decided on July 30, 2003. The Apex Court held that the classification of persons with two or less children was not arbitrary and the disqualification seeks to promote a national programme by creating disincentives. The Court also looked into the functions given to Panchayats and noted that 'Family Welfare' was an important function assigned

to Panchayats and the legislation to disqualify therefore served one of the important objectives. The fact that all States did not provide for such a disqualification and neither did the laws for elections to Parliament or the State Legislatures, did not make the laws discriminatory as there was no constitutional requirement that a policy be implemented simultaneously throughout the country and it is likely that in a phased manner such uniformity may ultimately come about. The Court also held that the law was also not violative of Article 21 or Article 25 as restrictions were squarely within the ambit of public order, morality and health and did not infringe on the right to practise any religion. Lastly, the Court held the provision to be salutary and in public interest.

6.4 Elections on Time

6.4.01 We have seen earlier how the matter of regular and timely elections was one of the important motivations for the Constitutional amendments. Inspite of this the issue of timely elections has been agitated before various High Courts and the Supreme Court. In the case of *Anugrah Narain Singh and Another vs. State of UP and Others* (1996) 6 SCC 303 the Apex Court held that Article 243 ZG completely bars considering any matter relating to a municipal election on any ground once the notification for holding the elections is published. The issues could be manifold covering defect in electoral rolls, arbitrary reservation or delimitation, but if these were allowed no elections would ever be held. In *B.K. Chandrashekhar and Another vs. State of Karnataka AIR,* 1999 KAR 461 decided on March 17, 1999 the High Court held that in the face of the mandatory provisions in the Constitution the State Legislature will have no competence to enact laws which will result in postponement of elections. In *State Election Commission vs. the State of Andhra Pradesh and Another* WP No.2481 of 2000 decided on April 21, 2000 the High Court applauded the efforts of the State Election Commission to conduct elections on time inspite of the State Government's action to postpone them. Similar cases have been decided by a number of High Courts. Once again the Supreme Court in *Kishansingh Tomar vs. the Municipal Corporation of Ahmedabad and Others* (appeal civil 5657 of 2005) reiterated the principles. The Constitution Bench comprising the Chief Justice and four other Judges held on October 19, 2006 that barring Acts of God no other calamities or circumstances will justify delay in holding elections.

6.5 Reservations

6.5.01 A special feature of our Constitution is the provision for reservations in the Legislative Bodies and in government jobs. The same principle has been extended to

Panchayats and Municipalities. However, in their cases the reservation includes not only for Scheduled Castes and Tribes but one-third of the seats as well as one third of the posts of Chairpersons have been reserved for women. Moreover a further stipulation provides for reservations in favour of other backward classes (OBC). The list of OBCs varies from State to State and since there are no published census figures States are required to devise special arrangements to determine the number of the OBC population. So far nine States have provided for such reservations. The issue of seat reservation is intrinsically linked to the process of delimitation. Considering the complex nature and lack of adequate data it was to be expected that controversies would arise and Courts would be required to step in. However, since the facts differ significantly from case to case most cases have been decided on the basis of these as well as the relevant State laws. However, ruling on the constitutionality of reservations the Calcutta High Court whilst considering these cases together (*Vidhya Charan Sinha vs. West Bengal* / WP No.1401 of 2003; *Mala Maji vs. West Bengal* / WP No.8805 of 2003; *Nirmala Gorai vs. West Bengal* WP No.9274 of 2003) held that reservations for the post of Chairperson of a Panchayat at any level is unconstitutional and where there is a conflict between the "rule of majority" and the "rule of reservation" the rule of majority will prevail. The last word on this judgement is yet to be heard as it has been subjected to an appeal. However, in the matter of positive discrimination the Supreme Court in *Kasambhai F. Ghanchi vs. Chandubhai D. Rajput and Others* 1998 (1) SCC 285 decided on November 25, 1997 that even if a person belonging to the backward classes has been elected from a general seat he could still stand for election to the post of President of the Municipality which has been reserved for a member of the Backward Class. In short when the intention of the Legislature is to promote the interests of the weaker sections then it must be done in as wide a manner as possible.

6.6 Proceedings of local bodies

6.6.01 In addition to proper constitution of local bodies and ensuring their tenure the conduct of proceedings and their proper functioning according to laid down procedure is also necessary. Whereas no confidence motions are part of the democratic procedure, State Laws also provide (as was done even prior to the 73rd and 74th Amendments) for removal of elected persons by designated officials. In case of no confidence motions the Supreme Court in *Ramesh Mehta vs. Sanwalchand Singhvi* 2004(5) SCC 409 decided on April 20, 2004, that only elected members can participate in no confidence motions taken up in a municipality. In such circumstances normally it is to be expected that those elected by

the people would not be subjected to superintendence by non-elected officials. However, the competence of the State Legislature to enact such laws has not been challenged. Having conceded this, the Courts have however insisted on strict compliance with procedures and principles of natural justice. In *Kamasundaram Kotiswara Rao* (AIR, 1993 AP 248) the Andhra Pradesh High Court held that removal of a person from an elective office is an extraordinary power and willful omission of duties and responsibilities must be clearly established. That technical lapses alone cannot justify removal, was another principle advocated by the Andhra Pradesh High Court in *V. Parasuvamaiah vs. Government of Andhra Pradesh* (1995 AIHC 1469 dated 3.2.1993). The Supreme Court in *Tarlochan Dev Sharma vs. State of Punjab* (AIR 2001 SC 25) set aside an order of the Punjab and Haryana High Court which had upheld the removal of the President of the Rajpura Municipality by the Principal Secretary, Local Government Department because of the arbitrary manner in which the officer had exercised his powers.

6.7 Powers and Functions

6.7.01 Building a robust structure would be by itself of not much use if the local bodies are not endowed with adequate functions. The Constitution has mandated that they be given such power and authority to enable them to function as institutions of self-government, and that this be done by suitable legislation. The Eleventh and Twelfth Schedules of the Constitution list out the subjects which normally should fall within the purview of the local bodies. However, the cases decided by Courts have been mainly related to the regulatory functions of these local bodies like building permissions, licensing powers, transferring land etc. Subject to following the law conferring jurisdiction and principles of natural justice, Courts have allowed local bodies to exercise powers, as being close to the grass roots, they are expected to understand local needs and requirements better. At the same time, exercise of these powers has brought the local bodies into conflict with other State authorities. Cases pertaining to holding of markets and levy of fees, which function is also assigned to Agricultural Produce Marketing Committees *(Velpur Gram Panchayat vs. Assistant Collector Marketing* AIR 98 AP 142); on levy of taxes on goods entering a local industrial area (*Falma Laboratories vs. State of Karnataka AI*R 1997 Kar 321) where such conflict of jurisdiction has occurred have been agitated in Courts. But reverting to the powers of the local bodies on regulatory issues a number of cases have been decided in their favour. In *M.C. Mehta vs. Union of India* (2004-05 SCALE 405) the Apex Court held that the Municipal Corporation of Delhi was within its jurisdiction to order the shifting of polluting industries. Another case which has attracted national

attention pertains to the cancellation of the licence of the Hindustan Coca-Cola Beverages Pvt. Ltd. by the Perumatty Gram Panchayat in Kerala on the ground that extraction of ground water in excess by the company has depleted reserves and led to a shortage of drinking water in the village. The responsibility to provide drinking water is that of the Panchayat and thus it was unable to do because of excess drawal by the company. The Kerala High Court has held that the company had obtained licences under the Factories Act and by following the requirements of environmental clearance and on that ground has found in favour of the company. The Panchayat has gone in appeal to the Apex Court where the matter rests.

6.8 Planning Powers

6.8.01 Unlike national and State level planning, district and metropolitan level planning finds a place in the Constitution. Traditionally planning at the district and municipal level was regarded basically as spatial planning. Broad policies and socio-economic parameters are decided at State and national levels and what was required was to ensure a proper and organized spatial spread of Government schemes. By the time the constitutional amendments took effect there were a number of authorities which had already been established and were functioning at the district and metropolitan level implementing schemes in specified sectors and in charge of planning for those sectors. Many states had Town and Country Planning Acts and statutory Urban Development Bodies. The power of the State Government to regulate urban planning and the relative powers of the municipal authorities was tested in the Textile Mills case (*Bombay Environmental Action Group vs.State of Maharashtra*) which was decided on appeal by the Supreme Court (SLP 23040 of 2005 and other appeals on March 7, 2006) wherein the Court held that the State Government was entitled to make regulations to find a compromise between several competing interests. It upheld the validity of existing Town Planning laws. A similar stand was taken by a division bench of the Karnataka High Court in what is known as the *Arkavathi Layout* case (Writ Appeal No.2624 of 2005) wherein the Bench was required to look into the States' powers under Entry 5 of List II and whether they should conform to Part IX and IXA of the Constitution. The Court held that it is competent for the Legislature even after the introduction of Part IX and IXA to pass laws in respect of entries in List II in respect of matters which do not pertain to the Panchayat or a municipality. However this remains an area in which many experts have opined the role of Panchayats and municipalities and the district and metropolitan

planning Committees needs to be given greater prominence. That such a dichotomy exists was brought out in the majority and dissenting opinion in the Andhra Pradesh High Court in the *Ranga Reddy District Sarpanches Association vs.Government of Andhra Pradesh and Others* 2004(1) ALT 659(LB).

6.9 Status of local bodies

6.9.01 The impact of Part IX on the existing constitutional scheme and distribution of legislative powers under the Panchayati Raj system and whether Part IX gives limited or full autonomy to panchayats came up before the Andhra Pradesh High Court in *Ranga Reddy District Sarpanches Association and others vs. Government of Andhra Pradesh, Panchayath Raj Department and others* {2004(1) ALT 659 (L.B.)}. The Court had to decide whether Part IX overrides Articles 245, 246 and List II of the Seventh Schedule. The Court held on January 29, 2004 that the Panchayati Raj Institutions do not constitute a third tier in the federal structure as a further unit in the vertical division of powers and that it is left to the State Legislature to decide to what extent the Panchayati Raj Institutions should be conferred with power and autonomy.

6.9.02 The important issue of the status and powers of Zilla Panchayats in comparison to the States also came up before the Supreme Court in Civil Appeal 3340 of 2007 in *M/s Gujarat Pradesh Panchayat Parishad and Ors. vs. State of Gujarat and Others.* The Court on July 30, 2007 held that a District Panchayat cannot arrogate to itself the status of a body as independent or autonomous as a Province in a Federation. The purpose of the Constitutional amendments was to guarantee their existence according to a Constitutionally mandated structure, but beyond that the Legislature could enact laws limiting their powers and functions.

CHAPTER 7

RESPONSES FROM THE STAKEHOLDERS

CONTENTS

7

RESPONSES FROM THE STAKEHOLDERS

7.1 Introduction

7.1.01 The Commission in its Questionnaire (Annexure 7.1) had raised several issues on the attributes and functioning of local bodies. A number of stakeholders responded and we have attempted a synthesis of those.

7.2 Rise of Local Leadership

7.2.01 The emergence of local leadership was expected to be a major impact of representative and participatory democracy at the local levels. Whereas this development was to be welcomed in a democratic polity, it also raises the question of conflicts and rivalries emerging in a multi-tiered system. The forms which such rivalries assume could have repercussions not only on the politics but also the governance at various levels. States which have accorded primacy to the federal concept, which recognizes only two tiers (based on full attributes of Government) have been quick to assert that conflicts of leadership in a federal system can only arise between the Centre and States. Conflicts do not arise where the relationship is one of subordination of one tier by another. That such leadership has emerged has not been denied. Many respondents have welcomed it. For many individuals it has been a preparatory ground for leadership roles at the State and Central levels. Governance has benefitted because of knowledge of and articulation of problems by local leadership. The encouragement given to such leadership also prevents growth of sectarianism at the State and Regional levels. Tensions will arise but if seen in a constructive manner can be of immense benefit to governance. This at best would be a temporary phase and would peter out as local bodies prove their bonafides. Moreover most tensions have arisen only at political levels. Once functional devolution occurs and role clarity is established tensions will die down. Many respondents have however not chosen to paper over the cracks. They have drawn attention to politicization of village and city communities and say that they have done more harm than good. This was inevitable because of the way the structure was developed with too many tiers at the local level,

each trying to establish themselves and competing not only amongst themselves but also with the State Government. Many of the policies of the Union Government (viz., direct release of funds) have further aggravated the tensions.

7.3 Number of Tiers

7.3.01 Strong arguments have been adduced in favour of reducing the number of tiers. Too many tiers mean division of functions and funds and assets amongst many. It prevents local bodies to "think big". Whereas concepts of grassroots planning and integration are sound ideas, their practice becomes difficult if there are a number of players with little or inadequate capacities. Preferences have also been expressed on which of the tiers could be done away with. Whereas there is overwhelming support for the village (also meaning group of villages) panchayats, district panchayats as elected bodies have not found favour. Politically it is said they remain a big threat to States if the parties in power are different. Discord between them can lead to a gridlock. A different view finds a distinct role for district level panchayats, especially in matters of planning, but sees little role for intermediate level bodies. At best it is said that they can have a supervisory role. In States like Kerala where villages have large populations an intermediate tier is considered quite redundant. However, a number of stakeholders find the existing dispensation satisfactory. In favour of the weakest link i.e. the intermediate panchayats it is said that the district panchayats would find it exceedingly difficult to plan for, coordinate or supervise activities of a large number of village panchayats and strictly from a management perspective an intermediate tier has relevance. As regards role delineation the strength of village panchayats lies in their distinct contribution to participative democracy, the intermediate panchayat in their supervisory role and that of district panchayats as planning and coordinating bodies. The consensus appears to be on leaving it to the States to determine which two tiers they would like to continue with.

7.4 Integration amongst Tiers

7.4.01 Although not many respondents have touched upon the matter of integration of the three levels, suggestions have been made that elections at the intermediate and district levels should be done indirectly by elected representatives at the village level. Another suggestion is that at least a fixed percentage say twenty must be indirectly elected to provide the organic link.

7.5 Devolution of Functions

7.5.01 In the matter of devolution of functions, those of the representative school of thought reiterate that it is the prerogative of the States to control the pace and content of devolution and have even resented the sustained efforts made by the Ministry of Panchayati Raj to build a national consensus or to devise incentive schemes to persuade States to devolve functions to local bodies. According to them, the best way to empower local bodies is by increasing the quantum of untied funds, leaving it to the States to decide *inter se* allocations and thereafter allowing local bodies freedom of action. Reducing the number of centrally sponsored schemes would make more untied funds available. It is only after these steps have been taken, can real progress be made feasible and States performance judged and well performing States be rewarded. Those belonging to the participative school too have argued for greater devolution of funds and functionaries. All three aspects of devolution must be done simultaneously. Finance Commissions must also play a constructive role by stabilizing the source of funds for local bodies. Suggestions have also been made to substitute the word "may" with "shall" in Articles 243G and 243W to leave no ambiguity whatsoever in the matter of States responsibility to devolve functions to local bodies. A cautionary note has been sounded by some who feel that local bodies must go through a learning process and capacity building must precede devolution.

7.6 Flexibility in Schemes

7.6.01 Most respondents have stated that in principle there can be no disagreement that flexibility is desirable. Schemes must be area specific and cater to geographical and cultural diversity. They must take into account the level of development. Schemes with rigid guidelines soon become unworkable and time is wasted in obtaining clearances in case deviations have to be made. It would be sufficient if core principles are enunciated leaving it to States and local bodies to settle the details. Many Union Ministries in the Government of India have pointed out that already centrally initiated schemes have such inbuilt flexibility. In fact even in the broad scheme of fund transfers regional variations (e.g. for hill states) have always been taken into account. However they also point out that specific details about the flexibility that is required are not forthcoming from States. There is interestingly a minority view which supports detailed guidelines allowing for little or no deviations. This must be insisted upon, as it is argued, that very little expertise

is available at lower levels in matters of planning and project formulation. Imprecise articulation of the objectives of the schemes and their contents or wide differences would make it difficult to monitor implementation.

7.7 Release of Funds

7.7.01 As regards release of funds most respondents would prefer that funds be released through the States. Direct release of funds implies that the Centre would also decide inter se allocation and this does not bode well for healthy federal relations. It also means that local bodies would consider themselves accountable only to the Centre. Releases through the States are easier to monitor because of the single account in the treasuries. Monitoring use of funds by such a large number of bodies would be extremely difficult. Releases through the States are easier to monitor because of the single account in the State treasuries. Some respondents have conceded the need for timely availability of funds by recipients and have opined for direct releases but with the States being kept fully informed and made responsible for monitoring the utilization. A few respondents have favoured direct releases to ensure that benefits flow directly and quickly. They have also recalled that State Governments use funds to shore up their ways and means position. However direct transfer means going outside the centralized treasury system. It is pointed out that lack of accounting and financial management systems to support this pattern of transfer has not been built up, with the result that the very substantial sums of money, of which there is no method to obtain an estimate, are lying in numerous banks all over the country. However IT solutions are available whereby information on use of central funds can be had on a real time basis, even though amounts are routed through States, ensuring that there is no diversion of funds.

7.8 Parallel Organisations

7.8.01 The prevalence of parallel organizations to undertake specific tasks at the district level, now that local bodies have been given a Constitutional status with responsibility for a large number of development sectors has led to a lively debate. It has been argued that the objective of the Constitutional amendments was to empower local bodies. If local bodies are found to be incapable for whatever reason, then the panacea lies in capacity building and not farming out activities to parallel organizations. Even if in exceptional circumstances such organizations are found necessary they should be under the control of local bodies and not State level authorities. Representatives of local bodies should be on their management committees. In any case the prerogative of constituting

such bodies should be that of the local bodies. Respondents who have taken a more practical approach have suggested greater attention to role clarity and capacity building. The adoption of the subsidiarity principle should determine what best can be done by the local bodies. If as a consequence of such an exercise some activities need to be performed by parallel organizations then they could be constituted. Under such circumstances they should be considered as being partners and the local bodies be sensitized to strengthen not undermine them. Thus community based organizations could draw their power and resources from local bodies not in a relationship of subordination but in a "spirit of social contract". This would ensure accountability to local bodies and yet protect the autonomy of parallel organizations. On the part of the local bodies they too will have to learn to work harmoniously with parallel organizations and building up this attribute would itself be a major capacity building measure. This conciliatory approach is not shared by all. This group argues that in a large and complex country multi-modal systems only would succeed. Local bodies are not a panacea for all manner of administrative problems and challenges. Highly technical activities require specialized organizations. The exploitation of natural resources (e.g. for water supply) may require a regional approach necessitating setting up of parastatals catering to a number of local bodies. Local bodies are also political organizations and suffer from all the deficiencies of political systems. Excessive decentralization has its own sets of problems. Moreover modern governance calls for innovative methods. There should be administrative space for different types of organizations each contributing in their own manner to the general good. Examples were held out of self-help womens groups (thrift and credit societies); producer cooperatives (in activities like milk production and oilseeds); non-government organizations (old age homes and programmes for the physically and mentally challenged). The convergence of the activities of all such bodies and local authorities should be done best through the planning process and activities spelt out in the district plans.

7.9 Local Bodies and Mega Projects

7.9.01 On the role of local bodies in planning and implementation of mega projects there is consensus that their constructive involvement can reduce land related disputes; ease the process of acquisition and relocation of oustees and their rehabilitation. Experience has demonstrated that in many cases apprehensions of the local people has been allayed by information disseminated through local bodies and by making them a fora wherein to voice local grievances. Beneficial effects of such projects in terms of employment generated, markets for products as well as direct investment of project authorities in education and health facilities can be projected with good effect through

local bodies. Issues of environmental consideration can be discussed locally and infructuous expenditure avoided if deal breaking issues are allowed to be raised and discussed in public in the initial stages.

7.10 Fifth and Sixth Schedule Areas

7.10.01 We have also received comments on the role of local bodies in the Sixth Schedule areas. A suggestion has been made that the Autonomous Councils should be brought on par with counterpart agencies in the rest of the country where the IXth and IXA parts are applicable. The under representation of women in the Councils and traditional institutions should be redressed through appropriate legislation. In the Vth Schedule areas PESA should be faithfully implemented.

7.11 Devolution of Funds and Functionaries

7.11.01 All respondents agree that conferment of responsibilities for various socio-economic schemes would be of no avail if there is no corresponding devolution of funds and functionaries. However, how much of these funds should be raised through own resources appear to be a matter of debate. The power to raise resources has been conferred only on village panchayats. The general experience is that they are reluctant to exercise this power. Devolution of funds through awards of the State and Central Finance Commissions is an important avenue, however a view has been expressed that the SFCs are non-elected bodies and it would be improper to make their recommendations binding on the State governments. The approach should be one of treating the local bodies as "self-governing" and not "self-sufficient". The overarching framework has to be one of devolution of funds, functions and functionaries instead of restricting their effectiveness and abilities through pressures to become "self-sufficient". In the common memorandum submitted to the XIIIth Finance Commission the States have linked devolution of functions with that of funds. They have stated that by recommending measures in terms of additionally earmarked share of Central taxes or a significantly large quantum of special grants to the States the Finance Commission would enthuse the States to "make fuller efforts at decentralization". Fund raising powers of local bodies should also be seen in the context of the total tax regime and its impact on the economy. Greater autonomy can also lead to greater complexities especially in the quest for a unified market. However, opinions have also been expressed on providing greater autonomy to local bodies. Proponents of this view hold that healthy traditions must develop to accept the recommendations of the State Finance Commissions, just as these have developed in the

case of the Central Finance Commissions. Existing sources of revenues now being tapped by other tiers of Governance can also be made available to local bodies, like service tax and Goods and Services Tax (GST). There could also be an exclusive list available only to local bodies which cannot be tapped either by the Centre or the States.

7.12 Planning Machinery

7.12.01 Whereas it is generally agreed that the power and ability to plan for the area coming under its authority is the single most important instrument for empowerment, the institutional base remains weak. There are no representatives of the village level and intermediate panchayats in the DPC. Their technical expertise is negligible. They have no flexibility in allocation of resources because of lack of untied funds. Many DPCs are headed by State Ministers who are not members of local bodies. It would also appear that the primary responsibility of the DPCs is to coordinate and integrate the plans of the village level and intermediate panchayats with no original contribution of their own. However, the strength of local bodies lies in their participative nature. They are in the best position to perform need based prioritization and determine the spatial spread of schemes. Their involvement in planning and implementation can lead to better accountability and good governance.

7.13 Integration of Parts IX and IXA

7.13.01 Views have also been expressed that regardless of the reasons which led to separate amendments being moved for urban and rural areas it is time that they be amalocal Governmentamated. Federal Constitutions make distinctions between levels of governance and the divide is not on rural or urban areas. Having separate provisions has fractured the third tier and this is not a desirable constitutional structure. It also casts its shadow on an integrated approach on many important issues.

7.14 Dispute Resolution

7.14.01 As regards resolution of disputes which may arise between States and local bodies there are those who hold the view that the third tier does not have all the attributes of Government and is subordinate in all respects to the States and hence if there is a disagreement then the views of the State Government must prevail in all cases. This is the only method to ensure the smooth functioning of the Constitution. However,

many others do not subscribe to the view that local bodies were expected to be completely dominated by the States. The intention of the Amendments was to carve out a distinct role for them and to provide them autonomy of action and this could lead to disagreements on a number of issues. They have suggested a mechanism at the State level similar to the Inter State Council at the Central level to become a forum for a constructive dialogue between States and local bodies and amongst local bodies themselves. Representation of local bodies in the State Assemblies (and Councils) could also provide them a voice in these fora. However, as regards memberships of MPs and MLAs in the local bodies many have felt that this is not desirable as it dampens emergence of local leadership.

ANNEXURE 7.1

Extracts from the Questionnaire

Local Governments and Decentralized Governance

4.1 Even though fifteen years have passed since the 73rd and 74th Amendments of the Constitution, the actual progress in the devolution of powers and responsibilities to local governments i.e. Panchayats and Municipalities is said to be limited and uneven. What steps in your view need to be taken to ensure better implementation of devolution of powers as contemplated in the 73rd and the 74th Amendments so as to enable Panchayats and Municipalities to function as effective units of self government?

4.2 Should greater autonomy be given by the State governments to Panchayats and Municipalities for levying taxes, duties, tolls, fees etc. in specific categories and strengthening their own sources of revenue? In this context, what are your views for making the implementation of recommendations of the State Finance Commissions more effective?

4.3 A large number of government schemes are implemented by the Panchayats and Municipalities which are operated on the basis of various guidelines issued by the Central and State line departments. There is a view that such common guidelines are rigid and sometimes unsuited to local conditions. Do you think there is a case for making these guidelines flexible, so as to allow scope for local variations and innovations by Panchayats and Municipalities without impinging on core stipulations?

4.4 There is an increasing number of schemes of the Central Government for which funds go from the Centre directly to local governments and other agencies. The purpose of this is to ensure that the targeted beneficiaries of these schemes get the benefits directly and quickly. Please comment on the desirability and effectiveness of the practice of direct release of funds and the role of the States in monitoring the implementation of the schemes. Do you have any other suggestions in this regard?

4.5 In the spirit of the 73rd and 74th Amendments to the Constitution primacy was expected to be accorded to Panchayats and Municipalities in decentralized planning, in decision making on many local issues eg. public health, school education, drinking water supply, drainage and sewerage, civic infrastructure, etc. and in the administration and implementation of Government funded developmental programmes, schemes and projects. In practice, however, many authorities, agencies and other organizational entities such as

societies, missions, self help groups etc. continue to function in parallel and at times even in competition and conflict. Concern has been expressed by some sections that these parallel institutions are contrary to the Constitutional vision and weaken the role and effectiveness of the Panchayats and Municipalities. On the other hand, it is sometimes argued that Panchayats and Municipalities do not have the capacity to plan, administer and implement many programmes/schemes/projects requiring very specialized technical and managerial skills and resources. What are your views in the matter? What steps would you suggest to streamline institutional arrangements between such parallel agencies and the Panchayats/Municipalities to bring about more effective and well coordinated action congruent with the spirit of the 73rd and 74th Amendments?

4.6 A view is often expressed that the three levels of the district, intermediate and village Panchayats within the Panchayat system clutter up the system and give scope for friction and discord amongst them. What are the means by which an organic linkage can be best fostered between the Panchayats? Are any changes in the three tier system warranted?

4.7 Participative planning especially spatial planning from the grassroots level upwards to culminate in a district plan is emerging as the most potent instrument for empowering Panchayati Raj Institutions. Do you think this is the right approach to empower Panchayats? What are your views on the role, functions and composition of the District and Metropolitan Planning Committees?

4.8 Instances have been reported where the State Governments have held different or even conflicting views to that of the local governments in respect of the administration of devolved subjects and *vice versa*. What mechanisms do you suggest, other than Courts, to help resolve such disputes? What other measures would you suggest to bring about better linkages between elected members of Panchayats and Municipalities with the State Legislatures? Is there a possible room for representation of elected Panchayats and Municipality members in the Upper Houses/Legislative Councils of the States, where such Upper Houses exist?

4.9 What roles do you envisage for the local governments in infrastructure creation specially mega-projects which may involve acquisition of land and displacement of people in areas under the jurisdiction of the local governments? Local governments should have a major role to play in decision making on issues relating to management of land resources especially change of land use from agricultural to urban and industrial purposes, acquisition

of land for public purposes etc., to ensure greater stakeholder participation and reduce possibilities of conflict between local, state and national interests. What are your views in this regard?

4.10 Large urban agglomerations and mega-cities pose very different kind of challenges for governance in a federal context. The relationship between the Governments of such large cities and other levels of Government is becoming increasingly complex. What roles and responsibilities would you like to see assigned to each of the three levels of Government for the better management of mega/metro cities including their security keeping in view the specific nature of the problems faced by them?

4.11 Many of the regions falling in the scheduled areas (Schedules V & VI) have traditional institutions of governance coexisting with or substituting Panchayati Raj Institutions e.g. Autonomous Hill Councils etc. What are your views as to how these institutions can be further strengthened and be congruent with the spirit of the 73rd and 74th Amendments without undermining their traditional character?

CHAPTER

RECOMMENDATIONS

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8

RECOMMENDATIONS

8.1 Approach

8.1.01 The Sarkaria Commission had observed that there was "a pervasive trend towards greater centralization of powers over the years, *inter alia*, due to the pressure of powerful socio-economic forces", and went on to say that "there is special need in a country like India for a conscious and purposive effort to counter it all the time". The methodology suggested was decentralization of the planning process and to develop adequate sub-state level political institutions as mandated by Article 40. However, it noted that in spite of the existence of such bodies because of lack of mandatory provisions regarding timely elections and fixed tenures and reluctance to delegate on the part of the States these institutions had been allowed to stagnate. It had hence suggested legislative action to rectify the position. This as we know has been accomplished by the 73rd and 74th Amendments.

8.1.02 The general complaint of the States has hitherto always been that many of the powers vested in the States in List II had been curtailed by the provisions of Lists I and III and the legislations enacted in pursuance thereof as well as by transfer of some subjects from the State to the Concurrent List. Now with the 73rd and 74th Amendments they are facing a further whittling away of their powers at the Sub-State level also. Many of the activities hitherto the sole responsibility of the State are required to be shifted to the third tier. States hence feel that they are caught in a pincer movement. The Constitution had provided for a balance between the Centre and States and this needs to be reaffirmed and the concerns of the States need to be addressed. Arguments of efficiency alone may not suffice if there is a danger that the balance is dangerously disturbed. This is happening by flow of powers to the Centre on the one side and by carving out a distinct space for local bodies on the other followed by a call for their empowerment. We are of the opinion that these are genuine concerns. But we are also of the opinion that the three tiers need to coexist and provide sustenance to each other and must synergize their actions. Looked at from this perspective there is no conflict as the actions of one would strengthen the

others. Role play also has to be seen in the context of emerging challenges especially in a globalised economy and this would mean each level concentrating on those responsibilities it is best suited to perform and allowing others to handle theirs. Many traditional responsibilities could be transferred to other tiers, whilst taking on fresh responsibilities. This would be particularly applicable to the Central Government and State governments.

8.1.03 The principle of subsidiarity to a large measure helps in reducing discord and we have kept that in mind. Although its enunciation is simple its practical application is difficult and requires patience and sustained effort. We are confident that this can be accomplished as much has already been done.

8.1.04 We have in our introductory section observed that there is a continual need to revitalize democracy and the modern trend is to do so by making it more participative. Mere representative democracy at the grassroots level would not suffice and local bodies too must be sensitive to demands of civil society. We consider this aspect vital in the interests of long term viability.

8.2 The Structure and Design of Rural and Urban Local Governments

8.2.01 The Constitution provides for three levels of local governments in rural areas (The District, Intermediate and Village levels) and three categories of urban local governments, the Nagar Panchayats, Municipal Councils and Municipal Corporations for urban areas. Article 243B(1) prescribes that all the States/UTs, excepting those with population not exceeding 20 lakhs, will have to constitute a three-tier system of panchayats, i.e. at the village, intermediate and district levels. States with population not exceeding 20 lakhs have been given the option not to constitute the panchayats at the intermediate level.

8.2.02 The approach to rural areas follows the report of the Balwant Rai Mehta study team, on which were based the set of experiments with local governments in rural areas, during the fifties and sixties. While the Balwant Rai study team had recommended the establishment of a three-tier Panchayati Raj with primacy to be given to the middle tier, the subsequent Ashok Mehta Committee preferred that primacy be given to the zilla parishad at the district level in a two tier structure. Hence prior to the constitutional amendments, States had adopted different patterns, based upon historical precedent and quite often, political expediency. Some of these variations typically included having only two levels of rural local governments, doing away with powerful district boards and

following a system of indirect elections to the intermediate level, instead of direct elections. Elections to local governments were not held for considerable lengths of time, there were variations in the powers devolved and different definitions of the *inter-se* relationships between them and varying approaches to reservations for socially deprived categories. Consequently there was great variation in the political, administrative, fiscal and social approach to local governments from State to State.

8.2.03 Following the 73rd and 74th Amendments, considerable standardization has been brought into the structure of local governments across India. This is because the Constitution has defined some aspects of the structure in mandatory terms, whereas flexibility is given to States in others. Although States have accepted the constitutional dictum of a three-tier structure, there has been a demand from some States that they would like to have the freedom to choose the pattern of decentralization which, in their opinion, is most suited to them. The question whether the mandatory three tier approach has served the objective of strengthening local governments in India, is increasingly being questioned. The Report of the Justice Venkatachalaiah Committee for amendments to the Constitution and the report of the Second Administrative Reforms Commission have suggested amendments to Parts IX and IXA of the Constitution, mainly to bring about a better definition of the scope of local government powers and responsibilities, as also their fiscal domain. These suggested amendments have not found unanimous support. Some have welcomed them as a natural process of evolution of local government. They justify that changes in the constitutional structure are required because fifteen years since the 73rd and 74th Amendments have not seen the emergence of truly empowered local governments because of a welter of rules, regulations and schematic guidelines. Those not in favour of major changes argue that considerable progress has indeed been achieved and that tinkering with the constitution might provide alibis for arresting this forward movement, rather than propelling reform faster.

8.2.04 An examination of contemporary accounts and discussions (by members of the Commission's Task Force) with those who were involved with the process of the 73rd and 74th Amendments does not reveal any specific policy on the basis of which it was decided that two separate amendments for urban and rural local governments were required. It seems that the bulk of the attention was focused upon bringing in rural local governments through the Panchayats and the 74th Amendment and its predecessor, the 65th Amendment were afterthoughts; aiming to take advantage of the political interest in the rural local government to confer Constitutional status to urban local bodies too, along

with socially empowering initiatives such as reservations for deprived communities and women. In all fairness though, while the comparative lack of discussion on the urban local government structure during the days leading up to the amendments might seem inexplicable today, it must be noted that perhaps those days, the rapid urbanization might have been unanticipated. The amendments preceded economic liberalization, which triggered the meteoric rise of the middle class, which in turn is the reason for the rapid increase in urbanization that we see today. The fact that massive urbanization is now a fact of life is the single biggest imperative for taking a fresh look at local governments. We need a robust local Government system that will help us to cope with the challenge of India transiting from a largely rural to a substantially urban country, over the next twenty to twenty five years.

8.2.05 A good local government system has to conform to certain design parameters that create the right incentives for them to function in a responsible and accountable fashion. An important requirement is that they must be politically so constructed as to minimize, or at least disincentivise the possibility of conflict between themselves (i.e. different tiers of local governments) and between them and political representatives at higher levels. Second, they must further the ideal of direct democracy and become more inclusive and responsive to the needs and requirements of the most vulnerable sections of society. Third, they must have a clearly defined functional space which is their own, where higher level governments have little role to play. Fourth, they must have a clearly defined fiscal space, created first and foremost by giving them a meaningful tax base, sufficient tax assignments and if necessary tied fund transfers to handle specific shortcomings or responsibilities. Fifth, they must have the freedom to build their own capabilities, both of the institution and the people who run these governments, taking assistance from either higher levels of governments or from other sources. Sixth, they must encourage participation of civil society on a regular and sustained basis. And lastly, there must be in place robust systems for people to hold their local governments to account; either directly, or through recourse to an independent agency empowered to intervene on their behalf.

8.2.06 How separation between various levels of government is to be achieved is a difficult task. It necessitates identifying those activities which are of immediate concern to local residents and reflects their preferences. However complications arise because of economies of scale and need to look at larger areas which may include within their boundaries a number of local bodies. Many a times there would be spillover effects of

such local public goods, for the management of which, other policy instruments are to be devised. In our earlier examination of the federal system such overlaps have been seen to persist in the executive domain of the Centre and the States. A cooperative approach with shared responsibilities was the solution that we have advocated and it holds true at the level of local bodies also.

8.2.07 However whilst examining the role of the Centre and States we were dealing only with two levels, whereas at the third level a larger number of bodies have been envisaged under the Constitution. We have identified "own space" as a necessary criteria. Too many levels restrict the space and increases the tendency to overlap. The dichotomy which arose between the Balwant Rai Mehta Committee and Ashok Mehta Committee arose because of differing perceptions. The approach of the Balwant Rai Mehta Committee towards local government was more in the direction of bringing about an element of participation into the community development programme. It was therefore designed around the organizational pattern of the community development programme, which typically looked at the district, as a historically well understood level of administrative organization and the village as the traditionally recognized level of grassroots level organization and sandwiched in between the new concept of the development block, as the level at which the development official effort would be coordinated and run. The Ashok Mehta Committee suggested the two tier system with a greater awareness of what constituted a local government, but to a large measure, both reports were more influenced by design patterns of line departments. Subliminally, the approach was to design local governments in the same manner as departments – the Gram Panchayat being the field office, the intermediate panchayat the block office and the district panchayat the district office. However, what was perhaps not realized was that these are elected bodies with elected representatives at each level, claiming to rightfully possess the mandate of the people. Hierarchical political structures tend to give rise to conflicts, rather than veering towards cooperation and harmonious functioning.

8.2.08 In almost all States, even after activity mapping exercises, there is considerable overlap between the functional responsibilities of the different levels of local Government because of the narrow space between each level. This is further exacerbated by distortions in fiscal design. In no state are local governments given sufficient tax assignments or adequate fiscal transfers packaged with the right incentives, with which they can address their functional responsibilities. This is particularly true of the intermediate and district panchayats, which have either no tax base at all, or only a negligible

one. Most fund transfers are tied down to specific schemes and purposes and local governments do not function as anything more than as agents of the State government. In most States, the local governments are not told as to how much funds would be devolved on them and when. They are bypassed by official channels that interfere in their functional space. They remain woefully dependent upon the State for their staff, training and development of physical infrastructure. Most local governments therefore spend most of their time negotiating with their principals; officers of higher level governments, rather than functioning as local governments. Elected representatives to local governments come with the expectation of earning the respect of their constituents by exercise of autonomous power and the utilization of resources to meet the needs of their people. However, faced with marginalization, they quickly begin to function more as intermediaries, using their positions as members of local governments to arbitrate between their people and higher level authorities who wield real power by collecting grievances, negotiating funding and supervising local contracting.

8.2.09 There is no doubt in our mind that the slow pace of empowerment is owing to the complex nature of the system. Too many activities need to proceed simultaneously – transfer of funds, functions and functionaries – and separately to three tiers. It is also at this level that parallel bodies interact with the people and civil society organizations find fertile ground for their activities. Centre-State disagreements on participation and fund flows further complicate matters. We are convinced that this complex matrix requires to be simplified. It is not necessary for each level to perform all activities with the some sophistication. Relative strengths of each level need to be assessed and only those functions assigned to it.

8.2.10 Fifteen years after the 73rd and 74th Constitutional Amendments, the time is ripe to reorder the local government system to mitigate some of the inconsistencies that have been noticed in the current hierarchical design. It is imperative that we create a flatter structure of local government, which conforms in greater measure to objective design theory of local government and therefore, contains within it the right incentives for their responsible, effective and accountable functioning.

8.2.11 A flat structure has already been envisaged for the urban sector. The Nagar Panchayats, Municipal Councils and Municipal Corporations are not arranged as a hierarchy. They deal separately with their exclusive jurisdictions, have their own powers of taxation and deal with higher levels of Government directly. This theoretically brings

in a measure of clarity in functions and devolution of funds. Accountability can also be fixed more precisely.

8.2.12 A flat, single level could have brought similar benefits to the rural sector also. However, there are structural differences between the two sectors which need to be and have been recognized. Unlike urban agglomerations where large populations are concentrated in limited geographical areas, rural communities are scattered over much larger areas. Populations are found in hamlets and villages with smaller numbers than in urban areas. Although representative democracy can very well meet the requirements of large areas and scattered populations, this would not be possible for direct democracy, and the strength of local governments lies in their capacity to lean in a greater measure, towards direct democracy.

8.2.13 The district level panchayat would have the benefits of a wider jurisdiction, developed infrastructure at the headquarters, a larger fund base and would be coterminous with the time tested and effective administrative unit which is the revenue district. It would have access to greater expertise, and functionaries would not be averse to come and locate themselves at their headquarters or even be part of a district cadre.

8.2.14 Village level panchayats would be close to the people where direct democracy (Gram Sabhas) can function. They would be in line with a long historical trend also. However, the Gram Sabha which is the pivot of Panchayati Raj system has not been given the importance it deserves in some States. While in some States, the Gram Sabha meetings take place in every village (when the panchayat consists of more than one village), in some other States only one composite Gram Sabha is convened for all the villages. It would be necessary to prescribe that Gram Sabhas will be constituted for each revenue village.

8.2.15 As regards the intermediate level, which is a group of villages, the concept of having a representative body at this level arose with the concept of the Community Development Block. In many States where the revenue Tahsils were not very big the Tehsil and Block were coterminous. Hence its efficacy lay in being an administrative sub-unit for better implementation and supervision. There was no advantage which accrued to the concept of representative local Government as constituencies were larger. It did not also have the advantage of being a unit for planning, although it played a role in compiling and coordinating village level plans for onward transmission to the district level. The complications which arise from multiplicity of tiers is not offset by the sole

advantage of better supervision, more so when we have better connectivity and use of information technology. This tier could hence be dispensed with.

8.2.16 We would therefore subscribe to the view of the Ashok Mehta Committee and give prominence to the district level structure and then the village level. At the village level we recommend empowerment of the Gram Sabha which should be for each revenue village. The issues of devolution of functions, activity mapping and planning responsibilities would be conditioned by this architecture.

8.2.17 Based on these considerations we recommend a two tier architecture of rural local Government. Article 243B needs to be amended as follows :

> 243B. Constitution of Panchayats – (1) There shall be constituted in every State, Panchayats at the village and district levels in accordance with the provisions of this Part.
>
> (2) Notwithstanding anything in clause (1), States may constitute Panchayats at the intermediate level, if they so desire in the interest of good governance.

8.3 Rotation of Seats

8.3.01 Article 243 D directs that the reserved seats, both for SCs and STs as well as women shall be allotted by rotation to different constituencies in a panchayat. This has been interpreted to mean that such rotation should take place at the end of every five years. If this interpretation is given effect to, no SC, ST or women members will ever get the opportunity of occupying the same seat for a second term, as it is highly unlikely that these persons would be allowed to contest from the same constituency, when the reservation is removed. If we accept the theory that most of the SC/ST and women members do not have any prior experience and will find it difficult to occupy positions of power in the initial period, it would be very difficult to support the idea that they should not continue in such positions, beyond one term. Since this provision of rotation applies to the chairpersons also, it is possible that the bureaucracy may take an upper hand in some places, as they are sure that the chairperson would not get re-elected. While the concept of rotation is commendable, it is also desirable to specifically prescribe the period for such rotation. This period should be long enough for the incumbent to get familiar with such positions and deliver the goods before completing that period and short enough to give all sections of the community a chance to get into positions of power at the local level. We therefore recommend that allotment by rotation to different Constituencies of reserved seats in a Panchayat as well as allotment by rotation of reserved offices of

Chairpersons of Panchayats, should be after two terms. Accordingly relevant clauses of Article 243D need to be amended.

8.4 Devolution of Functions

8.4.01 The constitutional pattern of functional transfer is contained in Article 243G & W, which gives leeway to the States to transfer powers and responsibilities to the Panchayats and Municipalities respectively, keeping in mind the need to ensure that they function as effective local governments. In furtherance of this provision, all States to which the provisions of Parts IX & IXA apply have enacted State Panchayati Raj and Municipality related Acts, which transfer functions, powers and responsibilities in local governments to a greater or lesser degree. However, the precision with which these laws have done this, vary from State to State. The table in para 4.3.0.2 also shows the wide variation and relative position of the States against certain criteria. Some of the important inconsistencies that have been noticed in the legislative transfer of functions to the Panchayats are as follows:

(a) **Imprecise transfer :** Several State laws have transferred powers to local governments as listed in a Schedule to the Act concerned. However, the schedule is often just a repetition of the Eleventh or Twelfth Schedules of the Constitution, which is left to be interpreted either widely or narrowly. The law therefore becomes a source of conflict between layers of government, rather than clarifying their responsibilities. In any case, no *de-facto* transfer of functions has taken place in the case of municipalities and the pre-1992 position persists.

(b) **Conditional transfer :** Some State laws contain widely stated provisions detailing the powers transferred to the Panchayats. However, there are conditional clauses, which enable the State, sometimes through a mere government notification or executive order, to withdraw powers and responsibilities conveyed through law.

(c) **Transfer of mandates which are vague :** Several Panchayati Raj legislations contain vague provisions under which the Panchayats are to 'endeavour' to undertake a number of unfunded mandates. Panchayats are often given the responsibility to 'promote' some or the other kind of behaviour, with neither the resources nor the regulatory powers to force people to conform.

(d) **Continued existence of parastatal agencies over local functions :** Parastatal agencies continue to play a major role in matters relating to urban planning, regulation of land use, water supply and sewerage, and slum improvement.

(e) **Lack of legislative sanction for fiscal transfers to match functional transfers :** Local Government laws, while laying down their functional mandates typically do not enforce any obligations upon States to transfer funds to local governments with which they can perform their functions. Thus much of what local governments are to do remain on paper, because they have no wherewithal to act upon them. The State Finance Commissions, created to adjust the fiscal domain to the functional responsibilities have not measured up to the task, with the result that the dependency of local bodies especially municipalities on State transfers has risen since 1992, frustrating one of the key objectives of the 74th Constitutional amendment.

(f) **Compliance of other laws with Local Government legislation :** Articles 243N and 243ZF of the Constitution speaks of the continuance of existing laws with respect to Panchayats and Urban local bodies respectively. They state that notwithstanding anything in the constitution, any provision of any law relating to local governments in force in a State immediately before the commencement of the 73rd and 74th Amendment Acts which is inconsistent with the provisions of Part IX & IX-A, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority ***or until the expiration of one year from such commencement, whichever is earlier.*** In these Articles is implicit the premise that after one year of the coming into force of the 73rd Amendment, no provision of any law that relates to local governments can exist, which is in violation or contravention of the Panchayati Raj Act of the State concerned. In other words, the local government laws enacted under the provisions of Part IX of the Constitution would gain precedence over *any provision of any law*. It is thus clear that legislations empowering Panchayats with powers and responsibility have a special and predominant status. However, in no State except Kerala has an exercise been conducted to amend other laws that impinge upon the functional transfer of powers to local governments so as to bring them into line with the local government legislations. The continuing practice of Ministries and

Departments both at the Central and State levels to create through executive orders, implementation mechanisms that bypass local governments in spite of the existing State legislations has resulted in diminishing the authority of the local bodies, in addition to creation of multiple implementation mechanisms.

8.4.02 Given these serious inconsistencies we are of the opinion that a clarity must be brought about in the devolution of functions accompanied by provision of requisite funds and functionaries. This must be done in a time bound manner.

8.4.03 Several committees have in the past, considered the fact that States' continue to drag their feet on the devolution of powers to the Panchayats and Ulocal bodies and recommended that there has to be a greater compulsion of States to empower Panchayats and Ulocal bodies with such powers and responsibilities that are necessary to enable them to function as institutions of self- government. The Venkatachalaiah Committee to suggest draft changes in the Constitution suggested that about 12 to 13 core functions be determined and mandatorily assigned to local governments through a constitutional amendment. The Second Administrative Reforms Commission suggested that Article 243G & 243W should be amended to make it mandatory that a Legislature of a State shall, by law, vest the local governments with such powers and authority as are necessary to enable them to function as institutions of self government in respect of all functions which can be performed at the local level including the functions in respect of the matters listed in the Eleventh and Twelfth Schedules. We agree with the recommendations calling for mandatory devolution of powers, but are also of the opinion that it must be done in a specified time period considering that seventeen years have elapsed since the 73rd and 74th Amendments came into force. We feel that substantial progress in devolution of functions should be made in the remaining two years of the XIth Plan and completed during the currency of the XIIth Plan. We accordingly recommend that devolution of functions be completed by 2015. The States would be at liberty to chose the items they would like to transfer during each year of a plan period, but would suggest that priority be given to the items pertaining to basic needs viz. literacy and elementary education; primary health and sanitation; rural water supply; rural roads; housing for the poor; nutrition; livelihood and employment guarantee and rural electrification. Articles 243G and 243W should be amended to mandate that devolution of functions as listed out in the Eleventh and Twelfth Schedules, together with the powers and authority to implement them should be done by the year 2015.

8.5 Model Law

8.5.01 To guide the States in this direction the Second Administrative Reforms Commission has suggested a Model Law utilizing the provisions of Article 252 of the Constitution. We endorse the recommendations of the Second Administrative Reforms Commission on a model law. This law should encapsulate under the overarching postulate of completion within ten years all aspects of devolution viz. transfer of functions, funds and functionaries. Under each item a division of responsibility between the two tiers as well as the State Government would have to be spelt out. The process of activity mapping would thus become a key to success. The laws must facilitate the process.

8.5.02 Activity mapping is a process by which each function that may be given to local governments is deconstructed to its component activities and then devolved upon each local government in accordance with the principle of subsidiarity - that every activity has to be undertaken at the lowest level at which it can be, and by no other. Whilst the Ministry of Panchayati Raj has been proactively persuading States to undertake activity mapping on the basis of the report of a Task Force set up in 2001, its efforts have had a marginal impact. There are also certain genuine difficulties associated with activity mapping. For instance, devolution of responsibilities relating to local service delivery in respect of those matters that have low externalities is relatively easier. However, unravelling and then assigning tasks of economic development such as agriculture and industrial development to local governments is quite another matter. Our recommendations on a flatter structure of local bodies is expected to make this task considerably easier.

8.5.03 Activity mapping must result in the bifurcation of the State Budget so as to state separately the fiscal transfers that go to the local bodies. The model law should lay down the methodology for this purpose and also delineate the responsibilities for accounting and audit. At present the C&AGs Report even on matters relating to local bodies is discussed in the State legislature and its Committees. State officials find it difficult to answer on behalf of other local elected bodies. The law must spell out the respective responsibilities.

8.5.04 Transfer of functionaries would follow from the activities which are transferred. But issues of recruitment, training and cadre management call for a degree of centralization. There are also numerous State Departments and cadres which are involved and a degree of uniformity would be needed to be brought about. This may be in contrast to the decentralization of activities. The law should bring about a clarity in this regard.

8.5.05 Articles 243N and 243ZF state that existing laws relating to local bodies inconsistent with Parts IX and IXA would remain in force till amended or until the expiration of one year from such commencement. We have mentioned earlier that such harmonization has yet to take place except in Kerala. There may be other Rules and Regulations relating to functions and functionaries which too may impede the process of devolution. The proposed law should address all these issues.

8.5.06 Where we differ from the Administrative Reforms Commission is on the methodology of implementation. We are of the opinion that Article 252 may not be the most appropriate instrument. The model law needs to be prepared and circulated to the States for adoption.

8.6 Monitoring the Devolution Process

8.6.01 To assess the progress in devolution we suggest that a Commission be constituted in 2015 to report on the 'Status of Local Government Devolution of Powers' giving an All India picture as well as the relative status State wise. The Commission should specially examine the status of devolution of functions in the Vth and VIth Schedule areas. The Ministry of Panchayati Raj and the Ministry of Tribal Affairs should provide the necessary Secretariat to the Commission and carry out either themselves or through Research Institutions studies on a continuous basis, which would be of assistance to the Commission. This report would need to be placed and discussed in Parliament as well as State Legislatures. Such a Commission should thereafter be appointed regularly after intervals of five years to report on the implementation of devolved subjects. Article 339 and Article 340 of the Constitution provide for appointment of such ad hoc Commissions to report on the administration of the Scheduled Areas, the welfare of Scheduled Tribes and to investigate the condition of socially and educationally backward classes respectively and we recommend similar provisions be inserted in parts IX and IXA.

8.7 Streamlining Institutional Arrangements between Parallel Bodies and Local Governments.

8.7.01 One problem with no immediate solutions in sight, has been the proliferation and continuance of structures parallel to the local Government system. Most of these are set up as directed by the Central or State Governments to plan and/or execute development projects in areas which are in the functional domain of local governments, using funds provided by the State or Central Government or donor funds.

They are called parallel because they have a separate system of decision making on resource allocation and execution of projects which is independent and removed from the Panchayati Raj set up. These parallel bodies could have in them bureaucrats, elected representatives and, even, non-officials and community representatives. They have considerable autonomy, flexible procedures and function in isolation directly reporting to the State Government and some times to the Central Government. Parallel bodies can be classified into five broad categories as follows:

(a) **First Generation Organizations**, such as District Rural Development Authorities (DRDAs), which evolved from early set-ups and are an expanded version of Small Farmers Development Agencies and Marginal Farmers and Agricultural Labour Development Agencies set up in the mid 1970's etc.;

(b) **Societies and Missions,** set up by and in accordance with directions issued by several Central Ministries, in order to ensure non-diversion and non-lapsing of funds such as the National Rural Health Mission (NRHM) district missions and Sarva Shiksha Abhiyan (SSA) missions;

(c) **Project Management structures**, set up to implement externally assisted projects in areas like Water Supply, Irrigation, and Watershed Management etc.;

(d) **Review Committees with or without formal executive functions, typically with the** District Collector as the head, with departmental officers as members. Though constituted with the primary function of review and monitoring, they are often used by Governments as executive bodies, with a large level of non-formal direction and control. These bodies can be created easily through Government Orders and once created, they tend to survive and create precedents for more such bodies; and

(e) **Development Authorities, Housing Boards, and Water Supply and Sewerage Boards, and Slum Improvements Boards** have been operating in a number of states. In several states, the Public Health Engineering Departments undertake the provision of services that are local in nature. These structures to a large extent have marginalized local governments, without being accountable to local populations.

8.7.02 User Group-Based Organizations, Community Based Organizations (CBOs) for water supply, irrigation etc., are not *per se* parallel bodies; they can exist as

autonomous social groups so necessary for augmenting social capital and deepening democracy possessing absolute freedom of action with which they can challenge PRIs through public action. However, they could also be government-organised groups for implementation of specific programmes like water supply, irrigation, watershed management or poverty reduction often with donor-support. Such bodies, organized for specific purposes around the promise of a benefit and recipients of public development funds, have to be considered differently. They may acquire the character of a parallel structure if there is no conscious decision to structure their relationship with PRIs.

8.7.03 Parallel bodies might have been created with bonafide reasons in mind, such as to provide multi-disciplinary and supra departmental professional support with a flexible organizational system for quick decision making and easier procurement of goods and services, streamlined accounts management, enabling the direct receipt of funds from the GoI, to enable flexibility and for easier reporting. However, in the new legal context of the Constitutional amendments for local governments, there is a need for revisiting the raison d'être of these bodies. The Constitution mandates that planning for economic development and social justice and implementation of such plans should be the responsibility of the PRIs/ULBs and it further provides for transferring schemes in the functional domain of PRIs/ULBs to them. These bodies have achieved mixed results. While in respect of securing non-diversion of funds they might have been effective, however, in planning and in ensuring transparency and participation the achievements are limited. Similarly the professional expertise in many cases has been limited to departmental expertise and there is not much difference between line departments and these agencies in this respect. Many of them also suffer from severe staff shortages and lack capacity to plan and implement.

8.7.04 The Constitution envisages harmonization not only of laws but also of institutional mechanism with the Panchayati Raj System. Viewed in this sense such institutions have to be harmonized with the local government set up. This process of harmonization may result in many parallel bodies being merged with local governments institutions, whereas others may continue because of reasons of functional and technical efficiency but with clear lines of accountability established.

8.7.05 There is no doubt that most of the important parallel structures draw their justification from central schematic guidelines. The DRDAs, the NRHM and SSA societies are typical examples. Quite often the need to have parallel structures is not

overtly stated, but contained in the schematic small print, such as the rules and guidelines regarding fund transfers. Each Ministry concerned should therefore come out with clear, unequivocal and detailed directives regarding the merger of the parallel structures that they have mandated, with the appropriate local government level.

8.7.06 The professional component of parallel bodies may be continued as Cells or Units within the appropriate local government, so that they can continue to carry out their professional roles including management of funds and reaching out to all implementing agencies, but under the overall supervision and control of the local Government concerned.

8.7.07 Whereas this would be the general prescription in case for purposes of efficiency continuance of or creation of a parallel institution becomes inescapable, it should be created in consultation with the local governments and made accountable to them. Accountability could be established through several mechanisms the most effective being inclusion of their role and activities as part of the planning strategy. The funds allocated and functions assigned to such bodies should be laid down in the district plan and linkages established with other schemes or activities. The DPC should be authorized to monitor performance and lastly local government representatives should find a place on the executive Committees of such bodies.

8.7.08 A common set of accounting practices should be prescribed, which ensure that the accounts of the parallel structures which remain or are created because of functional efficiency are captured in the accounts of the local government concerned, so that it is subject to the same oversight as the local government accounts. These practices may be arrived at in consultation with the Ministries of Panchayati Raj and Urban Development and the Comptroller and Auditor General of India.

8.8 Coordination at the District Level

8.8.01 The district has been a long standing unit of administration and governance. At the district level, the District Collector, by whatever name called has also been recognized as 'the head of the government at the district level, responsible for a diverse portfolio of functions ranging from delivery of essential services, land revenue administration, execution of rural development programmes, disaster management, maintenance of law and order and collection of excise and transport revenue. As such, virtually all the instruments of the State Government that operated at the local levels did so in conjunction with the Collector's office either formally or informally'. The Second

Administrative Reforms Commission has observed that one view is that 'with the empowerment of PRIs/ULBs in the districts, there is need to devise an environment in which the institution of District Collector gradually loses importance and ultimately recedes into a district level land revenue functionary, responsible to the local bodies. It has noted that 'this view is based on the belief that the strong traditions linked with this institution and its recognition in the public mind as the prime mover of governance at the district level would tend to impede growth of any other authority at that level.' However, it has also considered the counter view, which is, in its words is 'that the office of the District Collector has risen to this level of importance and utility through many national and local crises and it should not be weakened. After considering these views, it has concluded that 'though as per the new administrative and development environment, PRIs/ULBs are the third tier of government, they do not totally remove the Collector's responsibility in matters of local development', as there are several aspects of State activity at the district level, which would continue even after the full fruition of local governments. It has also noted that there is no integrated mechanism to look at the rural and urban problems at the district level in a holistic manner and has recommended the setting up of district councils. It has also recommended that the Collector also be the CEO of this Council in addition to his other responsibilities.

8.8.02 We do not support the suggestion of the Administrative Reforms Commission to establish a District Council. We believe that having direct constituency based elections to this body would again give rise to the possibility of inter tier competition and rivalry, born out of a desire by elected representatives at all levels to concentrate on constituency building rather than focusing on their primary responsibilities in the tier where they belong. A holistic look at the needs of rural and urban areas can best be done by the District Planning Committee (DPC) which is not a directly elected body and would have nominated technical experts. The Collector should be a member of the DPC. An elected body at the district level which would represent the rural and urban population would be too large a body. It is very likely to create a rural urban rift when representatives attempt a division of resources. The rise of urbanism we have noted is at a very fast pace and throwing up very special problems which are quite different from the rural areas. The present position therefore which seeks integration within the planning process should remain.

8.8.03 As it is the district Collector is overburdened. It would be unreasonable to expect that one officer no matter how capable he is would be able to do justice to the

combined portfolio. The GVK Rao Committee had recommended a separate administrative structure for the district panchayat and is being followed in all States. We recommend that it continue.

8.9 Dispute Resolution and Interaction Mechanisms at the State Level

8.9.01 Some States have established a State level council of the PRIs to deal with matters of coordination. However, these have not functioned well in practice. We recommend that such councils should be established with representation from both local governments and the State Governments. They must be given a clear mandate, and functions so that they can function as a dispute resolution and interaction mechanism between the State and the local governments. They would perform more or less the same function at the State level as the Inter State Council performs at the Central level. We have suggested mechanisms to strengthen the Inter State Council. Many of these could be adapted to ensure that the State Level Council would be an effective Institution.

8.10 Enhancing Democracy through empowerment of Disadvantaged Groups and Involvement of Civil Society

8.10.01 Local governments are best suited to enhance the democratic ideal, because of the geographical extent of their domain and closeness to the constituents. In addition owing to the content of the functions devolved on them, to specifically take care of the requirements of the disadvantaged groups. This would include not only women and the Scheduled Castes and Scheduled Tribes but also the illiterate, semi-literate and the mentally and physically challenged. The deliberations of local bodies, taking place in such close proximity to the constituents, make it imperative for them to be sensitive to local demands on a continuing basis. Constituents are also expected to take part more intimately than they would be expected to do at State and National levels. This explains the increasing trend to have citizen groups to advise, interact and also to participate in implementation. Programmes like Bhagidari in the National Capital would come under this category. Such ideas have been taken further wherein community based organizations (CBOs) and Non-Government Organisations (NGOs) provide specific services in parternerships with local authorities. Examples are small scale water supply and refuse collection. It is by such direct participation that the aspirations of the disadvantaged can be met. Rules, regulations, public notices, signages mean very little to the illiterate. A study conducted by the University of Law, Hyderabad which was sponsored by the Inter-State Council, on sub-national governance in the Fifth Schedule areas looked at these issues closely and recommended

that charts, booklets, posters, must be prepared in the tribal dialect highlighting the important provisions of the Panchayati Raj Acts and the powers of the Gram Sabha. This is rarely understood by those who make them as they do not approach the problem from the viewpoint of the disadvantaged. The same is true for the handicapped. A simple matter like 'physical access' although required by law, is hardly seen in place and wherever it is being implemented it is in most cases as a token, to be overwhelmed by the requirements of the able bodied. Since the formal structure cannot take care, in terms of representation, the requirements of such sections alternate structures must be conceived. Ward Committees in municipalities have been found to be a very effective method of enhancing direct democracy in which representations can be given to various sections without impacting on the statute defining composition of the local bodies. Similarly the content of annual plans, specific programmes, implementation schedules could be made public to make them subject to local scrutiny and participation. There could be a system wherein constituents can communicate their demands and grievances to the local authorities. The right to petition is an important right. State Legislatures have legislative committees which look into citizens petitions. Lastly there can be a consultative mechanism which allows suggestions to be given or by public hearings. All these mechanisms ensure transparency and prevent the sub-terranian influence of lobbies and vested interests. We have observed how the existence of such undesirable influences are brought out only through the instrumentality of Public Interest Litigation through Court processes. Unfortunately in many cases because of the time lag the damage has already been done.

8.10.02 Many Constitutional and statutory instrumentalities are being practiced in other Constitutions and we refer to some of them. Switzerland is a prime example of participatory democracy and many issues are directly decided through referenda. Akin to this is the initiative power, available in the US, where citizens can bypass the legislative bodies and enact laws directly. However these would be major innovations and we are not advocating it. But there are other instrumentalities relevant to such bodies. In Canada community councils envisage a citizen participatory role. In South Africa metropolitan councils, can institute sub-councils to enhance communication between residents and the metropolitan council. In Brazil local governments are required by law to incorporate civil society into their deliberative procedures. In South Africa a compulsory consultation process is required before a municipality adopts its budget or out sources any municipal service. To address the special requirements of the illiterate and semi-illiterate; people with disabilities and women, South Africa has made it a statutory obligation that these be

taken care of whilst drawing up community development plans. To communicate with them the language and methods used should be such as are intelligible to them. To ensure that their interests are looked after, local body offices must have personnel to transcribe requests of those who cannot read or write. Nagaland in India has shown a way to bring the community closer to the formal system. The Madhya Pradesh Panchayati Raj Gram Swaraj Adhiniyam, 1993 gives the voters the right to recall Panches and Sarpanches after two years.

8.10.03 The Nagaland Village and Area Council Act, 1978 has constituted a Village Development Board consisting of all permanent village residents and many schemes of development have been given to them. The Nagaland Communitisation and Institutions and Services Act, 2002 institutionalised a process of going to the community beyond the Village Development Boards. The law provides for ownership of public resources and assets and control over service delivery to be transferred to the community directly. To start with this has been done in elementary education, grassroots health services and power utilities.

8.10.04 Another example worthy of emulation is the Andhra Pradesh Government's success with conducting National Rural Employment Guarantee Act (NREGA) audits. It has institutionalized social audit and has also set up a Directorate of Social Audit. It has a committed budget for social auditing and provisions to host audit results on its website. This initiative has created an awareness amongst the beneficiaries, who are learning to hold the authorities to account. Since most expenditure under NREGA is through the panchayats, this movement has enabled empowerment of the beneficiaries at the grass roots level. Earlier because of the patriarchal and dominating nature of panchayats beneficiaries were not able to raise their voices either individually or in the Gram Sabhas. Such audits have encouraged inclusiveness, and ensured that socially disadvantaged society members belonging to SCs/STs are treated on par with others. An important fall out of the Andhra initiative is that civil society groups have been demanding that the mechanism be set up in other States. Success has been achieved in Rajasthan which is the second State to have commenced Social Audit of NREGA on the basis of the Andhra Model, but with the important distinction that the movement was led by civil society activists.

8.10.05 These requirements can be met by suitable provisions in State legislations and would be in consonance with the Directive Principles and Article 40 of the Constitution.

8.10.06 We accordingly recommend that State legislations concerning local bodies mandatorily have provisions to –

(a) involve civil society in specified activities; and

(b) to take care of the special requirements and aspirations of the socially, economically and physically and mentally challenged members of society.

We leave it to the good judgement of States on what the content of the legislation should be.

8.11 Mega Cities

8.11.01 We have treated the 73rd and 74th Amendments together in most matters as the underlying philosophy was the same, and both complemented each other. We have already opined that their coalescence need occur only in matters of planning, and that in spirit our recommendations relating to the rural local bodies would be applicable to urban bodies also. However we consider it appropriate to specifically draw attention to the mega cities. The prognosis is that the numbers of such cities will rise to about 50 by the year 2011 and that such cities will comprise about 45 per cent of the country's total urban population. These cities are distinguished by the fact that they are amorphous spatial units comprising a central city, several smaller towns, and villages along the transport corridors, without set boundaries or geographical extent. Moreover in this space of "variable geometry", urbanization is happening without the city, where the urban entity as a dense and central force is being diluted.

8.11.02 Such cities have other distinct features as well. One is the growing economic, social, cultural, and political dominance that they exert on the national and regional hinterlands. Several of them are globally important. They are powerful engines of growth, in many cases the dominant power in the economy of the State in which they are located. A second feature, observed almost ubiquitously, is that they are fragmented politically and administratively and are marked by an absence of a unified structure. The main challenge is how development in the megacities can be effectively managed and governed, in ways that they continue to remain economically and socially productive and sustainable.

8.11.03 The National Commission on Urbanisation (1988) suggested that these cities should, for reasons of the economic momentum they generate, be called National Priority Cities, and observed that the Central Government should have a role in their growth and development.

8.11.04 The Second Administrative Reforms Commission has recommended that for all "Metropolitan Corporations" which may be defined as cities with a population exceeding 5 million, MPCs may be constituted with the Chief Minister as the Chairperson in order to give the required impetus to the process of planning for such urban agglomerations. There should also be separate Police, Transport and Environment Authorities.

8.11.05 It is quite evident that -

(i) metropolitan governments are a special type of local Government. In order to determine who exercises power in a metropolitan city, one needs to "look outside the framework of municipal politics";

(ii) the way metropolitan areas are governed is of critical importance to the performance of the national economy;

(iii) as metropolitan cities leapfrog the administrative boundaries, the management becomes complex and as a corollary, demand for a sophisticated coordination machinery becomes stronger; and

(iv) these cities require frameworks and structures that can manage both internal transformation and the impact of global forces.

8.11.06 There are several dominant types of governance structures for metropolitan areas:

(i) quasi-autonomous local governments, constituting the metropolitan cities, drawing their powers directly from the state-level statutes, and exercising these powers as defined in the statutes. This arrangement has serious problem of coordination;

(ii) a mixed system of metropolitan governance where power and responsibilities are shared between the local governments, state governments, and numerous state and city-level parastatal organisations. They also are seriously deficient in terms of managing and governing cities and often provoke the question: who is in-charge of the city? Such governance structures have serious accountability problems;

(iii) a unified structure where powers and responsibilities are consolidated within a single authority; and

(iv) a two-tier metropolitan structure where higher order functions are performed by a senior-level government and lower-order by the local bodies. This system carries risks in a multi-party political system.

8.11.07 Part IXA of the Constitution dealing with urban areas provides for a flat structure, classifying local bodies on the basis of populations within their jurisdictions. In the case of the Mega cities we may have cities, towns and rural areas all functioning within the geographicfal confines of the mega city. There would be considerable overlap especially in the peri-urban areas. The issue therefore is whether attention to such areas can be bestowed better by another constitutionally mandated elected local body which would recognize coexistence of areas which have predominant urban characteristics; those having rural characteristics and those which have mixed characteristics. In the case of district level coordination we have opined that a representative body at the district level comprising both urban and rural areas would not only be unmanageable but would lead to an increased rural urban divide. We had opined that such coordination is best effected through the planning mechanism. We hold a similar view with regard to the mega cities, and our recommendations along these lines are given in the section wherein we deal with the Metropolitan Planning Committees. We are hence not suggesting any Constitutional provisions to separately provide for a representative local body for such mega cities.

8.12 Common Electoral Rolls and Delimitation

8.12.01 The implementation of the constitutional provisions relating to the structure and composition of the local bodies has been praiseworthy. Judicial pronouncements have also played a significant role in ensuring that the intentions underlying the Constitutional Amendments have been faithfully adhered to. There have however been two suggestions, yet to be acted upon, which would further refine the system and more importantly lead to a seamless integration of the third tier with the other two. These relate to (a) the preparation of electoral rolls and (b) the delimitation of the constituencies. We consider it appropriate to spell out these suggestions since we are in agreement with them and hope that they would be implemented.

8.12.02 Article 243K and 243ZA provide that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to local bodies shall be vested in a State Election Commission. The wording of these two articles follow those of Article 324 which lays down the power of the Election Commission (of India) in such matters. Of course whereas the territorial jurisdiction of the Election Commission extends to the whole of India that of the State Election Commission (SEC) is confined to the boundaries of the States. The electoral rolls for elections to Parliament and State Legislatures are prepared in sections and parts for each Assembly Constituency

and the electoral roll used in the Parliamentary election is that which comprises all Assembly segments in that Parliamentary Constituency. Thus the electoral rolls used are the same and the intensive and summary revision for the conduct of any election automatically updates the rolls for the conduct of the elections of the other. Since the voter is the same it stands to reason that the same roll should also be used for conduct of local body elections. Moreover the machinery used to prepare and revise the rolls is the State machinery and it is the same machinery which prepares the rolls for the local body elections also. There would not only be savings in cost but would link all the three tiers structurally in at least one important aspect, and bring in much needed uniformity.

8.12.03 As it stands the various State laws relating to preparation of electoral rolls result in differing methodologies being adopted. The qualifying date of eligibility to vote is generally the 1st of January of each year but not all States have adopted this date. Some States require the rolls prepared by the Election Commission to be used for reference, others do not.

8.12.04 The Election Commission has been discussing with State Election Commissions in this regard and having considered all aspects the Chief Election Commissioner (CEC) in November 1999 has suggested to the Government of India that the electoral rolls be commonly prepared. A similar suggestion has been made by the CEC to all Chief Ministers in July 2000. The National Commission to Review the Working of the Constitution in its report of March 2002 has made a similar recommendation and so has the Second Administrative Reforms Commission in its Sixth Report (Local Governance) of October 2007.

8.12.05 The Annual Conference of State Election Commissioners (SECs') as well as that of the Election Commission with SECs' has been discussing ways and means to operationalise this idea. Suggestions have been made to incorporate the ward numbers and street numbers and the name of the panchayat so that the rolls for the Assembly become more useful in preparing rolls for the local bodies. The Standing Committee of the State Election Commissions has also prepared two model bills to *inter alia* give effect to this suggestion and these have been commended to the States in May 2007.

8.12.06 We recommend that laws of all States should prescribe that the rolls for the Assembly elections be adopted for elections to local bodies also.

8.12.07 As regards delimitation of the Assembly and Parliamentary constituencies the Constitution (84th Amendment) Act, 2001 and the Constitution (87th Amendment) Act 2003 provide that:-

(a) the total number of existing seats as allocated to various States (except J&K but inclusive of the NCT of Delhi and UT of Puducherry) on the basis of the 1971 census shall remain unaltered till the first census is taken after 2026;

(b) the total number of existing seats in the Legislative Assemblies of all States as fixed on the basis of the 1971 census shall also remain unaltered till after the first census is taken after 2026;

(c) the number of seats to be reserved for Scheduled Castes and Tribes for Parliament and State Assemblies would be reworked on the basis of the 2001 census;

(d) the delimitation for the Assembly and Parliamentary constituencies will be on the basis of the population emerging out of the 2001 census and their geographical extent will be frozen till the first census is taken after the year 2026; and

(e) the constituencies would be so delimited that population (2001 census) of each Parliamentary and Assembly constituency in a State shall as far as practicable be the same throughout the State.

8.12.08 Article 82 of the Constitution gives the authority to Parliament to set up the Delimitation Commission whenever the exercise to delimit is to take place.

8.12.09 The Delimitation Act 2002 provides that the Delimitation Commission would include the respective SEC as a Member of the Commission for the State concerned. To this extent it recognized the imperatives of the 73rd and 74th Amendments and the fact that elections were also to be held for the third tier. These amendments provide that barring cantonments every other part of the country to which these amendments apply, will be constituted into a panchayat (or Municipality) at specified levels. Using the panchayat or a municipal ward as the basic unit on which the geographical limits of the assembly constituency would be aligned would have seamlessly merged the three tiers of Government structurally. However, this would remain a conjecture as Article 82 makes no mention of panchayat or municipal constituencies. Unfortunately there is no equivalent of an Article 82 in parts IX and IXA of the Constitution. The State Election Commission has also not been specifically empowered to conduct the business of delimitation. Hence the power to authorize or conduct the delimitation of these constituencies lies with the State Governments and in fact unless this is done elections cannot be held.

8.12.10 It could very well be argued that an equivalent similar article would not have ensured that an alignment would necessarily take place as different State Delimitation Commissions could very well follow their own. This is a valid argument and the solution would hence be neither in an article on the lines of Article 82 or to leave it to the best judgment of the State Governments. What is needed is to amend Article 82 and empower the Delimitation Commission, or indeed to provide for setting up State Delimitation Commissions to align the panchayat and municipal wards to the existing assembly constituencies. Since no further delimitation of assembly constituencies is to take place till after the census of 2026 there is for the present a finality of the geographical limit of the assembly constituencies. If each State Delimitation Commission takes up this work in right earnest the work can be completed before the next round of local body elections state-wise. Once this initial work is over the work of the State Delimitation Commissions can follow that of the Delimitation Commission. And the next Delimitation Commission can do its work not on the basis of administrative units, such as districts, sub-divisions, tehsils and revenue villages but on the basis of gram panchayats and municipal wards.

8.12.11 The reservations of the seats on the basis of the delimitation exercise should also be left to the State Delimitation Commissions.

8.13 Extension of Parts IX and IXA to Sixth Schedule Areas

8.13.01 Article 243M and 243ZC stipulate that the Parts IX and IXA do not apply to specified areas. In the States in the North-East the factual position has been indicated in para 3.9.0.3. There is a view that the 73rd and 74th Amendments were path breaking amendments to the Constitution and that the decentralization of governance and empowerment of local bodies that they envisage should be available to all parts of the country and that the North-East should not be deprived of its beneficial purpose. We have addressed this concern in the light of (a) the provisions of the Sixth Schedule and (b) the special problems of governance and development of the North-East.

8.13.02 When the Constitution came into effect Assam was one composite State and the excluded (or frontier tracts) only were separately and directly administered by the Central Government. The political map of the Region has since been completely redrawn. The Sixth Schedule to the Constitution as well as the Articles specific to some of the States in the Region viz. 371A (Nagaland); 371C (Manipur); 371G (Mizoram); and 371H (Arunachal Pradesh) seek to address the special requirements of the several States in the same spirit as envisaged by the Bardoloi Sub-Committee.

8.13.03 Whereas structurally there would be major changes if the Parts were made applicable, it is a debatable point whether functionally it would make a difference. We have opted for a flatter structure, in our recommendations relating to the general scheme of Parts IX and IXA. In this regard the prevalence only of District Councils and village councils (although not in all areas) would be in line with our recommendation. As regards functions some would even argue that the combination of legislative, executive, financial and judicial powers vested in the councils make them a much more functionally powerful institution. It would be open to these institutions to adopt the salutary recommendations which are made from time to time with the objective of making the Panchayati Raj institutions more efficient organs of socio-economic development. All schemes which seek to provide funds for capacity building, strengthening the planning regime and such like emanating from central sources should also be available to them.

8.13.04 The Sixth Schedule areas should also adopt the basic reforms that underlie any good system of local self-government. These include activity mapping based on subsidiarity, mechanism for engaging all stakeholders, devolution of adequate untied funds and streamlining of schemes and putting in place a well laid system of accounting. This would also take care of the complaint of many District Councils that there is overlap in functional responsibilities with State Government Departments.

8.13.05 The special problems of the North-East have led to several initiatives and a number of administrative arrangements have taken shape which are unique to the region. This region along with a few others, has always received special dispensation in terms of Plan Assistance and Special Central Assistance. The North-East Council coordinates development activities common to the Region. All Government of India Ministries are required to earmark ten per cent of their funds for being expended in the Region and to prevent lapsing a special financial instrument the Non-Lapsable Central Pool of Resources (NLCPR) has been established in 1988. A North-Eastern Region Vision 2020 has been prepared, setting out the development goals of the Region. A separate Ministry for Development of North-East Region has been set up.

8.13.06 The devolution of powers to the District Councils, just as to Panchayats in the rest of the country, is not satisfactory. We have made suggestions on how to constitutionally address this issue. Our basic objective should be to ensure that similar devolutions in a time bound manner accrue to the councils in the North-East, and would suggest provisions similar to those suggested for Panchayats but these amendments should

be in the Sixth Schedule and Articles specific to States of the Region. Such a course of action would also address the observation that within the Region there is a significant degree of variation in the functions devolved to one Council as compared to another.

8.13.07 It is expected that over a passage of time the initiatives which have been taken to address development issues would make their impact. The look east foreign policy has several ingredients which would boost the local economy and provide linkages with countries bordering the region. The recently concluded Asean Free Trade Agreement would also have significant positive fall outs on the people of the region. A political controversy arising out of proposals for extension of Parts IX and IXA to the Region would only detract from more pressing issues. Based on these considerations we are not in favour of their extension to the areas of the Region where at present they are not applicable.

8.14 Extension of Part IX to Fifth Schedule Areas

8.14.01 As regards the Fifth Schedule Areas based on the Report of the Bhuria Committee (1995) the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) was passed and came into effect in December 1996. This Act extends Part IX of the Constitution to Fifth Schedule Areas subject to certain exceptions and modifications. The underlying principle was to ensure that traditions and customs guided the management of village affairs and that their cultural identity was maintained, that disputes were settled according to customary practices and community resources were protected whilst empowering them with functions many of them mandatory. There would be reservation of seats for the Tribes and Panchayats would be headed by them.

8.14.02 The differences between the Sixth Scheduled areas of the North-East and those of the Fifth Schedule in the rest of the country had been highlighted in the joint meeting of the Bardoloi and Thakkar Sub-Committees. These areas were not in extended compact blocks but were interspersed with other areas in the States. There was disparity between them and other areas on many social and economic parameters. Not covering them with Part IX would have widened the gap. Comparisons would be made by village folk of the Scheduled Areas and they would definitely have concluded that they were being shortchanged. PESA is a step in the right direction.

8.14.03 All the nine States which have Fifth Schedule Areas have enacted the enabling legislation. PESA enjoins upon the State the obligation to consult tribal communities and their elected representatives in evolving criteria for the constitution of

village panchayats and Gram Sabhas in the Fifth Schedule Areas and to ensure that tribal communities, on the basis of ethnic identities, are constituted into different Gram Sabhas even within a Gram Panchayat area. Gram Sabhas have been vested with powers to identify beneficiaries of development programmes and to oversee these programmes. Very significantly Gram Sabhas are the protectors of traditional community rights over land and its resources and so must be consulted before any land is acquired. Similarly they safeguard community rights over Minor Forest Produce and can plan and manage minor water bodies and regulate extraction of minor minerals. PESA also mandates that Chairpersons elected to Panchayats in Schedule V areas are persons belonging to the Scheduled Tribes. However special laws which will impact on the subjects (which would become the responsibility of the Panchayats) have not been amended. Existing administrative guidelines which may not be consistent with the change are still in force. Adequate funds which could enable the Panchayats to carry on their responsibilities have not been made available. It is not only State laws which require harmonization but also several central laws. Attention towards all these aspects have been drawn in Chapter 7 of the March 2006 Report of the Expert Group on "Planning at the Grassroots Level" (Chaired by Shri V. Ramachandran) wherein it has made several recommendations and suggestions to remedy the situation. We are in agreement with those. The Ministry of Panchayati Raj is fully conscious of this and has initiated a number of measures to ensure that the objectives of the legislation are met.

8.14.04 As regards the Constitutional role of the Centre we are in agreement with the Expert Committee's view that in the matter of the development of these Scheduled Areas and the people, the Centre has a distinct role. PESA has been enacted under the provisions of Act 243M (4)(b) by a Central legislation and as such a responsibility is cast on the Central Government to ensure its smooth implementation. Para 3 of the Fifth Schedule empowers the Centre to give directions to the State as to the administration of the areas. The Governor of each State having Scheduled Areas is required to send reports regarding the administration of these areas to the Central Government. Article 275 which governs the grants from the Union to certain States casts a special responsibility on the Centre to ensure the development and raise the level of administration in the Scheduled Areas. Article 339 casts a responsibility on the Centre to address the problems of administration of the Scheduled Areas and the welfare of the Tribes by appointing a Commission to report on the administration and thereafter to give suitable directions to the States on matters concerning the welfare of the Tribes. These Constitutional provisions lay down the basis for the Centre's proactive role in the matter of the welfare of the Tribes and we are of the opinion that this is fully justified.

8.15 Discretionary Powers of Governors in VIth Schedule Areas

8.15.01 There have been conflicting views on whether the Governor exercises his role in respect of the Sixth Schedule areas, on the basis of his discretion or based on the advice tendered by the Council of Ministers of the State concerned. The reports of the Bordoloi and Thakkar Sub-Committees which have been examined earlier gave a historical account of the role of the Governor and it is quite clear from the report of the Advisory Committee of the Constituent Assembly and the subsequent debates in the Constituent Assembly that the intention was to pass on direct responsibility to the State governments and the elected Legislatures. There would be no "excluded" areas and the intention was to bring all areas into the mainstream of governance and under the same democratic umbrella. Hence no particular or exclusive role was prescribed for the Governor. The matter came up before the Supreme Court in *Pu Myllai Hlychho and others vs.State of Mizoram and others* {(2005) 2 SCC 92}. The Court in its judgement of January 11, 2005 examined all aspects of the case. It referred to the opinion expressed by former Chief Justice M. Hidayatullah in his third Anundoram Barooah Law Lectures at Gauhati in 1978, wherein the former CJI said that the Governor was not compulsorily required to consult the Council of Ministers and even if he chose to do so was not bound by its advice. The Court did not accept this view and drew attention to its earlier judgments in *Ram Jawaya Kapur vs. State of Punjab* AIR 1955 SC 549; *A. Sanjeevi Naidu vs. State of Madras* (1970) 3 SCR 505, 511 and *U.N.R. Rao vs. Indira Gandhi* (1971) 2 SCC 63. The consistent view of the Court has been that the powers of the President and Governor are similar to the powers of the Crown under the British Parliamentary System. The Court also referred to its own judgment in *Sardari Lal vs.Union of India* (1971) 3 SCR 461 which struck a discordant note and said that this judgment did not lay down the correct principle of law. According to the Supreme Court wherever the Constitution requires the satisfaction of the Governor for the exercise of any power or function, the satisfaction required by the Constitution is not personal satisfaction of the Governor but the satisfaction in the Constitutional sense under the Cabinet system of Government. The use of different phrases in the various Articles of the Constitution would not alter the position. The Court specifically referred to articles 371A(1)(b), 371A(1)(d), 371A(2)(b) and 371A(2)(f) which make mention of the "special responsibility" and "individual judgment" of the Governor in the State of Nagaland and said that even in such cases the satisfaction is in the Constitutional sense. Specifically referring to the discretionary powers conferred by Paragraph 20BB of the Sixth Schedule which was inserted by the Constitution (Amendment) Act, 1988 (Act 67 of 1988) the

Court held that such discretion too was to be considered only in the Constitutional sense. In all cases the Governor was bound by the aid and advice of the Council of Ministers.

8.15.02 In view of the Supreme Court's ruling which is also in line with the deliberations in the Constituent Assembly it is our view that all powers exercised by the Governor under the Sixth Schedule should be in line with those of a Governor in other States.

8.16 Integrating Traditional Institutions (TIs) with the Formal System

8.16.01 Para 3 of the Sixth Schedule confers powers on District and Regional Councils to legislate on matters concerning the appointment of Chiefs or Headmen. Apart from this there is no mention of Traditional Institutions. Their continued relevance was recognized by the Bardoloi Sub-Committee and they are one of the many distinctive features of the Sixth Schedule Areas. We have already opined on the relevance of the provisions which accord special dispensation to the Sixth Schedule areas (and other States of the North-East) and recommended their continuance. These provisions provide for a flatter system. The absence of formal village councils has been noted and suggestions made relating to them. It would be prudent to establish linkages at the village level between the traditional institutions and the village level councils. In this context we deem it necessary to look at some of the weaknesses of the traditional institutions as well as their strengths. When compared to democratic institutions they show weaknesses in (a) not allowing full participatory rights to all members of the community since women are excluded from decision making; (b) they are exclusive and ethno-centric and cater only to the ethnic tribal population; (c) are non-transparent; and (d) they expect compliance from members, defaulters being penalized or socially ostracized without a formalized system of due process. Unfortunately when the formal electoral system influenced them in recent times it was only to encourage the politicization of the process of choosing headmen with candidates even approaching the formal justice system to contest what they feel were arbitrary undemocratic appointments.

8.16.02 These institutions receive no Government funding and functionaries work on an honorary basis. They have engaged themselves with the task of maintaining social order and discharging civic duties such as regulating the water distribution system, garbage collection etc. They have also been recognized as the appropriate authority to certify the antecedents of every resident within the jurisdiction (for issue of passports/opening bank

accounts etc.). The MLAs have also been utilizing them as channels for implementation of the Local Area Development funds. The TIs have been able to accomplish this as they command considerable respect in their areas. They have succeeded in maintaining the social cohesion in the villages and are very suited to iron out social tensions before they get out of hand. They are also instrumental in bringing about conciliation in minor disputes.

8.16.03 We have recommended earlier the need to bring civil society closer to the formal system as a general proposition. Traditional institutions (albeit with their deficiencies) are a microcosm of civil society and need to be used to further the objectives of Autonomous Councils. The Nagaland initiative (which has the force of law) can serve as a good model in other Sixth Schedule Areas. Considering the complex nature of society and governance in these areas we are not in favour of imposition of change in the structure and functioning of these Institutions. We are of the opinion that such change must come voluntarily through introspection. Empowerment of women must come in the first instance by elections to the formal village and district councils.

8.17 Funds Flow to Local Bodies

8.17.01 The weaknesses in the system of fiscal transfers to Panchayats, apart from the obvious one of mismatch between functions devolved upon Panchayats and funds are the uneven, unpredictable, lumpy and untimely financial transfers to Panchayats, the imposition of treasury bans on expenditure, the lapsing of funds devolved to Panchayats at the end of the financial year and their recoupment into the Consolidated fund, delays in releases caused by cumbersome financial transfer processes involving several intermediate steps and prior cuts imposed on funds transferred to Panchayats.

8.17.02 Since the late 1970s, several Central Ministries release funds for Centrally Sponsored Schemes (CSS) directly to project implementing agencies, usually set up at the State or District level as registered societies. Even after the 73rd & 74th Constitutional Amendments and the establishment of local governments, these project implementing agencies have continued to receive funds from Central Ministries for schemes relating to matters listed in the Eleventh Schedule. The practice of sending money directly to a District or State level project implementing agency is followed by many Central Ministries such as Rural Development, Education and Health, for schemes implemented by these ministries. This complexity is further compounded by the large number of CSSs and consequently, multiple systems of fund transfers. There are also a variety of mechanisms adopted by States for transferring funds relating to their shares in CSS, State Finance Commission devolutions and State schemes meant for local governments. The result is a confusing and opaque system of fund transfer from Central and State Governments to local governments.

8.17.03 States have made repeated demands that CSS funds ought to be released to the Panchayats only through the Consolidated Funds of the States. In the meeting of Chief Ministers held on October 18, 2002 at New Delhi under the Chairmanship of the Prime Minister, there was consensus that henceforth all releases under CSSs should be made through the Consolidated Fund of the States and not directly to the project implementing agencies set up by the Central Ministries. It was also agreed that as a pre-condition, the States would pass on the funds to the end users within a stipulated time of three weeks and inform the concerned Central Ministry in the Government of India of having done so. Accordingly, vide Office Memorandums (OMs) dated January 13, 2003 and February 6, 2003, the Ministry of Finance, Government of India intimated Central Ministries to re-classify their budgetary provisions so that the funds from Centrally Sponsored Schemes would go as grants-in-aid to State Governments. However, these OMs were withdrawn by the Ministry of Finance vide OM dated June 11, 2003. Efforts to go back to this short lived system have been shelved, following opposition from many central ministries.

8.17.04 There have been dramatic improvements in the technology of fund transfer. These opportunities afforded by technology would also influence the manner in which funds are transferred to the Panchayats. The core banking network, which allows for instantaneous transfers of funds through the internet, is covering more and more bank branches. The NREGA has shown that payments can indeed be channelised to each individual who works on NREGA site through banks or post offices. The Planning Commission and the Ministry of Finance are putting in place a Central Scheme and Programme Monitoring system which attempts to track fund transfers made under all schemes on line, regardless of the actual method of fund transfer adopted.

8.17.05 These technological advances would meet the criticism that States misuse funds meant for local bodies by using them as funds for ways and means and delaying releases.

8.17.06 In this context it may be wise to have a relook at the manner of formulation of the CSS and the methodology of fund transfers. We have already stressed upon the need for activity mapping. The CSS must also be so devised that functions are properly allocated to the State as well as the tiers of Local Government. Fund transfers would also be modified accordingly.

8.17.07 Centrally Sponsored Schemes (CSSs) have been part of the fiscal transfer landscape of India since beginning. As of 2009-10, the number of CSSs touch nearly 100 and allocations under them of an order of nearly Rs. 100,000 crore. The CSS system has been criticized for several design faults, which are their accent on expenditure milestones, paucity of information on physical outcomes, lax accounting and auditing practices, considerable discretion in allocation criteria and a poor monitoring system coupled with limited remedial action. In addition, several of them are plagued by rigid conditionalities and a lack of a consistent approach to institutional structures. The latter is particularly harmful. Several CSSs have adopted institutional mechanisms that reveal no consistent pattern regarding assignment of functions and responsibilities even within the same ministry. This happens because most of them are designed in isolation resulting in a haphazard proliferation of different institutional means often working at cross purposes. Most CSS design disregard the formal assignment of functions to local governments. It is therefore no surprise that the manner in which CSSs deal with the roles of Panchayats varies widely. While some are relatively Panchayat friendly, and even transfer funds to Panchayat bank accounts and entrust both the planning and execution responsibility upon them, others clearly set up and operate through parallel structures which ignore the Panchayats and deal directly with NGOs and user groups. Such CSS implementation concentrates powers in District Missions, which have a wide flexibility to deploy funds. Such practices have actively harmed and stunted the growth of local governments.

8.17.08 The Task Force of the Commission has made some suggestions on the methodology of CSS formulations and fund transfers. These are shown in Annexure 8.1. We endorse these recommendations.

8.17.09 In para 6.9.0.2 we have referred to the Supreme Court's order in Civil Appeal 3340 of 2007 in the *Gujarat Pradesh Panchayat Parishad* case wherein the Court has drawn a distinction between a Province in a Federation and a Panchayat. Panchayats were never envisaged to be as autonomous as States and it was provided that the Legislature could enact laws governing their powers and functions. A reading of Article 243(A) (powers and functions of Gram Sabhas); 243(C) (Composition of Panchayats); 243D (Reservation of seats); 243F (Disqualification for membership); 243G (Powers, authority and responsibilities of Panchayats); 243H (Powers to impose taxes by, and Funds of the Panchayats); 243I (Consideration of the recommendations of the Finance Commission); 243J (Audit of Accounts) would indicate that apart from structural issues all aspects of the functioning of Panchayats (and similar provisions exist in the case of Municipalities) are to be controlled by the State Government. These provisions are a continuum of the

historical trends and in line with the legislative power already with the States under Entry 5 of List II (State List) of the Seventh Schedule to the Constitution.

8.17.10 It is clear therefore that the local bodies would need to function under the general guidance and supervision of the States. Any arrangement which would disturb this system or which has the potential to become a source of conflict between local bodies and the States should be discouraged. The umbilical cord which connects the local bodies to the States are stronger and so it is all the more important that funds to them flow only through the States. Article 243-I and Article 243Y contemplates a State Finance Commission which will recommend on the principles which would govern the financial relations between the State and the local bodies. Article 280 which deals with the Finance Commission also casts a duty on the Commission to make recommendations on measures needed to augment the consolidated fund of a State to supplement the resources of the Panchayats and Municipalities in the State on the basis of the recommendations made by the Finance Commissions of the State. Thus both these Articles contemplate a direct linkage between the State and local bodies in the matter of fund flows. Article 275 which provides for grants-in-aid to States, even where such grants are for specified purposes (viz. promoting the welfare of the Scheduled Tribes) or as in the case of Assam even for specified areas, contemplates a transfer only to the State exchequer. Any arrangement which provides for direct flow of funds from the Centre to the local bodies would in our view not be in consonance with the Articles referred to above.

8.18 Planning at District Level

8.18.01 Article 243G provides that power be devolved on Panchayats to enable them to function as institutions of self-government for the purposes of preparation of plans for economic development and social justice as may be entrusted to them. In substance Panchayats are envisaged as bodies which not only would lay down a vision of socio-economic development but would also have the wherewithal in terms of human, financial and infrastructural resources to implement this vision. This is the single most potent instrument of empowerment, and the institutional mechanism provided is the District Planning Committee (DPC) under Article 243ZD.

8.18.02 The intention would appear to be to encourage a bottom-up planning process. It is however not clear if responsibility is to be divided between the three tiers (district, intermediate and village), each to exercise a modicum of independence and also to integrate plans prepared by lower tiers or that the responsibility is primarily that of the DPC at the district level, which may take into consideration plans prepared by the other two tiers but

decide independently. The matter gets somewhat more complicated if we take State Level plans into consideration. Are they also to be formulated from the district up?

8.18.03 Going into the institutional weaknesses and constraints one notices the extreme dearth of expertise for conceptual understanding and knowledge of basic economic and statistical techniques. The staff engaged in planning are merely collecting and then distributing schemes formulated at the State and Central levels. This is the position at the district level. The position at the other levels is worse. Secondly no plans can be prepared without a clear idea of funds and in a constitutional scheme of things 'budgeting' has to be done by that level of Government where Legislative approval can be obtained. The States therefore would continue to play a pivotal role even in the case of district planning.

8.18.04 We need to simplify the process and in our view this can be done by giving primacy to the district level. It is the DPC which should decide and make allocations to the village level panchayats and also take care of all special interests (i.e. those pertaining to SCs/STs, and, water, forest, livelihood etc.). Our earlier recommendations on a flatter structure are extremely relevant in this context. Continued stress on involving village level panchayats as units of planning and intermediate panchayats in the entire planning process is to make the matter very complicated. To expect an yearly exercise (or even a five year exercise) where composite and integrated plans emanate from nearly 23,000 panchayats and flow up to the State level through the nearly 500 district panchayats is a very tall order. In the process the village panchayats are not concentrating on their core functions which is spatial planning, identification of beneficiaries and implementation of schemes for basic needs. In the case of intermediate panchayats their role was only to compile village level plans. It would have been difficult for them to interpose any new idea not contemplated either by the village panchayat or at the district level. The district would have the critical mass not only to understand the priorities laid down by Central and State authorities but also to put forth a strong case on behalf of the district. The emphasis on village level plans and integrating and coordinating at intermediate levels is misplaced. We therefore recommend that the entire emphasis should be on capacity building at the district level and the conceptualization and preparation of district plans. It is only when success is achieved in a workable and comprehensive district plan, can one contemplate further devolutions. The time we feel is not ripe for such an exercise.

8.18.05 Our recommendations on the devolution of powers in a time bound manner are given in para 8.4.0.3. We have envisaged a ten year period within which 11th and 12th Schedule subjects would become the complete responsibility of local bodies. It

is also our view that a flatter institutional set up at the district and below level would be more conducive to achieve this objective. In this system the role of the DPC would become crucial. Experts have always been remarking and not without some justification that they are generally on tap but not on top. Article 243ZD envisages that the Legislature of a State may provide for the composition of the DPC but further lays down that at least four-fifths of the total number of members would be from amongst the elected local bodies. There may be a need to provide for other peoples representatives to establish the link with State level institutions. However, the DPC should not be totally a body composed of elected representatives, for although they have a predominant role in the governance of the country at all levels the District Plan on which so much would depend must be technically sound and bring in an element of objectivity based on parameters of efficiency and equity. This can come about only by providing for a certain number of experts in planning and other sectors of development assigned to the local bodies, to be members of the DPC. Article 243ZD would need to be amended suitably. The Article as it stands provides for not less than four-fifths of the total number of members of the DPC to be elected from amongst the elected members of the Panchayat at the District level and of the Municipalities in the district. There would be other ex-officio members, leaving very little scope for nomination of experts. The number of elected members would need to be brought down to three-fifths to provide space for experts. It may be argued that such expert advice is already met through consultations and an expert and permanent secretariat. However, such inputs are generally provided through papers briefs and cannot substitute for direct interaction at the high table. We also do not subscribe to the view that the experts would be overwhelmed by the larger numbers of elected persons. We are convinced that interaction would be meaningful, provide opportunities to adjust viewpoints, fill in knowledge gaps and would result in a more workable district plan. The Planning Commission at the Central Level and State Planning Boards at the State Level have an admixture of elected representatives and experts. There is no reason why the DPCs should not follow a similar pattern. We accordingly recommend suitable amendments to Article 243ZD to provide for direct membership of experts to the DPC.

8.19 Planning for Mega Cities and Urban Agglomerations

8.19.01 If planning for districts is crucial, that for urban agglomerations is not only crucial but also urgent, considering the pace at which urbanization is taking place. Delays in setting up the requisite institutional framework (even after so many years only two Metropolitan Committees have been formed) would make the resolution of problems

intractable. What is required is a latticed architecture, with clear definition of roles of various bodies and interlinkages between them. At the Apex should be the Metropolitan Planning Committee endowed with legal powers to resolve disputes on matters concerning planning activities amongst various local bodies within its area and also exercise powers now being exercised by other authorities (viz. Revenue Departments; Transport Authorities; Town and Country Planning Departments) for its sphere of activity. Since a number of civic functions would continue to be performed by local bodies within its area of operation it would be necessary for the MPC to decide which of these would need to be planned and executed on the basis of the larger geographical area of the urban agglomeration and also decide on the appropriate agency. The Constitution does not require and neither are we in favour of a directly elected body for such agglomerations, criticisms may be made that a non-elected body is wielding such enormous powers. We are unable to put forth any defence except to state that the problems facing urban areas make such a solution inescapable. Since the State Government would exercise oversight jurisdiction over the MPC control by peoples representatives could be said to be exercised indirectly. We accordingly recommend that MPC's empowered as stated above be set up in all urban agglomerations of populations of ten lakhs and above at the earliest. Such empowerment can be done through State Legislation.

ANNEXURE 8.1

Recommendations of the Task Force of the Commission on CSS and Fund Transfers

Rationalisation and simplification of schematic transfers to Panchayats:

The Task Force accepts that there is a need for directed specific purpose grants, such as CSSs, However, too many fragmented schemes leads to confusion, wastage, duplication and leakage. The multiplicity of fiscal transfers at the Centre and State levels should be clubbed into the minimum required for devolution to Panchayats. Ideally, these should be rearranged in accordance with the items in the Eleventh and Twelfth Schedules. Rationalisation of schemes and line items in the budget could be based on activity mapping, aimed at moving away from scheme-based allocation to an activity/service-based allocation of funds. In the meantime, each scheme being operated at present could be reviewed with reference to its stated objectives, delivery mechanism, performance in the last few years, outcomes achieved, productivity of scheme expenditure, explicit subsidies and administrative and delivery costs with a view to eliminate/phase out schemes that are redundant, duplicated or uneconomic.

Bringing about consistency in the institutional design of CSSs:

There is need to bring about a cross-ministry consistency in the way that CSSs are designed and articulated. This will ensure that each CSS guideline meets certain design requirements, to ensure easy comparison. A standard chapterisation ought to be put in place for CSSs, so as to capture every aspect of CSS management. We have attempted a draft, which is placed below:

Chapter 1: Objectives of the CSS.

Chapter 2: Implementation Modalities and Strategies:

This chapter would describe the strategies for achieving the objectives of the CSS and schematically represent this through a Logical Framework Analysis. An Activity Mapping matrix, should also be prepared indicating precisely how the Central Ministry concerned envisages the assignment of agency responsibilities upon the State and the Local governments.

Chapter 3: Description of Milestones and Targets:

Chapter 4: Decentralised planning:

This chapter would describe the manner in which decentralized planning is to take place in the scheme and how these plans would be integrated into the district plan by the DPC.

Chapter 5: Women's component, Gender budgeting and weaker sections chapter:

What is the special focus on gender awareness and mainstreaming in all areas of budgeting and programme design of the Scheme? Steps for promoting active participation of women and those who are excluded and disadvantaged in decision making and reviewing of progress may be separately described. Special skill building measures under the scheme, if any, may be described.

Chapter 6: Systems for ensuring accountability and transparency

This would contain a description of both the downward and upward accountability systems envisaged. The details of how each level of government would put out its data on the implementation of the scheme concerned in the public domain through suo moto disclosure ought to be specified. The funding mechanism & systems for financial accountability should be specified. :

Chapter 7: Fund Flow

The Fund flow for the scheme will have to be described clearly, covering the exact mechanism of flow of funds from level to level, time limits at each level for the transfer of funds to the next level and how IT would be used for electronic tagging and tracking of funds transferred to Panchayats from higher level of governments, including rapid bank transfer of funds, tracking fund transfers to, and expenditures of the Panchayats.

Chapter 8: Reporting Systems and Monitoring of Implementation.

The reporting systems would require detailed enunciation in the light of the National Right to Information Act. 'Reporting' would have to be interpreted widely, to not merely cover reporting to higher levels of government, but also mechanisms for suo moto disclosure to local people through the Gram Sabha. This chapter could contain the reporting formats for the Scheme, the modalities of independent assessments:

Chapter 9: Innovation fund, Disaster preparedness and guidelines for use.

Chapter 10: Consultation framework, i.e., any draft MOU between the Centre and th State in implementing the programme, if any

Chapter 11: A repository of good practices relating to the CSS:

Chapter 12: Capacity building of elected Panchayat representatives and officials:

This chapter can describe the modalities of training. Basic core content and pedagogy may be annexed here, as also the formats for monitoring of training and assessment of post training results.

Chapter 13: Frequently asked questions

These would include inter alia, the following questions:

- *Who can apply under the scheme and how?*
- *What are the pre-requisites for application?*
- *What are the criteria for eligibility/ ineligibility?*
- *What are the time limits prescribed by for screening of applications?*

CHAPTER 9

SUMMARY OF RECOMMENDATIONS

CONTENTS

9

SUMMARY OF RECOMMENDATIONS

9.1.01 Structure of Panchayats

The slow pace of empowerment is owing to the complex nature of the system. Too many activities need to proceed simultaneously – transfer of funds, functions and functionaries – and separately to three tiers. This complex matrix needs to be simplified. There should be a two tier architecture of Local Government. Article 243B needs to be amended as follows :

"243B – Constitution of Panchayats –

(1) There shall be constituted in every State, Panchayats at the village and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause (1), States may constitute Panchayats at the intermediate level, if they so desire in the interest of good governance.

{para 8.2.17}

9.1.02 Rotation of seats

The concept of rotation of reserved seats for Scheduled Castes, Scheduled Tribes and women to different constituencies as well as to offices of Chairpersons of Panchayats is commendable. However the period should be long enough for the incumbent to get familiar with such positions. The rotation should hence be after two terms of the Panchayat. Relevant clauses of Article 243D would need to be amended for the purpose.

{para 8.3.01}

9.1.03 Time bound devolution of functions

States have continued to drag their feet on the devolution of powers to Panchayats and Urban local bodies. There should be mandatory devolution of functions and it must be done by the year 2015. Priority should be given to items pertaining to basic

needs. Articles 243G and 243W should be amended to mandate that devolution of functions as listed out in the Eleventh and Twelfth Schedules, together with the powers and authority to implement them should be done by the year 2015.

{para 8.4.03}

9.1.04 Model Law

To guide the States in time bound devolution together with transfer of activities with requisite funds and functionaries, a model law needs to prepared by the Centre and circulated for adoption by the States. The model law should also address the issue of inconsistencies of existing laws, rules and regulations with Parts IX and IXA.

{para 8.5.01; 8.5.05; 8.5.06}

9.1.05 Monitoring the devolution process

A Commission be constituted in the year 2015 and thereafter regularly after every five years to report on the 'Status of Local Government Devolution of Powers'. For this requisite provision be made in Parts IX and IXA on the same lines as Articles 339 and 340.

{para 8.6.01}

9.1.06 Streamlining institutional arrangements between parallel bodies and local governments

(i) All parallel bodies would need to be harmonized with the Local Govenrment set up. This may result in many parallel bodies being merged with Local Government institutions, whereas others could continue for functional efficiency but with clear lines of accountability.

{para 8.7.04}

(ii) Each Ministry should come out with clear, unequivocal and detailed directives regarding the merger of parallel structures that they have mandated with the appropriate Local Government level.

{para 8.7.05}

(iii) The professional component of parallel bodies may be continued as cells or units within the appropriate local governments.

{para 8.7.06}

(iv) If for any reason it becomes inescapable and a parallel institution needs to be created it should be done in consultation with the Local Government and made accountable to it.

{para 8.7.07}

(v) A common set of accounting practices should be prescribed which ensure that the accounts of the parallel structures which remain or are created because of functional efficiency are captured in the accounts of the Local Government concerned.

{para 8.7.08)

9.1.07 Coordination at the district level

(i) This aspect should be looked after by the District Planning Committee. The Collector should be a member of the DPC.

{para 8.8.21}

(ii) The Collector is overburdened and hence there should be a separate administrative structure for the district Panchayat.

{para 8.8.22}

9.1.08 Dispute resolution and interaction mechanisms at the State level

A Council be established for the purpose with representation of local governments and the State Government. It should function on the same lines as the Inter-State Council at the Centre.

{para 8.9.01}

9.1.09 Enhancing Democracy through empowerment of disadvantaged groups and involvement of Civil Society.

State Legislation concerning local bodies should mandatorily have provisions to involve civil society in specified activities and to take care of the special requirements of the socially, economically and physically and mentally challenged members of society.

{para 8.10.06}

9.1.10 Mega Cities

A representative local body for mega cities, which may have cities, towns and rural areas within its geographical confines is not recommended.

{para 8.11.07}

9.1.11 Common Electoral Rolls and Delimitation

(i) Laws of all States should prescribe that the rolls for the Assembly elections be adopted for elections to local bodies also.

{para 8.12.06}

(ii) Article 82 needs to be amended to provide for setting up of State Delimitation Commissions which should be required to align the Panchayats and Municipal Wards to the existing Assembly constituencies.

{para 8.12.10}

(iii) The reservation of seats on the basis of the delimitation exercise should also be left to the State Delimitation Commissions.

{para 8.12.11}

9.1.12 Extension of Parts IX and IXA to Sixth Schedule Areas

(i) It will be open to District Councils and Village Councils to adopt the salutary recommendations which are made from time to time with the objective of making the Panchayat Raj institutions more efficient organs of socio-economic development.

{para 8.13.04}

(ii) All schemes which seek to provide funds for capacity building, strengthening the planning regime and such like emanating from Central sources should also be available to them.

{para 8.13.04}

(iii) The Sixth Schedule Areas should also adopt the basic reforms that underlie any good system of Local Government. These include activity mapping based on subsidiarity, mechanism for engaging all stakeholders, devolution of ad-

equate untied funds and streamlining of schemes and putting in place a well laid system of accounting.

{para 8.13.04}

(iv) Devolution of powers to the Councils in the North-East must be ensured on a time bound manner by suitable amendments to the Sixth Schedule and Articles specific to the States of the Region on the same lines as suggested for the rest of the country.

{para 8.13.06}

9.1.13 Extension of Part IX to Fifth Schedule Areas

(i) All existing State and Central laws need to brought into alignment with the objectives of PESA.

{para 8.14.03}

(ii) The Centre needs to fulfil its special responsibilities under various provisions of the Constitution towards the Fifth Schedule areas.

{para 8.14.04}

9.1.14 Discretionary powers of Governors in VIth Schedule Areas

All powers exercised by the Governor under the Sixth Schedule should be in line with those of a Governor in other States.

{para 8.15.02}

9.1.15 Integrating Traditional Institutions with the Formal System

Traditional Institutions have their strengths and weaknesses. They need to address their weaknesses but change is desirable not through imposition but must come about voluntarily through introspection.

{para 8.16.03}

9.1.16 Funds to local bodies

(i) A change should be brought about in the manner of formulation of Centrally Sponsored Schemes (CSSs) and fund transfers.

{8.17.08; Annexure 8.1}

(ii) All Central Funds should flow to local bodies only through the States.

{para 8.17.10}

9.1.17 Planning at District Level

(i) Plans should only be prepared at the district level.

{para 8.18.04}

(ii) One-fifth of the membership of the DPC should be of experts. Article 243ZD needs to be amended for the purpose.

{para 8.18.05}

9.1.18 Planning for Mega Cities and Urban Agglomerations

Metropolitan Planning Committees to be empowered to conduct all planning activities for mega cities by exercising control over all local bodies within their geographical confines. MPC also to be endowed with powers being exercised by other authorities including Government Departments. This should be done by State Legislation.

{para 8.19.01}

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