

INNOVATIVE FEATURES IN PANCHAYATI RAJ IN SELECT STATES & SCOPE FOR THEIR REPLICATION

I. INTRODUCTION

1. The prelude

The Finance Commission appointed by the President under Art.280(3)(bb) is required to make, *inter alia*, recommendations as to “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 (*appointed by the Governor under Art.243I*)”. Accordingly, the Commission in its wisdom thought it fit to identify the factors responsible for the success of Panchayati Raj with a view to exploring the feasibility and desirability of replicating the best features found in the area of Panchayati Raj in other States. For this purpose, the Commission had entrusted the responsibility to conduct a quick study on this subject to the NIRD and submit a report on the findings of such a study.

The timeframe provided for the study to cover all the States in the country being strictly limited, the NIRD had chosen three major States, namely, Kerala, Gujarat and Madhya Pradesh, for the present study. Accordingly, the study team visited these three States during September-November 2003 for discussions with the senior-level officials of State Departments of Finance and Panchayati Raj, chairpersons and secretaries of four village-level panchayats in each State which were chosen by the relevant State government officials, and for the collection of qualitative and quantitative information on various facets of Panchayati Raj in the specified States. Information required for the study, including the formats prepared by the Institute, was communicated to the State Secretaries of Panchayati Raj and Finance long before the actual dates of the visits of the Study Team to the States concerned. As the Twelfth Finance Commission had entrusted another quick-study to the NIRD which warranted visits to fifteen major States, including the three States selected for the present study, the opportunity of State

visits to Kerala, Gujarat and MP was utilized also to collect some useful information for the second study¹.

Among the constraints confronted by the Study Team, the important are the following:

- a) Despite two to three months allowed for the States to provide us the requisite information in a format relating to 'best practices' and to send us the relevant documents, most of the States did not positively respond to our request, even after several reminders. Where the States supplied the quantitative information, they are shaky in several respects.
- b) Several States like Bihar, UP, Punjab, Haryana, MP, Kerala and Karnataka, and Tamil Nadu had provided us a part of the qualitative information relevant to our study in their respective vernacular official languages. We found it extremely difficult to get all these documents and other qualitative information translated into English within a month or two. Translation of all these papers is time-consuming and hence we could not fully make use of such information in local languages provided for our study.
- c) Many States are also handicapped in supplying the quantitative information relevant to our studies due to paucity of such information at their State level.

The methodology adopted for the present study comprise the following:

- a) Preparation of a format and a list of documents needed from the State which was sent to all the 29 States;
- b) Personal visits to States and conducting discussions with the senior-level officials of the State Departments of Finance and Panchayati Raj;
- c) Visits to four village panchayats in each of the three States selected for the present study and discussions with the elected representatives and Secretaries of the panchayats concerned;

¹ These comprise: AP, Assam, Bihar, Gujarat, Haryana, Karnataka, Kerala, Maharashtra, MP, Orissa, Punjab, Rajasthan, Tamil Nadu, UP and West Bengal.

The present paper is based on the findings of our quick study in the three select States of Kerala, Gujarat and Madhya Pradesh. The paper does not however boast of being an exhaustive one. Within the confines of available time and information, an attempt is made in the paper to cull out the important features of Panchayati Raj in the three selected States, which, in our view, could be considered for replication in other States. Selection of these three States does not however imply that only these three possess the best features worth emulation by other States. The report of the study which is still in the process of finalization contain other important features of Panchayati Raj that could be found in other States.

The paper deals with the parameters that we chose to assess the performance of the three select States in the area of Panchayati Raj and the results thereof, and the desirability and feasibility of their replicability in other States.

2. Parameters to assess the Performance of Panchayati Raj in States

Although the process of democratic decentralisation which gained momentum in the first two decades of 1960s and 1970s following introduction of panchayati raj in the rural India, the initial interest and initiatives have gradually received a setback particularly since 1980s due to a variety of factors. Elections to the panchayats were not conducted on time, and several of their functional responsibilities, powers, staff support and fiscal base were gradually withdrawn from the domain of the panchayats. By the end of 1980s, the situation was so disquieting that the Union government, under Art.40 of the Indian Constitution, had to take fresh and far-reaching initiatives to regain the lost glory of Panchayati Raj. This culminated in the enactment of the 73rd Constitutional Amendment Act which came into effect from April 23, 1993.

The 73rd Amendment had conferred Constitutional status on panchayats and had provided for certain obligatory as well as discretionary provisions. Among the provisions which were made *obligatory* for the States relate to introduction of a system of three-tier/two-tier panchayats in the States depending upon their population, conduct of elections to the panchayats for every five years,

composition of panchayats, prescription of electoral college for the election of chairpersons of the panchayats, reservation of seats as well as offices of chairpersons in the panchayats, mode of electing the chairpersons, constitution of SEC and SFC, etc. Another obligatory function cast on the State governments relate to constitution of a District Planning Committee, under the provisions of the 74th Amendment Act, which is of common concern to both the panchayats and municipalities. The *discretionary* powers of the States, in terms of the 73rd Amendment Act, include establishment of gram sabha and its empowerment, mode of election to the chairpersons of village-level panchayats, reservation of seats and offices of chairpersons of panchayats to OBCs, devolution of functions, powers and resources on panchayats, accounts and audit arrangements, etc.

State governments, by virtue of the matter 'local government' being included in the 'State List', have exclusive jurisdiction over the composition and grant of functions, powers and resources, and on all other matters relating to local government before the 73rd and 74th Amendment Acts were passed. Although the Constitutional Amendment Acts have brought some element of uniformity among the States in respect of the obligatory provisions made in the said Acts, the crucial area of functional and fiscal devolution has still been left to the discretion of the States resulting, wide inter-State variations in these areas. In fact, the fathers of the 73rd and 74th Amendment Acts seem to have deliberately made certain provisions of these Acts, including the issue of 'devolution', discretionary for the State governments with a view not to affecting the sensitivities of the State governments in these specific areas. As a result, the basic structure of the Indian polity has not been significantly altered and, notwithstanding 73rd and 74th Amendment Acts, it still continues to consist of only two-tiers, *viz.*, the Union and State governments.

By and large, States have, complied with the obligatory provisions of the 73rd Amendment Act, notwithstanding certain deficiencies, delays and variations found in the actual implementation of these provisions. As for the discretionary provisions, there still exist wide-variations across the States in their implementation. While certain States took fresh initiatives in this direction, others

have merely reiterated their earlier dispensation in their post-1993 Panchayat Acts, without resorting to significant additional or new measures. The pattern of Panchayati Raj in the States has their own distinctive features with some of the States having gone ahead of others in introducing certain unique or innovative features.

Against the varied patterns of panchayati raj prevailing in the various States, it is rather difficult to determine *prima facie* the States which could be considered as 'best-performing' and those which could be treated as 'less-performing', without applying certain parameters to assess the system in each State.

A few parameters/indicators have therefore, to be identified, selected and applied to determine what constitutes 'Best-Performance'. Such parameters should be relevant, acceptable, dependable and capable of being applied to assess the performance levels of the panchayats in various States. Again, all these identified parameters may not be of similar importance. This calls for assigning appropriate and realistic weights for each of the parameters, an exercise which is really daunting. Though wide-ranging discussions about the relevance and adequacy of the parameters, and the relative weights to be assigned to them is necessary, considering the extremely limited time-frame fixed for the present study, such a detailed exercise could not however be attempted. Nevertheless, the study, despite its limitations in terms of coverage, attempts to identify certain parameters for judging the performance of Panchayati Raj in different States, and identify the positive features found in some of the States which could be replicated in other States.

The parameters selected for the present study are also subject to several limitations. Lack of or inadequate or unreliable data and other information relating to quantitative parameters, mainly relating to the finances of the panchayats in different States, imposed serious limitations on our study. In this connection, we feel sad that the States have not been able to supply dependable and adequate information on the status of panchayat finances not only to us but

reportedly even to the Twelfth Finance Commission. We believe that the imperfect and inadequate data received from the States have to be considered by the TFC also with a pinch of salt, as exclusive dependence on such imperfect data would only lead to greater inequities in resource allocation to the States. The primary reason for such a deplorable state of affairs is the virtual absence of any appropriate mechanism evolved by the States for regular collection, compilation and monitoring of the essential statistical data on panchayat finances. Even the 1st and 2nd SFCs constituted by the States have, in several cases, made it clear that data availability is one of their serious limitations which in turn prevented them from making a meaningful analysis of the panchayat finances. The problems of data deficiency and data imperfections were also recognized both by the NIRD and the EFC. In fact, the situation forced the Eleventh Finance Commission to earmark a part of their grant to ‘creation of database’, and to ‘maintenance of accounts’ by the village-level and intermediate-level panchayats. Unfortunately these earmarked grants are reported to have not been fully and properly utilized by several States for the purposes for which they were provided so far. Considering the system deficiencies relating to the database on panchayat finances, we are afraid, the Twelfth Finance Commission may also be forced to make provision for the panchayats on an *ad hoc* basis or on a basis that they consider would atleast be tolerable, if not strictly scientific and objective.

Reverting to our study, we chose the following parameters to evaluate the performance of three States, namely, Kerala, Gujarat and MP, which in our view have been relatively more successful than the other several other States in the sphere of panchayati raj and decentralisation.

- a) **Status of compliance with *mandatory* provisions of the 73rd Amendment Act, and the initiatives, if any, taken by the States;**
- b) **Status of compliance with *discretionary* provisions of the 73rd Amendment Act;**
- c) **Legislative and Administrative measures taken by the State governments *beyond* the provisions of the 73rd Amendment Act;**
- d) **Desirability and feasibility of replicating the “Positive” features found in Panchayati Raj in the three selected States, in other States.**

e) Factors that contribute to the ‘best practices/success’ in Panchayati Raj

a) Status of Compliance with *Mandatory* Constitutional provisions

- Constitution of SEC & Conduct of Elections [Art.243E & K]
- Composition of Panchayats [Art.243C]
- Reservation of seats and offices of Chairpersons to Women / SCs / STs [Art.243D]
- Election of Chairpersons of Village Panchayats [Art.243C(5)]
- Disqualifications for Membership [Art.243F]
- Constitution of Finance Commission at State level [Art.243I]
- Governor of a State to cause SFC recommendations and ATR of State government to be laid before the State legislature [Art.243I(4)]
- Central Finance Commission to recommend “Measures” [Art.280(3)(bb)]
- Constitution of DPC (Art.243ZD).

b) Status of Compliance with *Discretionary* Constitutional Provisions

- Gram Sabha and its Empowerment [Art.243A]
- Representation of Chairpersons of lower-level panchayats in higher-level panchayats [Art.243C(3)(a)]
- Representation of Members of Parliament and State legislatures [Art.243C(3)(c) and (d)]
- Mode of election of Chairperson of Village-level Panchayat [Art.243C(5)(a)]
- Reservation of seats and offices of Chairpersons to “backward class of citizens” [Art.243D(6)]
- Powers, Authority and Responsibilities of Panchayats [Art.243G]
- Powers to impose taxes by, and Funds of Panchayats [Art.243H]
- Composition of SFC and qualifications requisite for appointment as its Members [Art.243I(3)]
- Audit of Accounts of Panchayats [Art.243J]

c) Legislative and Administrative Measures Taken by the States *Beyond* the provisions of STA Act

- Elections to Panchayats
 - Party-based and non-party based elections
 - Account of Election Expenses by candidates
 - Declaration of Assets by Panchayat Members
- State control over Panchayats & its elected representatives
 - No-confidence Motion against the Chairpersons
 - Removal or Suspension of elected representatives
 - Cancellation or Suspension of Panchayat Resolutions/works
 - Dissolution or Supersession of Panchayats
- Role and Powers of Standing Committees
 - Committees of Social Justice for Weaker Sections
- Devolution of Additional Responsibilities & Transfer of Staff and Schemes
 - Self-declaration by Tax-payers
 - Status of Revenue transfers to Panchayats
 - Incentives for improving internal resource mobilization
 - Status of DRDA
 - Public Contributions/Donations
 - Utilisation of Central Finance Commission Grants
 - Special Budget document on financial allocations to panchayats
 - SFC Cell at State level
- Accounts and Audit
 - Maintenance of Accounts by Panchayats
 - Arrangements for Audit of Accounts
 - Audit by CAG
 - Performance Audit
 - Statutory Audit
 - Legislative Committees
 - Local Fund Accounts Committee
 - Panchayati Raj Committee

- Transparency and IEC
 - Right to Information
 - Citizen Charter
 - E-Governance: Computerization and IT
 - Development Reports, publication of Newsletters / Magazines/ Handouts by Panchayats
- Capacity-Building
 - Training
- Others
 - Grievance-redressal Mechanisms
 - Ombudsman
 - Appellate Tribunals
 - Institutional supremacy of panchayats
 - State-level organizations for panchayats
 - Organizational, Administrative and financial linkages among the panchayats
 - Creation of database on panchayats.

d) Desirability and feasibility of replicating the “Positive” features found in the Panchayati Raj, in other States.

Although some of the identified innovative/best features found in the panchayati raj system of the States covered in the present paper can not entirely be replicated in all States, it is still possible to select a few of them can be considered for being emulated/replicated by the other States. This issue is open for discussion.

e) Factors that contribute to the ‘best practices/success’ in Panchayati Raj

We consider that the success of panchayati raj patterned of rural local government depends primarily, if not exclusively, on the following factors.

- Viability of the Panchayats
- Nature of local economy & its people
- Literacy level of the electors and elected
- Awareness levels of the people

- Political & Administrative will, commitment and support
- Nature and quality of local leadership and its commitment
- Devolution of Functions, Powers, Funds and Staff Support.
- Nature of local expenditure & revenue effort
- Institutional Supremacy
- Absence of Parallel Bodies or their accountability to panchayats
- Transparency
- People's Participation

II STATUS OF COMPLIANCE WITH MANDATORY CONSTITUTIONAL PROVISIONS

1. Constitution of SEC and Conduct of Elections

In all the three select States, namely, Kerala, Gujarat and MP, under the post-73rd Amendment Acts relating to panchayats, the State governments had constituted the State Election Commission. Under its superintendence, direction and control, the preparation of electoral rolls for, and the conduct of, all elections to the panchayats is vested. The Commission is headed by a State Election Commissioner. The State legislatures of these States have, by law, made provision with respect of all matters relating to, or in connection with the elections to the panchayats. The last elections to the panchayats were held in Kerala in September 2000, in Gujarat in December 2000 for the intermediate and district panchayats, and in December 2001 for the village-panchayats; and in Madhya Pradesh in January, 2000.

2. Composition of Panchayats

The Constitutional provisions provide for both mandatory as well as discretionary clauses regarding the composition of the panchayats at different levels. It makes a distinction between “seat” and “representation”. Art.243C clearly specifies that all the seats in the panchayats shall be filled by persons chosen by direct election from territorial constituencies in the panchayat area. Moreover, reservation of seats for the women, Scheduled Castes and Scheduled Tribes in the panchayats at all levels is also made mandatory by the Constitution. Nevertheless, it endows the

State legislatures with the discretionary power to provide for reservation of seats in panchayats for “backward class of citizens”. On the other hand, the relevant Constitutional provisions empower the State legislatures to provide, at their discretion, for “representation” in the panchayats of the chairpersons of a lower-level panchayat in the immediately next higher-level panchayat; and of the members of parliament and State legislatures in the intermediate and district-level panchayats.

In **Kerala**, under the KPR Act 1994, the village, intermediate and district-level panchayats consist of (a) members directly-elected from the territorial constituencies; and (b) the chairpersons of the village panchayats in the intermediate panchayats, and the chairpersons of intermediate panchayats in the district panchayats. In other words, while the ‘seats’ in the panchayats are filled by directly-elected members, ‘representation’ of the chairpersons of lower-level panchayats in the higher-level panchayats is provided in the State. *MPs and State legislators are however not represented in the panchayats in Kerala.*

In **Gujarat**, on the contrary, the panchayats at all the three levels, consist only of directly-elected members. While representation is given in the panchayats to the MLAs and MPs as “permanent invitees” in the intermediate and district panchayats, similar *representation is not provided to the chairpersons of lower-level panchayats in the higher-level panchayats.*

In **Madhya Pradesh**, under the *MP Panchayat Raj Avam Gram Swaraj Adhiniyam 1993*, while the village panchayats consist of only directly-elected members, it provides for the membership of MLAs and chairpersons of the village panchayats in the intermediate panchayats. As for the district panchayats (zila panchayats), the membership in these panchayats is restricted to directly-elected members, MPs, MLAs, and chairpersons of the intermediate panchayats. The *statute however provides that the MP and MLA concerned can nominate his representative who possesses certain qualifications prescribed by the State government, in his behalf, on grounds of his absence, illness or any other cause, for the meetings of the panchayats in which they are represented.*

Thus we find three different scenarios in these three selected States as may be seen from the following:

Level of Panchayat/State	Members in the Panchayats				
	Directly Elected Members	Chairpersons of lower-level panchayats in higher-level panchayat	MPs	MLAs	MLCs
1. <u>Village Panchayats</u>					
a) Kerala	✓	-	X	X	X
b) Gujarat	✓	-	X	X	X
c) MP	✓	-	X	X	X
2. <u>Intermediate Panchayats</u>					
a) Kerala	✓	✓	X	X	X
b) Gujarat	✓	X	✓\$	✓\$	X
c) MP	✓	✓	X	✓	X
3. <u>District Panchayats</u>					
a) Kerala	✓	✓	X	X	X
b) Gujarat	✓	X	✓\$	✓\$	X
c) MP	✓	✓	✓	✓	X

\$ “Permanent invitees” without the right to vote.

3. Reservation of Seats in Panchayats

Art.243D of the Constitution provides for mandatory reservation of seats and offices of chairpersons in panchayats at all levels to women, SCs and STs. All States have complied with this mandatory provisions. However, State legislatures are given the discretion to provide for reservation of seats and offices of chairpersons in panchayats to ‘backward class of citizens’ (BCCs). Accordingly many States have provided for reservation of seats and/or offices of chairperson to the BCCs.

In **Kerala**, except adhering to the mandatory provisions of the Constitution, the KPR Act 1994 *did not provide for any reservation of either seats or offices of chairpersons in the panchayats for the BCCs*. In **Gujarat**, one-tenth of the total number of seats and chairpersons of panchayats is reserved for this category. In **Madhya Pradesh**, the statute provides that 25 per cent of the total number of seats should be reserved for OBCs, if not more than 50 per cent of the seats are reserved for SCs and STs in the panchayats. Again, in Gujarat and MP, not less than one-third of the total number of seats reserved for SCs, STs and OBCs are reserved for women.

As for the reservation of offices of chairpersons for the BCCs in MP, 25% of the total number of chairpersons of village panchayats are reserved for them, if the total population of SCs and STs in the Block is less than 50 per cent. Similarly, 25% of the total number of offices of chairpersons of intermediate panchayats are reserved for OBCs, if the combined population of SCs and STs in the district is less than 50 per cent. However, 25 per cent of the total number of offices of the chairperson of district panchayats in the State have to be compulsorily reserved for OBCs.

The scenario in the three selected States in regard to reservation of seats and offices of chairpersons may be seen from the following:

Level of Panchayat / State	Reservation of seats for BCCs	Reservation of offices of chairpersons
1. <u>Village Panchayats</u> d) Kerala e) Gujarat f) MP	X 10% 25% if the total no. of Seats for SCs/STs if not more than 50%	X 10% 25% if the total population of SCs/STs in the IP is not more than 50%
2. <u>Intermediate Panchayats</u> d) Kerala e) Gujarat f) MP	X 10% 25% if the total no. of seats for SCs/STs is not more than 50%	X 10% 25% if the total population of SCs & STs in the district is not more than 50%
3. <u>District Panchayats</u> d) Kerala e) Gujarat f) MP	X 10% 25% if the total no. of seats for SCs/STs is not more than 50%	X 10% 25% of the total no. in the State

An interesting feature of MP is that the statute that *if the Chairperson of a Panchayat at any level does not belong to SCs/STs/OBCs, the Vice-Chairperson must necessarily belong to one of these categories.*

In **Orissa**, the State Panchayat Act makes it mandatory for allotting the office of the chairperson or vice-chairperson of a panchayat to a woman, if the vice-chairperson or chairperson of the panchayat is a man. In fact, during the last panchayat elections held in the State in 2002, all offices of chairpersons of

panchayats at all levels in the Scheduled Areas were reserved for Scheduled Tribes.

In **Bihar**, while seats in the village panchayats are reserved for women, SCs, STs and OBCs, offices of chairperson of these panchayats are not reserved for SCs, STs and OBCs². Reservation of offices of chairpersons of intermediate and district panchayats for SCs, STs, OBCs and women is however provided.

In **Punjab**, and **Haryana**, seats in the panchayats at all levels are reserved for SCs, OBCs and women only³. Similarly, the relevant statute does not provide for reservation of the offices of chairperson in these panchayats to OBCs and STs.

4. Election of Chairperson of Village Panchayats

The Constitution clearly specifies that the chairpersons of both the intermediate and district panchayats should be elected by the directly-elected members of these panchayats from amongst them. However, States are given the discretion to opt for either a direct or indirect election for electing the chairperson of a village panchayat. The practice across the States is mixed. In **Kerala**, the chairperson is indirectly-elected by the elected members of the village panchayat. In **Gujarat and MP**, he is however elected directly by the people of the panchayat area. Moreover, in MP *a person who is not a member of either House of Parliament or not an MLA or not the chairperson or vice-chairman of a co-operative society, can only be chosen as chairperson of the village panchayat, provided he is qualified to be elected as the chairperson of a panchayat.*

5. Disqualifications for Membership in Panchayats

The Constitution itself provides for a few disqualifications for a person to be chosen as, and for being a member of a panchayat, (a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the legislature of a State; (b) if he has not attained the age of twenty-one years; and (c) if he is disqualified by or under any law made by the legislature of the State.

² see the *Bihar Panchayat Raj Act, 1993*, Sections 13 and 15 (as amended upto September 2003)

³ see the *Punjab Panchayati Raj Act, 1994*, Section 11 and 12 the *Haryana Panchayati Raj Act, 1994*, Section 9.

The State statutes governing this issue also provide for a large number of disqualifications for a person to be chosen as or for being a member of a panchayat. Among these the following seem to be interesting.

In **Kerala**, besides the disqualifications specified in Art.243F of the Indian Constitution, some of the unique disqualifications specified in the KPR Act, 1994 for a person for being chosen as Member or for being continued as a member in panchayats at various levels in the State are as follows:

- a) *For being chosen as a Member:* (i) if disqualified under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 and has not completed six years from the date of disqualification; (ii) if he is found liable for the loss, waste or misuse of money or other property of the panchayat, by the Ombudsman; (iii) if he has been held personally liable for mal-administration by the Ombudsman; and (iv) if he has been sentenced by a criminal court for any electoral offence punishable under Sections 136 and 138 or has been disqualified from exercising any electoral right on account of corrupt practices in connection with an election, and six years have not elapsed from the date of such sentence or disqualification.
- b) *For being a Member or for a Member to cease to hold office:* (i) if disqualified under the provisions of Kerala Local Authorities (Prohibition of Defection) Act, 1999 and has not completed six years from the date of disqualification; (ii) *If failed, twice consecutively, to convene the prescribed meetings of the Grama Sabha* of which he is the convenor; (iii) If he is found liable for the loss, waste or misuse of money or other property of the panchayat by the Ombudsman; (iv) *if he failed to file declaration of his assets within the prescribed time-limit*; (v) if he has been sentenced by a criminal court for any electoral offence punishable under section 136 or 138, or has been disqualified from exercising any electoral right on account of corrupt practices in connection with an election, and six years have not elapsed from the date of such sentence or disqualification; and (vi) if he has been held personally liable for mal-administration, by the Ombudsman.

In **Gujarat**, in addition to the disqualifications specified in Art.243F of the Indian Constitution, the GP Act prescribed a few other additional disqualifications for a person for being chosen as a member in a panchayat or for being continued as a member in the panchayats. Among these, the important are: (a) if he/she has been convicted of an offence under the Protection of Civil Rights Act, 1955 or under the Bombay Prohibition Act, 1999, unless a period of five years, or so lesser period as the State government may allow, has elapsed since his conviction; (b) if he/she has been convicted of any other offence and has been sentenced to imprisonment for not less than six months, unless a period of five years, or such other period as the State government may allow, has elapsed since his release; (c) if he/she who at any time during the term of his office is disqualified under the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986 for being a member of a taluka/district panchayat, as the case may be.

In **Madhya Pradesh**, among the disqualifications presented for being an office-bearer of a panchayat the important are: (a) if he/she has, either before or after the commencement of the Panchayat Raj Act 1993, been convicted of an offence under the Protection of Civil Rights Act, 1955 (No.22 of 1955) or under any law in connection with the use, consumption or sale of narcotics or any law corresponding thereto in force in any part of the State unless a period of five years elapsed since his conviction; (b) *if he/she has been dismissed from the service* of the State or Central government, or a panchayat, or any other local authority or a Cooperative Society or any public sector undertaking under the control of the Central or State government *for corruption or 'disloyalty'*; (c) if he/she is suffering from a variety of laprosy which is infections; and (d) if he/she has more than two living children one of whom is born or after January 26, 2001.

An office-bearer of a Panchayat if he attracts any of the disqualifications specified in the Act, will cease to be such office-bearer and his office becomes vacant.

6. Constitution of a State Finance Commission

Art.243-I makes it mandatory for the Governor of a State to constitute a Finance Commission within one year from the date of commencement of the 73rd Amendment Act, and thereafter at the expiration of every fifth year, 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 the Part-IX*, and allocation between the panchayats at all levels of their respective shares of such proceeds; (ii) the determination of the taxes, tolls and fees which may be assigned to, or appropriated by the panchayats; and (iii) the grants-in-aid of the panchayats from the Consolidated Fund of the State; (b) the measures needed to improve the financial position of the panchayats; (c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the panchayats.

Another mandatory provision relating to the Finance Commission at the State level (SFC) requires the Governor of the State to cause every recommendation made by the SFC, together with an explanatory memorandum as to the action taken thereon, to be laid before the legislature of the State.

Accordingly, most of the States have appointed their first SFC within one year from the date of commencement of the 73rd Amendment Act but in several cases these first SFCs have undergone several reconstitutions, causing unwarranted delays in the submission of their reports. Moreover, absence of any time-limit fixed for the Governor to cause the SFC report, alongwith the ATR thereon, to be laid before the State legislature, led to abnormal delays in this regard. The express provisions and the spirit behind the Constitutional provisions relating to SFCs have not been fully understood by many States. Although the State legislatures have either made provisions in their Panchayat Acts or enacted separate laws in regard to the qualifications requisite of the members of the SFC, in several cases, serving or retired bureaucrats have been appointed as members of this Constitutional entity. In fact many States have not paid serious attention to

the recommendations made by their respective SFCs. In a significant number of cases, the SFCs have not functioned either as expert bodies or as Constitutional entities independent of the State governments. In fact, these Commissions have not been able to perform their expected role satisfactorily for want of statistical data, or expertise or functional autonomy, or cooperation from the State line departments as well as panchayats. In regard to the recommendations of the SFCs accepted by the State governments, the follow-up action in terms of legislative, administrative and financial measures is found to be tardy. There is a significant time gap between the expected date of implementation of the SFC recommendations and the actual date of submission of the report by the SFC or the date from which these recommendations have been given effect. The EFC could not unfortunately make fuller use of the recommendations of the SFCs for making their own recommendations on the measures needed to augment the Consolidated Funds of the States to supplement their resources due to inadequate and unreliable database on panchayat finances.

In **Kerala**, the first SFC was appointed on April 23, 1994 and it submitted its report on May 31, 1997. The State government, after accepting most of the recommendations of the SFC, had been sincere in faithfully adhering to their new commitments. The second SFC was also appointed on June 23, 1999 and it submitted its first report in 2001 and its final report in 2003. The report along with the ATR have recently been laid before the State legislature, and the government is keen on implementing the recommendations accepted by them, though the timeframe of their recommendations is 2001-02 to 2005-06.

In **Gujarat**, the first SFC was constituted on September 15, 1994 and it submitted its report on October 13, 1998, after the SFC was reconstituted four times. The recommendations of the SFC were under the examination of the State government till the middle of 2003. Finally, the SFC report along with the ATR of the State government were laid before the State legislature in late-2003, and their implementation is likely to commence from 2004-05 onwards. The second SFC has not yet been appointed in the State, and the Constitutional provisions have been accordingly been vitiated.

In **Madhya Pradesh**, the first SFC was appointed on June 17, 1994 and it submitted its report on June 20, 1996. The recommendations of the first SFC are being implemented by the State government from 1996-97 onwards. The second SFC was also constituted in the State on June 17, 1999 and its final report was submitted to the Governor of the State on August 98, 2003. The report was under the consideration of the State government at present, though the timeframe of the recommendations of the second SFC is 2001-02 to 2005-06.

It may thus be seen that in Kerala and MP, the first SFC recommendations have been implemented as intended by the 73rd Amendment Act, while Gujarat is still struggling to implement the recommendations of their first SFC. In the case of second SFC, in Kerala and MP, their recommendations have yet to be put in operation.

7. Central Finance Commission to recommend ‘Measures’

Under Art.280(3)(bb), the Central/National Finance Commission is required to make, *inter alia*, recommendations as to “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”.

Though the 10th Finance Commission was not required to deal with panchayat and municipal finances in term of their own ToR, the Commission took cognizance of the need to provide initial financial support to the States for supplementing the resource base of the local government institutions. As the first SFCs were still at work by the time the Commission had to make its recommendations to the President of India, it made an *ad hoc* allocation of Rs.4380.93 crores as grants to panchayats. Among the conditionalities for the use of their recommended grant to the panchayats and municipal institutions, the important relate to a matching contribution either by the local government institution/State government. State governments have however been given the discretion to frame appropriate guidelines for the use of the Commission’s grant by the local government institutions. Nevertheless, experience shows that the

grant recommended by the Commission could not be fully utilized by the States as they were not able to meet the conditionalities laid down for the government of India in this regard.

The Eleventh Finance Commission is the first National Finance Commission to be specifically asked, *inter alia*, to deal with panchayat and municipal finances under Art.280(3)(bb) and (c). The Commission had examined several pertinent issues relating to the functional and financial domain of the local government institutions, and finally made an *ad hoc* allocation of a total of Rs.10,000 crore for the panchayats (Rs.8000 crore) and the municipal institutions (Rs.2000 crore) for the period 2000-01 to 2004-05. It earmarked a small part of its total grant for 'maintenance of accounts by the village and intermediate panchayats' and for 'creation of database' on panchayat and municipal finances in the States. A major portion of their grant was however earmarked to 'maintenance of civic services' by the panchayats and municipalities. The Union Ministry of Finance had laid down the conditionalities, in tune with the EFC recommendations, for the use of the grant by the States. The grant is being released to the States by the Union Government for the last four years although information on its utilisation by the States, particularly to the earmarked sectors, is not adequately available to the researchers.

The Twelfth Finance Commission is again required to address to the local government finances in terms of their ToR. Unlike their predecessors, the Commission which is at work is expected to base their recommendations on a more rational criteria.

8. Constitution of District Planning Committee

In terms of Art.243ZD, a District Planning Committee has to be constituted at the district-level in all States to which the 74th Amendment Act is extended. The Constitution provided for the broad composition and functions of the DPC; but empowered the State legislatures to statutorily provide for its composition, the manner in which the seats in the Committee should be filled, the functions of the Committee, and the manner in which a chairperson of the DPC is to be chosen.

Several States have incorporated the Constitutional provisions in their Panchayat Acts or enacted separate laws creating the DPC, though the Committees are not functional in many of these States.

In practice, the composition of the DPC and its functions, except those specified in the Constitution, vary across the States. For instance, in AP, Assam, Bihar, Goa, Jharkhand, Gujarat, Maharashtra, and Punjab, the DPCs are not constituted though in some of these States statutory provision for their constitution is made. Except in Kerala, many DPCs where they are constituted, are not functional as yet. In States like Chhattisgarh, MP, Orissa, Uttaranchal, and UP, a State Minister is designated as its Chairperson. On the other hand in Karnataka, Kerala, Manipur, Rajasthan, Sikkim, Tamil Nadu, Tripura, and West Bengal, the chairperson of the district panchayat is made the *ex-officio* chairperson of the DPC. In Haryana, the Divisional Commissioner, is made the *ex-officio* chairperson of the DPC. As for the Secretary of the DPC, the District Collector is its *ex-officio* secretary in Chhattisgarh, Kerala, and MP, the CEO of district panchayat in Karnataka, Orissa, Sikkim, Tamil Nadu and West Bengal, the Addl. Deputy Commissioner in Haryana, Deputy Commissioner in Manipur, the Chief Planning Officer of the district panchayat in Rajasthan and the Chief Development Officer in UP and Uttaranchal. It is learnt that the DPC is likely to be constituted in AP and Gujarat soon in conformity with the Constitutional provisions.

In **Gujarat**, District Planning Boards(DPB) at the district-level with considerable untied funds placed at their disposal, have been functioning w.e.f. November 14, 1980. The chairman of the DPB is the Minister of the State, the President of the District Panchayat is its *ex-officio* Vice-Chairman, and the District Collector its co-Vice-Chairman. The District Planning Officer who works directly under the District Collector is Member-Secretary and the District Statistical Officer is the Additional Member-Secretary of the Board. The members of the Board comprise Presidents of all Taluka Panchayats, President of one Nagar Panchayat and one municipality, Mayor of the Municipal Corporation, one member of the Social Justice Committee, one representative of the district Lead

Bank, one lady member of the district panchayat, one expert from a research institute, all MLAs and MPs elected from the district, one Municipal Commissioner, District Development Officer, District Backward Class Welfare Officer and the Project Administrator of Tribal Area Sub-Plan. One officer of the GAD (Planning Division) is designated as Observer for the DPB.

The following functions are entrusted to the District Planning Board in the State: a) to frame specific schemes in various fields to be funded from the outlays under decentralized planning; b) to ensure maximum participation from the local government institutions, the public and the voluntary agencies; c) to undertake a regular review and evaluation of district-level schemes, and to strive to remove bottlenecks in their implementation; d) to prepare a perspective plan, five year plan and the annual plan of the district; e) to monitor the MNP in the district, identifying infrastructural support required for the family-oriented programmes for poverty removal, providing adequate outlays for them, and monitoring their progress at the district level.

In this connection it may be noted that the composition and functions of the District Planning Board as it exists today do not conform to the Constitutional mandate under 243 ZD which deals with District Planning Committees.

III STATUS OF COMPLIANCE WITH *DISCRETIONARY* CONSTITUTIONAL PROVISIONS

1. Gram Sabha and its Empowerment

Art.243A of the Constitution merely provides that “a Gram Sabha may exercise such powers and perform such functions at the village-level as the legislature of a State may, by law, provide”. The Gram Sabha is defined as “a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of panchayat at the village-level”.

All States have made statutory provision for the constitution of a Gram Sabha, though the level at which they are constituted, their functions and powers

significantly vary across the States. For instance, in West Bengal, Kerala, Orissa, Karnataka, and MP, they were constituted at a level below the gram panchayat level. While some States provided for their constitution only at the village panchayat level and confined them to perform a few traditional functions, some States like Kerala, MP and Karnataka have made them a very important organ of the Panchayati Raj by bestowing numerous functions and powers on them.

In **Kerala**, in terms of KPR Act, 1994, the gram sabha is constituted for each “constituency” of a village panchayat. The elected member of the constituency is the convenor of the gram sabha which is presided over by the President of the village panchayat. The gram sabha has to meet atleast once in every three months. The quorum prescribed for the meeting of the gram sabha is 10% of the total number of voters in its area, and for the meeting adjourned for want of quorum earlier, the quorum consists of 50 members. The Act clearly specifies the powers, functions and rights of the gram sabha.

A Gram Sabha in Kerala has some important powers, namely: (i) to verify the eligibility of persons getting various kinds of welfare assistance from the government like pensions and subsidies; (ii) to suggest location of street lights, street and community water taps, public wells, public sanitation units, irrigation facilities and other public utility schemes; (iii) to formulate schemes, to impart awareness on matters of public interest like cleanliness, environmental protection, pollution control and to give protection against social evils like corruption, and illicit and clandestine transactions; (iv) to formulate proposals and fixing of priority of schemes and development programmes to be implemented in the area of village panchayat; (v) to scrutinize the priority list prepared by the village panchayat for the selection of beneficiaries, to invite applicants and to prepare a final list of deserving beneficiaries in order of priority and sending the list for approval of the village panchayat which does not have the power to alter the order of priority indicated by gram sabha; (vi) To know the follow-up action taken on the decisions of the gram sabha and the detailed reasons for not implementing any of the decisions; and (vii) to appoint, elect or constitute general or special sub-

committees for detailed discussion on any issue or programme, and implementation of schemes.

The Act also provides for *disqualification of a member of a panchayat to hold office as such, if he has failed twice consecutively to convene the meetings of the gram sabha, due once in three months, of which he is the convenor.*

In **Gujarat**, the GP Act 1993 provides for the gram sabha for a village which is required to meet twice in a year on such dates as may be prescribed, subject to the condition that its first meeting in a year should be held within two months from the commencement of that year. All meetings of the gram sabha are presided over by the chairperson of the village panchayat. The Act does not stipulate any quorum for the meetings of the gram sabha.

In addition to its normal or traditional functions, the gram sabha is entrusted with certain other responsibilities by the State government among which the important are. (a) review of performance and attendance of field-level functionaries; (b) reading of mutations in revenue records; (c) educating the people on disasters and enabling them to prepare Village Disaster Plans; (d) review of status of public properties and encroachments thereon; (e) review of panchayat taxes in relation to their recovery, revision, imposition, etc., and (f) in Scheduled Areas, the financial institutions are required to take prior permission of the gram sabha, for money-lending, and for all transfers of properties from tribals to non-tribals have to be informed to the gram sabha.

Gram Sabha campaigns in the State are conducted through newspapers, television as well as traditional method of beating of drums. The year 1999-2000 was celebrated as 'Gram Sabha Year' in the State. Four phases of gram sabha have been completed since October 2001 till January 2003. Each phase covers a timeframe of about three weeks. All officials and field workers working at the village-level are required to be present at the gram sabha. Non-attendance of nominated Class-I and II officials to the gram sabha attracts punishment by the government. Distribution of pamphlets on various schemes and lectures by line department officers are also arranged for the gram sabha. Same sitting

arrangements for officials, non-officials and villagers are made in the gram sabha meetings. Officials are required to park their vehicles at the entrance of the village where gram sabha meeting is scheduled to be held. About 100 beneficiary / community-oriented schemes are discussed during the campaigns in each gram sabha. Video conferences by the Chief Minister of the State with the gram sabha are also being organized during the campaign period. This period is also used to spot disposal of some of the problems of the villagers.

In **Madhya Pradesh**, the Panchayat Act of 1993 stipulates that the gram sabha should meet every month, and it should be convened by the Secretary of the gram sabha. The Secretary of the village panchayat is the *ex-officio* Secretary of the gram sabha. It is presided over by the Sarpanch. The quorum prescribed for the meetings of the gram sabha is “not less than 20 per cent or one thousand which ever is less, of the total number of members of the Sabha” *out of which not less than one-third are required to be women members. Members of SCs and STs should also be represented in proportion to their population.* A special meeting of the gram sabha is to be convened if the Sarpanch, or more than ten per cent of the members or fifty percent of the members of the sabha, whenever is less, requisition it in writing. Decisions of the gram sabha are based on majority writing.

Gram Sabhas are vested with very far-reaching powers in Madhya Pradesh. The distinctive feature of gram sabha in the State is that, unlike in other States, it is endowed with executive powers as well as powers to levy taxes. In fact, the State government, as part of its efforts to promote village democracy, has amended the panchayat statute in 2001 transferring several functions and revenue-raising powers of the village panchayats to the gram sabha⁴. Among the functions of the gram sabha in the State, the important are⁵: (a) to ascertain and certify the proper utilization by the gram panchayat of the funds for plans, programmes and projects; (b) to exercise control over institutions and functionaries in social sectors transferred to or appointed by gram panchayat, through that panchayat; (c)

⁴ See Madhya Pradesh Act No.3 of 2001 which came into effect from January 26, 2001.

⁵ *The Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993*, Section 7.

to *manage* natural resources including land, water, forests within the area of the village; (d) to advise the gram panchayat in the regulation and use of minor water bodies; (e) sanitation, conservancy and prevention and abatement of nuisance; (f) *construction, repair and maintenance* of public wells, ponds and tanks and supply of water for domestic use; (g) *construction and maintenance of sources of water* for bathing and washing, and supply of water for domestic animals; (h) *construction and maintenance* of village roads, culverts, bridges, bunds and other works and buildings of public utility; (i) lighting of village streets and other public places; (j) filling in of disused wells, unsanitary wells, unsanitary ponds, pools, ditches and pits and conversion of step wells into sanitary wells; (k) *removal* of obstructions and projections in public streets and sites; (l) *registration and control* of entertainment shows, shops, eating houses and vendors of drinks, sweet meats, fruits, milk and other similar articles; (m) regulation of construction of house, latrines, urinals, drains and water closets; (n) *management* of public land and management, extension and development of village sites; (o) *maintenance* of gram sabha property; (p) *maintenance* of records of birth, death and marriages; (q) plantation and preservation of village forest; (q) establishment of Raksha Samiti; and (r) *granting of loans*.

In addition, Gram Sabha is entrusted with the following *powers to levy certain taxes and non-taxes*⁶. The statute divides these levies into obligatory and optional levies for the gram sabha. In the ‘obligatory’ list of revenues to be raised by the gram sabha, the property tax, a tax on private latrines, a light tax and profession tax on persons exercising any profession or carrying on any trade or calling are included. The ‘optional’ list comprises several items like tax on buildings, animal tax, water rate, profession tax on purchaser, agent, commission agent, weighman or a measurer, a temporary tax for special works of utility; tax for construction or maintenance of public latrines; a general scavenging tax for removal and disposal of refuse; and other fees.

⁶ *ibid.*, Section 77-A and Schedule IA and II-A

Again, another important feature of gram sabha relates to *recall* of elected representatives. The Act stipulates that *every Sarpanch of a gram panchayat shall forthwith be deemed to have vacated his office if he is recalled through secret ballot by a majority of more than half of the total number of members constituting the gram sabha*", after a notice signed by not less than one-third of the total number of members of the gram sabha and presented to the prescribed authority⁷. However, the Act further provides that no such process of recall should be initiated within a period of two and half years from the date on which the Sarpanch enters his office, or if half of the period of tenure of the Sarpanch elected in a bye-election has not expired.

The Act also provides that *every member of a gram panchayat is deemed to have vacated his office if he is recalled through secret ballot by a majority of more than half of the number of members of the gram sabha* constituting the ward from which he is elected⁸. Moreover, a member is also deemed to have vacated his office if the same procedure for the recall of the Sarpanch is adopted. If any Sarpanch or member desires to challenge the validity of recalling him, he has to refer the issue to the Collector within seven days from the date on which he is deemed to have vacated his office, and the decision of the Collector is declared final in this regard.

The issues of transferring the legitimate responsibilities of a gram panchayat to gram sabha, and the powers of gram sabha to recall the elected representatives of the gram panchayat is fraught with several dangers and has several implications. In the *first* place, it should be remembered that gram sabha is only a 'general assembly' of all voters and the gram panchayat is the executive arm of the sabha. It can only be a decision-making and guiding body rather than an implementing agency whether by itself or through its sub-committees. In fact it is not a part of the three-tier panchayati raj system. The Indian Constitution recognizes only the gram panchayats, intermediate panchayats and district panchayats constituting the formal structure of Panchayati Raj. The Constitutional

⁷ *ibid.*, Section 21-A(1)

⁸ *ibid.*, Sub-Section 21-A(2)

provisions refer only to ‘Panchayats’, though it makes a brief mention of gram sabha. Under the Constitution, it is the panchayats which are expected to be more endowed with functions, powers and resources by the State legislature. The fathers of the 73rd Amendment Act did not visualize the gram sabha as the “executive and tax-raising institution”. *Secondly*, if a gram panchayat fails to perform their assigned duties, the State government can always take it to task. If, on the other hand, a gram sabha fails to perform their obligatory and other duties, it is futile to expect that the State government would be able to punish the entire village community for their default. *Thirdly*, the Sarpanch and members of gram panchayat are a happy lot in that for the non-levy of taxes and fees in their localities can now be attributed to the gram sabha decisions rather than to their own desire. This is also supported by the findings of our field study in the four select gram panchayats in the State.

In fact, the powers of the gram sabha to recall the elected representatives, and transfer of the powers to levy taxes and non-taxes from the gram panchayat to the gram sabhas in the State has a dampening effect on local resource mobilization. According to one of the members of the second SFC of Madhya Pradesh, their micro-level study reveals that 55% of gram panchayats in the State are not raising any tax revenue, 70% are not raising any non-tax revenue, and 45% are not raising any revenue whatsoever⁹.

In **Orissa**, every village panchayat is statutorily required to obtain from the Gram Sasan a certificate of utilisation of funds by the panchayat for the plans, programmes and projects.

In **West Bengal**, following the concept of *gram sansad* (constituency-wise gram sabha), the Panchayat Act was amended in 2003 providing for a *Block Sansad* consisting of all members of gram panchayats in the block and the members of the panchayat samiti. The Block Sansad which holds its meeting on both half-yearly and annual basis is required to guide and advise the panchayat

⁹ see the “Proceedings of the National Workshop on Panchayati Raj Finances” held at NIRD on May 2003 (Mimeo).

samiti in all matters relating to development, including preparation of annual plan and budget, implementation of development programmes, schemes or projects, etc.

Again, a *Zilla Sansad* consisting of chairpersons of all village and intermediate panchayats, vice-chairperson of intermediate panchayats and the chairpersons of the Standing Committees, of the intermediate panchayats, and all members of the district panchayat, is provided in the Panchayat Act through an amendment Act in 2003. Its functions are analogous to those of the Block Sansad.

The **Punjab** and **Haryana** Panchayat Acts provide that if a majority of voters in any Notified Area or Municipality of the third class desire the establishment of a gram sabha, the State government may declare such urban areas as gram sabha areas for which a village panchayat will be constituted¹⁰.

2. **Devolution of powers, authority and responsibilities on panchayats**

Art.243G of the Indian Constitution empowers the legislature of a State to endow, by law, the panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to a) the preparation of plans for economic development and social justice; and b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to matters listed in the Eleventh Schedule.

Every State statute governing the panchayats in India provide for a list of functional responsibilities, powers and authority for them. However, it may be noted that there is a wide gulf between the statutory provisions and their translation into virtual reality by the executive government. In several cases the provisions relating to the transfer of responsibilities to the panchayats are couched in vague terms. A glance at the bewildering variety of the items listed in the

¹⁰ see the *Punjab Panchayati Raj Act, 1994*, Section 3; and the *Haryana Panchayati Raj Act, 1994*, Section 7.

statutes as “responsibilities or duties” of panchayats reveals that they are a combination of ‘sectors’, ‘sub-sectors’, ‘broad activities in sub-sectors’, and ‘sub-activities/specific responsibilities in a broad activity’. Such a shopping list of the functional domain of the panchayats lacks role clarity. This is true of the situation before and after the 73rd Amendment Act. States should have endeavoured to entrust to the panchayats specific and clearly-delineated activities so as to enable them to clearly understand their precise role in development process. Where certain specific responsibilities are entrusted to the panchayats in compliance with the statutory provisions, the relevant guidelines or executive instructions have not been issued by the State governments in several cases. Equally disquieting is the fact that, while transferring the responsibilities to the panchayats, the necessary follow-up measures relating to the powers, funds and staff support have not been provided to the panchayats commensurate such responsibilities. As per the existing Constitutional provisions, panchayats are to be involved in the planning and implementation of schemes of economic development and social justice. Of late, a few States, have however been evincing interest in transferring a few responsibilities of their line departments to the panchayats. Similarly, attempts are also being made to provide staff support to the activities undertaken by the panchayats. The present scenario also indicates that greater efforts are being made by a few States to strengthen the basic unit of rural local government, *viz.*, the village panchayats, in terms of functional responsibilities, delegation of powers, resource availability and technical staff support. Such instances are however few in number. In fact ever since their constitution, the intermediate and district level panchayats have been reduced to the status of implementing agencies of the State and Central sector schemes. Many State governments have not yet been willing to integrate the District Rural Development Agency with the district level panchayats. Where such integration had occurred, the district panchayats could enjoy the opportunity of implementing the rural development schemes with the help of the intermediate panchayats. However, during the last few years some State governments have been indulging in the creation of parallel bodies which work independent of the panchayats. Their creation led to erosion of the powers,

functions and authority of the grass-root panchayats. While the broad scenario of functional devolution on panchayats in the country is not very reassuring, it must however be admitted that the process of decentralisation and strengthening the panchayats have been engaging the attention of some State governments like Kerala, MP, Karnataka, Orissa, and West Bengal.

Kerala has embarked a policy of radical decentralisation of powers and responsibilities since 1995 when most of the development functions were transferred to the panchayats. Panchayati Raj in Kerala is on a firm footing in view of the political and administrative 'will' being exhibited by the State government. Strictly speaking, in terms of the responsibilities, powers, funds and staff support extended to the panchayats, Kerala has no parallel in the country. There has been a constant experimentation at the political and administrative levels to promote decentralisation in the rural sector. The statutes governing the panchayats are being frequently modified with a view to improving the efficacy of the institutional mechanism of the panchayats so as to make them more people friendly. Also there has been a sincere executive follow-up for operationalising the statutory provisions. It is gratifying to note that both the panchayats and the ruralites in the State are very clear about their respective roles in improving the overall quality of life of the people. Another important factor that contributed to the success of panchayats in Kerala is the supremacy of the institution of panchayats rather than the people who manage them.

The III, IV, and V schedules of the Kerala Panchayati Raj Act 1994 lists the functions of the village panchayats, block panchayats and district panchayats respectively. Eversince October 1995 a series of decentralisation initiatives have been taken by the State government among which the following deserve attention. In October 1995, the State government had transferred several powers and functions to the panchayats along with the institutions, offices and functionaries. In February 1996, a special budget document for local government allocations was introduced. In August 1996, the People's Plan Campaign for decentralized planning was launched earmarking 35 per cent of the plan funds to the local government institutions. In March 2000, 35 State Acts which are relevant to the

local government institutions in respect of the responsibilities, schemes, institutions transferred to them were modified. In July 2000, district-level offices and staff of a few State line departments have been transferred to the district panchayats. In January 2002, surplus staff in the State line departments, particularly the engineering staff, was redeployed to the local government institutions. During the same year, the share of 'untied' plan grants to the local government institutions was fixed as one-third of the total plan size of the State.

As regards the institutions and schemes transferred to the panchayats mention must be made of the following: (a) In the health sector, all institutions other than medical colleges and big regional specialty hospitals have been placed under the control of the local governments institutions; (b) In the education sector, high schools in the rural areas have been transferred to the district panchayats, while the primary and upper primary schools have been transferred to the village panchayats; (c) The entire responsibility of planning and implementing the rural development and poverty-alleviation programmes/schemes including the Centrally-sponsored schemes was transferred to the panchayats; (d) In the sphere of social welfare, the ICDS is fully implemented by the village panchayats and care of the disabled, to a substantial extent, has been made the responsibility of the panchayats; (e) As for the agriculture and allied sectors, the functions transferred to the panchayats include (i) agriculture extension including farmer-oriented support for increasing production and productivity; (ii) watershed management and minor irrigation; (iii) dairy development; (iv) animal husbandry, including veterinary care; and (v) inland fisheries; (f) Except the State Highways and Major District Roads, connectivity in the rural sectors has been made the responsibility of the panchayats; (g) Promotion of tiny, cottage and small industries is made another responsibility of the panchayats; and (h) Administration of all welfare pensions has been made the responsibility of the panchayats in the rural sector.

The details of transfer of institutions and staff to the panchayats in Kerala may be seen from Table-1.

TABLE -1
TRANSFER OF INSTITUTIONS AND STAFF TO PANCHAYATS IN KERALA

a) Institutions and posts transferred to Village Panchayats	
1. Agriculture Department	Krishi Bhavans of the respective places
2. Animal Husbandry Department	Veterinary sub-centre, Veterinary Dispensary / Hospitals of respective places.
3. Dairy Development Department	One Dairy Extension Officer and Auxiliary posts (this unit should be transferred to one of the Village Panchayats in the Block, and this should cover all the Village Panchayats in the block).
4. Fisheries Department	One Fisheries Sub Inspector (in the Village Panchayat wherever existing)
5. Rural Development Department	Two Village Extension Officer posts (including lady V.E.O) (if it is not possible to deploy two posts for a Village Panchayat from a Rural Development Block one post can be deployed for the present and additional post can be deployed as and when necessary subject to availability)
6. Social Welfare Department	Day Care centres and Anganwadis of the respective places.
7. SC Development Department	Balawadis, Balawadi-cum-feeding centre, seasonal day care centre and dormitories of the respective places.
8. Tribal Development Department	Balawadis, Medical unit, Nursery schools, Midwifery centres & Ayurvedic dispensaries of the respective places
9. Health Services Department (Allopathy)	Primary Health Centres and Government Dispensaries.
10. Health Department (I.S.M.)	Government Ayurvedic Dispensaries and Hospitals of the respective places.
11. Health Department (Homeo)	Government Homeo Dispensaries and Hospitals of the respective places
12. General Education Department	Government Lower Primary Schools of the respective places.
13. Public Works Department	One Public Works Overseer post (this post should be given to a Village Panchayat in which there are no engineering posts and the incumbent should work in three similar Village Panchayats).
b) Institutions and Posts transferred to Block Panchayats	
1. Agriculture Department	One post of Assistant Director and Auxiliary posts
2. Industries Department	One post of Industries Extension Officer
3. Rural Development Department	The post of Block Development Officer and posts.

4. Social Welfare Department	Care Homes, Oldage Homes and similar respective places.
5. SC Development Department	(1) Prematric Hostels of the respective places. (2) The post of Block Extension Officer (his services should be made available to all Grama Panchayats in the Block
6. ST Development Department	Tribal Extension Officer (his services should be made available to all Grama Panchayats in the Block)
7. Health Services Department (Allopathy)	Block level Primary Health Centre/Community Health Centre, Taluk Hospitals/ Government Hospitals.
8. Health Department (I.S.M.)	Taluk Hospitals of the respective places
9. Health Department (Homeo)	Taluk Hospitals of the respective places
c) Institutions and posts transferred to District Panchayats	
1. Agriculture Department	(i) Two posts of Deputy Director and auxiliary posts. (ii) The post of District Soil Conservation officer and auxiliary posts. (iii) One Assistant Executive Engineer and connect posts (iv) Soil Testing Laboratory of the respective places. (v) Mobile Soil Testing Laboratory (vi) District Sales Counter (vii) District Agriculture Farm/ Coconut nursery (These institutions which are transferred to District Panchayat should serve other districts also where such institutions do not exist).
2. Animal Husbandry Department	Veterinary Polyclinic, ICDP area office, Mobile Veterinary Dispensary, Mobile Farm Unit, Clinical Laboratories not attached to District Veterinary Centres. (the services of mobile units and clinical laboratories should be extended to urban areas also)
3. Fisheries Department	The fisheries Schools of respective places
4. Minor Irrigation Department	One section consisting of one Assistant Engineer and connected staff.
5. Industries Department	From the District Industries Centre, one Manager post and connected staff
6. Rural Development Department	One post of Assistant Development Commissioner and the District Women's Welfare Officer and Auxiliary staff
7. General Education Department	(i) The Upper Primary Schools and High Schools of the respective places (ii) One Section from the Deputy Director's Office

8. Technical Education Department	(i) Tailoring and Garment making Training Centre of the respective places (ii) Tailoring Trade Centres of the respective places
9. Co-operation Department	One post of Assistant Registrar and one post of Clerk
10. Public Works Department	One division consisting of Executive Engineer and auxiliary staff. (from among Local Works Division, Special Division, Building Division)

(Later the District Hospitals were transferred to the District Panchayats)

NB. Through follow-up government orders, majority of beneficiary oriented welfare and development schemes were transferred to the PRIs. Of special interest is the fact all the centrally-sponsored anti-poverty programmes including SGSY, IAY, and EAS have been fully transferred to them. Likewise all the pension/social assistance Schemes - for the Destitutes and Old aged, Handicapped, Widows, Agriculture Labourers, Unemployed – are implemented by the Grama Panchayats.

In **Gujarat**, the Panchayats Act 1993 clearly specifies the functions and duties/responsibilities of the village panchayats, taluka panchayats and district panchayats in Schedules I to III of the Act. One of the distinguishing features of the Gujarat model is that all the three levels of the panchayats are endowed with specific functions and duties many of which relate to planning and implementation of schemes. The panchayats at all levels are adequately staffed. The Panchayat Act provided for organizational and administrative linkages among the different levels of panchayats. For instance, the statute provides that a village panchayat shall be ‘subordinate’ to the taluka panchayat and the district panchayat; and a taluka panchayat shall be subordinate to the district panchayat. It further declares that the village panchayats, taluka panchayats, district panchayats and gram sabhas should constitute the Panchayat Organisation of the State.

Each district panchayat in Gujarat is headed by a District Development Officer who belongs either to the IAS or to the State Civil Service. He is assisted by one Deputy DDO and one Accounts Officer and one Internal Audit Officer. The DRDA in Gujarat is independent of the district panchayat and it has not yet been brought under the fold of the district panchayat. A number of institutions, schemes and functionaries of the development departments of the State government have been brought under the control of the district panchayat. Some

of the schemes of the State departments of Education, Public Health, Family Welfare, Agriculture, Animal Husbandry, Social Welfare, Minor Irrigation, Roads and Buildings have been transferred to the district panchayats. The district panchayat gets many of the transferred schemes, including the Centrally-sponsored Schemes, implemented through the taluka panchayats.

A taluka panchayat in Gujarat is headed by Taluka Development Officer (TDO) and who is a class-I officer of the State cadre. He is assisted by a team of extension officers and secretarial staff. In fact, the TDO performs not only the duties relating to the taluka panchayats but also of the State line departments, as is the practice in many other States. The taluka panchayat is the implementing agency of several State and Central Sector/Centrally-sponsored rural development programmes, in addition to performing the functions assigned to it by the panchayat Act.

The major functions of the taluka panchayat comprise: supervision and control over the village panchayats; coordination with village panchayats for planning and implementing the developmental and welfare activities; maintenance of health and sanitation activities; village approach roads and link roads, development of village sites for rural housing, preparation of plans for approach roads and development of irrigation in the taluka; provision of drinking water supply; etc.

At the village panchayat level, there is a Talati-cum-Mantri who is responsible for both land revenue collection and panchayat administration and is assisted by a few ministerial and menial staff. Some of these Talati-cum-Mantris are regular government servants, and others are appointed on *ad hoc* basis. Of late, there are two separate Talati-cum-Mantri posts in some village panchayats, one looking after the revenue functions and another dealing with panchayat administration. The major functions of village panchayats consist of: provisions of drinking water facilities to the people and cattle, maintenance of public roads, streets, drains, etc.; provision of health and sanitation facilities; ensuring social,

economic and cultural welfare of the SCs/STs and other weaker sections of the society.

The main functions of the district panchayats include supervision and control over village and taluka panchayats; establishment and maintenance of health facilities; ensuring social, economic and cultural welfare of SCs/STs and other weaker sections; maintenance of animal husbandry dispensaries; development of agriculture and irrigation facilities; construction and maintenance of roads and buildings; providing primary education facilities in the district; controlling the administrative machinery of all the three tiers of panchayati raj in the district, etc.

In **Madhya Pradesh**, in 2001 several functional responsibilities of the village panchayats have been statutorily transferred to the gram sabhas which are expected to perform them through their Committees. The respective functions of the gram panchayats, Janpad panchayats and zila panchayat are specified in the Panchayat Act 1993 itself¹¹.

The major functions of the gram sabha include provision of civic amenities like sanitation, conservancy and prevention and abatement of nuisance; construction, repair and maintenance of public wells, ponds and tanks and supply of water for domestic use; construction and maintenance of sources of water for bathing and washing and supply of water for domestic animals; construction and maintenance of village roads, culverts, bridges, bunds and other works, and buildings of public utility; construction, maintenance and clearing of public streets, latrines, drains, tanks, wells and other public places; lighting of village streets and other public places, etc. Also the gram sabha in the State is endowed with tax powers. In fact, gram sabha has been made a parallel body to the panchayats and is entrusted with functions which in other States are the legitimate responsibilities of the village panchayats. What is surprising is that the State government, in its over-enthusiasm to usher in *Gram Swaraj* seems to have overestimated the ability and willingness of the gram sabha to shoulder the new

¹¹ see Sections 7, 49 to 52 and 54.

responsibilities. The functional and financial domain of the village panchayats has been greatly eroded by these measures. They are now left with the responsibilities of (a) establishment, management and regulation of markets and melas other than public markets, and public melas; (b) preparation of annual plans for economic development and social justice; (c) ensuring execution of schemes, works, projects entrusted to them by the Government or other higher levels of panchayats; (d) considering the applications for establishment of colonies in their area; (e) exercising control over local plans, resources and expenditure of such plans; (f) coordinating, evaluating and monitoring of the activities of committees constituted by the gram sabha; and (g) reallocating to gram sabha the funds made available by the government pertaining to functions assigned to gram sabha works, schemes and projects.

In practice, there is a great deal of confusion and misunderstanding among the people as well as panchayat functionaries as regards the respective roles of a gram panchayat and gram sabha in the State. Though the funds and registers of the village panchayat and the gram sabha are to be maintained separately by the Secretary of the gram panchayat, one finds all receipts and expenditure of the gram panchayat and gram sabha clubbed together in the account books of the gram panchayat. Functional responsibilities of the gram sabha in the area of civic services, particularly sanitation and drainage, are not being performed by it as envisaged. Moreover, transfer of the powers to levy important local taxes to the gram sabha has greatly affected internal resource mobilization by the village panchayats. Strictly speaking, our empirical investigation reveals that even now, the powers and responsibilities of gram sabha in the State are not understood by the people and the village panchayats maintain their books of account the way they were being maintained before transfer of the functions and powers to the gram sabhas took place.

The Secretaries of the gram panchayats belong to two categories, viz., regular government employees, and panchayat *karmis* who are appointed on an *ad hoc* basis on a monthly consolidated salary. Many panchayat secretaries, particularly the panchayat *karmis* need induction training as many of them are

drawn from departments which are not concerned with the panchayati raj. The existing levels of knowledge of rules and procedures of these employees needs a lot of improvement. The chairperson of the village panchayat is the executive authority of the panchayat and many of them also seem to be not exposed to knowledge of rules, procedures and statutory provisions of the panchayats. Another disadvantage in the functioning of village panchayats in the State relate to the virtual absence of any support staff to the Secretary of the panchayat.

The Janpad panchayat which is the middle tier of the panchayati raj system has a Chief Executive Officer. He belongs to the State Civil Service or drawn from other line departments of the State. He is assisted by a few extension officers and secretarial staff. The CEO performs the functions assigned to him both by the Janpad panchayat and State line departments.

The zila panchayat which is the apex tier of panchayati raj has a Chief Executive Officer with support staff. However, as the DRDA was made a Cell of the zila panchayat, he has a large establishment of the Cell under his control. The zila panchayat has a wage employment wing, watershed wing, both headed by the Project Officer of the DRDA Cell, engineering wing headed by an executive engineer, and a monitoring wing headed by the project economist. The district panchayat in Madhya Pradesh has several development functions to perform.

In **Punjab** and **Haryana**, the panchayat statutes empower the village panchayats to ban the sale of intoxicating liquor in their areas¹². In Punjab, a gram panchayat possesses the discretionary power to direct that intoxicating liquor should not to be sold at any licensed shop within the panchayat area. If a resolution supported by atleast two-thirds of the total members is passed to this effect at any time between 1st April and 30th September in any year, the Excise and Taxation Commissioner of the State is required to implement the panchayat resolution in the area concerned. In Haryana also, similar statutory provision is made.

¹² see the *Punjab Panchayati Raj Act 1994*, Section 40. Also see the *Haryana Panchayati Raj Act 1994*, Section 31.

In Haryana and Punjab, the Panchayat Act 1994, empowers each gram panchayat to appoint its servants, other than its Secretary, subject to the rules issued by the government, and with the previous approval of the intermediate panchayat. The statute makes it *mandatory for the panchayats to pay their servants such remuneration, provident fund and gratuity from their own funds*, as may be prescribed by the government¹³.

3. Devolution of powers to impose taxes, duties, tolls and fees by panchayats

Art.243H of the Indian Constitution states that a State legislature may, by law, (a) authorize a panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits; (b) assign to a panchayat such taxes, duties, tolls and fees levied and collected by the State government for such purposes and subject to such conditions and limits; (c) provide for making such grants-in-aid to the panchayats from the Consolidated Fund of the State; and (d) provide for constitution of such Funds for crediting all moneys received respectively , by or on behalf of the panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

In **Kerala**, the KPR Act 1994, has conferred powers only on village panchayats to raise revenue from local jurisdictions in the form of tax and non-tax revenue. Virtually, all the conceivable local taxes have been left to be tapped by these panchayats in Kerala, unlike in other States where all such powers are not given to the panchayats. The Act empowers each village panchayat to levy a building/property tax, profession tax, entertainment tax, advertisement tax, show tax, land conversion cess, surcharge on building/property tax, service taxes for the provision of water supply, sanitation, drainage, street lighting and scavenging facilities to the people, and a plethora of fees, fines, etc.

In regard to revenue-sharing with the panchayats by the State government, the Act itself provides for the payment of the net proceeds of the basic tax levied and collected by the State government in a district to the panchayats in the ratio of 37.50 : 30.00 : 20.00 for the village, block and district panchayats respectively,

¹³ *ibid.*, Section 16 (Haryana); and Section 28 (Punjab)

and the balance is credited to what is known as 'Rural Pool' which is again distributed to the individual panchayats on a formula basis. Similarly, the State government levies a duty on transfers of immovable properties at the rate of 5 per cent in the form of a surcharge and 75% of the net proceeds of the duty are transferred to village panchayats and the balance of 25% is credited to the 'Rural Pool' which again is distributed among the panchayats.

Under the Kerala Motor Vehicle Taxation Act, compensation payments are made to the panchayats by the State government. Accordingly 20 per cent of the proceeds of motor vehicle tax is distributed among the village panchayats and municipal institutions. Thus, in Kerala the State government transfers the revenue from the basic tax, stamp duty and the motor vehicle tax, in full or in part, to the panchayats.

Two non-plan grants, viz., Rural Pool and Level-Crossing grants, are being provided by the State government to the panchayats. The 'Rural Pool' grant consists of a pool of 14 specific-purpose grants, 25% of the net proceeds of the additional stamp duty, and 1/8th of the basic tax revenue. The Level-Crossing grant is provided only to five village panchayats to meet the additional establishment costs imposed on them by the manned level-crossings. Moreover, the State government pays two special grants to the village panchayats, one from the Education Department for the maintenance of aided-primary schools and high schools; and the other from Kerala Grandhalaya Sangham for the O&M of the libraries affiliated to it.

For the new responsibilities transferred by the State government to the village panchayats, two types of grants are provided to the village panchayats since 1995. They are General Plan Grants-in-Aid, and Specific-purpose Grants for transferred responsibilities, both Plan and non-Plan. The General Plan grants play a very crucial role in the finances of the panchayats. This grant is virtually 'untied' in nature. The State government has merely stipulated that 40% of this grant should be spent on the 'productive sector'; a maximum of 30% on 'infrastructure', and a minimum of 10% on 'gender sensitive schemes and

subsidies'. These grants were entirely 'untied funds' for the panchayats till 1997-98. Since 1998-99, they are devolved on the panchayats on a formula basis. Subject to the broad guidelines issued by the State government, these grants can be utilized by the panchayats according to their own discretion. Panchayats are not required to obtain administrative sanction, regardless of the estimated cost of works, upto any amount, from outside authorities. They themselves can accord such sanction.

In Kerala, plan assistance to local governments is provided under two streams, the *first* relates to assistance for specific Centrally-sponsored schemes and State Plan schemes transferred to the local governments for planning and implementation. Schemes under this stream are implemented by the local governments according to the schematic guidelines formulated by the Union or State government. The role of the local governments is however confined to performance of 'agency function' as they are required to implement these schemes, besides selecting their locations or beneficiaries. The *Second* stream consists of Plan grants for local development. Local governments, under this stream, enjoy total autonomy in respect of formulation, prioritization and implementation of the schemes.

While distributing the Plan grant, it is ensured that a minimum allocation of Rs.25 lakh and Rs.30 lakh are made available to each Village panchayat and Block panchayat respectively. Similarly, a ceiling of Rs.1.25 crore for the total allocation of plan grant is fixed for a village panchayats.

As regards the magnitude of the total Plan assistance provided to the local governments, both urban and rural, the Annual Plan funds proposed to be transferred to them during 2002-03 were Rs.96.18 crore under the first stream, and Rs.1342 crore under the second stream, making a total Plan assistance of Rs.1438.18 crore, constituting 35.72% of the State Plan outlay of Rs.4026 crore.

In **Gujarat**, under the Gujarat Panchayats Act 1993, village panchayats are empowered to levy a tax on buildings and lands, octroi (abolished from May 1st 2001), pilgrim tax, tax on fairs, festivals and entertainments, service

taxes/cesses like general sanitary cess, general water rate, special water rate, special sanitary cess, drainage tax, and a lighting tax. They can also mobilize revenue from a variety of specified non-tax sources. Taluka panchayats in Gujarat are authorized to levy an education cess, additional tax on panchayat taxes, additional stamp duty on State-administered stamp duty on transfers of immovable property. District panchayats, on the other hand, are endowed with the power to levy additional taxes and fees on the village panchayat taxes and fees, and also an additional stamp duty on State-administered stamp duty.

One of the significant features of fiscal devolution on panchayats in Gujarat is that many revenue-transfers from the State government acquired statutory status. The State government transfers 5% of its forest revenue, and local fund cess for primary education, to the district panchayats; and a share in land revenue and stamp duty cess to taluka panchayats. A large number of grants-in-aid, both plan and non-plan, are also being offered by the State government to the panchayats, including grants per unanimous election to panchayats.

In **Madhya Pradesh**, before the transfer of tax powers from the village panchayats to the gram sabha, the former had the powers to levy a property tax on lands and buildings, tax on private latrines, profession tax, lighting tax, special tax on buildings, tax on animals, water rate, temporary tax for special works of utility, and several kinds of fees. In 2001, the State Panchayati Raj Act was modified transferring almost all revenue-raising powers of the village panchayats to the gram sabha, the former was left with the powers to levy market fees on persons exposing goods for sale in a market, a fees on registration of cattle sold in a market, a vehicle tax, water rate, drainage fees, entry tax on owners of vehicles other than motor vehicles only¹⁴.

Janpad panchayats are empowered to levy a tax on theatre or theatrical performances and other performances, a development tax on agricultural land, and licence fees for the use and occupations of public lands or other properties. The

¹⁴ see *M.P.Panchayat Raj Adhiniyam, 1993* as modified by the *MP Panchayat Raj (Sanshodhan) Adhiniyam, 2001*, Section 77-A.

zilla panchayats are empowered to increase the cess in respect of land held by every tenure holder and government lessee within the village panchayat area, which is being levied at the rate of Re.0.50 on every rupee or part thereof exceeding Re.0.50 on the land revenue or rent assessed on such land upto Rs.10/-. The cess is leviable in addition to the land revenue or rent or any other cess or tax on such land, and is collected in the same manner as the land revenue by the State government.

The statute provides for the constitution and operation of a 'District Panchayat Raj Fund' by the State government at the district level. The net proceeds of land revenue, cess on land revenue and cess on stamp duty levied by the State government, development tax on agricultural land, levied by the Janpad panchayats are credited to this fund for being used as grants-in-aid of panchayats.

In addition, a share from the proceeds of royalty from minor minerals, surcharge on commercial taxes are being transferred to the panchayats by the State government.

As regards grants-in-aid, they are paid to panchayats for meeting the salary expenditure of employees working in the panchayats, including *Siksha Karmis*, office maintenance, honorarium, sitting fees, travel and daily allowances to the elected representatives, infrastructure development, implementation of transferred schemes, including State sponsored schemes, grants under SCP and TSP, pensions to old destitutes, etc. Besides, several Centrally-sponsored Schematic grants like SGRY, IAY and NSAP are also passed on to the panchayats. Following the recommendations of the 1st SFC of the State, 2.91% of the State own revenue is being transferred to panchayats as untied grants.

4. Composition of SFC and qualifications requisite of their Members

Art.243I(2) of the Indian Constitution empowers the State legislatures to provide, by law, for the composition of their respective SFC, the qualifications which shall be requisite for appointment as members thereof, and the manner in which they shall be selected.

Accordingly, the State legislatures have, by law, provided for the composition of SFC and the qualifications requisite for appointment as its members. The situation in the three select States may be seen from the following:

State	Qualifications prescribed	Composition	Act under which prescribed
1. Kerala	One Member to be a person having special experience in financial matters and economics, and the other two to be persons having experience in public administration or local administration or having special knowledge in financial matters and accounts of the government and local bodies.	Not exceeding three, including the Chairman	The Kerala Panchayat Raj Act 1994, Section 186
2. Gujarat	The chairman to be selected from amongst persons who have had experience in public affairs, and the other members from among persons who: (a) are, or have been, or are qualified to be appointed as judges of a High Court; <i>or</i> (b) have special knowledge of the finances and accounts of government and local authorities; <i>or</i> (c) have had wide experience in financial matters and in administration; <i>or</i> (d) have special knowledge of economics.	Not exceeding five Members, including the Chairman	The Gujarat Panchayats Act 1993, Section 226
3. Madhya Pradesh	The Chairman to be selected from among persons who have had experience in public affairs, and the other two persons who: (a) are, or have been, or are qualified to be appointed as judges of a High Court;	One Chairman and four Members, including the Member-Secretary	The MP Rajya Vitta Ayog Adhiniyam, 1994

	<i>or</i> (b) have special knowledge of the finances and accounts of government; <i>or</i> (c) have special knowledge of economics.		
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In practice, for the first SFC in **Kerala**, one retired IAS official was appointed as Chairman, and one serving IAS official and another retired IAS official were appointed as part-time members of the Commission. For the Second SFC of the State, one academic was appointed as Chairman, and two serving IAS officials were appointed as its members.

In **Gujarat**, the First SFC was reconstituted several times. According to the first notification appointing the SFC, a person seemed to have with political background (Shri Jashwant Mehta) was appointed as chairperson, and one retired IAS official and another serving IAS official were appointed as members. At the time of submission of the first SFC report, the Commission consisted of one chairman and four members. Though designation or status of, or the posts held by, the chairman and its members can not be traced from the sources available to us, it seems that a majority of the SFC members at the time of submission of the report were either serving or retired IAS officials.

In **Madhya Pradesh**, the first SFC was headed by a former Union Minister of State, and of the four members, three of whom were academics and the member-secretary a government official. The second SFC was again headed by the former Chairman of the first SFC. Of the three members, two members were academics who were also the former members of the first SFC, and the third (member-secretary) was a serving IAS official.

5. **Audit of Accounts**

Art.243J of the Indian Constitution states that the State legislature may, by law, make provisions with respect to the maintenance of accounts by the panchayats and the auditing of accounts. Even before the enactment of the 73rd Amendment

Act, since the matter of 'local government' is a 'State subject', each State its own system of maintenance of accounts and arrangements for their audit. Usually the post-audit is done by the Panchayat Department officials or by the Examiner of Local Fund Accounts / Audit for the panchayats at all levels. However, after the launching of Centrally-sponsored programmes/schemes, substantial funds, particularly from the Union Ministry of Rural Development, are being released to the States. As a result, and again under the provisions of the CAG Act, 1971, the accounts of the panchayats, particularly those of the intermediate and district-level panchayats, are subjected to the audit of the CAG.

As present, panchayat accounts are being audited by the Department officials in a few cases, Examiner/Director of Local Fund Audit who is a part of the State Department of Finance, and the CAG.

In **West Bengal**, the Panchayat Extension officer at the Block-level is the statutory auditor of the accounts of village panchayats. The Accountant General in charge of local fund accounts is the statutory auditor of the intermediate and district panchayats in the State. In **Tamil Nadu**, the Deputy BDO is made responsible for the audit of the village panchayat accounts, except the "Scheme Funds". The Director of Local Fund Audit deals with the audit of Schematic Funds only. He is also the statutory auditor of intermediate and district panchayats in the State. In **Karnataka**, while the village panchayat accounts are audited by the Controller of State Accounts (equivalent to Examiner, LF Audit in other States), the accounts of the intermediate and district panchayats are audited by CAG. In other States, the Examiner of Local Fund Audit conducts the post-audit of the accounts of panchayats at all levels, though the CAG conducts mostly their test audit.

In **Kerala**, the accounts of the panchayats are audited by the Examiner of Local Fund Audit and the CAG. The Local Fund Audit is a post-audit and is annual. The CAG audit is usually a test audit. In view of the substantial volume of resources, particularly under 'Plan' account, being transferred to the panchayats in the State, the need for introducing a novel system of internal audit in the form of

'performance audit' for the benefit of the panchayats was felt by the Sen Committee appointed by the Government of Kerala. Based on the Committee's recommendations, the State government had introduced the system of 'performance audit' for the panchayats towards the end of 1990s. Originally introduced in 1997, this innovative system/practice became more effective only from May 2000 onwards¹⁵.

The performance audit differs from the formal audit systems that are in vogue, namely, audit by statutory audit authority and the C&AG in that it is a system of concurrent evaluation of plan formulation, monitoring, rectification of errors, and procedures and other mistakes that are likely to be committed by the panchayats in the performance of their assigned duties.

As the performance audit is a comprehensive evaluation of all the activities of a local government institution and is an internal audit system, the State government directed that no separate internal audit needs to be undertaken by the respective departments. The government further directed that all enquiries and investigation duties should be assigned to the performance audit staff, and that follow-up of audit paras/inspection reports of the Accountant General should be done by the said staff.

The Government issued sanction of staff for the performance audit work. Accordingly, the Headquarters staff consists of 26 JS/PI, 65 Clerks, 16 Typists and 26 Peons. Similarly the sanctioned field staff for the performance audit division comprises 66 Senior Superintendents, 138 PI/Junior Superintendents, 152 Clerks, and 152 Peons for the performance audit work.

In **Gujarat**, the Panchayats Act 1993 provides that the audit of accounts of a panchayat shall be carried out under the provisions of the Local Fund Audit Act, 1963¹⁶. Accordingly, audit of accounts of all the three levels of panchayats is done by the Examiner of Local Fund Audit in the State. It is usually post-audit conducted annually. Besides, the AG conducts test audit, on sample basis, of the

¹⁵ see GO(MS.) 172/97/LAD dated July 11, 1997; and GO (MS.) No.333/2000/LSGD dated November 30, 2000, Govt. of Kerala.

¹⁶ see Sections 121, 143 and 163

accounts of the taluka and district panchayats. In addition, for the Chief Minister's Fund and schemes of Rural Development Department, Chartered Accountants conducts the audit.

In each district panchayat, there is an Accounts Officer (Class-I Gazetted) and an Internal Audit Officer (Class-II Gazetted) who belong to the State-cadre posts of the Local Fund Audit Department. They conduct internal audit which is obligatory for any payment the amount of which exceeds Rs.40,000/- for a district panchayat, and Rs.15,000/- for a taluka panchayat in the district. The statute also makes provision for surcharging the amounts involved in illegal payments, on the person(s), making or authorizing such payments.

The Local Fund Audit Department is an independent audit department under the administrative control of the Finance Department. It is a part of the Directorate of Accounts and Treasuries and is headed by an Examiner at the State level. The Examiner conducts *inter alia*, the statutory audit of panchayats through 18 district-level offices¹⁷.

The annual post-audit of the accounts of the panchayats is conducted by the district offices of the LF Audit Department. Each audit party consists of one auditor, one deputy auditor and one sub-auditor. However, for village panchayats, only one auditor conducts the audit. The Examiner of LF Audit prescribed the number of mandays to be utilized for audit of accounts of the different local bodies by each audit party. Their audit also covers verification and finalization of pension cases of Class III and IV employees, pay fixation cases of panchayat employees, physical verification of stores of district and taluka panchayats, and maintenance of provident fund accounts.

The Directorate of Accounts and Treasuries conducts periodical training on audit at its own training centre and also conducts the departmental examination for them. Also a quarterly magazine is published by it regularly in which recent orders of Government/ Departments, important court judgments, etc. are included.

¹⁷ see the *Gujarat Local Fund Audit Act, 1963; Gujarat Local Fund Audit Rules, 1974, and Manual of Audit* as revised in 2001.

For computerization of the head office and district offices of the LF Audit Department, the process has been commenced. Hardware have been purchased and the software is being developed through an approved agency.

In **Madhya Pradesh**, the gram sabha accounts are to be audited annually by an independent auditor appointed by the gram sabha¹⁸. The Collector or any person authorized by him can conduct a special audit of their accounts. For certifying the utilisation of funds received from the Central or State government or their agencies, a gram sabha has to get its accounts audited as directed by the State government, including audit of accounts by Chartered Accountants, in addition to the independent auditor appointed by the gram sabha¹⁹. The accounts of panchayats are audited by the Local Fund Audit Department, and by the CAG in select cases.

In **West Bengal**, the State government introduced a cadre of Panchayat Accounts and Audit Officers which is specifically charged with the responsibility of conducting internal audit for the panchayats at all levels. The duties of these officers are (i) detection and minimizing the fraud and errors by frequent visits to village panchayats; (ii) exerting valuable moral check on village panchayats in keeping their books of accounts uptodate; (iii) checking the books of accounts in greater detail; and (iv) introducing increased efficiency and accuracy in book-keeping by the village panchayats. For the village panchayats, the Panchayat Accounts and Audit Officer at the block level visits all the panchayats within the block atleast once in each month for organising the accounts and conducting internal audit of accounts of the panchayats. At the sub-divisional level, the Samiti Accounts and Audit Officers (SAAO) perform similar duties for all the panchayat samitis in the sub-division. At the district level, the Audit and Accounts Officer performs duties similar to that of the SAAO, for the district panchayat. In addition, he prepares statements giving particulars of action taken by the panchayat samitis and the district panchayats on the annual report of the Examiner of Local Accounts received from the sub-divisional officer before the same is

¹⁸ see the *MP Gram Sabha (Audit) Rules, 2001*, Rule 3

¹⁹ *ibid.*, Rule 5

forwarded by the District Magistrate to the Accountant General. The internal audit of the accounts of the district panchayat is also conducted by the Regional Audit and Accounts Officer working under the administrative control of the Divisional Commissioner, while the statutory audit of this panchayat is conducted by the Examiner of Local Accounts.

One of the innovative features of this panchayati raj system in West Bengal is constitution of District Council for each district. A statutory district council is constituted in each district from 1994 on the lines of Public Accounts Committee. *The chairman of the council is the Leader of the opposition* and its secretary is the Additional Executive Officer of the district panchayat. The vice-chairman and five other members of the Council are elected by the members of the district panchayat from amongst them. The State government also nominates three of its officials as members of this Council. The primary functions and powers of the District Council is examination of the book of accounts and associated registers of panchayats within its jurisdiction; inspecting any office of the panchayat within its jurisdiction; calling for inspection / audit reports and the action taken by the panchayats thereon; interacting with any official / functionary of the panchayats; visiting work-sites of schemes/programmes under implementation; and suggesting corrective action, or measures for improvement where needed. The Council enjoys the unique position of overseeing all the financial transactions, maintenance of accounts, and inspection reports relating to all levels of panchayats in the district.

6. Legislative Committees

Recently in **Kerala**, a Local Fund Accounts Committee was created by the State legislature as one of the legislative committees. This Committee, like the Public Accounts Committee, is responsible for examining and bringing the major irregularities found in the audit of accounts of the local government institutions by the Local Fund Audit Department, to the notice of the State legislature for discussion.

In **Gujarat**, one unique feature of panchayati raj system relates to the creation of a separate Legislative Committee for the Panchayats, analogous to the Public Accounts Committee. This Committee is known as *Panchayati Raj Committee (PRC)* of the House. The Committee examines the Audit Report on the accounts of the district and taluka panchayats submitted by the Examiner of Local Fund Audit, and lays it on the Table of the legislature every year. The PRC had framed the rules of procedure for its internal working²⁰. Accordingly, the Secretary of the Gujarat legislature who is also the Secretary of the Committee, after laying the audit report of the Examiner of LF Accounts on the Table of the House, issues a circular memorandum to the line departments concerned requiring them to send to him detailed explanation in respect of paragraphs included in the audit report, cases pertaining to the write-off of losses of Rs.10,000 or above, and cases of defalcation and misappropriation reported and closed.

The Committee selects important paragraphs department-wise from the Audit Report for detailed examination and sends them to the departments concerned. On receipt of detailed explanations from the Departments, the PRC conducts its meetings to which the Examiner of LF Accounts, the Secretaries of Finance and Panchayat Departments; the Chairmen of the other three Legislative Committees, viz., Estimates Committee, Public Accounts Committee and Committee on Public undertakings are invited. Secretaries of the Departments are invited to give evidence, and they themselves have to attend the PRC meetings.

7. Transparency and IEC

a) Right to Information

The Kerala Panchayat Raj Act, 1994 defines ‘Right to Information’ as the “right to have access to information and includes the right to take certified copies or relevant extracts of a document”²¹. Similarly, the word “Information” is defined as “any material or information contained in a document relating to the administration, developmental or regulatory

²⁰ see *Rules for Internal working of the Panchayati Raj Committee*, 1982, Gujarat Legislative Assembly, 1982.

²¹ see Section 271(A)(b)

functions of a panchayat and includes any document or record relating to the affairs of the panchayat”²². However, in the interests of public and local administration, the State government is empowered to classify any document containing special categories of information as “notified document”, to which no person will have any right to access information, and the panchayat in all such case, can reject any request of the persons seeking such information.

The statutes/government notifications in a few other States have also provided for this right to information, following the lead given by Kerala.

b) Citizen Charter

In **Kerala**, the Panchayat Raj Act, 1994 makes formulation of a “Citizen Charter” mandatory for the panchayats²³. The Charter contains the different categories of services rendered to the citizens by the panchayat, the conditions for such service and also the time limit for such service. Besides publishing the Charter, each panchayat is required to periodically review and update it, atleast once in a year.

A few other States like AP, Punjab and Gujarat have also introduced the Citizen Charter for their panchayats, particularly in the village-level panchayats.

8. **E-governance and Computerization**

Sporadic attempts are being made in few States to introduce computerization and e-governance in their panchayats, although the process is still in its infancy.

In **Kerala**, e-governance is being introduced in the local government institutions on a mission mode facilitated by the **Information Kerala Mission (IKM)**. At present, the preparatory work of providing space and facilities for deploying computers is in an advanced stage. The following Table indicates the status of computerization in the village panchayats.

²² Section 271(A)(a)

²³ Section 272 A.

TABLE – 2
STATUS OF INFRASTRUCTURE FOR COMPUTERIZATION IN
VILLAGE PANCHAYATS

Status	No. of Village Panchayats
1. Arranged space for placing computers	757
2. Arranged space and completed electric wiring	556
3. Arranged space, completed wiring and earthing	414
4. Arranged space, completed wiring and earthing and provided furniture	346
5. Arranged facilities in all respects	310

Application software for data entry on plan projects, district-level consolidation and creation of database of previous year projects have been developed. A plan data of local government institutions for 2003 have been entered fully in respect of 558 out of 1215 local government institutions in the State. The following software applications for office automation have been developed.

<ul style="list-style-type: none"> • Sevena - Malayalam <li style="padding-left: 20px;">- Tamil <li style="padding-left: 20px;">- Kannada 	Civil registration and social security schemes.
• Sanchita (data product)	Compendium of Act, Rules, and government Orders
• Soochika	Workflow application
• Sanchya	Revenue module
• Sanchaya	Data entry module for property and profession taxes
• Sanchaya	Storehouse for past records
• Sugama	Administration, purchase and works
• Saphallya	Registering job opportunities
• Sakarma	Decision support system
• Sthapana	Handling establishment matters
• Swatantra	Executive assistance for local governance
• Sahata	Receipt application

Velland village panchayat in Thiruvananthapuram district has been fully computerized using the above applications. Birth, death and marriage registration is also being computerized in a few village panchayats. The State government has also been arranging training on IT-related matters to the panchayat employees. Action research on developing integrated citizen database, digitization of local government maps and spatial data on watershed have been completed. For

supplying hardware, a BOLT Request For Proposal (RFP) is made ready. Once the hardware is installed, the panchayat proposes to network all of them and more on to a web-based system.

In **Gujarat**, in the Valukud village panchayat of Ghogha taluka of Bhavnagar district, a pilot project called 'e-gram' is being implemented successfully. Computerization of the entire village has been completed and made on-line. The following five services for the people of the village panchayat have been made on line.

- (a) Registration and Issue of Certificates: i) Birth certificate; ii) Death certificate; iii) Income certificate; iv) Caste certificate; v) Agriculture certificate; vi) Entry in Form 0.__6; vii) Village Form 0.7/12 and 8; viii) Electricity certificate;
- (b) On-line payment of taxes to Revenue Department and panchayats;
- (c) On-line sanction letter received from district/taluka panchayats;
- (d) Website of the village; and
- (e) Data Bank of the village.

Considering the demand for such a project in other village panchayats, the State government proposes to cover all the villages in the State under the e-gram project in a phased manner.

9. Development Reports, Newsletters and Handouts by Panchayats

There are a few instances in the country where the panchayats, in addition to the State governments, bring out development reports, newsletters and handouts for the benefit of the rural local community. In **Kerala**, each village panchayat prepares a 'development report' containing its perspective of schemes/works to be taken up in their jurisdiction during the next five years, as part of the decentralized planning. Several village panchayats also publish newsletters containing useful information relating to health, nutrition, education, social welfare, women and child welfare, as well as the developmental schemes/programmes in implementation being executed by them. To promote the

overall well-being of the local people, public health campaign handouts are also being issued by the panchayats to the people.

10. Grievance-redressal Mechanism

(a) Ombudsman

The Kerala Panchayat Raj Act, 1994 provides for the constitution of a statutory authority, namely, the Ombudsman, at the State level for conducting investigations and enquiries in respect of charges on any action involving corruption and mal-administration or irregularities in the discharge of administrative functions, by a local self-government institution or by an employee or an officer working under the said institutions or by the elected members of these institutions including their chairpersons, and for the disposal of such complaints. Accordingly, the State government had constituted the Ombudsman with effect from May 29, 2000²⁴.

The functions and powers of the Ombudsman are specified in the statute itself. Accordingly, its mandatory functions comprise all or any of the following²⁵: (a) investigate into any allegation contained in a complaint or on a reference from government, or that has come to the notice of the Ombudsman; (b) enquire into any complaint in which corruption or mal-administration of a public servant or a local self-government institution is alleged; (c) pass an order on the allegations in the following matters: (i) where the irregularity involves a criminal offence committed by a public servant, the matter shall be referred to the appropriate authority for investigation; (ii) where the irregularity causes loss or inconvenience to a citizen, it may direct the local self-government institution to give him compensation and to reimburse the loss from the person responsible for the irregularity; (iii) where the irregularity involves loss or waste or misuse of the fund of the local self-government institution, realize such loss from those who are responsible for

²⁴ see the *Kerala Panchayati Raj Act, 1994*, Section 271G. The word 'corruption' "includes anything punishable under Ch.X of the Indian Penal Code (Central Act 45 of 1860) or under the Prevention of Corruption Act, 1988 (Central Act 49 of 1988)". see Section 271F(1)(d).

²⁵ *ibid.*, Section 271J

such irregularity, and (iv) where the irregularity is due to omission or inaction, it may cause to supply the omission to rectify the mistake; (d) pass interim orders restraining the local self-government institution from doing anything detrimental to the interest of the complaint if it is satisfied that much loss or injury will be caused to the complainant due to the alleged act; and (e) impose penalty in addition to compensation if it is of the opinion that the irregularity involves corrupt practice for personal gain.

As regards its powers for purposes of any investigation or enquiry, the Ombudsman enjoy the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters: (a) summoning and enforcing attendance of any witness and examining him; (b) requiring the discovery and production of any document; (c) receiving evidence on affidavits; (d) requisitioning any public records, or copy thereof from any Court or Office; (e) issuing commissions for the examination of witness; (f) such other powers as are cribbed; (g) collecting evidence, determining the loss and directing the amount to be realized from the person responsible in cases of loss or waste or misapplication of the fund of the Local Self-Government Institution or in respect of the loss or inconvenience caused to a citizen.

The Government of Kerala had framed rules for the enquiry of complaints, and service conditions of the Ombudsman²⁶. The Ombudsman has been endowed with the power (i) to suspend temporarily any action which is a ground for the complaint to protect the interests of justice; (ii) to summon any person as witness and require any person including the complainant or the respondent to arrange for the production of connected documents and records before him; (iii) to visit the building, office or place involved in or connected with the complaint as part of his investigation; (iv) if there is a *prima facie* case involving a criminal offence against an alleged person, the Secretary to

²⁶ see “Ombudsman for Local Self-Government Institutions (Inquiry of Complaints and Service Conditions) Rules, 1999 published in K.G.Ex.No.981 dated July 10, 2001 as G.O.(P) No.40095/N1/2000/LSGD dated May 31, 2001.

Ombudsman should send a complaint to the District Superintendent of Police alongwith the findings and recommendations thereon. The latter, on receipt of the complaint and recommendation of the Ombudsman, is required to register a case against the person concerned; (v) in case where procedure in the rules framed by the State government are not specially specified for the disposal of the complaints before the Ombudsman, it may adopt appropriate procedure which it thinks fit; and (vi) the Ombudsman may *suo moto* or on application submitted within 60 days from the date of its Order, review any of its decision.

The Ombudsman's functional jurisdiction covers both the rural and urban local governments.

(b) Tribunal for Local-Self Government Institutions

The Kerala Panchayat Raj Act, 1994 requires the State government to constitute a Tribunal for one or more districts to consider and dispose of the appeals or revision filed against the decisions of the local governmental institutions (both urban and rural). The State government, in consultation with the Chief justice of the State High Court, appoints one judicial officer of the rank of a District Judge for the Tribunal.

The Act provides that a Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act V of 1908) while trying a suit in respect of the following matters²⁷: a) summoning and enforcing the attendance of any person and examining him on oath; b) demanding the discovery and production of any document or other material object produceable as evidence; c) receiving evidence on affidavits; d) requisitioning any public document or a copy thereof from any Court or Office; e) appointing Commissions for the examination of witnesses or in respect of documents.

²⁷ Section 271 S.

All proceedings before the Tribunal are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code (Central Act 45 of 1860). The Tribunal, on receipt of a reference from the State government with regard to the legality or sustainability of any decision of the local self-government institution, is statutorily required to render its opinion to the government accordingly. However, these appellate tribunals are yet to be constituted by the State government.

However, these appellate tribunals are yet to be constituted at the district-level by the State government.

11. State level Organisations for Panchayats

As recommended by the Committee on Decentralisation of Powers (Sen Committee), the Government of Kerala had constituted a State Development Council in 1998 on the lines of the National Development Council at the Central level, with the Chief Minister as its Chairperson²⁸.

The *functions* of SDC are: i) discussing development policy issues having implications of local level development and regional development and arriving at a consensus; ii) harmonizing the district plans and the State Plan; iii) sorting out policy matters necessary for strengthening local self-governments; and iv) tackling inter-district matters concerning development.

The *composition* of the SDC is: (i) Chief Minister: *Chairperson*; (ii) All Ministers of the State: *Vice-Chairpersons*; (iii) Leader of Opposition: *Vice-Chairperson*; (iv) Vice-Chairman, State Planning Board: *Member*; (v) Chairperson of DPCs: *Members*; (vi) Mayor of Corporations: *Members*; and (vii) Chief Secretary to Government: *Member-Secretary*.

²⁸ see GO(P) No.177/98/LAD dated August 24, 1998 of the Local Administration (P) Department.

IV LEGISLATIVE AND ADMINISTRATIVE MEASURES TAKEN BY THE STATES BEYOND THE PROVISIONS OF THE 73RD AMENDMENT ACT

1. Elections Expenses by contesting Candidates

In Kerala and West Bengal, elections to the panchayats are fought on political-party basis. This is one of the reasons for requiring the contesting candidates to submit the statement of their election expenses in Kerala. In most of the other States, including Gujarat and MP, panchayat elections are conducted on non-party basis. However, in practice, most of the candidates contesting the panchayat elections have their affiliation to one of the political parties. This is more true of the intermediate and district panchayats.

In **Kerala**, the Panchayat Raj Act, 1994 requires every candidate or his election agent at an election to keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof²⁹. The said account should contain the particulars prescribed. As per the statute, the total of the said election expenditure should not exceed the maximum limit prescribed. However, certain categories of expenditure are not treated as expenditure in connection with the election. These comprise: (a) expenditure incurred or authorized in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent); and (b) expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the government like gazetted officers, members of the police forces, excise officers, revenue officers, and other categories of the prescribed State government officials, in the discharge of their official duty.

In addition to the above, the Act further states that every contesting candidate at an election should, within 30 days from the date of election of the returned (successful) candidate, lodge with the officer authorized by the SEC, an

²⁹ Sections 85 and 86.

account of his election expenses along with the connected records. The officer so nominated by the SEC is thereafter required to make available to another officer appointed by the Commission, the accounts of election expenses received by him along with the list of candidates who did not lodge accounts of their election expenses.

If the SEC is satisfied that a person has failed to lodge an account of election expenses within the prescribed period and manner, and has no sufficient reason or justification for such failure; or the accounts lodged are false; or has incurred election expenses exceeding the prescribed limit, the *Commission is required to declare such a person to be disqualified for a period of five years from the date of their Order*³⁰.

In **Gujarat** and **MP**, such a statement of election expenses is not required to be submitted by the contesting candidates.

In Karnataka, the recent amendment to the Panchayati Raj Act 1993 provides for a new Section relating to account of election expenses of candidates. According to the new provision (Section 301A), “every candidate at an election to zilla panchayat or taluk panchayat shall either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election, incurred or authorized by him or by his election agent between the date of which he has been nominated and the date of declaration of the result thereof, both days inclusive”. In the event of default in lodging the statement within the prescribed period for no good reason or justification, *the SEC may disqualify him from being continued as a member for a period of six years*³¹.

2. Declaration of Assets by Members of Panchayats

In **Kerala**, the Panchayat Raj Act makes it mandatory for every member of a panchayat to file a statement of assets and liabilities of himself and of the members of his family, within three months from the date on which he/she

³⁰ Section 33.

³¹ see *The Karnataka Panchayati Raj (Amendment) Act 2002* which came into force on October 1st, 2003, Section 310-A

assumed office, to a competent authority prescribed by the State government³². Moreover, any member, who initially filed the statement specified above, acquires any asset in his/her name or other members of his/her family or disposes or creates any liability thereafter on the assets, is further required to file a statement to this effect, to the competent authority prescribed by the State government, within three months from the date of such acquisition or disposal or creation of liability as the case may be.

*Default in filing the required statements within the prescribed period attracts disqualification for being continued as a member of the panchayat concerned*³³.

In Karnataka, the recent amendment to the State Panchayat Raj Act 1993 provides that “every member of a taluka panchayat shall within three months from the date of commencement of his term of office and until the expiry of his term, in every calendar year file a declaration of assets owned by him and any member of his family, in such manner and in such form as may be presented, before the State Election Commission or the competent authority as may be notified by the Government”³⁴. In the case of zilla panchayats, such a declaration by a member of the zilla panchayat has to be made “before the State Election Commission or competent authority as may be notified by the government”³⁵.

Again, the member concerned who, after filing his first declaration after election, acquires or disposes any assets he should again file further declaration to this effect before the competent authority specified, within three months from the date of such acquisition or disposal as the case may be. This new provision in the Panchayati Raj Act also provides that *failure to file such declarations or filing false or incorrect information will render the person to cease to hold office as a member of the panchayat concerned*.

³² Section 159.

³³ Section 35(q).

³⁴ *ibid.*, Section 136-A

³⁵ *ibid.*, Section 175-A

3. State Control over Panchayats & its Elected Representatives

Almost all the State statutes governing Panchayati Raj provide for a series of checks on the abuse or misuse of power by the panchayats and its elected representatives. Accordingly, the State statutes provide for the following checks as part of their control mechanism over the panchayats.

a) No-Confidence Motion against Chairpersons of Panchayats

In **Kerala**, the Act provides that the chairperson of a panchayat at any level ceases to hold office if (a) a notice of lack of confidence in him/her is served by not less than one-third of the total strength of directly-elected members of the panchayat; (b) if the quorum for the special meeting convened for this purpose is atleast one-half of the total number of directly-elected members; and (c) if the motion of no-confidence against the chairperson is carried out by a majority of total number of elected members.

However, the Act prescribes that no such motion of no-confidence against the chairperson of a panchayat can be raised within the first six months from the date of assumption of office by him/her. Similarly, the Act prescribes that a subsequent no-confidence motion can be raised against the same chairperson only after six months from the date of the earlier meeting.

In **Gujarat**, in terms of the statutory provisions, the motion of no-confidence against the chairperson of a village panchayat can be raised by any member supported by 50% of the total number of members, and by the prescribed number of members in the case of taluka and district panchayats³⁶. No quorum is prescribed for the special meeting to discuss and decide the motion of no-confidence motion for any level of panchayats. The motion of no-confidence is deemed to have been carried out if it is supported by a majority of not less than two-thirds of the total number of the members of the panchayat concerned. No provision of time-limit to be allowed before or after a motion of no-confidence is raised against the chairperson of a panchayat is however made in the statute.

³⁶ Sections 56, 70 and 84

In **Madhya Pradesh**, the statute provides that if a no-confidence motion against the chairperson of a village panchayat passed, by resolution, by a majority of not less than three-fourths of the elected members present and voting and by more than two-thirds of the total number of members, the chairperson ceases to hold office forthwith³⁷. However, no such motion against the chairperson can however be raised within a period of one year from the date on which the chairperson enters his office, or within six months preceding the date on which the term of office of the chairperson expires, or within a period of one year from the date on which the previous motion of no-confidence was rejected. The chairperson so affected can however challenge the validity of the motion by referring the issue to the Collector within a specified period. For the chairpersons of intermediate and district panchayats also, the same procedure applies in respect of a no-confidence motion against them. However, the appellate authority for the aggrieved is the Commissioner and the State government in the case of chairperson of an intermediate panchayat and the district panchayat respectively.

In **Punjab**, a notice to move a no-confidence motion against the chairperson of a village panchayat is to be submitted to the Block Development and Panchayat Officer (BDPO) supported by a two-thirds majority of the total number of members of the village panchayat, only after two years from the date on which the chairperson assumed office. The BDPO is required to convene a meeting of the gram sabha within a specified period for discussing and taking decision on the no-confidence motion. *If the no-confidence motion is approved by a majority of the members of the gram sabha present and voting; the chairperson is deemed to have been removed from his office*³⁸. Such removal will carry disqualification of the person concerned for election to the panchayat for a period not exceeding five years.

³⁷ see Section 21, 28 and 35

³⁸ see the *Punjab Panchayati Raj Act 1994*, Section 19

b) Removal or Suspension of Elected Representatives

All States, except Kerala, provide in their Panchayat Acts for the removal or suspension of elected representatives of panchayats for reasons specified in their respective Acts.

In **Kerala**, an elected member including the chairperson, of a panchayat at any level can at best be disqualified from being continued as a member of the panchayat concerned if he attracts any of the specified, disqualifications. There is no separate or specific provision for his removal.

In **Gujarat**, as per the GP Act 1993, (i) a district panchayat can remove a member or upa-Sarpanch of a village panchayat on grounds of misconduct in the discharge of his duties or of any disgraceful conduct or abuse of power or persistent default in the performance of prescribed duties and functions or incapacity to perform the prescribed duties and functions, or disqualify for a maximum period of 5 years; (ii) the DDO of the district panchayat in the case of taluka panchayat, and the Development Commissioner in the case of district panchayat, can *remove* any member or President or Vice-President of a panchayat on the same grounds specified in (i) above; (iii) The DDO of a district panchayat can *suspend* from office the Sarpanch or the upa-Sarpanch of a village panchayat or the President or vice-President of a taluk panchayat against whom any criminal proceedings in respect of an offence involving moral turpitude have been instituted or who has been detained in a prison during trial for any offence or who is undergoing such sentence of imprisonment as would not disqualify him from continuing as a member of the panchayat or who has been detained under any law relating to preventive detention for the time being in force. An appeal against the suspension orders however lies to the State government; and (iv) The Development Commissioner can similarly suspend from office a President or Vice-President or Chairman of a Committee of the district panchayat for the same reasons specified in (i) above.

In **Madhya Pradesh**, the statute provides that the prescribed authority may *suspend* from office any office-bearer of a panchayat against whom charges have been framed in any criminal proceedings under specified Sections of the Indian Penal Code, or under any law for the time being in force for the prevention of adulteration of food stuff and drugs, suppression of immoral traffic in women and children, protection of civil rights, and prevention of corruption³⁹.

The Act further provides that if the office of the chairperson is reserved for the member of SCs or STs or OBCs or for a woman, *the officiating chairperson shall be elected from amongst the members belonging to the same category*. If no member belonging to the category of the suspended chairperson is available, the officiating chairperson should belong to any of the other reserved categories.

The State government or the prescribed authority can *remove* for six years an office-bearer of a panchayat if he has been guilty of misconduct in the discharge of his duties or if his continuance in office is undesirable in the interest of the public⁴⁰.

c) Cancellation or Suspension of Panchayat Resolutions / Works

State statutes governing the panchayats provide for cancellation or suspension of Panchayat Resolutions/Works under certain specified circumstances.

In **Kerala**, the State government has the power either *suo motu* or on a reference by President, Secretary or a member or on a petition received from a citizen, to cancel, amend or vary a resolution passed or decision taken by a panchayat, if necessary, under certain specified circumstances, after the matter is referred to and a report received from the Ombudsman or Tribunal for LSGI. Till the receipt of the report from the Ombudsman or the Tribunal, government can temporarily *suspend* the resolution.

³⁹ Section 39

⁴⁰ Section 40

Also, the State government has the power to *dissolve* a panchayat under certain specified circumstances, only after giving the panchayat an opportunity of being heard and again only after seeking the advice of the Ombudsman.

In **Gujarat**, (i) the Taluka Development Officer is empowered to *suspend* any order or resolution of the village panchayat if he finds it unlawful. However, the district panchayat can revise or modify any of the order of the TDO; (ii) District Development Officer of the district panchayat can *suspend* the order or resolution of a taluka panchayat for similar reasons; (iii) The State government can *suspend* the order or resolution of a district panchayat for similar reasons; (iv) The Collector also enjoys the power to suspend/prohibit execution of any order or resolution of a panchayat for specified reasons.

In **Madhya Pradesh**, the relevant statute does not seem to provide for cancellation or suspension of panchayat resolutions/works.

d) Dissolution or Supersession of Panchayats

Most of the Statutes provide for occasions which attract dissolution of the panchayats.

In **Kerala**, if a panchayat fails to pass the budget of the panchayat on time or persistently make default in performing the duties or carry out the directions issued by the government or abuses its powers, the State government have the right to dissolve the panchayat concerned, after seeking the advice of the Ombudsman⁴¹.

In **Gujarat**, the State government, after consultation with the district panchayat, concerned may either dissolve or supersede a village or taluka panchayat for reasons specified in Section 253 of the Act. Such reasons include failure to obey an order made under the Act by the taluka or district panchayat. In the case of district panchayat, State government can dissolve or supersede it.

⁴¹ Section 193

In **Madhya Pradesh**, the State government or prescribed authority can dissolve a panchayat if the latter makes default in the performance of their lawful duties or exceeds or abuses its powers or fails to carry out the orders of the State government/the competent authority⁴².

4. Self Declaration by Tax payers

Only in **Kerala**, the system of self-declaration by the tax payers regarding their property value/annual income for purposes of the property tax and the profession tax leviable by the village panchayat was introduced and is in operation.

Although the Panchayati Raj Act in the State does not provide for a system of 'self-declaration' by the taxpayers, the State government introduced the system for the village panchayats in respect of their important taxes. Each property/building tax payer has to fill the form declaring the market value of his taxable property and file the declaration to the village panchayat. The secretarial staff of the panchayat, on the basis of the taxpayer's declaration, would physically verify the capital value declared for the same. He submits his inspection report to the Secretary of the village panchayat who in turn inspects those properties whose capital value appears to be not correctly declared, and makes his/her own assessment. The assessed values of properties are placed before the village panchayat for its final approval.

5. Standing Committees

Although almost all States provide for Standing Committees/Sub-Committees/Functional Committees for the panchayats which will consider the issues that concern them, in West Bengal and Gujarat, they assume importance for different reasons. In West Bengal, all proposals relating to works or schemes of all the development departments of the State government are got to be administratively sanctioned by the Standing Committees of the panchayat samithis and zilla Parishads, before they can be taken up for execution. In this connection, it may be noted that, under the latest West Bengal Panchayat

⁴² Section 87

(Amendment) Act 2003, *the leader and the members of the opposition party are given important role in the functioning of the Standing Committees*. Accordingly, the leader of the opposition in the district panchayat or intermediate panchayat became the *ex-officio* member of the Standing Committee on Finance. Other members of the opposition in these panchayats are included as members of the other nine Standing Committees.

In **Gujarat**, two important Committees are constituted at each level of panchayats *viz.*, Executive Committee and the Social Justice Committee⁴³. While the Executive Committee performs executive functions of the panchayats, the Social Justice Committee performs such functions as are essential for securing social justice to the weaker sections of the society, including persons belonging to SCs and STs. It is constituted from amongst the elected members of each panchayat. The government framed rules regarding the composition and functions of this Committee⁴⁴.

The functions prescribed and being performed by the Committee are: (a) to provide socio-economic activities including education, village sites, house sites (loan, subsidy), drinking water and medical care to the weaker sections, and to prepare and implement plans for this purpose; (b) to investigate into the cases of injustice to and discrimination against the weaker sections of the society; (c) to frame, manage and implement schemes to carry out these functions; (d) to attend to all other situations and matters arising in respect of such classes; (e) to ensure systematic disposal of carcasses and to provide means for the disposal of unclaimed corpses and carcasses; (f) to look after the drinking water facilities of the weaker sections; (g) to promote rural housing schemes for the weaker sections; (h) to look after street lighting facility in the locality of weaker sections if such facility exists for general public; (i) to look after bathing and washing facility for weaker sections; (j) to educate and look after education facility for the weaker sections; (k) to promote social and moral welfare of the weaker sections,

⁴³ Section 92

⁴⁴ Notification No.KP/146 of 1995/PRN-1094/1808/J dated September 2, 1995 of the Panchayats and Rural Housing Department, Govt. of Gujarat.

particularly prohibition, propaganda, removal of untouchability, amelioration of the condition of such sections, eradication of corruption and discouragement of gambling and other anti-social activities; (l) to make arrangements for pre-primary education and child welfare activities of weaker sections; (m) to arrange cultural programmes for the purposes of popular education of weaker sections; (n) to report to the competent authority the grievances of the weaker sections which can not be remedied by the panchayat; and (o) to organize, encourage and assist co-operative activities in the economic and social fields for the welfare of the weaker sections.

For the taluka and district panchayats also, constitution of an Executive Committee and Social Justice Committee are mandatory⁴⁵. Their composition and duration are also similar to their counterpart at the village panchayat level.

6. Public Contributions/Donations by NRIs

Among the States in which the system of public contributions/donations by NRIs to the panchayats is of paramount importance, Kerala and Gujarat top the list in the country. So far as Kerala is concerned, since people's participation in local development activities is on a very significant scale, there is voluntary public contributions for meeting a part of the cost of the developmental schemes taken up in their localities. In the case of Gujarat, it appears that there is a very strong bond between the NRIs and the villages in the State in which they were borne or brought up. A large number of buildings which benefit the community at large like school buildings, PHCs and hospitals are entirely funded by the NRIs. These physical assets which are constructed with the NRI funds are visible in a several localities in the State. After their construction, they are handed over to the panchayat concerned for their maintenance.

7. Special Budget Document on Financial Allocations to Panchayats

Unlike in other States, in Kerala, all Plan grants are separately budgeted in a document given as Annexure-IV of the State Budget. This document is passed by

⁴⁵ see Section 123 and 145

the State legislature and the allocations are therefore non-divertible by the executive government for other purposes. The State Planning Board, publishes this Annexure titled “Plan Assistance to Local Governments” in which individual panchayat-wise (and municipality-wise) allocation of plan grants under three broad heads, viz., General Sector, SCP and EFC Award, for the year are indicated.

8. SFC Cell at State level

The Government of Kerala set up a separate Finance Commission Cell on regular basis in the Department of Finance headed by an Additional Secretary who is assisted by a Deputy Secretary and other support staff. It is a permanent cell which acts as the secretariat of the State Finance Commission and collects the necessary data for the Commission and monitors the information when and where needed. The Cell was established on the recommendations of the 1st SFC of the State.
