



Knowledge. Voice. Democracy.

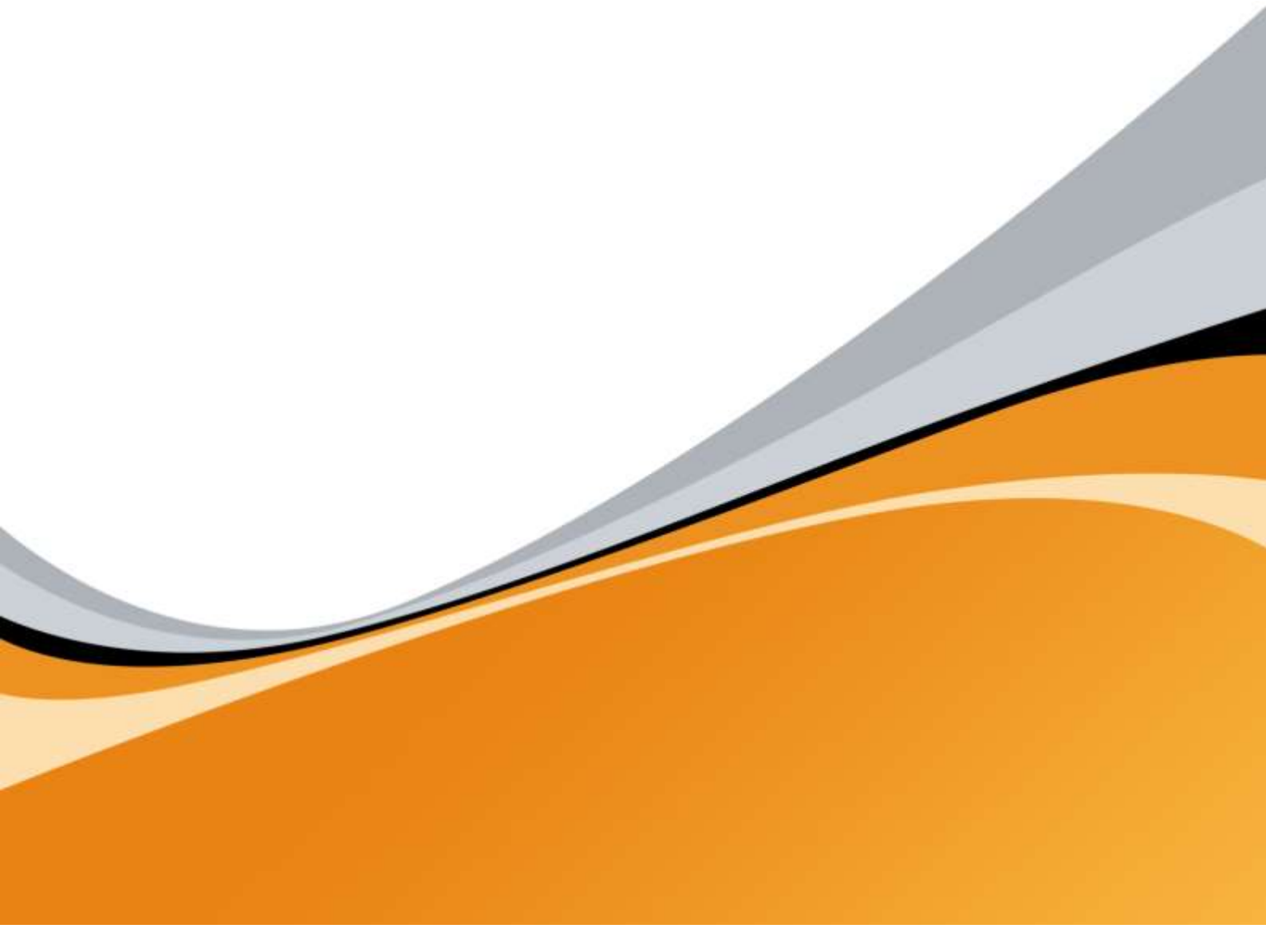
PIRA

occasional paper

April, 2001

Cry the Beloved Self –Government

By
L. C. Jain



Contents

I. Historical basis of Self – Government.....	3
II. Scope and substance of 73 rd /74 th Amendments.....	4
III. Raising awareness of adult population to its role and responsibility.....	5
IV. Reforming pre-existing legislation in conformity with the Amendments.....	6
V. Implementation.....	8
□ Regularity of Elections.....	8
□ Devolution of functions/authority to panchayats.....	10
□ Financial devolution.....	19
VI. Extension of Panchayats to Scheduled Areas.....	23
- Implementation of Central Act No. 40.....	26
VII. Social dimensions of the Amendments.....	29
VIII. Concluding Remarks.....	38

“I have not pictured a poverty-stricken India containing ignorant millions. Establish village swaraj – make each village self-governing and self-contained as regards the essential needs of its inhabitants¹.”

Mahatma Gandhi

I. Historical basis of self-government

“I am not interested”, said Gandhiji, “in freeing India merely from the English yoke. I am bent upon freeing India from any yoke whatever”. What were these other yokes: deprivation, disparities, discrimination. The search for ways to rebuild a India free from these yokes proceeded along with the struggle against foreign rule.

Soon after Independence the Indian National Congress reiterated the “Congress Objectives” in a resolution of November, 1947: “The AICC welcomes the elimination of foreign rule in India and the establishment of a free and independent state and a government responsible to the people of the country. Political independence having been achieved, the Congress must address itself to the next great task, namely, the **establishment of real democracy** in the country and a society based on social justice and equality. This can only be realized, when democracy extends from the political to the social and the economic spheres”. Further, it pinpointed that:

The smallest territorial unit (the village) should be able to exercise effective control over its corporate life by means of a popularly elected panchayat.

Constituent Assembly: Notwithstanding such commitment and clarity, and despite the fact that many stalwarts of the freedom struggle were also members of the AICC and the Constituent Assembly headed by Dr. Rajendra Prasad, the “popularly elected panchayat” failed to find a place in the draft Constitution. The draft came under sharp criticism in the Constituent Assembly. Congress leader Kamalpati Tripathi said, “**the draft Constitution can hardly be called the child of the Indian Revolution**”. In the whole Draft Constitution “we see no trace of Congress ideals and Congress ideology... no trace of Gandhian social and political outlook ... **it is terribly Centre-ridden**”.

The demand for a revision of the draft, however, could not be met as re-drafting, it was explained, might delay the finalisation of the Constitution. But the substance of the demand was sought to be met by addition of Article 40 among the Directive Principles of State Policy, which was adopted unanimously:

¹ 50 years after Independence, there is not a single village out of 350,000 villages, which is self-governing. Is it surprising that we still have 300 million people who are poverty-stricken and as many who are ignorant – deprived of literacy; and there are starvation deaths in villages alongside with bufferstocks of 60 million tonnes – Gandhiji had advocated food self-sufficiency at village level as the primary task of village panchayats and had endorsed Vaikunthbhai Mehta’s suggestion of a village level foodgrain bank to ensure that no single person goes hungry even for a day.

Article 40: The state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

While moving the above amendment, K. Santhanam put on record the intent of the Constituent Assembly in stirring terms:

What is attempted to do here is to give **a definite and unequivocal direction** that the State shall take steps to organize panchayats and shall endow them with necessary powers and authority to enable them to function as units of self-government.

That the entire structure of self-government, of independence in this country should be based on organized village community life is the common factor of all the amendments tabled and that factor has been made the principal basis of this amendment. I hope it will meet the unanimous acceptance.

However, the sad fact is that this “definite and unequivocal direction” was solidly ignored by the authorities in the first forty years (1950 to 1990) of the adoption of the Constitution.

Rajiv Gandhi’s initiative in the 80’s: At the political level Rajiv Gandhi as Prime Minister was disturbed at the lack of responsiveness of the administration and held wide consultations with administrators on how to give India a Responsive Administration. This churning led to realization on his part that Representative Government was fundamental to making the administration responsive. This process led to his sponsoring a Constitutional Amendment (64th) in late 80’s to put panchayats on a sure footing. This Amendment was however lost in Parliament – but on grounds other than opposition to the principle and purpose underlying the Amendment. The pieces were picked up by the next Parliament in early 90’s adding Amendments 73rd and 74th.

I. Scope and substance of 73rd / 74th Amendments

At long last, in 1992, the 73rd and 74th Amendments were brought to honour Article 40 of the Directive Principles to establish institutions of self-government from village upwards. The Amendments incorporated in two Chapters IX and IXa of the Constitution were supported by all Members of Parliament across parties barring one who dissented on technical grounds.

These Amendments indeed went further than Article 40, in their social sweep and significance. By providing for a definite minimum reservation for discriminated groups: Women, Scheduled Castes and Scheduled Tribes in the elected bodies (Panchayats / Nagarpalikas) and by requiring local area plans to include ‘*social justice*’ along with economic development, the 73rd and 74th amendments added explicit and dynamic social dimension to the pursuit of decentralization. Namely, to provide institutional under-pinning for systematic pursuit of several other sister Directive Principles besides Article 40, which too have hitherto remained mainly uncared for. In particular:

Article 38: State to secure a social order for the promotion of welfare of the people
 Article 41: Right to work, to education and public assistance.

Article 45: Provision for free and compulsory education for children.

Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.

Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

Article 48-A: Protection and improvement of environment.

Besides, the changes envisioned by these Amendments extended in their scope and sweep the entire system of governance. The mandate required active participation (via Gram Sabha/Ward Committees) of every single adult member of our one billion population. Thus, for the first time, an active role and responsibility were devolved on every adult citizen who was an eligible voter in the system of governance.

This historical perspective must since 1992 be borne in mind while assessing what has actually been done to implement the mandate of the 73rd and 74th Amendments. We must also remember that the Constitution is not self-enforcing. It relies on designated agents to promote its purposes and enforce its provisions. In the instant case the principal agents required to implement the above Amendments are: Parliament, Central Government, State Legislatures, State Governments, State Election Commissions, Gram Sabhas, Panchayat Raj Institutions, Nagar Palikas, National Finance Commission and the Planning Commission which though not a statutory body, occupies a critical place in the development domain –in planning, allocation of resources and periodic monitoring of progress and evaluation.

For enforcement the Constitution depends simultaneously on the degree of awareness and alertness of the people at large on the one hand and on the other faithfulness and firmness with which those who take the oath of office obey and advance its meaning and mandate.

I. Raising awareness of adult population to its role and responsibility

The dynamic responsibility placed on all the adult eligible voters via the Gram Sabhas and Ward Sabhas dictated the imperative of minimum Constitutional literacy imparted to all our electorate. It was self-evident that in the absence of informed mass support, the objectives of the Amendments could not progress satisfactorily and speedily. This was particularly necessary since the new system envisaged by the two Chapters (IX and IXa) had to be raised on a ground which was already heavily occupied by entrenched centralized approach and enormous powers vested in Ministries, Departments, Officials in Planning, financial and administrative spheres in the absence of popular panchayats.

Little has been done to promote mass awareness of the Constitution and the purpose of the Amendments. A 2001 study of degree of Constitutional Literacy by an independent body (CHRI) found that a majority of the people do not know the Constitution. And, as will be shown, the concerned authorities even if aware of the Constitution have not been sufficiently mindful of their duty to the Constitution.

I. Reforming pre-existing legislation in conformity with the Amendments

Amendments of Existing Panchayat Acts: The enactment of 73rd and 74th Amendments foresaw that the states will have to amend existing panchayat legislation to bring them in conformity with the Constitutional Amendments. The State Legislatures were given one year to pass conformity Acts. Not all the new state legislations conform faithfully to the letter and spirit of the Constitutional Amendment – but even such provisions which they have incorporated are not being followed by the State Governments faithfully.

Modification of previous Acts relating to subjects in 11th / 12th Schedules: Another mandate of the 73rd Amendment was embodied in Article 243 N, which required the States to review and alter all existing legislation relating to subjects assigned to panchayats and nagarpalikas as per Schedule Eleventh and Twelfth, to ensure that such pre-existing Acts did not impinge upon or thwart the autonomy of the local self-government institutions within one year.

Article 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"*.

The fact is that Article 243N has not been heeded by any state. And, though a number of state enactments which became null and void after the expiration of one year from the commencement of the Seventy-Third Amendment in 1992, by virtue of their being inconsistent with the letter and spirit of the Amendment, continue to assail the autonomy of the panchayat raj institutions. A number of parallel bodies are functioning under these otherwise null and void enactments – some which pre-existed and some which have been set up contrary to law, after the Amendment came into force:

The parallel bodies in various states, may be broadly classified into those that were created in the Pre-73rd Constitutional Amendment period and those created in the Post-73rd Constitutional Amendment period. The first category (Pre-Constitutional Amendment period) include those bodies that were functional even before the 73rd Constitutional Amendment Act came into being, like the Joint Forest Management, Water User Groups etc.

The second category (Post-Amendment period) includes those bodies that were constituted after the 73rd Constitutional Amendment Act came into being, e.g. the Expert Committees in Kerala, Janmabhoomi in Andhra Pradesh, Vigilance Committee in Himachal Pradesh and the Gram Vikas Samiti in Haryana. These bodies are the creations of the respective state governments.

The following table provides a glimpse into the areas overlapped by the parallel bodies and the relationship of the parallel body with PRIs in the respective state.

No.	State	Parallel Body	Areas of overlap/ substitution	Institutional Linkage with PRIs
1.	Uttar Pradesh	Water User Groups (WUG)/ Site Implementation Committee (SIC)	<ul style="list-style-type: none"> Formulating, developing and approving plans of the area covered by the WUG selection of beneficiaries (farmers) Construction, maintenance and management of link and main drains policy decisions like decision on rates of water charges 	Village Pradhan may be the ex-officio chairperson of the SIC.
2.	Haryana	Gram Vikas Samiti	Supervision of construction of work out of the funds released by HRDF Board, decentralised planning or any other state government scheme	The samiti consist of 4 members of gram panchayat Chairperson - Sarpanch Elected Members - one panch each from SC community, BC community and a woman panch
3.	Kerala	Expert Committee	Preparation of panchayat development plans	Technical advisory body to the panchayats regarding the plans prepared by the panchayat.
4.	Andhra Pradesh	Janmabhoomi	Planning and implementation of development programmes at the local level.	Sarpanch and the concerned ward member finds representation in the Habitation Level Committee of Janmabhoomi.
5.	Gujarat	Joint Forest Management	<ul style="list-style-type: none"> Cultivation, collection and sale of minor forest produce Conservation and maintenance of common property resources 	<ul style="list-style-type: none"> A representative of village panchayat will serve as one of the members of the mandal or committee. Village panchayat itself may become a mandal or committee for the purpose of JFM
6.	Rajasthan	Watershed	Minor Irrigation	Panchayats can become Project Implementing Agency (PIA) for watershed projects on priority basis.
7.	Himachal Pradesh	Vigilance Committee	Supervision of gram panchayat works/ schemes costing upto Rs.50,000/-	Supervisory body within gram panchayat of the works, schemes and other activities of Gram Panchayat.

Source : PRIA (2001); parallel bodies and Panchayat Raj

Thus laws which have become null and void are being kept alive to thwart, if not sabotage the working of the Constitution Amendments.

The Central Government has also failed in its duty to the Constitution. It does not appear to have challenged the continuation of these null and void Acts – administratively or in the Courts. In fact, it is knowingly aiding and abetting in this defiance of the Constitution by providing substantial funds to parallel structures of the type cited above.

A refreshing example however is an analytical and cogent discussion by S.M. Vijayanand, Member, 2nd State Finance Committee, Kerala in a discussion paper: Issues Related to Administrative Decentralisation and Administering of Decentralisation – Lessons from the Kerala Experience, June 2001:

There are several structures particularly at the district level consisting of officials and non-officials, generally nominated, discharging functions which have been transferred to the local governments – like DRDAs, FFDAs, various societies under Health Department, etc. These were constituted at a time when there were no democratic bodies at the local level. But now they have lost their relevance. Normally they have two components – a professional component and a political decision making component. The latter one has to give way when democratically elected bodies emerge or else they can end up as parallel power centers. Ideally the professional wings should serve the local governments. Kerala has already abolished DRDAs and is in the process of restructuring FFDAs/BFDAs. A similar restructuring of various Committees would be required.

I. Implementation

The pillars of the 73rd and 74th Amendments on which the “institutions of self-government” were to be erected and assured of certainty, continuity and strength supported by key statutory instruments: (1) State Election Commission and (2) State Finance Commission:

1. Time bound and regular elections to panchayats and nagarpalikas.
2. Devolution of functions, powers and resources such as to enable these elected bodies to function as an institution of self-government.
3. Constitution of District Planning Committees to harmonise and consolidate area plans for “*economic development and social justice*”, which are mandated to be prepared by village panchayats.

1. Regularity of Elections

The most shocking violations are in regard to periodic and regular elections, which was the core anchor of the Constitutional Amendment.

In Haryana, Municipal elections which were due in February 2000 were deferred due to the announcement of Assembly polls. In this case also the Supreme Court had to give directions to the State Government to hold

elections to local bodies within a stipulated time. The elections could only be held in March and April 2000 after the Court's intervention.

In Andhra Pradesh, elections to Hyderabad and Rajahmundry Corporations and five Municipalities have not been held as the exercise of delimitation of wards has not taken place. In the case of the Hyderabad Municipal Corporation, the High Court has directed to postpone elections till the Wards are delineated on the basis of the 1991 Census instead of 1981 Census (through WP No.13097 of 1993 judgement on 29.12.1994). The Andhra Pradesh government has now issued a notification on delimitation of wards in the twin cities of Hyderabad and Secunderabad on the basis of the 1991 Census even though the 2001 Census has already been initiated.

Earlier, a Division Bench of the Andhra Pradesh High Court had struck down an Ordinance promulgated by the state government in February 2000 seeking postponement of elections to Mandal and Zilla Parishads and ordered that elections be completed before 30th June 2000. The state government's contention was that on the basis of an unanimous resolution of the AP Assembly, a Bill to amend the Constitution to allow state governments not to have territorial constituencies for Intermediate and District Panchayats had been introduced in the Parliament. Therefore, elections to such levels at this stage would result in unnecessary expenditure and complications and hence the Ordinance had been issued. A writ petition was then filed by the State Election Commission, later joined by some NGOs challenging the validity of the Ordinance. The Andhra Pradesh government filed a Special Leave Petition in the Supreme Court against the High Court order. The Supreme Court has subsequently dismissed the SLP (SLP (Civil) No.7979 – 7986/2000) filed by the Government and has directed the state government to complete the election process by March 2001. Another Writ Petition (W.P.No.17501 of 2000) was filed in the Andhra Pradesh High Court challenging the method of allotment of seats to the BCs without their population being ascertained on scientific basis. The High Court on 13th December directed the state government to collect data of BC population once again on a scientific basis before 1st May 2001 and hold elections on 31st May 2001. The High Court asked the State Election Commission to hold elections to Panchayats only after this process is over.

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

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

The Supreme Court in its judgement dated 12 August 1997, in WP (Civil) No, 719 of 1995 observed as follows:

“.... It is necessary to emphasise that various clauses of Art.243 are to be followed in letter and spirit. The concerned states cannot be permitted to withhold election of panchayats except in case of *genuine supervening difficulties*, e.g., unforeseen natural calamities in the state like flood, earthquake etc., or urgent situation prevailing in the state for which election of the panchayat cannot be held in time. It will be unfortunate if the concerned states remain insensitive to the constitutional mandate of holding election of panchayats in time....”
(*emphasis added*).

Thus, the only valid ground for withholding panchayat election after it has become due is some ‘supervening difficulty’, but difficulty has to be ‘genuine’ in nature. In no case where the states delayed panchayat elections during the post- 73rd-amendment period, the difficulties cited by them could be regarded as ‘supervening’ or ‘genuine.’

1. Devolution of functions / authority to panchayats

Functional Devolution:

The 73rd Amendment includes Articles 243 (d) and 243 G. Article 243(d), defines ‘panchayat’ as an “institution of self-government”. Article 243 G spells out the framework of self-government, which the State Laws were expected to fill in.:

“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 –

- the preparation of plans for economic development and social justice;

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

This Article read with the definite directions of the Constituent Assembly and Statement of Objects and Reasons of the 73rd Amendment, provides the pith and substance of the character of devolution that was envisaged. It enjoins upon the State legislature to “endow the panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government”. It trusted the state legislatures to satisfy themselves that the powers and authority endowed by them add up to the substance and stature befitting an institution of self-government. The Constitution relied on the good sense and sense of responsibility of all concerned to be aware of the history leading upto this Amendment and to comprehend what constitutes “self-government”.

The Central Ministries are tenaciously hugging to authority, functions and funds which they came to acquire before panchayats came to being. For instance, for the 29 subjects listed in Schedule 11th as appropriate for devolution to Panchayats, the annual budget for 2000-2001 is a total of Rs. 72,000 crore for Centre and States combined (Rs. 31,000 crore for the Central Ministries and Rs. 41,000 core for the State Governments). Many of the schemes in these budgets are Centrally-sponsored and tied to a certain State share. Since the Central Ministries are unwilling to let go of these funds and functions to the panchayats, they have encouraged their counterparts in the states also not to devolve but to perpetuate the previous arrangements which were conceived when there were no panchayats. Almost the entire sum of Rs. 72,000 crore thus remains tied in Central-State hands, making devolution as directed by the Constitution a mockery.

There also seems to be no intention to devolve even in the coming years. The Rural Development Ministry, for example, is actively aiding and abetting the perpetuation of the administrative creature: the District Rural Development Agency (DRDA) which pre-existed the IX and IX (a) Chapters, and which should have been abolished and merged with the elected Zilla Parishads. In so doing, the Ministry is defying even the Standing Committee of Parliament which has repeatedly called upon the Ministry to wind up DRDAs and merge them with Zilla Panchayats. In spite of that the Rural Development Ministry is spending over two hundred crores annually to strengthen the administrative machinery of the DRDAs. And, what is even more shocking is that the Ministry has publicly stated that it plans to maintain DRDAs as “**distinct**” from panchayats (as per its Annual Report 2000-2001). This is an affront to the Constitution by a Ministry which is primarily responsible for enforcing the mandate of the 73rd Amendment. There are several other programmes under that Ministry e.g. National Social Assistance Programme (NSAP) where too the District Collector is

-
- Recent official examination of fund management by DRDAs has reportedly pointed out serious irregularities, huge diversion of funds and even fraudulent practices.

in control; the panchayats have only a peripheral role. This is deliberate subversion of the Constitution.

A glance at the actions of the different states in the matter of faithful implementation of the two Amendments in letter and spirit is a cause of anxiety. For instance:

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

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

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

West Bengal which is regarded as having a highly even though the state's conformity Act recognises each panchayat to be a 'unit of self-government', it keeps its earlier scheme of distribution of power unaltered. The Act provides impressive lists of functions which panchayats may discharge, but does not make provisions either of untied fund or of staff. By executive orders the state government allows the panchayats to share implementation responsibilities of some of its projects/ schemes/ functions. Thus the panchayats of the state have to remain satisfied with only 'agency functions', and are incapable of exercising autonomy in its own functional domain as given by the statute.

Karnataka, Madhya Pradesh and Kerala are the states where some attempts have been made to ensure the growth of panchayats as self-governing institutions. In 1997, Karnataka amended its original conformity Act of 1993 to express commitment for developing panchayats 'as units of self- government', to eliminate bureaucratic control over elected bodies to give powers of delimitation of constituencies to the state election commission, provisions for establishing a state panchayat council with Chief Minister as chairperson and all the adhyakshas of zilla parishads as members to act as a forum for discussing matters relating to the functioning of panchayats. Substantial staff and resources also were to be transferred to the panchayats. But, the situation cannot be called satisfactory. Funds come to the PR bodies in tied form for the purpose of administering departmental schemes. Untied funds are not substantial and the panchayats have little scope to launch programmes based upon their own plans and initiatives. They also have no effective administrative control over the government staff transferred to them and nor do they have their own cadres. Hence, panchayats of the state perform mainly agency functions.

The original conformity Act of Madhya Pradesh only referred to the state government's power of entrusting functions to the panchayats in terms of the provisions contained in Article 243G read with 11th schedule. But, like before, the Act also provided that the state government had the right to withdraw functions already assigned to the panchayats. An amendment made in 1996 reaffirmed the position and provided that the panchayats at different levels should have such power and authority as may be necessary to enable them to function as institution of self-government in relation to the matters listed in the 11th schedule. It also provided that the panchayats should have the power to select employees necessary for implementation of the assigned functions. The state government has issued a series of executive orders from time to time for delegation of powers. As the matter stands now, responsibility for programmes/activities of seventeen departments have been transferred to the panchayats along with staff and resources. Despite these efforts, panchayats remain only implementing agencies of the schemes conceived by the state or central government. They receive funds which are mostly tied to specific schemes. The staff continue to remain with the government even where full responsibilities of any function or activity have been stated to be transferred to the panchayats. Even in respect of taking major decisions on implementation, the district bureaucracy retains control. By far the greatest distortion in the process of decentralisation has been made by making a state minister chairperson of District Planning Committee and naming it as district government. The concept of district government as developed in M.P is an assault on the authority of the Zilla Parishad.

Kerala appears to be the only state where a systematic and sincere effort is on since 1996 to carry forward the process of decentralisation in its totality. Kerala's panchayat Act as amended in 1999 is probably the best attempt to define the functional areas of

different tiers of PRIs as precisely as possible, the objective being to reduce their agency role and expand their autonomous- actor's role. The Act has eliminated direct control of panchayats by bureaucracy and reduced drastically government control over them.

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

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

The process of assigning various functions thus becomes as important as the substance. The Kerala Act clearly says that functions are to be assigned by law and once so assigned can be withdrawn or modified only by a similar law. This is an important aspect because in many states the assignment of functions is done by regulations or government orders and even if the initial assignment is by a state law they are made subject to the rules and regulations as may be specified by the Government. The functional domain therefore becomes uncertain and variable at the discretion of the Government in power. It is interesting to note that while moving the 73rd Amendment Bill in December 1992 the then Rural Development Minister stated in the Lok Sabha that

“we intend to inscribe in the Constitution certain core elements of grassroots democracy to take them beyond the pale of changing political expediency”.

But this has not happened. Even in the limited experience since the 73rd and the 74th Amendments became law, there have been several agitations on behalf of both the panchayats and urban local bodies demanding from the State governments the functions listed in the 11th and 12th Schedules to be assigned to them. Very recently the All India Council of Mayors has also moved the Supreme Court seeking a direction to the State governments in this regard.

From the foregoing brief survey of the conformity Acts of different states, certain general conclusions can be drawn. First, most states have shown lack of genuine commitment to decentralise. Most states have chosen to keep the functional domain of panchayats unaltered. Even the mention of the 11th schedule functions in many state Acts does not alter the character of the functions assigned to them.

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

Even in the states which have shown some inclination to decentralise, devolution has not gone beyond the implementation responsibility of the schemes/projects conceived by the state or central government. As a result, panchayats are not being allowed to blossom into institution of self-government. Instead they have become one of the implementing agency of the state government, and that too as a subsidiary of state departments.

Lastly, all the states, except to a certain extent, Kerala, have chosen to assign functions not through the statute, but in the form of rules or executive orders. The task of assigning functions to the panchayats was given to the state legislatures, but the same does not seem to have been fulfilled satisfactorily. Functions, functionaries and finances have to go together for any process of devolution to be meaningful.

Article 243 G is a defining statement in favour of democratic decentralisation under which the local self-government institutions are required to play a distinct role in the country's governance along with the governments of the states and the centre. But these infants are being strangled by their own mothers and nurses.

As a result, even today, 54 years after Independence and eight years after the enactment of the 73rd and 74th Amendments, the situation at the grassroot level stinks of colonial outlook and administration. A recent report by George Mathew in the Hindu, on one of the major States, Maharashtra, which is popularly believed to be a pioneer in establishing panchayat raj, shows that instead of creating Panchayat Raj, it has in fact created a "*Gram Sevak raj going up to BDO raj and District CEO raj*". The elected panchayat institutions/representatives are subordinated to these officials. "The work of the gram panchayat centres around Gram Sewak and nothing can

move, nothing can happen without him. There is no power for the elected members or Sarpanches or Presidents at the Taluka and District levels. A social worker in one of these meetings stated that she saw in a nearby district the Zilla Parishad president not getting even a seat before the CEO and that he had to stand all the time to explain certain matters”, says the report. The Report adds that “The *elected* representatives in Maharashtra” are there “just to hear the grievances, receive petitions or sign the certificates. They have no power to act. For everything they have to knock at the door of BDO or ZP CEO”.

We now turn to 243G (a) which enjoins upon the Village Panchayats the responsibility of “preparation of plans for economic development and social justice”. This recognised like Gandhiji did, that without being engaged day to day with the living and livelihood problems of its inhabitants an elected panchayat will be an empty political box. He therefore advocated that Village Republics should create conditions for the inhabitants to at least grow food and produce cloth to meet their bare minimum needs. The Economic Survey of a taluka in Kheda district in 1929, prepared on Gandhiji’s advice also highlighted the role of panchayats to nurture their basic resources of soil, water, vegetation, grazing grounds, sanitation (all what we call today **environmental** concern).

The seemingly simple provision 243 G (a) embodies in it the essence of that wisdom as well as a composite solution of some of the chronic problems which have bedeviled development at the grassroot level right from the start of the planning period. First, of these is absence of planning from below and instead, planning from the top. Second, lack of planning on an **area** basis and exclusive reliance on **sectoral** planning. Third, implementation of plans in a fragmented manner by different sectoral departments without consultation or mutual co- ordination. This top down, isolated sectoral pattern of development has denied the benefits that would have otherwise accrued to the economy from the mutually reinforcing effect of investments/expenditures/activities. Understandably therefore, in spite of massive expenditure over decades, the yields in human and material terms have been sub-optimal. Last but not the least, this pattern of development excluded people’s participation in planning in determining priorities and strategies or in contribution of ideas, resources and energies of the communities which are necessary to enrich development and enhance the satisfaction of the people at large. Across numerous 5-year plans these maladies have continued unaddressed if not worsened.

One of the critical impediments in remedying the above situation was absence of grassroots area-based institutions (‘popular panchayats’ – of the people and accountable to them) which could prepare local area plans duly informed with knowledge of local conditions and priorities for removal of deprivation, disparities and discrimination afflicting the local population; and to supervise and ensure co-ordinated implementation of the plan with efficiency in use of resources and mobilisation of additional local resources. As the Second Five Year Plan had visualised that such local area plans (‘planning from below’) would benefit the entire planning endeavor at all levels – and advance the cause of economic development and social justice in a more assured way or what Gandhiji envisioned that self-governing India will strive to end ‘all yokes’ – deprivation, disparities and discrimination. That is what economic development and social justice are all about.

To reiterate Article 243G provides over-arching direction that while framing laws, the state legislatures should endow the panchayats “with such powers and authority as may be necessary to enable them to function as institution of self- government”. Has this direction been complied with? It does not appear to be the case.

The Planning Commission argues that in respect of the 29 subjects identified in the Eleventh Schedule it is necessary for the State Governments to clearly identify what would be done by the three tiers of Panchayats at their levels. This should be based on the rule that what can be done at the lower level should be done only at that level no higher. Furthermore, departmental functionaries who are required to implement the programmes at the Panchayat level must be placed under their overall supervision and control.

In some States, functions and functionaries have not been transferred to PRIs. For instance, in the field of decentralisation, the State Government of Andhra Pradesh is implementing the JANMABHOOMI mainly through the State bureaucracy, which is against the spirit of the 73rd Constitutional Amendment Act, 1992. However, after strong protests from Sarpanches, the State Government has agreed to transfer 16 out of the 29 subjects of rural administration to the local bodies. Also, Haryana State has circulated a list of 16 Subjects to be transferred to PRIs. The exercise appears to be vague as it does not provide for any transfer of funds, personnel and powers to the elected bodies. The responsibilities relate mostly to supervision and monitoring

With the exception of Kerala, none of the other states have enabled the village panchayats to undertake preparation of area plans for economic development and social justice – totally violating the direction explicit in Article 243 G (a). On the contrary the State Governments have continued with sectoral planning and administration the planning is centralised at State headquarters and implementation is done through the field offices of the various sectoral department – as if the Constitutional Amendment had not happened.

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

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

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

However, such is the mindset of the political and administrative leadership that they have argued that the provisions of these two Chapters are not mandatory and it is not incumbent on the states to entrust the functions and responsibilities under these schedules to the local bodies. The 11th and the 12th schedules are an integral part of the Constitution and have the same status and force as other schedules. Further more as part of the 73rd and 74th Amendments they have also been ratified by the required number of states. The country need not have gone through the elaborate process of amending the Constitution and ratifying the same if the schedules are regarded as decorative elements to be observed only as per convenience.

Financial Devolution

The statement of object and reasons for the 73rd Amendment had cited “lack of financial resources” as one of the factors which in the past had stood in the way of the panchayats “to acquire the status and dignity of viable and responsive people’s bodies”. To remedy this situation the 73rd / 74th Amendments took constructive steps:

243-I. Constitution of Finance Commission to review financial position – (1) The Government 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 Panchayats;
 - (iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State;

- (a) the measures needed to improve the financial position of the Panchayats;
- (b) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.

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.

243 Y Finance Commission –

1. The Finance Commission constituted under article 240-I shall also review the financial position of the Municipalities and make recommendations to the Governor as to-

- (a) the principles which should govern-

Article 243 Y the constitution extended the scope of the State Finance Commission to cover municipalities by;

- (i) the distribution between the State and the Municipalities 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 Municipalities 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 Municipalities;
- (iii) the grants-in-aid to the Municipalities from the Consolidated Fund of the State;

- (b) the measures needed to improve the financial position of the Municipalities;
- (c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.

2. 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.

3. To reinforce financial resources to panchayats and the municipalities, the Parliament also brought in the National Finance Commission in the picture by expanding the scope of Article 280 **Finance Commission**, adding the following provisions among the duties of the Finance Commission under 280 (3):

- (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;

- (cc) The measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;

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

Recommendations Regarding Transfer of Funds: State to Urban Local Bodies	
Andhra Pradesh	39.24% of state tax and non tax revenue to all local bodies
Assam	2% of State tax for local bodies, both rural and urban
Himachal Pradesh	An amount equal to Rs.12.2 crore as grants in lieu of octroi for 1996/97, to rise to Rs.17.9 crore in 2000/01.
Delhi	9.5 per cent of the total tax revenue of the state with MCD getting 96.85 per cent and NDMC 3.15 per cent.
Karnataka	5.4% of the total non-loan revenue receipt for meeting the plan and non plan expenditure
Kerala	40% of State plan funds for plan scheme and 1% of State revenue be transferred to the rural and urban local bodies in proportion to their population.
Madhya Pradesh	8.67% of the tax and non tax revenues of State government
Maharashtra	25% to 100% of entertainment taxes collected from municipalities of different grades, 25% of vehicle tax and 10% of professional tax are recommended shares for local bodies.
Manipur	Maintenance grant equal to Rs.88.3 lakhs to accrue to municipalities in 1996/97.
Orissa	Rs.179.5 crore is the projected transfer (grant) to urban local bodies between 1998/99 and 2004/5
Punjab	20 percent of the net proceeds of five state taxes, to be shared with the Panchayats and Municipalities
Rajasthan	2.18 per cent of the net proceeds to the local bodies. The division of these proceeds between rural and urban should be in the ratio of 3:4:1
Tamil Nadu	8 percent of the total revenue from all state taxes excluding the entertainment tax; of which 15 percent as equalisation and incentive fund in the ratio of 60:40 and 85 percent in the ratio of 55:45 among rural and urban local bodies.
Uttar Pradesh	7% of the net proceeds of state's total tax revenue should be transferred to urban local bodies.

West Bengal	16% of the net proceeds of all taxes collected by the State should be transferred to local bodies.
--------------------	--

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

Also review of the SFC reports observes that the mismatch between functions and finances and near bankruptcy in many situations have been recurring features of municipal body finances in the country. The Constitution, even after the 74th Amendment does not provide for an autonomous domain of tax or revenues raising powers to municipalities. These continue to be determined and regulated by the State governments. The State governments specify the taxes that the Municipalities can levy and collect which are taken from the State list in the 7th schedule. Historically these taxes have included taxes on lands and buildings, taxes on entry of goods into a local area for consumption, taxes on animals and boats, taxes on entertainment, taxes on professions, trades etc.

There are significant variations between the states. Since there is no district tax domain of the Municipalities as such, the control of the State governments in determining the tax, tax rates or even tax exemptions is significant. The Punjab government has recently abolished the levy of taxes on properties for domestic use. Within Rajasthan several municipalities do not levy property taxes.

The Report of the Eleventh Finance Commission (EFC), 2000, carries a special chapter VIII with extensive discussion of the implementation of the 73rd/74th Amendments and reviewed the report of the State Finance Commissions.

The Eleventh Finance Commission observations are pertinent and crisp:

The rural and urban local bodies, that is, the panchayats and the municipalities, were in existence even before the seventy-third and the seventy-fourth Constitutional amendments. Every State had enacted suitable legislation for devolution of functions, powers and responsibilities to these bodies, including the power to raise resources. The Constitutional changes – 73rd and 7th Amendments – however, envisage the panchayats and municipalities as institutions of self-government. It has been made mandatory, under the Constitution, to hold regular elections to these bodies under the supervision of the State Election Commission. Representation of SCs/STs and women has been made obligatory.

The devolution of financial resources to these bodies has been

ensured through periodic constitution of the State Finance Commissions that are required to make recommendations on the sharing and assignment of various taxes, duties, tolls, fees, etc. and on the grants-in-aid to these bodies from the Consolidated Funds of the States. These provisions are closely related to articles 243G and 243W of the Constitution which require that the State Legislature may, by law, entrust these bodies with such powers, functions and responsibility so as to enable them to function as Institutions of self-government.

In particular, the panchayats and the municipalities may be required to prepare plans for economic development and social justice, and implement the schemes relating thereto including those which are included in the Eleventh and Twelfth Schedules of the Constitution, respectively. The operationalisation of the changes contemplated under the constitution requires action by both the centre and the States.

The pace of empowerment of these bodies to function as institutions of self- government has, however, generally been slow.

In view of the 73rd and 74th amendments to the constitution, States now owe a greater responsibility to develop the local bodies as institutions of local self-government.

II. Extension of Panchayats to Scheduled Areas: Implementation of Central Act 40 of 1996:

The 73rd Amendment when passed in 1992 excluded Scheduled Areas and Tribal Areas from its purview. However, Article 243 M(4)(b) provided that Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and Tribal Areas subject to such exceptions and modifications as may be specified in such law.

The States having Scheduled Areas were thus bestowed with no authority to extend to the Scheduled Areas, the Panchayat conformity Act passed by them following the 73rd Amendment. They were obliged to take cognisance of Article 243 M. But most States having Scheduled Areas, violated Article 243M and enacted Panchayat laws for the entire state including the Scheduled Areas contrary to law. Neither the State legislature nor the executive paid heed to 243 M* .

The Governor too appears to have overlooked the restrictions imposed by 243M, before according assent to the conformity Bill. In doing so the Governor also remained unmindful of his extra responsibility towards Scheduled Areas under the Fifth Schedule (Article 244 (1), Part A, General (3) which requires the Governor to Report to the President regarding administration of Scheduled Areas: "The Governor of each state having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State".

The Central Government too which received the conformity Panchayat Acts passed by the state legislatures appear to have failed to point out the violation of the directions of 243 M although the Central Ministry of Rural Development was infact

designated to pursue the implementation of 73rd Amendment and act as a watchdog of the 73rd Amendment.

It was left to the people of the Scheduled Areas to agitate against the conformity Acts. Having failed to evoke a response from the Governments, they eventually challenged the conformity Acts in various High Courts. The High Courts (A.P., Bihar, Orissa, Maharashtra) held the extension of the conformity Panchayat Acts as ultra vires of the Constitution and reiterated that Part IX could be extended to Scheduled Areas only through an Act of Parliament, and not by State Legislatures.

Taking cognisance of the growing unrest among the tribals in different parts of the country and the judgement of the High Courts, the Government of India in the Ministry of Rural Areas and Employment constituted a Committee of Members of Parliament and Experts (Chairman: Shri D.S. Bhuria, M.P.) on June 10, 1994.

The overall emphasis of the report of the Bhuria Committee was that any legislation on the Panchayats for the tribal areas should be based on basic premises of participative democracy and that it should be in consonance with the customary laws, social practices and traditional management of community resources. The Committee visualised that the institutions at the grass root and district levels should have functional autonomy, power relating to management of natural resources be vested in the Gram Sabha and the role of lower level government functionaries be minimal and confined to law and order in Scheduled Areas. The proposals recommended by the Bhuria Committee paved the way for passage of a comprehensive legislation extending provisions of the Constitution relating to the Panchayats in the Scheduled Areas.

The Act called the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (Central Act No. 40) was made applicable to the States which have Scheduled V areas. These States are Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Madhya Pradesh, Chattisgarh, Maharashtra, Orissa and Rajasthan. The concerned state governments were allowed a period of one year to amend such provisions of their existing Panchayat Acts which contravened the provisions of the Central Act. This Act received the assent of the President on 24th December 1996.

The Central Act No. 40 also made some specific and significant exceptions and modifications, such as:

Exceptions and Modifications to Part IX of the Constitution – 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) 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) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their culture identity, community resources and the customary mode of dispute resolution:
- (c) every Gram Sabha shall :

- (i) approve 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) 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 (c).
- (iii) 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 resettling or rehabilitating persons affected by such projects in the Scheduled Areas shall be coordinated at the State level;
- (iv) planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;
- (v) 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;
- (vi) 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;
- (vii) 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 specially 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 panchayats at the lower level or the Gram Sabha.
- (o) The State Legislature shall endeavour to maintain the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district level in the Scheduled Areas.

Continuance of existing laws and panchayats: 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 the 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.

Implementation of Central Act No. 40

Let us now look at the subsequent developments. A recent review (by the National Institute of Rural Development, Hyderabad) of the Acts passed by the states in conformity with the provisions of the Central Act 40 reveals noticeable deviations by the States from the directions of the Central Act No. 40. Notable examples of such deviations are:

- (a) No statutory provisions have been made as envisaged in the Central Act to contain safeguards to ensure that Panchayats at higher level do not assume the powers and authority of any Panchayat at the lower level of the Gram Sabha.
- (b) The quintessence of the Central Act is to recognise formal authority of the Gram Sabha and the Panchayats at the appropriate levels in managing natural resources. The Central Act has assigned specific roles to be played by these institutions in managing natural resources. An examination of the extent to which the mandate of the Central Act has been followed by the States while transferring the powers and functions to different Panchayats and Gram Sabhas, reveals that several States have not vested the Gram Sabhas with the status and substance by the Central Act:
 - (i) **Acquisition of land etc.:** The Central Act has made provisions that before making the acquisition of land in the Scheduled Areas for development or projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas the Gram Sabha or the Panchayats at the appropriate level shall be consulted; the actual

planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level.

The Andhra Pradesh Act for example, has assigned this responsibility to the middle tier i.e., Mandal Parishad. The Gram Sabha does not figure in this process.

The Gujarat Act has assigned this responsibility to the Taluka Panchayat.

- (ii) **Mining Lease:** The Central Act has provided (Section K) that 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.

Only Madhya Pradesh and Gujarat have amended the rules, regulations etc. to give “sufficient teeth to the Gram Sabha and Panchayats at appropriate level in this region”. The other States having Schedule V areas are yet to incorporate the provisions of their amended Acts by changing the rules in their existing Mines and Minerals (Regulations and Development) Act passed during different times.

- (iii) **Control over institutions and functionaries in all social sectors and local plans and resources for such plans including tribal sub plans :** The Central Act assigns power in respect of above matters to the panchayats at the appropriate level and the Gram Sabha. Accordingly, the states have made provisions to devolve the powers to different units of the panchayats so as to exercise control in the above matters. While deciding the units to whom the controlling powers should be devolved, none of them took into account the provisions of the Central Act that “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 level in the Scheduled Areas”. The Schedule-V Areas continue to be administered through ITDP and MADA.

The term administrative arrangement does not mean general administration, it is concerned with ‘administration of tribals in Scheduled Areas’ to cover all aspects dealt with in the Sixth Schedule – executive, judicial and legislative. The intent of this Article, as noted by BD Sharma, is the gradual progression towards that ideal. The states are expected to initiate action in the right earnest sooner than later. However, there has been no development in the area of decentralised planning in any state. As found, none of the States including those not having Scheduled-V Areas have taken initiative to decentralize planning process fully.

- (iv) **State laws for different subjects:** There are certain subjects which are being regulated by respective State laws enacted from time to time but without giving any scope for intervention by the Panchayats in the countryside more particularly in the Scheduled Areas. The Central Act has stipulated that the State legislature shall endow the panchayats at the appropriate level and the Gram Sabha in the Scheduled Areas with the powers in certain matters in such ways so as to enable them to act independently (the word used by the Central Act is to “function as institutions of self-government”). (Sections m-l-vii). These matters are listed below:

The power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant.

The ownership of minor forest produce;

Power to enforce prohibition or to Regulate or Restrict the Sale and consumption of any intoxicant: Following the recommendations of the Working Group on Development and Welfare of Scheduled Tribes during 8th Five year plan (1990-95) several state governments took the step to discontinue commercial vending of alcoholic beverages in tribal areas. However, none of them empowered the Panchayats or Gram Sabha to enforce prohibition in the Scheduled Areas. Even after the passage of the Central Act only Madhya Pradesh, Chhattisgarh, Maharashtra and Orissa have changed their existing Excise Act so as to ensure that the panchayats at the appropriate level and the Gram Sabha are endowed specifically with the above powers. The other states are yet to initiate action in this matter.

The Central Act has clearly assigned the right of ownership of minor forest produce to the panchayats at the appropriate level and the Gram Sabha. Accordingly the state governments have made provisions in this regard. An examination of the States M.F.P. Acts shows that the panchayats in the scheduled areas do not have the right of ownership on the MFP in any state. However, these Acts have defined MFP products which are mostly derived from the Indian Forest Act 1927 which is considered mother of the Forest Act of the States. Only three states, viz., Gujarat, Maharashtra and Orissa have changed the rules in their Minor Forest Produce Acts to give effect to the amended provisions of their Panchayat Act.

The Central Act has endowed the panchayats at the appropriate level and Gram Sabha with 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. The state governments have accordingly amended their Panchayat Acts. But the existing subject Acts which protects scheduled tribes against alienation of land and provides for restoration by the government have been amended by three states only. The governments in the remaining states continue to exercise these powers through the District Collectors.

Bringing in conformity to the provisions of the Central Act, the states have given statutory powers to the panchayats at appropriate level and gram sabha with regard to management of village markets and melas by whatever name called. But they (the state governments) have not yet initiated any action to suitably amend their Subject Acts governing the village markets incorporating in them the provisions of the amended Panchayat Acts.

The problem of indebtedness is a symptom of economic malaise. The causes for indebtedness are many and varied. But as working group has stated “.... It cannot be doubted that unscrupulous money lending practices and exploitation of tribals are important factor”. Following the provisions of the Central Act, the States assigned the power to exercise control over money lending in Scheduled areas to the panchayats and gram sabha. But the concerning subject laws are required to be changed by the states so as to make the amended provisions of Acts effective. The development that has taken place in the states in this regard is as follows: The Governments of A.P., H.P. and Rajasthan are yet to initiate actions in this matter.

The above review shows that not one single authority (be it the State legislature, the State Government, its law officers, the Advocate General, the Governor, the Central Ministry of Rural Development) expected to enforce the Constitution appear to obey even its most unambiguous provisions. The Central Act 40 which is an emphatic piece of legislation is being obeyed more in the breach.

However, it is necessary that the functions and powers assigned to Gram Sabhas under this Act to Schedule Five areas are extended to all the Gram Sabhas in the country as a whole.

III. Social dimensions of the Amendments

It is necessary to recognise that the circumference of the 73rd Amendment is larger than that ordained by Article 40 of the Directive Principles which called for ‘organisation of village panchayats’. In particular the larger context and import of Articles 243D and 243G needs to be grasped. In brief, Article 243D provides for reservation in panchayats at all levels, of a minimum percentage of elected seats for Scheduled Castes, Scheduled Tribes and women. Article 243G provides for preparation of a village area plan for not only economic development, but also social justice. This calls for a look at some of the other pertinent Articles of the Constitution bearing on social order for a proper understanding of the wider significance of Articles 243D and 243G.

Article 38 of the Directive Principles expects the “State to secure a social order for the promotion of welfare of the people:

1. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
2. The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 47: These aspirations expressed in Article 38 for securing

an egalitarian social order are sought to be reinforced by Articles 41, 45, 46 and 47 among others:

Article 41: Right to work, to education and to public assistance in certain cases – the state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 45: Provision for free and compulsory education for children – the state shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Article 46: Promotion of educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and drugs which are injurious to health.

A major factor contributing to 'inequalities in status, facilities and opportunities' referred to in Article 28 (2) is untouchability affecting a large number of people as individuals as also as groups. To liberate them from this disability the Constitution (Article 17) ordered the abolition of Untouchability:

“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

True, the Directive Principles are not enforceable by any court, “but the principles therein laid down are nevertheless fundamental in the governance of the country”. Mark the words “fundamental in the governance of the country”.

Yet, discrimination in its most pernicious form has continued or allowed to be continued in spite of the Directive Principles adopted in 1950. Even a brief look at the conditions of the vulnerable sections of our people as brought out by reports/studies is haunting:

The condition of dalits is found in a pitiable condition in western Rajasthan, given the dominant caste system prevailing over here. Despite strict laws against atrocities against dalits, their exploitation by dominant caste force goes

unabated in villages of western Rajasthan. There has been

a phenomenal rise in cases of atrocities against dalits. Such rise depicts the increasing vulnerability of the dalit in western Rajasthan.

Dalits are treated as untouchables and denied access to water, public services and other common village resources. The practise of untouchability can be observed in a more overt and crude form in common public places like primary schools, PHCs, panchayat building, water collection points etc. The dalits are not allowed to enter temples for offering their prayers. The panchayat representatives belonging to the dalit community are not even allowed to occupy their requisite seats in majority of panchayat buildings in Thar Desert region. There are incidences of large scale discrimination of dalit children in government run primary schools of western Rajasthan. The discrimination of dalit students ranges from separate sitting arrangements to separate drinking water facilities in state run primary schools. Most schools have separate pitchers – one for the upper caste students and other for the dalit students.

... a FIR (First Information Report) was lodged by the administration against the Principal and the teachers of the Navraber Primary School.

... at the behest of the community, a compromise was arrived at and the complaint was withdrawn with an assurance that the teachers will get departmental punishment and the timings for such actions were left at the discretion of the collector.

... after a fortnight from the compromise, in a retaliatory action influential casteist Hindus and Muslims decided that none of the shops in the village will sell any provisions to the dalit families in the village. Any shopkeeper defying this was required to pay a penalty of Rs. 1005. This pressure tactics was used to teach dalits a lesson for raising their voice and this meant that they will have to travel at least 18 kms. to buy any provisions.

(Dalit Adhikar Abhiyan, UNNATI, 2001)

First, existence. The primary concern is to ensure protection of the persons and property of the dalits. Second, atrocities, violence. according to police reports in Gujarat alone, the general crime rate has decreased by 1.35 % during 1990-1993 but the crimes against dalits have gone up by 90 %. The police reports are based only on registered crimes. It is learnt that 13.5 % victims of atrocities are criminally pressurised not to lodge complaints with police, while complaints of another 15.7 % victims, though recorded by the police, the same is not shown on records. 20 % of crimes against dalits are of serious nature which includes rapes, murder and grievous

bodily injuries.

Structural poverty adds to the already degrading living conditions of majority of dalits, both in urban as well as in rural areas. The living conditions of scavengers trace their pathetic conditions. Though the combined numerical strength of dalits and tribals in Gujarat alone is 23 % of the state population, 54 % of the state's landless agricultural workers, belong to this class. The specially enacted Labour Courts to protect their rights have failed to do so.

Then there is child labour and the unorganised labour force. Most dalits self employed as cotton weavers in rural areas had no option but to migrate to cities to join the British introduced high productivity oriented weaving technology based textile industries. It is learnt that the implementation of government's sponsored welfare measures have not been above 40 %. Needless to say that even this scanty implementation has remained untouched from corruption. In July 1998, in U.P., a district judge empowered to award any sentence including capital punishment, on being transferred and taking charge of his new office, washed the entire office with Ganga jal to purify it, since the previous occupant of that office was a judge from dalit community.

Women Singularly positioned at the bottom of India's caste, class and gender hierarchies, largely uneducated and consistently paid less than their male counterparts, dalit women make up the majority of landless labourers and scavengers, as well as a significant percentage of the women forced into prostitution in rural areas or sold into urban brothels.

Cases documented by India's National Commission for Women, by local and national nongovernmental women's rights organisations, and by the press, reveal a pattern of impunity in attacks on women.

Women's labour is already undervalued; when she is a dalit, it is nil. The atrocities are also much more vulgar.

Making women eat human defecation, parading them naked, gang rapes, these are women-specific crimes. Gang rapes are mostly of dalit women.

Sexual violence is linked to debt bondage in rural areas.

(Broken People, Human Rights Watch)

Male and female literacy rates diverge by 23 % points; there is marked difference over most of north Karnataka.

33% of girl children are out of school and the drop out rate for girls is 46% at the primary school level; in Raichur the dropout rate in lower primary schools for SC and ST girls is 44%.

Only 6 out of 224 members of the Karnataka Legislative Assembly are women (3%).

Women work more hours than men on unpaid, unrecognised chores. Women are paid less than men for equally arduous work.

There is ample proof of social and economic discrimination against women.

(Human Development and the Second Sex by Dr. Renuka Viswanathan)

There is general consensus in the country that given the entrenched nature of discrimination in our society, the State by itself (and given its inadequacies in implementation), has not succeeded much in creating the aspired social order. There is also general recognition that any significant advance in the social order cannot be brought about by the State alone; and that it can accrue only if there is a combined endeavour by the State and the discriminated sections of our society in particular the Scheduled Castes, Scheduled Tribes and women who must be empowered through minimum assured representation in decision making bodies. This recognition is reflected in the 73rd Amendment, Article 243 D which provides for 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 so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in 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 Chairperson 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 of 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) 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.

Further, the 73rd Amendment added Article 243 G relating to 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, subjects 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.

The concern for furthering social justice is institutionalised in Article 243 G(a) which enjoins upon village panchayat to prepare an area plan not only for economic development but also “Social Justice”.

In order that such area plans prepared by village panchayats for economic development and social justice have some assurance of implementation, the 73rd Amendment also added Article 243-I to provide for the constitution of State Finance Commission to review the financial position of the panchayats and to make recommendations to the Governor as to -

- (a) the principle 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 Panchayats;
 - (iii) the grants in aid to the Panchayats from the Consolidated Fund of the State;
- (b) any other matter referred to the Finance Commission by the Governor in the interest of sound finance of the Panchayats.
- (c) 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.

The tragic fact is that though the 73rd Amendment became operative from 1993 when the Conformity Acts were passed by the States, in no State, the direction (243G (a)) for "the preparation of plans for economic development and social justice" has been complied with except Kerala where a promising beginning has been made. In no State the panchayats have been endowed with the necessary powers and authority as envisaged by Article 243 G which could enable the panchayats to prepare and operationalise area plans for economic development and social justice. The result is that till today, there is no village plan of the character envisaged by the Constitution.

The Finance Commission, as already noted has criticised the Governments for their failure to devolve adequate financial resources to panchayats in terms of the Constitutional mandate.

The consequence of lack of devolution of powers, functions and financial resources to panchayats has been to defeat the social purpose of giving representation to Scheduled Castes, Scheduled Tribes and women in panchayats to enable them to participate in the endeavour to alter the conditions suffocating their life. In spite of the 73rd Amendment and its special provisions and in spite of their being elected to panchayats, they as elected representatives and the panchayats alike remain handicapped and are unable to plan or press for implementing any meaningful measures to improve their social/economic conditions.

Besides, the manner in which the scheme of Reservation (Article 243D) has been implemented has given rise to many avoidable difficulties and consequent dissatisfaction among those for whom the scheme is intended, as brought out by various studies.

Worse still, some of the states have used the reservation provisions (Article 243D) to delay the holding of elections within the statutory time limits.

Regrettably, all the laws that Parliament and State Legislatures have passed for their welfare and protection have either remained uncomplied with or wherever they have been implemented, they have not been bent in favour of the discriminated groups like the dalits. Often they become the victims at the hand of the law enforcers.

The same remains the case with regard to women. There have been various pieces of legislation, economic and social, which were meant to protect the women from violence, to uphold their rights and their dignity. But these again have remained unimplemented or ineffective. In fact discrimination and violence against women are on the increase, as evident from a brief look at the evidence from the field:

The following case from Rajasthan is a case of physical abuse, which quells the very spirit of women's participation in any role of leadership : Mishri Devi of Thikiri village in Dausa district belongs to the tribal community and was elected to the post of sarpanch reserved for an ST woman. The upper caste male villagers could not digest the idea. On August 15, 1998 (ironically) she was stopped from exercising her right to hoist the national flag during the Independence Day celebrations. Further, the upper caste males went to the extent of stripping her. Sweets, which she had brought for the event, were thrown in the drain, as she was considered to belong to an untouchable caste.

The above case shows that resistance against female leadership is

further compounded in the case of a scheduled or backward caste sarpanch. Such women have to combat dual oppression. The case of Mishri Devi exemplifies the desperate methods that upper caste people can resort to, to crush the spirit of ST women aspiring to leadership positions. Such experiences of humiliation and violence can leave behind an indelible sense of disenchantment and create apprehensions among other women aspiring to leadership roles. They also illustrate that a lot of effort is required by way of sensitisation and orientation to change people's mindsets on caste and women's role.

No wonder the dalits are despaired. A recent publication called the 'Dalit Question of India – Freedom from oppression still far away' is a sad commentary on the insincere and ineffectual implementation of the 73rd Amendment and indeed the social order aspirations of the Constitution; it says :

“political power is helpful only if it can bring about effective political representation, i.e by addressing the agenda of social change, which has not yet happened. And so political reservations have to be understood only as token ...

All this leads to a regrettable but inescapable conclusion that those charged by the Constitution to usher in change in our social order failed to do so in the decades before the 73rd Amendment, and have continued to show scant interest and commitment to further the directions of even the new Articles 243D and 243G. The purpose of the 73rd Amendment was not to rely entirely on the establishment and to create countervailing power of the people themselves at large and of the discriminated persons in particular, to ensure that somewhere a process of change is introduced in our social order from village onwards. The objective of fostering countervailing power is being thwarted by Government indifference and inaction, which is otherwise under oath to promote the purposes of the Constitution.

Unmistakably, this dismal working experience of the 73rd Amendment et al is attributable more to the failure of those in charge of enforcing the Constitution rather than that of the provisions of the Constitution. In fact, it reinforces the premises underlying the introduction of the 73rd Amendment that no serious attack on problems afflicting our social order, specially problems affecting the dalits and women could be ushered in to any meaningful effect without giving powers and resources to the decision making fora right from the village panchayat onwards. Even then it will not be easy to banish the afflictions. But without that it will be well nigh impossible to even make a beginning towards social change. Thus any delay and dilatory politics to endow adequate powers to the local panchayats would have unfortunate consequences on even the little window of faith that the 73rd Amendment opened for groups reeling under intolerable discrimination in all facets of their life – political, economic, social and cultural.

Ms. Kailasam went on to say that the PRIs have no information on disbursement so that they cannot effectively respond to implementation. This was reinforced by Mr. M.D. Mistry, of Disha in Gujarat whose comments on district level officers in Gujarat was as follows: “even the district level President does not know how much has been disbursed”.

Mr. Jesurathinam, Director, Neythal mentioned that development should not only be concentrated on finance but also in other sectors like agriculture, irrigation, etc. which are not under the control of panchayats.

...unless these powers are transferred to the panchayats they work as indigenous agencies and assists the governments only with their programmes.

it is evident that collecting tax locally is important but how can it be done if they are not given simultaneously control over the natural resources. An example was cited whereby they were trying to collect tax on agricultural revenue when the water tank had been given out to the local factory.

If bureaucrats interfere with PRIs, how will they build up savings and investments.

Ms. Janakamma, Member, Malangi Gram Panchayat, Mysore, mentioned that as there is no money in the panchayats, they have not been able to perform their duties and they are also not able to get loan as they are poor and they do not have access to credit. The people in the village say that since she is a member, she has to arrange for the improvement of their village.

(Financing for District Level Development, Draft Report of a Seminar, KWIRC,

*Bangalore,
June 2001)*

In most parts of the country, there are cases which testify to the fact that the leadership of scheduled castes and tribes has not been accepted by the upper caste. They cannot come to terms with a lower caste emerging as the head of a village institution and taking on public decision making roles.

Violence and Corruption: Criminalisation of politics with corruption, violence and 'goondaism' is not only found in state elections but also in panchayat elections. In Rajasthan, a woman sarpanch, Darshana Rani of Tauguwana in Alwar district, her husband and two other family members were abused and injured in an attack by 12 persons, who were led by one of her arch rivals in the panchayat elections. The attackers were said to be armed with guns and iron bars. Similar stories are found in Madhya Pradesh, for example of Sangeeta Rathor of Gahod Panchayat Samit, Bhind district. On the day of counting during the panchayat elections, her vehicle was fired upon and she had to flee for her life. She confessed that being a woman in the male dominated panchayat system was a phenomenon that one had to confront. She even stated that it was difficult to call a panchayat committee meeting because of the fear of violence and abuse.

...even the Panchayati Raj Act remains a mystery to most of these women and men. Certain facts are known – elections are to be held once in five years, the sarpanch is the local administrative head, there are reservations for women. beyond this not much is known. Many women are still under the misconception that women can only contest the election on a reserved seat. They do not know that it is mandatory for Gram Sabha (people's forum) to be held twice a year. Proper information is not provided to them. even if they do get information, it is only the sarpanch who tends to learn because she/he has to run the panchayat, whereas the panchs remain removed from a lot of activities².

The Indian Institute of Public Administration warns us: "Panchayati Raj should not be projected as an institution to implement only developmental programmes or schemes, but as a people's movement for rural reconstruction. We have raised the aspirations

and expectations of the common man in the rural areas to such an extent that it may be difficult for the Panchayats to meet them unless powers and functions are transferred to them”.

VII. Concluding Remarks:

When India took control over its own destiny in 1947, there was the promise of the freedom movement that political power will not be concentrated in few hands but will be widely shared with the people. This promise has been observed more in the breach. It is yet to be redeemed. Given the entrenched Centre-ridden mindsets, the future prospects are dim.

The main reason behind such a disturbing view is that those who are governing India have steadily liberated themselves from the history and dreams of the freedom movement. What is worse there seem to be a number of persons in the government at all levels who in the fashion of Winston Churchill are not convinced that people are fit for self-government. Hence, all their genius and ingenuity is employed to constantly invent ways to frustrate rather than further the Constitution.

One notable exception in this bleak scenario are the latest “Guidelines” of the Ministry of Finance as a follow up of the excellent and Constitutionally correct Report of the Eleventh Finance Commission. They set a precondition that states will receive their share out of the special allocation by the Finance Commission, only if they certify that they have implemented the basic provisions of the 73rd /74th Amendments. These Guidelines represent rare, positive and committed vote in favour of 73rd and 74th Amendments. One prays they prevail and sustain:

Extracts from Guidelines issued by the Ministry of Finance, for the utilisation of Local Bodies grants recommended by the Eleventh Finance Commission (2000-01 to 2004-05)

The Eleventh Finance Commission (EFC) has recommended grants amounting to Rs. 10,000 crores payable during the period 2000-05 (Rs. 8,000 crores for Panchayats and Rs. 2,000 crores for Municipalities) to States for Rural and Urban Local Bodies.

The recommendations stemming from the EFC’s report dwell upon the transfers of powers, responsibilities and resources under Articles 243G and 243W of the Constitution. The Eleventh Schedule to Article 243G lists out 29 functions that should be transferred from the States to Panchayati Raj Institutions. Similarly, the Twelfth Schedule to Article 243W mentions 18 functions to be entrusted to Urban Local Bodies Annexure-III-A and III-B detail the functions under the Eleventh and Twelfth Schedule.

SCHEDULE V AREAS: Parliament has passed the Panchayats (Extension to Scheduled Areas) Act 1996. The Act is applicable to Schedule V areas in Jharkhand, Orissa, Chhatisgarh, Madhya Pradesh, Andhra Pradesh, Maharashtra, Gujarat, Himachal Pradesh and Rajasthan.

Annexure-IV gives details of functions in addition to the 29 functions under Schedule XI, which are to be administered by the PRIs in Schedule V areas. For Schedule VI areas, prospective action is to be taken by the Ministry of Home Affairs.

CONDITIONALITIES FOR RELEASE OF LOCAL BODY GRANTS TO STATES

Local Body Grants (LGBs) shall be released to States that have completed the due election process in respect of the local bodies. Therefore, States should certify whether elections have been held, before the expiry of the terms of local bodies, to all the local bodies at all the levels / tiers. In case of delay in holding local body elections in time, funds will be deducted proportionately.

The intention of the 73rd and 74th Amendments to the Constitution was to empower PRIs and ULBs to discharge functions assigned to them under the Constitution. States are expected to devolve responsibilities powers and resources upon the PRIs and ULBs, as envisaged in Schedule XI and XII respectively. Similarly for Schedule V areas other than the North-East, additional responsibilities are to be devolved upon the local bodies. Where such powers, responsibilities and resources have not been devolved upon local bodies States should ensure that the same is done no later than 31st March 2002. The Central Government shall withhold 25% of the grants meant for PRIs and ULBs, from such States that do not devolve responsibilities powers and resources, as recommended by the respective State Finance Commissions, upon the local bodies.

Details of release of grants to local bodies by the State Government in respect of grants received from the Central Government on the recommendation of the Tenth Finance Commission (TFC) and the utilization thereof shall be communicated to this Ministry.

A certificate stating that the grants have been released only to elected local bodies where elections are mandatory under the Constitution should be furnished to this Ministry. Also, a certificate stating that the local bodies have utilized the grants released to them for the purposes of the Scheme should be furnished to this Ministry. This should contain the consolidated details of actual utilisation of grants along with matching contribution by the local bodies within a period of eighteen months from the date of receipt of grants from the Central Government. The first such utilisation certificate from State should reach this Ministry latest by October 2002.

The State Government shall treat expenditure against these grants as part of Plan Expenditure in their budgets. Funds to the State Government under LBGs shall be treated as earmarked funds.

The LGBs shall not be delivered for any other purpose. Also, the grant shall not be withheld by the State Government.

The LGBs shall be transferred to the concerned Local Bodies within a month or earlier or if the local body is not able to raise matching funds, within three months or earlier of its being released to the State Government. The order of the State Government regarding onward release of grants of LBs should be endorsed to the FCD, Department of Expenditure, within a week of its issue. The onward release of grants to the LBs shall be an additionally over and above the amounts flowing from the State Government to the Local Bodies.

The State Government should ensure that the District Planning Committees and Metropolitan Planning Committees have been constituted and they function as per the intention of the Constitution. The State Government should keep the Ministry of Finance informed about the status of these Committees.

Alas, similar firmness of purpose is not exhibited by the Standing Committee of Parliament which is the most powerful and zealous watch dog of the letter and spirit of the Constitution as a whole and these Amendments. Oddly the Committee has been endorsing the Demand for huge Grants of the of the various Central Ministries particularly the Ministry of Rural Development and Panchayat Raj, which are meant to be spent in ways meant to frustrate the mandate of the Constitution Amendments 73rd / 74th. True, the Standing Committee has in its successive reports, given vent to its displeasure and indignation at the stance of the Ministry of Rural Development:

EXTRACTS FROM THE REPORT OF THE STANDING COMMITTEE OF PARLIAMENT ON THE DEMAND FOR GRANTS OF THE DEPARTMENT OF RURAL DEVELOPMENT (2000-2001)

The Committee are dismayed to note that the Performance Budget (2000-2001) of the Rural Development Department does not include the implementation of the Constitution (73rd Amendment) Act, as one of the functions of the Department.

Equally shocking is the fact that the Department have employed outdated terminologies to refer to local bodies instead of using the terms and phraseologies used in the

Constitution. The Committee strongly deplore the casual approach of the Government in preparing the Performance Budget which ought to have been drafted with utmost care, precision and perfection especially when it has to be laid before Parliament.

The Performance Budget of the Department however does not contain any information relating to the constitution of District Planning Committees, their role and involvement in rural development schemes and programmes. The Committee stress that the Constitution requires the Government to ensure the involvement of District Planning Committees as grassroot level institutional devices for democratic planning. They, therefore, direct the Government to ensure the fulfillment of the Constitutional requirements in this regard in all States for involvement of the District Planning Committees in all rural development programmes in future.

But it has not followed through this displeasure by axing the objectionable items in the Demand for Grants. An obnoxious example is that despite the refusal of the Ministry to dissolve DRDAs, the Standing Committee has endorsed budgetary provisions to further strengthen the DRDAs and worse still to maintain them as “distinct from Panchayat Raj Institutions”. The Committee does not seem to have refused to endorse payment of even a paisa of public money which contravenes the Constitution thus affecting the well-being of our Republic.

Regrettably, the Planning Commission too has failed the Constitution. Though it clears massive sums for Annual and Five Yearly Plans, it has shown little evidence of exerting its leverage to enforce the mandate of the Constitution Amendments 73rd / 74th and conditioned its approval of State/Central Plans to unambiguous conformity with the will of the Constitution.

And, this inspite of the fact that the Planning Commission’s own Mid-Term Appraisal (2000) points to gross misdelivery and misutilisation of huge and precious funds on poverty alleviation programmes and Centrally-sponsored schemes by official implementing agencies including DRDAs. The Planning Commission has not used its own findings to make the Central Ministries and States comply with the Constitution.

In the event, **self-government** remains a distant dream.

© 2001 PRIA. The text may be reproduced for non-commercial purposes, provided credit is given to PRIA. To obtain permission for uses beyond those outlined in the Creative Commons license, please contact PRIA Library at library@pria.org. Please use the following citation:

PRIA (2001). Cry the Beloved Self –Government By L. C. Jain : PRIA.



Participatory Research in Asia
42, Tughlakabad Institutional Area, New Delhi-110062
Ph:+91-011-29960931/32/33
Web: www.pria.org