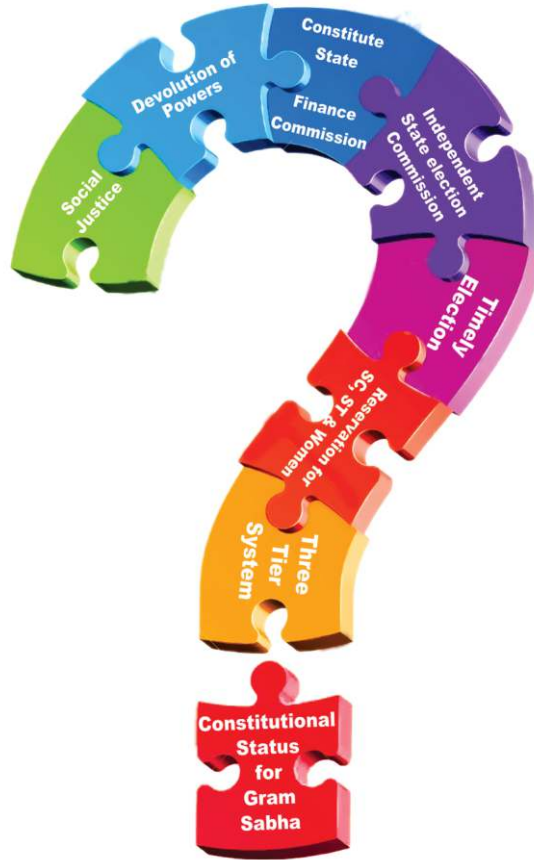




National Campaign for Constitutional Amendment to Part IX (Article 243 A,G & H) and Amendment to Introduce List IV in the Seventh Schedule (Local Government List)



Sourcebook - 2017
(For Strengthening Local Government)

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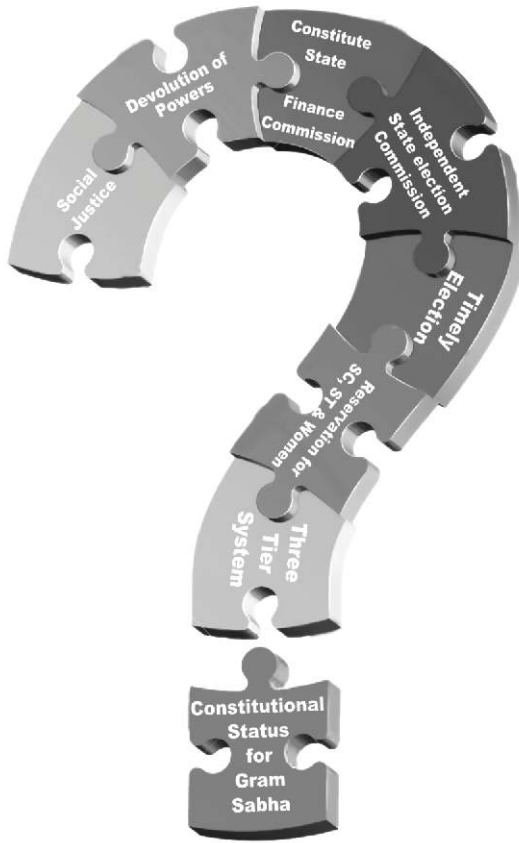
Volunteers for Social Justice & Dalit Dasta Virodhi Andolan



Social Awareness Society for Youth



National Campaign for Constitutional Amendment to Part IX (Article 243 A, G & H) and Amendment to Introduce List IV in the Seventh Schedule (Local Government List)



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Strengthening Local Government Sourcebook 2017
November 2017

National Campaign for Constitutional Amendment to Part IX
(Article 243 A,G & H) and Amendment to Introduce List IV in
the Seventh Schedule (Local Government List)

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National Campaign to Strengthen Local Government in India

Third National Consultation

22, 23 November 2017, New Delhi

Programme Schedule

22 November 2017, ISI

- 0900 Registration and tea
- 1000 Welcome
- 1010 Why Constitutional Amendments and the campaign: The issues and sharing learning from the process to date
- 1030 Experiences of excluded communities and vulnerable sections
- 1200 Experiences and challenges in PESA
- 1330 Lunch
- 1430 Experiences and challenges in urban government
- 1600 Tea
- 1630 Sharing of state experiences
- 1730 Close

23 November 2017, Constitution Club

- 1000 Introduction to the draft bill
- 1030 Reading Draft Bill with Constitutional Amendments required including List IV for local government
- 1130 Recommendations for Amendments
- 1230 Towards a people's movement
- 1330 Lunch
- 1430 Action plan and way ahead (2018-19): National Steering Group / State Anchors
- 1530 Concluding session/Vote of thanks
- 1600 Close with tea

CONTEXT

1. Third National Consultation on Local Government: An Introduction

Grama Swaraj – independent, self-sufficient, village republics – formed the cornerstone of our independence struggle. Yet 70 years after the British have left, it remains a partially fulfilled dream at best. It took 45 years after independence to partially enshrine local government in our constitution through the 73rd and 74th amendments and the panchayats (Extension to Scheduled Areas) Act (PESA) for rural, urban and fifth schedule areas respectively. Some progress has been made in local government that has not been possible in the state or central government, of which the representation of women is a significant example. It has been made possible both because of explicit reservation for women – 33% initially, but with more states moving to 50% – and because the proximity of the seat of governance to the habitation makes it easier for women to participate. For instance, Tamil Nadu has consistently had about 5% more women elected than the quota at the panchayat level – but has dismal representation of women in the state legislature and in the national parliament.

The overall picture is not rosy either. The devolution of powers is still incomplete, in part due to not having a separate list in the Constitution of India for local government on the lines of the state, union and concurrent lists. This gap leads to absurdities of scheduled areas being ruled by the forest department and all local governments (in rural, urban and scheduled areas) accountable to the bureaucracy – a remnant of the colonial era when all elected representatives were accountable and subservient to the British bureaucracy. Now the local government is accountable to the state bureaucracy. Additionally, restrictions that do not apply to the state and central elections are being imposed on representatives at the local government – like the conditions on schooling or the number of children. These disproportionately affect those from social excluded communities and vulnerable sections.

Of all the social justice legislation, the ones regarding local governance – 73rd and 74th amendments and PESA – are significant because they mark a watershed in national agenda setting, with the baton passing on to civil society. The first two are products of a political party process. The third

marks the turning of the tide and is a product of a civil society process substantially expanding and completing the Dilip Singh Bhuria Commission recommendations on tribal self-rule as the true expression of local governance in fifth schedule areas. The momentum of this civil society initiative on PESA led to a flood of subsequent legislation and constitutional amendments such as the rights to information (2005), work (2005), food (2013), education (2009), Protection of Women from Domestic Violence Act (2005), Prevention of Child Marriage Act (2006), Protection of Children from Sexual Offences Act (2012).... all the way up to the amendments to the SCs and STs (Prevention of Atrocities) Act and Rules notified in 2016.

Local governments are hamstrung by the perception that they are little better than sub-contractors to the village office in most parts of our country. It is no coincidence that they are referred to as local bodies not as local government. Surely this is not what we fought for. The government itself understood the limitations of the 73rd amendment, coming out with a model Grama Swaraj Act in 2009. However, but for a few states, not much has translated into state legislation. The process needs to be taken to its logical conclusion.

A significant part of the problem is the nomenclature of 'panchayat' which was the traditional decision-making body of the village that comprised only of men from the dominant community. The jostling for space and legitimacy between the caste/ khap/ katta panchayats and the secular/constitutional panchayats is a result of this linguistic ambiguity. In matters regarding the customs and traditions, the decisions of the caste panchayats invariably prevail over the constitutional functionaries and provisions. Their long reach and impunity has resulted in them ordering girls from socially excluded communities to be gang-raped/paraded naked for 'crimes' of their male relatives, often the crime marriage across caste boundaries. For this reason, in contrast to Gandhi's Arcadian village utopias, Ambedkar was of the opinion that caste was so entrenched in village India that Dalits need to move to cities.

In the quest for the ideal, the ever present reality of religious minorities being exiled from their villages and/or forced to sign patently discriminatory pledges to be allowed to return and Dalits being ostracised / socio-economically boycotted on the orders of the panchayats cannot and

should not be overlooked. It follows from the understanding that no unit of governance should be so small that local prejudice can become the law. Larger units of governance are more likely to be liberal, given the need to be more accommodative of the diversity of cultures intrinsic to geographic spread and demographic scale.

This consultation is third in the series of a joint search for effective decentralisation and a supportive constitutional architecture anchored by the Human Rights Advocacy and Research Foundation (HRF). It brings together practitioners, civil society, administrators and academics from all the three streams of local governance – urban, rural and scheduled areas. The co-creation of a constitutional architecture and legal ecosystem for decentralised governance that is inclusive of the socially excluded communities and vulnerable sections such as the women, Dalits, Adivasis, persons with disabilities, LGBTQIA+, religious and linguistic minorities must necessarily be inclusive so that their specific concerns are addressed, their specific needs are fulfilled and specific safeguards are inbuilt. The task assumes urgency given the enhanced role envisaged for the local governments by the fourteenth finance commission.

This compendium consists of the consultation briefs, reports on the journey so far and the experiences that shaped it. In the journey forward, while HRF will continue to anchor the process as the secretariat, we hope the process will be co-owned and co-created by a rainbow coalition of stakeholders with diverse skills and competencies, and the passion to craft it into a grassroots movement. State, district and local level initiatives exist. The task – and the challenge – is to synchronise them for national impact.

Human Rights Research and Advocacy Foundation (HRF)

November 2017

2. Towards Building a National Campaign for Constitutional Amendment to Part IX (Article 243 A, G & H) and Amendment to Introduce List IV in the Seventh Schedule (Local Government List)

Ossie Fernandes
(Founder, HRF)

Introduction

The 73rd and 74th Constitutional Amendments are important cornerstones for empowerment of people and building grassroots democracy. For this, sustainable development and democracy are inseparable and indivisible. Strengthening democracy at the grassroots level and re-defining federalism in terms of empowerment of the poor and rejuvenating local self-government is an important constitutional goal when combined with the quest for sovereignty (self reliant governance), social justice and equality. Panchayats and Urban Local Governments under the new scheme are the most crucial processes for people to assert their community identity, fulfill their basic needs, fight exploitation, and unequal and oppressive power relations, promote human rights and protect community assets for the goal of self-reliance and sovereignty.

The Union Government through the Constitution 73rd and 74th Amendment gave a political signal that decentralisation had come to stay in India. 33% reservation for women in elected bodies and also reservations for Dalits and tribals according to the proportion of their population were guaranteed. What is encouraging is that as against 33% reservation for women in panchayats, the actual participation of women's is more that 38%. But this has not necessarily translated into women empowerment, or helped the marginalised communities like the Dalits and tribals to gain equal opportunities. Women and Dalit presidents have to face many challenges and are used in many cases as a front by the power elite. Landlord, mercantile, dominant caste leadership still persists in panchayat government. There are several cases of elected women members who remain behind their husbands or men in the family and allow them to take all decisions as though they are the presidents. Brutal attacks on women are several. The Inspector of Panchayats (the District Collector) has removed hundreds of elected leaders. Further, women are not allowed to sit in the

chair for elected leaders or given the keys to the office. However, hundreds of women, though newly elected, are also demanding that they function independently. Women presidents who refuse to follow the diktats of the male panchayat members (caste, political party or class) face problem through them.

Of the 29 subjects for which the state governments are to devolve powers, authority and responsibilities to the respective local governments, more than half pertain to management of environment resources, improvement of livelihood and eradication of poverty. However till date the state governments have not empowered the panchayat, by not entrusting their powers. The state has not handed over substantial planning authority and responsibility. Plans prepared by the local governments have not been accepted. Similarly, developmental plan and outlay are not implemented through the panchayat. The role of panchayat has not been clearly spelt out. Panchayats are only treated as scheme implementing (state and central) agencies. For the state developmental sector, there have been parallel bodies established. Panchayats are not given the power to manage and administer in PDS, education, health, drinking water, non-convention energy. It is the district administration that still yields enormous powers.

Powers of gram sabha Need to be strengthened by amendments to the Constitution and Panchayat Act

Article 243A of the Indian Constitution, states that the gram sabha means a body consisting of persons registered in the electoral rolls relating to a village within the area of panchayat at the village level. The sabha may exercise such powers and perform functions at the village level as the legislature of the state may by law provide for in the powers. (The rules issued under the Tamil Nadu Panchayat Act, 1994). In Chapter 11 of the Tamil Nadu Panchayat Act 1994, the state has diluted the powers of the gram sabha by defining that gram sabha as the body which shall approve the village plan, budget for the year, and review the progress of implementation of all schemes entrusted to it. The Government of Tamil Nadu (GoTN) by GO MS.No.152 of Rural Development Department has defined the other functions including quorum and procedure for convening and conducting of meetings. However till today in most cases, it remains a body which has to take dictats only according to the details of the district administration and

not extending its scope beyond that, to look at the real livelihood issue of that village and exercise its power.

Gram sabha is the only forum at the village level where all the voters including women, scheduled caste and scheduled tribe and the poorest in the village have the right to participate and raise the issue of their own welfare matters and the problem which affects the village on the whole. It should function like a Parliament.

Gram sabha members are yet to understand the need for devolution of power and fully participate in the decision making process. While the law states that any industrial activity in a village requires the consent of the gram panchayat, it is hardly ever the case. In some cases, affected persons have been left with no other recourse but to agitate. Environment governance, land and natural resource management are key issues. Local people can manage the resources in a more sustainable manner only when the community is aware and involved. Wherever the local community stands up for their rights, take charge of their lives and questions decisions that impact them, the panchayat government system works. Both sides are true.

Gram sabha is a powerful grass roots institution for mobilizing people to plan for their self-reliant development and also to take decisions to stop destructive development. On numerous occasions in many states the village panchayat council, at times together with the grama sabha have passed resolutions objecting to various mega projects. They have also refused to give no objection certificate for construction of destructive and polluting industries etc. It has also brought about changes in public policy, state law and budgetary allocations undermining welfare governance sustainable development and promoting a culture of manufactured consent. Hence it is necessary to have constitutional amendment which binds all the State Government Panchayat Act to a set of minimum powers to the grama sabha. The grama sabha should function as powerful independent, deciding body without the intervention of district collectrate. The district collectorate should function like a Parliament to the elected bodies.

A limitation of the Constitution 73rd Amendment

The constitutional scheme however did not go all the way; it stops short of ensuring that state legislations on panchayat government and urban local

government would mandatory have to translate the constitutional scheme of decentralization into the state specific legislations. There was no compulsion to infuse the constitutional scheme of governance with a parallel List-IV for local government similar to the distribution of powers listed in List-I, II & III for State List, Union List and Concurrent List. The failure to clearly delineate this has contributed to various state governments opting for devolution of powers to the extent thought necessary and safe by the ruling government. In Tamil Nadu devolution of 29 powers outlined in the 73rd Amendment and 18 powers in the 74th Amendment has not been introduced by way of amendment to the Tamil Nadu Panchayat Act 1994. While matters like reservation for schedule castes and schedule tribes and women, establishment of state finance commission, state election commission have been obligatory. The Government of Tamil Nadu has chosen to reduce this devolution of powers to disempowered elected panchayat functionaries assisting the bureaucracy in implementation of various schemes and public works by passing from time to time mere government orders.

Until today neither powers nor finance or state government personnel have been decentralized and made accountable to the elected local government system. A corollary of not instituting a List-IV in the scheme of governance in the constitution also left the local government system with no powers to legislate or adjudicate in important legislative matters concerning self-reliance dispute resolutions etc. Hence all law including Government Orders is made by the State or Central Government on behalf of local government. Local government both in rural and urban areas continue to function under the controlling powers of the bureaucracy except in the village panchayat system where village panchayat presidents are not only the elected representatives but are also vested with powers as the executive of the village panchayat. Several earlier powers which were vested with officials of the Block Development Office were removed in 1996 and located in the powers of the village panchayat president.

Consistent with the spirit of the 73rd Amendment of the Constitution the panchayat government structure in many states including Tamil Nadu needs to be radically restructured towards local self-governance and strengthening of women and other oppressed peoples in grassroots democracy. This again requires increasing awareness and advocacy campaign efforts to achieve the reforms.

Besides the consistent lobbying for collective support for strengthening the panchayat government, it is also necessary to engage in advocacy and lobbying for protecting the democratic structure of local government without any adverse changes. There is also a need to lobby for transfer of 50% funds and personnel of the State Government to the panchayats, to repeal section 205 of the Tamil Nadu Panchayat Act which empowers District Collectors to dismiss elected panchayat presidents and other main demands of the Tamil Nadu Federation of Women Presidents in Panchayat Government (TNFWPPG).. This requires to also work with academics, universities, political activists, NGOs and people's movements to build such a campaign.

Since the introduction of constitutional 73rd Amendment, (i.e.) Article 243A to 243K including, Schedule 11, it was thought that it would be imperative on the state governments to devolve powers, planning, finance and personnel to the three tiers of panchayat government. This Article (243G) gave the legislature of a state the option of "may, by law endow the panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government". It left it non mandatory to the state legislature to devolve the 29 powers as listed in Schedule 11. Hence, decades after the constitution amendment most state legislatures have preferred not to devolve powers, authorities and responsibilities to panchayats and those who have attempted have done so in a very limited manner.

However again with regard to the gram sabha (Article 243A) it is left to the state legislature to devolve powers to exercise and perform such functions at the village level. In most states gram sabha have not been entrusted with powers because it has been left to the option of the state government. With regard to the composition of panchayats (Article 243C), in many states there is no linkage between the three tiers of panchayat village, union & districts since the state government "may by law provide for the representation of the chairpersons of the village panchayats in the panchayats at the intermediate level".

On the other hand the 73rd Amendment made it compulsory the three tiers of panchayat government to hold elections for every five years, to give reservation to the scheduled castes and scheduled tribes as nearly as may

be, the same proportion to the total number of seats to be filled by direct election in that panchayat as the population of the scheduled castes or scheduled tribes in that panchayat area, and one third of the total number of seats reserved shall be reserved to women belonging to the scheduled castes or, as the case may be, the scheduled tribes. Further it is mandatory to provide 33% reservation for women at each level of panchayats. The Amendment also directs all the states to constitute a finance commission to review the financial position and make recommendations.

Factors of disempowerment faced by Dalit panchayat presidents

Even after so many years, the situations of Dalits remain the same. They are away from development. In panchayats reserved for Dalits, the presidents face innumerable problems on the basis of discrimination and untouchability practices. Dalit panchayat presidents work under the constant threat, from the dominant community (caste Hindu groups). It is evident that the dominant caste that have been controlling the affairs of the village and the rural economy, cannot tolerate the changes that are being brought by the decentralised democratic institution. Therefore from 1996 onwards after the local bodies elections, mainly in Dalit headed panchayats, non-functioning of panchayats,, tension, violence, murder of elected representatives are happening in order to prevent them from functioning.

Even after the 4th phase of panchayat election (2011), there are incidents of discrimination, untouchability issues faced by Dalit panchayat presidents. Although more and more Dalits are executing their power as presidents, still many newly elected face lots of challenges, like not being allowed to sit in president's chair, to hoist national flag etc., District administration is not providing support to these presidents. When they try to protect the common lands and resources, revenue officials and police were not coming in support of Dalit panchayat presidents. Non co-operation of ward members, vice presidents especially not signing in cheques there by preventing presidents from implementing any schemes, welfare measures etc., are continuing.

There is also a fact that many Dalit presidents as part of their federations started raising their voices against their odds by way of agitations, complaining to district / state administration. These federations at district, block, and state level should be supported.

Factors of disempowerment faced by women panchayat leaders

Women are not allowed to freely discharge their duties as elected representatives. In several cases the male relatives of women members function and discharge the official duties in their place. In the case of scheduled caste women who are not formally educated interference and control by benami members of a dominant caste is the reality. In the case of women village panchayat ward members generally they are treated as non-entities. Any bold decision regarding the panchayat especially in terms of corruption, accountability and transparency in functioning is met by very hostile males / dominant caste, landlord and trade interests including threats to life and family.

Domination and control by panchayat clerks is a major obstacle. Panchayat clerks are invariably male and they continuously withhold information or provide misguiding advice. Schedule caste and scheduled tribe women are often at the mercy of panchayat clerks. Constant male / dominant caste corrupting influence is a major obstacle. Entrenched male / dominant caste channels of bribe and looting of common village resources and earmarked finances, encroachment of lands and waterbodies vested in panchayats force women into helplessness or acceptance. When the President is male and the Vice President is female she is forced to sign the cheque even for purposes she does not agree (In Tamil Nadu, the village panchayat account is operated jointly).

Constant denial of information to elected women representatives by clerical persons and higher state government bureaucracy and by elected male members. Cultural attitude of the males and male elected representatives that women cannot be leaders, women cannot be in a management position, women are not good administrators, public work will neglect the family, women are only good within the house and for rearing and bearing a family etc are all very disempowering factors.

Lack of sufficient formal schooling to manage panchayat administration, records, finances etc. In several cases women have even after three years not given access to the panchayat office keys & registers. In a few cases women presidents because of their lack literacy have signed cheques made out by the clerks without knowing procedures. After this, petitions are filed

before the collector accusing women of fraud. Regular threat by local politicians especially in matters of implementing developmental works, licensing and managing panchayat properties. Lack of support structures – Very limited support from the women's movement or other social movements especially in times of threat or crisis.

Historical oppression which has pushed women into a culture of silence – women in panchayats lack the confidence to speak up in front of males or challenge undemocratic / corrupt practices - constant use of discriminatory words by males. Even a women panchayat president not standing up when a dominant caste member enters the office is construed as arrogance and met with severe hostility and abusive language. Public administration / finance management skills, insufficient skills, communication opportunities and knowledge for running a public institution and no access to training on complicated administrative and financial matters are constraints that women face. In addition, there is the double role of managing a public institution and upbringing of the family.

Why this Campaign

Political democracy can flourish best in conditions of freedom, economic and social equality and democracy; lakhs of new leadership among women and Dalits that the October 2011 panchayat election has thrown up has the potential to galvanise the movement for this real participatory democracy from below. This process must be sustained. To achieve this it is essential to support the networking of women and Dalits from below and enable them to associate to achieve their demands. It is also crucial to continue to strengthen the elected Women Panchayat Presidents' Federation and enable the elected Dalit federation to give a call for rebuilding the formation of a state level movement (Federation) of all elected leaders from the village panchayat government. Women's rights and the rights of Dalits are an integral part of human rights and democratic development. Popular participation, grassroots democracy and transparent governance are essential pillars of sustainable development.

Women and Dalit leadership continue to be discriminated in the matter of participation in public life and denied access to political power. They need the necessary knowledge and skills to effectively perform their governance

role as elected members of local bodies and exercise their powers. Real decentralised governance, grassroots democracy and power to the people can be achieved only when women, Dalits and other disadvantaged sections who have been elected, participate actively on an informed basis, enforce their rights and are free to perform their duties in an environment of dignity and security.

Panchayat government is the first government. Panchayat power is based on people's power and the urge for participatory democracy. The grama sabha is the central institution for the promotion of participatory democracy. This will provide opportunities for the exploited and marginalised communities to raise their voices against continued inequalities, denial of freedoms, discrimination and social injustice.

Hence there is a need of initiating a campaign for further constitutional amendments so that state governments will mandatorily have to devolve powers to local government and as per distribution of powers in the constitution. The creation of a new list titled List IV will detail powers that will be vested with local government. Activists, people's movements, lawyers, academicians, researches etc., should be involved in this campaign.

3. Report of the First National Consultation, 11 March 2014 – New Delhi

National Consultation for Strengthening Local Government and Dalit and Women Elected Representatives was held on 11 March 2014 in New Delhi, with representative heads of civil society organisations and panchayat leaders. The main purpose of the consultation was to initiate a National Campaign for a Constitutional Amendment to Part IX & IX-A (Article 243G & W) and Amendment to create List IV in the Seventh Schedule (Local Government List).

Necessity of strengthening the local government by inclusion of List IV in Seventh Schedule of the Constitution and amendment to Part IX and IXA was discussed elaborately. Different experiences from various states with regard to caste and gender based discrimination faced by elected representatives of local government were also shared and some of the strategies to overcome these issues also were discussed.

Ms. Devaki Jain, Development Economist and Activist inaugurated the consultation and consented to be part of this campaign. Mr. George Mathew, Chairperson of Institute of Social Sciences who has organised several national consultations of panchayat presidents also delivered the keynote address and extended his solidarity to this campaign.

Ossie Fernandes, Director, HRF who chaired the inaugural session said that this the beginning of a long journey to build a campaign for Dalits, Adivasis and women as there is more bureaucratization rather democratization and decentralisation in panchayat governance. *Mr. Ramesh Nathan*, national Convenor, National Dalit Movement for Justice, welcomed the participants and said that a National level vibrant campaign is necessary to advocate with Central Government to bring the amendments in 73rd Constitutional Amendment.

Ms. Sehjo Singh, Director, Programmes & Policy, ActionAid India, shared her valuable experiences especially on women panchayat presidents. Around 40 delegates across various states of India participated. They also discussed the issues of panchayat in their respective states especially difficulties caused by non-devolution of powers, finance, discrimination of women and Dalit representatives, etc.

Some of the delegates across various states of India who participated are *Mr. Abdul Gani Khan* and two others from Jammu & Kashmir, who are also part of Association of Local Governance of India, *Ms. Asha Devi*, Zilla panchayat representative from Rajasthan, *Mr. Sukhdev Vishwa Premi*, Director, Centre for Mountain Dalit Rights, Himachal Pradesh, 2 representatives from National Campaign for People's Right to Information, representatives from Dalit Adhikar Manch, Bihar, 12 participants including 3 village panchayat presidents from Tamil Nadu.

Mr. Abdul Gani Khan while sharing his experience of panchayat governance in Jammu and Kashmir suggested that all states should implement the three tier system of panchayat. There should be code of conduct for the gram sabha where there should be a quorum present to discuss all the developmental issues of the village. The funds should go directly to gram sabha and panchayat instead of to the bureaucracy as at present. The Block Development Officer (BDO) should be accountable to grama sabha and panchayat. He also said that all grama sabhas should be given powers to see that there is no gender bias in the village and no girl child drops out of school.

He further said that, panchayats should be given powers to evolve a policy to stop female feticide and infanticide. They can be given power to assist the families who give birth to female child (may be a minimum of Rs.1500 to 2000 per family). All girl children should enjoy the Right to Free and Quality Education. The cases of violence against women should be handled by women judges and the cases should be decided within 6 months. He further said that like in Pakistan Conduct Certificate by panchayat members or President for police, BDOs and village administrative officials should be made compulsory for their promotion and appraisals.

Ms. Asha Devi, panchayat representative from Rajasthan said that women need to be educated, given awareness on various socio-political issues including panchayat administration. They should be given assurance of safe environment to function as representatives of panchayat. She also said that participation of women in government should be dealt with dignity. Government should provide trainings with conscious intervention to educate them.

The key decisions evolved are to

- Circulate widely the draft amendments together with a position note.
- Organise a larger convention, in June or July 2014, inviting Village panchayat presidents across the state and civil society organisations, women and Dalit movements, etc.,
- Circulate a one page manifesto to all political parties before the parliament election.

Resolutions

1. Mandatory devolution of powers, finances and personnel to the panchayat and Municipality by amending Article 243 G & W of constitution.
2. The Amendments stop short of ensuring the devolution of powers to panchayat government institutions Similar to the List-I, II & III for Union List, State List, and Concurrent List respectively, there is no list IV for Local Government.
3. The devolution of 29 powers outlined in the 73rd Amendment and 18 powers in the 74th Amendment has not been made mandatory by way of amendment to the panchayat Act and Constitution. Hence it is also necessary to devolve 29 powers to panchayat and 18 powers to the Municipality by way of amendment to the respective panchayat Act and Constitution.
4. Give the gram sabhas greater powers to monitor the functioning of the panchayat and decide on budgets and the allocation of funds and other resources, as well as the identification of beneficiaries for panchayat schemes. Village development plans should be formulated by the gram sabhas, which would then feed into development plans at the taluk/ union and district levels. Information on Gram Sabha meeting agenda must be publicly shared in advance.
5. Establish separate quorums for participation of Dalits and women in gram sabhas and sub-gram sabhas (i.e. ward sabhas).
6. Removal of arbitrary powers of District Collector is necessary, particularly the discretionary powers of the District Collectors to remove panchayat presidents should be repealed.

7. Lessen bureaucratic control over panchayat programmes and make bureaucrats more accountable to the panchayat.
8. Devolve greater functions, funds and functionaries to the panchayat so that they have effective political authority and discharge their duties and functions as local institutions of self-government within the meaning contemplated by the Indian Constitution.
9. Give greater powers and include Dalits in planning, while preparing rules and facilitate a mandatory process of village, taluk/union and district panchayat preparing a scheduled caste development plan with a clear gender component, which should become a charter to work towards the economic development of Dalit women and men in the panchayat.
10. Monitoring and Accountability mechanisms under the Panchayat Raj Act should be strengthened.
11. Establish mechanisms of Social Auditing. Gram sabhas as well as local non-governmental organisations focusing on Panchayati Raj should be made part of the Social Auditing and the reports should be made publicly available.
12. Amend the Panchayati Raj Act and give judicial powers so as to include offences related to interference with Dalits' political participation: that is, any person not being a member of a scheduled caste or scheduled tribe forcing, intimidating or bribing a member of a scheduled caste or scheduled tribe to function as a benami for them; and any person not being a member of a scheduled caste or scheduled tribe instigating false or malicious no confidence motion or complaints against panchayat presidents with the intention to remove them from office. The latter offence could be dealt through a suitable amendment to panchayat Raj Act
13. Stringent action should be taken on the complaints of violence against Dalit and women elected representatives under the relevant legislations such as SCs and STs (PoA) Act 1989 and Indian Penal Code.
14. Provide free legal aid for Dalit women panchayat representatives who seek access to judicial redress for obstructions in the performance of their official duties.

15. Provide protection to the Dalit elected representatives by providing them security personal and provide them gun licenses.
16. Policing should be done at the level of the panchayat System and not through the Criminal Administrative Justice System at the first stage.
17. Evolve mechanisms so that the judicial system functions independently inside the panchayat Raj System.
18. Evolve mechanisms whereby the Panchayat Raj System should be able to operate three important laws (i) Right to Information (ii) Right to Hearing (iii) Grievance Redress Mechanisms.
19. Establish a specific office in each district to act as a support mechanism for Dalit, and women panchayat presidents, including providing advice, training and information as well as monitoring their implementation of duties and interventions by others such as panchayat members and government officials. These offices should mediate and resolve problems encountered by the above panchayat representatives and ensure the efficient and effective running of the panchayat. Dalit and women should be represented as much as possible in each office.
20. Provide 50% of reservation for women, in all States.
21. Provide 50% of the state budget to the panchayati raj institutions.
22. To improve the economic conditions of Dalits in rural areas, it is necessary to facilitate their political participation, develop a national perspective plan with explicit short- and long-term goals for overall development of Dalits and women with fixed time-bound targets and allocate separate funding for this plan.
23. In addition to regular panchayat trainings for all panchayat representatives, conduct special trainings for Dalits and women elected representatives, as closely as possible to the start of their term of office, in order to specifically capacitate them for their panchayat duties. All trainings should include a gender and caste perspective, as well as legal sanctions which apply to those who prevent Dalit political participation.
24. Integrate gender and caste awareness training into all trainings for panchayat representatives, including methods of recourse in cases of discrimination and other rights violations towards Dalits, Adivasis and women. These trainings should further specifically focus on promoting

a culture of inclusive development, accountability and transparency in the panchayat Administration.

25. Mandate that in all government contracts related to common properties, these contracts benefit Dalits and Adivasis in proportion to their population.
26. Build up a widespread campaign and lobby the respective states governments as well as the national government in order to bring the amendments and strengthen political will to implement the political reforms suggested above. This includes applying pressure through monitoring and further exposing the failure of government monitoring mechanisms for panchayat governance.

The way forward

It is necessary to include List IV in Seventh Schedule of the Constitution and Amendment to Part-IX and IXA of the Constitution to strengthen Local Government. Seeing the significance of this programme National Dalit Movement for Justice (NDMJ) based at Delhi decided to co-organise the campaign together with several Networks namely Dalit Arthik Adhikar Andolan (DAAA), All India Dalit Mahila Adhikar Manch (AIDMAM), National Campaign for Dalit Human Rights (NCDHR), Institute of Social Sciences (ISS), Human Rights Advocacy and Research Foundation (HRF), and Tamil Nadu NGO Alliance for Empowering panchayat Government (TNNA).

A national campaign was launched and all the delegates present consented to be part of the campaign. It was decided to form a coalition and to broaden the campaign by including various stakeholders like Village panchayat Presidents, civil society organisations, women and Dalit movements across the State.

An ad-hoc committee consisting of Ossie Fernandes, Ramesh Nathan, Sukhdev Vishwa Premi, Satish CDR, Gandimathi, A.G. Khan and Mr. George Mathew, Ms. Devaki Jain, Ms. Aruna Roy and Nikil Dey as experts was formed for drafting the position paper with data in support of the constitutional amendments.

4. Report of the Second National Consultation 14th February 2015, Bengaluru

An inaugural meeting to build a national level campaign for constitutional amendment to part IX and IX-A (Article 243 G & W) and amendment to create List IV in the Seventh Schedule (Local Government List) was held on New Delhi at 2014. As a continuation of this meeting a one way consultation was organised at Bengaluru 2015. 35 representatives of panchayat Government from various states including Tamil Nadu and 40 representatives of civil society participated.

Mr. Narayanasamy, former President, zilla panchayat, Bengaluru, former Member of Parliament while inaugurating the consultation held on 14th February 2015 at Bengaluru to strengthen this campaign, appreciated the organisers for this attempt taken to strengthen local government institutions. He further said that, "In 1980's, before the 73rd Amendment, Karnataka functioned best in panchayat raj system in India under the leadership of *Mr. Ram Krishna Hegde* and *Mr. Abdul Nazeer Sahib*. After the 73rd Amendment, Karnataka was the first state to enact its state panchayat Act. One problem of 73rd amendment is it did not make compulsory for the states to implement State Finance Commission's recommendations. Also reservation for Other Backward Classes (OBCs) was not mentioned in the 73rd Amendment. But any state can bring in that clause in their State Act. Panchayat Acts of some states have reservation for OBCs Devolution of powers is at different levels in each and every state. But District Planning Committee is not powerful and active. For a state like Karnataka itself, it took 15 years to elect the members of District Planning Committee. Even now, DPC in Karnataka is not powerful.

He proposed the following points as amendments necessary in 73rd Constitutional Amendment.

- To ensure a high degree of transparency and accountability, panchayats have to be made answerable to the grama sabhas. This should be made compulsory by law. There should be emphasis on the participation of the most marginalized communities in all aspects of local governance. This will create opportunities for the participation of members of the socially disadvantaged groups including women and children. It should be made

by law, that the special gram sabhas for members of the scheduled caste and scheduled tribes, women and children be mandatory, instead of being driven through annual circulars. Prior to the ward sabhas there should be hamlet or habitation based sabhas.

- The devolution of functions, functionaries and finances is critical if the gram sabhas and panchayats have to fulfill their constitutional mandate. As of today, it is not compulsory for government officials to take part in panchayat meetings and to provide required information to them. The officials are accountable to the decisions taken at the gram sabhas and in the panchayats and that they are answerable to the people and the panchayats they serve.

He ended his speech by recommending to submit a report to government by including a separate clause in the State Panchayat Act mentioning that a State Government can initiate to emphasise Central Government to bring in amendments in 73rd & 74th Constitutional Amendments.

While giving her special address *Mrs. Ruth Manorama* said that, "Reservation for women has become reality in panchayat which is still not in parliament. Hence it was possible for many women with not much education and without political background to come as their village heads. We have to appreciate and protect this women leadership. As women we are capable of fulfilling the needs of our family, like that we have to fulfill our panchayat needs. We should not allow our family male members to function in the panchayat on behalf of us. We have to struggle not only to bring in amendment, but also to retrieve the grassroot democracy which is lost". She also requested the delegates that it is their duty to take ahead the campaign because as panchayat representatives, they can bring out the change in the society.

Earlier, *Mr. Jeeva*, Convenor, who chaired the inaugural session - explained about the powers of gram sabha under the Kerala Panchayat Act. Comparatively panchayat system in Kerala is better because gram sabhas are given more powers. A legal frame work which did not take into account the caste factor will end in discrimination and violence. So, this campaign while initiating while proposing the amendments should clearly brief about caste problem said *Mr. Ramesh Nathan*, General Secretary, NDMJ in his key

note address. *Nirmala Rani*, District Panchayat President of Kottayam, Kerala said that “as compare to other state the panchayat system in Kerala is good. But, we too have problems. We don't have powers to enact the necessary laws eventhough we are devolved with 29 powers the State Government is controlling some of the departments including health and electricity. The fund for gram panchayat is devolved through district panchayat only. Panchayats receive 30% fund from the state budget. The village panchayat presidents gets the salary per month Rs. 5600 along with the travel allowance of Rs.1500/-”. Then the representatives of the panchayat from different states shared their experiences of panchayat administration.

TamilNadu: Panchayats are unable to take actions on the resolutions of gram sabha. The administrative sanction from the district administration for each work of the panchayat differs from what has been sent by the panchayat. The intervention of government officials including the Block Development Officer (BDO) in the panchayat administration is very high. Panchayat finds it difficult to fulfill the needs of the people because of non-devolution of powers and less financial allocation. In Tamil Nadu, as panchayat presidents they face lots of challenges including the arbitrary powers of district collector withdrawal of existing limited powers, etc.,

“Tamil Nadu is a good example for how not a state should function with regard to decentralised democracy. Still, the agenda for the gram sabha is sent by the District Collector. She has the power to repeal the resolution of the panchayat. The panchayats have to be given more power if we want to implement various laws including the Protection of Women from Domestic Violence Act because, they are very near to the people” said *Ms. Gandhimathi*, Director, LAW Trust and Advisor, TNFWPPG. While sharing his views *Mr. Nambi*, Director, CSED said that In USA like countries any new product is not sold without consulting the local bodies. But here the local bodies are with no powers. The gram sabha should function as a cabinet and the bureaucrats should serve the panchayats.

Andhra Pradesh: Non-devolution of powers, very less financial allocation, drinking water scarcity, increasing suicide death of farmers this is the situation of panchayats here. The panchayat face very serious issues in fulfilling the basic needs of people like providing education, road facilities, toilets, housing, etc., because of non- devolution of finance, powers and

functionaries. Because of the Telangana issue the panchayats are almost inactive here. We are in a situation that we cannot even use the funds from the Central Government.

Kerala: The implementing officers of the departments are appointed by the state government. Panchayats have no power to take action on these officers if they violate their duties. Still the lands are under the control of the Revenue Department. A village panchayat are the gram sabha cannot decide on the works done from the MP or MLA fund. The gram sabha cannot make any change in the beneficiaries list for various government schemes.

Karnataka: The panchayat president is elected by ward members. A person thus elected will function as president for 20 months. Then, another person among the ward members will be elected as president. Gram sabhas are given more importance in planning for the panchayats. One panchayat will include 13 to 18 small villages. In many villages providing drinking water is the very big issue. Panchayats are struggling to rectify this problem.

Gujarat and Bihar: The panchayat presidents here are facing caste and gender discrimination. They don't have the right to sit in the chair allotted for the president. The women/Dalit presidents who refused to function as benami for dominant caste/men are targeted with no confidence motion. intervention by government officials, corruption and domination by dominant caste forces is rampant in panchayat administration. Many presidents are forced to sign in panchayat cheques without knowing the reason for what it will be spent for.

Mr. Ossie Fernandes who chaired this session, said that globalisation means in a way centralizing, Under globalisation you are centralizing not merely within the Indian states, you are also centralizing at the world level. So, globalisation is a total anti-thesis to decentralisation and devolution of powers. In my opinion, one organ that will be worst affected because of globalization is the panchayat. We are saying give more financial allocation to panchayats, whereas WTO and the TNCs are saying cut the finances and the markets must be allowed to operate. So, truth for them becomes false for us. There are Municipalities in some of the developed countries that say: 'This is a WTO free Municipality'. 'This is WTO free zone'. 'No products coming out of WTO agreements are allowed inside the Municipality'. Section

159, 160 of the panchayats Act gives the panchayat the authority to provide 'No Objection Certificates'. TNCs think it restricts their freedom of operations. Now, they are making moves to take away that power.

The panchayats in Tamil Nadu have not moved to that stage to associate themselves with other people's movements. That's one of the areas where we need to help them—to associate with women, Dalits, tribals, working class, etc. That linkage is not made yet. that linkage is very important. If we can work with the panchayats systematically and push the government to function more independently, there is a chance of fighting globalisation from below.

While sharing his views *Mr. N.Thayalan*, Director, HRDF said that many dalit panchayat presidents are forced to function as benami's of dominant caste of the village. The common resources are under the control of dominant caste. They don't want to leave that control to dalit presidents. But, with limited powers and lot of challenges many dalit panchayat presidents are taking strong decisions in protection of common resources of the village panchayat. A strategy should be evolved for this problem on behalf of this campaign. *Mr. Pandiyan*, Director, SASY requested that a vigilance committee should be formed at the district level to monitor the issues of Dalit panchayat presidents. The unity of women panchayat presidents as women irrespective of the caste, political interest, class difference will strengthen them. So, they should be federated and strengthened. Many women presidents are denied of information regarding the panchayat lands. They have to be taught of various strategies to get the information said” *Ms. Jesurethinam*, Director, SNEHA and Advisor, TNFWPPG.

The following action plans were finalised to strengthen and to take this campaign broadly.

- A position note for this campaign should be drafted very soon.
- To strengthen the panchayat acts of various states, to take this campaign broadly in different states, state level consultations should be organised.
- Apart from the panchayat presidents, ward members and members of the gram sabha of different panchayats should be involved in this campaign. The justifications for the amendments to the constitutional amendment should be drafted immediately.

- Media should be made aware of this campaign. When the state level consultations being organised demand should be raised to amend the respective State panchayat Acts.
- Some of the participants took responsibility to organise the state level consultations.

Kerala – 1st week of May 2015. Prior to that Kerala Panchayat Act should be reviewed. With the help of District Panchayat of Kottaiyam this consultation will be organised.

Gujarat – 2nd Week of October 2015.

Tamil Nadu – July/August 2015.

Karnataka - Since Karnataka is going to face the panchayat election in March 2015, it was decided to release the alternate manifesto. HRFDL accepted to organise a consultation with around 100 panchayat presidents.

HRF was given responsibility to draft the position note and draft Amendments for the campaign by the end of May 2015.

EXPERIENCES

5. Local governance and women presidents

A.Gandhimathi

(Advisor, TNFWPPG)

Context

Local governance has emerged as a critical forum of decision making, as decentralization and devolution of power from central and state governments strengthens grass root democracy in India. Local governance systems have tremendous potential for increasing the participation of marginalized communities, especially women, in democratic processes. This proposed program will develop a model for strengthening grassroots democracy through increasing women's effective participation and building gender-responsive systems of local governance. The Union Government of India through the Constitution 73rd and 74th Amendment gave a political signal that decentralisation had come to stay in India. 33% reservation for women in elected bodies and also reservation for Dalits and Tribal were guaranteed. What is encouraging is that as against 33% reservation for women in local body, the actual participation of women is more than 38%. Since the constitutional 73rd and 74th Amendment, Tamil Nadu has witnessed four local government elections, 1996 and 2001, 2006 and 2011. The total number of seats contested in the 2011 elections were 12,524 for village panchayat president, 99,333 village panchayat ward members, 6471 panchayat union ward members, 655 district panchayat ward members. Out of all these 38,540 seats were reserved for women. But this has not necessarily translated into women empowerment, or helped the marginalised community like the Dalits and tribals to gain equal opportunities. Often they are viewed as passive recipients and not as capable decision makers in their own right.

The election for panchayat government had highlighted the following political trends.

1. There was a massive participation of young people. Women, Dalits in the local election who have been denied space in the formal political domain.
2. Ground issues with local specificities were put forth in the agenda of politics in the elections.

3. Dalits and Dalit women are still being prevented to file nomination and contest in the elections.
4. The traditional feudal elements of high Caste / political parties who monopolize local bodies under their control for years still continue to dominated the political scene.
5. The role of money and caste in the elections were determining factors like in the general elections.
6. Regardless of the above disturbing trends the percentage of independents candidates winning the elections has increased tremendously.

The panchayats concentrated local civic amenities issues. Panchayats were instrumental in bringing out the change in rural areas- such as roads, streetlights, bus stops, graveyards and so on. Women and Dalits were playing active role in panchayats. However Dalit presidents were not permitted to exercise their powers but they are learning to be assertive in exercising the powers as they derive their their strength from their federation.

However, the following core issues were not addressed upon effectively.

- **Lack of people's planning from below:** Practical gender needs of the women are not being part of the plan and not based on the real needs and issues.
- **Control over common resources:** Panchayat governments should dynamically protect and promote all the commons in the villages.
- **Lack of devolution of powers:** The district collector who is the of Inspector of Panchayat along with project officer of DRDA and BDO hold majority of the powers.
- **Inadequate planning, monitoring and evaluation:** Wrong identification of target areas and beneficiaries poor implementation of various schemes, misutilization of funds, ignoring people's real aspirations and issues.
- **The conversion of agricultural lands** and other resources for commercial purposes denying livelihood opportunities for the local community.

- **Lack of gender budgeting, social auditing:** The participation of women and Dalits in gram sabha meets have not ensured and the budget does not reflect the needs of women and Dalits.

The need for strengthening local governance mechanism in coastal districts

- The expansion of global capital into markets not penetrated earlier has impacted adversely on the life, livelihood and resources of the coastal communities despite their continuous struggles. It has also brought about changes in public policy, state law and budgetary allocations undermining welfare governance sustainable development and promoting a culture entire of manufactured consent. As part of globalisation Special Economic Zones are destroying villages and have not benefited the people in any manner except, causing loss of their lands, resources and forced evictions. This market based on economics of super-exploitation accumulation by encroachments and emasculation of the livelihood of the margins leaves a long struggle ahead for the poor and other working classes. This world Government of Capitalism is diametrically opposed to the movement from below or power of decision making by the grama sabha and panchayat council.
- To defend decentralization requires the ongoing struggle against contemporary capitalist accumulation and centralized state power. Local governance mechanisms (grama sabha) is a powerful grass roots institution for mobilizing people to plan for their self – reliant development and also to take decisions to stop destructive development. There has been instance that the participation of women in the gram sabha has passed resolutions objecting to various mega projects they have also refused to give no objection certificated for construction of destructive and polluting industries etc. This being the Pre-tsunami context, both the union government and state government are promoting harbor based fisheries in lieu of shore line fisheries and culture fisheries instead of capture fisheries, in addition to the lift of ban on importing fish and allowing foreign vessels in deep sea fishing in the post tsunami context.
- In the name of reconstruction the state has evicted hundreds of thousands of fishing communities from their original habitats In

Tamilnadu. The panchayat government was not taken into faith during the tsunami reconstruction process and it remained as an agency to implement the schemes of the government, In this context it is necessary to enhance the capacities of the existing women leaders both at the community level to attend the gram sabhas as well as working closely with the panchayat raj institutions to pass resolution using the powers vested in them will result in posing a stiff resistance against the anti-people development project

- Local governance mechanisms have the powers to regularize and determine the usage of poramboke lands; to call for gram sabha meetings and pass resolutions; ensuring that the basic physical and social infrastructure needs are met; usage and management of common resources; management and regulation of water bodies; removal of encroachment and the functioning of government schemes like the NREGA.
- The worst affected in the neo –liberal era are the women as they do not have any say in any of the decision making process at the village/panchayat level in terms of the practical gender needs, the access to resources like (land, water bodies, coast) and implementation of the various schemes that acts as safety nets. The women are further subjected to oppression because of the unleashed by the forces of patriarchy exerting power over the women both in the internal (within home) as well as the external domain (community level). Women are still not allowed in the decision making process of the community as they are excluded from the traditional panchayats. The women in the coastal areas are still residing in vulnerable disaster risk situation as there is no fool proof disaster reduction plan being introduced in the community. Despite the fact that the Disaster Management Act has come into place the role of women in the same has been undermined.
- With the emphasis on privatization, by big capitalist businesses (India and foreign) there is a need to protect the public services sector for especially basic services like health care, education, electricity, water, transport, roads, housing/shelter, public distribution system (food security). Increasingly health, education, water and transport services are getting privatized, increasing costs to the poor

- Policy and financial illiteracy, along with general functional illiteracy hamper elected women's ability to participate effectively in their constituencies. Secondly, many of the women do not have a rights based consciousness to push a women's rights agenda. Thirdly, in India, elected women from specific marginalized communities, like the Dalits, have faced so much resistance with backlash from the powerful local leaders, corruption and criminalization of politics that it has even resulted in women becoming victims of physical and emotional violence.
- Apart from the elected women candidates, Women in the coastal communities (the electorate), also do not have knowledge and understanding regarding their rights and responsibilities partly due to the prevailing class caste and gender hierarchies which denies women their rightful place in the different Institutions of the society. They are not able to support elected women officials and act as effective constituents who are able to use the social, political and legal tools available to demand their rights and seek accountability from elected representatives. Women do not have access and control over resources and this makes their position vulnerable.

Need for intervention with the elected representatives and the women electorates

True democracy cannot be run by 20 people sitting at the centre....that should be run from the bottom by the people from each village...The power today is centered in Delhi, Calcutta, Mumbai i.e. in big cities...I want to distribute it amongst seven lakh villages in India. --- Mahatma Gandhi on Swaraj

- Governance consists of the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them. Though our constitution laid the principles of democratic government, the governments formed after freedom is not fully open to meaningful citizen participation in political processes and decision-making in practice. An effective system of checks and balances among legislative, executive, and judicial

authority is not fully achieved. Though freedom of information act ensure access to government information by citizens and the media, political parties are not willing to come within the purview of RTI and the economy is not free of government domination. In other words the economic policy is not in favour of the marginalized sections. It favours the already accumulated classes. The concept of welfare state is dwindling and the sovereignty of the state is slowly shrinking as MNCs and TNCs decide the domestic and foreign policies of the government.

Six indicators of good governance /democracy

- Voice and Accountability
- Political Stability and Absence of Violence
- Government Effectiveness
- Regulatory Quality
- Rule of Law
- Control of Corruption

Our experience regarding the indicators of local governance reveal that democratization of the panchayat Raj institution is yet to be achieved. The programmes and policies fail to fulfill the aspirations of the commons. There is no accountability mechanism on the part of the Bureaucrats to the grass root democracy. The traditional institutions such as caste, class and patriarchy dominate the political spheres and they need to be democratized. The regulatory quality of the governance is lacking and the rule of law is not followed. In other words, the local government is treated as the implementing agency of various schemes of state and central government and there is no sharing of powers as guaranteed by the 11th schedule of the Indian constitution. Corruption is rampant at every level. The very principles of grass root democracy such as social justice, gender equality and economic development for which the local governments are promoted still remains as a distant dream as the voices of the grass root policy rarely gets transcended into micro level reality.

- Democratization of panchayat government is very much needed to bring effectiveness and to fulfill the real needs of the disposed classes. This is true of the elected governance in coastal areas

- The gender, social position, economic base, education, political membership are the determinates for the assertion of power by the elected representatives. In case of coastal communities, the women candidates remain vulnerable in all these aspects. As far as the community women are concerned they have poor access to education, information and services. They are under Constant threat of their resources being usurped by destructive policies and projects and their non diversified nature of livelihood. This necessitates the need of our intervention with panchayat governments. We need to invest in the political and livelihood engagement of women to end the entrenched discrimination that women face in accessing, owning and using critical natural resources in sustainable and productive ways.

Broader strategies

- Institutionalizing a bottom up participatory planning process where the women Dalits and other excluded families/ individuals will play an active part in decision making processes through imparting the skills of micro level planning.
- Bringing the local government accountable for quality public services- drinking water, pds public toilets, linking roads and transport facilities and health care services.
- Developing politically informed cadre of youth with special focus on younger women at the panchayat level for improved participation and decision making.
- Facilitating the participation of Dalit families in grama sabhas and Village Development Committees (VDCs) and campaign for conversion of poramboke lands for claiming tenancy rights of revenue poramboke lands.
- Advocacy with the state for devolution of powers and funds by sensitizing and federating the elected representatives at Taluk, district, state and National level.

6. TRIBALS OF INDIA & PANCHAYAT RAJ SYSTEM

Dr. Jacob Thundiyil,
(Convener, NACDIP)

NACDIP stands for National Advocacy Council for the Development of Indigenous People. It is an apex network of the Adivasi organisations spread across 12 states of tribal concentration in India; they are Odisha, Andhra, Telengana, Chhattisgarh, Jharkhand, Gujarat, Rajasthan, Madyapradesh, Tamilnadu, Kerala, Karnataka and Bihar to name them.

NACDIP came into being in the year 2000 A.D. as a pressure group to influence policies and decisions of Government by means of lobby and advocacy in favor of the tribals who had remained neglected and deprived of basic amenities for centuries. The network has been combating human rights' violation and been advocating the rights of the indigenous people over land, forest and water. It played a vital role along with other networks and succeeded in bringing about the Acts-PESA (Panchayat Extension to Schedule Area) and FRA (Forest Rights Act). Another land mark it has reached is the incorporation of MTMLECE (Mother Tongue Based Multi Lingual Early Childhood Education) into the education policy of the Government of India as well as that of Odisha. MTMLE is an innovative Adivasi child friendly approach that facilitates the Early Childhood education of Adivasi children for whom the state languages are as foreign as English is. It has also smoothened the children's transition from ECE centers to Primary schooling. NACDIP is on its campaign for its replication in all the tribal pockets of India. It works closely with the Ministry of Women and Child Development (MoWCD) and Ministry of Tribal Affairs (MoTA).

Background on Tribals

- Indigenous communities across the globe live usually away from the mainstream or caste societies.
- They have their own identity, value system and culture, entirely different from that of other societies.
- The tribal communities in India are found either in the 6th schedule or 5th schedule areas. They are mostly in the north east and central India.
- There are also tribal communities who have been scattered because of the division of states in the South and the Eastern part of India.

- They have their own governance system regarded as direct democracy and this is much different from the representative democracy. There is only selection or nomination to the position of the community head or to that of managing the governance of the community.

Tribal autonomy

To the tribals, each hamlet is an autonomous village which we call Gramsabha today and this is substantially different from and contrary to the government Panchayat system on account of the value system retained by the tribals. Consequently, the tribals are not able to take active and effective participation in the existing Panchayat Raj System. They look at every other village as a different village in all aspects. They have ownership over the resources in their respective villages and around. The forest, termed 'reserved forest' by the government, did belong to them; their livelihood depends mainly on forest products.

Value system

The mainstream people more often say that the tribals don't ask any thing either from the Panchayat or block or from the district administration. Asking or begging is out of the culture of the tribal communities. They were satisfied with the resources within the village and that was sufficient for them. The ownership was always with them and there was no necessity to beg for anything. This culture still prevails over the lives of the tribal communities; this is why the government program which categorizes a person as a beneficiary is not easily acceptable to the tribal people. The planning department and the political parties in power, who do the decision making, do ignore totally this fact; this accounts for the fact that the government policies and programs are not accepted by the tribal communities and they do not participate in these.

The policies and Acts for strengthening tribal communities and life

Tribal movement gathered momentum since 1992 in different states as a campaign all for the actualisation of Bhuria committee recommendations presented in the parliament then under the leadership of Dr. B.D. Sharma and others. In 1996, the Government of India got unanimously approved, in the parliament, the implementation of PESA (Panchayat Extension to Scheduled Areas) Act throughout the 5th Schedule areas of India. Had this

Act been implemented to the letter and spirit, the traditional tribal governance would have made a comeback to tribal communities ensuring their rights over forest, land, water and self governance. This sounds antagonistic, as it were, to the existing Panchayat Raj System in our country. According to the Panchayat Raj system, a cluster of villages constitutes a Panchayat which is different from that of PESA. According to the latter, every hamlet is considered a Panchayat and/or Gram Sobha. This is much in keeping with the customs and culture of the tribal communities.

It is quite unfortunate that there has been lack of political will and interest on the part of any government that came after 1996 till today to implement PESA with all its implications. It was set aside to the discretion of the state governments. The rules formulated by the states reflected much the interests of the mainstream caste societies in the main. The only benefit that the tribals have obtained so far from the Act is that they have the prerogative of acquiring the top posts in the three tier Panchayat Raj system. All the other significant areas of benefit, namely, right to land, forest, water and village autonomy, have been overlooked.

NACDIP and other networks are on constant movement for the effective implementation of PESA, for the tribals have not, for a fact, improved as expected along the economic and educational spheres of life. Neither do they fully enjoy their right to political participation. Even when they adopt non-violent means of advocacy for their rights to realize, more often, their leaders are labeled as associates or sympathizers of Maoists and are put in judicial custody without any trial. The complaints on such issues, lodged before the human rights commission, do not bear any fruit either. The situation of the tribal communities in both schedule and non-schedule areas is pretty critical and their existence, at jeopardy.

Taking into account the present political scenario, one can call Indian Politics a power centric phenomenon: it concentrates power at the center nationally, devaluing or rather questioning virtually the lofty ideals and principles of Panchayati Raj system and of PESA. The situation calls for a diversification of power and strengthening Gram Sobha. All the political parties need to be motivated and the beaurocrats, sensitized on what is happening today. Influenced by their own vested interests and political motives, they, who are supposed to be at the service of the people, function as rulers and do

undermine the elected representatives more often than not. The need of the hour is the arousal and awakening of the people of the country. The supportive role of the civil societies and media is crucial to be played towards this end; they are to voice for pro-poor policies and amendment in the Panchayati Raj System and the constitution to strengthen the local self government especially that of the tribals so that PESA is implemented in letter and spirit.

7. 74th Constitutional Amendment – Weak Act with Weak Implementation

Kathyayini Chamaraj

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Gandhiji's idea of 'gram swaraj' or village republics was that villages should become self-reliant and their governing institutions, the panchayats, should become institutions of genuine local self-government. Similarly, 'Nagara Swaraj', should apply to urban areas. But in 70 years of Independence, and 25 years of the 74th Constitutional Amendment or Nagarapalika Act, decisions about local urban affairs are still being taken at higher and higher levels, leading to centralisation and lack of control of communities over decision-making over their own resources, development choices and livelihoods in urban areas.

The lack of control of urban communities over their own affairs is becoming even more marked and the dream of 'Nagara Swaraj' even more distant. Urban citizens and communities, including their municipal representatives, are having less and less say in the decisions regarding mega infrastructure projects, loans, conditionalities, privatization of basic services, et al, that are driving cities. Citizens' role in the decision-making, planning and development of their areas is almost non-existent. Cities are becoming arenas of severe contestations over land, infrastructure and services and the resultant disparities. At the community level, with the distant government's inability to look into and solve every locality's problems, cities are getting converted to stinking spaces, full of over-flowing dust-bins, plastic-choked drains and vacant sites, pot-holed roads, pavements with gaping holes, howling stray dogs, et al.

The growing disparities between the upwardly mobile sections in cities and the increasingly marginalized urban poor living on the peripheries are becoming even more marked as the nation progresses. So much so that, as famously said by Prime Minister Rajiv Gandhi himself, only 15 paise out of one rupee released by the Centre were reaching the marginalized.

The 74th Constitutional Amendment (74th CA) or Nagarapalika Act

It was precisely to give back control to local communities over their own planning and development that the Central government passed the 74th

Constitutional Amendment Act, better known as the Nagarapalika Act, in 1992. This was the urban equivalent of the parallel legislation for rural areas, the 73rd Constitutional Amendment, well known as the Panchayat Raj Act, which deals with decentralisation of governance to rural local self-governments. The Nagarapalika Act recognised the urban local bodies as legitimate third tiers of local self-government and gave them Constitutional validity and permanence.

It was hoped that decentralisation of decision-making would give back to the community its control over local decision-making, and also ensure proximity, transparency, people's participation and accountability of the local government to its citizens. In order to ensure that the weaker sections in society got a voice on these bodies so that the traditional power structures at grassroots level could be altered, the 74th CA provided for reservation of seats and posts to SC/STs, in proportion to their population. 33.33 % representation to women, within the SC/ST quota as well as in general, was mandated which has helped a substantial number of women to participate in the political process and exercise power. This has now been enhanced to 50%.

The Nagarapalika Act also mandated the setting up of:

- ◆ State Election Commissions (SEC) to oversee periodic elections to these local bodies and hence ensure their permanency;
- ◆ State Finance Commissions (SFC) to decide upon the sharing of Central and State funds with local bodies so that they had definite sources of income to carry out their functions and would be able to work independently of the Central and State governments in managing their affairs;
- ◆ District Planning Committees (DPC) to decentralise the process of planning for development so that a bottom-up, area-specific plan incorporating the felt-needs of the citizens of the local communities could be evolved. It was also meant to reconcile the plans of the urban and rural areas within the district and the sharing of resources between them.
- ◆ Metropolitan Planning Committees (MPC) for metropolitan areas with a population of 10 lakhs or more to prepare a draft development plan for the area as a whole.

- ◆ Finally, ward committees to be set up in cities with a population above three lakhs to enable proximity and accountability of the local elected representative and local body to the citizens.

Powers and functions of municipalities as per the 74th CA

The 74th CA intended municipalities to function as “effective institutions of self-government”. The traditional functions of municipalities, such as public health, sanitation, solid waste management, etc., are well known. However, the 74th CA envisaged that municipalities would go beyond the mere provision of civic amenities and play a crucial role “in the preparation of plans for local development and in the implementation of development projects and programmes including those specially designed for urban poverty alleviation”. Hence the main function of local bodies as given in Article 243 is “Planning for economic development and social justice”.

Devolution of 3Fs – Funds, Functions and Functionaries: The Twelfth Schedule

The 74th CA laid down in the Twelfth Schedule annexed to the Constitution, a suggested list of 18 functions for municipalities in addition to the main task of “Planning for economic development and social justice”. However, it left it to the individual States to decide which functions, if at all, they chose to entrust to municipalities, and which of these were to be mandatory and which discretionary. This is in contrast to the 27 functions listed in the 11th Schedule which are to be devolved to Panchayat Raj bodies. Also, the Twelfth Schedule does not include several functions that would have to be performed by municipalities if they are to fulfill their role of “Planning for economic development and social justice”, such as those of the public distribution system, primary education, primary health, labour and employment.

But the lists being only indicative and not mandatory, States have devolved functions as they please. Many have devolved them on paper only. Further, while the functions may have been devolved, on paper or otherwise, the necessary funds and functionaries that need to go along with the functions have not been devolved. Both the M.N. Venkatachaliah and Moily commissions have mooted that the list of functions should be made mandatory. As already noted, the funds that should go with the functions are missing. As for the functionaries, they are missing too.

For instance, urban planning continues to be done by bodies such as the Bangalore Development Authority (BDA) and its functionaries are accountable to the State government and are not answerable to the BBMP. The same with the Bangalore Water Supply & Sewerage Board and the Karnataka Slum Development Board, though water supply and slum development are functions to be devolved to ULBs in the 12th Schedule. Neither the funds nor the functionaries of these bodies have been devolved to the BBMP. Hence municipalities have not been able to perform all the functions assigned to them under the 12th Schedule.

States are reluctant to transfer all functions to local bodies mentioned in the 12th Schedule of the Constitution. States also resist assigning rights and powers to local bodies. A vested political motive is reflected all through the provisions of states' laws. Hence the list of functions to be devolved to urban local bodies under the 12th Schedule should be made mandatory through the Constitutional Amendment.

Lack of executive powers to elected representatives

The conformity legislations of States have failed to recognise the paradigm shift in powers of elected representatives vis-a-vis the bureaucrats that needed to be brought about with the third tier being made a constitutional body, similar to the Central and State governments. Thus the colonial legacy of giving all executive powers to the Commissioner of the ULB has continued while the Mayor continues to remain a figure-head with only ceremonial functions. Mr. Sivaramakrishnan of the Centre for Policy Research says, "The terms of mayors vary from one to two years in many states and, in some, up to five years. The election procedure alternates between direct and indirect elections in different states and frequently changes, as shown by Rajasthan and Himachal Pradesh recently. If the government feels that bureaucrats and parastatals can do a better job, it should be candid about it and give up all pretences of elected self-government." There is a need to spell out through a Constitutional Amendment executive powers to the Mayor and elected representatives and also fix indirect election of Mayor as the standard (similar to the election of CMs and PMs in the state and central governments) as directly elected persons tend to become authoritarian and dictatorial.

Weak State Election Commissions

The first mandate of the 74th CA is that urban local bodies should always be governed by an elected body to give them democratic legitimacy. The State Election Commission (SEC) is the constitutional body empowered to conduct the local body elections under the 73rd and 74th CAs, as per Article 243K and Article 243ZA. However, unlike the Central Election Commission and its state branches, and despite what the 74th CA says, the powers of the SECs have been determined by the State governments and these vary in each State. As Mr.K.C. Sivaramakrishnan and Bhanu Joshi of the Centre for Policy Research point out, "The three critical processes in an election — preparation and updating of the electoral rolls, delimitation and preparation of the reservation roster and last, the conduct of the election — are managed by multiple institutions. In some states, the state government decides on the reservation and delimitation roster, the district commissioner, tehsildar or a specially appointed officer under the broad supervision of the SEC updates the electoral rolls, while the SEC is in charge of the conduct of the election."

The control by State governments, such as Karnataka, over the delimitation of wards, the preparation of the reservation of roster, and the issue of notification of elections has resulted in inordinate delays in the conduct of elections. In the case of the delay in the election to the Bruhat Bengaluru Mahanagara Palike (BBMP) [Greater Bengaluru Municipal Corporation] in 2015, the State Election Commission expressed its helplessness in conducting the elections before the Courts as only the last task of conducting elections is entrusted to it while the other two preparatory tasks are all in the hands of the State government. It was only after the intervention of the Supreme Court that elections were held to the BBMP. Earlier too, the urban local body elections in Bengaluru were delayed for four years between 2006 and 2010 and Administrators appointed to run it on the excuse that Bengaluru 's municipal boundaries were being extended to create Greater Bengaluru. Hence there is a need for a Constitutional Amendment to empower the State Election Commissions to conduct regular local body elections, as in the case of the Central Election Commission, without waiting for political sanction.

Inadequate grants from State Finance Commissions

Though the State Finance Commissions are supposed to determine the share of ULBs in the divisible pool of State's taxes commensurate to the 18 functions in the 12th Schedule supposed to be performed by them, the grants from the SFCs to ULBs have never been adequate for performing all these functions. Thus, especially big cities, have to always go with a begging bowl to the State governments to be able to fulfil their functions. The budget for BBMP for example is based on expected grants from the State government. But the State government is under no mandatory obligation to fulfil these expectations and it may or may not provide the promised grants, resulting in the BBMP being unable to keep the promises made to the citizens in its budget.

Mr. K.C. Sivaramakrishnan has pointed out that "the 11th, 12th and 13th Central Finance Commissions have all urged clarity and enhancement of financial resources, including an independent tax domain" to ULBs. There is a need to fix a formula for the devolution of finances from the State to ULBs and an independent tax domain for them through an Amendment to the 74th CA.

Dysfunctional Metropolitan Planning Committees

The 74th CA also included provisions for a District Planning Committee under Article 243ZD for development planning for the district, including both rural and urban concerns. Similarly, under Article 243ZE, a Metropolitan Planning Committee was to be set up for each multi-municipal metropolitan area with a population of 10 lakh or more. Both these bodies were meant to replace top-down planning by the Central and State Governments for the ULBs and PRIs and bring planning to the district and metropolitan level to be done by the PRIs and ULBs.

However, Mr. K. C. Sivaramakrishnan finds the composition of these two bodies deficient. He says, "...the composition of the two committees heavily favours elected members of the panchayats and municipalities. The proportion is four-fifths of the total number in the case of DPCs and two-thirds for MPCs. According to a recent CPR study, in the metropolitan areas of Mumbai, Kolkata, Chennai, Bangalore and Hyderabad, non-municipal urban territories, special purpose bodies, elected representatives of the state legislature and Parliament, as well as business and industry, are

important stakeholders. The restricted design of the MPC does not allow for flexibility or adequacy of representation. This is a major reason why the MPC, though a constitutional requirement, has not been set-up at all, except in Kolkata and Mumbai. Even in these areas, they are practically non-functional. What, then, is the purpose of letting this flawed amendment remain as it is?"

In Bengaluru, the MPC was set up after 23 years of the 74th CA through a Court order but has remained dysfunctional. Parallely, the BDA has been conducting public consultations to prepare a Revised Master Plan 2031 for Bengaluru. So, why are there two planning bodies for Bengaluru? In addition, the State government is also making several plans for Bengaluru outside the Master Plan, such as for the steel fly-over, the elevated corridors, etc. All these decisions are not being taken by the MPC. Also, while BDA prepares a mainly spatial and zoning plan, the MPC is required to prepare development plans on 15 items, including urban poverty alleviation, etc., along with mechanisms for monitoring and assessing outcomes.

This is the reality, although Article 243ZF of the 74th CAA clearly stated that any legal provisions, which are inconsistent with the provisions of the 74th CAA, unless amended or repealed earlier, "shall cease to be valid at the end of one year from the commencement of the 74th CA", i.e. 1994. Hence the power of BDA to prepare the Master Plan for Bengaluru has become automatically void and the planning powers should rest only with the MPC. Implicit in the Constitutional amendment is the objective that the State government should devolve planning powers for metropolitan areas to the third tier of government and desist from itself making plans for them.

In his book 'Governance of Mega-Cities', Mr. Sivaramakrishnan favours an amendment to the Constitution to expand the composition of the DPC and MPC to give representation to many more stakeholders.

Differences between 73rd & 74th CA

Several differences existed between the 73rd and 74th Constitutional Amendments as they were drafted by different committees though their goals were the same. The conformity legislations of Karnataka also perpetuated the differences. For instance, There is in Karnataka now one elected Gram Panchayat representative for a population of 400 under the

Panchayat Raj (PR) Act, whereas under the KMC (Amendment) Act of 1994, there is one elected councillor for each ward for 30-35,000 population in big cities like Bangalore. There is neither an area nor population basis for fixing the limits of a ward. Representation ratio in urban areas is very high. It needs to be brought down by having elected ward committee members from sub-wards, so that elected representatives can approach their citizens effectively and more frequently.

Also, while the grama panchayat president is indirectly elected by the members of the GP, and is hence one among equals, the councilor in urban areas is directly elected by the entire ward. Thus while the GP president has to pay heed to the opinions of all the other members of the GP who have elected him president on the decisions taken in the GP, the councilor in the urban ward has no such compunction to listen to the other members of the ward committee who are mostly nominated members and hence ignores them. This anomaly can be set right only through an amendment to the Constitution, making the election of the ward councillor indirect as in the GPs, so that he is one among equals.

Ward Committees (WC)

Noting that in very huge urban areas, even the municipality, or third tier, may still be too distant a body for the citizen, the Nagarapalika Act mandated the formation of local area committees, called ward committees, to carry out most of the functions of the municipality. While the Act says that all cities with more than three lakh population shall have ward/s committees, it does not bar smaller cities also from having them. The 74th CA gave state governments the option to form wards committees, either for every single ward in the urban body or for a group of wards.

It also left the composition, territorial jurisdiction and the manner of filling up the seats in the wards committees to the State governments. Most states have gone in for nomination of ward committee members. Kerala is the only state which has opted for election of ward committee members so far. The procedure for making nominations of ward committee members is non-transparent and undemocratic. There is no participation of the people of the area in the selection process. No applications are called for publicly, there is no public scrutiny of nominations and filing of objections, and no transparency in the mode of final selection. Many nominated members and

NGOs were unsuitable, having criminal records or having no proven “knowledge of municipal affairs”. In Karnataka, for instance, councilors have been asked to nominate the ward committee members and they have filled these bodies with their spouses, relatives, party workers and party office-bearers, negating the very purpose of forming ward committees which is to make the councillor accountable to citizens. This existing structure of urban governance is not inclusive of citizen participation.

Unless ward committees have the power to impose financial penalties on ward-level officials with whose functioning the ward committee is dissatisfied and unless they also have the power to terminate contracts, such as garbage and road contracts, if the contractors fail to perform properly, effective decentralisation cannot happen. If all such tasks are to be approved and sanctioned only by the Commissioner or higher-level officials, despite having ward committees, the red-tape and delays in decision-making will continue.

Ward committees should be allowed to plan, budget, monitor and social audit all works in their wards through the constitutional amendment.

Area Sabhas

Under the purview of Jawaharlal Nehru National Urban renewal Mission (JNNURM) of 2005, enactment of a Community Participation Law (CPL) was made a part of the mandatory reforms to be brought about by the beneficiary states. A Model CPL was made available to States for the purpose. It suggested a modification of the existing two-tier system of urban local governance of municipal council and ward committee into a three-tier system by adding the Area Sabha/Mohalla Sabha as the lowest layer, as a parallel to the Grama Sabha of the rural areas, a provision that was missing in the 74th CA. The Area Sabha Representative was to be elected by the Area Sabha, a body of all voters of the Area (three contiguous polling booth areas) and he was to be an automatic member of the Ward Committee. Other 10 members were to be nominated to the ward committee representing various interest groups. The Model CPL also called upon States to have one ward committee per ward. Several states have passed/enacted a CPL or modified their existing laws incorporating crucial points of the CPL.

A study by CIVIC Bangalore on “Comparing Community Participation Laws across States” by Shyam Singh compares these states' laws with JNNURM's CPL and Parivartan's Model Nagararaj Bill (NRB). Comparison of CPL and NRB indicates that CPL is relatively weaker than what has been proposed in Parivartan's NRB. Review of the states' laws indicates that states have not followed the provisions made in the CPL completely.

The most compromised arena in these laws is the autonomy of the Area Sabha/Mohalla Sabha. Ward Committees are also not equipped with essential functions, rights and powers. Line of control still exists with the municipality. Many states have not provisioned Area Sabha and stay with two-tier system of urban governance. This is against the spirit of the CPL to strengthen community participation.

None of the states provides financial autonomy to AS/MS and WC. And, very few provide planning, budgeting, monitoring and social audit functions to these structures. Most of the functions assigned to AS/MS and WC are either to advise or assist the municipality only. AS/MS and WC are not provided primary responsibility of implementing such functions.

There is a majority of nominated members in AS/MS and WC instead of elected members.

None of the states has been able to provide model practices. Karnataka for example has resorted to nomination of Area Sabha Representative by the councillor. And the ASR is not a member of the ward committee. The Karnataka Act has also given veto powers to the councillor on the decisions of the ward committee.

Reflections from experiences of participatory urban governance across the world show that citizen participation is a key to effective and outcome-driven process of urban governance. This report concluded that all states' laws, in their present form, are not likely to make any impact on the ground in enhancing citizens' participation.

It is not too well known that an alternative Model Nagararaj Bill had been prepared by Anna Hazare, Arvind Kejriwal, Medha Patkar, etc., called the 'Parivartan Bill' which advocated total direct democracy by citizens, rather than the 'participatory democracy' put forward by the government's Bill of

the same name. The Parivartan Bill proposed that the Area Sabha should have the power to allow/disallow any commercial or industrial activity or any land use conversion or acquisition of any land and the terms and conditions on which it is allowed; to decide the public purpose for which land is being acquired; to allow/disallow removal of a slum /displacement until those being removed are resettled, to get all encroachments removed from public land; have first right and control over all natural resources in its jurisdiction, such as land, CA sites, water, lakes, etc. Whether such direct democracy should be accepted in our 'representative system' needs a wider debate.

A bane of current municipal affairs is the lack of an effective and timely grievance redressal system at ward-level. For this, CIVIC had recommended the adoption of the provisions of the Right to Hearing Act of Rajasthan. The ward committee should review on a weekly basis at a public hearing every Friday, between 12 noon and 3PM, all grievances and the delivery of services within the time limit, as per the standards stipulated under the Citizens' Charter, giving the complainant citizen or applicant a Right to be Heard. Written replies on every grievance should be provided to the complainant within 21 days, stating reasons for rejection of an application, if any. The Zonal Commissioners of the municipal corporation should review on a fortnightly basis any escalated grievances about the delivery of services which are not redressed by the ward committee.

It would be advisable to bring into a Constitutional Amendment all the features of the Model Community Participation Law and the desirable features of the Parivartan Bill so that there is effective citizen participation at the grassroots level in urban areas through Area Sabhas and Ward Committees , which are directly elected by the citizens.

Issues that need further discussion and inclusion

Committee to be set up to review the functioning of the 74th CA

A committee to review the entire gamut of provisions relating to the implementation of the 74th Constitutional Amendment in its true spirit needs to be set up, headed by a public figure and members devoted to the cause of decentralisation, to review the conformity legislations of States and present a revised set of amendments to the Constitution. The following suggestions could be included in the Constitutional Amendment itself so that they become mandatory for all States to follow.

Officials to be ex-officio members of ward committees

All ward-level officials of the municipal corporation and jurisdictional water board officials shall be ex-officio members of the ward committee. The concerned jurisdictional officials of the ESCOM, city bus transport corporation, city police, slum board, social welfare dept., food inspector, labour inspector and HMs of primary schools, anganwadi workers and PHC doctor should attend the ward committee meetings whenever they are called upon to do so. The jurisdictions of these departments should be harmonized with that of the wards.

Portfolios for ward committee members and sub-committees

Each member of the ward committee can be allocated different portfolios depending on his expertise and interest. Ward committee members holding particular portfolios could be federated at the city level to constitute a city-level forum on that particular subject and have consultative status at city-level on that subject before policy decisions regarding that domain are taken. Sub-committees can be formed under each of these ward committee members with a particular portfolio. Interested citizens can be co-opted to serve on these sub-committees under each ward committee member.

Provision for recall and 'no confidence'

There should be a provision for calling a 'No confidence motion' by ward committee members or by 51% of Area Sabhas against the chairman for not conducting meetings or for any other violation of the Act and Rules. Members of the Ward Committees who do not attend three consecutive meetings should be disqualified.

Ward HDI and Ward Social Infrastructure Index

There needs to be an Information & Statistics Committee at ward-level which will collect the necessary data and create:

- A Ward Human Development Index (HDI) with information on life expectancy, literacy, income levels, IMR, MMR, malnourishment and nutrition status, BPL lists, eligibility lists for old-age, widow, physically-challenged pensions, etc.
- A Ward Social Infrastructure Index to indicate number of PHCs, schools, anganwadis, day-care centres

Ward 5-year Vision Plan

The Ward Committees should be asked to prepare a 5-year ward vision plan as per a Performance Management System (PMS) based on human development and social infrastructure outcomes at ward level. Targets need to be set and outcome indicators developed for measuring these. Monitoring and review need to be based on performance on those indicators. The Area Sabhas need to be involved in setting targets and reviewing municipal performance.

Activity mapping

There should be proper activity mapping of functions between the corporation, ward committees and area sabhas and should be exclusively done by those levels without interference from higher levels. The basis should be that what can be done at the lowest level is best done at that level. Ground-level officials of the state's line departments or para-statal bodies performing functions now listed for discharge by the wards committees, such as urban poverty alleviation schemes, slum clearance, etc., should be made accountable to the wards committees.

Funds and bills of ward committees

Funds to be released to the ward committee only on its conducting mandatory ward committee meetings. 40% funds of municipality to be given as untied funds. Ward committees to certify bills and impose penalties on officials and contractors for non-performance of garbage and road contractors, etc.

Role of the secretary of the wards committee

The Secretary of the Ward committee should be placed above and be authorised to give directions to officials of the health, engineering, education, and other departments of the Corporation, to give effect to decisions taken by the wards committee. His designation should be suitably changed to, say, CEO of the ward committee. The CEO should be provided with enough secretarial support to take follow-up action on the resolutions of the ward committee and to report action taken on every point raised during the wards committee meetings.

Right to information

The ward committee should “display all vital information pertaining to development projects, especially receipt of funds and how they are being spent on a prominent board for the information of the public. Second, all relevant records should be open to inspection and third, members of public should also be able to obtain photocopies of documents pertaining to development projects as also matters of general public interest. Particularly, all bills, muster rolls, vouchers, estimates and measurement books should be available...” (Mr. N. C. Saxena quoted by the Urban Management Committee)

Functions of Area Sabha

Area Sabhas should plan, prioritise and budget for their areas and conduct social audits. The ward committee should collate all the plans from the Area Sabhas and prepare a ward budget. The Area Sabha shall be consulted before allowing /disallowing any commercial or industrial activity or any land use conversion, or acquisition of any land. If yes, on what terms and conditions; at least fifty voters shall be present at the meeting of Area Sabha;

Grievance redressal

Citizens with any grievances shall be enabled to submit their grievances at the ward office daily, receive an e-acknowledgement with unique tracking number and be asked to appear for a 'right to hearing' on the next ward public hearing. The ward committee shall review on a weekly basis all grievances and the delivery of services within the time limit in the Citizens' Charter. If the stipulated timeframes for service delivery is not adhered to, compensation would be paid to the applicant. The deputy and zonal commissioners of the Municipal Corporation shall review on a fortnightly basis any escalated grievances.

Ward committee as institution of local self-governance

The ward committee should be given the power to decide on the use of public land, properties and resources in the ward, including parks and playgrounds, use of civic amenity sites, location of public amenities, etc. MLA's, MP's, etc., should not be allowed to interfere in local issues which are in the exclusive domain of the wards committees. Ward committees & Area

Sabhas should get all information on projects planned for their areas, give consent to projects planned in their ward, give inputs on CDP, budget, etc.

Organisation of citizens

Ward committees should foster the organisation of citizens in their areas, as required under the Act, and interact regularly with them. A network of neighbourhood groups / street-wise citizens' committees, which federate into Community Development Societies and ward-level federations should be actively promoted to create downward accountability mechanisms of the ward committees to the constituents, i.e. the people and community. This to be preferred rather than upward accountability of wards committees to the Municipal Commissioner, Council, etc.

Amendments needed to the 74th Constitution Amendment

- The list of functions to be devolved to urban local bodies under the 12th Schedule should be made mandatory.
- PDS, primary health care, primary education, anganwadis, and labour law enforcement need to be included in the 12th Schedule and all the functions in it made mandatory for Urban Local Bodies and further down to Ward Committees.
- Executive powers should be given to the Mayor and elected representatives and also mandate indirect election of Mayor (similar to the election of CMs and PMs in the state and central governments) as directly elected persons tend to become authoritarian and dictatorial.
- Empower the State Election Commissions to conduct regular local body elections, as in the case of the Central Election Commission, without waiting for political sanction.
- There is a need to fix a formula for the devolution of finances from the State to ULBs and an independent tax domain for them through an Amendment to the 74th CA.
- Expand the composition of the DPC and MPC to give representation to many more stakeholders.
- Make the election of the ward councillor indirect as in the GPs, so that he is one among equals.

- Include all the features of the Model Community Participation Law and the desirable features of the Parivartan Bill so that there is effective citizen participation at the grassroots level in urban areas through Area Sabhas and Ward Committees.
- The Area Sabha Representative (ASR) should be elected by the Area Sabha and he should be a member of the ward committee.
- Other 10 ward committee members should be selected by various interest groups themselves.
- No veto power should be given to the councillor on the ward committee
- A clear division of functions and powers –activity mapping- should be demarcated between the municipal council, ward committees and area sabhas.
- Core functions such as planning, budgeting, monitoring and social audit must be assigned to ASs/MSs and WCs.
- A Ward Human Development Index (HDI) should be prepared with information on life expectancy, literacy, income levels, IMR, MMR , malnourishment and nutrition status, BPL lists, eligibility lists for old-age, widow, physically-challenged pensions, etc.
- A Ward Social Infrastructure Index should be prepared to indicate number of PHCs, schools, anganwadis, day-care centres
- The Ward Committees should be asked to prepare a 5-year ward vision plan as per a Performance Management System (PMS) based on human development and social infrastructure outcomes at ward level Targets need to be set and outcome indicators developed for measuring these. Monitoring and review need to be based on performance on those indicators.
- The ward committee should be given the power to decide on the use of public land, properties and resources in the ward, including parks and playgrounds, use of civic amenity sites, location of public amenities, etc.
- A fixed share of allocation of local revenue, control over natural resources including their management must be given to local bodies without any checks.
- Primary responsibility for implementing all 18 functions provided in the

12th Schedule of the Constitution must be given to ASs/MSs and WCs. However, supervisory powers may be given to the municipality.

- The ward committee should be given the power to decide on the use of public land, properties and resources in the ward, including parks and playgrounds, use of civic amenity sites, location of public amenities, etc.
- Ward committees should have the power to impose financial penalties on ward-level officials with whose functioning the ward committee is dissatisfied.
- Ward committees should have the power to pass bills and terminate contracts, such as garbage and road contracts, if performance of the contractor is poor.
- Ward committee should have the power to allow/disallow any commercial or industrial activity or any land use conversion or acquisition of any land and the terms and conditions on which it is allowed;
- Ward committee should decide the public purpose for which land is being acquired; to allow/disallow removal of a slum /displacement until those being removed are resettled, to get all encroachments removed from public land;
- There must be a grievance redressal system at the ward level on the lines of the Right to Hearing Act of Rajasthan.
- There should be provision for no confidence motions / recall/removal of the elected representatives.
- There should be provision for capacity-building programmes for citizens must be prepared and implemented by recognized experts at the Area level, so that citizens can participate in the governance processes with utmost capacity.

8. Unless the Rural Poor are Enabled to Enforce their Rights Amendments will Only be on Paper

Narinder Bedi, Ganesh Iyer and Manisha Krishnapurkar

(Young India Project)

In 1994 the Central Government passed two 73 & 74 which brought the Panchayat Raj Institutions: Zilla Parishad, Mandal Parishad and Gram Panchayat under the Constitution.

We would consider it as a commendable decision especially when more than 60% of the seats for Sarpanch and wards were reserved for women, SC, ST and BC in the Act. But the power centres in the gram panchayat have not changed. Though the gram panchayat elections are not party based the candidates are party backed and the Sarpanch is either a rich upper caste member, or if a woman, SC or BC then the candidate is a front for a politically powerful person. Therefore it would be wrong to assume that by making Gram panchayats responsible for implementing pro poor legislations or pro poor programs, the rights of the poor will be protected or the benefits of the programs intended for them will be delivered to them.

The gram panchayats of today are neither democratic nor can they be trusted to protect the rights and the interests of the rural poor.

The theory behind the concept of a gram panchayat may be good but when you consider when and why panchayats were created historically, and study the social, economic, and political situations existing then and compare them to the situations existing now, you will realise that the Gram panchayats of the past had a very different social role.

The gram panchayats of the past were not democratic nor were they expected to protect individual interests, they were responsible to ensure that caste, if Caste panchayat, or if Gram panchayat that the existing customs and rules were followed by all the members of the panchayat.

Where and when transgressions were committed the panchayat had the right to punish the transgressor. Each panchayat had the right to do justice according to the rules established by its community, it was a decentralised but not a democratic system. One of the ugly remnants of the past caste panchayat system is honour killing.

We have come a long way since then. Today, we not only have caste but also gender and class interests interacting in each village and those interests have to be respected in accordance with the rights given by the constitution.

The demands on the gram panchayat have changed drastically and the gram panchayat is unable to protect or promote the interests of women and the weaker castes and classes in the Gram panchayat. It is time to bring about corrective changes at the Gram panchayat level in order to enable the poor to access the rights given them by legislation.

We would like to share our experiences with gram panchayats in Anantapur District of Andhra Pradesh where we have been working with rural working poor since 1975.

In 1983, it was brought to our attention that 1500 acres of land, belonging to 4 gram panchayats of CK Palli mandal which were being cultivated by 600 landless families and these had been registered in the names of families and friends of a powerful land lord of the area.

This was illegal because government lands can only be assigned to the actual landless cultivators. But the four gram panchayats where the lands were located were helpless because the landlord was too powerful to be opposed. We helped the 600 families to form a union and started informing them about the concerned act and building their confidence to challenge the land lord. What we did not understand at that time was, we were building a counterforce in each gram panchayat in order to enforce the land rights of the families. By 1984 the union had got the government to cancel the old pattas and start issuing new pattas to the 600 families.

We had the same experience in helping labourers to implement Bonded Labour Abolition Act, the gram panchayats were helpless because the landowners had bonded them. What we were starting to learn was that gram panchayat institutions are controlled by the politically and economically powerful sections of the village.

Young India Project (YIP) was fortunate that by the time the panchayat Raj Act of 1994 inclusive of amendments 73 and 74, had been legislated, YIP was working in six districts (Anantapur, Chittoor, Kadapa, Kurnool, Nalgonda, and Nellore) of Andhra Pradesh and had formed Rural Poor

Mandal Unions in 131 mandals with a membership of 156,000 from the gram panchayat.

Since 1983 we had been organising unions of rural working poor to take up struggles for rights given them by legislations: land reforms, bonded labour, house sites on the name of women, Atrocities Act., etc. Because of the rights struggles under taken by them over 10 years, our unions were ready to participate in the panchayat Raj elections of 1995.

We studied the Act, simplified it and prepared a training manual. We conducted trainings through our Mandal Union Secretaries in the 131 mandals where YIP and our solidarity groups were working. We got our Gram panchayat unions to select candidates under reservations for SC, ST, BC, minorities and women from among the union members.

In total 60 % of the ward seats were reserved and even the Sarpanch seats were under proportional reservation. In the past landed classes would put up dummy candidates under reservation and get them elected. We insisted that candidates chosen under reservation should be union leaders and not lackeys of the rich.

511 union members were elected as Sarpanch out of them 176 women and 5820 were elected as ward members and out of them 1,795 were women. With donor funding 721 Sarpanch and 6,840 ward members were given training by us on the Panchayat Raj Act, even non-union members attended our trainings. Under the Act we explained the responsibilities, and the powers given to the Gram panchayats.

In December 1995, to undermine the importance of gram panchayats TDP introduced PVP (Prajala Vaddaku Palana Programme) in the panchayats under which officials went from panchayat to panchayat conducted gram sabha meetings to select works to be taken up in the gram panchayat, and the works were taken up under Shramadan and the gram panchayats were by passed.

Worse was yet to come, under the amendments, 29 subjects were to be transferred to the gram panchayats by each State. Andhra Pradesh did not transfer any of the 29 subjects to the gram panchayats. So gram panchayats had neither responsibilities nor resources.

Our unions started an agitation to devolve the 29 subjects to the gram panchayats but met no success.

It was obvious that the MPs, MLAs, Zilla Parishad and Mandal elected leaders who were from financially and politically strong sections of society had no intention of allowing independent gram panchayat political leadership to develop.

But our unions did not give up and in the year 2000, 13,000 union members contested in the panchayat raj elections and 11,200 of them got elected. In spite of our agitations the 29 subjects were not devolved.

We learnt a very clear lesson that all our political institutions are under the control of the rich and the upper castes and even if we capture gram panchayats they can still sabotage the exercise of power given to panchayats in the Act. By then we had already developed alternate power of the poor in the form of gram panchayat Samakhya which only included rural working poor in each gram panchayat (SC, ST, BC, Minorities and women) and they had been trained and organised to protect and demand and receive all pro poor legislated rights and benefits.

We had campaigned for Right to Work from February 1986 onwards and MGNREGA was legislated in 2005.

In 2010 we convinced the Government of Andhra Pradesh through a two year pilot project, which demonstrated that unless the MGNREGA workers are given rights trainings, are organised into gram panchayat Samakhya (GPS) and enabled to enforce the rights given under the Act. MGNREGA will fail.

This convinced the government of Andhra Pradesh and they passed Government Order G.O. MS. 80 and created APNA [Andhra Pradesh NGO Alliance] as a partnership between the government and NGOs. Under this partnership NGOs were made responsible to give trainings to the MGNREGA workers, organise them into GPS, and conduct monthly meetings to resolve rights based issues.

By 2015, 235 NGOs had formed GPS in 425 of the 625 mandals in divided Andhra Pradesh. We are proud to state that no other state has created such a grass root power of the poor rural workers at the gram panchayat level.

In most of the States MGNREGA is being implemented through the gram panchayats and the Sarpanch are making money by hiring contractors who use machineries (both are non-negotiable under the Act) to do MGNREGA work. Unless the poor capture gram panchayats no amendment or constitutional change can help them. The most notorious violators of rights of the MGNREGA workers and MGNREGA rules are TN, Rajasthan, Karnataka, and U.P.

In 2016 the Government of Andhra Pradesh asked National Institute of Rural Development (NIRD), Hyderabad to evaluate 10 years of implementation of MGNREGA in Andhra Pradesh. They consulted YIP on why and how APNA came into existence and YIP's role in it.

Their evaluation was very positive about APNA but questioned the integrity of many NGOs who had done no work but had collected the salaries of the two workers per mandal paid by the government. Most NGOs consider the government to be corrupt and therefore do not want to work with the government.

Are the NGOs any better? Many of them are equally corrupt and do not care about the rights of the rural poor. The point we are making is: it is false to assume that strengthening the gram panchayats will ensure that the rights and interests of the poor in the gram will be honoured. The fact is gram panchayats may be a grass roots institutions but they are certainly not democratic in their action.

To be democratic one must have opposition, in the Parliament and in the states you have the opposition parties to ensure that the ruling party does not abuse the powers given by the constitution. In the gram panchayats you have no opposition to question the Sarpanch. When the Sarpanch commit fraud who has the guts to stop them?

Therefore if we want to implement pro poor rights and benefits through gram panchayats we must first build a counter force in each gram panchayat by organising those for whom the Act was legislated, into gram panchayat Samakhya, and inform and enable them to demand each right and each benefit.

If we want to build GPSs as counter force of rural working poor at gram panchayat level we do not have to wait for amendments and legislations, we should form GPSs now so that when amendments and legislations come the GPSs are there to ensure that they are implemented. While demanding amendments we should also be organising rural working poor into GPSs to ensure that the rural poor can benefit from those amendments. If we don't do that our effort to bring about the amendment will be a wasted effort.

Now the wind of fraud and rights violations is blowing over Andhra Pradesh MGNREGA officials are telling the Principal Secretary of Rural Development that they don't need APNA/NGOs, Community Resource Persons (CRPs), and GPSs to implement MGNREGA. They will appoint their own CRPs. Why not?

If in other states there are no APNA/NGO appointed CRPs, and GPSs why should Andhra Pradesh have them? If in other States there are frauds why cannot Andhra Pradesh MGNREGA Government Officials, be made free of APNA to do what is happening in other States.

At least in Andhra Pradesh there are NGOs who are fighting with the government to prevent it. But what about the other states, where corrupt politicians and officials commit fraud by violating the legislated rights given to the rural poor? Can Amendments change this grass roots reality?

In ending this paper, we know that the grass roots democracy is the way to the future if we really want to liberate the world from poverty and other social stigmas. YIP's believes that the approach of rights based development is the first step to this and we want the world to join us and make this approach bigger and better to strengthen the weaker sections

9. Panchayati Raj Institution in Operation

Alex Tuscano
(Praxis)

The panchayats are among the oldest institutions for local governance in rural Karnataka. This long standing system of local governance is also known as panchayat Raj (which means rule of village committee). It is a decentralization of power and governance. Panchayat Raj ensures proper execution of rural development programmes. It encourages participation of general people in the development programmes.

Structural Constitution of Karnataka Panchayat Raj

Panchayat Raj in Karnataka follows a three-tier structural constitution. It has elected bodies at each level. Panchayat Raj constitutes of:

- The Gram panchayats at the village level
- The Taluk panchayats at the sub-district (taluk) level
- The Zilla panchayats at the district level

Karnataka has 30 Zilla panchayats, 176 Taluk panchayats, and 5,659 grama panchayats. All the three units of the panchayat Raj have members directly elected by the people. The government does not have any provision to nominate representatives to any of these institutions.

In 1993, the Karnataka government enacted the 73th amendment to the constitution to usher in panchayati Raj, a local government.

Karnataka Panchayat Raj Act, 1993

The Karnataka Panchayat Raj Act, 1993 aims to achieve democratic decentralization especially for the rural areas. Karnataka enacted the new Panchayat Raj Act incorporating all the mandatory provisions of 73rd Amendment to the Indian Constitution.

The objectives of the Karnataka Panchayat Raj Act, 1993 are:

- Establish a three-tier structure for panchayat system at village, sub-district and district levels
- Elect members to the three tiers through direct election at all levels
- Reserve seats for scheduled castes, scheduled tribes and women at all the three levels

- It also provides reservation of seats and offices of chair persons at all levels for the persons belonging to Schedule Castes and Schedule Tribes, women.
- It also provides reservation of seats and offices of chair persons at all levels for the persons belonging to Backwards classes.
- Elect Chairpersons and Vice Chairpersons through indirect elections
- Conduct elections to all the three levels under the State Election Commission
- Empower State Finance Commission to determine the sharing of funds between the State Government and the Panchayat Raj bodies
- Maintain accounts and conduct audits at all the three tiers of the panchayat system

Functions of Gram Panchayat

There have been several amendments to the Karnataka Panchayat Raj Act, 1993 since its inception.

Ward Sabha And Gram Sabha

(Section 3 and 3A substituted by Act 37 of 2003 w.e.f.1.10.2003)

This is the most important component of Panchayati Raj Institution. This can be called totally decentralized living participatory democracy. Democracy has been reduced to casting vote once in five years. But Ward and Gram Sabha gives an opportunity to make democracy living, participatory and dynamic. Every citizen of the ward and the village gets full right to attend and participation in the discussions of panchayat and make suggestions and demand resolution of their problems.

Ward Sabha and Gram Sabha should meet at least once in six months. After the legislation of MGNREGA there should be one more, third, meeting on 2nd October to make the village residents to prepare plans for MGNREGA works to be taken up during that years.

Ward Sabha and Gram Sabha are empowered to generate proposals and determine the priority of schemes and development programmes (grama panchayat development plan) to be implemented in the panchayat area by the Zilla panchayat or Taluk panchayat;

(a) Have to identify the most eligible persons for beneficiary oriented

schemes and forward the same to the grama panchayat for inclusion in its development plan;

- (b) decide on the location of streetlights, street or community water taps, public wells, public sanitation units, irrigation facilities and such other public amenity schemes within the area of the Ward Sabha;
- (c) should assist the activities of school betterment sanghas, Anganawadi, Mahilasamaja, Youth associations, self help groups, women activities in the panchayat area;

Should assist and monitor the activities of public health centres in the panchayat area, especially in disease prevention and family welfare population control and control of cattle diseases and create arrangement to quickly report the incidence of epidemics and natural calamities;

Have power and responsibility to conserve and maintain public properties such as Gomala, tanks, tank beds, ground water, grazing grounds of the cattle, mines etc., within the limits of the Gram panchayats

Praxis which had dalit and agricultural labourers' organizations, Dr.Ambedkar Coolie Karmikara Sangha, in over 150 villages of Devanahalli Taluk, prepared the people for the elections. People were clear that it is going to be a vote for themselves and not for any political party or political leader. While we were trying to take advantage of the reserved seats for the Dalits and Adivasis we also aimed at general seats. People broke their party ranks and rejected the appeal from the upper caste landlords and put up their own candidates.

After the election results were over there were surprising results. Majority of the candidates put up by the Ambedkar sangha under reserve seats got elected. They defeated overwhelmingly those candidates put up by the upper caste landlord under reserved seats. Many who fought under general category too got elected.

The outcome of the elections was a great experience for the dalilts who were excluded from all forms of governance and political power. They were mere voters and captive vote banks of the rich and powerful. But the experience was diabolical.

One they celebrated the success of their election and were looking forward to turn the panchayat in favour of the poor.

But on the other hand, they face severe physical assault from the upper caste. The upper caste could not stomach that the Dalits broke ranks with them and elected their own candidates. Further they even defeated upper caste candidates by electing the Dalits under general category. The people did not expect this and they were not prepared for this assault.

We conducted village by village meetings to review the outcome of the elections and wanted to understand the onslaught on them by the upper caste landlords. The wisdom of the people gave two explanations for the assault.

One, the landlords felt they were losing their hold on the Dalits. They felt humiliated by outright revolt by those who were dependent on the upper caste for work and credit. The Dalits had already started their own credit cooperatives which had reduced their dependence for credit on the landlords.

Two, the members of the sangha realized that when they vote in assembly and parliament elections the candidates are not their immediate neighbours. But in the panchayat elections the Dalits had voted against their own village leaders. This could not be digested by the upper caste landlords.

The experience of atrocity taught them another important lesson that they should remain united and make sure that they are not victimized in any other way. There were attempts to refuse them work in the landlords' farms. This was effectively fought by them as the labourers from the neighbouring villages refused to go for their work.

Panchayati Raj Institution

Panchayati Raj has emerged in the Indian governance as the most important and powerful institution. This institution has brought the government at the door steps of the people in the villages. The village people have complete access to the panchayat functioning through gram sabhas. Any resolution passed by the gram sabha is binding on the local governance and it cannot be over ruled even by parliament. If the citizens use the gram sabhas

effectively there will be a sea change in the development scene at each village.

According to me the most important component of the Panchayati Raj institution is Gram Sabha. It is mandatory for all panchayats to hold at least twice a year Gram Sabha. In Tamilnadu Gram sabhas are held thrice a year. All the citizens coming under a panchayat have right to attend the Gram Sabha meetings. Originally it was the most empowered body of the panchayat. The decisions and resolutions passed by the Gram Sabhas could not be over ruled even by the parliament. But this clause seems to have been amended and the Gram Sabha are now deprived of this power. It is essential that this power should be restored to the Gram Sabha.

In Gram Sabha the majority of the people come from poorer section and they get an opportunity to put forward their problems and put their weight of number to pass those resolutions that will benefit these sections. Gram Sabhas are devoted to prepare village development plans. Drinking water, sanitation, roads, street lights which are often insoluble issues in the villages get resolved by the Gram Sabha making a plan to resolve these issues. Gram Sabha can ensure that the programmes like Primary health care centre, Primary schools, Anganwadi functioning, PDS, food and nutrition programme for the children under five, pregnant and lactating mothers are implemented effectively. Gram Sabha held on October second is supposed to be fully devoted to make plans for to implement MGNREGA. All the works to be undertaken under MGNREGA are decided during this meeting and there will be no excuse for anyone to say that there is not work left to be undertaken under MGNREGA and thereby defeat the objective of employment guarantee for the rural labourers. Gram Sabha can create a committee which can be empowered to monitor the implementation of all programmes coming under MGNREGA, Food Security Act, Right to Education Act, housing right, right to drinking water and sanitation.

Often people in the villages are not aware of the power of the panchayats and Gram Sabhas. The state governments and even the central government do not work with the local governments. The role of the NGOs is very important in the smooth functioning of the panchayats and Gram Sabhas to bring the panchayat Raj Institution in the focus and make the panchayat responsible to the people and make people relate to the panchayat.

Panchayats have been ignored in the role of disaster relief, rehabilitation and disaster risk reduction. Disaster Management Authority of India too has not indicated any role to the Panchayat Raj. In the coastal Kanyakumari districts, the parish priest and the parish councils play a prominent role and the local government and even the police do not find a role in the lives of the people.

Praxis organized several training programmes for the people on "Panchayat Raj Institution". We guided people to prepare village development plans and to participate in the gram sabhas to put forward their plans for the panchayat to implement in the villages.

These programmes have woken up the people to their rights vis-a-vis the panchayat Raj Institution. Some of the panchayat presidents have expressed their anxiety over the growing awareness among the people about their rights which the panchayat should meet. People have learnt what schemes the panchayat should implement and what will be the contribution and fees the people have to pay. The panchayat presidents are unable to refuse people their rights. Earlier the panchayat presidents used to collect three times more than what the money people should pay for obtaining water connection. People's refusal to pay more than statutory fees has unnerved the presidents of the panchayat.

1. The panchayati Raj training has created awareness about the duties of the panchayat, different schemes that panchayat should implement for the people. Street lights, roads, hygiene, health, education, employment and housing are the areas where panchayat should deliver to the people.
2. Gram sabhas are the most powerful instruments in the hands of the people where they can demand for resolutions that will make the panchayat work for the poor. These are non challengeable resolutions. But the panchayat president do not organize statutory Gram Sabhas. Instead they call people get their signatures and give them cool drinks and send them away. People do not know what is Gram Sabha and its purpose for the development of the villages.
3. People have learnt to participate in these gram sabhas. Before the gram sanbha could be held the people meet at their village level and prepare village development plans for their respective villages and present these

in the gram sabha and ask the panchayat and gram sabha to pass resolutions and take measures to implement the programmes of the people. In this manner gram sabhas have truly become people's panchayats.

4. We understood the provisions of Right to Information Act. Some of us used the knowledge to get information from various officers.
5. We understood about fees to be paid to the panchayat towards drinking water, electricity connection etc. as per the government order and taking action to implement the same in our villages. There had been cases where the panchayat presidents used to collect three times as much the fees from the people. These presidents are now very unhappy about the awareness we have and they tend to take revenge on us.

10. Decentralization – The Kerala Experience'

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Kerala is known for not only for its achievements in human development but also for its achievements in democratic decentralization. Local Governments have become an indispensable part of Indian democracy after the enactment of 73rd and 74th Constitutional amendments. Kerala's experience with Local Governments has been distinct in three ways. First, the administrative and financial devolution is more important in Kerala than elsewhere. The part played by Local Self Governments in providing services to people and in formulating and implementing Plans is greater in Kerala than elsewhere. Thirdly the extent of people's participation in Local Governance and development planning is also greater than elsewhere.

Strategy of decentralization in Kerala

Kerala followed the the big bang approach in decentralization. Big bang approach means transfer of Powers, functions and resources to Local Governments at one go. Kerala believes, without this approach real and effective decentralization come into effect. Along with the transfer of power, functions and resources large scale capacity building measures had been taken by the State Government. Giving responsibility and then building capacity, giving powers and then creating procedures and systems, giving funds and then setting up umpiring systems –this was the strategy followed to establish strong Local Governments. To operationalise decentralization, Kerala chose an effective participatory planning process. People's involvement and participation is very large in the planning process.

Principles of decentralization

Effective Local Governance become possible only by holding fast to certain principles and values. The principles such as Autonomy, Rule

of Law, Participation, Due process, Transparency, Accountability, Equity, Responsiveness, Subsidiarity, Consensus, Complementarity etc. are the key principles of devolution of powers laid down by the Committee on Decentralization which have been adhered to by government in practice.

Constitution of panchayats at different levels

- (1) The Government shall, by notification in the Gazette, constitute with effect from such date as may be specified in the notification: -
 - a. a village panchayat for each village or for group of villages.
 - b. a block panchayat at intermediate level; and
 - c. a district panchayat for each district panchayat area and specify the names and headquarters of such panchayats.

- (2) The Government may, at the request of the panchayat concerned, or after consultation with the panchayat and after previous publication of the proposal by notification, -
 - a. increase or diminish the area of any panchayat by including within such panchayat area any village or group of villages.
 - b. alter the name or the headquarters of a panchayat at any level; or
 - c. Provided that any alteration shall not be brought into force before the expiry of the term of the existing committee of that panchayat.

Strength of Panchayats

- (1) The total number of seats in a village panchayat, a block panchayat and a district panchayat to be filled by direct election shall be notified by the Government in accordance with the scale specified with reference to the population of the territorial area of the panchayat concerned.

- (2) The Government may after publication of the relevant figures of each census by notification alter the total number of seats in a panchayat

Strength of Panchayats (2015-2020)

Sl.No	Type of Panchayat	No. of Panchayats	No of Elected Representatives
1	Grama Panchayat	941	15962
2	Block Panchayat	152	2076
3	District Panchayat	14	331
4	Total	1107	18369
Largest Grama Panchayat:Kumili in Idukki District(795.28 sq km)			
Smallest Grama Panchayat:Valpattanam in Kannur District(2.04 sq km)			

Population and Area

The population and area of Village panchayats are large in Kerala compared to other States. Village panchayats have an average population of around 270,000. The density of population is also very high with half of the Village panchayats having a density of population of above 10,000 persons per sq,km. The distribution of Village panchayats according to Population range and area is given below.

Population range	No.of village Panchayats	Area	No.of village Panchayats
Below 10,000	12	Below 10 Sq. Km	51
Between 10,000-20,000	228	Between 10-20 Sq. Km	304
Between 20,000-30,000	418	Between 20-30 Sq. Km	257
Between 30,000-40,000	224	Between 30-40 Sq. Km	122
Between 40,000-50,000	51	Between 40-50 Sq. Km	44
Above 50,000	8	Between 50-75 Sq. Km	62
-	-	Between 75-100 Sq. Km	35
-	-	Above 100 Sq. Km	66
Total	941	Total	941

The large population and size of Village panchayats affects public participation through village-wide grama sabhas. Therefore Kerala has gone in for sub-Village panchayat grama sabhas at the level of the Ward which is the electoral constituency of a Village panchayat Member.

Composition of Panchayats

Composition of Village Panchayat

- (1) Every Village panchayat shall consist of elected members equal to the number of seats notified by the Government.
- (2) All the seats in a Village panchayat shall be filled by persons chosen by direct election in accordance with the provisions of this Act.

Composition of Block Panchayat

Every block panchayat shall consist of: -

- a. elected members equal to the number of seats notified by the Government and all these seats shall be filled by persons chosen by direct election.
- b. the Presidents of the Village panchayats in the territorial area of the Block panchayat.

Composition of District Panchayat

Every district panchayat shall consist of,

- a. elected members equal to the number of seats notified by the Government and all these seats shall be filled by persons chosen by direct election..
- b. the presidents of the block panchayats in the district

No representation of MPs or MLAs in panchayats at any level in Kerala.

The members of a panchayat whether or not chosen by direct election shall have the right to vote in the meetings of the panchayats except in meetings of office bearers election and non confidence motion voting.

Election of Chairpersons

Chairpersons of panchayats at Village, Block and District levels shall be elected by, and from amongst, the elected members thereof. No Direct Election at any level

Reservation

- a. Seats reserved for the SC and the ST, in proportion to their population
- b. Not less than 50% of the total number of seats reserved for women belonging to the SC or, as the case may be, the ST.

- c. Not less than 50% (including the number of seats reserved for women belonging to the SC and ST) of the total number of seats reserved for women.
- d. No Reservation for backward class of citizens

Reservation of offices of Chairpersons

- a. The offices of Chairpersons reserved for SC, and ST in proportion to their population.
- b. 50% of the Office of Chairpersons are reserved for Women.
- c. No Reservation for backward class of citizens.

Rotation of Seats

- a. The seats reserved for SC, ST and women shall be allotted by rotation to different constituencies in a panchayat.
- b. The number of offices of chairpersons reserved shall be allotted by rotation to different panchayats at each level.
- c. The number of seats reserved shall be determined by the Government in accordance with the provisions of the panchayat Raj Act.
- d. Reserved seats shall be allotted by the State Election Commission or the Officer authorized by it.
- e. The State Election Commission or the Officer authorized by the State Election Commission shall determine, as to which constituency, the constituencies reserved for SC, ST or Women shall be allotted according to rotation, by draw of lots.

Duration of Panchayats

- a. The term of office of members shall be five years from the date fixed for convening the first meeting.
- b. A casual vacancy shall be filled within six months after the occurrence of the vacancy, through a bye-election.

Dissolution of Panchayats

- a. If a panchayat fails to pass the budget or majority of its members resign from office or is disqualified, the Government shall dissolve the panchayat.

- b. If the Government is of opinion that panchayat persistently makes default in performing the duties imposed on it by law or in carrying out the orders or directions lawfully issued by the Government or exceeds or abuses its powers, the Government may dissolve the said panchayat.

Government shall inform the decision to dissolve a panchayat to the State Election Commission and shall seek the advice of the Ombudsman

Disqualifications for membership

As per the clauses stipulated in the Panchayat Raj Act, the State Government is not the authority to take decision on disqualification. Whenever a question arises as to whether a member has become disqualified, the question shall be referred before the State Election Commission, for decision.

Grama Sabha, the body of Voters

Constitution

All persons whose names are included in the electoral rolls relating to a village comprised within the area of a village panchayat shall be deemed to be constituted as grama sabha of such village. Each constituency of village panchayat may be specified as a village under clause (g) of article 243.

Grama Sabha Meetings

Grama Sabha shall meet at least once in three months at the place fixed by the Village panchayat. The convener of the Village panchayat shall, compulsorily invite the member of the Block panchayat, the District panchayat and the Legislative Assembly representing the area of the grama sabha.

Special Grama Sabha Meeting

The Convener of the grama sabha shall, on a request in writing made by not less than ten per cent of the members of the grama sabha, convene a special meeting of the grama sabha within fifteen days with the agenda given along with the request.

Convener of that Grama Sabha

The member of a village panchayat representing the constituency comprised in the area of a village shall be the convener of that grama sabha;

however due to any reason, physical or otherwise, the convenor is unable to perform his functions as such, the President may appoint a member representing any adjacent constituency as the convenor.

Presiding Grama Sabha Meeting

Meeting of the grama sabha shall be presided over by the President of the village panchayat or in his absence the vice-president or in the absence of both of them by the convenor of grama sabhas.

Reports to be presented before the Grama Sabha

The village panchayat shall place before the grama sabha a report relating to the developmental programmes relating to the constituency during the previous year and these that are proposed to be undertaken during the current year, and the expenditure therefore, the annual statement of accounts and the administration report of the preceding year. If in any circumstances, any decision of the grama sabha could not be implemented, the president shall report the reason therefore, before the grama sabha.

Recommendations and Suggestions of Grama Sabha

The village panchayats, the block panchayats and the district panchayats shall give due consideration to the recommendations and suggestions, if any, of the grama sabha.

Powers, Functions and Rights of The Grama Sabha

- a. to render assistance in the collection and compilation of details required to formulate development plans of the panchayat;
- b. to formulate the proposals and fixing of priority of schemes and development programmes to be implemented in the area of Village Panchayat;
- c. to prepare and submit to the Village panchayat a final list of eligible beneficiaries in the order of priority relating to the beneficiary oriented schemes on the basis of the criteria fixed;
- d. to render assistance to implement effectively the development schemes by providing facilities locally required;
- e. to provide and mobilise voluntary service and contribution in cash or in kind necessary for the development plans;

- f. suggesting the location of street lights, street or community water taps, public wells, public sanitation units, irrigation facilities and such other public utility schemes;
- g. to formulate schemes to impart awareness on matters of public interest like cleanliness, environmental protection, pollution control and to give protection against social evils like corruption, illicit and clandestine transactions;
- h. to promote harmony and unity among various groups of people within the area
- i. of the grama sabha and to organise arts and sports festivals to develop goodwill among the people of that locality;
- j. to monitor and render assistance to the beneficiary communities engaged in the developmental activities within the area of the Village panchayat.
- k. to verify the eligibility of persons getting various kinds of welfare assistance from the Government such as pensions and subsidies;
- l. to collect information regarding the detailed estimates of works proposed to be implemented in the area of the grama sabha;
- m. to make available details regarding the services to be rendered and the activities proposed to be done by the concerned officials in the succeeding three months;
- n. to know the rationale behind every decision taken by the panchayat regarding the area of the grama sabha;
- o. to know the follow up action taken on the decisions of the grama sabha and the detailed reasons for not implementing any of the decisions;
- p. to co-operate with the employees of the village panchayats in the sanitation processes and rendering voluntary service for the removal of garbage;
- q. to find out the deficiencies in the arrangements for water supply, street lighting etc. within the area of the grama sabha and to suggest remedial measures;

- r. to assist the activities of parent-teacher associations of the schools within the area of the grama sabha;
 - s. to assist the public health activities especially prevention of diseases and family welfare, within the area of the grama sabha.
 - t. to perform such other functions as may be prescribed from time to time.
- (2) The grama sabha shall, in its ordinary meeting or in the special meeting convened for the purpose; discuss the report referred to in sub-section (6) of section 3 and it shall have the right to know about the budgetary provisions, the details of plan outlay, item wise allocation of funds and details of the estimates and cost of materials of works executed or proposed to be executed within the area of the grama sabha.
- (3) The Audit report of the performance audit report placed for the consideration of the grama sabha shall be discussed in the meeting and its views, recommendations and suggestions shall be communicated to the concerned village panchayat.
- (4) The quorum of the grama sabha shall be ten per cent of the number of voters of its area and the procedure for convening and conducting meetings of the grama sabha shall be such as may be prescribed. Provided that the quorum of the meeting of a grama sabha which was adjourned earlier for want of quorum shall be fifty when convened again.
- (5) The Officers of the Village panchayats shall attend the meetings of the grama sabha as may be required by the President and an officer nominated by the Village panchayat as the co-ordinator of the grama sabha shall assist the convenor in convening and conducting the meetings of the grama sabha and in recording its decisions in the Minutes Book and also in taking up follow up action thereon.
- (6) The grama sabha may appoint, elect or constitute, general or special sub-committees for the detailed discussions on any issues or programmes and for the effective Implementation of the schemes and the decisions and in furtherance of its rights and Responsibilities. Provided that such committees shall consist of not less than ten members of whom, not less than half shall be women.

- (7) Resolutions may be passed on majority basis, in the meetings of the grama sabha in respect of any issue within its jurisdiction, however, effort should be made to take decision on the basis of general consensus as far as possible.
- (8) When beneficiaries are to be selected according to any scheme, project or plan, the criticism for eligibility and order of priority shall be fixed by the panchayat subject to the terms and conditions prescribed in the scheme, project or plan and such criterion shall be published in the manner prescribed and intimated to the grama sabha.
- (9) The priority list prepared by grama panchayat after inviting applications for the selection of beneficiaries and conducting enquiries on the application received, shall be scrutinized at the meeting of the grama sabha in which the applicants are also invited and a final list of the deserving beneficiaries, in the order of priority, shall be prepared and sent for the approval of the grama panchayats. Provided that the Village panchayat shall not change the order of priority in the list sent by the grama sabha for approval.

Responsibilities of Grama Sabha

- (i) dissemination of information regarding developmental and welfare activities;
 - (ii) participating in and canvassing of programmes of Health and Literacy and such other time bound developmental programmes;
 - (iii) collecting essential socio-economic data;
 - (iv) providing feed back on the performance of development programmes;
 - (v) resort to moral sanction to pay taxes, repayment of loans promote environmental cleanliness and to maintain social harmony;
 - (vi) mobilise local resources to augment resources of the panchayat;
 - (vii) supervising development activities as volunteer teams and
 - (viii) make arrangements for reporting urgently incidence of epidemics, natural calamities, etc.
- (2) The grama sabha shall make periodical reports to the village panchayats in respect of matters specified in a section 3 A of Panchayat Raj Act.

Powers, Duties and Functions of Village Panchayat

It shall be the duty of the village panchayat to meet the requirements of the village panchayat area in respect of the matters enumerated in the Third Schedule of Panchayat Raj Act. The Functions of the Village panchayat are divided in three categories

- (1) Mandatory Functions
- (2) General Functions
- (3) Sectorwise Development Functions

Prepare every year a development plan in respect of the functions vested in it, maintain and manage the institutions and assets under its control and ownership, construct and maintain village roads, protect and maintain community properties, provide drinking water, street light, sanitation etc. are also the responsibility of Village panchayat. The panchayat has the power to acquire immovable assets required for the public purpose and it has the power to accept donations.

Planning

The panchayat at every level shall prepare every year a development plan in respect of the functions vested in it and it shall be submitted to the DPC. The village panchayat shall prepare the development plan having regard to the plan proposals submitted to it by the grama sabhas. The panchayats shall in addition to the annual and five year plans; prepare a perspective plan foreseeing a period of fifteen years, and such plan shall be sent to the concerned DPC.

Institutions and Officials under LSGIs

The hallmark of Kerala's decentralization is the transfer of public service delivery institutions and officials to Local Governments. The important institutions transferred are the following.

- Krishi Bhavans (Agriculture Offices)
- District Farms-Agriculture and Animal Husbandry
- All veterinary institutions at district level and below
- Primary, Secondary and Higher secondary Schools
- Dispensaries, Primary Health Centers, Community Health Centres , Taluk Hospitals and District Hospitals under the three streams of

medicine, namely; Allopathy, Ayurveda and Homoeopathy

- Anganwadis
- Pre metric and Post metric hostels for SC and ST students

Institutions and Officials under a Village panchayat

- Village panchayat Office and staff
- Krishi Bhavan(Agriculture Office) and Staff
- Veterinary sub-centres, dispensary/hospital and staff
- Matsya Bhavan (Fisheries Office) and the post of Sub Inspector of Fisheries
- Village Extension Office and Village Extension Officer
- Anganwadis, Balawadis and Day Care Centers and staff
- Allopathy, Ayurveda and Homoeopathy Health Centre/Dispensaries/Hospitals and Staff
- Lower Primary and Upper Primary Schools and Staff

Staff in a Village panchayat

Staff pattern varies according to the category of the Village panchayat. An average Village panchayat would have the following staff.

Secretary	: 1
Assistant Secretary	: 1
Accountant	: 1
Clerks	: 5
Office Attendant	: 1
Total	: 9

The full control and supervision of the institution and employees transferred to the panchayat under the Act shall rest with the panchayats concerned.

Resources

Fiscal decentralization initiatives in Kerala constitute a best practice with the State following the classical principles of devolving funds to Local Governments. Local Governments in Kerala have different financial sources to meet their administrative and developmental expenses and providing services to public.

Sources of Income of Village panchayats

(A) Own Revenue

- i) Tax revenue: These are taxes directly demanded and collected by Village panchayats. The following are the major taxes.
 - Property tax
 - Profession tax
 - Entertainment tax
 - Advertisement tax
 - Service tax
 - Show tax
 - Surcharge
- ii) Non tax revenue: The non tax revenue could be classified as follows (1) License fee (2) Gate fee from Public markets, Public parking place etc. (3) Rent (Income) from property (4) Income from property other than rent (5) Permit fee (6) Registration fee (7) Service /User charges (8) Income from ferries (9) Fines and penalties (10) Other source/Sundry items(Interests, endowments, contributions etc.)

(B) Grant –in-aid from State Government

Grant –in-aid from Government could be classified as follows

i) General Purpose, Maintenance and Development fund

As per the recommendations of State Finance Commissions funds are devolved to Local Governments in three streams namely, General purpose fund for meeting the expenditure on traditional functions and establishment expenses, Maintenance fund for maintaining the assets of Local Governments including those transferred as part of Decentralization and Development Fund for Development functions.

Maintenance fund is devolved in two categories – one for maintenance of roads and th other for maintenance of non-road assets; whereas the Development Fund is in three categories namely- General Sector , Scheduled Caste Sub Plan(SCSP) and Tribal Sub Plan(TSP). The distribution of all category of grant-in-aid are given in the following tables.

Budget Allocation For LSGIs In the State Budget:2017-18

SI No	Category of Fund	Amount(Rs)
1	General Purpose Fund/Fund for Traditional Functions	1364,65,53,000
2	Fund for Maintenance of Assets –Non Road Assets	655,03,45,000
3	Fund for Maintenance of Assets –Non Road Assets	1528,41,39,000
4	Fund for Expansion and Development(Development Fund)	6227,50,00,000
	Total	9775,60,37,000
Total Amount Rupees 9775.60 Crore		

Details of Plan Allocation for LSGIs 2017-18 (Development Fund)

SI.No	Local Government Institutions	General Sector	Special Component Plan (SCSP)	Tribal Sub Plan (TSP)	Total(Rs. In Lakhs)
1	Grama Panchayats	240957.92	58266.15	9998.41	309222.48
2	Block Panchayats	55619.71	20159.25	3471.07	79250.03
3	District Panchayats	55619.71	20159.25	3471.07	79250.03
4	Municipalities	76166.42	10810.26	657.45	87634.13
5	Corporations	59581.24	7810.09	2.00	67393.33
	Total	487945.00	117205.00	17600.00	622750.00
(Total Rs. 6227.50 Crore)					

Grant-in-aid for implementing State and Centrally Sponsored Schemes

Certain Plan and Non-Plan Schemes, which include Centrally Sponsored Schemes(CSS) and State Sponsored Schemes have been transferred to Local Self Government Institutions for Implementation. The distribution of such scheme funds shown below.

Distribution of Plan and Non-Plan Scheme funds to LSGIs (2017-18)

SI.No	Local Government Institutions	Plan (Rs. In thousands)	Non Plan (Rs. In thousands)	Total (Rs. In thousands)
1	Grama Panchayats	818100	21400823	22218923
2	Block Panchayats	0	48806	48806
3	District Panchayats	0	48806	48806

4	Municipalities	205600	2988773	3194373
5	Corporations	181600	1666848	1848448
	Total	1205300	26488588	27353356
(Total Rs 2735.33 Crore)				

The hallmark of fiscal decentralization is that every single rupee is distributed among Local Governments according pre published and transparent norms and formula. There is no discretion in in deciding and transferring of funds to Local Governments.

Accounts and Audit

The panchayat shall maintain such books of accounts and other books in relation to its accounts and prepare an annual statement of accounts. The panchayat shall submit the annual accounts and statements to the Audit Authority. The Director of Kerala State Audit Department and his nominees shall be the auditors of the panchayat. The State Performance Audit Officer and his nominees are the auditors for the Concurrent Audit. This audit is called Performance Audit. In addition to these two audits Accountant General and his nominees are also conducting audits in LSGIs.

The auditors shall conduct a continuous audit of the accounts of the panchayat and shall after completing the audit for a year or for any shorter period or for any transaction or series of transactions, send a report to the panchayat concerned and duplicate copies thereof to the officer authorised by the Government in this behalf.

Support Institutions and Mechanisms

To strengthen Local Governance, increase transparency and efficiency and increase participation and reduce governmental control over LSGIs several support institutions are functioning . Important among them are the following

(A) The State Election Commission

State Election Commission is the Authority to

- i) Delimitation of wards
- ii) Determination of Reservation seats and offices
- iii) Preparation of electoral rolls
- iv) Verification of Accounts

- v) Conduct of Elections
- vi) Oath to elected representatives
- vii) Conduct of Office bearers Election and Standing Committee Election
- viii) Conduct of no-Confidence motions and disqualification of defector

(B) The State Finance Commission

State Finance Commission is constituted under clause (1) of Article 243-I of the Constitution of India and section 186 of the Kerala Panchayat Raj Act, read with clause (1) of Article 243-Y of the Constitution of India and section 205 of the Kerala Municipality Act, 1994.

The Commission has the mandate to review the financial position of the panchayats and Municipalities and make recommendations.

(C) Delimitation Commission

Delimitation Commission is an independent body headed by the State Election Commission to carry out delimitation of wards.

(D) District Planning Committee

Kerala is the only State with active District Planning Committees. District Planning Committees in 14 Districts. Total Members in District Planning Committee is 15. The Chairperson of the DPC is District Panchayat President, and Secretary is the District Collector. One expert person nominated by the Government is also a member in DPC. The remaining 12 members of DPC are elected representatives. State Election Commission is the authority to conduct election. MPs and MLAs are Permanent Invitees.

(E) Ombudsman for Local Governments

An authority for Local Self Government Institutions, at State Level known as 'Ombudsman' for making investigations and enquiries, in respect of charges on any action involving corruption or maladministration or irregularities in the discharge of administrative functions, in accordance with the provisions of this Act by Local Self Government Institutions and Public Servants working under them and for the disposal of such complaints. This is a high power institution manned by High Court Judge.

(F) Appellate Tribunals

This is a judicial tribunal set up in the State Headquarters with a District Judge as the Tribunal to consider the appeals by citizens against the

decisions of Local Governments. An appeal on any notice issued, order passed, or action taken by the panchayat or a revision on a decision taken by the panchayat or standing committee on any appeal shall lie to the Tribunal.

(G) State Development Council(SDC)

The State Development Councils functions as the forum for discussion of policy and operational issues relating to local governance. SDC is headed by Chief Minister and consists of all Ministers, Opposition Leader, Vice Chairman of State Planning Board, the Chief Secretary, Mayors and Presidents of District Panchayat.

(H) Right to Information

The Chapter XXV A describes the right of citizen to get information from panchayat Raj institutions and the responsibility of LSGI in this regard. This chapter was included in the panchayat Raj Act in 1999. Every person bonafide requiring any information shall have the right to get such information in accordance with the procedure prescribed.

(I) Citizen Charter

Every panchayat shall, in the manner prescribed, formulate citizens charter regarding the different categories of services rendered to the citizen by the panchayat, the conditions for such service and also the time limit for such service and publish it in the name 'citizens charter'. The citizens charter shall be renewed and updated periodically at least once in a year.

Challenges

The role of Local Governments is very significant in Kerala. People expecting a lot from the LSGIs. To perform the expectations of the people is very challenging. Developing the third tier of administration and governance is not without challenges. The major challenges faced by Kerala Local Governments are the following.

- (a) Enough power has been given to the grama sabhas. But the functioning of grama sabhas is not satisfactory. Meetings of grama sabhas are moreover ritual and the participation of voters is poor.
- (b) Better off sections of the society who control the means of production and can be able to control political decisions have not taken keen interest in intervening the local development process.

- (c) The capacity of large number of elected representatives to manage and control the local governments and its bureaucratic wing is not at the expected level. Rotation system in reservation to some extent blocked the coming of experienced persons as administrators.
- (d) The strongest Local Government is the Village panchayat which has the weakest capacity at the official level. Lack of professionalism at the cutting edge is a threat.
- (e) Managing Professional and technical persons has not been not very easy for local governments.
- (f) Ad-hocism , lack of vision, lack of expertise and lack of local level statistics etc. leads to poor and need based planning.
- (g) Persistent demands from the people and democratic instincts of elected representatives have combined to give rise to a tendency to spread recourse thin.
- (h) Inclusiveness is the motto of Kerala's decentralization. Even though certain marginalized sections have not benefitted in a better manner.
- (i) Ombudsman, Appellate Tribunal State Development Council etc. need to be pro active to fulfill their responsibilities.
- (j) Setting up an Audit Commission is yet to be operationalised.
- (k) To ensure accountability and questioning of decision making, people's monitoring and social audit is necessary. But it has not been effective and widespread.

In its report, The Committee on Decentralization stated that, Power should go to people and should not be blocked at any level. By learning by doing efforts have been made a lot to achieve the Committees' objective. Even now, after twenty years of experience we know, we have to walk a long distance to reach the destination.

11. Jammu and Kashmir Panchayat Raj

Rao Farman Ali

(Researcher and Peace Practitioner)

Introduction

Jammu and Kashmir is situated between 32° —15` to 37°—05` latitude north and 72° — 35` to 80°—20` longitude east and is commonly known as Kashmir—the princely state of 1947. It is bounded by China in north and east, Afghanistan in north – west, Pakistan in west and in south by India and has complex physiographic divisions, consisting of—Poonch and Jammu, with two further subdivisions- Shivalik; Sub-Himalayan zone—Pir Panjal range—Valley of Kashmir; blessed with a fertile soil, glorious climate, grand mountains, fine rivers and lovely lakes—main Himalayan mass—Gilghit-Hunza.

Climate of Kashmir differs from province to province, from Alpine (Ladakh) to the sub-tropical (Jammu) are the extreme variants of climate while as valley of Kashmir owing to its location and topography. Leh is coldest - 23.3°C [winter], while as Jammu hottest above + 46°C [highest recorded in summer]. Srinagar has also recorded as low as -20°C [winter] and as high as 38.3°C [summer] but temperature of Kashmir valley is generally moderate. Western disturbances are more active than the monsoon currents throughout the region. The average rainfall is about 65cm, with variations ranging from 5cm in Gilghit to 8cm in Ladakh, 17.5cm in Skardu-Deosai, 67.5cm in Kashmir valley and 115cm in Jammu. Most significant features of western winds is the snowfall which is partly influenced by altitude as well. It ranges between 20-30cm at Srinagar and 80-90cm at Sonamarg. It is also heavy on the Pir Panjal ranges¹.

Kashmir was called 'Kasperia' by ancient Greeks and the Chinese pilgrim Hien-Tsang, visited the valley in 7th century called it 'KaShi-Mi-Lo'. But by people of Kashmir from an unknown time, Kashmir is commonly called as Kasheer as mentioned in early authentic Kashmiri literature e.g Shaikh Noorudin Noorani^{A.R} which refers to its ancient usage. Major Linguistic groups like Indo-Euro and Indo-Aryan are Kashmiri. others are Dogri, Gujari, Pahari, Ladakhi, Punjabi, Lahanda (Potohari), Urdu, Balti,Shina

1) Rao Farman Ali , Kashmir Under The Shadow of Gun , Uppal Publishing House, 2012, New Delhi,pp1-2

(Dardi; spoken chiefly in Gilgit and Gurez area), Tibetan, Burushaski (mainly spoken in Hunza, Nagar and Yasin) (Kishtwari, Siraji, Rambani, Poguli, Banjwahi which are included with Kashmiri), Hindustani (Urdu and Hindi).

Kashmir valley, surrounded by the mountain range is inhabited as long as 4000 B.C. Crafts and handworks like Carpets, Shawls, Papier-mâché, Wood Carving, Stone Carving, Namda Work, Chain Stitch, Embroidery (Crewel Work), Needle Work (Sozni [knitting]) and Gabba making, and most important is literature and poetry—attracted the world attention. So far as the definition of 'Kashmir' itself is concerned can be a source of confusion since 'Kashmir' is a term that describes both a region as well as the Valley of Kashmir.

The region of Kashmir is generally used to denote the borders of the princely state of Kashmir which, since the partition of the Indian sub-continent, spans three countries, India, Pakistan and China. Kashmir as a greater term comprises several sub-regions, each with varying climates and cultures. This child of the mighty Himalayas receives abundantly the paternal grace in the form of captivating scenic beauty, lush green pastures, meadows and condescending gleaming snow covered mountain peaks which capture the changing tinges of the bright sun, in so many ways the perennial murmuring rivers and rivulets and the vast lakes give it a peculiar character to the nature lovers. In its valleys and paddocks, grow the trees and herbs of rare quality, including the most precious of all flowers - the Kesar (Saffron). In its forests are found the best pines, deodars and a typical species of animals including rare antelope Hangul. The orchards yield apples, apricots, pears, walnuts and cherries of world standard. On its green meadows graze the lambs bearing the superb fluffy wool, spun into fine wools. Wular Lake (Asia's biggest fresh water lake), Dal lake with house boats, Gulmarg, Pahalgam and their glaciers besides other tourist places like Nishat, Shalimar, Harvan, Chasma Shahi, Achabal, Kokernag, Aharbal have given it an international fame as a tourist spot, moreover some new places which include Kongwatan, Kousarnag, Nagputin, Chatapal, Chohurnag, Yousmarg are emerging tourist destinations although visited only by locals. Kashmir is the only region in the subcontinent which has a continuous recorded history and dates back to 4000 B.C. Twenty-one dynasties of Hindus, Buddhists, Kushans, Huns and Zoroastrians had ruled Kashmir, historically it was regarded as one of the major Centre of Sanskrit

learning, during the epic period with a republican system of government from the capital city of Karna-Rajapuram-gatva-Kambojah-nirjitastava, shortened to Rajapura, and has been identified with modern Rajauri. The oldest authentic books on Kashmir history are Nilmat Puran and Rajatarangini.

Akbar the Mughal king of India ruled Kashmir in 1586. Mughals ruled the State for about 167 years. Mughals visited Kashmir quite often and took steps to add to its loveliness by raising stylish buildings and beautiful gardens. But Mughals did not bother much to improve common man's lot and treated Kashmir as a colony. On the contrary, they forcibly introduced a typical way of living on Kashmiris even though not a single strategic investment was made in Kashmir. This was a very effective recipe to deprive them of their erstwhile bravery, militancy and self-confidence, in order to eliminate all chances of revolt by them.²

The decline of Mughal power in Kashmir paved way for Afghans. The Afghan rule over Kashmir, which lasted for 67 years (1752 to 1819 A.D.) was one of cruelty and loot. Most of the Afghan governors of Kashmir crushed the people ruthlessly and without any doubt proved cruel rulers. But there was something worse in store for Kashmiris. The Sikhs conquered the State and made the colony, literally a prison for common Kashmiris. The Sikh rule, although lasted for only 27 years, was worse than the Afghan rule. Continuous slavery and ruthless suppression by foreign rulers had badly demoralized Kashmiris hence they could not put up a concerted resistance against alien domination and suppression and that subjected them to yet another slavery. In 1846 when the British conquered Kashmir as a result of a defeat which they inflicted on the Sikhs with the treacherous help of Gulab Singh, their defence minister and made a commercial deal of Kashmir to him like a commercial commodity for a sum Rs 7.5 million (Nanak Shahi Takas) of this most ignominious and inhuman transaction was made on 16th March 1846 under an agreement called the Treaty of Amritsar.

Although, Maharaja Rabi Singh as a Dogra ruler of Kashmir took the initiatives of codification of his country through RPC (Ranbir Penal Code) 1873 and raised Police as an Institution of Law and Order, but this was

2) Rao Farman Ali, Jammu Kashmir: Resolution Through Reconciliation for Peace and Dignity, Sabzaar Communications, 2010, Anantnag, p4.

unfortunately used to serve the interests of ruler rather than ease the people from sufferings.

During the reign of Maharaja Hari Singh the Kashmiri Pandits had also started an agitation within the State known as 'Kashmir or Kashmiris'. The demand of the leaders of the said movement was the recruitment of the educated sons of the soil in Government services, ban on the sale of land to outsiders, freedom of the press, freedom of association and assembly. On 31st January 1927, Maharaja Hari Singh issued an order defining the term 'Mulkis', i.e. the State Subjects. The said order provided that the State Subjects would be preferred over outsiders in cases of employment in the Government services. The said order also provided that outsiders, from now onwards, would be unable to purchase immoveable property within the State of Jammu and Kashmir.

State Subject Order

The term "State Subject" was sanctioned by Maharaja Hari Singh (vice Private Secretary's letter No. 2354, dated the 31st January, 1927 to the Revenue Member of Council) vide Notification No. I-L/84 of 20 April 1927 and was later promulgated for general information. Another notification was issued by order of Maharaja dated Srinagar, the 27th June 1932 vide No.13L/1989 on foreign policy.³

Process for Democratisation

It is pertinent to mention that on 22nd April 1934, Maharaja Hari Singh, in order to establish a Legislative Assembly and in order to secure his legislative, executive and judicial powers enacted a Constitutional Act of his country known as Regulation No. 1 of Samwat 1991 (1934 AD). Under the said regulation a Legislative Assembly for the State called the Praja Sabha consisting of a total of 75 members was constituted. Of the 75 members, 33 members were elected members of whom 21 members were Muslims, 10 members were Hindus and 2 members were Sikhs. But the right to vote was restricted to only 3% of the total population. Only literate persons having an annual income of Rs.400/- or more were permitted to vote. Women and illiterates were totally debarred from exercising any franchise. Though the said modifications were meant to give ventilation to the

3) Source: Constitution of Jammu and Kashmir, 1957

growing dissatisfaction amongst the Muslim population of Kashmir, the Maharaja continued to be the absolute Monarch exercising all of his previous legislative, executive and judicial powers without surrendering any of his previous powers. No rule made by the Praja Sabha would be deemed to be passed until and unless the Maharaja gives his assent thereto. The said regulation did not satisfy the peoples demand for representative government. The newly formed Muslim Conference made people especially the Muslim subjects of Maharaja to feel and ventilate and express their grievances in a more organised and effective manner. The people were totally dissatisfied with the Regulation No. 1 and regarded the Legislative Assembly formed under it as a 'mock' Assembly. Muslims totally dissatisfied with the said regulation No.1 the Muslim Conference made an immediate demand for 'Responsible Government', which was there and then rejected by Maharaja Hari Singh. In protest the Muslim Conference called upon the people to observe 'Responsible Government Day'. Sheikh Abdullah wanted all Muslim and Non-Muslim groups to participate in the said agitation, but the Hindus and other Non-Muslim groups refrained from participating in the said movement.

To be precise, the Muslim Conference seemed to support the ideals of the Muslim league, that ultimately led to the creation of a separate state of Pakistan, while the National Conference sided with the Indian National Congress and averred united nationalism. Under concerted attack, Abdullah felt it advisable to revive his base and reestablish his Muslim credentials. He began to take particular interest in Islamic projects, including the renovation of the famous Hazratbal Mosque and in the Islamic Endowments Committee that maintained the many mosques and shrines in the Valley.

Episode of 1947

Importantly, when tribesmen on 22 October 1947 attacked the sovereign country ruled by Dogra Maharaja, it disturbed the State's law and order situation, the chaotic situation led to bloodshed of innocent people, around 0.300 million Muslims mainly in Jammu were killed by unruly Hindu fanatic mobs supported by some Hindu officials of Maharaja including Hindu extremist organisations purposely to change the demography of Jammu region, in this situation almost 0.75 million Muslims migrated to newly created Pakistan. However, some Hindus in Jammu and Kashmir located in

the areas mainly Kotli—presently administered by Pakistan— were killed by tribesmen.

After that Maharaja Hari Singh felt threatened and he did a conditional accession of his country with Union of India through instrument of accession which is having 9 Articles. However, Indian Constitution is not directly applied to the State in view of Article 7 of the Instrument of Accession but indirectly by Article 370 of Indian Constitution giving it a Special Status. However, Maharaja's Country got divided into Indian administered Kashmir (IaK) and Pakistan administered Kashmir (PaK), small portion is under China. Equally, out of Article 370 of Indian Constitution ; Article 35A was derived through Presidential Order of 1954 to give special protection to the people of Jammu and Kashmir. Further to award legitimacy to the political agreement between Srinagar and New Delhi called as “ Delhi Agreement” of 1952.

History of panchayat institutions

The founder of panchayati Raj in Jammu and Kashmir was Maharaja Hari Singh this institution as a law was established 1935 and later by an amendment in 1941, the list of functions of the 1935 Regulation were widened by an Act of 1951— essentially, the panchayati Raj Institutions (PRI) were adopted to be re-established by Constituent Assembly of the State.

The Jammu and Kashmir Government thereafter enacted the Village panchayati Act in 1958 replacing its own already existing the 1951 Act as the Constitution of Jammu and Kashmir came into existence of 17 November 1956 and enacted from 26 January 1957. For this purpose various committees were stipulated who attempted on panchayati Raj in the State. Finally in April 1988 it was introduced in the State Legislative Assembly and came into existence in March 1989 commonly known as JAMMU AND KASHMIR PANCHAYATI RAJ ACT-1989).⁴

The preamble of the JAMMU AND KASHMIR PANCHAYATI RAJ ACT-1989 states in chapter 2nd, every Halqa panchayat shall consists of such number of Panchs not less than seven and not more than eleven including the

4) Source: Government of Jammu and Kashmir .

Sarpanch, as the prescribed authority may, from time to time, fix in this behalf:

- Provided that if the prescribed authority is of the opinion that women are not adequately represented in the Halqa panchayat, it may nominate such number of women to be members thereof, as it may deem fit.
- Provided further that the number of women members to be nominated as such shall not exceed 33% of the total number of elected Panchs.
- Provided also that while making nomination the composition of the Halqa panchayat with reference to representation of Scheduled Caste, Scheduled Tribe and other weaker sections shall be given due consideration.

The first election under the Act of 1989 was held in 2001 after a gap of 12 years, although they could not be successful in all parts of the state due to the prevailing situation. The panchayat bodies could not, therefore, become functional in the State in the last two decades. In the intervening years, panchayat institutions in other parts of India have evolved with the backing of the 73rd Amendment act 1993. The Amendment envisions a larger and vibrant role for panchayati Raj has been recognized with wider power and financial resources not merely as institutions of political participation but institutions of social and economic development. The strengthening of the panchayati Raj Institutions (PRIs), with properly defined role in local planning, decision-making and supervision, is being advocated as an essential part of the governance reforms agenda by both the government as well as civil society groups.

Large-scale panchayat Elections

In 2011 panchayat elections were held in Jammu and Kashmir after 23 years at all the three levels that are; village, block and district level. As per the Cabinet Decision No.40/3/2011 dated 09-02-2011 and Cabinet Decision No. 170/21/2011 dated 21.09.2011 vide Government Order No: 1126-GAD of 2011 dated 22-09-2011, the Government of Jammu and Kashmir ordered the devolution of functions and activities to these Institutions have specified the devolution of functions and activities to these institutions in respect of 14 departments. The panchayati elections were held in 16 rounds from April to June 2011. The panchayat elections were quite vibrant compared to the previous panchayat elections which were held in 2001, these were much

more meaningful and participatory. The number of Sarpanchs and Panchs in the State were 4,130 and 29,719 respectively, out of which 9424 were women, with State level average voter turnout of about 77.71 percent. All Sarpanchs and Panchs were duly elected in accordance with the provision of Jammu and Kashmir panchayat Raj Act, 1989. The young people and women were quite involved in the electoral process with many of them joining the election fray as the candidates for Panch and Sarpanch constituencies.

This election shows the positive impact on women and youth in political participation at grass root level. The panchayats are expected to play an important role in ruler development of Jammu and Kashmir, particularly after 2011. It was the great achievement of National Conference government to make the panchayati Raj elections possible as the conditions were not favorable in Jammu and Kashmir.

However, Union government used such like languages like mainstreaming of youth and naïve people; as a result it halted the effective working of PRIs and some of the elected Panchs and Sarpanchs became casualty to the hostile bullets.

Planning and Development Boards

In March 2014 State Assembly passed the Jammu and Kashmir panchayati Raj (Amendment) Bill 2014 which seeks to allow payment of honorarium to chairpersons of District Planning and Development Boards and Chairpersons and Vice-chairpersons of Block Development Councils.⁵

Moves for Amendments

However, in July 2016 amidst protests and walkout by the opposition parties, Jammu and Kashmir Legislative Council passed an amendment to panchayati Raj Act, allowing indirect elections of Sarpanchs by Panchs instead of a direct election.

The government moved a Bill to amend Jammu and Kashmir panchayati Raj Act, 1989 in the Upper House, which was opposed by the Congress and the National Conference Legislators who termed the amendment as a step to

5) Source: Government of Jammu and Kashmir .

“discredit and dis-empower” the panchayati Raj Institutes in Jammu and Kashmir.

On the other hand, the coalition government of PDP-BJP in Jammu and Kashmir defended the amendment, saying it was the procedure at highest level of governance at the state and central government.

Later in December 2016, Governor of Jammu and Kashmir N. N Vohra consented to issue JAMMU AND KASHMIR PANCHAYATI RAJ (AMENDMENT) ORDINANCE 2016 to empower the State Chief Electoral Officer but practically nothing was done.

Again on 4th November 2017, State's Governor, N N Vohra, has agreed for the promulgation of JAMMU AND KASHMIR PANCHAYATI RAJ (AMENDMENT) ORDINANCE, 2017, so that any further delay in commencing preparations for the conduct of the pending elections is prevented.

Moreover, Governor N.N Vohra has consented to the issue of the J&K panchayati Raj (Amendment) Ordinance 2017 to empower the State Chief Electoral Officer to determine and de-limit Halqa panchayats and to conduct the panchayat elections.

Challenges

- Lack of security for panchayati leaders
- Lack of people's participation in elections
- Lack of educated leaders for panchayati Raj

Way Forward

Since 73rd Amendment which advocates decentralised planning by granting more powers to panchayats is not applicable in Jammu and Kashmir. Yes, amendment has the provisions for a separate Finance Commission and Election Commission for panchayati raj institutions. Importantly Jammu and Kashmir has a separate constitution. So, the Central or Parliamentary decisions are to be ratified by the State Assembly then and only then amendments or the laws can be made applicable to the State, provided all mainstream parties in Jammu and Kashmir show the political determination for the betterment of panchayat.

12. Status of Panchayat in Puducherry

KA Jeganathan

(President, Federation of Local Bodies of State of Puducherry)

Puducherry got independence on 1st November 1954 after nearly 260 years of remaining a colony of Britain and France. At that time there were five zones namely Puducherry, Karaikal, Mahe, Yanam and Chandra Nagoor. Chandra Nagoor got independence in 1950 and merged with West Bengal. Pudhucherry and Karaikal lie near the Tamil Nadu border. Yanam is in the Godavari district in Andhra Pradesh and Mahe is near the Arabian Sea in Kerala.

Even though Puducherry got freedom from France in 1954 itself it merged with Indian union in 1962 only. Then it was brought under the direct control of Indian government as a union territory with a legislative assembly. Local body elections aiming to give enormous power to common men were held right from French rule upto 1968.

Elections to the local bodies were held in 2006 after a gap of 38 years as per the direction of Madras High court. Through this election 96 village panchayats, 10 commune panchayats, and 5 municipalities totaling 113 local bodies were formed and 1138 people representatives elected under the 73rd and 74th amendments performed their duties of public welfare.

Even though the tenure of their posts ended in 2011 fresh election has not been conducted in the last six years thereby insulting our Indian constitution. The Congress government refused the representatives of village panchayats, commune panchayats and municipalities who are elected as per the 73rd and 74th amendment to execute their rights. Chain protests, fasting, bandhs and agitations were organized between 2006 and 2011. Then some GOs were issued. As per 243G, work was allotted in 24 departments and as per 243W work was allotted in 18 departments and were given to village panchayats and municipalities.

Local body elections could not be held because of the instigation of the state government and also due to the inefficiency of the opposition parties. Based on the case filed by a woman councilor that OBC reservation was not maintained on the basis of population and also the reconstitution of wards,

the election was withheld by the judiciary itself since the government stand is that OBC reservation is not based on 2016 census. Elections can be conducted for all sections (ladies, SC, ST, OBC and general) based on 2011 census in accordance with our constitution.

A meeting was held for getting the public opinion at the end of year 2016 after the reconstitution of wards. But so far no. GOs were issued based on the outcome of the meeting. So we here in this meeting are stressing the point of conducting elections for all the local bodies.

Both the central government and state government should come forward to conduct the elections, to allocate necessary funds and also to constitute Finance and Planning Commission. Gram Sabha should be constituted as per the amendment of the law section 243-A. Puducherry union consists of an area of 290 square km of Puducherry, 161 square km of Karaikal, 9 square km of Mahe and 20 square km of Yanam. We stress the point of immediate election for transparent administration, improving infrastructure facilities and also for remarkable change in all sectors.

The decision of gram sabha should be made final. It should not be from bottom to the top posts reserved for women and should not become a puppet in the hands of men. The SC and ST section should be recognised and should be established also. The root level local bodies should be strengthened as in Kerala.

13. Panchayat Raj in Scheduled Areas of Jharkhand

Praveer Peter

(Solidarity for Peace, Ranchi, Jharkhand)

India created history in fiscal federalism via the landmark 73rd and 74th amendments to the constitution in 1992. These amendments introduced a three-tier local self government to the federal structure, giving constitutional recognition to rural local self-government institutions and enabling decentralised governance through panchayati Raj institutions.

Nevertheless, there was not much interest in strengthening participatory democracy by way of making the gram sabha the corner stone of the panchayati Raj system. While the constitution of gram sabhas was made mandatory in states, the powers and functions of the gram sabhas have been left to the discretion of the state legislatures. As a result, different states have developed powers and functions for this body differently.

Following the amendment, a high-level committee was constituted under the chairmanship of Dileep Singh Bhuria, charged with recommending how scheduled areas should be incorporated under the 73rd Amendment Act. As recommended by this committee, a Bill was introduced in parliament and passed on December 19, 1996. Subsequently, after getting the president's assent on December 24, 1996, the 73rd Amendment Act was extended the Scheduled Areas mentioned under Clause (2) of Article 244 of the constitution. It became mandatory for the states to amend their existing panchayat Acts to conform with the Extension Act within a year.

The Panchayati Extension to Scheduled Areas Act, 1996 (PESA) has made it mandatory for states having scheduled areas to make specific provisions for giving wide-ranging powers to tribals on matters relating to decision making and development of their community.

Technically, when the Act refers to extending the provisions of Part IX of the constitution to the schedule V areas, politically, it gives radical governance powers to the tribal communities and recognises its traditional community rights over local natural resources. It not only accepts the validity of "customary law, social and religious practices, and traditional management practices of community resources", but also directs the state government

not to make any law which is inconsistent with these. Accepting a clear-cut role for the community, it gives wide-ranging powers to gram sabhas, which had hitherto been denied to them by the law makers of the country.

As the situation stands at present, no gram sabha can hope to function without going through revenue officers at various levels, and in a majority of cases, required sanctions are denied by inordinate delays or outright refusals. No stretch of common property can in anyway be rightfully owned and controlled by any village, communities, groups, or people. And the gram sabha's power to accord such ownership is never recognised. This is a direct violation of the PESA Act which clearly states that;

“A state legislation on the panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources. Every gram sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution”.

Status of panchayati raj - Jharkhand

Introduction

Following its Constitution as a separate State, Jharkhand has enacted its panchayati Raj Act.

This has been done in accordance with the provisions of the 73rd Amendment to the Constitution and that of the panchayat Extension to the Scheduled Areas) Act, 1996 are applicable to this State.

Gram Sabhas

Power and functions of Gram Sabha and its annual meeting under section 10 of Jharkhand panchayati Raj Act (JPRA 2001) are as follows-

Powers and functions of gram sabha and its annual meeting

1. Under Rules to be made by The State Government in this regard and subject to such general or specific orders as may time-to-time be issued by the State Government, the Gram Sabha shall perform the following functions, namely
 - a. i) Identification of economic development schemes for the village and formulation of criteria for fixing their priorities.

- ii) Approval of schemes for social and economic development including all the annual schemes pertaining to the Gram panchayat, before implementation of programmes and projects.
- iii) Discussions on annual budget of the Gram panchayat and making recommendations thereto;
- iv) Deliberations on audit report and annual accounts of the Gram panchayat;
- v) Deliberations and confirmation of appropriate utilization of funds for the schemes, programmes and projects specified under section 10 (a) a (2) by the Gram panchayat;
- vi) Identification and selection of persons as beneficiaries under poverty alleviation and other programmes;
- vii) Assuring distribution of funds or resources among beneficiaries and their proper use.
- viii) Activating people towards community welfare programmes and receiving contributions in cash or kind or in both and participation of voluntary worker;
- ix) Enhancing general conscience unity and amity among people in general;
- x) Keeping control through Gram panchayat over such organisations and such functionaries in social sectors, as have been transferred to the Gram panchayat or appointed by the Gram panchayat;
- xi) Managing natural sources as land, water, forest falling within the limits of the village area according to the constitution and other relevant laws then in force;
- xii) Giving advice of the Gram panchayat as to regularization and utilization of small reservoirs;
- xiii) Keeping watch over local schemes and over sources and expenditure of the said schemes;
- xiv) Sanitation and conservancy as well as prevention and solution of nuisance;
- xv) Construction, repairs and maintenance of public wells and ponds as well as making available drinking water for domestic use;

- xvi) Making available and maintenance of rural roads, culverts, bridges, embankments and other works and buildings of public utility.
- xvii) Construction and maintenance of rural roads, culverts, bridges, embankments and other works and buildings of public utility.
- xviii) Construction, maintenance and conservancy of public roads, cess-pits, drains and other public places;
- xix) Filling up of wells not in sanitary ponds, ditches and holes ;
- xx) Providing light on village paths and other public places;
- xxi) Removal of hindrances and projections to public streets and places as well as the spaces which are not private properties or which are open for public use whither such places are vested in the panchayat or belong to the State Government.
- xxii) Regulating and controlling recreations, games-shows, sops, eating houses and vendors of beverage, sweets, milk and similar other articles;
- xxiii) Regulating construction of houses, cess-pits urinals, drains and flush latrines;
- xxiv) Management of public land and management, extension and development of village site;
- xxv) Disposal of corpses, carcasses (including those unclaimed) and other obnoxious articles in such a way that the same may not be injurious to health;
- xxvi) Providing places separately for dumping rubbish;
- xxvii) Responsibility for sale and test of meat;
- xxviii) Taking care of the gram sabha-properties;
- xxix) Establishment and management of pounds and maintenance of records regarding cattle;
- xxx) Taking care of ancient and historical monuments excepting those which have been declared to be of national importance and maintaining grazing ground and other lands lying within control of the Gram Sabha;

- xxxi) Maintaining records of births, deaths and marriages;
 - xxxii) Assisting in census or other surveys done by centre, state or other organisation constituted lawfully;
 - xxxiii) Giving assistance in control of contagious disease, vaccination etc. work;
 - xxxiv) Helping the disabled and restitutes (including women and children);
 - xxxv) Expansion of youth welfare, family welfare and sports;
 - xxxvi) Afforestation and conservation of village forestry;
 - xxxvii) Abolition of dowry like social evils;
 - xxxviii) Implementation of orders of the State Government or other competent officers to improve the condition of scheduled castes, scheduled tribes, backward classes and to prevent untouchability;
 - xxxix) Preparing schemes for basic amenities and making arrangements therefore;
 - xi) Helping disabled women/children;
 - xii) Execution of work assigned of construction work as per specified schemes within the gram sabha area;
 - xiii) Exercise and discharge of powers and functions assigned by the State Government under this Act or any other law in force in the State for the time being.
- b) For discharging these functions and duties the gram sabha may constitute the following standing committees, namely:-
- Village Development Committees.
 - Government Estate Committee,
 - Agriculture Committee,
 - Health Committee,
 - Village Defence Committee,
 - Infrastructure Committee,
 - Education Committee and Social Justice Committee,
 - Vigilance Committee.

- (c) Reservation of seats, terms of office, resignation, procedure for removal, conduct of business, members, eligibility for membership, meeting manner of filling vacancy, selection of secretary and procedure of Standing Committees shall be as may be prescribed by the presiding officer;
- (d) Village Development Committee shall prepare a scheme for all-round development of the village and shall put up the same before the Gram Sabha for its approval;
- (e) Every Gram Sabha may set up a fund which, consisting of the following four parts, shall be known as Gram Kosh (Village Fund):-
- Grain Kosh
 - Labour Kosh
 - Commodity Kosh,
 - Cash Kosh
- The following shall be deposited in these funds:-
- Donations,
 - Incentive amounts
 - Other income
- (f) Gram Kosh shall be kept in such a manner and maintained in such a way and form as the prescribed.

Annual Meeting of Gram Sabha- Gram panchayat shall put up before the annual meeting of the Gram Sabha, which shall be held at least three months before the start of the next financial year, the following matters:-

- (i) Annual Return of account, administrative report of the preceding financial year, last audit report and reply given relating thereto, if any;
- (ii) Programme relating to development and other works proposed for the next financial years;
- (iii) Annual budget of the Gram panchayat and annual scheme for the next financial year;
- (iv) Report of the vigilance committee;
- (v) Explanation called for from Mukhia and members of the Gram

panchayat in respect of any particular activities, schemes, income and expenditure;

Gram panchayat shall also place before the Gram Sabha the matters which may be required by the panchayat Samiti, Zilla Parishad, Deputy Commissioner/District Magistrate or any other officer authorized in this behalf, to be placed before such a meetings;

Gram panchayat shall under this section implement the recommendation made by the Gram Sabha in respect of the matters before it, if any, in the light of the rules of the State Government in force for the time being.

Extra powers and functioning of gram sabha in scheduled area

It shall protect and preserve the traditions and customs of persons their cultural identity and community means (Sarna, Masna, Gohar-Sthan etc.) and their customary manners of disposal of disputes, which are not inconsistent with constitutional view-point, and when needed may for the sake of extending co-operation in this regard, duly bring proposals before the Gram panchayat, panchayat Samiti and Zilla Parishad as well as the State Government;

- ii) It may manage the natural sources including land, water and forest within the village areas according to its tradition but in tandem with the provision of the constitution and duly keeping in view the spirit of other relevant laws in force for the time being;
 - iii) It may provide for local schemes including tribal sub-schemes and sources and costs for such schemes;
 - iv) It shall exercise such other powers and discharge such functions as the State Government may assign or delegate to it under any law in force for the time being;
 - v) Gram Sabha, through the Gram panchayat, shall manage Bazaars of the villages, and fairs including cattle fair, irrespective of their name.
- In addition to functions specified under section 10 (1) (a) and extra powers and functions of Gram Sabha in scheduled area mentioned under section 10 (5), the State Government may time to time ascertain other extra powers and functions for Gram Sabha in scheduled area.

- Gram Sabha shall be free to consider any subject related with the functions of the Gram panchayat and the Gram panchayat shall implement its recommendations in the light of then prevalent rules.
- The State Government may, by general or special order increase the functions and duties delegated to the Gram Sabha or may withdraw the same.

Status of Implementation of the Provision of panchayat (Extension to Scheduled Areas) Act, 1996 (PESA)

Component

Mandatory provisions

Section 4 (i): The Gram Sabha or the panchayats at the appropriate level shall be consulted before making the acquisition of land in Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;

- The Jharkhand Act has no provision in this regard.

Section 4 (j): Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to panchayats at the appropriate level;

- The Jharkhand Act has assigned this power to Gram panchayat.

Section 4 (K): The recommendations of the Gram Sabha or the panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licences or mining lease for minor minerals by auction;

- The Jharkhand Act has no provision in this regard

Section 4 (I): The prior recommendations of the Gram Sabha or the panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;

- The Jharkhand Act has no provision in this regard

Section 4 (m):(i) The power to enforce prohibition or restrict the sale and consumption of any intoxicant;

- The Jharkhand Act has assigned this power to Gram panchayat.

Section 4 (m)(ii): The ownership of Minor Forest produce;

- The Jharkhand Act has assigned these powers to three tiers of panchayat.

Section 4 (m)(iii): The power to prevent alienation of land in the Scheduled Areas and take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe:

- The Jharkhand Act has assigned this power to District panchayat.

Section 4 (m)(iv): The power to manage village markets by whatever name called;

- The Jharkhand Act has assigned this power to all three tiers of panchayat.

Section 4(m)(v): The power to exercise control over money lending to the Scheduled Tribes;

- The Jharkhand Act has assigned this power to District panchayat.

14. Women in Panchayat Realities & Recommendations

Based on one & a half decade of Experiences & experiments of Mahila Rajsatta Andolan (MRA)

Mr. Chetan Wagh

(Resource and Support Center for Development (RSCD))

Give us a chance!

"Now that an opportunity to take the plunge presents itself, my brothers on the shore offers unwarranted advice - Beware! Or you will certainly drown. Learn to swim first or you will never swim! Oh? Such sudden an unusual concern for my well-being". I exclaimed, "Give us chance to test the waters, our hands and legs are capable of keeping us afloat , we may swallow some water but give us a chance to endeavour!"

- Nurjahan Pathan, Woman Councillor, Andheri, Mumbai

Global and National Context

This is just a beginning of women participating in governance on an extensive scale. The twentieth century ushered freedom struggles thwarting the shackles of dominant ideologies like racism, slavery etc. Before and after 1950 many countries attained independence from imperialist regimes, and achieved their sovereignty and embarked on their independent missions making it an era that nurtured attention to this section of the society. On the international front serious concerns were raised about communist regimes all over the world like Yugoslavia, Poland, Hungary, Czechoslovakia, East Germany and later the disintegration of Soviet Union saw a downfall of Marx philosophy with free economy offered as the only viable option. The political environment simmered with discontent and it was an era ideal to cultivate new concepts. The first twenty five years were devoted to nation building, framing constitution; but soon the changing social, cultural, industrial and economical parameters made it impossible to ignore women's issues.

Even in Indian context, India became independent and framed its constitution. The Constitution of India has provided many safeguards for the social, economic, and political development of women trying to provide them with equal status in the society. However the oppressive dynamics of caste and class hierarchies in combination with gender inequality, work

negatively for women. Secondly an added political dimension has been the Emergency that was declared in India in 1975 with restrictions imposed on movements of the Trade Union, and other social organizations. Similarly between the years 1978 and 1980 elections saw many upheavals on the political front and the youth disappointed or disillusioned by 1980 general elections turned their back to politics and formed or joined voluntary organizations and started working independently. It is imperative to note that the 80's also was important in terms of the Mandal Commission report, the Shah Bano case, Ram Mandir – Babri Masjid issues, that further lead to the polarization of the society.

Locating Women

The year 1975 marked the watershed of the women's movement after United Nations declared it as the 'International Women's Year' which initiated deliberations all over the world on issues faced by women, rethinking on the concepts of liberty and equality as until then these topics were handled within the limited scope of Women and Child Welfare Departments. Most importantly United Nations declared the period from 1975 to 1985 as the 'UN Decade for Women'. This declaration instigated debates on matters ranging from government policy, marriage and relationships, empowering women, their psychology, participation of women in politics, economy to their contribution as human resource at home.

Though international women's decade made a mark all over the country it had a profound impact on Maharashtra. After the emergency of the 1975, with these restrictions on the political activity, the women members of political parties, gaining clarity on the issues faced by women took initiative for organizing poster exhibitions, panel discussions, songs, writing articles, columns, speeches and seminars, bringing significant problems faced by women to the forefront. Women as a group enjoyed freedom then and taking advantage of the opportunity - a 'Stree Mukti Sangharsh Parishad'(A Women's Liberation Struggle Conference)' was organized in Pune which proved to be the basis of formation of an autonomous and pro-women's organizations where issues of women from middle class were tackled alongside those of women labourers.

In 1980s, 'Stree Purush Samanta Yatra' (Women-Men equality tour) travelled to various parts of Maharashtra to spread the message of equality as propagated by Stree Mukti Sanghatana's street play 'Mulgi Zhali Ho! (A Girl is born)' reaching out to members of different strata of the society. This play highlighted different women's issues that were almost like a Manifesto of women's movement! In the same decade Mahila Mandals (Women's groups/ collectives) were initiated in many villages, that motivated women and they were ready to imbibe new ideas.

Meanwhile a National Perspective Plan was developed in 1986 and the concept of 'Women's Welfare' changed to 'Women's Development'. Another vital change for the women's movement came during this period as the government began conceding that women were capable of being more than a weaker section that needed help as till then women's share in per capita income and their labour at home was never measured. For instance a 'Shramshakti' report was published in 1987 that made a detailed documentation of women's contribution to society. This was followed by new laws that were result of the anti-dowry campaign, the agitations that ensued after the Mathura rape case brought about a fundamental change in the law regarding rape. It was underlined that women as a section of the society was denied an opportunity to develop and had become weak.

In 1994, Maharashtra announced its Women's Policy and it was the first state to draw a women's policy which bestowed property rights to women, allowed a child to affix mother's name to her/his name and also brought reservation of women in police forces - these were historic decisions. In the last 20 years, awareness in women had multiplied, which was reflected in the government policy as legal amendments were in process, the constitution had presented an opportunity to participate in governance – a sign that society was prepared to embrace these changes.

Core Realities

This is an attempt to highlight the challenges faced by EWRs at different levels as a result of their being a woman and understanding certain inadequacies in the existing structure that are affecting women's participation irrespective of their caste, class, religion and ethnic identities. At one level the patriarchal setup looks at women with the same distrust and doubt in handling village governance, the space allocated to women is thus

hijacked by their family members, spouses or mostly men belonging to certain vested interest groups. But at the same time, the caste-class hierarchies along with other socio-economic and political background places women belonging to different marginalized communities into a more vulnerable terrain.

As an organization with 24000 members in 26 districts, 78 blocks and 2000 focused villages, MRA has faced many challenges, in the last 17 years. On one hand, it had its share of success stories, instances where villages have been transformed drastically. It bore testimony to the tremendous potential shown by the women and the way they used an opportunity that came their way for the welfare of the society. However, on the other hand, when you have to build a different brand of politics, promote value based governance, the endless obstacles are an integral part of the journey.

Violence as a tool to suppress EWRs

The women in governance have definitely succeeded in creating unique milestones guided by the principles of the movement. However, male dominated society, ridden with caste and gender discrimination is forever on a look out for an opportunity to stop their successful ascendance. They allow only malleable candidates, who could be easily manipulated to contest elections, ask elected wives to be mute spectators physically assault a woman Sarpanch if she tries to actively take up an issue, threaten and abuse family members and if all such tactics don't work, the last weapon they resort to is maligning her character. For instance,

"It was not difficult for Sunita Agham from Yavatmal to win election, an active SHG leader, as women from her SHG and bhajan group had insisted that she contests election. Everything was normal till she ascended the post. Villagers had gathered in large number and Sunitatai was happy to see the large crowd at the Gram Sabha. However as she got up to address the crowd, some one behind her shouted, 'close the meeting!' and she was stupefied! And then someone threw red chilli powder in her eyes and slapped her. It was later revealed that the previous Sarpanch had detested Sunita's election to his post."

"Soon after getting elected Pratibha Tayde from Akola began struggling to get water for the village. As she collected people's contribution, the

opposition created many obstacles. As the village had no water people started creating a hate campaign against her and barraged her with questions. She could not take the constant pressure and finding no way out, Pratiba Tayde had no other option but to commit suicide to set herself free.”

These are not the only experiences. There have been many serious incidents where if not the EWRs then their family members have also been targeted. For instance, in order to de-motivate her, Anuyatai's child was kidnapped; in some other place husband of an EWR was thrashed for no reason. When Shraddha Ramteke of Gondiya complained against false voting, police used vulgar language to embarrass her. After opponents realized that Ratnamalatai would be elected unopposed to the Bhandara Zilla Parishadher rivals defamed her character. After Jijabai Kharat resolved the village water problem, she was cleverly entangled in a murder case. In many such incidents the police have even refused to register a complaint, but things got moving after MRA stepped in.

Politics is not a place where women are admired any longer as men have realized that they are here to stay. It is feared by the power holders that the reservation in local self-government bodies can rise up to 50% and that they will enter Lok Sabha and Vidhan Sabha in a matter of years which according to them is not a good proposition. When a woman family member is asked to contest, she is given certain amount of freedom, some doors open, and to some extent she is ready to exercise her decision-making power and all this leads to change. When this new shift in power relation is experienced, and this new role and responsibility is difficult to comprehend, attacks increase leading to assaults and suspicions.

Liquor Prohibition

Alcohol abuse by men has been a common problem that women across class and caste face. There are stories of families getting indebted due to money spent on buying liquor and there are narratives of domestic violence by drunken men. When 'prohibition' is brought up as topic for discussion at the gram sabha, men start walking out, branding it as women's subject. Women in their struggle to stop alcoholism fight with the men at home, in the village and most importantly the liquor shop keepers. Wardha district in Maharashtra has declared prohibition for years but liquor is sold illegally and rampantly just across its border with government and police turning a blind

eye. The neo-rich class, in the last 20-25 years has also given a class status to alcohol and that has made the issue even more complex.

“We are addicted to love
They to alcohol
It is easy to make laws on prohibition
Break liquor barrels
And at times
A procession of the drunkard
However there is no cure for addiction
Is the truth of the matter”

Large number of liquor shops get license and justify that wine and beer do not fall in the category of 'alcohol'. Oranges, grapes and sugarcane are already used to make alcohol but in recent years the government also gave license to make liquor from food grains like jowar and bajra Government of Maharashtra declared a subsidy of Rs. 10/- for this liquor from food grains. Although all sections of the society severely criticised this decision and a petition was filed in the High Court against it, the government has withdrawn the proposal but the main aim remains. The farmers association has backed the government citing that it will increase the value of their crop, so political leaders are happy and no party has opposed this move as all leaders have their nexus with one or another factory that will produce the drink. Established politicians control many power centres in the village like sugar factories, credit societies, educational societies, water supply society, milk society, newspapers, television channels that are important in rural politics. Therefore, financial, human resources are available very easily.

Electoral Politics

Election is one of the most important components of democracy. However in reality, corruption, supply of food items like meat, providing alcohol are means by which votes are bought. Instead of election manifesto, leadership qualities, development agendas, it is the above malpractices that influence a voter. Panchayat election is dominated by political parties, but without party symbols. It is like a cooperative election. General people's panel can take a lead to project themselves with a creative remark of “new manifesto” based

on loopholes of traditional power holders. Whole constituency can get involved in issue framing and planning for their own development.

Secondly Andolan Panel, i.e. Rajsatta Panel gets an advantage of 'non-party' but political symbol of linking village issues with village institutions. Image mapping of party and Andolan creates a very positive image of Rajsatta candidate as an innovation and gender justice.

Value based election with no liquor, no mutton/ meat and no money creates an impact of new beginning of the village development. 'My Village' concept is sometimes beyond the concept of nation building. Hence voters cast their vote for village building candidate than traditional Patil or landlord.

Unopposed Elections or Division of Office in Multi Tenures

Under the guise of unopposed election to the post of Sarpanch, a new process has emerged - i.e., the post of Sarpanch is auctioned! The person who can buy the post gets it or it is divided for half term between two- three people. However, the practise to do so has percolated from the State Legislative Assembly and if Chief Ministers of Karnataka, Uttar Pradesh and Jammu Kashmir have shared their tenure, the villagers can hardly be blamed for doing so.

Two Child Norm in Panchayats

Under the two child norm the person elected under PRIs should not have more than two children and if the third child is born after assuming the post, that person is removed from his/her post. This policy has been adopted by Maharashtra since 2001. If the third child is born after 2001, his mother/ father are barred from contesting elections. This law is being implemented in Rajasthan, Madhya Pradesh, Andhra Pradesh and Himachal Pradesh and in many other places.

These provisions are used to topple opponents and at some places the husband has also divorced his wife. It has been observed in Solapur district that the birth of third child is not registered and the most vulnerable are women and people from the tribal belts. Even today women have no control over their fertility and the number of children she can have. Many a times she is expected to bear children till a male heir is borne.

"Sutra' an institute in Himachal Pradesh studied the disadvantage of this law. It has published a report and giving into the discontent among the people the Himachal government withdrew it. Though organizations are pursuing a similar withdrawal in Maharashtra the government has not taken any steps in that direction.

Travel Allowance for Women Sarpanch/ ST Pass for Women Sarpanch

MRA has repeatedly worked at various levels, pursued the demand for ST pass for women Sarpanch travelling to block places for village development work. However in spite of continuous assurances, there has been no decision at the state level. A woman MLA first raised this question in the winter session in 2004 and again in 2005, many MLAs even took up the matter in the budget session. But the ex-chief minister gave a standard reply, 'The state transport already gives a concession to 21 components of the society, so the matter will have to be studied and expenses understood before a decision could be taken!'

At a practical level, ST pass is an important demand as

- The woman Sarpanch has to ask for travel allowance from home and if that money is not given on time work remains incomplete.
- She has to visit the block places to understand various state and central schemes and for follow-up.
- If she cannot travel she has to depend on the GramSevak and that means inviting fraudulent methods practised by him To attend urgent matters she has to travel on a motorcycle with another man and if this happens often, it starts village tongues wagging and it gives space for character assassination by the community
- The travel allowance granted by the state government is meagre amount and there is no guarantee that the allowance will reach them on time
- State transport gives concession to Assembly members but today no MLA travels by a state transport bus.
- The total travel expenses of women Sarpanch will not be more than 60-70 crores and all MLA and MP who increase all their allowances as inflation grows, simply forget their counterparts in the village.

- Every Assembly session ends without sanctioning this demand.

Dual Responsibilities: Family and Work

Responsibilities of home, children, illnesses, fields and daily wages still remain on women. If the woman is from an economically backward community, she cannot let go of her daily wage and it is a delicate balance to maintain. Political party meetings are invariably held at night after dinner and though women attend it after completing their chores they are not comfortable as the meetings prolong. Visits outside the village are a part of the job as they have to attend party meetings, accompany many men colleagues; it gives a chance for defamation. If the husband is suspicious, matters turn worse. If the husband is a supporter the rivals beat him up. Fighting corruption, inspecting ongoing work involves devoting a lot of time and energy and it is very difficult to do so along with looking after the household needs.

There is an absence of women from the minority sections of the society like Muslims, Sikhs and Christians in MRA movement. A few women came forward from each community but they are not a social unit as yet. Also tribal women become lone members of the movement and they are very few in the mainstream. Mahila Rajsatta needs to rethink on new ways for their inclusion.

Women's Front of Political Parties

“Go ahead not by circling the path but by proving your might”

The 73rd Amendment granted 33% reservation to women but empowerment of women's front of different political parties is not visible. This is a contrasting picture. Women are party leaders but within the party women's front have a secondary status. These fronts are neglected during distribution of tickets as well and they also have no say in developing the party policy. They are delegated chores like managing a programme, gathering women, presenting a bouquet to chief guests, welcoming guests, and looking after the catering needs. They are not included in the discussion regarding the main speech, structure of the event etc. Most women face the same problem after they are elected and want to be a part of the committee. But they are never selected and if chosen all that comes to their way is either the Women or Child welfare or may be the Education department.

33 % Reservation at National Level

Today not only successful EWRs want to go further in local level politics but women now dream of upward movement/ mobility in politics. Many active women leaders and EWRs of MRA demand and support the 33% reservation in Lok Sabha and Rajya Sabha. MRA had celebrated when the bill of 33% reservation was passed in Rajya Sabha by "Dhole Vajava" - playing one music instrument and distributing sugar/ sweets in the village.

Issues Faced by Single Women in Governance

Single women play an important role in multiple ways as Aganwadi teachers and helpers, ASHA workers, Police Patil and supportive role in SHG's. However when the same single woman becomes a EWR then the villagers don't like it. It has been observed that single women faced lots of difficulties while functioning in Grampanchayat. To overcome this, there is a need to build organisation of single women EWRs.

Future Scope in Politics (Panchayat Samiti/ Zilla Parishad)

Contesting election of panchayat Samiti and Zilla Parishad requires support from political parties. However it is difficult and challenging for women to get nomination and ticket from the party. Getting party nomination is like getting a passport. It is difficult to contest value-based elections along with traditional methods of politics.

Convergence of Inter-state Strategies and Policy Learning's

MRA's team and activists have received an important and insightful opportunity to interact with other states and have a common platform or forum where the sharing of issues and concerns of EWRs could be dealt with. There have been some important learning's from these inter-state meetings like understanding the situation of PRIs in these states, new concepts and practices, challenges and strategies used by the EWRs. For instance, ward meetings of Rajasthan, meeting allowance of Kerala state and 50% reservation for women in Bihar. These interactions have also been useful for demanding policy changes. MRA is also an active partner in National Platform to Promote Decentralization (NPPD) at National level. But there is lack of systematic convergence and dissemination of people centred policies and practices.

Collaboration with Government Department and Agencies

Most of the people's movements are viewed by the Government as anti-state or anti law. It takes more energy and efforts to build rapport, and convince ones credibility while working on the same issues, with common minimum understanding. For instance, while working with the Maharashtra State Election Commission, sharing of information at various levels, it has been experienced that MRA has received limited support for solving the cases on election. MRA has only received the list of various roles to be performed by election commission internally and externally. It has also been observed that there is no separate machinery for solving issues related to elections. The department of Central Government does not work efficiently without the support from State Government.

The relation with Election Commission of Maharashtra was initiated through the Krantijyoti project that focused on Training for EWRs of Gram panchayat. The role of MRA and RSCD has been of providing training and developing training materials. In this process, the College of Social work, Nirmala Niketan has also played an important role for organising training of 20,000 EWRs of 10 Districts of Maharashtra. It is equally important to note that in Gram in Bharat, unit of National news channel, two interviews on the Krantijyoti Projects were telecasted.

YASHADA is also an informal partner in creation of a pool of 300 panchayat trainers in the State. MRA is also an active partner of LoGin- Asia and learning from 13 Country Partners.

Local learning's are converted into recommendations for strengthening democracy and women participation at panchayat level.

Political Recommendations

- Atleast 33% reservation for women in all national and state policy making bodies on the basis of policy for local self-governance.
- Provide reservation for women for the post of Sarpanch/ up-Sarpanch of the Gram panchayat's in all the states.
- The minimum representation requirement for the women in the panchayat's in all States should be 50%. It was one of the important recommendations of the 81st Constitutional Amendment Act passed by the 14th LokSabha.

- It should be made obligatory on all political parties to amend their constitutions in order to provide for 33% reservation for women at every level and every wing of party organization.
- Constituencies reserved for women must be determined not by a draw of lots but by a definite sequence in rotation. This will reduce uncertainty and also the arbitrary element and give some breathing space to the parties and the aspirants.
- Reservation of 1/3 seats in various committees of Municipal Corporations, State Legislatures and Parliament must be provided. This will expose women to all the intricacies of legislative affairs.
- A Standing Committee for Women's Development needs to be constituted in the parliament as well as in the State Legislatures wherein 1/3 seats must be reserved for men. This is very essential in order to establish that women's issues are not the concern of women alone
- Reservations need not be eternal phenomena. The policy must be reviewed after 15 years. After 15 years it can be assessed whether any natural processes have evolved during this period, leading to a greater representation of women in those constituencies which were always open like Rajya Sabha and Legislative Councils, as well as in such constituencies which have got de-reserved due to rotation.
- Right of vote proportionately, for elected representative in local self governance in the election of Member legislative council (where it is applicable).
- State Election Commission & State Finance Commission should be self-reliant in 3f's (Finance, Function & Functionaries).
- Legislative panchayati Raj Committee need to coordinate with people's platform in 3 tiers of local self governance. Committee must disseminate their report publically.
- Autonomy of local self governance need to get converted from policy to practice. Each state must prepare their strategic plan with timeline to obtain optimum autonomy at LSG.
- Each one (Local Representatives) must be a trained one - Every ER's must get quality and need based training at every stage. Training policy for quality assessment is must.
- Induction policy for all newly elected representatives is an essential part

of effective governance. (Ref: Local Self Government of Western Australia) .

- Support Women's Charter of Demands – 1996 specifies the following :
 - a) an end to criminalization of politics and politicization of crime
 - b) public declaration of assets of candidates
 - c) right to recall elected members
 - d) right to information
 - e) public hearings on projects and policies that affect people to involve them in planning
 - f) the nexus between the liquor lobby and politics should be cut

Administrative Recommendations

- Ensure that due consideration is given by authorities at all levels to the proposals of the gram sabha, particularly those relating to issues of women and children
- Ensure adequate number of women panchayat secretaries and entrust not more than two gram panchayat's to one panchayat secretary/village development officer
- Ensure that preference is given by gram panchayat's to women's self-help groups in awarding contracts for village level construction work
- Implement the Women Component of the Five Year Plan through panchayat's
- Ensure that the Government provides 33% funds for women's empowerment at the national, state and at local self-governance, along with concrete guidelines.
- Elected women representatives must be provided with an adequate EWR fund to enable them to perform efficiently.
- Women's participation in decision making need to be facilitated statutorily, at the level of
 - a) Gram sabha
 - b) Village sub-committees
 - c) Financial Decentralization and control over natural resources

- d) PRI administrative procedures and governance need to be in local languages.

Legal Recommendations

- “Women's Sabha” before every gram sabha need to be evolved statutorily as a national policy; which will support the process of women in governance.
- Ensure that every state Government opens a toll free helpline for elected women at the state and district levels to attend to emergent needs (adverse or otherwise) in terms of police assistance, information dissemination, legal assistance, counseling, etc with a view to strengthen women's participation in governance
- Provide for EWR's protection law to deal with those committing violence against women candidates during and after elections
- Scrap the two child norm as applicable at present in respect of the representatives of panchayat's, which is against the reproductively rights and it will encourage girl-killing.
- Provide right to land and housing in joint names of spouses and even for single, deserted, Dalit, tribal, Devadasi, widowed and battered women and for those rendered homeless in caste/communal riots and due to displacement
- The motion of no confidence cannot be moved against him/her without 3/4th majority.
- Flag hosting by all elected women heads at all levels need to be a national policy; which will strengthen the “sense of freedom” for the women also.
- Sarpanch, woman or man, especially belonging to the deprived caste/class (from BPL category) must get travel concession for their mobility and as incentive for performance
- Finance guidelines need to be very effective, transparent and accountable to PRI's by which they can govern their PRI.
- A cell at the district level, preferably in the Collector's office must be set up, where the women and Dalit Sarpanchs can approach if they face any functional difficulty.

Supportive Recommendations

- Establish HLP – (Horizontal Learning) Platform for mutual support & hand-holding which is a real need at block level.
- Introduce regular gender sensitive reorientation programs for MPs, MLAs and bureaucrats about the funds, functions and functionalities of the panchayat's
- Provide literacy training under special crash programs for illiterate women panchayat members
- Facilitate internship programs for panchayat women representatives inside and outside the country
- Give awards for outstanding performance by women representatives at all levels of the panchayat's in the country
- Political Education and Training must be imparted to the women representatives of the backward castes/classes and other marginalized sections of the rural society and elected representatives of the gram panchayat's and other motivated and potential leaders from the gram sabha on their rights and roles in the account both the knowledge and significance of the political processes as well as the political dynamics. This must be mandatory in a sustained and focused manner.
- Every policy needs clear-cut implementation guidelines, mass awareness strategies, punishment mechanisms and review procedures to minimize wide policy practice gaps within the context of India.
- Need of orientation policy in all three tier local representation.

Way Forward

Many women mastered the art of swimming, some choked, at times lost their life, but many endured the struggle remaining afloat, hanging on to a log while yet others built boats to reach the opposite bank. Obstacles emerged in all forms - no-confidence motions, rivals trying to demoralize, conceited men and Patils, who had ruled on their own terms from time immemorial, along with the pain and suffering of being born as a woman and bearing physical abuse, the most distressing factor was the lack of support from a real partner who supported rival groups or governed in 'her' name, granting her the right to 'sign' as if he was a benefactor! It was a tight rope walk to humbly accept misgivings without bringing disgrace to family and

yet make good of the opportunity and fulfill expectations of people who elected you. But amidst all this appreciation, motivation and helping hands gave strength in the form of the Sanghtana (organization), the training workshops toned knowledge, legal amendments helped face turbulent times and when this team of amateur swimmers compelled a champion to choke, it infused them with the might of a matriarch!

15. Present status of Local Governance in Karnataka

Ms. Kripa M.M

(Coordinator, The Concerned for Working children and
Member of the Secretariat of Gram Panchayat Hakkottaya Andolana)

“Governance from Delhi should be stopped and
Panchayat Raj should be given its rightful place so
democracy is strengthened at the village level.”

“Halliyinda Dillige!”

- Abdul Nazir Sab

The year 1983 marked a new era in the history of Panchayat Raj in Karnataka. It was one of the first states that pioneered Panchayat Raj in India by enacting the Karnataka Zilla Parishads, Taluk Panchayat Samithies, Mandal Panchayats and Nyaya Panchayats Act, 1985 but popularly known as the Act of 1983. Patterned on the recommendations of the Ashok Mehta Committee, it was conceived and sculpted by Shri Abdul Nazeer Sab, who was also instrumental in drafting it. Chief Minister Ramakrishna Hegde who was committed to the principle of 'power to the people' introduced the bill in the State Assembly in 1983 and the Act received the assent of the President of India on 10th July, 1985.

Eminent people like Shri Abdul Nazir Sab, Shri Ramakrishna Hegde, Shri M Y Ghorpade, and Shri L C Jain, took the baton forward battling great opposition to establish this alternate system of governance based on an entirely different social construct to the atomised and inorganic view of society that is a result of industrialisation and the new economic order.

JP describes Gandhi's sociological thought on this subject as an “organic or communitarian view that puts man in his natural milieu as a responsible member of a responsible community. This does not treat man as a particle of sand in an organic heap, but as a living cell in a larger organic entity”. He goes on to say that to accomplish this task it is necessary to discover new “political and economic institutions” and he urged “the protagonists of panchayat raj [to look] beyond the hackneyed phrases of political and economic decentralisation, fondly hoping that parliamentary democracy plus a large measure of local self government would perform the trick and usher in peoples democracy of their dreams”.

This was the frame within which the Report of the Karnataka Panchayat Raj Act Amendment Committee (KPRAAC) headed by *Mr. Ramesh Kumar* and Amendment Bill were drafted. They were a ground breaking set of amendments which would take local governments to a higher plane and set a new bench mark for the nation to follow. It would also influence the way Governance is practiced in larger tiers of government rooting out corruption, the culture of patronage and the corporate-communal binary among other things and ensure that development plans are designed through the participation of 'all' and not the select 'few'. It was radical in its approach, but then this was required in order to honour and respect the true spirit of Gram Swaraj.

This KPRAAC was set up to suggest remedies to the then existing Act that has been mangled over the past 20 years through hundreds of executive orders by myopic Ministers and bureaucrats, reducing it to a mere State controlled delivery system manned by officials rendering people powerless. Schemes have been centralised, the bureaucracy strengthened and all the rights, powers and autonomy of the Panchayats and Gram Sabhas systematically taken away. After careful scrutiny, State wide consultations with all stake holders and very deep and detailed deliberations over a year, the Committee suggested 88 amendments to the then existing Karnataka Panchayat Raj Act 1993 that would ensure that Local Governments and more importantly, the people through their Gram Sabhas are masters of their own destiny.

As a cumulative result of advocacy by Gram Panchayat Hakkottaya Andolana and such organisations who work to strengthen local governance and like-minded people, lobby by the KPRAAC and a huge demand from local government elected representatives, the Amendment Bill was signed by the Governor of Karnataka on 18th December 2015 after it was passed by both houses of the Karnataka Legislature on November, 26th and 27th 2015. On February 25th 2016 it was gazetted with the name 'Karnataka Gram Swaraj and Panchayat Raj (second Amendment) Act, 2015' as suggested by the committee and its amendments became part of the Act. Nearly 80 per cent of the far reaching amendments suggested by the Committee have been accepted in the final Act. Probably for the first time in the history of Panchayat Raj in India, the devolution of the 3Fs -Finance, Functionaries and

Functions- to the Panchayats has been ensured to such a great extent legislatively, bringing the fulfilment of the 73rd Constitutional Amendment closer to reality.

Naming the Act 'The Gram Swaraj and Panchayat Raj Act' is a statement of intent and commitment to devolution and autonomy of Panchayats. It determines the nature and direction of the Act. The inclusion of 'Directive Principles of Panchayat Policy' [2A] reiterates the State Government's commitment to fulfilling the spirit of the 73 Constitutional Amendments. Recognition of the 'Habitation Sabha' as a unit of local self government uphold social justice congenial for all people generally, in particular to the people of the vulnerable sections of the society to exercise their rights. It promotes grassroots participatory democracy and enables inclusive development to become a reality.

The Act says, The gram sabha shall be the basic unit of local self-government at the village level to ensure the direct participation of all the citizens of the village in the planning, implementation, monitoring and evaluation of all economic, social, cultural and environmental development Programmes and all central, State and district sector Government schemes implemented in the gram panchayat. It also says gram sabhas shall be the decision making body through its participation in the good governance of the area and actively encourage involvement of residents of panchayat in decision making.

Definitions says, "Vulnerable sections of society" means the children, adolescents, women, senior citizens, the sick and the infirm, the disabled and the differently-abled, the Scheduled castes and the scheduled tribes, the religious, linguistic and sexual minorities, the bonded labour if any, nomadic and tribal groups and migrant labour of the society. It has also introduced "Priority ranking method" means the course of prioritizing of beneficiaries under the various schemes, programmes and plans taking into consideration the backwardness of the area, urgency of need, level of impact and coverage.

It gives a provision for special gram sabhas for representative groups of women, the Scheduled Castes and the Scheduled Tribes, and the Farmers and the Artisan populations, the youth and the senior citizens, within the

gram sabha. It says they can come together as often as may be to hold meetings among themselves and outline their needs of the group for development along with suggestions of redressal, for being placed before the gram sabha at its regular meetings. According to the Act, Meetings of gram sabhas for drafting plans and Programmes for empowerment, separately, of the Scheduled Castes and the Scheduled Tribes, Women and the Children shall be convened to discuss issues related to each of them separately, at least once in a year before the Gram Panchayat Meetings.

Act also says, the gram Panchayat shall be an institution of local self government and the state shall subject to availability of funds endow the gram panchayat with the powers, authority, functions, functionaries and funds as may be necessary to enable them to function as institutions of local self-government.

Inclusion of Some of the Salient recommendations in the New amended Act:

- The recognition of Habitation sabhas,
- Giving voice to the truly marginalised such as Lambani tandas and there by strengthening grassroots participatory democracy;
- The concept of the 'responsibility' or Activity Map that details the roles, responsibilities and functions of each tier of Panchayats ensuring that what the tier closest to the people [Gram Panchayats] get to hold the responsibilities that should be designed and implemented by the Gram Sabhas - such as the food provided in Anganwadis;
- Plans developed by Gram Panchayats based on the needs of the members of the Gram Sabhas shall not to be altered and bottom-up planning with the proposed establishment of the Taluk Planning and Development Committees including representatives of Gram Sabha Presidents as members and also their inclusion in the District Planning Committees;
- The setting up of a State Decentralised Planning and Development Committee.
- The term of Adhyakshya has made five years and the prevention of any no confidence for 30 months for trivial reasons which would resolve the contentious issue of horse trading for the post of Adhyakshyas.

- The proposed grievance redressal authority with a time bound and effective service delivery mechanism has also been accepted.
- The act ensures levels of accountability and transparency at all levels of the administration and makes it mandatory for members to declare assets and liabilities
- However, the constitution of a Commissionerrate of Panchayat Raj and Karnataka Panchayat Administrative Services on the lines of the KAS has been kept in abeyance due to financial constraints.
- The need for the empowerment of women and the establishment of an environment conducive to their participation has been recognised and the reporting of sexual harassment in the vicinity of all panchayats and acting to prevent and mitigate such offence has been made mandatory.
- Creditably, the need for a 'fear free' environment and efforts to maintain communal harmony, respecting and protecting the rights and freedoms of minorities, backward classes, women and children is much needed in the present clime of terror and divisive politics and the new provisions recognise this.
- Only 20% of untied funds have been provided for, against the 50% suggested by the Committee, but it is a considerable improvement as the previous Act did not have any such provision.

For more details about inclusions, please visit the following link:

http://gpha.weebly.com/uploads/1/2/5/7/12572575/inclusions_of_pra_ac_recommantations_in_gs_act.pdf

To refer the Karnataka Gram Swaraj and Panchayat Raj Act, 1993, please visit the following link: http://gpha.weebly.com/uploads/1/2/5/7/12572575/kgs_pr_act__e_-2015.pdf

Devolution of power to Local Bodies or Panchayat Raj is the most exciting manifestation of participatory democracy. It embodies the core principles of the individual as an integral member of a community being able to determine her destiny along with the destiny of the community. It converts the concept of 'self governance' into a structural system that is workable and based on social justice and pushes the boundaries of Gram Swaraj to the logical limit.

Despite several States in India having passed Panchayat Raj legislations, nowhere has it gone all the way and enabled the total devolution of funds, functions and functionaries; the biggest stumbling block being our elected representative and the bureaucracy for their fear of losing power and control. Yet Karnataka has managed to achieve this through enactment of Karnataka Gram Swaraj and Panchayat Raj Act. This move also paved the path for translating the normative and functional provisions of devolution of power as envisaged in articles 243 of Indian constitution into realm of practice.

However, operationalisation of the Act is the need of the hour which is critical to enable local Governments to enjoy complete autonomy in planning, execution and implementation of programmes and projects as per the desires of their Gram Sabhas and mould their villages closer to the aspirations of their constituents instead of the dictates of line ministries or State and Central Governments.

After the enactment of the act, Bottom up Planning process has been started which is the core spirit of this Act. But, obtaining the resource envelopes (allocated funds) disclosed by all ministries and their departments that have been earmarked for utilization in Panchayat areas need to be systematized. Further, the planning process is directed by the 'Responsibility Map' that delineates the rights and responsibilities of each tier beginning with the Gram Sabha and ensuring the principle of subsidiarity, i.e. each tier of Panchayats being able to exercise their rightful responsibilities at their level without it being usurped by another level, and ensuring a more horizontal structure. But, making a rule to realize responsibility map as mentioned throughout the Act is yet to be done.

It is most important to create awareness to bring the changes in practice, to build the capacity of elected representatives and officials of local governments and Gram Sabha Members, to stop any moves by the Machiavellian minds of vested interests and power hungry politicians who try to violate the act and its spirit. However, the more than a lakh of elected representatives need to handle this newfound power and recognition of their rights and responsibilities with sensitivity, care and the utmost respect. It should not be used to perpetuate corruption, but harnessed within our

Constitutional framework, with caution and transparency, setting an example of good governance for all.

As GPHA played a crucial role in drafting the bill, enactment of Act, it is also observing the implementation of the Act in its true spirit. Thus, it focused on the actions of the government regarding Act implementation process and has responded critically when any violation was noted. As a result, when the government's process pertaining to Vision Planning went off track, GPHA challenged this development both at the local level and at the State level. It developed a detailed critique of the specific clauses in the amended Act which had critical implications and explained how ignoring them is a violation of the Act.

In October 2016, the State Housing Corporation working under the Housing Ministry of State issued an order to stop the process of selection of beneficiaries in Gram Sabhas for the Housing Scheme until the next circular was issued. This was against the Gram Swaraj Act which upholds the Gram Sabha as the basic unit of local self-Government at the village level to ensure direct participation of all citizens in local governance GPHA collectively and vocally opposed this move. A senior delegation from GPHA met the Members of the Legislative Council elected by local authorities and explained to them how this circular curtails the powers of Gram Sabha and violates the Gram Swaraj Act and strongly urged him to withdraw the Circular that violate the amended Act. As a result, Ministry of Rural Development and Panchayat Raj issued a letter to the Housing Department informing them to take action without violating the intent of the section of the Act. But the Housing department didn't respond to this. Thus GPHA filed a writ petition on behalf of Gram Sabha Members to challenge the Ministry concerned in the High Court of the State. High Court issued an interim order of stay for the operation of government order issued relating to the above issue. The argument in the court is still on.

LEGAL FRAMEWORK

16. People's Bill on Constitutional Amendments to Strengthen Local Government

Amendments needed in Part IX of the Indian Constitution regarding devolution of Grama Sabha, Powers, Authority and Responsibilities of Panchayats, Powers to impose taxes and fund of the Panchayats etc.,

PART IX The Panchayats

1 Article 243 {Definitions}

In this Part, unless the context otherwise requires, -

- a) "district" means a district in a State;
- b) "Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;
- c) "intermediate level" means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;
- d) "Panchayat" means an institution (by whatever name called) of self-government constituted under Article 243B, for the rural areas;
- e) "Panchayat area" means the territorial area of a Panchayat;
- f) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published;
- g) "Village" means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

Amendments suggested

1.1 Add

Decentralization

1.2 Substitute

- "as the Legislature of a State shall, by law, provide"

- “functions at the village level which include”
- Powers, function and rights of the Grama Sabha.

Responsibilities of Grama Sabha

- Empowering Grama Sabha for according approval to the works funded under district panchayats and block panchayats and funded under other schemes.
- Issue of notification under Article 309 of Constitution of India for empowering Grama Sabha to accord approval for selection of all beneficiaries under subsidies schemes in respect of 29 departments as per schedule XI of Constitution of India.
- The resolution passed in Grama Sabha meeting to be made mandatory for implementation by all departments
- Empowering Grama Sabha to take up social audit on all schemes implemented in village panchayats

Entrustment of Powers

- Village panchayats may be empowered to levy tax on agricultural land based on land revenue and to levy tax on vacant land as in the case of urban local bodies
 - Block panchayats may be empowered to levy tax on kudimaramath for maintenance of minor irrigation tank as already provided under Tamil Nadu Panchayat Act 1958
 - Block panchayat may be empowered to levy road cess for maintenance of panchayat union roads
- Consolidated Funds
- The government shall make by law defining the mode of allocations made to three tier panchayats

2 Article 243A {Gram Sabha}

A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide.

Amendments suggested

2.1 Delete

“as the Legislature of a State may, by law, provide”

2.2 Add

Powers, Function and Rights of the Grama Sabha

- a) Collection and compilation of details required to formulate development plans of the panchayat;
- b) To formulate the proposals and fixing of priority of schemes and development programmes to be implemented in the area of Village Panchayat;
- c) All plan schemes implemented by various line departments are to be formulated at the village panchayat level with approval of Grama Sabha
- d) to find out the deficiencies in the arrangements for water supply, street lighting etc. within the area of the village panchayat and to suggest remedial measures
- e) to collect information regarding the detailed estimates of works proposed to be implemented in the area of the Village panchayat
- f) to monitor and audit all activities of elementary / middle schools (government and private) within the area of the village panchayat by making necessary amendment to Right of Children to Free and Compulsory Education Act 2009
- g) To monitor and audit all the public health activities including nutrition, prevention of diseases and family welfare, within the area of village panchayat.
- h) Resolutions may be passed on majority basis, in the meetings of the grama sabha in respect of any issue within its jurisdiction; however, effort should be made to take decision on the basis of general consensus as far as possible. The priority list prepared by Grama Panchayat after inviting applications for the selection of beneficiaries and conducting enquiries on the application received shall be scrutinized at the meeting of the Grama Sabha. The Village Panchayat shall not change the order of priority in the list sent by the grama sabha for approval.

3 Article 243G {Powers, Authority and Responsibilities of Panchayats}

Subject to the provisions of the Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and

such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level; subject to such conditions as may be specified therein, with respect to the –

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

Amendments Suggested

3.1 Delete

- State may, by law, endow the Panchayats
- such powers and authority as may be necessary
- such law may contain provisions for the devolution of powers
- such conditions as may be specified

3.2 Substitute

- The State Shall, by law endow the Panchayats
- Such powers and authority which are necessary
- Such law shall contain provisions for the devolution of powers

3.3 Add after a and b

- c) De-concentration of land and distribution of land equally
- d) De-concentration of wealth and incomes
- e) The right to housing as a place to live in security and dignity and provision of building materials at subsidized public distribution system.
- f) Monitoring and improving the Child Sex Ratio
- g) After investigation, filing reports to the police and concerned authorities and wherever necessary filing litigation in support of abuse of women and children
- h) Ensuring the prohibition of children from employment in all forms upto 18 years.
- i) Should have a Lok Ayukta or dispute resolution mechanism or Panchayat court similar to the recommendations of the Law Commission of the India.

- j) Widening of the scope of Ombudsmen to village panchayat including action against president and vice president for removal

4 Article 243H {Powers to impose taxes by, and funds of, the Panchayats}

The Legislature of a State may, by law, -

- a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and
- d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

Amendments suggested

4.1 Delete

- The Legislature of a State may, by law,
- Authorise a Panchayat
- Assign to the Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes....

4.2 Substitute

- The Legislature of a State shall by law
- Every panchayat including block and district panchayat should have the powers to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with List IV of Schedule VII
- Entrust a panchayat including block and district panchayat with powers based on clear list of such taxes, duties, tolls and fees originally levied and collected by the State Government to be used for specified social development purposes for the panchayat in accordance with List IV of Schedule VII

- Empower Panchayat to obtain not less than 50% of the grants-in-aid to the Panchayats from the Consolidated Fund of the State / SFC grant and
- The constitution of such Funds for panchayat from the Consolidated Fund shall be credited in the Panchayat account, but for all money received shall not be by any public servant or public authority and the Panchayats alone shall be entrusted with powers for withdrawal of such fund.

5 Article 243I {Constitution of Finance Commission to review financial position}

1. The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to –
 - (a) the principles which should govern the –
 - I. distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;
 - ii. determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayats;
 - iii. grants-in-aid to the Panchayats from the Consolidated Fund of the State;
 - (b) measures needed to improve the financial position of the Panchayats;
 - (c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.
2. The Legislature of a State may, by law, provide for the composition of the Commission, the qualifications which shall be requisite for appointment as members thereof and the manner in which they shall be selected.
3. The Commission shall determine their procedure and shall have such powers in the performance of their functions as the Legislature of the State may, by law, confer on them.

4. The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

Amendments suggested

5.1 Delete

- The Governor of a State
- to make recommendations to the Governor
- which may be divided
- which may be assigned to
- any other matter referred to the Finance Commission by the Governor
- The Legislature of a State may, by law, provide for the composition
- performance of their functions as the Legislature of the State may, by law, confer on them
- The Governor shall cause every recommendation made by the Commission

5.2 Substitute

- The state legislature shall
- To make recommendations which are binding on the Cabinet of the State Government
- Which shall be divided between village panchayat, block panchayat and district panchayat under this Part in the ratio of 60:35:5 respectively and the allocation between the Panchayats at all levels of their respective shares of such proceeds;
- which shall be entrusted to and appropriated by, the Panchayats;
- grants-in-aid empowering Panchayats 50% from the Consolidated Fund of the State / SFC grant
- any other matter referred to the Finance Commission by the State Legislative Assembly in the interests of sound finance of the Panchayats

The recommendation of State finance Commission with regard to apportionment of state government own resources among the local bodies should be made mandatory

- The Legislature of a State shall, by law, provide for the composition of the Commission, the selection process must receive the consent of the district panchayat presidents in writing and at least the process of selection must be approved by 2/3rd of the district president collegium
- The Cabinet of the state government shall cause every recommendation made by the Commission under this article to be binding on the cabinet and to present in the following Legislative assembly session as to the action taken with regard to the enforcement of the recommendation

6 Article 243 ZD – District Planning Committee

Amendment suggested

6.1 Delete

- (2) The Legislature of a State may, by law make provision with respect to –
- a) The composition of the District Planning Committees;
 - b) The manner in which the seats in such Committees shall be filled;

6.2 Substitute

- (2) The Legislature of a State shall, by law make provision with respect to
- a) The composition of the District Planning Committees;
 - b) The manner in which the seats in such Committees shall be filled;

Prepared by the National Campaign for Constitutional Amendment to Part IX (Article 243 A,G & H) and Amendment to Introduce List IV in the Seventh Schedule (Local Government List) incorporating comments and suggestions from the first and second national consultations.

17. Critique of the Draft Model Panchayat and Gram Swaraj Act

Joy Elamon and Tina Mathur
(UNDP)

(This is a summary of a discussion in The Decentralization Community of Solution Exchange, an initiative of the United Nations in India)

Ministry of Panchayati Raj has formulated a Model Panchayats and Gram Swaraj Act (MPGSA) for states. The Ministry invited members to give their comments and suggestions. The specific comments offered by respondents are given below.

Suggestions on DPC and Planning

- One of the primary tasks of the District Planning Committee (DPC) would be capacity building for decentralized planning. This provision needs to be incorporated. Item 88 (1) could read as: The DPC shall have a planning office as the Secretariat with a full time Vice Chairman.
- Item 88 (2): The word, 'elected members of the District Panchayat' excludes the members of Gram and Block panchayat. It could be changes to members of the Panchayats at the district level. Item 88 (3) could be modified to read that MPs and MLAs shall be special invitees to DPC meeting and members by nomination.
- There is a provision for "persons representing the State Government" in the DPC. This provision could be deleted.
- Item 88 (*) could read as: There shall be planning office headed by the Vice Chairman to assist the DPC, who shall be appointed by the District Panchayat. The qualification, expertise and experience of the Vice Chairman of DPC shall be decided by the District Panchayat.
- Item 91 reads "A dedicated centre in every district shall be set up to provide assistance to the Panchayats for preparation of plans". Since the assigned role of the DPC is to provide assistance to the Panchayats for the preparation of plans, the role of a dedicated centre' is not clear. DPC should have the power to consult any technical and professional individual/institutions.
- The key word in 88 (6) is not about DPC creating a draft plan, actually it should be DPC consolidating the plan.

- For intra-Panchayat sharing and exchange of plan proposals, the Village Panchayats have no role under Section 33 (6) while Intermediate Panchayats have also been denied any scope to know plan proposals of the District Panchayat. This should be amended.
- Section 36 relating to Parastatals should be deleted altogether as they continue to exist for non-amending the concerned state Act. Removal of such parastatals is the executive responsibility, may not crowd the legislative area.

Gram Sabha/Ward Sabha

- Along with the provision of recall [item 58(A)] there could be another provision of losing membership for chairpersons/members for not convening the gram sabha/Ward Sabha consecutively for two times. In [item 67(4)] there is mention about performance audit report to be presented in the gram sabha. The details of its composition and activity need separate description.
- gram sabha and Ward Sabha cannot be regarded as an administrative set up as they do not perform any administrative role; they perform more like legislature. Hence, a new category to be created to describe them.
- In article 20 and 21 a long list of works confuses between various functions-management, planning, execution, monitoring, and deliberating functions, which are the main spirit behind creation of gram sabha. It also misses two critical points, gram sabha has no say on budget of gram Panchayats, and also gram Sabha has no say on what is to be done at block and district levels.
- Two meetings in the span of 6 months each tend to become ceremonial. gram sabha must mandatorily meet more, at least 3 times a year at fixed dates.

Accountability and Citizens Participation

- There may be specific provisions given to citizens to inspect the records on tax accounts, measurement book and muster rolls. Provision may also be made to constitute Appellate Tribunal to enable the citizens go against the arbitrary decisions of Panchayat (in issue of license etc.) and for the adjudication of disputes between Panchayats.

- Section 251 talks of social audit of only village panchayats, and not of block and Zillah panchayats. Social audit and Citizen Report card clauses must apply equally to all tiers of panchayats.
- The idea of Ombudsman in Section 254 is welcome but there must be at least one Ombudsman per district of r the system to be effective. The Chief Minister must not be involved in the selection of the Ombudsman. The staffing of the Ombudsman's office must not be left to state governments as mentioned in Section 257. There must be at least 5-10 staff members depending on the size of the district.

General suggestions

- This bill still maintains the rural urban dichotomy. Focus must be on local governments covering both rural and urban areas. This implies combining the regulatory and implementation Ministries associated with local governance at the Union and the states. Also the Model Act needs to enshrine tier specific obligatory, regulatory or developmental responsibilities for items included in the 11th schedule of the Constitution. Such responsibilities must be mutually exclusive for any given tier of panchayats. The idea of Secretary being a state government servant is completely contradictory to decentralization and devolution. MPGSA, though belated, is a welcome step for aiming at uniformity in the functioning of the Panchayats across the states. This will demand political will of the state governments as it will call for legislative action for major amendments to be effected on the existing Act together with requirement of re-defining political philosophy on Panchayats. Besides, it will also have to address crucial adjustment problems for the existing panchayats.

18. THE CONSTITUTION (SEVENTY-THIRD AMENDMENT) ACT, 1992

Statement of Objects and Reasons appended to the Constitution (Seventy-second Amendment) Bill, 1991 which was enacted as the Constitution (Seventy-third Amendment) Act, 1992

STATEMENT OF OBJECTS AND REASONS

Though the Panchayati Raj Institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersessions, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.

2. Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the short-comings which have been observed, it is considered 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.

3. Accordingly, it is proposed to add a new Part relating to Panchayats in the Constitution to provide for among other things, Gram Sabha in a village or group of villages; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village and intermediate level, if any, and to the offices of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of Panchayats and office of Chairpersons in Panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of 5 years for Panchayats and holding elections within a period of 6 months in the event of supersession of any Panchayat; disqualifications for

membership of Panchayats; devolution by the State Legislature of powers and responsibilities upon the Panchayats with respect to the preparation of plans for economic developments and social justice and for the implementation of development schemes; sound finance of the Panchayats by securing authorisation from State Legislatures for grants-in-aid to the Panchayats from the Consolidated Fund of the State, as also assignment to, or appropriation by, the Panchayats of the revenues of designated taxes, duties, tolls and fees; setting up of a Finance Commission within one year of the proposed amendment and thereafter every 5 years to review the financial position of Panchayats; auditing of accounts of the Panchayats; powers of State Legislatures to make provisions with respect to elections to Panchayats under the superintendence, direction and control of the chief electoral officer of the State; application of the provisions of the said Part to Union territories; excluding certain States and areas from the application of the provisions of the said Part; continuance of existing laws and Panchayats until one year from the commencement of the proposed amendment and barring interference by courts in electoral matters relating to Panchayats.

New Delhi; G. Venkat Swamy.

The 10th September, 1991.

THE CONSTITUTION (SEVENTY-THIRD AMENDMENT) ACT, 1992

[20th April, 1993.]

An Act further to amend the Constitution of India

BE it enacted by Parliament in the Forty-third Year of the Republic of India as follows:-

1. Short title and commencement.-
 - (1) This Act may be called the Constitution (Seventy-third Amendment) Act, 1992.
 - (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. Insertion of new Part IX.- After Part VIII of the Constitution, the following Part shall be inserted, namely:-

PART IX THE PANCHAYATS

243. Definitions.- In this Part, unless the context otherwise requires,
- (a) "district" means a district in a State;
 - (b) "Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;
 - (c) "Intermediate level" means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;
 - (d) "Panchayat" means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas;
 - (e) "Panchayat area" means the territorial area of a Panchayat;
 - (f) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published;
 - (g) "village" means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

243 A. Gram Sabha.- A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide.

243B. Constitution of Panchayats.- (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

243C. Composition of Panchayats.- (1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and; for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation-

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

- (d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within-
 - (i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;
 - (ii) a Panchayat area at the district level, in Panchayat at the district level.
- (4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.
- (5) The Chairperson of -
 - (a) a Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and
 - (b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

243D. Reservation of seats.- (1) Seats shall be reserved for-

- (a) the Scheduled Castes; and
 - (b) the Scheduled Tribes,
- in every Panchayat and the number of seats of reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.
- (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.
 - (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled

Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

- (4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

- (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.
- (6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

243E. Duration of Panchayats, etc.- (1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

- (2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is

functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

- (3) An election to constitute a Panchayat shall be completed-
- (a) before the expiry of its duration specified in clause (1);
 - (b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

- (4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.

243F. Disqualifications for membership.-(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat-

- (a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

- (b) if he is so disqualified by or under any law made by the Legislature of the State.

- (2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

243G. Powers, authority and responsibilities of Panchayats.- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may

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

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

243H. Powers to impose taxes by, and Funds of, the Panchayats.-The Legislature of a State may, by law,-

- (a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- (b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- (c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and
- (d) provide for Constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

243-I. Constitution of Finance Commission to review financial position.- (1) The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to-

- (a) the principles which should govern-
 - (i) the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the

State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;

- (ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayat;
 - (iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State;
- (b) the measures needed to improve the financial position of the Panchayats;
- (c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.
- (2) The Legislature of a State may, by law, provide for the composition of the commission, the qualifications which shall be requisite for appointment as members thereof and the manner in which they shall be selected.
- (3) The Commission shall determine their procedure and shall have such powers in the performance of their functions as the Legislature of the State may, by law, confer on them.
- (4) The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

243J. Audit of accounts of Panchayats.- The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts.

243K. Elections to the Panchayats.- (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

- (2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

- (3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).
- (4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

243L. Application to Union territories.-The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the Legislative Assembly of a State were references, in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

243M. 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.

- (2) Nothing in this Part shall apply to-
 - (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.
- (3) Nothing in this Part-

- (a) relating to Panchayats at the district level shall apply to the hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force;
 - (b) shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.
- (4) Notwithstanding anything in this Constitution,-
- (a) the Legislature of a State referred to in sub-clause (a) of clause (2) may, by law, extend this Part to that State, except the areas, if any, referred to in clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;
 - (b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

243N. Continuance of existing laws and Panchayats.-Notwithstanding anything in this Part, any provision of any law relating to Panchayats in force in a State immediately before the commencement of the Constitution (Seventy-third Amendment) Act, 1992, which is inconsistent with the provisions of this Part, 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:

Provided that all the Panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

243-O.Bar to interference by courts in electoral matters.-

Notwithstanding anything in this Constitution,-

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;
- (b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.'

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

"(bb)the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;"

Constitution, the following Schedule shall be added, namely:-

"ELEVENTH SCHEDULE (Article 243G)

1. Agriculture, including agricultural extension.
1. Land improvement, implementation of land reforms, land consolidation and soil conservation.
2. Minor irrigation, water management and watershed development.
3. Animal husbandry, dairying and poultry.
4. Fisheries.
5. Social forestry and farm forestry.
6. Minor forest produce.
7. Small scale industries, including food processing industries.
8. Khadi, village and cottage industries.
9. Rural housing.
10. Drinking water.

11. Fuel and fodder.
12. Roads, culverts, bridges, ferries, waterways and other means of communication.
13. Rural electrification, including distribution of electricity.
14. Non-conventional energy sources.
15. Poverty alleviation programme.
16. Education, including primary and secondary schools.
17. Technical training and vocational education.
18. Adult and non-formal education.
19. Libraries.
20. Cultural activities.
21. Markets and fairs.
22. Health and sanitation, including hospitals, primary health centres and dispensaries.
23. Family welfare.
24. Women and child development.
25. Social welfare, including welfare of the handicapped and mentally retarded.
26. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
27. Public distribution system.
28. Maintenance of community assets."

19. PESA, 1996
The Provisions Of The Panchayats
(Extension To The Scheduled Areas) Act, 1996
No.40 OF 1996
(24th December, 1996)

K.L. MOHANPURIA
(Secy. To the Govt. of India)

An Act to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas.

Be it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:-

Short title

1. This Act may be called the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996

Definition

2. In this Act, unless the context otherwise requires, "Scheduled Areas" means the Scheduled Areas as referred to in Clause (1) of Article 244 of the Constitution. Extension of part IX of The Constitution
3. The provision of Part IX of the Constitution relating to Panchayats are hereby extended to the Scheduled Areas subject to such exceptions and modifications as are provided in section 4.

Exceptions and modifications to part IX of The Constitution

4. Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely:-
 - (a) a State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;
 - (b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;

- (c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;
- (d) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;
- (e) every Gram Sabha shall-
 - i. approve of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;
 - ii. be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;
- (f) every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the plans, programmes and projects referred to in clause(e);
- (g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution;

Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;

Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes;
- (h) the State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the district level:

Provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat;

- (i) the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;
- (j) planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;
- (k) the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas;
- (l) the prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;
- (m) while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with-
 - (i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;
 - (ii) the ownership of minor forest produce;
 - (iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;
 - (iv) the power to manage village markets by whatever name called;
 - (v) the power to exercise control over money lending to the Scheduled Tribes;
 - (vi) the power to exercise control over institutions and functionaries in all social sectors;
 - (vii) the power to control over local plans and resources for such plans including tribal sub-plans;

- (n) the State Legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha;
- (o) the State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas.

Continuance of existing laws on panchayats

5. Notwithstanding anything in Part IX of the Constitution with exceptions and modifications made by this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas, immediately before the date on which this Act receives the assent of the President, which is inconsistent with the provisions of Part IX with such exceptions and modifications 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 the date on which this Act receives the assent of the President;

Provided that all the Panchayats existing immediately before such date shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having Legislative Council, by each House of the Legislature of that State.

20. A Great Adventure of Democracy and Development

Prime Minister Shri P.V. Narasimha Rao's
letter to Panchas and Sarpanchas, 5th May, 1993

My dear friend,

You and your fellow-panchayats are elected to look after the socio-economic development and welfare of the people in the area of your Panchayat. There are very high expectations from your institution. Do you think that you have been able to fulfil these expectations? Perhaps, the system has not been created properly, wherein you could really perform the job to the satisfaction of the people. You may even say that adequate resources or responsibilities have not been given to you and the Panchayat.

You may recollect that our dynamic leader and the then Prime Minister, Late Shri Rajiv Gandhi, had addressed you in September, 1989 about the Panchayati Raj Bill which was initiated by him to make your hands stronger. The steps initiated by him at the time have now taken a definite shape. You would recall that the Constitution (Seventy-Second Amendment) Bill 1991 and was introduced in the Lok Sabha in September 1991 and was referred to a Joint Committee of Parliament. On the basis of their report, the Lok Sabha passed the Bill on 22 December, 1992 and the Rajya Sabha passed the Bill on the following day. After ratification by the legislatures of more than half the states, the President was pleased to give his assent to this Bill on 20 April, 1993. This Act was brought into force by a notification with effect from 24 April, 1993.

Thus, you would be glad to know that democracy and devolution of powers to Panchayats have now become part of the most sacred document of this nation: the Constitution of India. No one can now snatch democratic practices from your Panchayat. Panchayats cannot be kept arbitrarily suspended or dissolved now. No one will be able to take away the powers, responsibilities and finances devolved upon the Panchayats.

The Constitutional changes will prove to be a major landmark in the history of development of rural areas of this country. *This Act will ensure that real power will go back to you only and you will be expected to play a much greater role in the development of your area and people.* It should be

possible to ensure the participation of poorest of the poor in this process and no section of society should have a feeling of being left out.

Village Panchayats will very soon become living institutions on permanent basis and will consist of representatives of the people elected by them. These institutions will run various programs for their welfare and will also involve people in their planning. They will be vibrant institutions performing necessary developmental, regulatory and general administrative functions. *Agriculture, Land improvement, Animal Husbandry, Village and Cottage Industries, Drinking Water, Poverty Alleviation Programs, Health, Sanitation, Family Welfare etc.*, will necessarily be the concern of the village panchayats. They must be able to provide for the day -to-day common needs of the people besides protecting their well being in different ways.

Development of our nation can only be achieved if our vast rural areas are developed. People living in rural areas have been suffering from poverty and unemployment and they don't have adequate purchasing power.

In some of the areas the plight of the poor people is multiplied by vagaries of the nature. Excessive problems are created for the poor people due to failure of monsoon and some of the areas are chronically drought affected. In these areas you are expected to play a much greater and responsive role so that relief could be provided to the needy people. Recently, I have toured the drought affected regions in the State of Bihar, Madhya Pradesh and Orissa. *It is my firm belief that relief programs can be administered in a better and systematic manner only with the involvement of Panchayats.*

The main features of the Constitutional (Seventy-third Amendment) Act, 1992, which would be legislated upon in all the States are:-

- (a) The Gram Sabha will be a body comprising of all the adult members registered as voters in the Panchayat area.
- (b) There shall be three-tier system of Panchayat at village, intermediate and district level. Smaller states with population below 20 lakhs will have option not to have intermediate level Panchayat.
- (c) *Seats in Panchayats at all three levels shall be filled by direct election.* In addition, Chairpersons of Village Panchayats can be made members of Panchayats at intermediate level and Chairpersons of Panchayats at

intermediate level can be members of Panchayat at the district level. MPs, MLAs and MLCs could also be members of Panchayats at the intermediate or the district level.

- (d) *In all the Panchayats, seats would be reserved for SCs and STs in proportion to their population and one third of the total number of seats will be reserved for women. One third of the seats reserved for SCs and STs will also be reserved for women.*
- (e) Offices of the Chairpersons of the Panchayat at all levels shall be reserved in favour of SCs and STs in proportion to their population in the state. One third of the offices of Chairpersons of Panchayats at all levels shall also be reserved for women.
- (f) Legislature of the State shall be at liberty to provide reservation of seats and offices of Chairpersons in Panchayats in favour of backward class of citizens.
- (g) Every Panchayat shall have a uniform five year term and elections to constitute new bodies shall be completed before the expiry of the term. In the event of dissolution, elections will be compulsorily held within six months. The reconstituted Panchayat will serve for the remaining period of five year term.
- (h) It will not be possible to dissolve the existing Panchayats by amendment of any act before the expiry of its duration.
- (i) A person who is disqualified under any law for elections to the Legislature of the state or under any law of the state will not be entitled to become member of Panchayats.
- (j) Independent Election Commission will be established in the state for superintendence, direction and control of the electoral process and preparation of electoral rolls.
- (k) Specific responsibilities will be entrusted to the Panchayats to prepare Plans for economic development and social justice in respect of matters listed in XI Schedule. For the implementation of development schemes main responsibility will be entrusted to the Panchayat.
- (l) *The Panchayat will receive adequate funds for carrying out their functions.* Grants from the State Government will constitute an

important source of funding but State Governments are also expected to assign the revenue of certain taxes to the Panchayat. In some cases, Panchayat will also be permitted to collect and retain revenue it raises.

- (m) In each state, a Finance Commission will be established within one year and then after every five years to determine the principles on the basis of which adequate financial resources would be ensured for Panchayat.
- (n) The Panchayats existing on 24 April, 1993 will be allowed to complete their full term except when they are dissolved by the House by a resolution.

I am enclosing a copy of the Constitution (Seventy third Amendment) Act, 1992 which will enable you to appreciate the provisions of the Panchayati Raj Act. Since this Act has been brought into effect from 24 April, 1993, the states will be expected to amend their Panchayati Raj Acts to bring them in conformity with the Constitution Amendment - Act, before 24.4.1994. It is expected that states shall enthusiastically react to this and expedite the measures for enhancing the state legislations.

The main objective of enacting this Constitution Amendment Act is to improve the participation of the people in the process of their development. It was felt that involvement of people was lacking and they were not having opportunity to decide the matters which directly affect their life. Once the provisions of the Constitution Amendment Act are incorporated in the Acts of the states and institutions are established at different levels, the quality of implementation of programs will be substantially improved. State Governments will devolve adequate functions, finances and powers to ensure better implementation of various developmental programs.

I would like you to call a meeting of your Panchayat and explain to all the members the main features of the Panchayati Raj Constitution Amendment Act. Thereafter, I would like you to call a meeting of the Gram Sabha to explain these matters to all adult persons who live in the villages falling within your Panchayat. *It is particularly important that all the Scheduled Castes and Scheduled Tribes be called to this meeting. You must also specially ensure the participation of all the women of the Panchayat in this meeting.*

We are starting out together on a great adventure of democracy and development at the grass root level. The success of our efforts will depend mostly on how you and your panchas undertake the responsibility entrusted to you. Success will also depend to some extent on the cooperation between you, the State Government and the Union Government. I assure you of our utmost support and cooperation.

You may come across certain problems and will have lot of suggestions in improving the decentralized model of administration envisaged in this Constitution Amendment Act. Please do not hesitate to write to me about the problems you encounter and the suggestions you might have for improving the work of the Panchayat.

My greetings and best wishes to all of you

Yours sincerely,

Sd P.V. Narasimha Rao

(Prime Minister)

[All emphasis as in original, as released by the Ministry of Information and Broadcasting, Government of India, May 1993.]

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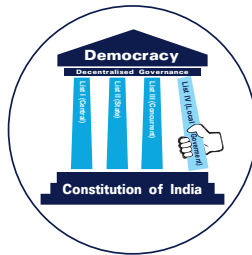
Panchayat government is the first government. Panchayat power is based on people's power and the need for participatory democracy. Devolution of powers, functionaries and finance must be accompanied or preceded by de-concentration of wealth, power and income, a struggle against inequalities and abolition of practices of untouchability and discrimination.

The grama sabha is a significant institution for the promotion of participatory democracy. This people's institution provides opportunities for the exploited and marginalized communities to express their voice against continued inequalities, denial of freedoms, discrimination and social injustice.

The present system of decentralized governance, however, is loaded in favour of caste, class and gender inequalities, depriving elected women, Dalits and scheduled tribes, an opportunity for asserting their identity and practicing participatory governance.

Ossie Fernandes

Founder, HRF



National Campaign for Constitutional Amendment to Part IX (Article 243 A, G & H) and Amendment to Introduce List IV in the Seventh Schedule (Local Government List)

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