DECLARATION

I hereby declare that this thesis titled “Local Self-Government Authorities A Critique” is an independent work carried out by me and any part thereof has not previously formed the basis of the award of any degree, diploma or other titles.

Thiruvananthapuram
05---/06/2017

A. Suhruth Kumar
PREFACE

The issue of centralization versus decentralization has to be examined from the point of view of exchange of information and of things and persons with the environment. It can be looked into as a problem of logistics. Decentralization is rational or cost effective if movement of messages, men and materials leads to successful task from the environment. As Kochen and Deutsch pointed out that though institutions have a great deal of persistence and tend to protect their own survival, they nonetheless do change. Some of these changes find toward greater or lesser decentralization and a functional analysis of the level of decentralization most appropriate to their chief task is entrusted in order to evaluate rationally the actual change which occurs in response to technological or political pressure1.

Decentralization has been discussed basically from the view point of arrangement of local government and democratic governance. These concepts with different approaches have been clearly and profoundly presented by Fesler with following classification2:

1. Doctrinal Approach– decentralization as an end in itself through a process of romantic idealization.
2. Political Approach– political willingness and initiatives to decentralize and transfer powers and functions to decentralized units and allow them to operate with such framework with autonomy politically determined.
3. Administration Approach– motivated by efficiency criterion and administrative rationality becomes the desideration.
4. Dual-role Approach– area function dichotomy in local governance so as to carry out economic and social development forward rapidly.

The Gandhian concept of “concentric circle” of power distribution and the idealization of village community have reduced decentralization almost to a dogma and

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an article of faith. Instead of treating decentralization as a means to the achievement of some governance values and democratic ends, such decentralization tends to elevate to the status of a hardened doctrine3.

The different types of political, functional administrative, geographical, financial decentralization shall be examined with a critical mentality to ascertain the advantages and disadvantages. Administrative and functional decentralization shall be studied to point out that how in adequate are the measures that are initiated by the Centre and State Governments to provide administrative and governance authority to local government institutions.

The present study intends to consider the concept of decentralized democracy and local governance under the practical experiences and experiments in Kerala, and to analyze the institutional capability and administration efficiency of such institutions with real and philosophical perspective. For the last two decades the researcher has indulged in the process of decentralization of governance as a master trainer and support faculty to assist the local government institutions within the state and outside the state. The field experience and felt realities guided the study as much.

The study portrays the disregard of bureaucrats and cold reception of politicians and attitudinal antipathy of people towards real decentralization and local governance which empowers the people to decision making. The study enthusiastically established the positives while empathetically criticized the unscrupulous demerits of the existing local government system in the light of field realities for the last twenty years.

The ideal motive behind the study is to raise an administrative critique on the local government system and the legal framework for the same in order to suggest juristic remedies and rectification to resolve the issues addressed in decentralization of democratic power. I have incurred heavy and numerous debts of gratitude in the preparation of this thesis, while only some of which I personally and specifically acknowledge here.

First and foremost, I express my deep and heartfelt gratitude towards the spirit, the guide and my supervisory teacher Dr. K. Parameswaran, Former Professor, School of Indian Legal Thoughts (SILT), Mahatma Gandhi University, Kottayam, who has always been a source of inspiration, guidance, strenuous helps, time bound advises, continuous encouragement and compulsion, untiring willingness and readiness throughout the entire period of work. I wish to express my indebt respect and sincere gratitude to him.

Prof. Sunil Kumar Cyriac, Director, School of Indian Legal Thoughts (SILT), Mahatma Gandhi University, Kottayam has always been a constant source of inspiration and encouragement to complete the work. I express my sincere gratitude and respect to him.

I also bow my head and owe special debts and thanks to Dr. K. Sheraffudeen, and his colleagues who mercifully extended their wholehearted support in the cumbersome complex procedural formalities to complete the work. I wish to express my heartfelt thanks to their patience and goodness.

It is my duty to express my sincere gratitude to the organization and functionaries of Grameena Patana Kendram, Karakulam, Thiruvananthapurum, especially to Seema Nair, for her assistance and co-operation in the completion of the work in the present format.

I owe special debt to the library staff of the Kerala State Legislative Centre for Development Studies, Thiruvananthapuram, Centre for Advanced Legal Studies and Research, Thiruvananthapuram, and the Government Law Colleges, Thiruvananthapuram and Thrissur, who has provided sincere support and backing to me in this study.

I personally owe to my family members, especially to my spouse, Dr. K. T. Sreelatha Kumari, for her patient and continuous compulsion and inspiration behind the work, and express my sincere gratitude to them.

I humbly bow my head before one and everybody who empowered me to undertake and complete this work and dedicate the same to the unnamed, those who are behind this task.
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<td>AllER</td>
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<td>Art., art.</td>
<td>Article, article</td>
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<td>Administrative Sanction</td>
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<td>BDO</td>
<td>Block Development Officer</td>
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<td>BP</td>
<td>Block Panchayat</td>
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<tr>
<td>C &amp; AG</td>
<td>Comptroller and Auditor General</td>
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<td>CCP</td>
<td>Chinese Communist Party</td>
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<td>CPC</td>
<td>Code of Civil Procedure</td>
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<td>Cr. PC</td>
<td>Code of Criminal Procedure</td>
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<td>District Development Council</td>
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<td>DPDC</td>
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<td>DPSP</td>
<td>Directive Principles of State Policy</td>
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<td>GIS</td>
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<td>Grama Sabha</td>
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HUDCO - Housing and Urban Development Corporation
HYVP - High Yielding Varieties Programme
IAAP - Intensive Agriculture Area Programme
IADP - Intensive Agriculture District Programme
IAY - Indira Awas Yojana
IC - Improvement Committees
ICDS - Integrated Child Development Scheme
IDBI - Industrial Development Bank of India
ILR - Indian Law Report
IP - Intermediate Panchayat
IRDP - Integrated Rural Development Programme
IT - Information Technology
ITDP - Integrated Tribal Development Programme
JRY - Jawahar Rozgar Yojana
KILA - Kerala Institute of Local Administration
KLJ - Kerala Law Journal
KLT - Kerala Law Times
LAN - Local Area Network
LG - Local Government
LPO - Local Public Ombudsman
LQR - Law Quarterly Review
LSG - Local Self-Government
LSGI - Local Self-Government Institutions
MGNREGA - Mahatma Gandhi National Rural Employment Guarantee Act
MGNREGS - Mahatma Gandhi National Rural Employment Guarantee Scheme
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<td>MP</td>
<td>Member of Parliament</td>
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<td>NABARD</td>
<td>National Bank for Agriculture and Rural Development</td>
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<td>NDC</td>
<td>National Development Council</td>
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<td>National Extension Services</td>
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<td>National Informatic Centre</td>
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<td>Nagarpalika</td>
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<td>NREP</td>
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<td>P&amp;RD</td>
<td>Panchayat and Rural Development</td>
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<td>Panchayats Empowerment and Accountability Incentive Fund</td>
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<td>PMSJRY</td>
<td>Prime Minister Swarna Jayanti Rozgar Yojana</td>
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<td>PR</td>
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<td>Public Works Department</td>
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<td>RLB</td>
<td>Rural Local Bodies</td>
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<td>RLEG GP</td>
<td>Rural Livelihood Employment Guarantee Programme</td>
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<td>Scheduled Caste / Scheduled Tribe</td>
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<td>United Programmatic Fund</td>
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<td>Village Panchayat</td>
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<td>V-SAT</td>
<td>Very Small Aperture Terminal</td>
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<td>Ward Committee</td>
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<td>Ward Sabha</td>
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INTRODUCTION

Decentralization of democratic power is a measure to increase peoples’ participation in governance process, to improve service delivery system under the government, reorganize development and welfare programme of the society with direct intervention of individual citizen and their basic collectives. Whereas the problems of centralized governance and the related institutional system still continue, concentration of power of policymaking, planning, implementation, evaluation and reforms at the higher levels of governance have not been changed after the introduction of 73rd and 74th constitutional amendments. Hence it is essential and relevant to conduct a critical study on the existing local government system.

The theoretical framework of democratic decentralization has originated from the earliest socio-political life of human being, but which declined and deteriorated owing to the establishment of nation-state system and executive mechanism under such a statehood character. The main object of the study is to evolve a structural and practical resolution and to establish a functional administrative system in local government institutions.

The concept of decentralization is to empower the general public in the governance process. The theory applied here is that the decision-making power has to be with the people themselves and not of the political or bureaucratic functionaries. Gram swaraj was the ideal concept in this regard.

Whereas the conceptual base was not practicalized even under the proposed constitutional amendment and State legislation did not effectuate local self-governance owing to different reasons like,

- Framework legislation at the Centre and detailed law-making by States has watered down the basic concept of decentralization itself.
- The lackadaisical attitude in implementation of the Schedule of the proposed subjects which are to be entrusted to local self-government institutions resulted in torpedoing the will of the legislature.
• Dual control over political and official functionaries as well as the power vested with States and Centre in administrative policymaking and financial devolution are restricted the reforms.

• Rule of law measures deal with administrative, executive, welfare, social security and allied functions transferred to local governments really limit their role as ‘government’ due to the absence of policymaking and judicial powers.

• Much more political and administrative initiatives are essential to evolve an ideal system of decentralized governance in India.

The present study will help to evolve such an integrated and comprehensive system of administration at the grass root level.

Literature review

Local self-governance presents higher concern in the socio-political-economic and administrative sectors in the historic evolution of the nation. The arch domain of different kings, the dichotomy under rule of colonial administration, and post-independence period, after the introduction of the Constitution, the local governance mechanism requires much consideration from rulers and public.

The indigenous platform of local people, the legal framework of governmental administration, the constitutional tool for participatory and decentralized democracy, the legislative and administrative restructuring for grass root level governance, the good governance measures for service delivery system etc. attained much attention for the last two decades in India.

A historical literature survey, a scenario analysis, and an opinion collection with respect to the ideological and idealistic aspects of local self-governance has helped to conceive more realistic perspective in local governance system.

The studies and recommendations of various Committees and Commissions in this regard at national and State level also provide an arena of awareness on local governance. Brief examination of the efforts by the then Central and State governments to nurture local governance institutions has guided to evolve a clear view in this regard.

The policy measures, political decisiveness, executive motives, merits and demerits of systematic approaches, the instrumentalities like laws, rules, orders,
guidelines, schedules, manuals etc. and other such intrinsic and extrinsic, social and institutional elements have been considered for generating a futuristic outlook in this regard.

Normative and doctrinal study with limited extent of empirical study in corresponding areas have been utilized to generate as much information and to evolve adequate inferences. Repeated consultation with experts in field with considerable experiences in local governance also is to be utilized as part of the study.

The present study is confined to administrative aspects so as to evolve suggestions in order to propose a convergence and integration in local governance, rural development and decentralized development initiatives under local government mechanism.

The existing system, its strength, weakness, opportunities and threat have been considered as part of the study. In the light of available materials and information certain solid conclusions are evolved as part of the study.

**Objectives of the study**

1. To present a scenario analysis of the local governance system in Kerala.
2. To examine the proposed legislation and executive measures to identify gaps in the local governance system.
3. To suggest thorough legal and policy reforms to realize the aim of decentralization of democratic powers.
4. To suggest institutional reorganization so as to establish real, functional and acceptable structure for decentralized administrative system in the State of Kerala.

Democratic decentralization is defined as the transfer of power from the centre of public administration at the State or regional level by public and units at a lower level of bureaucratic tier and elected bodies at the same level or a lower level⁴.

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⁴ Mark Robinson, *A Decade of Panchayat Raj Reforms, the Challenges of Democratic Decentralization in India*, pp. 10-30
Decentralization and local governance in India in no means exhaust the subject of local governance either as an empirical conception of local realities or as a satisfactory analytical perspective on the subject

i. Decentralization as mandated by the constitutional amendments and enacted in to laws by the states.

ii. The achievement of an adequately robust form of decentralization remains a project beset with as many difficulties, both institutional as well as social and political.

iii. There are enormous regional variations in the way in which decentralization has been designed and implemented and a comparison between, say, Kerala and Haryana right, to a first time observer of Indian decentralization can suggest that the States belongs to two different countries.

iv. The constitutional amendment is silent in the question of relationship between the three tiers and the lack of coordination between them tends to weaken the structure as a whole.

v. The relationship of the local governments with the district administration and with line departments is also not dealt by the Amendment Act and hence it is silent about that subject matter.

The content, the conception, the legislation, the enforcement as a whole, with respect to decentralization in India, has been treated as a State subject matter, and hence the vertical and horizontal transfer of powers, functions, and responsibilities has not been realized in India. Higher amount of centralization happened during the last seventy years. The union became rather unitary and the provinces became more weak due to such policy conversions.

Centralized governance had become substantially discredited in the post-cold-war world, with the collapse of the erstwhile socialist states on the one hand and the weilding down of welfare state approaches on the other. The failures that have observed are not altogether due to inherited social inequalities, many of them can be attributed to an absence of the required reform in law or of a clear reworking of the relationship between the local elected institutions and administrative structures.

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5 Niraja Gopal Jayal, Amit Prakash, Pradeep K. Sharma (Ed), Local Governance in India, Decentralization and Beyond, Oxford University Press (2007), pp. 1-3
6 Ibid at p. 5
The picture is complex and requires an understanding of the interpretations of old and new institutions, of the changing rules of engagement between citizens and state of politics and society on the one hand, and law and administrative structures on the other.

The content of democratic decentralization and local self-governance can be summarized as

i. Political decentralization – Hierarchy and Structure
ii. Fiscal decentralization – Resources and Revenue Expenditures
iii. Functional decentralization – Functions and Functionaries
iv. Administrative decentralization – Computerization, capacitization
v. Social decentralization – Audit, Accounts, Transparency

Some forms of village self-governments seem to have in India from the earliest times in which people grouped themselves into settled communities. Features of this polity were the panchayat or committees of representative elders which administered village affairs either on its own responsibility or as headman’s advisory capacity. Besides the general panchayat there were caste panchayats dealing with the questions concerning their own caste only, but these are outside the scope of this survey and study.

We need not idealize the old indigenous panchayat or picture it as a farsighted body which superseded even vigorously, dispensed justice wisely and untiringly supervised the moral wrong in all its dealings.

There is no local authority who has legal power to preserve a right of way, or prevent a nuisance, not a scavenger or a conservator cannot be employed, not erect or set up or lighted, not a dispensary or a school established or maintained by means of local taxation.

Whereas the constitutional mandate and legal measures at present provide rather better options on local self-governance in the country. The policy decisions and administrative functions in this regard shall be examined with a critical mind set.

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7 Ibid at p.5
8 J. G Drummond ICS (rtd), Panchayat Raj in India, Humphry Miford, Oxford University Press (1937), p. 5
9 Carstairs, Local Government of Bengal, Macmillan (1904), p. 12
Hypothesis of the study

“Seventy years of democratic governance has achieved substantially in many fields at the macro level but these macro achievements have not altered the life or livelihood of the people at the micro level. New arrangements to meet challenges in the rural and grass root level societies which are the backbone of the country is essential. Local governance system involving people in every stage of the governance, administration, development and welfare measures are not in par with the expected equity, equality, opportunity and social justice at its outset.”

The present study is conceived as a means to check the dynamics of decentralization, to test the contradiction of centralization and decentralization to review the existing administrative arrangements for rural planning development, to examine the multiple system of control and supervision of the administrative mechanism, the role conflicts among the different functionaries in local governance etc.

Limitation

There are certain limitations to the study such as non-availability of authoritative case law, authentic version of legal research works and secondary data in the concerned field. Hence the researcher has been compelled to depend upon individual / personal observations, field study and empirical analysis.

Methodology

a. Literature Review – The study has been mainly based on the available secondary sources such as reports, policy documents, legislative contents etc.
b. Scenario Analysis – Delphi method in futuristic science has been utilised for the purpose so as to evolve a consensus opinion in conflicting matters.
c. Questionnaire method has been used to collect the views and comments of the related population in respective areas of the study especially with direct stake holders of local self-governance.
d. Brain storming and focus group discussions have been utilised to collect a comprehensive perspective in respective subject matters.
Analysis and discussions

The available information are analysed critically without any prejudice and with an impartial sensitivity which is aimed and attempted to evolve an integrated, converged and comprehensive resolution applicable in this regard.

Chapterization

The present report consists of four consecutive parts with total seventeen chapters including the conclusion and suggestions. The conceptual aspects of local self-government, historic evolution of democratic decentralization in India forms the first and second chapters respectively. On the basis of literature availed by the researcher, a comparative overview of local government mechanism in different countries is incorporated in the third chapter as an eye opener. A detailed description regarding local government system in India with concerted effort for that is also included in this chapter. A number of committees empowered by the central and the state governments from time to time have rendered their recommendations and suggestions for building up local government system in the country. Hence, an elaborated description on such committee reports is included as the next chapter.

Part II of the report is absolutely earmarked for a legislative overview on local government institutions. As part of that the salient features of different constitutional framework legislations has been enumerated in chapter V. The state level laws on panchayat raj and municipalities are also summarized as the continuing chapters VI and VII with larger relevance for the administrative matters of local self-government institutions. Following this, to satisfy the thirst of readers, an interstate comparative statement on the praxis of decentralized governance process in different states of India in detail.

On the hardened basis of above stated literature review, an empirical analysis part is included in this report with a content of nature and extend of delegation, administrative control on local governance, control of delegation by hierarchical institutions, correlative interface of different tiers of local government, constitutional authorities in connection with local governance, institutional capacity building of decentralized democratic authorities, allied and transferred institutions along with
respective legislation, participatory economic development through local governance
are brief incorporations of the respective chapters IX to XVI.

The last part exclusively contains the conclusions and suggestions based on the
study. The evolved suggestions have been arranged in a highly transparent and
adaptable manner at the end of the study. The present study has been used by the
researcher to make an academic overhauling of the local government system in Kerala,
with respect to experiences and practices in the other constituent States in India and
proposed reasonable measures to reorganize and restructuring of the administrative
system under local government institutions at respective levels with clear and
unambiguous commitment to democratic decentralization. To achieve the goal, real
decentralization is essential in our perspective and practices. For easy accessibility to
the contents, three appendices and three annexures are also enclosed in the report.
PART I

HISTORICAL PERSPECTIVE
CHAPTER I

CONCEPT AND DEVELOPMENT OF LOCAL SELF-GOVERNMENT

In modern world new institutions with new powers are created and new powers are conferred on existing institutions. The development has been due to the extension of franchise, and the traditional institutions of democratic and responsible government had to adapt to the possession of vast extended functions. From the primitive tribal system to the highly complex modern society, the individual has come to be more and more dependent on his fellow beings.

Civilization is based on division of labour resulting in loss of tribal character. The unit of society became not the tribe but the village. In the course of time specialization of functions produced towns on the basis of local self-sufficiency. Though the Kingdom was the ultimate political unit, in the hierarchy village and town continued to be the main political unit of the economic and social systems.

State is an organized society and membership thereof means the possession of rights and duties of such society. The relation between State and its members is one of reciprocal obligations. State is under obligation to maintain law and order in the society and give facilities of enjoying civil and political rights to the members. At the same time the members are under an obligation to obey the law of the State and to pay taxes to the administration. John Salmond has defined a ‘state’ or a political society as an association of human beings established for the attainment of certain ends by certain means. However, all association possesses this important characteristic. So it must be differentiated from others by reference to functions. The chief ends of State are defense against external aggression, administration of justice and maintaining law and order with in the territory. In modern society a State should not be merely concerned with administration of justice, but it must be concerned with social justice by engaging itself

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1 W. Ivor Jennings, *The Law and the Constitution* (1938), pp. 185-190
2 The hunter of wandering tribe provided food, clothing, fuel, weapons, and shelter for himself and his family and the tribe as whole was concerned only with organized defense and aggression. Today the individual is but a unit in a vast system of production and distribution. W. Ivor Jennings, *The Law and the Constitution* (1948) p.1
in several constructive activities for social betterment and security. Of all the artificial persons the greatest is the State. It owns wealth and possesses rights and duties.

The State is a legal person. Holland observe that the State as a great juristic person, enjoy many quasi-rights against individuals, as well as strangers as subjects, and liable to many quasi-duties in their favour. During modern period local authorities are given into the status of ‘state’ in jurisprudence. Legal recognition of State as a collective real person is simply a matter of time. As the part of the State and the Government, local authorities also shall be recognized as a collective real person and it is simply a matter of time. The Government of India is a legal person under the Constitution of India. Part III of the Constitution clearly provides an idea about the term ‘State’. Under Article 12 of the Constitution all local authorities are considered ‘State’. The expression ‘local authorities’ refers to authorities such as municipalities, districts, boards, panchayats, improvement trusts, mining settlement boards, hill councils, tribal development councils etc. Status of local authorities as ‘State’ was discussed in several decisions and affirmatively answered by Courts. In State of Gujarat v Shantilal Mangaldar it was held that Borough Municipality of Ahmedabad as a Local Authority.

In this sense local authority is also a part of the sovereign. Sovereignty means the supreme power vested in a sovereign body with reference to a State. It is that part of the State attached to the ruling head or body. The government is under subjection to the ruling body in many aspects. In this sense it cannot be subordinated to any other power within or without the State. Ruling body may come and go but the sovereignty persists. It perishes only when the State comes to an end. It is also free from external control or domination. But in actual practice these powers of sovereign are also limited in many respects. One may observe such limitations in the sphere of local authorities also.

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5 Holland, The Elements of Jurisprudence (13th edn.) (1919) p.387,
4 Ibid.
5 See Jethro Brown, Personality of the Corporation and the State (1905), 21 LQR 365
6 art. 300 The Constitution of India, 1950
7 art. 12, ibid
1.1 Local Administration under Colonial Rule

Bombay, Madras and Calcutta presidencies were established by the Royal Charter Act 1793, as wholly official bodies, modeled in line of English boroughs. They functioned as court of records for civil and criminal cases. But there were no actual means of local administration in development and welfare matters.

Improvements of Towns Act, 1850 authorized the government to introduce municipal administration in any town where inhabitants were desirous of making better provision for construction, repairing, cleaning, lighting or watering of public street, roads, drains or tanks or for the prevention of any nuisance or for improving the town in any manner. But the Act was never enforced in Madras Presidency.

Under British rule one of the important measures adopted to steer government institutions out of financial crisis was the establishment of local self-government institutions in mofusil towns and entrusting them with the responsibility of providing civic amenities.

Not less than five local inhabitants could be appointed by the government as municipal councilors for a period of one year each. District Magistrate was the ex-officio president of municipal committee. These bodies were empowered to levy house tax.

The concept of local self-government remained elusive till 1870, when devolution of power to urban local bodies was made by Lord Mayo. These included taking steps to bring local interest, supervision and care to bear on the management of funds devoted to education, sanitation, medical relief and public works division.

Town Improvement Act, 1871

The Act gave additional functions to the municipal councils such as maintenance of hospitals, dispensaries, schools etc. Non-officials from rate payers or taxpayers were elected as councilors, their period of office was raised to three years. District Collector was ex-officio president and provided for appointment of a Vice President. Inspecting

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officers were appointed in these bodies. These provisions were further extended by 1878.\textsuperscript{10}

The elite section of the society became increasingly aware of social and political injustice they suffered. They started to agitate against the policies of colonial rulers. M. K Gandhi considered and used it as a tool and instrument in Indian independence movement. The demand for political right and purposeful change in the administration attracted support of larger section of the population. The agitation triggered by the national urge for self-government shocked the empire. The need to associate people with affairs of administration was felt urgent and imperative. In this context Lord Ripon’s Resolution\textsuperscript{11} opened a new progressive chapter in the history of local self-government in India. The essential structure of local administration solidly based on the concept of the Resolution.

The cardinal features of the resolution are:

1. Non-official element in municipal councils should be reduced to less than 2/3 of its strength.
2. Non-official members of municipal councils should come into office through the system of election based on any one of the simple vote, cumulative vote, election by wards, or by whole town, suffrage of more or less extended, qualification or election by caste or occupation.
3. Chairman should be a non-official as far as possible to induce confidence in the members.
4. Chief executive officer should not vote in the proceedings and act as an arbiter among parties.
5. The resources made available should be such as could yield revenue increasing with improved administration.
6. New taxes could be levied only with governmental sanction. So also loans and works costing more than a prescribed limit could be undertaken only with sanction of the Government.
7. No rules or bye laws could be enforced without governmental sanction and full publication.

\textsuperscript{10} Town improvement (Amendment) Act, 1878
\textsuperscript{11} Lord Ripon’s Resolution (18\textsuperscript{th} May 1882)
8. Any action of the local administration might be set aside in fit cases and superseded for specific periods in default of duties.

On the influence of the Resolution, Madras District Municipalities Act, 1884 was enacted. Even after that the government preserved the powers to remove chairman, in default of abuse of powers. Main functions entrusted with local bodies were construction and maintenance of streets, roads, drain, lighting, municipal buildings, public health, medical care and vaccination, sanitation, prevention of epidemics, improved water supply and education etc. Financial matters included wider powers for taxation like house tax (47%), professional tax (17%), rents and prices (18%) tolls, fee, fines, and trade rates, grants-in-aid etc.

A Committee was appointed to study failures of local bodies and it opined that it was due to lack of finance, excessive control by government, and inadequate control of local bodies over the services. But till 1919 the observations and recommendations received only scant attention. After the implementation of Montagu-Chelmsford Reforms (1919), Government of India took steps to democratize taxation powers, and freed local bodies from administration by district level officers. Accordingly the following changes were introduced.

1. Withdrawing municipalities from the control of district authorities;
2. Abolishing system of nomination;
3. Removal of disqualification of women to contest election;
4. Chairman was the executive Authority till 1933 and after that a Commissioner was appointed;
5. More taxation powers;
6. Absolute powers to fix the staff was provided under the Act, but in 1935 government assumed the power.
7. Government was enabled to constitute any class of officers or servants in municipal services. Hence the selection, designation, delegation, training, payment of salary and other emoluments, monitoring, control and disciplinary functions etc. were entrusted with the government as part of its sovereign powers. Local government institutions were not so equipped due to lack of facilities of that period.

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12 Report on Royal Decentralization Commission (1907-1908)
1.2 Local governments before Independence

Local government history has to deal with two major features. One, comparatively modern and certain precise, the Ripons Resolution (1882), the other uncertain in substance and obscure in date of origin, is the traditional village unit of government, the panchayat.\(^\text{13}\)

Sir Charles Metcalfe referred to the village panchayat as ‘little republics’. Yet, when a real analysis is made it is clear that Metcalfe’s description could apply only to the area around Delhi where villages had established themselves as self-government units which withstood invaders and tax gatherers alike.\(^\text{14}\)

Therefore, panchayats of the past were representative of the village population as a whole is not clear. They might be drawn from members of the founding families or from the Brahmins and superior cultivators. The menials and landless had almost no say in its affairs except perhaps in South India.\(^\text{15}\)

These bodies would have been highly conservative. They provided some form of order in village life. They also provided in their public meetings a medium through which people could participate as passive listeners and panchayat decisions could only be gender and community based. Village bodies were not concerned with the complexity of national development, but with a simplest aspect of living within a small space. In some cases, villages were so isolated that they continued in their undisturbed existence for years. In others they were ravaged to such an extent that they either collapsed or were places of terror.\(^\text{16}\) Indian villages survived in past even after its constant neglect by government.\(^\text{17}\)

Districts were divided into sub-districts, variously named tehsils and taluks. In some areas these were split into groups of villages called revenue circles. In others, link was direct from sub-districts, where the collector of taxes was also the recorder of land title, widely known as the patwari or kotwal etc.\(^\text{18}\) The British administration with its

\(^{13}\) The Madras District Municipalities (Amendment) Act, 1920
\(^{15}\) Ibid at p.15
\(^{16}\) Ibid at p.19
\(^{17}\) P. Spear, *Twilight of the Mughals*, London 1951, p.114 quoted by H. Tinker op. cit. p. 33
\(^{18}\) Ibid at p.16
Roman system of justice replacing the traditional powers of panchayat in the more serious judicial cases, its system of tax gathering and of administration made such a violent impact that the corporate life of the villages was weakened and in most case ceased to exist.

Apart from a deliberate action it was the result of advantages of a centralized, uniform system of administration applied without regard to its effect upon the indigenous social structures in the vast area.\(^\text{19}\) In the case of municipalities the 19\(^{th}\) century saw promotion of municipal boards without any suggestions of elected representatives mostly provinces for which the British were directly responsible.

Into the scene of decaying village the strong district administration and municipal boards were introduced through Ripon’s Resolution (1882). A number of principles of local government which were designed directly as an instrument of political and popular education neither necessarily nor primarily as an improvement in local administration. Its main purpose was “to make use of the intelligent class of public spirited individuals to whom, it is not only bad policy, but mere waste of power, to fail to utilize”.

Ripon proposed to establish rural boards and rural districts even before twelve years than establishment of country council. It was proposed that these bodies should contain two-thirds non-official representatives, elected whenever possible, and control should be exercised from without rather than within.

From 1887 to 1900 district boards and taluk boards were set up all over British India. They consisted mainly of nominated members and of almost as many officials and the main functions were construction of roads, public health, primary education etc. The aim of 1882 Resolution was to develop the local self-governing bodies which included panchayat in order to provide them opportunities for training people in the art of self-government. But they remained no more than appendages of the administration and their resources were so meager that they were hardly capable of fulfilling even the limited functions.\(^\text{20}\)

\(^{19}\) Ibid at p.17
Ripon realized that district boards were too large if the system was to rest upon the ancient foundations of the village system and consequently he urged for placing maximum area under local board. The district board was to be supervising or a coordinating authority only. Yet most provinces made the district board, the most important body, giving it funds and functions, and empowering it to delegate duties to local board. It was an impossible task within their limited available funds. The only exception was Assam and Madras. For most of India the system became as an officially operated one from village to the district administration. In the end most of the sub-district and the district boards fell in to disuse or were abolished.21

This state continued up to Twentieth Century. In 1909 the Royal commission criticized this and urged that sub-district boards should be once more established everywhere as principal agencies of local government in order to assure a return to local knowledge and local interest.22

Following 1st World war and formulation of Government of India Act, 1919, rural self-government was transferred to Indian ministries. But most serious handicap to their development was that no proper local government service was established, no executive officers were there to guide the working of bodies, undefined responsibilities, the role of the chairman as executive officer, lack of motivation in the chairman, absence of stable majority for presidents etc. It necessitate that improved finance, higher standard of administration, supportive official service had more concern in discussion regarding Local Self Government (LSG)23.

Local government in India dealt with two major factors of the past. One, comparatively modern and certainly precise, is the Ripons Resolution. The other, uncertain in substance and obscure as to date of origin, is the traditional village unit of government, the panchayat.

The facts as seen by the devotees are difficult to substantiate by historical facts. Mythical writings, belief, life in the ideal village, and more historical documents deal with their existence in the first millennium. They were referred as ‘Little Republics’.24

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21 H.Tinker op. cit. p. 18
23 Report of Local Self – Government Committee, Bombay (1939) p. 102
24 Sir Charles Metcalfe in 1832 quoted in *Little Republics*, Times of India, 5th June 2016
**Tradition of Village Community**

M.K. Gandhi observed that “In this structure comprised of innumerable villages, there will be ever widening never ascending circle. Life will not be a pyramid with the apex sustained by the bottom. But it will be an oceanic circle whose center will be the individual always ready to perish for the village, the latter ready to perish for the circle of villages, till at last the whole becomes one life composed of individuals, never aggressive in their arrogance but ever humble, sharing the majesty of the oceanic circle of which they are integral units.”

He continued that “Therefore, the outermost circumference would not yield power to the minor circle but would give strength to all within and derive its own strength from it. If there was to be a republic of every village in India, then I claim the variety of my picture in which the last is equal to the first and more the last.”

Unfortunately this picture has not been realized till today in the local governance process in India.

The village communities were little republics having nearly everything they want within themselves and almost independent of any foreign relations. Dynasty after dynasty trumbles down due to external pressures and internal complexities, revolution succeeds revolution for the sake of wealth and power, but village communities, each forming a separate little unit in itself, had a high degree, conclusive to their happiness, and to the enjoyment of a great portion of freedom and independence. In modern global village era and in a period of cross border trade and market such a concept of little state structure may become an outdated and unrealistic idealistic measure. Therefore the village constitution may never be destructed and anything that has a tendency to break them up shall be avoided.

A change of thought may be observed in the struggle for independence. The national leaders thought that power politics should be replaced by politics of co-operation. This resulted in the incorporation of the constitutional directive with respect to the local governance in independent India as part of its rule of law. Article

25 M.K Gandhi, Harijan, 28th July 1946.
26 Sir Charles Metcalf in 1832, quoted in Little Republics, Times of India, 5th June 2016
28 See Dr. V.P. Varma, Modern Indian Political Thoughts, Agra (1961)
40, in part IV of the Constitution was then incorporated. Thus the Congress party felt more about unanimity in the panchayat and more powers should be vested to those bodies elected unanimously than that vested to those panchayats which could not be achieved unanimity in the process of election.29.

Ministers of local self-government meeting in 1958 had observed that panchayat should be responsible for the total development of the village, they raised concern for themselves with physical, mental and moral development of the community. They should consider themselves responsible for the socio-economic progress of the community, if presently the panchayat did not approximate to the picture, the government should make concerted efforts to make them so.30

Ambedkar observed that, the need to make democracy a participatory democracy has been emphasized by many, and the mere creation of a parliamentary democracy without the participation of the people themselves other than voting was not likely to be effective in the regeneration of India and in the revitalization of its rural life. That they have survived through all vicissitudes may be a fact. But mere survival has no value. I hold that these village republics have been the ruination of India. I am, therefore, surprised that those who condemn provincialism and communalism should come forward as champions of the village, what is the village but the sink of localism, in due of ignorance, narrow-mindedness and communalism?

The difference of views of M.K Gandhi and Ambedkar gives insight to the then prevailing political conditions. Ambedkar believed firmly that any autonomy to villagers would result in added suppression of Scheduled Caste. The Constituent Assembly decidedly rejected Gandhian outlook and adopted the view of Ambedkar.31

At present one should see that socio-political atmosphere has changed to accept the concept of democratic decentralization on a different plain. If it is not so it will become the denial of opportunity to change the administrative and governmental functions in the country. But the political parties have welcomed the extension of decentralization involved in panchayat raj as giving the party organization more power.

31 Granville Austin, Indian Constitution: Cornerstone of a Nation (1966), pp 321-330
The state government argue for parallel units of congress party setup parallel to the three tier system of Panchayat Raj Institutions.  

But it is difficult to draw up a balance between the opposite views in this regard. For several decades as a well-knit social organization the village community had been slowly but steadily declining. As the pursuit of individual interest within and outside the village had become common, the influence of the community over its members had diminished. The growth of inequality in land ownership, land transfer to non-cultivators, migration towards towns, is evidence of these trends. The old leadership in the village had been losing its position and influence without substantial signs of new leadership stepping into its place.  

One has to keep this in mind while legislating for the village. The new panchayats should not be what the panchayats of the past was. For this non-political elections may be maintained by the consent of all political parties, and caste and religious prejudices may be subdued. But total political alignment cannot be avoided. Village elections are about to be linked up with the larger statewide or country-wide elections. There are no strong village interests which may keep people united and prove superior to political divisions.  

The analysis also shows the experience in India regarding the localization of governments and the hierarchy of highly centralized political system in the country towards the grass root level of administration. For the last sixty years there was not much change in this approach. But after realizing the influence of provincial polity and localized political power and bargaining process, the political parties have started to argue for decentralization of power. This may be for shielding their actual policies. However, in the present situation all political currents are compelled to accept the concept of decentralized democratic power and local level governance in their agenda to mobilize and equip the masses.  

Regulation and autonomy are two extremities which constitute “control continuum” in the sphere of State – local relationship. The sponsoring agency either at

the Centre or at the State, reserve the right to control and supervise the local self-government. The element is observable from the British concept which brings on the postulate that local communities should have substantial responsibility for order and to conduct their affairs under general eye of the Central Government. British fostered in India a growth of local self-governments on a statutory pattern in 19th century. They planned a greater premium on the regulatory rather than autonomous aspects of local self-government. The pattern of excessive control and supervision continued to find a place in all subsequent legislation on local bodies though the constitutional and political circumstances necessitated greater stress on the autonomy of local bodies.

The policies of provisional governments under Diarchy in 1919 meant additional powers and functions to local bodies. But the prevailing political climate was becoming more and more anti-British. Therefore genuine extension of power and autonomy of local bodies had only little scope.

Panchayats established under the Act of 1920 were merely a pale shadow of the glorious institutions that flourished in villages in the earliest times. They were not fully representative or responsive, their powers were limited, their finances were weak and fluctuating and there was no provision for regular or substantial aid from the Government.

In most of the States the most important unit of local governance was the panchayat samithi. It was the body which performed most functions. It had the task to interpret ‘government’ to the villagers. To this end workers at village level and panchayats themselves were under the supervision of the staff and members of panchayat samithi. The staffs were under the supervision of the staff at the district level. But revenue collection, maintenance of law and order etc. were performed by the traditional organization of State. In addition to electing the members of panchayat, the people themselves in every village were supposed to exert influence over the structure through the assembly of all adults - the Gramasabha, which met periodically and

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35 Ursula K Hicks, Development from Below, (London Oxford University Press 1961) p19
36 See H. Tinker, Foundations of Local Self Governments in India Pakistan Burma, University of London (1954)
considered the work and proposals of the panchayath. Unfortunately nobody took pain to implement this and the practice of basic democracy was mostly defective.38

The panchayat raj attempts to introduce democratic control for which Ripon pressed as long as 1882.39 The idea of indirect elections from tier to tier stemmed from the practice of electing the very result Block Development Committees (BDC) and District Development Committees (DDC).

The size of the planned social investment programme upon which agriculture and rural industry as well as many industrial programme of the country depend is staggering. The building up of these services, their administration and maintenance, must fall to an increasing extent on the local government system, aided and stimulated by the State and Union Governments. Their major problems will be to bring local opinion into the formulation of local plans and local support to the extension, and to ensure that the services shall become accepted and used by citizens. Local government is directly and heavily involved in developmental functions, not just the municipal functions allocated to it in so many countries.

Local self-government bodies have a vital part to play in the field of development. The general direction of policy should be to encourage them and assist them in assuming responsibility for as large a portion of the administrative and social services within their areas may be possible.40

Thereafter it stressed the integration of the village panchayats with popular organizations at higher levels and for greater devolution of powers and functions to the local bodies at each level.41

Panchayat Raj, the system of local governance at present, mainly restricted to rural India. At the basis of three-tier structure is the village panchayat, a body elected by adult suffrage with provision for the representation of certain sections of the population unlikely to secure this through ballot box. The middle tier and district tier

39 See Lord Ripon’s *Resolution on Decentralization of Power* (1882) and *Report of Decentralization Committee* (1908)
have similar provisions to broaden the council consisting indirectly elected members, usually the chairman from village panchayats and middle tier panchayats.\textsuperscript{42}

From the above analysis it is evident that local governance in India has been treated as a sponsored function and supplementary performance on behalf of the State and Central governments. Never in the history, they have developed into the status and integrity of self-governing bodies within the sphere of administration in planning and development or welfare activities. This ground reality is to be considered as the golden key to open the square of local government authorities through democratic decentralization.

1.3 Local Administration in Princely States

The organization of the country for social systems and purposes was of the pure Hindu type. The unit of society was the joint family. Member of joint families, associated themselves for political and administrative purposes and established village communities. The Brahmin village community was designated as Grama and non-Brahman ones are named as Kara, Ditika, Cheri, and Muri, and later on Desam.\textsuperscript{43}

Though actual government was vested in four Kalakams or elected as representatives of the sixty four Gramas assisted or presided over by an officer called Rakshapurushan (protector),\textsuperscript{44} who was to be elected by the whole body as their executive officer and to remain in office for a period of three years. Each Kalakam will further elect an Avoradha,Nampi to serve as a sort of Councilor to the Rakshapurusham and the lands of the Kalakam with adequate support of the officers assigned to them. But the office of the Rakshapurushan subsequently fell into disuse.

Chola Period

Vigour and efficiency of functioning of the autonomous rural institutions was the most striking character of the period. Neelakanta Sastri observed that highly developed committee system – Variyams for the administration of local affairs was evolved and the saba of uttiramerur revised its constitutional arrangements twice at

\textsuperscript{42} Henry Maddick, “Panchayat Raj-A study of Rural Local Government in India “(1970) p.3
\textsuperscript{44} Ibid
short intervals in the reign of Paranthakai Cholan\textsuperscript{45}. A number of similar attempts to evolve improved methods of administration in the light of experience were made at that period. Village officials were engaged only in the routine affairs of administration. Besides that a local chieftain or a powerful local official was entrusted to the property in a particular area in return of or a separate tax called *padikaval kuli*. Conditions elsewhere in South India were generally similar though administrative terms differed in the different Kingdoms\textsuperscript{46}

During the period of *Paranthakai I* in Chola dynasty, system of administrations was established in its fullest strength in all villages.\textsuperscript{47} During the Chola reign the whole territory was divided into *Mandals* (Provinces) for the ease of administration. These were again segmented to *Valynadu* and again into *Nadu* as well as *Kottams*. The ultimate unit of administrative system was that of village with self-government powers\textsuperscript{48}. People were increasingly engaged in agriculture and cottage industries like weaving, black smithy, jewellery, salt-making etc. Commercial activity also was in better condition at that time. Important source of income of the nation was land tax. It was collected as money or in kind by the *Grama Sabha*. Land to the triller policy was generally recognized by the rulers and water irrigation was considered as the prime function of rulers for increased production of agricultural products. Tax was imposed only after a scientific and systematic survey and it was re-fixed in completion of every year. One third of the total GNP was collected as tax.\textsuperscript{49}

Area of central administration was very much limited in those periods. Day to day administration was conducted by local authorities. Through such authorities more and more people became part of state governance and there was participatory system of government, upto a considerable extent.\textsuperscript{50}

Between B.C.1246 and B.C.907 two important sectors existed. One was village and the other one was town. In each village two administrative committees were functioning, *Oor* and *Mahasabha*. Adult men of each village were the members of such

\textsuperscript{45} K.A.Neelakant Sastri, *A History of South India from Pre-historic Times to the Fall of Vijaya Nagar*, 4th Edn. (1958) p.205  
\textsuperscript{46} Ibid  
\textsuperscript{47} Prof.A.G.Menon, *Indian History*, (original in Malayalam – *Indiacharithram*) Kerala State Institute of languages (1976), Part III, pp.340-341  
\textsuperscript{48} Ibid at 349  
\textsuperscript{49} Ibid at pp.349-350  
\textsuperscript{50} Ibid
groups. Women were not given membership in them. Oor had a general membership but Mahasabha was comprised of Brahmins of the locality. Thorainda Mandalam and Cholaimandalam declarations provide evidence for these establishments.

Uttaraiserur Declaration made by Paranthaka Cholan- I state about the constitutional functions of Mahasabha and administrative forum appointed by such group known as Variyam. The criteria for getting membership in a Variyam was the ownership of minimum 1 acre of land, house ownership, age between 35-70 years, knowledge in Vedic and sciences etc. Those who had functioned as member for a three year period continuously, those who failed to submit their accounts, those who had committed sins or crimes, irresponsible persons and thieves were disqualified from taking part in Variyam.51

One representative for each ward was elected from the whole eligible persons in those through a system of election called Kudavola. Village was usually divided into thirty wards. From the ward representatives twelve persons were elected as Samvalsara Variyam members, another twelve persons as Thottam Variyam members and six persons were elected as Erivariyam members through lottery system. Another two types of Variyams also present at that time were Panchavariyam and Ponvariyan. Separate administrative bodies were constituted to deal with law and justice, agriculture and external affairs etc. The representatives were not eligible to get any honourarium or allowance. They were known as Variya Perumal, Mahasabha Samajik, Perumkuri Perumal etc. Usually a tree shade, temple ground, bank of a lake etc. were used as place for meeting.

Those who had knowledge and experience in science, literature with practical awareness and moral qualities were accommodated to the bodies. Those who had completed three years term were disqualified from working in any representative or nominated bodies. The restriction was required to avoid malpractices in governmental activities. Among the powers of Mahasabha land ownership was the important one. Conversion of wasteland into agricultural land was the duty of Mahasabha. Collection of land tax and disputes resolution was vested with the Mahasabha. Judicial bodies were known as Nyayathar. Mahasabha was entrusted with the power to impose separate tax for the conduct of Grama Sabha and the activities of local government. There was a

51Ibid at pp.357-352
job division between the central and local authorities. Law and order, defense and other
general matter were managed by central authorities and rural development as well as
improvement of the local people was the main function of local government52.

Chera Dynasty.

During the rule of Cheras, the administration was vested on local landlord and
priest of the Brahmin community. It almost resembled the feudal system in Europe.
The State was divided into villages, Grama and Kara as subdivisions. Normally Kara
was the smallest unit of administration. Powers of local government were vested on a
local person. Each village was autonomous to a certain extent. But the governance was
not on the basis of democracy. Instead of election and representative method the king53
used to select persons to exercise the powers.

Village Government

The arrangement for the internal administration of the country by village
communities continued, however for a very long time not withstanding changes, of
Central Government. The village community, to use the words of Lord Charles
Metcalf, possessed an inherent vitality in itself; which prescribed it to avoid the
revolutions of power and the changes in dynasties. It was like a little republic having its
own territory and its own municipal government under a headman.54 The headman
belonging to non-Brahmin classes was, in later times, designated by the generic title
Madampi. They were at a very early time, allowed to take for themselves a portion of
land within their respective jurisdiction in return for the protection afforded by them to
the rest of the community in the same way as earlier Rakshapurushan or protectors.

In later times the country was divided into Nadus (district or provinces) for the
purpose of administrative convenience, of which these were seventeen at one time, and
were subdivided into Desams (village). The most successful of the village headmen,
respond in a few instances into chiefs of Nadus in some places and their domain was
known by the names of Sivaruponis and Edavakay. The village head men were also
known as desavazhi in some places. They were the sole proprietors of lands in their
respective villages and they enjoyed the following rights also, viz.

52 Ibid at p.353
53 Ibid at pp.382-383
a) ‘Ampalapathi’-direction of religious ceremonies of the village people;
b) *Uraima*-management of pagoda lands and accounts;
c) The controller of village ceremonies like marriages; and
d) *Deshadhipathyam* – general supervision of all affairs of the village.

The ranks of the chiefs in Travancore were received additions from other sources of nampoothiri Brahmans, who held sway over devaswams or pagodas possessing immense wealth and landed property. They invoked the assistance of *Samastha Kshathriya*, and managed the devaswams under the designation *Koviladhikarikal*. The devaswams exercised sovereign functions within the limits of their landed property as did the wealthy classes of brahmans generally within the limits of their *samanthas*. The life and liberty of devaswam tenants were at one time at the mercy of these communities.

The chiefs, principal and petty had their own private domains held in absolute right, and their resources of revenue consisted of, besides the produce of their own private janmam lands, custom duties on trade, mint duties, escheats, pon taxes, taxes on profession, a variety of royalties on cardamom and other indigenous products, the wrecks of vessels, stranded on the courts, presents on festivals and occasional contributions on extra-ordinary exigencies.

The exercise of power by devaswams and *madampis* later became united in one sovereign, and found an incompatible political head in Travancore at the beginning of the Present century. In Malabar area the local chieftains were called *rajas* and heads of villages were *madampimar*.

**Travancore Region**

The history of local self-government in Travancore goes back to the agencies of several municipalities constituted under the Travancore Municipal Regulation (1920). The administration of the bodies was vested in the respective councils presided over by elected chairman, except in the case of Trivandrum where the president was an official nominated by the Government.

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The earlier legislation in regard to the matter was Regulation II of 1894. Prior to that a set of Rules passed in 1878 governed the conservancy and other matters connected with the improvement of towns. The rules applied to the town of Trivandrum and regulated only certain matters relating to conservancy. They had not the force of law and were not comprehensive enough to meet the growing needs of the capital and the whole staff fell for short of the requirement of a struggling town like Trivandrum which comprised an area of about 10 sq. miles. The adverse circumstances necessitated immediate remedy and accordingly a committee was appointed by the Government to suggest necessary measures of improvement. The recommendations were accepted and the conservancy department was reorganized.

In 1894 Town Improvement and Conservancy Regulation was passed in order to create Town Improvement Committee. Such committees were appointed at Nagercoil, Quilon, Alleppey, and Kottayam. The number of members of committees varied from five to nine with a permanent official majority. But the powers of the committee were limited and their duties were confined to the supervision of sanitary arrangements. The

57 Note: In 1881 Diwan Ram Ingar had described the sanitary condition of the town of Trivandrum thus: “The situation of the town on the thick vegetarian by which it is surrounded in all sides shut it out, on the one hand, from the sea breeze, while the filth and dirt which are allowed to foster in their midst expose the inhabitants, on the other, to noxious exhalations and place their lives in jeopardy as an epidemic my break out at any five and became difficult to erect.

58 Surgeon Major J.Hobston, Darbar physician was the President and the Chief Engineer, the Diwan Peshkar and a Retd. Judge of the Sadar Court were members of the committee to study the Town Improvement aspects. Till 1893 the conservancy establishments of the capital was under a sanitary committee appointed a few years earlier. In The Town Improvement and Conservancy Regulation was enacted to provide conservancy and improvement of Towns and to create Town Improvement Committees and Town funds. They were vested with different important subjects like private slaughter houses, bathing ghats, street lamps etc at Nagercoil, Quilon, Alleppey and Kottayam. In 1895 Licantiate in medicine and surgery and in sanitary Inspector for Trivandrum. He was also made the Health Officer to advise the committee on sanitary matter.

24. The cannimes Market was handed over to the Trivandrum Town Improvement Committee in 1895. In the next year rules were introduced for the regulation of vehicular Traffic. With a view to preventing possible threat of plague, special sanitary arrangements were made in sea bordered towns like Trivandrum, Quilon and Alleppey in addition to strict quarantine at the ports. A contagious deceases hospital was sanctioned in 1897.

The selection of sites for slaughter houses, the provision of might soil carts and appliances, the Improvement of public wells and tanks, the conversion of certain lands to roads, gravelling of few other roads were the other works during the year. The permanent conservancy establishment was considerably strengthened during 1898.

For better maintenance of the Cannimes Market, the power of supervision of the Market was handed over to the Health Officer in 1903 To avoid unsatisfactory removal of rubbish and sweepings by the contractors, it was take up by the department. In 1904 house scavenging was introduced and for that applied during later period. By 1910 house tax was also introduced.
committee had no power of taxation. Hence it was superseded by the Regulations II of 1901 which authorized local taxation with the sanction of government and thereby enabled the committees to augment resources and widen the scope of usefulness.

Regulation V of 1910 was passed to introduce amendments of the Regulation. New committees were formed at Alwaye, Kayamkulam and Thiruvalla in 1911 and at Vaikkom and Shenkotta in 1912. Increased power of appeal and punishment were conferred on the president of the committee as per subsequent amendments. In the next year towns of Colachel, Padmanabhapuram, Changanachery, Paraur, Neyyattinkara, were brought under the purview of Town Improvement Regulation and committees were formed in these places. Four more committees were constituted in Kuzhithurai, Mavellikara, Haripad and Attingal in 1914, by raising the number of towns.

In 1912 the rate payers of the towns of Trivandrum, and Kottayam were allowed the privilege of electing five members and those of Nagercoil, Quilon Allepey to elect four members.

Regulation II of 1963 was enacted to invest the presidents of the committees with powers of inspection and control in food stuffs and aerated water production and sales. Other amendments relating to licenses for constructing buildings etc. were also introduced. The privilege of electing members was extended to all the committees in the State and by 1919 all of them had non-official majorities. In 1920 a further advancement, through the appointment of non-official presidents of Alappey, Nagercoil, Mavellickara, Kottayam, Quilon and Paraur was introduced in the system.

In 1920 a new Regulation was passed following the law in force in British India, at that time constituting the total areas which had been declared as towns by Regulation II of 1894 and III of 1901 in to Municipalities. A revised constitution was also sanctioned for each of the councils.

Maximum number of officials and minimum number of elected members were fixed. Scope of municipal activities was enlarged and obligations as well as discretionary powers of councils were defined. Privilege of electing members was extended to 15 towns and of the remaining four Mavelikkara and Alwaye had nominated presidents, Colachal and Trivandrum continued to be presided over by officials till 1924.
Two State level conferences were conducted to discuss the Regulation of Municipal councils in 1921. In 1922 powers of presidents with regard to appointment was increased and in 1923 their payment also enhanced. On the basis of resolutions in the conference, tentative measures for transfer of Public Works Department roads to municipalities and their maintenance, repair, construction of minor roads also of Nagercoil and Alleppey had been done.

Hence main functions transferred to municipalities were sanitation, public health, lighting of public streets, vaccination, registration of birth and death, construction of roads etc. Educational institutions were maintained and grants for private schools were given by certain municipalities. Establishment of markets and vehicle stands were commercial activities of municipalities at that time. In 1927 removal of night-soil by means of motor Lorries was introduced in Thiruvananthapuram, and in 1930 electric lights in roads were introduced in Thiruvananthapuram, Nagercoil and Kottayam.

Chief Executive Authority of municipality was the president. Except at Thiruvananthapuram, the municipalities had elected presidents. By the last day of 1936 the total strength of members in 17 municipalities was 306 of whom 191 were elected and rest including 53 officers were nominated by the government. Total area under the municipalities was about 90 square miles and total population was about 300, 93759. Total revenue of municipalities was about Rs.5,08,056 and government grant was about Rs. 46,064.

In many of the sessions of the Srimoolam Popular Assembly demands were made for creation of local boards with a view to fostering and developing local self-government even in rural areas60. The domain of urban and rural self-government was great training ground from which political progress and a sense of responsibility could be generated and it was felt that the time had come to accelerate the rate of progress and to stimulate the sense of responsibility among the average citizen and to enlarge his experience 61.

59 See Census Report, Government of India (1931)
60 T.K.Velu Pillai, The Travancore State Manuel, Vol.IV p. 244
61 The Regulation and Proclamations of Travancore Vol. V  p.1106
In accordance with this pronouncement the Village Panchayat Regulation VII of 1925 was enacted for the constitution of village panchayats. Village panchayats were established at six places, viz. Bhuthappandy, Nedungady, Paravur, Sambuvadakara, Ettumamur and Perumbavur in the year 1932, but came into working order with regular budget estimate only in 1934. One more panchayat was sanctioned for Airur in Thiruvalla Taluk. The area comprised by these panchayats aggregated to 52.32 sq.miles, with a population of over 69,000. Out of a total of 54 members of the panchayats, 36 are elected by the people and the rest nominated by the Government. The village panchayats attended to sanitation, lighting of the streets and the improvement of tanks and wells.

In the interest of a progressive and enlightened administration, the Government always encouraged the system of local self-government. The most important step to meet the demand was taken in 1920 when Municipal Act was passed. Though drafted on the lines of Madras District Municipalities Act of 1884, City of Madras Municipalities Act, 1884 and the Punjab Municipal Act, 1891, care was taken to make it as indigenous as possible. It was enacted to make better provision for the organization and administration of municipalities in Travancore for the conservancy and improvement thereof, for the diffusion of education therein and for other objects of public utility calculated to promote the health, comfort and convenience of the inhabitants.

The minimum and maximum numbers of members were raised from 6 to 9 and 16 to 18, number of officials was limited to 1/3. Power of electing president and vice-president was delegated to councils. Powers of committees were widened in matter of removal of obstructions, constructing buildings and other affairs and new powers with regard to education, water supply and extinction of fire were conferred.

The Government was authorized by Travancore Village Panchayat Act 1925 to declare any area as a village for the purpose of the Act. Each village panchayat was to consist of not more than eleven members. The duties of the panchayat were classified as obligatory and discretionary. The construction, maintenance, and repair of means of communications and drains, the cleaning of streets, the excavation, maintenance and

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62 Ibid
improvements of wells and tanks the construction of bathing ghats, the opening and
maintenance of burial grounds, control and management of cattle pounds, enforcement
of sanitation, primary education, the lighting of public places, planting of trees,
improvement of agriculture, prevention of mortality, and development of cottage
industry were the main functions.

The panchayats were entrusted with criminal jurisdiction relating to petty
offences such as voluntary causing of hurt with or without provocation, assault, theft, or
mischief in relation to property not exceeding a value of Rs.10. The Act lay particular
emphasis that whatever money the village may be able to levy should be spent in the
village. For furthering and encouraging rural development, the Travancore Village
Unions Act was enacted in 193964.

Every village union was a body corporate having perpetual succession and a
common seal and showed to be vested with the capacity of suing or being sued in its
corporate name, of acquiring, holding and disposing property or entering into contracts,
and of doing all things necessary, proper or expedient for the purposes for which it was
constituted.65

The number of members in the village union was to be fixed by the Government. Their
term of office was three years and there was no remuneration. The village unions had to make
provisions for carrying out the requirements of the village in respect of basic amenities66.

This Act helped greatly to develop a spirit of citizenship and growth of democratic
feeling among the people67. The powers and functions vested with panchayats were similar or
greater than village unions.

64 Ibid
65 section 3 of the Travancore Village Union Act 1939.
66 Powers of village panchayat under the Travancore Village Union Act 1940
   1. Cleaning of streets.
   2. The construction, maintenance and improvement of wells and tanks for the supply of Drinking
      water to the public.
   3. The opening of burial and burning of rounds.
   4. The control and management of cattle pounds and provision of stud bulls.
   5. Sanitation
   6. Cleaning of sit from canal or channel and
   7. There carrying out of petty irrigation works.

67 Functions which government may direct them to undertake include
   1. Construction maintenance and improvement of communications and drains
   2. Construction maintenance and improvement of ponds and tanks for water supply
Village panchayat courts at six places were tentatively established in 1917 at Nagercoil, Trivandrum, Quilon, Allepy, Kottayam, and Paravur continued during 1919. Creation of new village panchayat courts in all the other thirteen Town Improvement Committee (TIC) centres were sanctioned with effect from 1920. Thereafter a general decrease in the work load in village courts had taken place. The rate of process fees and the value of copying sheets also were increased. Then the Nineteen panchayat courts were made permanent from 1935.

Village Vigilance Committees were constituted to co-operate with police in the matter of prevention and detection of crimes. The total number of such committees was 3,775 during that time.

Under Travancore dynasty Village Panchayat was appointed with the sanction of Her Highness the Maharani. The Chairman of the panchayat and in Chairman’s absence, the Registrar had to annually prepare and publish an electoral roll for the village showing names of persons qualified to vote at the election to village panchayat. Electoral roll once published remained in force till replaced by a new one.

An Amendment Regulation in a sub-section to sec.11 of the Panchayat Regulation, dealt with disqualification of members bearing the post. This was introduced as an analogy of sec.19 (1) (b) of the Travancore Municipal Regulation.

To the public for washing and bathing
3. Primary education.
4. Lighting of public places.
5. Planting and preservation of grounds,
6. Excavation and maintenance of ponds.
7. Relief of the poor and sick.
8. Control of cattle stands, grazing grounds, communal purambokes;
9. Improvement of agriculture, agristocks and prevention of cattle
10. Promotion and encouragement of cottage industry;
11. Control of rest houses, campt sheds cct.
12. Restoration and improvement of minor irrigation works;
13. Vaccination;
14. Registration for birth and deaths; and
15. Other public utility services to promote safety, health, comfort or conveniences of villages.

68 Town Improvement Committee, 1920
70 Ibid at p.117
72 The Travancore Village Panchayat (Amendment) Regulation I of 1111 M.E. (Regulation & Proclamation), Vol. V p.1102
73 sub-section 3 of section 11 of the Travancore Village Panchayat (Amendment) Regulation, 1111 M.E.
From 1894 regulation onwards fiscal, powers and funds were provided with government grants, fines, penalties etc. collected by local bodies. By 1900 Regulation local governments were empowered to impose taxes with previous sanction of the Government. From 1910 onwards house tax was to be levied by all towns in Travancore. Local taxes include:

1. Property tax;
2. Professional tax;
3. Animals and carriage tax;
4. Carts tax; and
5. Vehicle tax.

But Taxes estimated by local authorities might be imposed with Government sanction.

1. Tax on advertisements.
2. Tax on entertainment

Government control over local governments with respect to funds and revenue started and continued from this period itself. The chairman of the panchayat council could be removed by motion passed by 3/5 majority or if he willfully omitted or refused to carry out or disobeyed the provisions of the Act, Rules or by-laws, Regulation or lawful orders or abused the powers of the council.

Government could also supersede a Panchayat council if it was not competent to perform or persistently, made default in performing duties or exceeded powers. Such super-session period was not to exceed two years.

1.4 Village organization in the states of Cochin and Malabar

The nature of early village organization of Cochin was as of the West Coast generally. All lands except those set apart for religious purposes were held on military tenure, every little sub-division of territory instead of being called district of so many thousand pagodas, being called in name of so many thousand individuals. The districts (nads) were divided into villages (desams) which were under hereditary chiefs, whose duty was to make allowance of military nature to the government did not essentially

“Our Government may likewise remove any member who without reasonable cause in the opinion of our govt; absented himself for more than three consecutive months from the meetings of the Panchayat.

differ from those of the district village officials of other countries. The headman of a desam was the desavazhi or aruniwar and he enjoyed only a part of the powers which were supposed necessary for a chief of the desam. There was a desavazhi to every village except those were private property of the naduvazhi or raja. But in most villages where the rajas had acquired the property by purchase etc. the old deshavazhi still remained. In the absence of desavazhi, raja appointed parvathikar as manager of the village.

Desavazhi had control over all officers of the village. He was military chief of the village. In police and judicial activities he was aided by two or more responsible inhabitants. They held no regular appointment nor were the posts hereditary. The naduvazhi collected the revenue (extra and ordinary) and in that duty he was assisted by two or more accountants called putwallis. The system substantially continued till 1957. Civil disputes were referred to arbitration by caste assemblies or by a panchayat appointed by the king.

All appeals from decisions of naduvazhis and desavazhis were decided by a court of panchayat in his presence or in that of his minister. It was evident that the village panchayats and the legislative council will, instead of accentuating sectarian differences, read the past right, work steadily and honestly in that period so as to evolve a glorious future for the state with respect to the decentralized governance.

In 1909-10 sanitary boards were constituted under a Sanitary Board Regulation under Government control and with limited powers in Cochin. In 1921 Cochin Municipalities Act II was passed and that was replaced by the 1938 Act. This continued till replaced by the Kerala Municipalities Act of 1960.

In Cochin area village panchayats were established as early in 1914. Under the Cochin Village Panchayat Act, 1914 five panchayats were constituted and by 1934 their number rose to eighty seven.

75 Sir Thomas Munroe (1817) quoted by C. Achutha Menon, The Cochin State Manual (1911) pp.319-21.
76 Rights of Desavazhi – 1. Ambalapathi – Religious Ceremony
  2. Urayma – Management of pagoda lands.
  3. Desam – Control of Marriages, village ceremonies.
  4. Desapattu – General superintendence of all offences.
77 Ibid at 388.
78 See Indian Administration Report 1870
80 Ibid at p.374.
Panchayats in Cochin were not empowered to impose tax. Their income was confined to receipts from usufructs, trees etc. and grants from Government. Certain panchayats were vested with judicial powers but in later they were taken over by the judicial department. Panchayat did not pass any staff or execution wing. There were 100 panchayats at the time of unification of Travancore and Cochin States in 1949.  

In Malabar region, villages having a population more than 500 were constituted panchayats under Madras Village Panchayat Act, 1950 which came in force in 1st April 1957. They were classified in to class I & II having 5000 or above population and income exceeding Rs.10,000 and less than that. But the powers and duties were the same as that of Panchayats in Travancore-Cochin (TC) region.

Meanwhile in TC. region in 1940, the Village Union Act was passed but it took away judicial powers from the panchayats and allowed less power to them in the 1925 Act. Hence at the time of integration of States there were two types of Panchayats in T.C. area, one under Village Panchayat Act of 1925 and the other under Village Union Act of 1940. Total seven Village Panchayats and 195 village unions companied of 28 lakhs of people.

In 1950 T.C.Village Panchayat came into force and they were reorganized through elections in 1953. Panchayats started to function from 15th August, 1953. Apart from Malabar area three classes of panchayats were constituted in T.C region. List of functions delegated to these institutions was also scheduled as the part of the Act

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81 See Report of the Panchayat Finance Commission, 1985
82 Travancore – Cochin Region (TC)
83 Grade I Annual income above Rs.15,000.
   Grade II -do- Rs.15000-5000.
   Grade III -do- Rs.below 5,000.
84 Responsibilities of Panchayat under T.C.Village Panchayat Act 1950
   i) Construct, repair, maintain all roads other than under Public Works Department;
   ii) Preserve purambokes, paths, lones, canals etc.
   iii) Carryout petty irrigation schemes;
   iv) highting of public roads and public places;
   v) Provide public comfort stations;
   vi) Maintain public market, public slaughter house;
   vii) Control dangerous and offensive trades;
   viii) Planting and preserving trees;
   ix) Open and maintain burial and burning grounds; and
   x) Register of birth and deaths;
In Malabar region all other areas not coming under village panchayats were brought under direct administration of Malabar District Board. Panchayat derived income from land duty on transfer of property, house tax, professional tax, vehicle tax, and non-statutory grants were provided by the Government. District Board derived income from professional tax, entertainment tax, education cess, land cess, stamp duty, licence fee, and grant-in-aid from the Government.
CHAPTER II

HISTORIC EVOLUTION OF
DECENTRALIZED DEMOCRATIC AUTHORITIES
IN INDIA

2.1 Early era

During the time of the Rig-Veda (1700 BC), evidences suggest that self-governing village bodies called 'sabhas' existed. With the passage of time, these bodies became panchayats (council of five persons). Panchayats were functional institutions of grassroots governance in almost every village. The Village Panchayat or elected council had large powers, both executive and judicial. Land was distributed by this panchayat which also collected taxes out of the produce and paid the government's share on behalf of the village. Above a number of these village councils there was a larger panchayat or council to supervise and interfere if necessary. Casteism and feudalistic system of governance under Mughal rule in the medieval period slowly eroded the self-government in villages. A new class of feudal chiefs and revenue collectors (zamindars) emerged between the ruler and the people. And, so began the stagnation and decline of self-government in villages.

During the British rule, the autonomy of panchayats gradually declined with the establishment of local civil and criminal courts, revenue and police organizations, the increase in communications, the growth of individualism and the operation of the individual Ryotwari '(landholder-wise) system as against the Mahalwari or village tenure system.

The panchayat had never been the priority of the British rulers. The rulers were interested in the creation of 'controlled' local bodies, which could help them in their trading interests by collecting taxes for them. When the colonial administration came under severe financial pressure after the 1857 uprising, the remedy sought was decentralization in terms of transferring responsibility for road and public works to local
bodies. However, the thrust of this 'compelled' decentralization was with respect to municipal administration.

From 1870 that Viceroy Lord Mayo's Resolution (for decentralization of power to bring about administrative efficiency in meeting people's demand and to add to the finances of colonial regime) gave the needed impetus to the development of local institutions. It was a landmark in the evolution of colonial policy towards local government. The real benchmarking of the government policy on decentralization can, however, be attributed to Lord Ripon who, in his famous resolution on local self-government on May 18, 1882, recognized the twin considerations of local government: (i) administrative efficiency and (ii) political education. The Ripon Resolution, which focused on towns, provided for local bodies consisting of a large majority of elected non-official members and presided over by a non-official chairperson. This resolution met with resistance from colonial administrators. The progress of local self-government was tardy with only half-hearted steps taken in setting up municipal bodies. Rural decentralization remained a neglected area of administrative reform.

**Indian village autonomy – a historical summary**

A historic context of village autonomy as it has emerged through the ages will provide a better perspective to Indian planners concerned with rural reforms. Vedic and post vedic sources\(^*\) show Indian village as a self-sufficient and autonomous miniature republic. The autonomous village is best described by Sir Charles Metcalfe in his famous minute of 1830 in which he wrote:

The village communities are little republics, having nearly everything they can want within themselves. They seem to last where nothing else lasts. Dynasty after dynasty tumbles down, revolution succeeds revolution, but the village community remains the same. This union of village communities, each one forming a separate little state in itself, has contributed more than any other cause

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\(^*\) Altekar describes the lack of original sources for a better understanding of polity during the vedic period as compared to the mauryan age and the succeeding periods of Indian history. See A, S, Altekar, *State and Government in Ancient India*, (Motilal Banarasidass, Banaras, 1955)
to the preservation of the peoples of India, and the enjoyment of freedom and independence.

The *vedic* age

The village during the *vedic* age was administered by a respected official who in turn was advised by a council of elders. The Ramayana cites a village leader of great prestige called *Gramani*, He was held in high esteem so much so that when Rama killed Ravana, the happy gods, in singing praises to him, compared him to a general and a *Gramani*:

"That the *Gramani* enjoyed high status in the village can be noted furthermore in that "at the royal consecration, the king's entourage consisted of a *Gramani*, a *Suta* (charioteer), and a *Bhagdugha* (collector of taxes)." As one Indian historian has written:

*Gramani* was probably at the head of the village administration. The post carried considerable prestige and is described to be the object of the highest ambition of a *Vaisya*, The king exercised his powers over the village through the *Gramani*.

A *Gram Vridhas* (council of village elders) and the whole village cooperated with him in collecting dues for the state.

The *mauryan* age

The mauryan age village administration during this period (324 B.C.-236 B.C.), was closely linked with agriculture. The village size ranged from 100 to 500 families. Boundaries were demarcated by river, hill, forest, ditches, tanks, bunds, and trees situated at one or two *krosha* (1 *krosha* equals 2 miles) presumably for mutual protection with neighboring villages.

The following officials composed the village administrative staff: (1) the headman (*Adhyaksha*), (2) the accountant (*Samkhayaka*), (3) village officials of different grades (*Sthanikas*), (4) the village couriers (*Jamgha karika*), and (5) the veterinary doctor (*Anikastha*). In addition, the *Chikitsaka* (in charge of sanitation) and the *Ashwa-damak* (horse trainer) were also village officials. All these


87 H.D. Malaviya, *Village Panchayats in India*, Economic and Political Research Department, All India Congress Committee, New Delhi, 1956, p. 45 (Ramayana Yuddha-kanda, Shloka 17, Sarga 116.)

88 Ibid., pp. 71-72, Altekar, op. cit., p. 319
functionaries were given land free of rent and taxes but they were not allowed to sell or mortgage the land.\footnote{Malaviya, op. cit. 87, p. 72}

Vidyalankar cites the degree of governmental control over the village. Every village had its own sabha (assembly) which debated all matters relating to the village; rules helpful to the entire community were framed, and the offenders were punished through regular trials and judgments. The sabha was the centre of the multifarious activities of the village. It discussed religious and social matters. It arranged numerous types of entertainments. The sabha met under a shady tree. Representatives of village families, the elders, and other experienced folk gathered there. The Indian people lived independently in these self-governing village republics\footnote{Satyaketu Vidyalankar, \textit{Maurya Samrajya Ka Itihas} (It is in Hindi, English translation of the title reads- \textit{History of the Mauryan Empire}) Indian Press, Allahabad, 1928, pp. 210-211 as quoted by Malaviya, op. cit. 87, p. 74.}.

From 200 BC to 00AD, every village had its own sabha (assembly) which debated all matters relating to the village; rules helpful to the entire community were framed, and the offenders were punished through regular trials and judgments. The sabha was the centre of the multifarious activities of the village. It discussed religious and social matters. It arranged numerous types of entertainments. The sabha met under a shady tree. Representatives of village families, the elders, and other experienced folk gathered there. The Indian people lived independently in these self-governing village republics\footnote{Altekar says: "The Grama or village continued to be the smallest administrative unit; headman was known as Giriirnarii, Gramika or Gramanayaka or Gramabhojaka. He was assisted in the administration by a council of elders, Grama-mahattaras, as in the earlier period." Altekar, op. cit., p. 331}.

The village administration was in charge of a headman designated as a Grameyaka or as a Gramadhyaaksha. He had a clerk to work under him to keep the records. The headman was assisted in his work by a non-official council. The village councils were known as \textit{Janapadas} in the Gupta administration.

The main responsibilities of the village council were defence, settlement of communal disputes, collection of revenues, organization of public works, and acting as a trustee for minors\footnote{Ibid at p. 342}. Justice was administered by royal officials with the help of the,
village councilor assembly. In certain cases the assembly alone sat in judgment and passed sentence\textsuperscript{93}.

In southern-most region of India the "lowest administrative units were the Kurram (union of villages) and grama (village) each under its own headman who was assisted by assemblies (Ur, Mahasabha)\textsuperscript{94}. In summary, the village headman and the accountant, both prominent officials in the Vedic and Mauryan periods, continued to play an important part in village administration during the Gupta period, although the village council took various forms but it retained most of its earlier functions.

The Mughal Period

The traditional officers, headman, accountant, and watchman, were active and the village, continued to be the basic unit of administration and it was little altered by the vicissitudes of Mughal, Mahratta rule. Each village had a number of hereditary native officials. The most important was the headman, usually referred to as the patel, who collected the revenue and in Madras was a petty magistrate and civil judge; the patwin, or accountant, in charge of the village accounts, registers of holdings, and records connected with the land revenues; and the chowkidar, or watchman, the rural policeman\textsuperscript{95}.

This feeling is shared by Majumdar and his associates\textsuperscript{96}. Samant's view on the judicial aspect of the panchayats is that the village councils under Muslim rule had the support of the state because "when muhammadan interests were involved, the decision of a panchayat was enforced by the ruling monarch which is a sufficient proof to show that the power of the State was always behind the village councils\textsuperscript{97}. It can thus be inferred that the administrative structure as well as the spirit of the panchayats remained basically intact from Vedic period through mauryan and gupta periods up to the end of mughal rule in India.

\textsuperscript{94} Ibid at p, 195
\textsuperscript{95} Cecil Cross, \textit{The Development of Self-Government in India 1858-1914}, University of Chicago Press, Chicago, Illinois, 1922, p. 27. Although it lasted up to 1858 when the English finally took over after the mutiny, but effective Mughal rule in India was from 1526 Baber's invasion to 1707 in the year of Emperor Aurangzib's death.
\textsuperscript{96} Majumdar op. cit. pp. 381 and 560
2.2 The British Rule

As seen and described by the British colonial officials, the typical Indian village has its central residential site, with an open space for a pond and cattle stand. Stretching around this nucleus lie the village lands, consisting of a cultivated area and (very often) grounds for grazing and woodcutting. The arable lands have their several boundary marks, and their little sub-divisions of earth ridges made for retaining rain or irrigation water. The inhabitants of such a village pass their life in the midst of these simple surroundings, welded together in a little community with its own organization and government, which differ in character in the various types of villages, its body of detailed customary rules, and its little staff of functionaries, artisans, and traders.\^98

The most characteristic feature of the government of a village was the village councilor panchayat (literally, council of five). In Matthai's view, the village council might designate either a general meeting of the inhabitants or a select committee chosen from among them.\^99

The headman in non-landlord villages "has always been part of the original Constitution, holding all important position in every sphere of village life," while in the landlord type, the headman is comparatively a government creation and the original purpose of his appointment was simply to act as an intermediary in revenue matters between the proprietary body and the government.\^100

With this distinction between the two systems of land-holding, the changes can be seen more clearly. Under the centralized British regime, all activities were initiated and directed from the center. The village autonomy had no important place in the scheme. Because the British rulers deemed it wise and profitable to have direct dealing with the tenants, the existing village machinery was, therefore, relegated to the background.\^101 The land revenue allotment and collection which till then was vested in the village councils was allowed to lapse in favor of direct dealing with the tenant.\^102 The traditional village headman and accountant became paid government servants.

\^99 Matthai, ibid. at pp. 15-16
\^100 Ibid at p. 10
\^101 Samant, op. cit. p. 23
\^102 Ibid. at p. 23
Thus, the villagers were not only deprived of their land revenue share but their leaders were also reduced to salaried government employees.

In judicial matters, the regular courts established, by law, influenced even distant villages. The British administrators would not enforce local panchayat courts decisions. Statute law, therefore, in many ways replaced the social and religious traditions. The panchayat, an effective institution of social control before the advent of British rule, was gradually made ineffective with the introduction of a more formalistic, legalistic, and impersonal system of justice.

The introduction of this British system of justice by regular courts and fixed laws, naturally, tended to suppress the indigenous agencies, whether caste assemblies or guilds, by which the customary usages regulating the conduct and rights of the members of the communities were constantly though unconsciously modified to suit the changing conditions.

With the introduction of centralized colonial administration under the British, the traditionally self-sufficient and self-governing character of the village was almost completely eroded. However, the British government later, realizing the efficacy of traditional village system of self-government, tried to extend some semblance of local autonomy to the Indian village. The success or failure in British attempts at panchayat reform can be made clear by describing in the succeeding discussion the role of the Indian nationalist movement.

2.3 Panchayat and the nationalist movement

The Secretary of State for India at that time realizing the lag, appointed a Royal Commission on Decentralization which investigated in 1907-1908 the crucial issue of local self-government. The Indian National Congress took for the first time a stand on the problem of restoration of village panchayat in 1909 and in its 24th Session held in Lahore in December passed the following resolution:

This Congress expresses its satisfaction that the Secretary of State has recognized that the Local Self-Government scheme of 1882 has not had a fair trial and has pressed on the Government of India the necessity of an in-effectual advance in the direction of making local, urban and rural bodies really self-
governing and it expresses the earnest hope that the Government will be pleased to take early steps to make all local bodies from village panchayats upwards elective with elected non-official chairman and to support them with adequate financial aid\textsuperscript{103}.

The recommendations of the Decentralization Commission like the local self-government scheme of 1882 remained unfulfilled. The Congress, in its Karachi session held in December, 1913, regretted the non-implementation of the measures of the Commission and passed a resolution urging anew increased powers and resources for local units\textsuperscript{104}.

\textbf{Gandhi on Panchayats}

The Congress party's preoccupation with \textit{swaraj} (self-rule) movement and the non-enforcement of Decentralization Commission's recommendations retarded the re-emergence of panchayat for some time. Although no immediate prospect of progress was within sight, the public interest was kept alive by two classical treaties on local government.\textsuperscript{105}

\section*{2.4 British Attempts to revive the Panchayats}

The British rulers made many unsuccessful attempts to reform local government in the country\textsuperscript{106}. The Royal Commission on Decentralization of 1907 will be treated because it reveals the general pattern of British attempts at reform and the causes of their failure. The Commission appointed by Edward VII considered the whole subject of local self-government. The Commission agreed that "throughout the greater part of India, the village constitute; the primary territorial unit of Government organization, and from the villages are built up larger administrative entities."\textsuperscript{107} These villages, according to this report, "formerly possessed a large degree of autonomy," but this autonomy the Commission continued:

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\textsuperscript{103} Malavya, op. cit. pp. 215-216  \\
\textsuperscript{104} Ibid. at p. 216  \\
\textsuperscript{105} John Matthai, \textit{Village Government in British India}, Op cit. 98 and Radhakumud Mukerji, \textit{Local Government in Ancient India}, op. cit. 86  \\
\textsuperscript{106} For the many other attempts to revive local government by the British, administrators in India, see Matthai, op. cit. 98 pp. 162-198.  \\
\end{flushright}
“… has now disappeared owing to the establishment of local civil and criminal courts, the present revenue and police organization, the increase of communication, the growth of individualism, and the operation of the individual raiyatwari system which is extending even in the north of India. Nevertheless, the village remains the first unit of administration, the principal village functionaries—the headman, the accountant and the village watchman—are largely utilized and paid by the Government, and there is still a certain amount of common village feeling and interests.”

The Commission recommended the individual village as the ordinary unit of panchayat administration, and the membership of five as “as good average,” though local variations were allowed. The report also urged that the village headman "should be ex-officio chairman of the Panchayat, as being ex-hypothesi the most influential person in the village." The recommendations of the Commission were laudable. But the provision that panchayats would be under the control of the district authorities virtually negated the reformative intent of the report. The nationalists felt that village officials' dependence upon government superiors defeated the spirit and intent of decentralization.

2.5 Panchayats since Independence

In the first drafts of the constitution, no mention was made of the village panchayats. Gandhi deplored this omission and called for "immediate attention if our independence is to reflect the people's voice. The greater the power of the Panchayats, the better for the people”108.

Panchayats in Second Five Year Plan

The development of the village along cooperative lines and 'ultimately the economic prosperity of the country would depend on the effective functioning of panchayats. The reconstruction of the village along cooperative lines implies, firstly, that a more or less homogeneous social structure in which different sections of the community have equal opportunities is brought into existence, and secondly, that the economic basis of village life is greatly expanded. Measures relating to land reform, development of village industries, establishment of village panchayats have to be

108 Harijan, 21st December 1947, as quoted in Malaviya, op. cit.87, p. 256.
considered in relation to these two basic objectives the agency which provides direction and leadership in the village is the panchayat. The development of panchayats has to be a fundamental item in the programme of national extension and community projects\textsuperscript{109}.

**Panchayats in the Third Five Year Plan**

Major responsibility for the implementation of development work at the block level is placed on the block Panchayat samiti." This body works closely with the village panchayat and the zilla parishad, the unit at the district level. Four criteria have been set for successful projects through democratic decentralization at the district and block levels\textsuperscript{110}:

1. The way each panchayat samiti and panchayat mobilizes local manpower and other resources and elicits the people's cooperation.
2. District administration's responsibility at all levels for making supplies and services available at the right time according to the accepted programs and for preventing loss due to waste or misapplication of funds.
3. Panchayat samitis and panchayats should stress increased agricultural production.
4. Panchayat samitis and panchayats should emphasize measures to raise the level of living of the less privileged sections to the level of other groups in the area.

In order to fulfill the objectives of the third plan and meet the target set, many states have evolved their own pattern of decentralization suitable to local conditions. This is being enforced in different states: namely, Andhra Pradesh, Assam, Madras, Mysore, Orissa, Punjab, Rajasthan, and Uttar Pradesh etc.

**2.6 Administrative Mechanism in Malabar, Kochi and Travancore**

Apart from other east coast territories, for administrative purposes, Malabar was not divided into villages. In Malabar, Parishes functioned as local units. For revenue administration each *taluk* was divided into *amsams*. The ten *taluks* of Malabar district were divided into 426 *amsams*. But owing to the lack of scientific geographical survey

\textsuperscript{109} Draft Outline of the Second Five Year Plan, Planning Commission, Government of India, New Delhi, 1956, pp. 66-70

\textsuperscript{110} See Third Five Year Plan, Planning Commission, Government of India, New Delhi, (1961) op, cit.
the territorial area of *amsam* was not so clear and specific during that period. Acceptability of census data also was doubtful\(^1\)

As per the analysis of the British administers in Malabar, there was no village units in the traditional Hindu format of grama. Instead, the country was under military administration of traditional indigenous rulers from *naduvazhi* to *deshavazhi* at different levels with inherited or vested powers of the rulers\(^1\).

Later certain changes may be seen in this context, by which it was stated that as any other province of India, in Malabar also the revenue administration was divided into districts and villages from earlier period of history. The jurisdictional limits of such villages exist even today without much change. Heads of such villages and districts held their status and power through traditional inheritance pattern and the villages were known as *desams* in the history\(^1\). The local rulers considered *thara* as their lowest basic unit. But it is not logical or reasonable to provide much relevance to village administration and to consider this as much influential in highly autocratic governance system of those countries. Whereas the local villages, *thara* had much resemblance with similar type of village republics in other parts of the nation due to their survival as little republics under a *karanavar* or *kartha* or senior citizen as the local authority.

*Kozhikode Nadu* was divided into 125 *desams*, at the same time 72 *thara* were also functional there simultaneously. *Nadu* was governed under a representative platform known as *nattukootam*. The *nattukootam* was usually vested with powers to consider and dispose of allegations against even ministers and officials of the state\(^1\). The local governance unit, *thara*, continued during the period of Mysore rulers. And they were converted into subdivisions of the district known as *hobali* during British period, with little but expansion in their area and population. But *hobali* was not fruitful in the government administration in satisfactory manner and hence they had to be reconstituted so as to serve those responsibilities as mentioned by Sir Thomas Munro\(^1\). Actually the *hobali* was not real village administration mechanism in its legal sense. In

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\(^1\) William Logan, *Malabar Manual*, p.82  
\(^1\) Warden, *Revenue Board Report* (1815 September) p.12, para 63-64  
\(^1\) See Sir Thomas Munro, *Revenue Report* (1817 July 4)  
\(^1\) Supra n.1 at 111  
\(^1\) Supra n. 3 at 113
actual practice they were caused to extent the chain of administration instead of linking and assisting the district collector in the governance process.

During 1822-23, the hobali system was abolished and replaced by amsam through the reforms introduced by the then special commissioner H. S. Grame. Around 2000 amsams constituted during that period were reduced into 425 in number afterwards due to their reconstitution by different amsam adhikaris. Mr. Grame failed to differentiate thara and amsam. Hence due to the reforms introduced during that period, the village administration jointly performed by several elder citizens in the Grama thara became autocratic administration of adhikaris appointed by the rulers. Former deshavazhis, who were not appointed as adhikaris, were entrusted with their traditional status and powers by the rulers. Hence transformation from previous village government, i.e, thara to real local self-government known as amsam absolutely failed. Thereafter, the governmental administration of each parish (amsam) was performed by adhikaris and in addition to these a headman, a menon (Accountant) and two or three kolkar (policemen) were appointed by the then government\textsuperscript{116}. This system of public governance was continual up to the period of the elected district boards in Malabar region.

**Village administration in Cochin**

The nature of the early village organization of Cochin as of West Coast has been generally the same. Its substantial account was given by Sir Thomas Munro in 1817\textsuperscript{117}. The State was divided into districts (nudu) and subdivided into villages (desams) under the Headman (deshavazhi – janmi) which enjoyed different powers and rights such as:

- The ambalapathi – ceremonious head of temples in the village
- The urayma – management of temples, lands and servants.
- The karayma – controller of marriages and other public ceremonies of village
- The deshapathi – general superintendence of law and order including offences within the village

The powers and rights were severable and separable as well as the status of deshavazhi or janmi were decided accordingly. There were usually few pramanis for a

\textsuperscript{116} Ibid at p.84
\textsuperscript{117} The Cochin State Manual, p.412
desam or village, but they were not regularly appointed or hereditarily entrusted. Instead they were only designated from time to time within the neighbourhood.

The village system remained substantially till 1762 when the naduvazhis and deshavazhis were deprived of their powers of governance. Thereafter the State was divided into kovilakathumvatis or taluks, under karyakar and sub-divided into thirty pravritis, the units of village administration under pravriti karyakar or parvatyakaran. They were assisted by one or more accountants (menons), a cash-keeper (chandrakaran), pramanakars (registrars), tannadar, chowkidars (policemen), vicharippukars (foresters) etc. as government servants. In 1762 there were 12 taluks in Cochin, which was reduced to 10 by 1860 and once again reconstituted into 6 taluks in 1907, by merger and realignment. By 1813 a chief accounts officer was also appointed to assist karyakar known as tirumukham. In 1818, the karyakar was re-designated as tahsildar and tirumukham into samprathi. Tahsildar was vested with police and magisterial powers initially. But in 1907 those powers were separated.

By 1762 there were two major administrative divisions in Cochin known as thekkemukham and vadakkemugham under each sarvadhikaryakars. During 1813 these officers were abolished and karyakars were placed under the district order of the Diwan. In 1822 diwan peshkar was appointed to assist the diwan. In 1878 a deputy peshkar was also appointed and continued till 1895 without much difference in designation and powers. There was no participatory or democratic system of governance in the Cochin princely state during this period of time.

Local Government system in Travancore

Local government system of Travancore was chiefly conducted through the agencies called as municipalities under the regulation promulgated by the Maharaja. These bodies were presided over by non-official known as elected Chairman. Whereas in Trivandrum, the whole time salaried official nominated by the government was the president of the municipality.

Construction of streets and their maintenance, lighting the streets, maintenance and preservation of public health, vaccination, registration of birth and deaths, basic

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118 Ibid at p.416
119 Ibid at p.417
120 The Travancore Municipal Regulation, 1920
education, public convenience etc. were the main duties vested with such municipalities. Trained women were engaged in midwifery functions. The system of the removal of sewerage by means of motor lorries was introduced in Trivandrum Municipality by 1927. Establishment of markets, pounds and vehicle stands were undertaken by municipalities by that time. Municipal toll gates were instituted to collect rates for animals and vehicles. To compensate the municipalities in their losses of revenue, grants were sanctioned and suitably increased.

During the sessions of Sri Mulam Popular Assembly, the demands for creation of local government boards to foster and develop local self-government in rural areas, villages and panchayats were considered. It was stated as, the domain of urban and rural self-government was the great training ground from which political progress and a sense of responsibility have taken their start and it was felt that the time has come to quicken the advance, to accelerate the rate of progress, and this to stimulate the sense of responsibility in the average citizen and to enlarge his experience.

In accordance with this proclamation, a specific regulation for constitution of village panchayat was pronounced, and in several places such village panchayats were established there under. They were also entrusted to attend village roads, street lighting, improvement of water tanks and wells etc. Out of total 36 members of the village board, 25 were elected by the people themselves and rest were nominated by the government.

2.7 Democratic Decentralization: Kerala Experiment and Experience

Democratic decentralization is the process of devolution of powers, functions and resources of the State to the elected representatives and institutions of lower levels of governance so as to facilitate greater direct participation of the citizens in administrative process. A major drawback of Indian democracy has been that participation of citizens in government was more or less limited to the periodic exercise of the franchise to elect representatives to the Central and the state governments. The

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121 Travancore State Manual, Chapter XXXV, pp.241-43
122 Ibid at p.243
123 The Regulation and Proclamation of Travancore, Vol V, p.1105
124 The Travancore Village Panchayat Regulation, 1925
125 Travancore State Manual, Chapter XXXV, p.244
parliamentary system existed only at the central the state level, whereas at the district and the lower levels the powers were concentrated at departmental bureaucracies, who were accountable only to hierarchical superiors. Previous local government institutions existed in the country was either caste-wise, religious or executive instrumentality or mere administrative apparatus of higher level government mechanism. An important aspect of democratic decentralization is to bring bureaucratic State machinery at the lower levels under the control of elected local self-governments. The concept of democratic decentralization developed here requires that not only appropriate institutions and opportunities but also necessary capabilities would have to be created at the lower levels for ordinary citizens to participate in the decision-making, planning, implementation, enforcement, monitoring, auditing, benefit sharing and other related activities.

**Democratization and development**

The above process of democratization may contribute to acceleration of economic growth and greater economic welfare of citizens in many ways. Most of the traditional arguments in economic theory favour decentralization related to advantages of local decision-making process. As Oates has argued, “the tastes and preferences of the people are spatially differentiated and welfare can be maximized only by providing services consistent with these differences.” Such specific local choices can be made only locally. Bringing the point of decision-making to the point of action can significantly reduce the cost of information, it is almost a truism of public finance that local bodies are more efficient with respect to allocation of function, while stabilization and redistribution functions are better served by central government.

The arguments favouring local level decision-making process is further strengthened if, in addition to the traditional civic duties, economic development is also regarded as local body function. Local level planning then becomes necessary not only to take note of the preferences of the people, but also natural endowments if they are catered by each local body. Planning has to be a multilevel process. Each level of administration has functions that are most optimally taken up at the level. Land and

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126 See Oates E.W, *Fiscal Federalism*, Newyork (1972)
water management, small-scale production, particularly, agriculture and cottage industry – and locally specific services are best planned at the local level.\textsuperscript{129} Centralization inevitably leads to narrow departmentalization, fragmentation and duplication and lack of complementarities between programmes at the ground level. Only through decentralization and by making department officials accountable to elected representatives at local level can horizontal linkages and integrated programmes be ensured.

Democratic decentralization may also contribute to significant improvements in the efficiency of implementation, particularly if the development process is made participatory as well as transparent. This helps to prevent misuses and leakage of resources and allows better monitoring of programmes. Participation may also help to tap dormant local resources in the form of monetary donations, material contributions and voluntary labour. In a labour surplus situation characterized by high degree of disguised unemployment, community participation may make significant contribution of resources of creation of social and physical infrastructure.

Asset management and utilization may be taken over by the community, ensuring equitable distribution of resources. Public vigilance and social ombudsman as watch dog on governance may ensure responsive service delivery, corruption free administration and public accountability in governance process.

Apart from the above material resources potential, democratic decentralization may help what some theorists call social capital. There exist a vast arena of interpersonal relations or small group and community networks where order is maintained without recourse to State legislation on the basis of trust and norms – governed behaviours.\textsuperscript{130} Such informal norms, mutual trust and interpersonal networks may significantly reduce transaction costs of collective action and economic exchange and when appropriately linked to State interventions generate significant synergies.\textsuperscript{131} In this respect as much as with physical capital, social capital becomes an important asset in development. One may not want to join the currently popular tendency of converting capital into a historical category independent of social relations. Not all

\textsuperscript{129} See Planning Committee Guideline for Formulation of District Plans, Planning Commission of India, Government of India, New Delhi (1969)
\textsuperscript{130} See Ellickson Robert, Order Without law, How Neighbours Settle Disputes, Cambridge (1991)
forms of trust or social networking are conducive to promoting developmental objectives. Democratic decentralization, however has the potential of state – civil society synergy is a powerful argument for decentralization.

**Retarded decentralization**

The question still remains, why despite powerful arguments in favour of democratic decentralization, democratically elected governments in the third world continue to be highly centralized in structure. Besides colonial legacy there are three possible factors that contribute to the above situation. First, the social and economic crises in these countries have been powerful stimulus for centralization. It is well known how in independent India the green revolution strategy and Centrally planned vertical programmes that emerged as a response to the crisis of the mid-sixties coincided with dismantling of the first generation of local bodies. Secondly, they are powerful political and bureaucratic vested interest who has consciously thwarted all attempts to decentralize. Thirdly, successful decentralization involves certain preconditions such as existing appropriate legal and administrative framework, local information based capacity building programs and civic culture. No doubt that these preconditions are most important for democratic decentralization to take root. But to make fulfillment of these preconditions a requirement to introduction of democratic decentralization is only a ploy to postpone substantial devolution of power to lower levels. The federal policy, social plurality, economic equity, administrative transparency etc. may be ensured only through restructuring of the State government systems and mechanisms.

By the enforcement of 73rd and 74th Constitutional Amendments, elected representative bodies at district, taluk/block and village level in the rural areas and the towns and cities with uniform five year terms have become an inherent part of the state structure. They also have introduced an element of social justice through substantial reservation of dalit communities and women in the above bodies and to the posts of important offices. Most importantly gram sabhas (assembly of voters in different villages or parts thereof) have been given constitutional status. Similarly ward committees in municipal areas are constitutional entities. Yet, the Constitution remains far removed from the ideal decentralized structure. It still remains quasi-federal in nature with heavy concentration of power in the Centre. There has been no restructuring of the Centre-State relations. State Government continues to enjoy
considerable discretion in allocating functions and powers to local bodies. Further, segregation of rural and urban areas in the Constitution has foreclosed the possibility of a government at the district level that would have full control over district administrative machinery.

Though the Constitution speaks self–governing unit at the local level it does not envisage substantial devolution of regulatory functions. Even with respect to development functions the devolution of powers, finances and functional autonomy of the local self-government institutions are not clearly mandated. A major weakness is that the Constitution does not mandate a minimum list of functions to be devolved to such institutions. The Constitution can be given credit at the most for creating only an enabling framework. The extent or limit of transfer of powers, functions and responsibilities from the Centre to the State and to the lower tiers were left to the whims and fancies of the bureaucracy and was decided by regional or sub-regional politics. It was left to the State Government to determine the extent and scope of actual devolution. The actual powers and functions devolved to these new institutions vary widely among the States with many providing no enhancement of local powers over the past. The unwillingness of the Central Government to devolve any of its own powers to States is the basic factor responsible for this. One is tempted to recall the observation of EMS Namboothiripad, the chief architect of people’s planning, that in such a situation it was surprising that neither the bureaucrat nor politician at the State level was prepared to decentralize whatever power had been conferred to the State under the Constitution.132

State Finance Commissions have been appointed and reports have been submitted. Analysis of the reports shows that the resources devolved to the local self-government would not increase substantially even if their recommendations are implemented. More than the increase in resources, a major positive impact of the state finance commissions would be the reduction of arbitrariness by the State Governments in devolution of funds. Devolution of funds and distribution of programmes and schemes still depend on the Central and State governments and their policies from time to time. Executive guidelines, directives, prescriptions, mandatory allocations etc. again reduce the ambit of autonomy of local self-government institutions. The District Planning Commissions (DPCs) are yet to function effectively and involvement of local

bodies in planning has not undergone any qualitative change. It is in the context of such fairly adverse environment that the on-going experiment for decentralized planning in Kerala assumes particular significance.

What are the salient features of Kerala’s decentralization programmes that make it special? There are four important points of departure for Kerala model when compared to decentralization programmes of other states or to the best of knowledge, in other parts of the world.

Reversal of sequence of the decentralization process

Democratization involves a number of processes related to changes in administrative structure, allocation of functions and powers, and control of resources. All three are interrelated and to an extent have to be introduced simultaneously. But the concept of decentralization reforms cautions that the changes be effected gradually. Typically it may be argued that preconditions for successful decentralization, and this according to a sequence and with a clear demarcation of function between various levels, have to be met. Administrative support structures have to be created by establishing horizontal linkage effecting institutional changes, redeploying staff, generating an information base and training personal.

Awareness creation is also important. The devolution of financial resources is to be limited by absorption capacity of the nascent institutions. It is almost a case of cutting a coat to suit the size of the cloth. For various reasons preconditions would be seldom met and financial devolution would continue to be namesake. The model of decentralization presumes a linearity of implementations informed by a social technocratic vision in which blueprint may be deployed in a frictionless environment.

In Kerala the above sequence of decentralization has been reversed. One of the first decisions taken by the newly elected government in 1996 was to earmark 35 to 40% of the outlay of the Ninth Five Year Plan towards projects and promises to be drawn by local authorities. During 1997-98 the total resources devolved worked out to be Rs. 1025 crores, and in 1998-99 Rs. 1178 crores, not counting funds from Centrally sponsored schemes and institutional loans that could be availed of by local bodies with government guarantee. This indeed was a substantial hike in plan funds earmarked to local authorities. Before 1996-97 the share in the annual plan was limited to a paltry
amount of untied funds that averaged around Rs. 20 crores. As a result, it has been estimated that share of panchayats in the total government expenditure, which historically averaged around 3%, has increased nearly threefold.\footnote{See Lekha S, “Selected Issues in Local –level Fiscal Decentralization: A Comparative Study of International and Indian Experience”, Jawaharlal Nehru University, Unpublished Thesis CDS (1997)}

There was no doubt that the administrative capacity and experience of the newly elected members did not warrant such a large-scale devolution. Instead of waiting for gradual administrative capacity-building through reforms, the Government opted to take the plunge and devolve funds. Given the sequences of decentralization, it was inevitable that there would be serious problems during the stage of implementation of plans. The necessity would then compel the Government to carry out essential complementary reforms and create conditions for successful financial devolution. Given the inherent limitations of a coalition government and inevitable minimum time required for the immense task of building new complex of rules and procedure, the administrative reforms such as redeployment of staff and even legislative process have been slow. One can imagine what would have been the fate of decentralization if the normal sequence of reforms process has been adhered to.

As equally important as the size of the plan funds devolved was the nature of devolution. In 1997-98, 75% of the devolution, i.e, Rs. 749 crores was in terms of grant-in-aid and the rest in the form of schemes sponsored by State Government. The latter component was to be further reduced over time. The share of grant-in-aid component was confined to relatively small amount to so called untied fund. In contrast the nature of financial devolution in Kerala is such as to permit maximum autonomy to the local authorities.

It would not be an exaggeration to say that financial devolution is being used as an instrument to bring about a functional division of labour between State Government and local authorities. The formal functional distribution of power between the State Government and local bodies under the Panchayat Raj Act and Municipal Acts was subject-wise rather than in terms of definite activities. This resulted in considerable overlap and duplication. Negotiation of schematic activity-wise demarcation of functions would have been very difficult and time consuming owing to resistance from departments. Instead of going through the above routine, the Local Self-Government
Institutions (LSGIs) were given autonomy to formulate any project that could be taken up within their capabilities.

A calculation shows that during the previous decade under Kerala scheme, i.e. scheme, whose location and benefits may be identified within the boundaries of a district, had been around 30% of the annual plan outlay to the local bodies, predominantly in the form of grant-in-aid implied that sooner or later the State Government would have to confine itself to State level schemes alone. During 1996-97 the first year of the decentralized planning most of the departments insisted on continuing all their traditional schemes and there was considerable duplication between the department programmes and those of the LSGIs. But the situation also created considerable strain on the overstretched financial resources for the departments and in subsequent years most of the departments on their own, gave up schemes and programmes that the LSGIs had chosen. Thus village roads and minor irrigation have virtually disappeared from State Government’s plan. Even though by law all piped water supply schemes are monopoly of the Kerala Water Authority (KWA), it no longer takes up small scale projects.

**Planning as an instrument of social mobilization**

The second distinctive feature of decentralization under Kerala model is the Central role allotted to the planning function of LSGIs. A comprehensive area plan is to be prepared by each local body before they can claim the grant-in-aid. In Kerala itself during the five year of the new local bodies in 1996-97 a total of ₹212 crores of rupees had been provided to them and untied fund “to initiate the preparation and implementation of local level need based plan programmes for development”. But no local body had prepared any plan. The most common method adopted was merely to provide funds equally between ward members for various works (mostly roads), selected by them. The attempt was to break this tradition by insisting on comprehensive area plans. Sectoral planning process and considerable allocation for primary sector has rejuvenated the agriculture based social initiative in Kerala.

Apart from the comprehensive nature of the local plans and the maximum autonomy given to the LSGIs in plan formulation, the micro level planning methodology adopted in Kerala is singular from similar experiments in other States by the insistences on mass participation and transparency. The district is no more the basic
planning unit. The planning process starts from grass roots with maximum involvement of the masses. It is a genuine bottom up planning process. Mass participation is not limited to elected representatives or voluntary agencies but includes ordinary people assembling in grama sabhas and no official experts and volunteers participate in the preparation of reports formulating projects and drafting the plan. The officials are to work alongside non-officials. The people’s planning campaign was launched to empower around the elected local bodies by rallying official experts, volunteers and mass of people around them, so that the impediments to the local level planning may be overcome.

In order to ensure transparency and participation without compromising the technical objectivity of the planning process, a sequence of phases, each with its distinctive objectives, nodal activities and training programme, was drawn up. In the subsequent years also similar sequence of activities with necessary modification were undertaken in the preparation of the plan.

An important component of the people’s campaign was fairly elaborate capacity-building for training programmes. The campaign was the largest non-formal education campaign, the country had ever witnessed. At the local level more than a lakh persons received at least five days of training. All the elected representatives were expected to participate in the training programme at one level or other. Each round of training focused on definite planning activities that had to be undertaken. Separate handbooks were prepared for each round. Planning is a technical process that involves an assessment of the needs and resources, the fixing of the priorities, the preparation of the projects and formulation of the plan. But in the case of Kerala model the process of planning has been much more than a technical exercise. It occupied centre stage because it was being used as an instrument for social mobilization in support of decentralization.

**Panchayat raj legislation in Kerala**

The first major Communist Party involvement with the local bodies was in 1952 when it won elections to the Malabar District Board. The District Board played an important role in spreading education and health facilities in Malabar. A serious debate within the Party about the role of local bodies in the administrative structure took place after formation of the State of Kerala. EMS Namboothiripad, the Chief Minister,
chaired and the Administrative Reforms Committee (1958) addressed the administrative reform of the newly formed State of Kerala. An important cornerstone of the vision of future administrative edifice of the State was local self-government.

The report argued for a two tier setup, panchayats and municipalities at the grass root level and a district council at the District level. Besides the normal civic functions and development duties, the function and powers of panchayats included significant responsibilities in revenue administration and a number of other regulatory functions. In this respect it went much beyond what was recommended by even Belvantrai Mehta Committee which had by and large looked at the Panchayat Raj Institutions (PRIs) as merely popular developmental agencies.

With respect to district council, the Administrative Reforms Committee (1958) was divided into two opposite views both of which were presented in the text. One position was that the council need only have advisory powers and therefore need only be constituted through indirect elections and exofficio membership. The opposite view was that elected District Councils, should function as institutions and take charge of all aspects of development work. The District Council Bill introduced in the Assembly in 1958 visualized a comprehensive district council that would coordinate the functions of both the panchayat and municipalities in the District and also take over the entire development administration in a phased manner.

The Bills could not be passed as the Government was dismissed and the assembly was dissolved. Subsequent legislation passed in 1960 and 1961 were watered down version of the draft Bill drawn up by the previous ministry and in terms of implementation, a far cry from the declared legislative intentions. The role of panchayats in Kerala was limited to what are known as civic duties and the district council was put in the cold storage.

In 1967 E.M.S Namboothiripad ministry again introduced Kerala Panchayati Raj Bill (1967) with a two-tier system – panchayat at the lower level and zilla parishad at the District Level. At the Select Committee stage, the Bill underwent significant modifications to which the Chief Minister made significant contributions. The zilla parishad, which was visualized to be a unit of planning and development, was renamed district council and its functions redefined as “the administration of a district in respect
of matters enumerated in the first schedule shall be vested in the district council”. This Bill was lapsed since the ministry was brought down.

A Kerala District Administration Bill was introduced in 1971, reintroduced once again in 1978 and finally passed in 1979 while A. K. Antony was the Chief Minister. The Act was not implemented during the next decade. The attempt of the left coalition government in 1981 to implement the law was scuttled by the major coalition partner, a breakaway faction of the Congress. Finally, it was during the left democratic ministry of 1987-91 that measures were taken for implementation of the Act. A commission was set up to study the 1978 Act to make recommendation for rectifying many of its defects, certain essential changes were made and election conducted in February 1990. The District Council was constituted in March 1990. A number of notifications were issued transferring district offices in agriculture, soil conservation, animal husbandry and others. It may be noted that comprehensive changes required in the existing legislation had not been carried out and there was a fear that the Government was adopting adhoc approach to the whole process.

It was in the above context that E.M.S Namboothiripad took initiative in starting a public debate on measures to be urgently undertaken to make decentralization effective. He set forth a number of proposals in an opening article and invited public debate. Some of his proposals were startling. He called for disbanding of the Local Administration Department, as the District Council was the coordinating agency of municipalities and grama panchayats. Arrangements were to be made for a State Development Council with representation of all ministers and certain other key officials and presidents of District Councils. He sought abolition of unnecessary and avoidable duplication of work between the Government departments and the directorates outside Secretariat through substantial dismantling of departments in the Secretariat and combining the directorship and secretaryship in person. Instead of IAS officers, technical and professional persons were to be the heads of the combined department-directorate set up. A major portion of the departmental staff was to be redeployed to District Councils. He argued for greater devolution of powers to the District Councils so that they are transformed into genuine district governments.

The publication of the above proposals was followed by a discussion in which important leaders of political parties including administrators, academicians and leaders
of opposition parties participated. From a re-reading of the articles today, it is very
evident that many could not imbibe the spirit of radical reforms then proposed.

The new Government set out to undo whatever that had been achieved in the
decentralization front. The very first decision taken by it was to amend the District
Administration Act and restrict the powers of District Councils. The District Collector
was removed from the ex-officio secretaryship of the council and junior official was
appointed as the secretary to the Council. The amendment also empowered the
Government to alter the powers and functions through notification without reference to
the legislature. Thereafter the officers and institutions transferred were taken back
through a series of notifications and most of the powers were nullified so that the
District Councils were left with only a few functions and even fewer resources. They
were left with no technical staff and little administrative support. What remained was
only a ghost of the grand design for decentralization. The then State Government
advocated their stand on the foundation of new panchayat raj and nagarapalika
legislation.

As seen in the introductory section the 73rd and 74th Constitutional Amendments
were major landmarks in the history of local bodies in India, but for Kerala these
Constitutional Amendments were a step back from the progressive features of the
District Administration Act in existence there. The amendments compartmentalized
the rural and urban areas, making comprehensive district government impossible. They
imposed a three tier structure which nobody in Kerala wanted. By April 1993, the
Government of Kerala like the other State governments had to pass conformity
legislation. For several months no action was taken by the Congress government in
Kerala, and finally in March 1994 after all-round criticism from intellectuals, opposition
parties and public in general, the Government in a hurry introduced Kerala Panchayat
Raj Bill whose provisions were highly restrictive.

As a result of public pressure, certain changes in some of the draconian
provisions were made at the select committee stage and it is the legislation that was in
force in Kerala when the campaign was launched. Many of the anti-democratic
provisions remained and complementary legislative amendments in the related statues
had not yet been made. It is primarily to make recommendations regarding legal and
administrative changes that the next government set up, as we have already noted, the
committee headed by late Sathya Bratha Sen. It demanded another round of constitutional changes to facilitate States like Kerala to remove constraints in self-governance at the district level and below.

**Barriers to decentralization**

The conception of PRIs as part of a larger political process also meant that these institutions cannot be imposed from above by legislative processes alone, but have to establish through popular movements through mass mobilization. The left movement in Kerala had succeeded to a considerable decree in bringing basic reforms in agricultural sector, collective bargaining in labour sector, public distribution of essential commodities system, social provisioning of education, health and other services to the social agenda through mass mobilization in favour of these issues and PRIs could not be an exception of this.134

The issue of Kerala’s backwardness in decentralization cannot be settled satisfactorily for the time being. But viewing PRIs as part of a larger political process should provide some clue to this. Thus one of the reasons for this is the relative political instability in Kerala and the lack of commitment of ruling party to the decentralization process. The brief survey of the history of decentralization in Kerala reveals how the State government that came to power frustrated the efforts made by the left governments in 1957, 1967 and 1987. As in the rest of India, the lack of commitment to decentralization, despite the generous lip service to the ideal, was the most singular factor that prevented effective decentralization in the State. In Karnataka also the subsequent State government reversed the decentralization programme of the 1983 Government.

Excessive departmentalism and bureaucratic vested interest are the other impediments to decentralization. This was the recurrent theme and important source of concern. There is no doubt that the opponents of decentralization viz. the bureaucrats, who have been enjoying the sweet benefits of centralization in the government secretariat would employ every tactic as to retard transfer of power to the councils.

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It is indeed difficult to generate the necessary political will to create preconditions for a successful programme for decentralization. It is in this context that the importance of mass mobilization in support of decentralization reforms becomes important. Only through mobilizing the masses for creating public opinion in favour of decentralization can the hurdles be overcome. Here also there is an interesting contrast between West Bengal and Kerala.

The introduction and strengthening of PRIs was originally linked to the rising tide of peasant movement for land reforms in West Bengal. The panchayat played a crucial role in ‘Operation Barga’. A large proportion of panchayat members were drawn from the ranks of leadership of peasant movement. The role that the panchayat played in the flood relief operation of 1978 and later in the agricultural extension work during the post ‘Operation Barga’ phase stabilized the relationship. Decentralization became a part of the agrarian reform that was being carried out in West Bengal.135

The coalition politics in Kerala was too enmeshed in repressive and manipulative tactics to stem the tide of mass movement to think of any measures for comprehensive decentralization quite apart from the fact that the political parties always ideologically been lukewarm to decentralization.

The fears expressed about the absence of powerful mass mobilization in support of the 1991 reform of district council became a reality when the Congress government wantonly set about dismantling the entire edifice without fear of any serious resistance. The significance for people’s campaign for Ninth Plan is that for the first time in Kerala the masses of people mobilized in support of PRIs.

The discussion so far should leave no doubt that the left took a consistent stand in favour of decentralization. The support for decentralization is no newly found fervour. What is new in the people’s campaign is the attempt to link local democracy with local development. This is the major feature of the current Kerala experiment. In a sense, the link between decentralization and development is part of mainstream thinking. It has been the rationale for advocacy of PRIs in the five year plan and other government documents. It was in pursuance of this that Balwant Rai Mehta Committee

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and later Ashok Mehta Committees took “Panchayat Raj as a vehicle of development” as ideal.

From the point of view of the radical movement, the participatory nature of the decentralization process assumes special significance. Decentralisation facilitates the people and their organization to directly intervene in the planning and implementation of development. In a centralized system their participation in planning may be only indirect at the central or state level, in an era where people’s participation by governmental and international agencies has come to be synonymous with voluntary organizations.

It is unfortunate that the Report does not take into consideration the fact that there were voluntary organizations which had sizeable membership and are active in rural areas, such as Kisan Sabha, Agricultural Labour Organization, students and youth and women’s organizations etc. which are not and would refuse to be non-political. Many of them are very active and enjoy the confidence of people. Wherever such organizations exist they should be given an important role in the scheme of human resource development. This aspect is ignored by a few critics because of their prejudice against political parties and organization oriented towards them.

With respect to the people’s participation in the decentralized planning the official guidelines of the Planning Commission do not go beyond the involvement of the volunteers of the so called “non-governmental organisations (NGOs). People are a vast reservoir of life experience and local wisdom, and the potential must be tapped for the success of local level planning. But the official documents on this topic, at best take ordinary people into consideration for identification of the felt needs. Thereafter, their role reappears only at the implementation stage after the experts have drawn up the local plan. E.M.S Namboothiripad, as we shall see, thought that this is an extremely narrow minded elitist approach, a hangover from the tradition a bureaucratic planning.

**New development culture**

The people are much alienated from planned development process in our country. Here the attempt is to unravel the problem by correlating politics of development.
The basic factor responsible is the very class framework of development and class bias of development policies. The path of capitalist development without land reforms and compromising with imperialism impoverishes the vast majority of people and condemns them to a life without even bare basic necessities. Any attempt to improve their lot is considered a drag on development, a drain from the pool of investable funds, not to tell the struggles that are viewed as disruptive of planned development. This is a shortsighted view.

In the ultimate analysis, all investment surpluses are created by the people and determined by their willingness to sacrifice themselves in money, materials or labour.

One has to approach decentralization as a process of extension and deepening the system of political democracy. The extension of parliamentary democracy from the Central and State levels to district and lower levels would open up possibilities of more direct participation of the masses in day-to-day governance. Such grass root level democracy is favourable to mobilization and defense of the interest of the exploited and weaker sections. This will only improve development and the lot of the poor. One has to agree that the process initiated in Kerala in the last two years is by far the most radical in terms of the scope and nature of devolution. The attempt is being made to make a major break with the past and in order to facilitate the transition a unique mass movement has been launched in support of decentralization. A major contribution of decentralization campaign is indeed creation of mass movement for democratic decentralization. From a mere government-led administrative reform, the process of decentralization has to become an objective for popular action and a part of popular politics.

In the specific setting of Kerala, democratic decentralization is an important strategic initiative to resolve development crisis in the State at least partially and to make a break with narrow political compartmentalization that tends to divide people. Such strategic initiative cannot stem from any single movement, but could be the result of fairly long debate and introspection. The discussion has been more focused on unfolding the logic of democratic decentralization from the political perspective.

The above approach does not in any way underestimate the significance of an autonomous civil society and the synergies that State-civil society interface may generate. In Kerala a variety of local level development initiatives were evolved even
within the limited opportunities or spaces available in the traditional centralized State structure of development policies. The developmental experiments are testimony to the vitality of a civil society in Kerala and also prepare the ground for the people’s planning campaign. The lesson learned from each of these micro-experiment and debates have been widely diffused through different modes and have been successfully incorporated into the campaign. However, the process through which they were scaled up and consolidated remains to be documented. Dearth of space does not point to the nature of interaction of mass movements and other civil society organizations with political parties or the interface between social and political process. Nevertheless, one has to emphasize that if the above experiments, theoretical discourses or even partial movements for further democratization efforts are to become universal and sustainable, they would have to become part of a larger political strategy for democratic decentralization.
CHAPTER III

LOCAL GOVERNMENT: COMPARITIVE ANALYSIS

Local government may be defined as government by elected representatives of the people, charged with administrative and executive functions in matters connected with day-to-day life of the population in one particular locality, and vested with powers to make byelaws for guidelines. De Tocqueville pointed out that the local assemblies of citizens constitute the strength of free nations. Town meetings are to liberty what primary schools are to science, they bring it within the people’s reach, they teach men how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions it cannot have the spirit of liberty.136

The local government is primary school for democracy. The success of democracy depends on the proper functioning of local bodies and its institutions. With this preposition in view, this chapter elucidates the historic experience of different nations and political systems. It may be an eye opener in the evaluation of the process of democratization of governance and the relevance of local polity in such conceptual changes.

3.1 British system

The liberal emphasis in England may be ascribed above all things to her free local institution. British local government is empowered with administration of most of the social enactment or impact of a revolution. It is the result of various legislative attempts as well as policy formulations.

The modern period of local government began in 1832 and developed in 1835 through two main legislations137. On the foundation of these two legislations the British boroughs (cities) were established in 1885138. The system still continues with little changes. In 1888 the elective councils for local bodies were established. The unified urban and rural council as districts were established in 1894. Elected Metropolitan Borough Councils were set up within the country of London in 1899.

136 Alexis de Tocqueville, Democracy in America, (1835), See Chapter V
137 The Reform Act, 1832 and The Municipal Corporation Act, 1835.
138 The Municipal Corporation Act, 1885
The present system of local government was established as a culmination of the legislative and administrative steps on 1929\textsuperscript{139}. Still the policy in this regard has been the same, i.e., retaining and improving local autonomy in the sphere of administration.

Though local government system was evolved over a period extending hundreds of years and local governance was there long before the origin of Parliament, they have got the present importance and features from various legislation of the Parliament.

In the Saxon period local authority consisted of shires, heredrads, townships and boroughs. But in the middle ages they were reduced into three, viz. county, borough and the parish. Counties were administered by the Crown directly. Thus lesser amount of self-governance was there in such bodies during that period. Maintenance of law and order and variety of other functions were entrusted with the bodies. The boroughs were chartered municipal bodies with urban population. The parish was equivalent to modern village and had rudimentary type of mansions. This system continued till the industrial revolution. During modern period major attempt was made through reorganization of local government in 1972-74 period through establishing them with larger powers\textsuperscript{140}. But that was also made under the direct capacity of the Crown and not in a democratic self-governance process.

Local authorities are not local organs of the Central Government as in many continental countries. Every local authority has its own separate existence, to act within the extent of specified powers. Though Central Government exercises numerous powers with ever increasing influence over the manner in which local authorities carry on their affairs, local authorities are in law dependent entities and are not mere organs of the Central Government.

The kinds of local authorities at present are mainly five. They are

1. The Parish:

   In rural areas the smallest unit of local government is the parish. The population of parish is managed by the parish meeting in which all rate payers attend. The parish council consists of five to fifteen members selected from residents. The members hold office for three years.
councils discharge minor civil as well as ecclesiastical duties. It shall appoint an overseer responsible for the administration of charity funds of the village, maintenance and repair of footpaths, recreation of grounds, and lighting of roads. The higher authorities may entrust them more powers so as to enable them to provide libraries, workshops, and water supply. A paid clerk may be engaged by the council to perform the office functions.

2. Rural District Council

Rural District Council is formed by group of parishes, Rural District Council consists of representatives of parishes, elected as councilors. They are elected for a period of three years. It has a permanent existence as one third of its members retire every year. The Chairman may either be chosen from the councilors or from outside and can act as justice of peace which in office. The council meets at least once in a month. Functions of the council are discharged through committees, such as Sanitation, water supply, public health, road works and that for other miscellaneous activities. But Rural District council are not statutory bodies.

3. Urban District Council:

The Urban Districts Council includes towns and other areas having dense population, not being rural areas. Where there is increase in population and industrial growth a county may request to be converted to an urban district. Constitution of urban council has been similar to that of rural districts through elected councilors from each parish. Urban district has the power to maintain minor highways, housing, sanitation, public health and other licensing functions\(^\text{141}\). Urban District Council also is not a statutory body.

4. Boroughs:

It is an urban area organized for self-governments within limits prescribed by Central Government. There are two types of boroughs, county boroughs and municipal boroughs. The former is outside the jurisdiction of county council. The municipal borough is geographically and administratively part

\(^{141}\) The Municipal Corporation Act, 1855
of the county borough and is endowed with powers and functions of a county, and exempted from county jurisdiction. Borough is a municipal corporation with perpetual succession, corporate seal, coat-of-arms, a town hall other appearances of show or pomp. Each borough has a council elected from different wards or constituencies, each returning three or multiple of three councilors. One third of the councilors retire each year. The councilors in turn elect aldermen, one third of their number. The borough council elects its own Mayor either from among the councilors or from outside. The Mayor holds office for one year and may be re-elected. He presides over the local bench of justice of peace. Borough council has powers of a large Urban District Council and additional powers conferred on them. Most of the works of borough council are done through committees. Borough council has its own budget and can appropriate money. It may borrow money with pervious sanction of the Central Government.

5. The County:

Every county is divided into electoral divisions, each returning one councilor at elections, which are held once every three years. The councilors, in turn, elect a number of aldermen whose number is to be 1/3rd of the councilor’s number. Their term of office is six years, but half of their members will retire every three years. County council has an elected Chairman. County can appoint its own administrative staff. Powers and functions of county council are extensive so as to include buying tax, rates, borrowing money for public purpose, public health protection, maintenance of highways, licensing of buildings for amusements etc. Education, control of county police, agricultural production, housing etc. are functions of county councils.

**Characteristics of English local governance**

The main characteristic features of English local governance are enumerated as follows:

i) Local authority is a separate legal personality;

ii) It has governmental powers over a defined local area. As explained above a two tier system of local government’s functions exists in most of the areas. For some particular areas three tier system also exists.
iii) The authority will be financed at least in ‘part’ by local taxation of inhabitants of the area.

iv) The authority must be controlled by representatives elected directly on an adult franchise by the inhabitants of the area.

The powers of the local government system were modified in 1985, by which the metropolitan county councils were abolished. The functions were transferred to either the various metropolitan district councils within the area of former metropolitan county, or to specially established joint authorities. On 1st April, 1996 new unitary authorities were created to carry out all local government services within the area. The structure of local government, except in London after the change consists of counties, metropolitan districts, non-metropolitan districts and province unitary councils. The principal functions of local governments are now exercised by either metropolitan district councils or specially created joint authorities for service matters such as police, fire force etc. Non-metropolitan councils consist of parish councils, county councils and district councils.

In London, local government was reorganized a decade earlier than rest of England and Wales. However, the new enactment abolished the system that existed up to 1985. Hence the Greater London Council along with borough councils and City of London Corporation were abolished. The functions were reallocated to either the London Borough Council or to a specially constituted joint authority in respect of fire and civil defense.

In Wales, the two tier structure of local government consisting of county councils and district councils has been replaced and unitary authorities were established, the first tier known as county and the other known as council boroughs.

Local authorities are not agents of Central Government. They exercise functions conferred on them by statute rights. But they are not absolutely free and to be controlled by the Government. They can function only within the framework which can be changed at any time by legislature by the Parliament. Hence they function under three fold controls, i.e., judicial, administrative and political. Some other extra-legal controls also operate over them.

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142 The Local Government Act, 1985
143 The Local Government (Wales) Act, 1994
i) Judicial control is imposed through the doctrine of *ultra-vires*.

ii) Administrative controls are financial control, approval and consent, directory and advisory control. Loan sanctioning, resource mobilization, audit and grants are examples of financial control. Compulsory purchase order, permissive orders, schemes, byelaws, guidelines, discretionary powers, appointment power, disciplinary power etc. are forms of administrative control. Regulations, impositions, directions, circulars, ordinances are forms of directory and advisory control.

iii) Political control imposed through public opinion, press and media and election process.

All local governmental authorities work under control and supervision of Central Government. The control over local governments is a compromise between flexible US system and rigid continental system. Hence England was the first country to succeed in reconciling a decentralized system of municipal government with order and efficiency in local administration. Departments of Central Government like Home Office, Board of Education, Board of Trade, Ministry of Health etc. exercise wide powers of control and supervision over local government. The supervisory control includes inspection, inquiry, statistical examination, authorization of loans, issue of advisory circulars and statutory instruments, administration of exchequer grants, audit etc.

The Central Government exercises control mechanism over local authorities through the following methods.

i) Grant-in-aid system: Infringement of autonomy of local self-government will not be popular in democratic polity, hence they are not absolutely autonomous. The usual method adopted is to offer “something for nothing” such a grant-in-aid or subsidies by the Treasury, is the main administrative channel through which central control of municipal government has developed in England. This is because the grant-in-aid is conditional resources, entailing inspection and an evaluation of the operation expenditure.

ii) Block grant: Subsidies and grants to local government were given for designated purpose like health, education, housing, drinking water etc. Not it has switched over block grants with general provision to meet expenses of
local body according to its discretion. Nearly half of the local government expenditure now flows from Treasury. Thus the Central Government calls the tune or sets the trend making local bodies political subsidiary.

iii) Parliamentary control: Local Government is subject to the supreme control law enacted by the Parliament. The term law includes delegated legislation also.

iv) Constitutional control: If a local government neglects its legal duties, the Central Government may intervene by moving the High Court requiring any such neglect to be set right. Help from courts may be taken by the Central Government to check any illegal action.

v) Institutional control: Local government system is in declining phase in the place of its origin itself. Many of the national agencies and centralized authorities, public corporations and multinational agencies established to undertake new services are severely affecting the autonomy and existence of local governments.

Overlapping of functions of local government and Central Government is another concern. Demarcation of spheres has high relevance. The particular sphere to be assigned to local bodies is not a question which is or wholly can be addressed by considerations democratic freedom or responsibility. It is to be considered as capability of development by the ties of neighbourhood and the activity of local communities or by the consideration of the local government as an educative process and invaluable to democracy on that account. The assignment of functions to local government must mostly be on administrative efficiency and practical considerations.

3.2 Swiss System

*Cantons* are the units of the Swiss Federation. Originally there were 222 *cantons*, three out of them had divided into 6 half *cantons*. The half *cantons* have their own constitution and government. But they have provided with half representation in the council of states and voting referendum.
Under Swiss constitution, *cantons* have been guaranteed autonomous status. As such they exercise all powers which are not delegated to the Federal Government. Thus *cantons* are not mere administrative units but autonomous units of the federation\(^{144}\).

Full *cantons* and half *cantons* of Switzerland may be divided into two categories from an administrative point of view.

i) *Cantons* in which direct democracy exists; and

ii) *Cantons* in which representative democracy exists

The *cantons* have their own constitutions. They can amend the same subject to two conditions like

a) they should provide a republican government; and

b) they should have nothing contrary to the Federal Constitution.

*Landsgemeinde* is the legislative assembly of all adult male citizens of the *cantons*. It is an open air meeting and this practice of *Landsgemeinde* is termed as democracies of the open air type, an initiation of agora of ancient Athens. Attendance in the meeting is compulsory and the defaulters in some of the *cantons* are fined. The meeting is presided over by the *Landsgemeinde*. Its functions are extensive including passing legislation, amending cantonal constitution, voting on budget, approving accounts, electing the members of executive council, representative of *canton* to the council of states, most conspicuous example of what Rousseau and certain other political philosophers pointed out as the only democracy.

While *Landrat* or the cantonal council is the body elected for four years by separate electoral district, they are known as subsidiary legislatures which deal with details which could not be attended by *Landsgemeinde*. They are empowered to issue ordinances, pass smaller expenditures, examine accounts, prepare legislative measures for *Landsgemeinde*, and elect petty officials. Hence up to a considerable extent it acts as an advisory body to formulate and draft proposals for submitting to popular assembly.

\(^{144}\) Quoted by L. N. Srivastava, *World Constitutions* (1984)
Third component of local canton is regierangsrat or the administrative council. It consists of seven members elected by Landsgemeinde. It is the executive council of the cantons. Landsgemeinde who is the head of the government will preside over them.

The cantons having representative democracy rely on the elected representatives and governmental agencies. They practice extensively twin institutions of direct legislation referendum and initiative. Constitutional referendum is compulsory in all cantons. Legislative referendum is compulsory for full canton and one-half cantons and eight full canton and one-half canton. Except in Geneva all other cantons provide for initiative for proposing both constitutional and ordinary laws. The cantons are supplemented by devices of direct democracy and sovereignty of the people is maintained.

The main organs of governance in cantons are:

i) The great council – the legislature

ii) The government council – the council of status of the executive

iii) The cantonal courts – the local judicial authority

Great council or cantonal legislature is directly elected for one year to six years in different cantons. Generally it is for four years. The legislature is unicameral. Membership may vary from canton to canton. Members do not draw any salary but get nominal daily allowance. Great council meets once in an year. Its normal duties are performed passing canton laws, voting annual budget, controlling administration, electing members of the executive council, higher judges and other cantonal officials. They are also empowered to declare emergency and call for cantonal troops if required. It has a power to ratify inter-cantonal treaties, and to grant pardon and general amnesty.

Each canton has a collegial or plural executive known as council of status or government council. The members of executive vary from five to eleven. They are elected by great council for a term of one to five years. But they may be reelected as long as they wish to serve and they may serve effectively and honestly. Members are drawn from political parties, hence it has much party colour as a business board. It is presided over by chairman known as Landsgemeinde who is the first among equals. Each member is responsible for each department of the government. Executive is directly responsible to the cantonal legislature. The members of cantonal council can
draft and initiate bills in the legislature. They participate in debate but do not enjoy the right to vote.

The Swiss cantons have their own judiciary with three categories of courts.

i) At the lowest level of justice peace court

ii) special magistrates to deal with first instance of civil and criminal cases.

iii) Cantonal district court is at the apex level in the hierarchy of cantonal courts. It acts as the final court of appeal as well as in some cases federal tribunal and hears appeals against the decisions of other two cantonal courts in the lowest level. The judges are directly elected or elected by great council. They are actually elected for a fixed tenure but frequent election guarantees them life tenure. The judges are assisted by assessors to dispense justice. They are fair, impartial cheap and prompt judiciary.

The cantons are divided into districts and the districts in communes. There are roughly more than three thousand communes in Switzerland. The communes act as the basic units of political life of the country. Here the districts are mere administrative units in between cantons and communes. There is an elected chief district officer, sometimes assisted by a council to perform administrative functions with advice of the council. He is the representative cantonal government and is responsible for execution of cantonal orders and enforcement of its laws.

Communes are the basic and smallest territorial unit and play the primary role in Swiss political governance. They can be classified into urban and rural. Urban communes are of bigger size and larger population. But majority of communes are rural. Citizenship is granted only when one requires citizenship in a commune. A person residing and settled in a place for minimum three months can exercise his right to vote in the commune as a member.

In all, communes have a democratic setup of Government. In smaller communes popular assemblies, including the entire adult male population of the commune act as legislature. Bigger communes have representative legislatures known as general council. They have executive government known as communal council. Referendum and initiative are practiced in all communes. Administration of commune is concerned with matters like police, education, sanitation, water supply, poverty relief etc.
Charitable hospitals and asylums are managed by more prosperous communes. Switzerland is characterized by country of communes and are more independent and in many respects more democratic in organization than English parishes. Rural districts and counties as members of the communes, the Swiss people reach sentiments in the principles and practice of democracy.

3.3 Japanese System

Alexis de Tocqueville opined that the local assemblies of citizens constitute the strength of free nations, as primary schools are to science, town meetings are to liberty. They bring it within the reach of people, they teach people how to use and how to enjoy liberty. A nation may establish free government but without the spirit of municipal institutions. It cannot have the spirit of liberty. Local government is a school for democracy so as to encourage the spirit of common interest and shared administration. The common will of the people of a locality gives a sense of confidence in doing things by themselves.

In the Japan the history of local government has two distinct phases: Prewar local government and postwar local government. The prewar system of local government originated after the Meiji Restoration and abolition and liquidation of feudalism. The original fiefs were reorganized into new units of administration called prefectures. Town and villages were also reorganized by the government. The government had an objective to prevent popular participation over local administration and to introduce centralized rule from the capital for the sake of full control, proper function and good administration in local bodies. For this home affairs ministry was established.

The constitution of Japan is unitary and prescribed composition of each prefecture with executive and legislature. The head of the government executive was the Governor, who was appointed by the Central Government as its representative. He had complete charge of local governance including election, education, poor relief, police, public health, protection of industry, conscription, supervision of subordinate officials, supervision of communal government etc. as the chief executive of the prefecture the Governor was in charge of all matters which were entrusted to local self-government. Sometimes he administered such matters according to the consent of prefectoral legislature, sometimes according to discretion. In this concern the Governor enjoyed
vast discretionar powers as the sole supervisor of local governance. He was responsible to the ministry of home affairs for commission and omissions. It is doubtful to say the prefectures are units of local self-governance in Japan.

The prefecture legislature consisted of thirty legislators, elected by popular vote and prefrectural council members were ex-officio members of the legislature. Every Japanese male of 25 years or above and was paying some direct tax for the time being and who was not disqualified otherwise had the right to vote and elected to the prefectural legislature. Term of office of prefectural legislature was of four years. The assembly should be convened at least once in an year by Governor so as to discuss and provide consent to general principles or policies and to pass annual budget. But the legislature had no control over the acts of Governor because he was not responsible to the legislature and had overriding authority on the decisions of legislature.

The prefectural council was composed of the Governor, two higher officials of the prefecture and seven to ten elected members of the prefectural legislature. It was a standing committee of the legislature. It was empowered to deliberate on matters delegated to it by the assembly, to advise Governor to inspect treasury, to dispose administrative disputes and other allied subjects.

Prefectural government was under a higher rate of control by Central Government owing to two reasons. They were Governor, the nominee of the Central Government, was the role supervisor and controller of administration and the chief executive and high officials were changed along with the change of cabinet of the Central Government.

As in the case of villages and communes in cities, the government has modeled the local government pattern of their own. Chief of the executive of city administration was Mayor appointed by the throne from amongst the list of three candidates nominated by the city assembly. He had the duty to supervise and administer the functions of local government. In the performance of the functions he had to take the consent of the city legislature. He also carried out business of the Central Government as its agents the direction and supervision of the government officials. The city legislature had power to interfere with actions of the Mayor when he dealt with the central affairs.

The city legislature consisted of city assembly and city council. The members of council were elected by the people of the city as in the manner of election of prefectural
legislature. Town and village government were organized and established in the manner that of the city government. The chief executive was elected by the town or village assembly, with the approval of prefecture Governor. He has similar function and powers to that of the Mayor. The town and village assemblies were constituted in the pattern of city legislature.

During the post-war period the occupation authorities thought that there should be wide extension of local authority and autonomy to nurture development of grass root level democracy as a check against the national regimentation.

The New Japanese constitution had incorporated the above vision and provided that regulations concerning organization and operations of local public entities should be fixed by law in accordance with the principles of local autonomy and local governance shall establish assemblies as deliberative organs. The local bodies shall have the right to manage their property, affairs and administration and making of regulations within law, and special law which was applicable only to one local public entity cannot be enacted by the Diet without the consent of the majority of voters of the local area concerned. As a result the members of laws were envisaged in order to define the structure of local government, its powers and authority including the most important legislation in 1947\textsuperscript{145}.

The governor is the chief executive of the prefectural government. Any Japanese national aged 35 years or over is eligible for the post of governor. A governor should not essentially be a resident of that particular prefecture in which he was appointed. There is no restriction on sex basis and men and women may be selected to the post of governor.

A governor cannot be concurrently a member of the Diet of the local legislature. The governor is to be elected by the people of prefecture and the tenure is to be 4 years, unless he resigns earlier or a no-confidence motion is passed against him in the local assembly. In such a circumstance the governor can either dissolve the assembly or resign or and call for an election. A no confidence motion shall be passed with 2/3 majority of the total members of the assembly. The newly constituted assembly may unseat the governor through a second no-confidence motion, with simple majority of

\textsuperscript{145} The Local Authority Law, 1947
membership in the assembly. The governor may also be removed through the method 
popular recall by the public, if 1/3rd of electorate of the prefecture file a petition for 
removal of governor and is supported by majority of voters in the election.

The governor can appoint one to three assistant governors who can be removed by 
him, with duties determined by the governor. Such duties include political as well as 
administrative including the capacity to act as governor in his absence. In the absence 
of a governor or assistant governor the prime minister may appoint a temporary 
governor to deputize the gap in a prefecture. The prefecture has an accumulate, a 
treasurer, an auditor and other essential functionaries as may be provided for in their 
bye-laws.

Governor co-ordinates and represents the administration of the locality as an agent 
of Central Government in national matters and an officer of the prefecture in local 
matters. His important duties are as follows.

I) Appointment, removal and supervision over officials of the locality.
II) Custodian of official documents and other important papers.
III) Preparation of budget for the prefecture under his guidance and control.
IV) Collection of taxes and payment of expenditure, along with management of 
property.
V) Issue regulations or ordinances without reference to prefectural assembly.
VI) Require property after paying compensation.
VII) Order fines up to 2000 year for violation of regulations or ordinances.
VIII) Take over the powers of perpetual assembly during emergency.

Though governor has administrative, regulatory and supervisory powers and 
functions he may share directive power over local governments, his position is 
responsible to and answerable to the Central Government being its agent. His action or 
inaction may be made accountable through mandamus while he has wide administrative 
powers to co-ordinate, to direct, to supervise, to check municipalities, their records, and 
accounts. In addition to these the governor has important socio – political 
responsibilities.
In cities, town and villages local governments are run by municipalities. Executive powers of municipality are vested with the mayor and legislative powers are given to municipal committee. Mayor is elected on the basis of universal adult suffrage. He may be removed from office by governor if he fails to perform functions according to law or directives. He cannot be a member of Diet or local legislature simultaneously. He can get salary for performance of duties. He may resign office or may be removed on a vote of no confidence. He may be ousted by recall by people when a recall election has passed with 1/3rd support of voters.

An assistant mayor may be appointed by mayor to assist him in functions, and may be removed from the post by the mayor. Usual function of assistant mayor is political and administrative in character. Mayor has dual functions, while acting as agent of the Central Government, in national matters he is also responsible to the governor and while acting as an executive officer of the municipality he is not so really. As the Chief Executive of municipality he may appoint, supervise, and punish local officials. He is bound to prepare budget and place it before the committee for consideration.

Mayor is responsible for collection of taxes, fees, to account them and to audit of all appropriations and transactions. He has regulatory powers during emergency.

The members of municipal assembly are elected for a term of four years. They may be re-elected. Members of assembly cannot act as member of Diet or prefecture assembly at the same time. In small towns and villages general meeting of the electorate may substitute municipal assembly. Municipal assembly shall meet six times in an year as regular sessions. Special sessions may be held on a demand from mayor or from at least ¼th of the total members. Assembly can elect its own chairman and standing committees at its first meeting after the election. Municipal assembly has powers to enact byelaws, pass annual budget, fix penalty for violation of byelaws and impose taxes and decide fees for public services. It can conduct investigations regarding local affairs and direct local officers to appear before it for producing their testimony.

3.4 French system

Regarding a general discussion on France, apart from the continental system of governance, there is a centralized form of administration. In France the local
government system is highly centralized owing to unbroken chain from the communes to ministry of interior at Paris. There is sharp centralization and uniformity in local government. The local government is neither autonomous nor self-governing, but consists of convenient administrative divisions.

Local government history begins from 1789 and before that there was no such system because the king had carried out administration during this period, but the country was divided into small units of administration called generalities. In 1789 changes were made in the structure and powers of local government. The rural areas were divided into departments (provinces) and subdivided into *Arrondissements* (district) which were further divided into *cantons*. The urban areas were divided into communes. Powers, authorities and functions were also distributed in accordance with the change. But the abrupt revolutionary change from strong centralized autocracy to complete decentralized autonomy without adequate preparation and planning resulted in lawless anarchy, corruption and failure of administration.

During 1800 through the efforts made by Napoleon the weaknesses were remedied and a strong centralized local government system was established, and it is still continuing with some reforms. Under the system there are four major constituents.

1. Department
2. *Arrondissement*
3. *Canton*
4. Commune

Highest unit of local administration is department headed by a prefect appointed by the President of the Republic, on recommendation of the minister of interior. He has a dual function as an agent of the Central Government and an executive of the local department. As part of enforcement of central laws administrator is executive head of local body. He should enforce resolutions of the council.

The department general council is elected for six years term. It shall meet twice in a year. It has elected president. It can deal with functions of poor relief, roads, buildings, public welfare, communication etc. But the power is limited owing to over ruling by the Central Government.
Every department is sub-divided into smaller *arrondissements* under a sub-prefect appointed by the President of the Republic on recommendation of the minister of interior. There is an Arrondissement council elected for six years having very limited powers. *arrondissements* are further divided into the basic units called *cantons* in rural area.

Communes are constituted as local bodies for urban area with fixed population and having a municipal council of 10 to 36 members, who are elected by universal adult suffrage. Term of municipal council is six years. They will meet at least four sessions in a year. Executive head of the commune is mayor who is elected by the council for six year tenure. He can act as the president of the council and executive head of the municipal committee. He cannot be removed from office before the completion of tenure but may be suspended for one month by the prefect or for three months by minister of interior. He may be removed from office only by an order of the President of Republic.

Departments are generally classified into four categories on the basis of their importance. The top most class is known as lords class or special class, next category is first class, the other one is second class, and the last on is called third class. Though general council and its president are entrusted with functions, a representative of the national government appoints cabinet speaker to preside over the council meetings and is authorized to take steps to ensure public order, safety, security and solidarity. Before 1982 departments were administered by prefect appointed with limited power. Prefects enjoyed some authority within the department and as the agents of the State they played a key role in the local administration. But centralization of decision-making in the national government reduces the extent of decentralization.

*Arrondissements* are constituent parts of departments but have no corporate personality. The essential functions of those bodies are to reduce the load of departments in administration whereas communes are basic independent units of local governance when compared to geographical divisions called *cantons* and *arrondissements*. Communes may be of rural or urban but legally recognized, politically constituted, and administratively organized. Each commune has elected peoples council and a mayor elected by members of the council. But within the department, the prefect has great amount of control over the affairs of the commune.
because they act as intermediary between people and the government. The powers, authority and position of the prefect have placed it on an eminent status in the French governmental system so as to perform innumerable functions and to act in exceptional circumstances.

After 1981, along with the centralistic traditions of government, the national government has permission to devolve the fullest rights and freedom of regional and local authorities through the reforms introduced in the law by March 1982. Main reform in this regard has been the constitution of 22 regions with wide variety of functions, powers and activities including economic social and cultural areas, complementing such authorities of departments and communes. Each of the regions comprises of 2-7 departments and has been represented by elected council through universal adult suffrage. The reforms had two distinct phases, first one is redistribution of powers and restructuring administrative, financial and technical matters being abolished. The second phase includes the decentralization of duties, redistribution and gradual transfer of functions to local authorities. Such transferred power includes education, environment and so as to give more participation to local public.

3.5 Chinese system

To have a look into local government in the communist system, the best example is the village autonomy of China. Economic, political and social relations in the Chinese countryside are presently undergoing transformation. Unquestionably the transformation in the formation of rural society has produced far reaching changes in basic, or grass root level organizational system.

In ancient China, neighborhoods and shiros established their own terms of self-government. This form of autonomy continued for several thousands of years. In contemporary times, the drive for modernization broke open the formerly closed isolated country side, cleavages among the peasantry sent warning in rural areas resulting in a comprehensive mobilization of rural areas. The Chinese Communist Party’s (CCP) assumption of power in 1949 began a process of national administration presenting down to village level, then setting the stage for implementation of rural autonomy.
After founding of the People’s Republic of China in 1949, the new Government set up peasant organization, district and township administrations. In Orkin areas village governments were established under the district level. In China by 1952, the Government had districts and townships below the country level. But on the eve of the movements to create peoples communes in 1956 number of townships dropped further.

Between 1954 and 1957 the Government’s new administrative village system was imposed upon the constituencies of the people, due to any reason, thus denying them any substantial freedom to act on their own. The administrative village had representative director selected by its own village representative committee. This type of system can be seen as preliminary attempt at direct democracy at the grass root level. From this period onwards village level organization became an important economic and social unit.

From the inception in 1958, the people’s communes replaced township governments, taking on administrative as well as social, political, and economic functions. The government converted 94 countries into people communes. In September 1962, the revised draft on people’s commune works regulations divided the people’s communes into two levels, i.e. the commune and the production team and thereafter into three levels, the commune, the production brigade and the production team. As the basic assenting unit of the people’s communes, each production team adopted a system of independent accounting making it solely responsible for its profits and losses.

The turning point in the development of grass root democracy came with the advent of household responsibility system in 1979. This new arrangement dealt a fundamental blow to commune system. By the new arrangement the Government set up village committees to replace production brigades and production team. The policy opened the door for autonomy at the grass root level.

The drive for village autonomy was an outcome of the national democratization process initiated after the cultural revolution. In June 1981 CCP Central Committee Documents entitled the Party through Resolution of certain Historical Problem since the founding of People’s Republic of China, emphasized the gradual expansion of direct
democracy at the grassroot level as an integral step in the construction of a highly
democratic socialist system. The new constitution in 1982 reinstated the system of
township, minority nationality township and small town governments. It also created
the village committee on the primary grass roots mass based organization of self-
governments with its director, deputy director and committee members to be elected by
popular vote within the village.

The Central Government decreed the dismantling of the entire people’s commune
system in 1983. Most districts set up township management to replace people
communes, village committees to replace production brigades and village groups to
replace production teams.

The law reform made in 1988 expressly stipulated that the village committee was
a grass roots autonomous organization that would be seen by the people and be
responsible for local administration. Each village committee was to be established
based upon local residential conditions population size and other factors which base
served the principles of village self-governments. The director, deputy director and all
committee members were to be chosen for an unrestricted number of three year term
through direct popular election. Regarding the function, village committee was
responsible for local administration, public projects mediation of disputes and public
security and serve as the inter communication link between the people and
governments.

After 1990, the drive for village autonomy entered a new stage. During the
period, criticism about the wisdom of grass root democracy dispelled. The most
outstanding achievements in implementing grass root autonomy were:

1. Central Government defined village autonomy as a threefold process; democratic
elections, democratic decision making and democratic administration.
2. Vast majority of village committees held direct elections.
3. The village committee organizational structure became increasingly sound.

In the peoples communes, the grass root level were made jointly by the village
party branch and the production brigade management committee. After the abolition of
peoples commune system, village committee took over the role of the production
brigade management committee. The authority of village committee expanded and eventually led to the growth of the village council system.

The village council is comprised of village representatives, villagers who are representatives in people’s congresses at various levels, village group chiefs and village committee members. The formation of village council led to a large scale transformation of village committee policy-making system. In the new circumstance, neither the village party branch nor the village committee could enact policy without the approval of village council.

At present, favourable trend has emerged in village autonomy in China. In the midst of China’s political development the advent of village autonomy has produced the following impacts:

1. Village autonomy has effected fundamental change in the direction of rural political developments;
2. Village autonomy provides the problem of democracy and developments;
3. Village autonomy closely integrates the problem of democracy and developments;

China’s experiments with village autonomy proves that implementing political reform which calls for decentralization in a nation with a long standing tradition of centralized authoritarianism require two important steps:

1. Real power must be transferred downward to lower levels and the remaining division of power between the Central and local government must be clearly defined;
2. Real power must be handed over to the people to expand genuine right of citizen.

Two constituent organs of local governments were organized according to the Constitution of China, viz. (i) Local people’s congress (ii) Local revolutionary committee146. The People’s Congress in provinces and municipalities was directly under the Central Government. They are elected for 5 year period whereas people’s

146 The Constitution of China, 1975
congress of prefectures, cities and countries are elected for 3 year period. People’s congress for rural communes and towns are elected for a period of two years.

The Local People’s Congress is the legislative organ of each locality at each level. Their main functions are:

i) Elect People’s revolutionary committees.
ii) Ensure the execution of laws and decrees within.
iii) Lead Socialist revolution and socialist construction.
iv) Maintain revolutionary order.
v) Safeguard the citizens’ rights.
vi) Maintain public order.
vii) Protect public property etc.

A fixed number of deputies are elected by people’s congress at the next lower level as per the method fixed by law. Two methods are used for election, Secret ballot and show of hands.

Local revolutionary committees at each local level shall be permanent organs of local people’s congress and local people’s governments at various levels respectively. Each revolutionary committee shall consist of a chairman, vice-chairman and other members. Such a committee shall be elected subject to recall by the people’s congress at the corresponding level. But election and recall are not final and they shall be subject to the examination and approval of the organ at the next higher level.

The local revolutionary committees are responsible and accountable to people’s congress at corresponding levels. They are also accountable to the organ at the next higher level.

Organs of self-government of national autonomous areas at the levels of region, prefectures and counties are provided by the Constitution itself. The people’s congress and revolutionary committees are to be the organs of local self-government. They shall exercise the same functions of the local congress as well as exercise autonomy within the area of legal authority. It is also provided that higher organs of the State shall

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147 article 22 of the Constitution of China, 1975
148 article 24 ibid
extent fully safeguard and create support to autonomy and socialist revolution and socialist construction at the national autonomous areas of local government.

3.6 Comparative overview

i) Constitution of local governments:

In England the local government is constituted by election on the basis of citizenship and adult suffrage. But rate payers are made participants of meetings in which the election is carried out in the case of parish. But the rural district and urban district council consists of representatives from parish. Direct election is the procedure to elect members of such councils. Borough council has multiple representations by councilors. Aldermen are elected from among the councilors. The election of councilors and aldermen in country council also follow the same procedure.

In Switzerland the Landsgemeinde has a practice of democracy of the open air and compulsory participation of people in the meeting. Defaulters are to be penalized. The landrat is cantonal legislative council and Regierungsrat i.e., Administration has representative character of membership but the method of election is not a direct, whereas in the case of communes, the adult male population of the commune is empowered to serve as legislature. In communes the legislature has representative character. Hence participation of all citizens especially women is not present in local governance.

In Japanese system the prefectural legislator is elected by local residents having 20 years or more age. But in municipality the mayor is elected by people of the locality through adult suffrage. He may be ousted by a recall of the people, hence his election is direct one different from election of members of the council.

In France, before 1789, there was no elected assembly for local governance. The administration was run by officials appointed by the King. After the reforms in 1789 the power of administration was entrusted to prefect, who was appointed by the President of the Republic and not elected from among the people but its decisions may be overruled by the Central Government. Sub-prefect of arrondissements also was not elected by appointed by the president. Hence there was no democratic participation of local public in their administration.
Under Chinese system local people’s congress was directly elected by people. But local revolutionary committee members were elected by people’s congress through indirect voting system. At the same time, office bearers of the revolutionary committee may be recalled by people’s congress. This will create a hold up on local administration by people. The control shall be usual according to supervision of Central Government because the people’s congress functions directly under it.

From the above analysis one thing stands out clearly that direct democracy is in name only and democratic practice in local governance is under different kinds of centralized controls. Public participation as well as role of local public is very limited because most of the local bodies are mandatorily accountable to central administration.

ii) Autonomy of local bodies:

All local government authorities in England work under the supervision and control of the national government. Its control over local bodies is a compromise between flexible U.S. system and rigid continental system.

Control measures are:

i) Parliamentary control or legislative control is exercised through the law making power of the national parliament by framing statues.

ii) Policy-making method is exercised by the central departments. The local bodies are bound to follow such policies while exercising powers and performing duties.

iii) Administrative control is imposed over the local bodies through the means of inspiration, inquiries, authorization, statistical examination, advisory circulars, guidelines and statutory instruments through the superior departmental authorities.

iv) Financial control is the most effective control because local bodies are highly dependent on grant-in-aids and other resources like block grants and development grant paid to them by national government. Any such grant consists of conditions, regulations and prescription by the Central Government. In addition to this, local bodies have no way of resource mobilization of their own. Their accounts and expenses are under strict scrutiny and audit of the national government.
Judicial control is through the intervention of judiciary through writs in the functions of the local government authorities. This is mainly through the doctrine of ultra vires.

Development control is imposed through multiple kinds of agencies and authorities, neo national and international corporations and companies, which are constituted to undertake the new services thus severely cut the autonomy and existence of local bodies. Globalization policies, co-ordination and unification programmes, standardization with high specification etc. also penetrate into the realm of local government.

Hence in England methods of centralized control, overlapping functions of local and national governments, and new trends of globalization have resulted in curtailing the relevance of local governance and affect the functioning of local bodies.

In Switzerland there are two types of local government mechanism, one with direct democracy and the other with representative democracy, but both of them are under the control of the federal constitution. Swiss Constitution guarantees the autonomous status of local government authorities by providing that such units are sovereign in-so-far as sovereignty is not limited by the Constitution. As such they exercise all the powers which are not delegated to the federal bodies. Hence in Switzerland the local bodies are not merely administrative units of national government but rather autonomous units of the federal governance.

In Japanese system of local government during the prewar period, it was aimed to prevent popular control of local governance and to introduce the rule from Tokyo. The ministry of Home Affairs established during that time was with aim to ensure full control and proper function of local administration through villages, towns and cities. Within that system the governors of prefectures, who are appointed by and answerable to the Central Government had acted as the head of the executive government with full charge of local administration. Under this dual capacity as the representative of Central Government and chief executive of the prefecture governor he had administrative, supervisory, discretionary, regulatory and advisory powers in respect of matters including subordinate officials and their functions, powers and activities of communal
government etc. The governor was accountable to the minister of Home Affairs with respect to the commission and omission of his powers and functions.

In addition to the centralized control over local administration through governors another drawback was that the Central Government can change the governor and his high officials among with the change in the central cabinet. This has adversely affected efficiency and efficacy of prefectural governments. The prefectural councils also were composed of the governor, two high officials of the prefecture, and few members of the prefectural assembly and also acted as standing committee of the prefectural legislature; which had powers to advise the governor, inspect treasury, decide administrative disputes and allied subjects. But they also function according to the dominance of the governors, the nominee of Central Government. In cities the mayor, even though he was ‘appointed’ by the Throne from a list of three candidates nominated by the city assembly, was accountable to the governor for his actions and omissions. Mayor was also bound to carry out the business of Central Government as its agent, under direction and supervision of the various government officials.

The town and village government election, functions of town and village assembly and their chief executives were under the approval and confirmation of the governor. But there was a considerable change in the approach of lawmakers during the post-war period and it was expressed through the constitution itself that the regulations concerning the organizations and operations of local public entities should be fixed by law in accordance with the principle of local autonomy and local governments should establish deliberative bodies according to law. Such bodies should have the right to manage property, affairs and administration, and to enact own regulations. Special law applicable only to a local public entity was not to be enacted by the Diet without consent of the majority of voters in the local area concerned etc. were some of the basic approaches in the changed situation. But the system had the governor as the chief executive of a prefecture, and assistant governors appointed by governor had considerable powers and authority in policy-making as well as administrative functions. Apart from the prewar period the Prime Minister was empowered to appoint temporary governor to deputize the duration of the absence of governor or to assist the governor. These chief executives had power to co-ordinate administration and represent the Central Government in the concerned local government. Hence even in the post-war liberal period of local administration the governor had considerable powers and
authority like powers enjoyed by governors of Indian provinces before independence. In addition to this the Minister of Home Affairs shares the power of control and direction over local government with the governor. Hence the governor had dominance over local governments not only in administrative but also in socio-political aspects in Japan, whereas the local government authorities were subject to the supervisory and control power of the national government and its officials.

Under the French administrative system local government was highly centralized and was subjected to the regulations of Ministry of Interior at Paris. Here the local governments are neither self-governing nor autonomous. Before 1789 there were no elected bodies but the administration was run by the officers appointed by the king. By the 1789 reforms an abrupt change from strong centralized autocracy into absolute decentralized autonomy at different levels ended in total lawlessness. Once again in the history of local governance in France, strong centralization was introduced from 1800 during the napoleonic period so as to remedy lawlessness, anarchy and corruption due to absolute decentralized autonomy. In the existing system, the administrative head of department called as prefect and *arrondissements* and *cantons* called as sub-prefect are appointed by the President of the French Republic and accountable to the president for their actions and inactions. Hence there is only limited autonomy provided to the local government authorities. While considering the experience of China in the field of local government, it is evident that a number responsibilities and functions are there to discharge by the local government under local people’s congress and local revolutionary committees, but the actual practice of autonomy does not exist because the highly centralized Communist Party of China exercises the material control over such bodies. The higher organs of the state shall fully protect the exercise of autonomy of local bodies but it must be within the limits of their authority as prescribed by law. This means that there no absolute autonomy for local authorities but are living limited autonomy within the preview of legislation. These legislations are prepared according to the centralized policy of the national government and communist party.

**Functional comparison**

In England the local government have provided with the following functions.

a) Parish
i) Maintenance of local charity funds.
ii) Maintenance, repair and constructing village roads recreation grounds, lighting of roads.
iii) Water supply, sanitation, public health.
iv) Library and work house.
v) Electrical functions.

b) County

i) Borrow money for public purpose.
ii) Public health
iii) Maintenance of highway, lightning of roads.
iv) License buildings, amusements, entertainment etc.
v) Control of county police.
vi) Agriculture and housing.

It denotes that important areas entrusted to the local bodies. But they are subjected to financial, legal and administrative supervision at higher levels. Hence the local governments have come to depend on Central Government who plays the role of bagpiper who calls the tune to control and convert them into agents or subordinates of the national government. In addition to this, the national government can intervene in the functions of local authorities through advices, inspection, regulations, approvals and with-holds. Hence an indirect and implied control by Central Government exists in the Local government system. In addition to this the functionaries also are appointed by Central Government.

In Switzerland also the main functions entrusted to local governments are matters like cantonal police, education, sanitation, water supply and poor-relief. But the cantonal council is empowered to issue ordinances, vote for small expenditure, audit of accounts, making of rules, byelaws for local area as well as advisory powers. The practice has considerably helped to maintain direct and representative democracy in the local governance up to a certain extent. They were entrusted also with the duties of cantonal judiciary. Hence, the system in Switzerland in local legislation, administration and judicial implementation, is rather progressive and role model to other legal systems.
Under local government system of Japan, the Governor or Assistant governor has been vested with wide powers including appointment and removal of officials, custody of documents, preparation of budget, collection of taxes, audit of expenses, management of property, promulgation of regulations and ordinances, acquiring property and spending money during emergency services within the authorization of law, and imposition of tax or decision on rates or fee according to legal prescription. They are also entrusted with the power to penalize disobedience or violation of such decisions or laws. Hence in Japan system the actual executive powers and functions are run by governors and mayors and not by local autonomous bodies.

Whereas in French local government system the executive prefects and sub-prefects are entrusted to perform duties regarding education, sanitation, agriculture, highways and police according to the policy of the departments in the Central Government. The local council is vested with powers such as poverty relief, roads, buildings, public welfare, public communication etc. But they enjoy only very limited powers. As in the case of Britain, here also functionaries are appointed by Central Government through the Ministry of the Interior.

In the case of China the local people congress are entrusted with some important powers like election of local revolutionary committee, execution of laws and decrees, with approval and implementation of local economic plans, budgets and accounts, maintenance of revolutionary order, safeguarding of citizen’s right, protection of public property etc. These powers may be utilized only under the guidance and control of national government.

i) Decentralization of power and local self-governances are the only ways to sustain true democracy in society.

ii) Local government authorities shall have no absolute autonomy, but have only limited and controlled autonomy according to the law of the land.

iii) Functions of the local government bodies shall be re-fixed so as to convert them as true governmental authorities instead of mere executive agents or apparatus of the various levels of government.

iv) Sufficient functionaries, funds and infrastructure facilities shall be statutorily provided to local government authorities so as to revitalize them as self-dependent governmental bodies.
v) Actual participation of local public shall be collectively mobilized and utilized to reduce the centralized, bureaucratic, sway in public governance.

vi) Instead of control, regulation and supervision from higher levels of government, guidance, assistance, empowerment etc. shall be provided only to strengthen democratic decentralization and local level governance of administration.
CHAPTER IV

HIGH POWER COMMITTEES ON LOCAL SELF GOVERNMENT AND REFORMS IN ADMINISTRATIVE DECENTRALIZATION

Democratic decentralization means return of decision-making power to the people. The government should divest itself completely of certain duties and responsibilities and devolve them to a body which will have the entire charge, of all development work within its jurisdiction, reserving to itself only the functions of guidance, supervision and higher planning. But till today the power centres of the governance had never attempted to give up their strong hold in democracy.

4.1 Balwant Rai Mehta Committee

The committee on plan projects opined that at the block level, an elected self-governing institution should be set up with jurisdiction co-existentive with a development block. But after 73rd constitutional amendment and State legislation on Panchayati Raj the interim level of local government body has no such self-governance function apart from certain delegated duties vested with them.149

Though the Report suggested that panchayat samiti should be constituted by indirect election from the village panchayats, the present system of panchayat samiti in Kerala and many of the other States are elected by the people.

The functions of the panchayat samiti should cover development of agriculture in all aspects, improvement of cattle, promotion of local industries, public health, welfare work, administration of primary schools and collection and maintenance of statistics. It should also act as agent of State government in executing special schemes

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of development entrusted to it. Other functions should be transferred to the panchayat samitis only when they have started functioning as efficient democratic institutions.\(^\text{150}\)

Different sources of income have been assigned to local government institutions\(^\text{151}\). Though certain power to tax collection and finance mobilization were provided with local governments, the ultimate control was maintained by the higher levels of the government. The State government should confer adequate grants-in-aid conditionally or unconditionally or on a matching basis, with due regard to economically backward areas. All Central and State funds spent in a block area should invariably be assigned to panchayat samiti to be spent by it directly or indirectly excepting when the samiti recommends direct assistance to an institution. The technical officers of the samiti should be under technical control of the corresponding district level officers, but under the administrative and operational control of panchayat’s chief administrative officer. The annual budget of the samiti should be approved by the zila parishad.

The committee suggested that a certain amount of control should inevitably be retained by the government, e.g. the power of superseding a panchayat samiti in public interest.\(^\text{152}\) Main resources of income of panchayat are property or house tax, tax on markets and vehicles, octroi or terminal tax, conservancy tax, water and lighting rate, income from cattle ponds, grants from the panchayat samiti and fee charged from the registration of animals sold, etc. The village panchayats should be used as the agency for the collection of land revenue and be paid a commission. For this purpose the panchayat may be graded on the basis of their performance in the administrative and development field, and only those which satisfy a certain basic minimum efficiency be invested with the power.

The village panchayats should be entitled to receive from panchayat samiti a statutorily prescribed share, up to three-fourths of the net land revenue assigned to the latter. Local resources now raised by the village panchayats and spent on the

\(^{150}\) Ibid at para 2.19-20

\(^{151}\) Percentage of land revenue, cess on land revenue, professional tax, duty on transfer of immovable property, rent or profit from property or building, from fairs, ferries, markets etc., share of vehicle tax, public contributions, grants of Central and State governments, loans etc. are the prescribed income sources of LSG’s as per the constitution and law of local government.

\(^{152}\) Ibid at para 2.21
maintenance of watch and ward staff should, in future, be used for development purposes.

The budget of the village panchayat will be subject to scrutiny and approval of the panchayat samiti, chief officer of which will exercise the same power in regard to the village panchayat as the collector will in regard to the panchayat samiti. No village panchayat should, however, be superseded except by the State government who will do so only on the recommendation of the zila parishad. Hence the vertical and horizontal autonomy of local authorities was questioned in the suggested system of local governance.

The compulsory duties of the village panchayats include water supply, sanitation, lighting, maintenance of roads, land management, collection and maintenance of records and other statistics and the welfare of backward classes. It will also act as an agent of panchayat samiti in executing any scheme entrusted to it. Before 1994, for a period of four decades the panchayati raj and nagarapalika institutions continued as mere executive instrumentalities of the State.

The judicial panchayat may have much larger jurisdiction than even a gram sewak's circle, and out of the panel suggested by village panchayats the sub-divisional or district magistrate may select persons to form judicial panchayats. Even today, such a gram nyayalaya mechanism had not come to a reality under the decentralization of power process.153

To ensure necessary coordination between the panchayat samitis, a zila parishad should be constituted consisting of the presidents of the samitis, MLAs and MPs representing the area and the district level officers. The collector will be its chairman and one of his officers will act as secretary.

If this experiment of democratic decentralization is to yield maximum results, it is necessary that all the three tiers of the scheme, viz. village panchayat, panchayat samiti and zila parishad should be started at the same time and operated simultaneously in the whole district.

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153 Ibid at para 2.36
The constitution of the panchayat should be purely on an elective basis with the provision for co-option of two women members and one member each from the Scheduled Castes and Scheduled Tribes. No other special groups need be given representation. Persons elected or aspiring to be elected to local bodies should be provided with some training in administrative matters so that they are equipped with a certain minimum of knowledge of this machinery which is growing more and more complex. Hence, it may be specifically accorded that those States which have taken much pain in this awareness creation, the goals of decentralization availed in a satisfactory pitch.

Some of the States consider it advisable to develop power to a local body at the district level. While the block is the optimum unit for the purpose, similar devolution to a district body may take place instead provided that,

a) Such a district body is fully empowered by statute on the same lines as the panchayat samiti, though on a correspondingly larger scale;
b) The appropriate funds, powers of taxation, requisite field staff, and supervisory staff at the district headquarters are made available on the same lines as for the panchayat samiti;
c) In the blocks selected for development programme, panchayat samitis are constituted as agents of the district body to carry out development activities proposed for that area by the district body, and all funds meant to be spent in the block are to be transferred to the panchayat samitis;
d) The district body operate directly only in nonpanchayat samiti areas or in matters of inter-block and district level activities and institutions; and
e) If feasible, similar arrangements may also be worked out in the alternative to devolve power to a body with a sub-division of the district for its jurisdiction.

Unfortunately, none of these recommendations were implemented for a number of years in the country.

**Co-ordination between the Centre and States**

In subjects assigned to the States, the activities of the Central Government should be confined to assisting the State governments with finances, coordinating

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154 Ibid at para 2.47
research at the highest level, advanced training, organization and control of such inter-
state institutions as the States cannot themselves establish, and to evolve, in consultation
with the States, a common national policy consonant with the various Five Year Plans.
Where the Central Government desires to introduce any new scheme on a country-wide
basis, it would be correct to advise States only on broad lines of the scheme and allow
them to work it out with necessary modifications. The Central Government has never
succeeded to maintain such self-control in the introduction of Centrally Sponsored
Schemes (CSS) and in devolution of their fund. The Centre is confined even today with
control over the funds and functional under rural development and panchayat raj even
after 1994.

Administrative pattern: Co-ordination with the State

The financial implications of increasing the number of local government
officials should be limited by pooling the staff working in the different fields of
development and assigning their duties and functions to the local functionaries within
his reduced charge. All field workers at a level below the block in the departments of
Agriculture, Harijan and Tribal Welfare etc. should be merged with the local
government functionaries, the additional cost of scheme being shared between the States
and the Centre on a mutually-agreed basis. A closer link should be established between
the rural development officials and village panchayat immediately. As development
secretary of the village panchayat, the Village Extension Officer should submit progress
reports to the village panchayat at the time of each monthly meeting and the latter
should forward its comments to the Block Development Officer (BDO).

In the interest of effective coordination the district collector should invariably
consult members of his team at the district level at the time of recording his annual
observations on the work of the BDO. At the block level, the staffing of the
government departments and that of the local bodies should not overlap functionally.

The staff dealing with the works programme relating to irrigation, housing and
communications etc. borne on the community development budget should be treated as
net addition to the cadres of the Irrigation and Public Works Departments (PWD) which
can then redistribute their jurisdictions in units of complete blocks. Substantial transfer
of the functionaries never happened in the history of local government. But the
redeployment was only in proposal and the dual control over the executives continues in the sphere of local government.

In certain States the revenue officer, known as tehsildar or mamlatdar is Block Development Officer. This arrangement seems to have serious drawbacks, viz. the block is too large, the officer gets over-worked and the officers as recruited at present may be unsuitable for development work. These defects should be rectified if the two functions are to be combined in one functionary. At the district level, the collector should be the captain of the team of officers of all development departments for securing necessary coordination and cooperation. Since then the revenue administration department was never marked or associated with the local government systems even in States like Kerala.

Wherever the collector is not empowered to make annual assessment of the work of the departmental officers in regard to their cooperation with other departments, their speed in work, their dealings with the people and their reputation for integrity, should be invested with such powers. The collector should be provided with a whole time additional officer to relieve him of general administrative duties so that he can himself, as far as possible, function and be designated as the district development officer. The actual distribution of work should be left to the collector. In all matters requiring coordinated action by more than one department, the collector should receive copies of all important communications. The collector should also be asked to forward his comments on the annual report of each district development department and will, no doubt, utilize the material for the compilation of the annual administration report of the district on community development. The functions and responsibilities of the Collector as the member secretary of the District Planning Committee (DPC) were not properly performed owing to lack of effective coordination and smooth correlation within the administrative system.

Public participation in local development planning and community works should be organized through statutory representative bodies which should also take over the maintenance of the works not to be ascertained in a better fashion as it was anticipated by Balwant Rai and others. Working groups constituted at the local government level, beneficiary committees at the project level, monitoring committee for plan
implementations etc. are such opportunities for better participation in local developments.

4.2 Ashok Mehta Committee

Approach and recommendations of the committee on Panchayati Raj Institutions are visible from the following statement.

“We are departing from the conventional mode of presenting our views, suggestions and recommendations in the form of an itemized summary because our main endeavour throughout has been to lay down a new approach towards the panchayati raj institutions - not in the usual point-by-point way but rather in concentrical circles, as they interact and depend on one another. The formulation of structures, functions and the utilization of financial, administrative and human resources of panchayati raj institutions should, in our opinion, be determined on the emerging functional necessity of management of rural development. In our Report, we have attached importance to the direction rather than specifics on certain items usually done and hitherto highlighted in various cognate reports. The institutional, structural and functional specifics of panchayati raj would, in our opinion, vary over time as well as space; we can do no more than indicate the spectrum of possibilities while the various State Governments would have to work out the actual details keeping in view their changing requirements. Whatever be the variations, they have to be round the crucial theme of linking institutions of democratic decentralization with socially motivated economic development.\textsuperscript{155}

The dissociation of the growing complex programme of development with panchayat raj institutions which were considered inadequate, and incapable to utilize the bureaucracy to be attuned to execute planning and implementation, several internal deficiency in the functioning of panchayat raj institutions and above all, the lack of clarity about the concept grass root level democratic governance itself have weakened the entire system of local governance in the country.

Part of the disappointment arose from the syndrome that they have not been assigned significant functions and tried continuously and with zest. The development

\textsuperscript{155} The report of the Committee on Panchayat Raj Institutions, Department of Rural Development, Ministry of Agriculture, Govt. of India, New Delhi (1978), pp 175-202.
programmes were not channeled through them. Some of the comments like the emergence of oligarchic tendencies are inherent in the social milieu, and some others are common to other tiers of the polity also. Panchayati raj institutions should not be singled out for these comments. It has many achievements to its credit in introducing a process of democratic seed-drilling in the Indian soil, in breaking the gulf between the bureaucratic elite and the people and in generating a new leadership not merely relatively young in age but pro-social change in outlook.\textsuperscript{156}

Even after two decades of panchayat raj and nagarapalika legislation, the situation has not changed. Autonomy of local governments, funds, functions, functionaries and their transfer to local governments, role of elected and official personnels, delegation of powers etc. are not yet in par with the concept of decentralization. The establishment of democratic bodies below the State level is an imperative from the political and socio-developmental perspectives. Democratic institutions with periodic elections at all levels will provide a forum for the assertion of their strength in large number by the weaker sections. With the people and political parties having adequate opportunities to exercise power at various levels, national energy in political recrimination will yield to constructive competition and mutual co-operation in developmental activities among political parties\textsuperscript{157}. But it is not realized till today in the Indian polity.

As pointed by the Ashok Mehta Committee\textsuperscript{158} panchayati raj democracy in the national and state level, is both an end and means. As an end, it is an inevitable extension of democracy, as a means to be responsible for discharging obligations entrusted to it by the national and State governments in spheres not yet transferred to its exclusive jurisdiction. Hence in both end and means local self-government should contribute to the philosophy as well as practice of rich, rewarding life in rural and urban society.

Ashok Mehta Committee made recommendation to transfer substantial quantum of powers from the State governments to local bodies, is bound to have concern with the existing scheme of distribution of powers between the Union and the States, which would require a detailed but separate consideration. In order to achieve requisite status

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\textsuperscript{156} Ibid at para.3 \\
\textsuperscript{157} Ibid at para 4 \\
\textsuperscript{158} Ibid at para.5
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as well as continued functioning, the Committee agreed that some provision in the Constitution deserve careful consideration by the Government of India.

The Committee came to the conclusion, on account of growth of the span, spatial scatter and the complexities of the development activities, as also significant changes in the strategies, the context of institution-building in rural India has undergone a change since the submission of the Report of Balvantray Mehta Study Team (1957).159

According to the findings of Ashok Mehta team, the institutional, structural and functional contours of panchayati raj had to be in conformity not only with the accelerating pace of development but also with its strategies and policies. New structures of development administration or local level development management will have to take into account the functional necessities of the on-going development thrust. panchayati raj Institutions in the coming decades should, therefore, be equipped to undertake democratic development management under conditions of rapid changes, continuous growth and sustained innovations in all spheres of rural life. This logical and reasonable resolution is applicable to the practical measures of both rural and urban local bodies.

It is only a philosophical perspective. How it may be realized under the constitutional frame-work of federal set up is the problem. Apart from the constitutional and substantial policy the State governments should realize the social costs of administering expanding development programmes from a distance or only through governmental machinery. When they delegate responsibilities for implementation to lower levels, they can concentrate on refinement of strategies and higher-level policy-making in the management of challenges of development administration in areas such as rural land structural deficiencies, agricultural modernization, rural industrialization, credit universalization and planning for fuller utilization of natural resources.

Regarding the structures, composition and election, the institutional design for panchayati raj and nagarapalika should take into account the functional necessity of propelling the on-going developmental thrusts, built upon the intricacies at the

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159 Supra note in 149
appropriate levels and transmit the impulse to people through location-specific involvement.

The emerging scenario of dynamics of development necessitates technical expertise of a high order be made available at levels below the State to sustain the momentum of rural and urban development, which, in many cases, have been already administratively decentralized at the district level. The inescapable compulsion, therefore, is that the district should be the first point of decentralization, under popular supervision, below the State level. Equal, equitable and sustainable development, distribution of goals and benefits of development, the strategic role and status of district level administration so as to co-ordinate rural and urban local bodies etc. are relevant considerations in this regard.

Below the district level, the balance between technological requirements and possibilities for meaningful participation by the people in development management may, in our view, be best achieved, by grouping a number of villages to constitute mandal panchayats. These would not only ensure economic viability, but also enable the people's representatives to exercise democratic supervision over large number of micro projects which are to be implemented at local levels in the coming years. Most of these projects are not entirely village-based and would require a span of technology beyond the capacity of village panchayat. The attention to the family-based programme, often covering as many as four hundred families, needs larger unit to tackle them than at present. Such a mandal panchayat (village panchayats in Kerala) would cover a population of 15,000 to 20,000 and would also facilitate the forging of necessary linkages with schemes for development of focal points and growth centers and would ensure efficient management of the growing rural-urban linkages. Role-clarity of interim level panchayat (block panchayat in Kerala), structure and constitution of such institutions, horizontal linkage with urban local bodies etc. also are to be treated as larger issues of local self-governance.

From the experience, preference is for two tiers, a district- level zilla parishad and a mandal panchayat, people are conscious of the fact that two other tiers are already in existence and it may take time for the suggested institutional design to take shape and become fully operational. The block-level panchayat samitis, where they exist now, would be converted into non-statutory executive committees of zilla parishads and when
the mandal panchayats become active, most of their functions would be taken up by mandal panchayats. As a transitional structure, the block may, therefore, continue as per the convenience of the States keeping in view their requirements and the stage of development. At the village level, the people would be involved in mandal panchayats through village committees which would look after the municipal functions and related welfare activities. Till mandal panchayats are constituted, a federation of existing village panchayats may be desirable. Hence it become expeditious that there shall be zonal bureaucratic set up and grama sabha level democratic institution for better participation and utilization of decentralized governance.

On the composition of different tiers of panchayat raj institutions the Committee had suggested only a broad pattern. They made it clear that whatever may be the structural arrangements, the directly elected elements must preponderate over the others at all levels. Scheduled Castes and Scheduled Tribes should get their representation on the basis of population in the election process. Chairpersons of village and district level panchayats should be elected directly, but the mandal panchayat chairperson should be elected directly or indirectly. Election may be conducted simultaneously for all those tiers.\(^{160}\)

The zilla parishad (district level administration and governance body as in the case of district council in Kerala)\(^{161}\) would function through a number of committees, the more important ones being constituted for agriculture, education, small industries, finance and public works. The composition of all the committees should be on the basis of proportional representation so as to ensure representation to all sections and shades of opinion. A committee of the chairmen of these committees will function as the standing committee of the zilla parishad. There will be a committee on social justice in zilla parishad as well as at other levels also.

A suitable committee for dealing with the problems of educational staff like transfers to be comprised of members of zilla parishad, a representative of the State Government and the district education officer with a view to bringing in evenness and method in transfer and postings. As per the provisions of the law related to district planning committee (DPC), all members of the zilla parishad and M.L.A’s., M.L.Cs. and

\(^{160}\) Ibid at para 14
\(^{161}\) The District Councils are established in State of Kerala according to the District Council Act of 1989
M.Ps. from the concerned district shall constitute the planning committee at the district level for plan formulation and periodic review.

Regarding the structures of local bodies, the committee opined that it would have to be necessarily modified in case of areas with predominant tribal population or in hilly or desert area. The tahsils/blocks where strong traditional tribal organizations are functioning would be allowed to look after their social functions. They made it clear that the structures established by the Constitution in such places need not be disturbed\textsuperscript{162}. Such a liberal outlook was present in the proposed constitutional amendment in 1989\textsuperscript{163}. Whereas in the present system of local governance such a freedom of local democracy was not accepted.

To ensure equitable representation and participation of marginalized people, seats may be reserved for Scheduled Castes/Scheduled Tribes on a population basis in the mandal panchayat. A committee with all women members of the panchayat represented on it would also ensure that decisions are made by women themselves on priorities and choices in welfare and development programmes specifically for women and children. The sanctity and logic of such a homogenetic group for women may cause sectarian nature of function at certain occasions.

The gram sabha has an important role in activating the democratic process at grass-roots and deserves genuine encouragement. The proposed village committees would have the special obligation to organize two gram sabha meetings every year to explain to people what programmes the mandal panchayats are executing in their area and to channelize the people's feedback to the mandal panchayat.

Ashok Mehta Committee suggested for transfer of judicial powers to the local government institutions. However, they proposed to establish gram nyayalaya or nyaya panchayats at grassroots. The working of nyaya panchayat has shown mixed results, in most cases they remained inactive. The administration of justice on a decentralized basis has its merits but the functioning of the existing nyaya panchayats has not been able to elicit popular satisfaction. Such a mechanism was conceived by the Karnataka legislation during 1983. Whereas that provision was not incorporated in the 73\textsuperscript{rd} and 74\textsuperscript{th} constitutional amendments.

\textsuperscript{162} See schedule VI Constitution of India (1950)
\textsuperscript{163} The 64\textsuperscript{th} Constitutional (Amendment) Bill (1989)
There was a recommendation from Ashok Mehta Committee that panchayati raj elections should be conducted by the Chief Election Officer of the State in consultation with the Chief Election Commissioner. But this was rejected by the Parliament itself as and when proposed by the 64th constitutional amendment because of the highly centralized nature of the proposal.

**Functions of local self-government**

The Ashok Mehta team pointed out that functions devolved upon panchayati raj institutions being highly location-specific, exhaustive list of functions, in an all-India perspective, will not have much operational relevance. Local priorities in all development programmes vary from region to region and it is, therefore, necessary that States and Union Territories should have adequate scope for evolving their own list of functional priorities.

Their basic approach with regard to decentralization was that of spectrum of functions and tiers; development being a dynamic process, functions could not remain static. Periodic adjustments would, therefore, have to be made in the functions devolved upon panchayati raj institutions to suit the changing requirements. But this does not mean that decentralization may be viewed as a political charity or administrative concession. The functional agenda of panchayati raj institutions would be inescapably determined by the unfolding logic of dynamics of development; in the interests of effective implementation State governments would have no choice but to decentralize adequate powers and functions and provide proportionate financial resources at the relevant local levels.

Keeping in view the foregoing approach, the Ashok Mehta Committee opined that all the development functions relating to a district which were now being discharged by the State government would have to be placed under the zilla parishads. Some of the functions which can be so decentralized include: agriculture and allied sectors, health, education, communications, rural industries, marketing, welfare of backward classes, family welfare, etc. Even under these heads certain parts may have to be with the State governments. Thus, functions such as agricultural research, college and university education, medium irrigation projects and other similar items involving

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164 Ibid. at para 26
complications or cutting across district boundaries may not be transferred to zilla parishads. The recommendation helped us to bring out a role clarity regarding local self-government but was not so important up to 1994.

Under the new envisaged scheme, the decentralization would commence with the district as the first point and further movement below will take place depending upon the situation in each State. Broadly, the zilla parishad will handle all the decentralized State programmes and plan them at the district level. The mandal panchayat will handle the implementation work. Even today such delegation based as functional decentralization has not been materialized anywhere in India including Kerala.

The entrustment of development functions to panchayati raj institutions would remain incomplete unless all such institutions are vested with the authority to take their own decisions and plan according to their own requirements. Planning would, therefore, be an important function to be discharged by zilla parishads. Whereas the district planning committee in the existing format without any secretarial or ministerial support will not be worthful. Bureaucratic apathy to autonomy of local self-government institutions also causes much hardship in this regard.

The functions of the mandal panchayats would have to be viewed from a new angle. They would be responsible for implementation of schemes and projects assigned by zilla parishad. These would be many. They would have to play a promotional role in activating community action, build up organization and project formulation. They would continue to perform the functions conventionally assigned to them under various statutes. They would have increasing role to play in the sphere of municipal and welfare functions. The administrative, executive development and regulative functions entrusted to local bodies shall comprehensively cause to increase of LSG responsiveness and responsibility.

Ashok Mehta team categorically pointed out that elaboration of an omnibus list of mandal panchayat functions has no relevance unless there is genuine decentralization accompanied by corresponding resources. The foregoing classification of the mandal panchayat functions would, indeed, facilitate the process of decentralization by helping the task of identification of areas in which further decentralization may take place. What is, therefore, needed at the mandal panchayat is purposive work allocation and transfer
of money component along with the functions assigned to them for implementation. This would not only introduce clarity into the expenditure pattern, as also help the State-level heads of departments in specifying operational procedures for execution of various plan projects. In general, mandal panchayats have to administer, coordinate, and provide institutional supervision to on-going field level projects.¹⁶⁵

In view of the fast moving developments and transitions, the regulatory functions may continue to be vested in the Collector but such regulatory functions which are germane to implementation of various development programmes should be assigned to the appropriate tier of panchayati raj. Further, the revenue department should be reoriented to encourage and facilitate the working of panchayati raj institutions. Distinct and separate non-co-operative performance of revenue and administrative functions resulted in higher rate of hardship to the general public, elected functionaries and officials. Duplication of work, dual institutional mechanism and other such practical complexities arose due to the existing revenue and administrative department system.

Hence, the devolution of regulatory functions upon the panchayati raj institutions may be reviewed in due course of time when the zilla parishads have been properly established and are in a position to make and implement their own plans with the quantum of resources available or placed at their disposal. Thus the mandal panchayats would have to be suitably integrated with growth centres. They would have to take the necessary decisions concerning marketing, input supplies, credit and servicing and welfare requirements in association with other organizations in this regard. In due course of time the mandal panchayats will have to be the base-level organization for project implementation and as such they would not only take over the functions of the block, but higher level technical expertise will be made available at lower levels, Some of the block-level functions would have to be moved upwards as only the district-level body would be competent to discharge them. Vertical and horizontal integration, institutional, departmental convergence, scheme and project-wise inclusiveness etc. shall be maintained and promoted among local government and higher level government mechanism.

¹⁶⁵ Ibid. at para 33
On administration of the local bodies, the Committee proposed a basic approach to remoulding of the administrative organization of panchayati raj institutions such as administration must drape well with the body politic and fit its contours. With the decentralization of the functions of the State governments, all the concerned district-level officials would have to be placed under the zilla parishads and lower tiers. A separate development administration functioning on a decentralized basis would, thus, develop along with a composite zilla parishad secretariat. The constitution of elective organization to supervise and direct development programmes would certainly upset the existing administrative routines but the various problems of personnel management and personal adjustments should not be allowed to stand in the way of this change over; the administrative apparatus would have to adapt itself to this fundamental change166.

The previous experience provides many pointers to tackle the problems relating to promotions, protection of pay and other emoluments and maintaining uniformity in service conditions. The committee cited that staff of gazetted rank in Class I and Class II should continue to remain on the cadres of the State government while the Class III and Class IV should be fully handed over to the panchayati raj institutions. There should be adequate provision for inter-changeability between the State level officers and Class I and Class II working under the zilla parishads. The recruitment of the zilla parishad staff may be done by independent of state and district-level boards. All developmental staff with the zilla parishad should be placed under an officer to be designated as the chief executive officer of zilla parishad. The officer will achieve horizontal coordination vis-a-vis the other district heads who will be secretaries of the respective subject committees of the zilla parishad with chief executive officer being an invitee to the committees' sittings.

Regarding decision making systems under local governance, zilla parishad will be responsible for policy formulation supported by any specific decisions taken by its committees, but the main responsibility for the entire implementation work should be that of the chief executive officer. The development executive should be of a sufficiently high rank; a person who has successfully served a district for a period of not less than three years should, therefore be appointed as chief executive officer167.

166 Ibid. at chapter VIII, para 3.1 and 3.2
167 Ibid. at chapter VIII, para 5.1-3
Whereas it was evident from the history of local governance in the country that
some transitional, mainly personnel, problems involved in division and transfer of entire
district staff into State and District cadres are inevitable. Even after the decentralization
of district-level functions to panchayati raj institutions, the State government would
continue to maintain some district-level staff for the execution of its schemes but the
extent of dualism of staff would be restricted to State functions which would be
determined at the time of decentralizing the powers to the zilla parishad.

Regarding revenue and magisterial matters, the Collector would continue to
exercise the regulatory, revenue and other functions assigned by the State government.
He would also organize and help the conduct of 'social audit'. The role of the Collector
may have to be reviewed later when some of the regulatory functions of the State are
sought to be transferred to the zilla parishad. Till today the district revenue functions
are not transferred to and district authorities are not integrated with the local
government mechanism in concept or practice. Much conflicts and complexities are
amounted and confined owing to this disassociation in local governance.

The Committee clearly pointed out that mandal panchayat would be handling the
developmental as also municipal and welfare functions. It would, therefore, be possible
for them to have a full-time panchayat executive officer, instead of part-time assistant.
The salary and emoluments should be appropriate to attract sufficiently qualified
personnel. There is considerable staff of different development departments at the field
level: in due course, the staff (e.g. such officials as the agricultural extension officer, the
veterinary stockmen, the fisheries extension assistant, commercial crop extension
workers, small industries promotion staff and the health sub-centre staff etc.) should
move to the mandal panchayat level\textsuperscript{168}.

Ashok Mehta team had considered managerial aspects of the bureaucratic
system under local government during that period. As far as technical inputs are
concerned, the line-hierarchy will not be broken. The staff in the zilla parishad will be
under the control of their superiors for technical matters giving scope for technical line
control but they would be under the chief executive officer for administrative control.
The confidential character rolls of the district level technical staff written by the chief
executive officer will, therefore, be countersigned by the concerned head of department.

\textsuperscript{168} Ibid. at chapter VIII, para 10.1
The confidential character rolls of the chief executive officer, written by the chairman, could be countersigned by the commissioner of the division.

On account of increase in the volume of development work and their growing complexity, the Committee opined that it would be necessary to constantly study the developmental requirements and mould the structures and functions of State-level departments looking after panchayati raj institutions. The comment by committee of the role and function of the local government ministry in the State and Union levels was very much relevant. There should be a Minister for panchayati raj whose main tasks would be as follows:

a) Enactment of Panchayati Raj legislation;

b) Elections to Panchayati Raj Institutions;

c) Training of elected office bearers and executive officers and administration of all training centres meant for the panchayati raj system as a whole;

d) Promotion of Audit of Panchayati Raj Accounts;

e) Review of Panchayati Raj activities for report to the State Legislature; and

g) Promotion of camp training of elected members of Panchayati Raj.

Routine administrative work, a strengthened directorate of panchayati raj and a secretariat department under a development commissioner would be necessary but all the development departments would have to play a role in the successful working of panchayati raj institutions. The panchayati raj statutes should be so formed to facilitate the transfer of full powers. The responsibility of the council of Ministers in the state level is particularly significant will be looking after the entire performance of panchayati raj institutions. The State governments should also arrange for periodical independent evaluation of the work of panchayati raj institutions including education and health institutions. The Government of India have the special obligation to strengthen the progress of democratic decentralization and development management in the local level and to oversee that panchayati raj institutions are not bypassed in developmental activities. But these positive and stimulating roles are not practical even today.

169 Ibid in chapter VIII para 13.2-4, para 12
4.3 G. V. K Rao Committee

Different State governments including West Bengal, Karnataka, Madhya Pradesh etc. initiated to implement certain suggestions of Ashok Mehta Committee. But they have not attained their goals owing to adequate legislative and political support. Once again another attempt was made in this respect by the Union government in 1985. Past experience clearly indicates that bureaucracy alone cannot be assigned with the responsibility to achieve economic development and social justice. While the objectives of removal of poverty, as laid down in the Seventh Plan, must be adhered to, local initiative must be encouraged and detailed strategy worked out by local people. It is, therefore, essential to involve the people and their representatives effectively in drawing up programmes of rural development and implementation. Panchayati raj institutions have to be activised and given all the support needed so that they can become effective organizations to handle people's problems. Elections to these bodies should be held regularly. It is also necessary to encourage voluntary agencies, with informed idealism, operating in rural areas, in every possible way\textsuperscript{170}.

For the first time in history a planning institution was proposed at the lower level as part of policy making by local government institutions. The district should be the basic unit for policy planning and programme implementation. The zilla parishad should, therefore, become the principal body for management of all development programmes which may be handled at that level\textsuperscript{171}. Panchayati raj institutions at the district level and below should be assigned important role in respect of planning, implementation and monitoring of rural development programmes. Some of the planning functions at State level may have to be transferred to district level for effective decentralized district planning.

Role of a powerful elected political administrator at district level was recognised by the Committee. Scope and relevance of more participatory bodies and smaller units with higher rate of public involvement in developmental administration was accepted by the Committee. The President of the zilla parishad may be directly elected for a term co-terminus with the zilla parishad, or for one year each on the Mayoral pattern. The

\textsuperscript{170} See Report of the Committee on Administrative Arrangement for Rural Development and Poverty Alleviation Programmes, Department of Rural Development, Ministry of Agriculture, Govt. of India, New Delhi (1985)

\textsuperscript{171} Ibid see summary of recommendations.
work of the zilla parishad should be done by a number of sub-committees, elected on the basis of the proportional representation so that participatory democracy could be developed and encouraged\textsuperscript{172}.

Regarding financial allocations and distribution of funds the Committee suggested budgetary prescription at local government level. In this connection, the Committee recommended the introduction of the concept of district budget. It is desirable that it is brought into being as quickly as possible.

Department based programmes such as, compartmentalized activities, fragmentized fund distribution etc. create much restraints and constraints in decentralized development. The proliferation of development agencies and departmentalization and fragmentation of function should cease. But Rao Committee has no conclusive answer in this respect. State governments also had little interests in fund allocation to lower levels.

For effective decentralized governance, adequate functionaries must be present at local body level. Apart from continuous debate on this no fruitful effort was made for restructuring or redistributing officials till that time. The district level officers of the various functional/line departments will continue to handle the work relating to their respective areas. However, the schemes and programmes being implemented by them should form an integral part of the district development plan. There is also an urgent need for rationalizing the deployment of functionaries at the district level and below. Considering the task to be assigned to various levels of administrative set up at the district level and below the State governments may have to work out the staff pattern. In some cases there may not be significant augmentation of the strength; the requirements will be met by redeployment of the staff after necessary reorientation/training. Wherever additional staff requirement is involved, the State governments may send the proposals to the Centre.

Rao Committee considered the matter of strengthening and training of official and political functionaries in local bodies. Hence they have suggested for extending the existed training mechanism. A refresher / orientation training may be organized for the different functionaries engaged in rural development programme. For this purpose,

\textsuperscript{172} Ibid.
additional training facilities be created wherever necessary and the full cost thereof may be borne by the Centre.

Integration in rural development programmes

Rao Committee had functioned and evolved their recommendations through different group efforts. The first group was constituted to consider the existing organization set up for on-going rural development and poverty alleviation programmes and to identify structural overlaps and constraints so as to suggest new set up for planning and implementation of the programmes. The working group was led by Prof. K. N. Raj, Dr. M. L. Santhanam and Dr. V. L. Prasad. It was felt that the lack of integration between rural development planning and antipoverty programmes, as well as among various anti-poverty programmes themselves is a serious problem as it has created a good amount of confusion in the planning. A suggestion was made that the planning function for the district level should be done on the basis of a set of objective norms. It was suggested that as the intervention of politicians prevails at the State as well as at the district level, and as bureaucrats who are not objective in their planning decisions, planning should be strictly done by a well prepared formula which is prepared by experts and finalised only after the discussions in the State Legislative Assembly. Planning at all the levels - district, block and village-should be done strictly on the basis of such a formula. If little money is left with local authorities, it should be used for filling infrastructural and other gaps. Also, a need was felt for exchange of information and interaction among various state governments. It was felt that the National Development Council should take up this clearing house role effectively.\footnote{Ibid See Working Group Reports}

Structure and constitution of panchayati raj institutions

Regarding the structure, organization, constitution, functions and powers, there was no uniformity among the decentralized government system of different States. Considering the diverse experiences of States regarding panchayati raj institutions, it was felt that no uniform set of recommendations can be made in this respect. Some States (a few) did not have panchayati raj institutions, and some others did not have happy experiences with them. In Gujarat and Maharashtra, for example, the panchayati raj setup exists and it appears to be functioning well as the panchayats are helping...
agricultural and related development. However, there the panchayats do not represent the interests of the poor and, therefore, should not be involved in planning and implementation of development programmes in a direct fashion. On the other hand, a few States do have elected panchayats who are in a position to undertake development activities for the poor. These panchayats should be involved in district and lower level planning in those States. It is, however, not desirable to keep elected bodies out of the planning process altogether even in the States where panchayats are not doing well. It was suggested that in these States plans should be prepared by experts on the basis of objective norms and it should be put to the panchayats for their consideration. They should be allowed to make modifications if they could justify them.\textsuperscript{174}

**Administrative and organizational changes**

Expected changes in decentralized governance cannot be evolved through structural changes alone. Attitudinal reform was also essential. Administrative improvement cannot be brought about merely by increasing the strength of the staff, but it will come only if the staff is prepared to undertake programmes to fulfil the social objectives of plans. Improvement in the quality and the morale of the staff is essential in this context.

1. Some suggestions were made to improve the performance of the staff in anti-poverty programmes. The first suggestion was regarding better follow-up and better monitoring of programmes. Poverty cannot be removed by one shot only, continuous follow-up is necessary. The second suggestion was regarding development journalism. It was felt that this kind of journalism may improve the monitoring from outside the government.

2. There is an urgent need to strengthen the staff of development administration at all levels in terms of quality as well as in terms of number. It was suggested that as VLWs at present are over-burdened, their number (both territorial and functional VLWs) should be fixed with respect to the population covered by them. Women should also be properly represented in the total strength of VLWs.

3. There is a need to improve the professional expertise, including planning expertise of development administration. It was suggested that number of extension officers in agriculture, animal husbandry, forestry, industries, irrigation, energy, etc. should be raised and the strength of junior engineers.

\textsuperscript{174} Ibid.
should also improve. It should be seen that the professionals sent to rural development departments are really competent and are not transferred to these departments as a punishment.

4. In this context, a suggestion was made that the involvement of professionals from outside the government should be allowed as enough expertise is not always available within the government.

5. In order to improve the performance of the staff it is necessary to avoid frequent transfers. An officer should be allowed to remain in an office for at least a few years (norms should be fixed about this) so that he is able to produce some result. It should be noted that all these changes do not necessarily mean a big increase in the staff. Sometimes it may mean cutting down the staff also.

6. To improve the performance of the development administration, it was felt that there was a need to improve the data-base at the district level. A view was expressed that it was possible to generate enough data through some efforts even today. However, some others feel that there were some important gaps in the available data which needed to be filled in. These gaps were identified as data regarding details of water table and water potential, unemployment and poverty, and inflows and out-flows of human beings (migration) and of commodities are not available. In this context, it was suggested that there was a need to redesign the NSS sampling so as to make the data on unemployment and poverty available at the district level. The need for improving the accuracy of data was also pointed out by some.¹⁷⁵

Role and functions of panchayati raj bodies and their relationship with other administrative set up was highly relevant to analyze this aspect. Yet another working group of experts was constituted in the leadership of Dr. M. L Dantewala. Quite a few State governments adopted the panchayati raj system with minor variations. But only two or three States achieved some degree of success in the process of decentralization both in planning and administration. Gradually however, many States have abandoned the system and those which still adhered to the idea of decentralization deflated the importance of panchayati raj organization and substituted it with bodies having representation of state leadership and the district level bureaucracy. The decline in the status and authority in the panchayati raj system was attributed to reluctance of the

¹⁷⁵ Ibid.
political leadership at state level to share power with district leadership. The latter was viewed as a rival focus of power which would compete with the former in future elections. It was also mentioned that the district bureaucracy was also not reconcile to serve under the control and direction of the zilla parishad leadership. Of late, there appears to be a revival of the idea of decentralization. This is probably a consequence of the experience gained from a large number of rural development and poverty alleviation programmes.

During that period, most of the States have considered local bodies as instrument to deal with local people. States were not ready to pool funds or functions to local governments. Only two states, Karnataka and West Bengal, appear to have put their full faith in devolution of planning authority on the panchayati raj system. A study of what has been put through in West Bengal since 1978 and what is intended in the Karnataka Bill, expected to receive the President's assent in the near future, reveals the following basis features:

1. In both States, the chairman of the zilla parishad is from amongst the directly elected members.
2. In Karnataka, there will eventually be only one-tier below the district, viz the mandal panchayat. In West Bengal, there are two tiers: the panchayat samitis at the block level and the gram panchayats.

The working group was of the view that decentralized planning bodies (zilla parishads) should have enough freedom to plan according to their perception of local development potential as well as constraints.

There are two other parameters within which they will have to work. These are,

1. In an unequal society sharply divided in terms of access to assets/skills, direct election will be greatly influenced by money power and we may get a so called representative leadership with doubtful commitment to poverty alleviation and elimination of exploitation of the poor. Under such a situation, some instruments / arrangements may be necessary to safeguard and protect the interest of the poor.

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176 Ibid. See Report of Working Group II
177 Ibid
2. An autonomous planning body (like the zilla parishad) may be tempted to prepare plans much beyond the availability of financial resources which are mostly derived from 'outside' sources, i.e. not raised by own efforts. Such extravagant demands when not satisfied would provide a cause for conflict. Likewise, such a planning body may not like to adhere to certain accepted rational priorities. If a large number of district planning bodies ignore these priorities, the cumulative state plan may turn out to be highly divergent from the one which is in the interest of the state as a whole. Hence, such of the autonomous district planning bodies will have to work within the broad sectoral allocations determined at the State level.

i) Each State should have an inter-district council, analogous to the inter-state council contemplated in article 263 of the Constitution, which should serve as a forum for discussion of inter-district as well as State-district problems and for evolving State-wide consensus on basic policies and priorities, especially in respect of problems of the poor and of weaker sections generally.

ii) Each district should have an ombudsman to whom individual citizens, or groups, can approach for redress of grievance arising out of alleged maladministration by the zilla parishad. A provision for this effect should be included in the panchayati raj legislation of each state. The possibility of the collector being empowered as ombudsman, where he is not a functionary of the zilla parishad (as in West Bengal), could be explored.

iii) Panchayati raj institutions below the level of zilla parishad will be different in different States, the inter-face between these and development staff below the level of district heads will need to be worked out State by State, keeping in mind the principle of accountability to the people's representatives.

Apart from few concerted efforts made by certain States there was no momentum in local governance agenda in India. For a long period of time, lack of constitutional mandate, weaker political perspective, non-trustworthy attitude of opinion makers, resistance from bureaucracy, less enthusiasm from community organizations etc. caused such a situation.
4.4 L. M. Singhvi Committee

Once again, the Government of India came out with the constitution and appointment of another expert body to investigate and submit suggestions on democratic decentralization. Hence the committee in the chairmanship of L.M. Singhvi was established for the said purpose. The said committee was entrusted to examine Integrated Vision of Democracy, Ascent and Ennui of Panchayati Raj Momentum, Causes of Decline, An Approach to Conceptualization, Need for Constitutional Protection, Party Politics and Panchayati Raj, Nyaya Panchayats, A Plea for Integrated Administrative Structures etc.

The concept of panchayats was a part of the philosophy of *Purna Swaraj* and *Gram Swaraj*. Mahatma Gandhi and Jawaharlal Nehru breathed into those concepts and inexorable and practical patriotic impetus during the era of struggle for independence. Indeed, at the time of our Constitution, the concept of village panchayats was not a remote and hoary historical concept. It was a part of the legacy of India's struggle for freedom and its quest for its own traditions and identity[^178].

Singhvi Committee was of the view that it has been a fundamental error to regard panchayati raj institutions primarily as tools for administrative programmes and development projects. That error had the effect, in greater or lesser measure, of devaluing and downgrading the role of these institutions as units of self-government and relegating them to a secondary position, harming and hampering both democracy and development.

Singhvi Committee pointed out that initially democracy and development seemed to march hand in hand. There was climate of optimism and resurgence, but within a few years of the inauguration of the new era, panchayati raj institutions began to sag, stagnate and decline.

The potential of panchayati raj institutions as centres of people's power aroused apprehensions and a jealous hostility all around. Elected representatives in Parliament and State legislatures saw with dismay their inevitable dependence on panchayati raj

functionaries with whom they were not quite willing to share power. There was public apathy and indifference and a perceptible weakening of political will to support these institutions on a priority basis. There was chronic insufficiency of resources at the disposal of these institutions. Most of the institutions had to function in a hand to mouth predicament in a state of perpetual neglect and humiliated impoverishment. The bureaucracy was becoming alienated after the initial phase and had begun to resort to systematic by-passing of these institutions. Programme after programme was launched without involving panchayati raj institutions in them. These programmes have become close preserves of bureaucracy undermining and frustrating the panchayati raj institutions as units of self-government. Facilities for training were meagre. Research and reform inputs were negligible. Political factionalism and certain public disenchantment with these institutions weakened them further and these institutions failed to nourish themselves from the reservoir of people's power because grama sabha as a basic institution did not become a living and pulsating reality. Corruption began to creep in. What is worse, elections to panchayati raj institutions were not held for years together. Elected sarpanches and panches and other panchayati raj functionaries were suspended and panchayati raj institutional were superseded frequently and indiscriminately.

Unfortunately, the elected political elite as well as the entrenched bureaucracy saw in the emerging leadership of panchayati raj institutions a competing cadre with whom they were not particularly anxious to socialise or cooperate. The State governments which were primarily responsible for nurturing these institutions began to look askance at them. Not surprisingly, these institutions also suffered from benign neglect at the national level, although occasional expressions of concern were not lacking. These expressions, however, proved to be cries in the wilderness.

This Committee was of the view that panchayati raj institutions declined because of lack of conceptual clarity, absence of political will and denial of national priority, lack of continuous process of research, evaluation, feedback and correction at these institutions.

The quantitative and geographical expanse of panchayati raj institutions throughout the country is not necessarily an asset, unless steps are taken to change the orientation. These institutions can be turned to good account but there are Augean
stables which cannot be cleansed except by turning the waters of the river Alpheas through them. The concept of grassroot democracy for its own sake and the concept of development as an integral part of self-government can be durable inputs of catalysis and catharsis to make panchayati raj institutions fully effective and credible.

**An approach to conceptualization**

To realize local self-governance system in India, an absolute reconceptualization is essential. Here Singhvi Committee conceptualized the panchayati raj institution as basic units of self-government. The Committee took villages and grama sabha as republican base of democratic nation. The Committee considered the grama sabha the embodiment of direct democracy.

The Committee opined that the concept of panchayati raj institutions must draw inspiration from quintessential concept of gram swaraj. That is the explicit mandate and background of article 40 of the Constitution. The Committee was of the view that the concept of village panchayats as units of self-government is central and integral to the constitutional mandate and is vital in terms of the living rural reality. The villages may be reorganized and many of them may in the process be grouped and enlarged in order to make for more viable village panchayats and enlarged villages should continue to be primary and homogenous units of self-government with a measure of direct democracy.

The demographic size of the area is no doubt relevant to the effective transfer of technology, organization of services in respect of health, education, agricultural and industrial sectors and other welfare activities. Rationalization of territorial limits and demographic size is a highly desirable goal in the on-going process of democratic self-government, technology transfer and economic development. Village reorganization on the basis of relevant criteria which should take into account factors of identity, continuity, contiguity, homogeneity, communications and techno-economic, demographic and cultural factors. There is a case for larger and more viable village units. The task of delimitation of reorganized villages should be performed preferably by a commission in each State under the mandate of a legislation on the basis of clearly enunciated criteria, the application of which would have to be carefully balanced in the light of public representations and popular proclivities. However, there must be caution against the concept of large federal mandal units with numerous hinterland village as basic units of self-government. Even though federated mandals may appear to be
administratively more efficient from a planning point of view, they will be democratically less self-sufficient and less self-reliant.

The panchayati raj institutions should be organized as part of the process of democratic decentralization for building up the institutional edifice from the grassroots upwards and not as gift of devolutionary process. The panchayati raj institutions have to be viewed as institutions of self-government which would naturally facilitate participation of people in the process of planning and development flowing from and as a part of the concept of self-government. Development planning should be democratic planning. The bureaucratic structures and devolutionary strategies cannot achieve people's participation in a meaningful manner.

The operational dynamics of panchayati raj should be directed to achieve community and social mobilization, transcending the barriers of caste, religion, sex and disparities of wealth and surmounting social disabilities and disadvantages. The panchayati raj institutions should become vehicles for homogenization, secularization and socialization of national ethos. This has to be a conscious process through specific programmes and by an effective utilization of media of mass communications.

Need for constitutional protection

During the initial decades of independence it may be a reality to abstain from such a constitutional mandate, it became essential in the later period to incorporate constitutional provisions regarding local governance. Most of the committees and commissions in this respect have pointed out that message. Hence Singhvi Committee envisaged and recommended that local self-government should be constitutionally recognized, protected and preserved by the inclusion of a new chapter in the Constitution. Local self-government and more particularly, panchayati raj institutions, should be constitutionally proclaimed as the third tier of government. The broad framework and content of constitutional amendments which were drafted several years ago in 1974-75 by a committee under the Chairmanship of Dr. L.M. Singhvi may be taken as starting point. The Committee was of the view that a separate chapter should be added to the Constitution so as to make identity and integrity of the panchayati raj institutions reasonably and substantially inviolate.
The peculiar phenomenon of elections to panchayati raj bodies not being held for years after the expiry of their statutory terms in most States adequate remedial mechanism has to be prescribed by the Constitution itself or by corresponding legislation. The magnitude of delay in holding elections was shocking as well as staggering in many cases. Without the renewal of mandate, the panchayati raj institutions became empty shells or mere wire pulling mechanisms. An electoral mandate is evidently the life breath of a democratic institution. To deprive the panchayati raj institutions of that life breath was to suffocate and asphyxiate them.

The elections to panchayati raj bodies should be held promptly at the end of the specified term. A constitutional provision should be made to ensure regular, free and fair elections for panchayati raj bodies and the task should be entrusted to the Election Commission of India operating through State Commissions or similar apparatus. No panchayati raj institution should be allowed to remain superseded for more than six months. These elections should be held on the basis of the electoral rolls prepared for the Lok Sabha and the State Assemblies.

In order to avoid apprehensions and charges of political bias or interference, it would favourably consider recommendation for a panchayati raj judicial tribunal to be constituted in each State to adjudicate controversies in relation to elections, suspensions, supersessions, dissolutions and other matters relating to the working of panchayati raj institutions and its elected personnel.

The ways and means should be found to ensure the availability of adequate financial resources for panchayati raj institutions to function effectively. The institutions of local self-government have often been reluctant to raise revenue resources through taxing powers. A pattern of compulsory and optional levies and a list of subjects in respect of which powers to levy taxes and fee may be entrusted to panchayati raj institutions with a provision that for a given period, the State governments shall levy and collect on behalf of panchayati raj institutions and shall disburse to them, on the basis of the recommendation of Finance Commission in each State. The Finance Commission appointed by the Union Government should make an adequate earmarked provision for panchayati raj institutions. The resources budgeted for various rural development and poverty alleviation programmes should be routed through panchayati raj institutions which would as a result gain in authority and effectiveness.
Party politics and panchayati raj

Political parties do perform pivotal role in the democratic governance system. The Union and State level election process was established on the basis of party politics and partisanship of elected members in the houses as well as cabinets, whereas in local government institutions with direct democratic involvement of general public such predominance of political affiliation and affinity may cause some hardship. L. M. Singhvi Committee was of the view that it was neither practicable nor desirable to injunct the participation of individuals associated with political parties in panchayati raj institutions by law. If a consensus was not reached and if elections are held, it does not decisively change the situation merely to provide by law that no party symbols will be allotted in the elections, so long as parties in fact remain active in the electoral process. Indeed there was something to be said in such a situation to allow the cleansing symbolisis of open electoral competition and contest which is otherwise a part of national politics. The Committee felt that the role of political parties or self-denying self-restraint by political parties in that respect has to be evolved by a consensus among the political parties rather than making it a subject matter of legislative prohibition. The issue was thrashed out by the Prime Minister who in the National Development Council and in consultation with leaders of different political parties.

Nyaya panchayats

Policy formulation and legislative functions are not transferred to the local bodies even today in India. Similarly judicial functions and powers are not provided to local bodies. Some sort of experimentation in this regard was made by the Karnataka State through its 1983 nyaya panchayat legislation. The institutions of nyaya panchayats are valuable aid to the development of social habits of self-government and rule of law. Nyaya panchayats should be entrusted with functions of mediation and conciliation in addition to adjudication. The Singhvi Committee suggested that there may be a nyaya panchayat for a cluster of villages constituted by election or appointed from a special panel to be prepared for the purpose. In addition, each party to the dispute may be permitted to choose a nyaya panch from a panel to be presided by a professional judge as in the case of arbitration proceedings. Alternatively they may be elected by a consensus in primary panchayat units so far as possible. It was suggested that appropriate qualification and training may also be prescribed and permanent staff
for keeping records and for service of notices and summons should be appointed. The full implications and ramifications of the recent recommendations of the Law Commission in respect of another variant of local judiciary are in the form of gram nyayalayas.

**A plea for integrated administrative structures**

Another area of consideration was administrative system, institutional mechanism, performance assurance and evaluation of the local governance at the lower tier of the State. The administrative structures for planning and development should be dynamic and independent and should at the same time be integrated with institutions of local self-government losing their dynamism and independence. The principal technical and administrative officers of various specialized departments along with their line formations should be part of the organizational and administrative structure of the zilla parishad. The district development commissioner would be the chief executive officer of zilla parishad. The district development commissioner should be entrusted with the task of assisting in coordinating the planning and implementation activities of various departments, agencies and institutions at the district level. Officers of high caliber, proven competence and sympathy for panchayati raj institutions should be detailed to function as panchayati raj officials. The Singhvi Committee recommended that every official in the administration should be made to work in panchayati raj and rural development setting so as to sensitize public administration to the problems of rural India. It was emphasized that the administrative structures should not be top-heavy and the administrative personnel should be made aware of the importance of panchayati raj institutions and their accountability to them generally. Their strong view was substantial training, research and public education inputs should be provided to strengthen the panchayati raj institutions and the performance capabilities of those who are called upon to function as voters, elected representatives, administrative officials and voluntary workers in relation to panchayati raj institutions. Voluntary institutions should be given the pride of place in providing these inputs. It would be the most productive and profitable investment in democratic institution building. On the ground of detailed consultations and interaction the Singhvi Committee agreed to prepare model legislation within the framework of the proposed new chapter in the Constitution. It should be prepared with sufficient scope for appropriate local adaptations. The National and State level local self-government institutes, and centres for training at the
district level, should be established and entrusted with training, evaluation and research responsibilities particularly in relation to panchayati raj and urban local institutions. The institutes and centers should also be a clearing house of information relating to local self-government and should monitor and report developments in that field. They were of the view that the proposed National Institute of Local Self-Government should, in respect of its research and evaluation functions, utilize universities, research bodies and voluntary organizations such as All India Panchayats Parishad which should have a consultative nexus with it and which would be an invaluable resource for dissemination of information as well as for proper motivation.

As on examination, more committees and commissions can be identified and appraised in this sector. The 1989 law on panchayat raj was formulated upon such informations, whereas that was rejected by the parliament due to technical reasons, which may defeat the cardinal objective of such a law making. Subsequently those drawbacks were remedied for an interim period only. Visible changes were happened only after four decades of our constitution and the local governance system within the country.

4.5 V. Ramachandran Committee Report

After three decades from the first Administrative Committee Report (ARC Report) which introduced a proposal for District Administration System in Kerala, as part of decentralization of democratic power, no effective measures were taken for the same\(^{179}\). Whereas in 1987, the then State Government has resolved to initiate practical steps to introduce district administration system in the State. As a result, the government has appointed a high power committee in this respect in the chairmanship of V. Ramachandran, IAS.

It is a truism that it is difficult to get the right political decision taken to devolve powers to local governments. But, it is not often realized that the political decision gets delayed, mostly, not due to the lack of political will to part with power but due to lack of clear understanding of what decentralization is all about resulting in a fear of the unknown. Moreover, even where the political decision has been taken, the process of devolution of powers has often been stalled due to plain ignorance about “doing”

decentralization, that is, absence of capability to envision the process and inability to structure the step by step procedure. In a sense, administering decentralization is far more complex and uncertain, demanding greater commitment and wisdom, than taking the decision to decentralize administration.

Even after the constitutional amendment mandating a local government system and decentralized planning for local development, one gets a feeling that the progress is slow indicating absence of vision of what to do and how to do.

When dealing with the subject of democratic decentralization, one is not writing on a clean slate. The subject has been under discussion for long, five Bills were moved in the Legislative Assembly from 1959 onwards and two of them were considered in detail. The Kerala District Administration Act was finally passed in 1979 and received the President’s assent on May 18, 1980. When steps were taken for implementation of the Act immediately thereafter, some difficulties were faced and major reservations were also expressed by a number of persons on the powers and functions entrusted to the district councils under that Act. Opinion on the subject ranges from one end of the spectrum to the other – from those who do not see the need for any democratic decentralization to those who would like full-fledged ‘district governments’ to be established.

There is no doubt that without changes in the political and administrative culture, democratic decentralization will not take place. For it to succeed, changes are also necessary in the local bodies’ culture as well as in the general culture of dependence of the people on government for everything.

While there have been strong centralizing trends during the last 50 years as explained in the study, it is also true that state level political leaders recognize the need for some decentralization when they receive petitions from the people on all manner of subjects and when it is found that the people have to approach a minister at the state level to get even a small matter attended to. Senior officers also bemoan the fact that they have to spend most of their time dealing with minor matters, which should be attended to at local levels and they do not have sufficient time to devote to more important questions of policy and management. It would appear that contradictory pulls have been at work on decision-makers and that the centralizing pulls have won so far.
With the progress of development and increasing complexity of administration and rapid growth in the responsibilities of government, the need for decentralization has become urgent. Assuming that there is the necessary political will for decentralization, a major structural reform of this magnitude cannot be implemented successfully without a major reform and reorganization in the services. Every State Government employee is now a component of a vertical organization from the State to the panchayat level. A substantial number of the category of employees will have to be brought under the district council and they will have to work together under it. Their conditions of service and status as government servants will, no doubt, be protected, but since even very minor changes are resisted, the resolution of matters relating to the services in the context of democratic centralization will call for a higher degree of political will and courage than is demanded by the process of decentralization itself. Unless, it is forthcoming, the ship of decentralization may well founder on the rock of service problems.

An overseeing on Evolution of Decentralization

Traditionally, panchayats were self-governing units in the country exercising overall control over the life of the people of the village. They were not democratic in the modern sense and considered mainly of elders of different castes. There were also panchayats for each caste which enforced the caste rules and code of conduct and awarded punishment if in case of transgression of such rules and norms. The panchayats and the people of the people the village did not, of course have any voice in the overall governance of the territory or the region. When king and rulers changed and imposed their rule on the people, the village and panchayat continued as basic unchanging units looking after a major part of their social and economic life.

Several of the earlier of powers of the panchayats had been taken away and they have brought under the control of supervising officers severely restricting the rights of the people. During independence struggle, Mahatma Gandhi stressed on the village as the basic rule of India with full-fledged panchayat system.

The Gandhian constitution of free India, drawn up under the imprimatur of Mahatma Gandhi and which envisaged the five-tier system stated as follows:
“The higher panchayats will tender sound advice, give expert guidance and information, supervise and coordinate the activities of the village panchayats with a view to increasing the efficiency of the administration and public services. But it will be the basic units that would dictate to the centre and not vice versa. In fact, the whole system will be turned upside down – the village shall become the real and moving unit of administration.”180

However, even when the popular Governments came to power in British India following Government of India Act, 1935, the basic structure of the laws regarding panchayats, municipal and local boards was not changed. The problem was one of reconciling the requirements of modern government and development with the Gandhian concept. These problems in varying forms remain even today.

Soon after independence, the All India Congress Committee in a resolution stated that the congress objectives observed as follows:

“Political independence having been achieved, the Congress must address itself to the next given task, namely, the establishment of real democracy in the country and a society based on social justice and equality. This can be realized when democracy extends from the political to the social and economic sphere. Democracy in the modern age necessitates planned central direction as well as decentralization of political and economic powers, in so far as this is compatible with the safety of the State, with efficient production and the cultural progress of the community as a whole. The smallest territorial unit (the village) should be able to exercise effective control over the corporate life by means of popularly elected panchayat.181”

The question of the role to be assigned to panchayats was obviously a subject for discussion while drawing up the Constitution of India. The first drafts of the Constitution did not make any reference to panchayats at all. Dr. Ambedkar, one of the principal draftsmen of the Constitution applauded the fact that the draft Constitution had “discarded” the village which he damned as “nothing but a sink of localism, a den of ignorance and narrow-mindedness.” Gandhiji on the other hand observed: “it is

180 Malaviya A. D, Village Panchayats in India, All India Congress Committee New Delhi (1956) p. 249
181 All India Congress Committee Resolution, November 1947
certainly an omission calling for immediate attention, if our Independence is to reflect the people’s voice. The greater the powers of panchayats, the better for the people.”  

Finally, the Constituent Assembly included the following provision in the Directive Principles of State Policy:

“The State shall take steps to organize village panchayats and endow such powers and authority as may be necessary to enable them to function as units of self-government.”

The only other mention of Local Government Institutions in our Constitution is in List II (State List) of the seventh schedule, listing the fields of legislative and executive jurisdiction of states. This entry reads as follows:

Local government that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

The local government institutions are thus creatures of the state legislatures and their existence and functions depend on the decisions that state governments and legislatures take from time to time. Several proposals have been made over the years for making substantive provisions in the Constitution regarding a local government structure in the states and ensuring timely elections to local government institutions.

Decentralization in other parts of India, a bird’s eye view

As part of the planned development programme and co-operative movement in independent India, it was suggested that the district administration should be re-organized in order to provide for, among other things, linking up in relation to all development work of local self-government institutions with the administrative structure of the state governments. It was pointed out that so long as local government institutions were not conceived as part of the same organic constitutional and administrative frame-work, the structure of democratic government provided by the constitution at the centre in the states would remain incomplete.

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182 Harijan, December 21, 1947
183 art. 40 of the Constitution of India, 1950
184 Item 2 List II, Schedule 7 of the Constitution of India, 1950
The Grow More Food Enquiry Committee made several recommendations for increased food production, organizationally, it stressed the need for an integrated structure for rural development and recommended the establishment of a development block for 100-120 villages (the small traditional Indian villages) under the charge of a Block Development Officer, assisted by technical officers in agriculture, animal husbandry, co-operation and engineering and with village level workers at the rate of one for 50-10 villages. The Committee made recommendations for an integrated structure at the district level also, under the chairmanship of the Collector. These recommendations were given concrete shape with the launching of the community development programme, which was implemented through the National Extension Service and covered the entire country within a few years. The Development Block was created as the basic unit for integrated rural planning and development comprising agriculture and allied activities, education, health, social welfare, communications, supplementary employment etc. with special emphasis on self-help and public participation. A schematic budget was indicated. There was common staffing pattern and the programme was meant to be executed in three stages.

The planned development programme emphasized that the proposed democratic structure in the districts should satisfy two essential conditions. “In first place, the functions of the popular body should include, if necessary, by stages determined in advance the entire general administration and development of the area other than such functions as law and order, administration of justice and certain functions pertaining to revenue administration.

The second condition was that for small areas within the district or the sub division such as development blocks or the taluks, sub committees of the popular bodies should be assigned with clear functions in the implementation of local programmes185.”

From 1959, for a period of five to six years, the panchayat raj institutions started in many states as mentioned above, functioned with varying degrees of powers, functions, autonomy, and efficiency. The Intensive Agricultural District Programme (IADP) had already been started in 1960 in selected districts involving vertical control of agricultural staff at the field level. The Intensive Agricultural Area Programme (IAAP) and the High Yielding Varieties Programme (HYVP) were started in 1965. As

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185 See Second Five Year Plan document, 1956
pointed out by G. V. K Rao Committee, these developments had two simultaneous results:

a. The community development programme itself lost much of its earlier cohesive force and yielded to what may be called a conscious disintegration which was accompanied by falling budgets and the takeover of the much of the staff by the respective line agencies; and

b. Even though the intensive efforts in agriculture led to the Green Revolution, the benefits of this remained largely confined to the larger farmers and areas which were better placed to receive the benefits of the HYV technology package.\(^{186}\)

The Committee recommended a two-tier system, with the district as the first point for decentralization below the State level. Below the district level, it recommended that development management could be best achieved by grouping a number of villages to constitute mandal panchayats. It recognized the existence of other tiers at the block (taluk) level and village level in some States and suggested gradual conversion to a two tier system in such States.

**Efforts in Kerala for Democratic Decentralization**

The Government gave top priority to administrative reforms and constituted a Committee on August 15, 1957 headed by E. M. S. Namboodiripad, the then Chief Minister, for examining the working of the administrative machinery, assessing its adequacy and suggesting measures for improving its efficiency. The terms of reference of the Committee, inter alia, covered the following:

"(iv) to suggest measures for decentralization of powers at various levels with a view to expeditious despatch of government business;

(v) to suggest methods for democratization of the organs of Government at various levels with a view to effective participation of local self-governing institutions or other representative bodies in the administration.\(^{187}\)

In its report submitted on July 26, 1958, the Committee recommended the strengthening of panchayats in the State as viable and basic unit of administration and

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\(^{186}\) The report of the Committee to review the Administrative Arrangements for Rural Development and Poverty Alleviation. Department of Rural Development, Ministry of Agriculture, Govt. of India (1985)

\(^{187}\) First Administrative Reforms Committee in the State of Kerala appointed on 15th August 1957.
development at village level, including the collection of land revenue as agents of the
government. Above the Panchayat, the Committee recommended the reconstitution of
taluks and blocks in such a way that revenue and development functions could be
combined at the level of the taluk in one office. An Advisory Council formed by
indirect election and replacing all ad hoc committees was suggested to be formed at the
reconstituted taluk level. As regards the district level, there were two views in the
committee and both were set out in the Report. One view was that with the
strengthening of the Panchayats, which would be relatively large-sized in the State, it
was enough to have a district council with the Collector as the Chairman and which
would function as an advisory and co-ordinating agency in matters of development. The
other view was that a district council with executive functions should be constituted by
direct election with a non-official President and non-official Vice President. All the
district officers of development departments would be members of the council without
the power to vote. The Collector was not to be a member but was to be kept informed
the progress of work from time to time. It was suggested that the implementation of the
reform might be undertaken in three stages as follows:-

"First Stage – The District Councils should function as the agents of Government in
respect of all development work – both social service and production – exclusively
pertaining to their sphere and generally direct coordinate, supervise and review the
activities of the official and non-official agencies in the district in this regard.

Second Stage – They will take over and assume full control and responsibility over the
social services branch of development, continuing to function as in the first stage in
regard to other items of development work,

Third Stage – They will assume full authority over development work in the district
except the very important schemes which may be specifically retained in Government's
direct control and function as full-fledged local self-governing units for their area."\(^{188}\)

Following the recommendations of the Administrative Reforms Committee, a
Kerala Panchayat Bill was introduced on December 9, 1958. Later, the Kerala District
Councils Bill was introduced on April 16, 1959 by the then Chief Minister. The basic

\(^{188}\) Report of the Administrative Reforms Committee, Government of Kerala, 1958 Vol.1, Parts I & II
The principles of the proposed legislation were listed as follows in the Statement of Objects and Reasons:

"(a) A District Council will be set up for each revenue district;
(b) The District Councils will consist of members representing the municipalities elected from among the councils, members elected on the basis of adult franchise from non-municipal areas and official members comprising officers of Government connected with the planning and execution of development schemes in the district who will not have the power to vote or move any resolution;
(c) There will be reservation of seats for Scheduled Castes and Scheduled Tribes;
(d) The number of non-official members of the District Council range from 15 to 30 according to population; and
(e) The term of office of the District Council will be the same as the Panchayats, namely, five years.\(^\text{189}\)

The functions of the District Council were to cover development matters, to be progressively changed from agency functions to full-fledged executive functions in three stages, as recommended by the Administrative Reforms Committee.

Whereas neither the Panchayat Bill, 1958 nor the District Councils Bill, 1959 could, however, be enacted into law as the Legislative Assembly was dissolved on July 31, 1959.

During 1960 and 1961, when Pattom A. Thanu Pillai was Chief Minister, the Kerala Panchayat Act, 1960, the Kerala Municipalities Act, 1960 and the Kerala Municipal Corporation Act, 1961 were enacted unifying the existing laws in the Malabar and Travancore-Cochin regions of the State and enlarging the functions and financial resources of the local bodies. As regards the Kerala Panchayat Act, the Statement of Objects and Reasons of the Bill observed as follows:

"The proposal is that the panchayat should be the only organization at the village level between Government and the people and that they should be the media through

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\(^{189}\) See Statement of Objects and Reasons, the Kerala District Councils Bill introduced on 16\(^{th}\) April 1959
which the villagers come into contact with the Government. In other words nothing that
takes place within the panchayat area should be done without the panchayats being
associated with it.

Provision has been made for entrustment to the panchayat the functions now
attended to by the village officers excepting the judicial functions exercised by certain
village headmen in the Malabar area. Where the functions are entrusted to the
panchayats the village staff would form part of the panchayat establishment. The
Village Officer would be responsible for the collection of panchayat revenue and land
revenue and the village assistants for the maintenance of land records and cultivation
accounts.

It is also proposed that panchayats should be entrusted with the responsibility of
control and supervision of elementary schools and of medical, public health work and
for the development of agriculture animal husbandry and cottage industries. The staff
now employed at the panchayat level of the Government for these purposes will work
under the control and supervision of the panchayats. The extent to which the panchayats
and Government officers may exercise control - administrative, technical and
disciplinary - over such staff will be clearly defined in the rules to be prescribed190.*

In accordance with the Objects and Reasons the Kerala Panchayat Act as finally
passed contained an impressive list of duties and functions191. The Act also provided
that the Government could authorise the Panchayats to exercise other functions such as
collection of land revenue, maintenance of survey and village records, collection of
village statistics, supervision and control over Government primary schools, medical,
public health, child welfare, maternity institutions and execution of community
development work including improvement of agriculture, animal husbandry,
communication and village industries192. Over the years, however, while the panchayats
could exercise most of their compulsory duties, only very few, if any of the
development functions were given to them and none of the responsibilities
contemplated in Section 58 of the Act were entrusted to them by any of the
Governments. In fact, by the amendments to the Kerala Panchayat Act as per the Fourth
Schedule of the Kerala District Administration Act, 1979, the development functions of

190 See the Statement of Objects and Reason, the Kerala Panchayat Act, 1960
191 See Section 57 of the Kerala Panchayat Act, 1960.
192 See Section 58 of the Kerala Panchayat Act, 1960
the panchayats are restricted by bringing them under the supervision and control of the
district councils. That amendment also removes from the provisions of the Kerala
Panchayat Act\textsuperscript{193}, the specific mention of collection of revenue and other revenue
functions\textsuperscript{194}.

In February 1964, during the ministry headed by R. Sankar a "Kerala Panchayat
Union Councils and Zilla Parishad Bill" was introduced in the Legislative Assembly.
The scheme of this Bill was on the lines of the recommendations of the Balvantray
Mehta study team and the Panchayati Raj set up introduced in States like Madras (Tamil
Nadu) and Rajasthan. The block was to be the basic unit of planning and development
in the State with an elected Panchayat Union Council with sufficient authority to carry
out the development tasks assigned to the blocks. At the district level an advisory zilla
parishad was proposed with the Collector as the Chairman and with non-official and
official members. The Chairmen of the Panchayat Union Councils were to be members
of the zilla parishad. The parishad would also advise the Government on matters
relating to local authorities. The bill could not, however, be proceeded with as the
Government fell within a few months.

The Administrative Reorganization and the Economy Committee headed by M. K.
Vellodi, which was appointed during the President's Rule in 1965, generally endorsed
the provisions of the 1964 bill with some suggestions and modifications regarding the
details of control, finance, etc. The Committee also observed that associated
membership for the members of the Legislative Assembly in an executive body like
taluk samithi "is likely to inhibit growth of local leadership\textsuperscript{195}.''

After a prolonged spell of President's Rule in the State, a ministry again headed by
E. M. S. Namboodiripad was formed in March 1967. The Kerala Panchayati Raj Bill,
1967 was introduced in the Legislative Assembly in August 1967. The Bill
contemplated essentially a two-tier system- panchayats at the basic level and at the
district level, zilla parishads with executive functions and some sources of revenue and
with some powers of supervision and control over the panchayats. The functions of the
zilla parishad contemplated in the bill were all developmental and were an elaboration
\textsuperscript{193} Ibid
\textsuperscript{194} See detailed discussion on the Fourth Schedule of the Kerala District Administration Act, 1979, in Part
II of the Report.
\textsuperscript{195} Report of the Administrative Reorganization and Economy Committee, Government of Kerala (1965-
of the provisions in the 1959 bill. The bill was considered in detail by a select committee which took evidence in a number of places within the State and also conducted a study tour of Maharashtra, Rajasthan and Andhra Pradesh with a view to learn how the concept of panchayati raj system was worked out and implemented in those States. The Select Committee submitted its report in August, 1968 and recommended substantial changes in the Bill. The Act itself was recommended to be called "the Kerala Local Government Act". Major modifications were made in the functions and powers of zilla parishad to be called district councils.

After the new Government under the Chief Ministership of C. Achutha Menon took charge in October, 1970, the "Kerala District Administration Bill. 1971" was introduced in the Legislative Assembly. The general structure of the bill was the same as that recommended by the select committee on the earlier bill in 1968. There was a greater elaboration of some of the provisions. In particular, a number of schedules were added to the bill providing for entrustment of Government's powers to district councils in 24 different enactments. The amendments were in the nature of an omnibus provision in each of the Acts, giving powers to the Government to delegate its powers, other than the general rule making powers, to the district councils. This bill also lapsed before it could be enacted into law.

A 'Kerala District Administration Bill' was again introduced in the Legislative Assembly on August 1, 1978 when A. K. Antony was Chief Minister. The structure of this bill was also the same as the 1971 bill, but the second schedule specifically listing such items as police administration, prisons administration, etc. was removed and the functions under 'administration of land revenue' were also restricted. The number of Acts with a general provision for delegation of Government's powers to district councils included in the schedules was increased to 30.

The Kerala District Administration Bill, 1978 as reported by the Select Committee and as finally passed by the Legislature in 1979 received the assent of the President on May 18, 1980 by which time a new Government under the Chief Ministership of E. K.

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196 Report of the Select Committee on the Kerala Panchayati Raj Bill, 1967 and the Bill as reported by the Committee. Government of Kerala 1969
Nayanar had come to power. The Kerala District Administration Act, 1979 (Act 7 of 1980) was published on May 27, 1980\(^{197}\).

The next Government under the Chief Ministership of K. Karunakaran came to power in May 1982 and it took some time to consider the implications of the Act. It was generally felt that certain amendments to the Act were inevitable before its implementation could be taken up. In 1984, it was decided that a Committee under the Chairmanship of the then Minister for Local Administration would consider the lines on which amendments to the Act had to be made\(^{198}\). The Government also decided that pending the amendment to the Kerala District Administration Act, 1979, preliminary steps will be taken during a period of two years, to transfer to the district level, through constitution of working groups, the sanctioning of district-level schemes and works and to bring about a greater degree of administrative co-ordination at the district and lower levels with emphasis on location-specific and area-specific development, so that it would be easier for the district councils, when formed to take up such items of work. Accordingly, the Government had issued a series of orders to bring about greater co-ordination of the implementation of development schemes in the district and had also delegated the function of preparation of schemes under the Special Component Plan to the district level. The Committee constituted for suggesting amendments to the Kerala District Administration Act did not, however, make any headway and no report was presented.

Following the general elections in March 1987, a new Government again headed by E. K. Nayanar came to power. The coalition of parties had stated in its election manifesto that the District Administration Act would be implemented. Apparently in the light of the various reservations that have been expressed from time to time regarding the provisions in the Act and in the light of the general opinion that the Act would have to be amended before it could be implemented, the Government have asked the V. Ramachandran Committee to advise on the measures to be taken for decentralization at the district and lower levels.

Decentralization means that the process of centralization will be reversed and that which is centralized will also be made over to lower levels to a certain extent.

\(^{197}\) Vide Notification No. 9154/Leg-C2/79/Law dated 27th May, 1980 in Kerala Gazette Extraordinary No.XXV/362 of the same date

\(^{198}\) Vide G.O. (Rt.) I317/84/LA&SW dated April 7, 1984
Centralization means greater concentration of powers and "functions at higher levels and withdrawal of the same from lower levels to a greater or lesser degree. During the last 50 years, centralization has consistently won over decentralization. How did this happen? That is the other part of the story. The political and bureaucratic mind set compelled us to continue with centralized governance system. To establish real democracy at the grass root level, instead of decentralization, genuine attempt for decentralization is essential.

At the minimum, common policies, priorities and targets have to be set and different units have to take note of them and act in the direction of their achievement. When planning is undertaken, as in our country, for development along the socialistic path with direct involvement of Government in many development and welfare matters and with public management of important segments of economic activity including a major part of the financial system, the degree of centralization becomes greater unless conscious steps to counterbalance it are taken. Even today the governmental activities envisaged and enforced under the centralized modus operandi due to economic and resources control in the hands of the higher level governments.

Development implies technological change and modern technology, at least until very recently, has been a strong centralizing force. Tasks which could be done entirely at the local levels when technology was simple become the responsibilities of larger organizations when technology became complex. Such functions, as 'lighting' and 'water supply' which could be handled entirely at local levels several decades ago became the responsibilities of larger organizations when electricity is to be supplied through a grid system from far away power stations and when large storage reservoirs have to be built for water. Nowadays, even 'garbage disposal' has become a complex task involving use of mechanical equipment, re-cycling and other processes. In such a situation, local units cannot be responsible for an entire 'subject'. They can perform only certain functions under each 'subject' appropriate to their level. It is important that they discharge such functions so that decisions are taken at the place and by the persons where and by whom the incidence of such action is directly felt. The tragedy is that even such functions were not assigned to them by the larger organizations. The nature, limit, ambit of functions, responsibilities and powers of each tier is not mentioned in the schedule of the Constitution or the concerned legislature. Hence there was no bonafide attempt to transfer any such powers or functions to local government institutions.
Most of the statutes and memoranda creating the Boards, Authorities and other organizations scrupulously avoid any mention of Local Government institutions and their responsibilities in these fields. 'Village Industries' is a subject invariably listed as one of the responsibilities of panchayati raj institutions. But, ironically, it was almost the first subject to be handed over to a National Commission as early as in 1953. There are State Boards in each State formed under a statute. The Acts creating these Boards make no mention of the role of panchayati raj institutions in the promotion of Village Industries. 'Water Supply' is also a commonly seen item in the lists of functions of panchayati raj institutions but the Laws creating Water Boards or Authorities do not assign any role to these institutions. The Kerala Act on Water Authority, for example, stipulates that even the existing systems under Local Governments will be taken over by the Authority by a particular date and that the powers of focal bodies regarding water supply will be treated as having been extinguished with such transfer. 'Construction and maintenance of field ‘channels' is an eminently suitable candidate for local attention but the Law on Command Area Development Authority makes no mention of any possible role for Local Government institutions. 'Housing' is a decentralized activity, but Housing Boards and Slum Improvement Boards have taken over even the existing powers of local institutions and even small schemes in the remote areas of a State are implemented by the vertical organizations of such Boards. The older Acts like those on Electricity provided for permitting local authorities to take up certain functions like distribution, but as a matter of policy the Electricity Boards and State Governments have not extended this to new authorities and the effort has always been to take away the function from the existing ones.

From the point of view of efforts at democratic decentralization, the result is that while 'subjects' were listed as vested in Panchayati Raj institutions in many cases, the actual powers, funds and the manpower were with an Authority, Board, Corporation or Society and not with the local Government. Restraints, controls and management were vested with the State and Central Governments. After 1990, considerable number of non-governmental and community based organizations also came to the picture as stakeholders.

The centralization trends have been pronounced in the field of access to resources. The revenue sources of local Governments are very few. They have hardly any access to capital resources. Since savings are centralized and loans are made available on a
project basis by specialized national level institutions (IDBI, NABARD, HUDCO, nationalized banks etc.) and the Central and State Governments are themselves severely constrained for resources, local Government institutions have to be content with small change. In many countries, capital outlay by local Governments is a substantial part of public capital outlay. Here, it is less than one per cent. Without functions, funds and functionaries, the decentralization became mere promise and propaganda of the rulers.

Though not connected with centralization, it has to be noted that in a democratic society, co-operatives have an important role to play. Many activities are organized on co-operative lines from the Village to the State and even National levels. One can cite the examples of several agricultural products - currently, a co-operative structure is being established in the State for coconut. Milk production and marketing have been successfully organized on co-operative lines. The relationship between Panchayati Raj institutions and co-operatives has always been a grey area. Even after five decades of local governance in Kerala, the co-operative institutions are not in par or in tune with the decentralization of democratic governance.

The omnibus nature of the amendments is open to the criticism of excessive delegation on grounds of being inappropriate (detailed study of the Acts shows that several powers should not be delegated) or insufficiently defined (the discretionary powers vested in the executive is vast in as much as either nothing may be done or everything could be done). Elected representatives do not have any executive, legislative or policy making powers than the status of an instrumentality of apparatus of the higher level governments.

In some cases, it is not the government's powers that are to be transferred to the district councils, but the powers of statutory authorities/boards. More enactments have to be amended if the listed functions like 'Rural water supply', 'Construction of field channels and field bothies', Village industries' are to be exercised by the district councils. Dual control and the dichotomy of functions, functionaries and funds created considerable blocks on the local governance process in the country.

It will be clear from the few examples that have been cited that both the list of 'matters and subjects' and the instrumentality for the entrustment of powers in statutory items should be reviewed carefully. This is done in Part II along with other provisions of the Act. It is necessary to reorganize the non-statutory functions and to be much more
specific regarding functions covered by statutes, keeping in view their appropriateness in each case, the present stage of development and the interests of laying a firm foundation for a major structural reform.

Paradoxically, the very conceptual generosity of the Kerala District Administration Act, the long list of 'matters and subjects' and the omnibus nature of the amendments to thirty Acts in the Schedules seem to have led to an operational paralysis, arising out of fears that they could lead to a 'withering away' of the state government and chaos all round. Such fears were clearly misplaced as many of the powers could not be exercised without parallel action on a wide front. Also, the Act gives the government powers to interfere with and stay any resolution, proceedings or act of the district council on the ground of examining its regularity or legality199.

The result is that a believer in democratization feels like the weak and thirsty man to whom a tank of water is shown at distance but whose legs are tied for fear that he would get drowned. He is unable to take a single step and gets perched and weaker while all that he needs are a few glasses of water and his legs to be untied so that he could pick up strength, walk up to the tank and enjoy it instead of getting drowned in it200.

**A local Government Structure for the State**

When discussing democratic decentralization, reference is usually made only to panchayati raj institutions by which are meant the District Councils (zilla parishads) taluk or block samithis, mandal panchayats and village panchayats. Urban local bodies like municipal corporations and municipal councils are generally left out. In a modern development setting involving urbanization, it is necessary to take note of the entire local Government structure below the State level and there is no reason why urban local government units should be left out of reckoning. It is through the establishment of a composite local government201 structure that democratic decentralization from the State to the district and lower levels can be brought about. It is necessary to decide upon and

199 See Sections 68 and 74 of the Kerala District Administrative Act of 1979
201 The term "local authorities" is frequently used, both in statutes and in common parlance, to refer to these bodies. All LGIs are local authorities, but all local authorities are not LGIs [vide Section 3 (31) of the General Clauses Act, 1897]. LGIs form an important and distinct group of local authorities and is to better to use the term 'local government' to denote them.
establish such a structure, in order to delegate powers and functions to different units in a rational and complementary way.

We have three well-established local government institutions (LGIs) in the State of Kerala - panchayats, municipalities and municipal corporations. There was also a township committee like Guruwayur and Cantonment Towns like Kannur. In the context of democratic decentralization the establishment of a District Council at a district level and a taluk samithi between the panchayat and district levels have been under consideration. There is general agreement about the need for a body at the district level, even though there may be wide differences about the nature and range of its functions from those who would like it to be purely advisory and monitoring body for development matters to those who would like it to be virtually a "district government" dealing with all subjects coming within the jurisdiction of the State Government at the district level. As regards the taluk samithi, the question has been raised by many whether such samithis are necessary in a State in which the districts are by now small and the panchayats are big (equal to the mandal panchayats in other States). Even the Kerala District Administration Act, 1979, visualises the taluk samithi only as a nominal body.

The efforts made in the country as well as in Kerala State towards democratic decentralization to the district and lower levels, during the last thirty years, were surveyed in detailed manner. In the light of the difficulties faced in making the powers and functions entrusted to district councils and panchayat samithies operational, an approach to the method of conferring powers on such bodies and entrusting functions to them was suggested. The various provisions of the Kerala District Administration Act, 1979 and its 33 schedules were examined in detail. Apart from amendments to several sections of the Act, a thorough revision of the schedules has been made. The First Schedule dealing with powers and functions of the district, council has been redrawn and detailed amendments proposed to 24 subject-matter enactments, so as to enable the district councils to exercise the powers and functions coming within the purview of those enactments.

One of the important matters to be considered under "administrative arrangements" is that relating to services. The enormity of the problems that may be faced while dealing with service issues was hinted. It was stated therein: A substantial
number of the State Government employees will have to be brought under the district council and they will have to work together under it. Their conditions of service and status as Government servants will, no doubt, be protected, but since even minor changes are resisted, the resolution of matters relating to the services in the context of democratic decentralization will call for a higher degree of political will and courage than is demanded by the process of decentralization itself. Unless it is forthcoming, the ship of decentralization may well founder on the rock of service problems. In making recommendations regarding services in implementation of such reforms, the sensitive nature of the issue and its potential for stalling the entire process has been kept in mind.

In case some of the recommendations are not accepted or some changes are made, the administrative arrangements will have to be suitably modified in accordance with such changes.

The sections of the Kerala District Administration Act as proposed to be amended, relevant to an understanding of the matters covered and the revised in it.

**Administrative arrangements at the State level**

V. Ramachandran Committee suggested that early decision should be taken regarding a composite local government structure in the State in order to decentralize powers to the district and lower levels. A Kerala Local Government (Structure and General Provisions) Act has been suggested to be enacted, laying down the structure of local government in the State and comprising general provisions regarding a common election body, electoral system, Appointment of finance commission, powers of the Commissioner for Local Government simultaneously with the amendments to the Kerala District Administration (KDA) Act.

- Special cell in Local Administration Department of the Secretariat may be formed.
- Post of Commissioner for Economic Development Additional Chief Secretary is to be revived.
- Co-ordination Committee is to be formed.
- Cabinet Committee on Decentralization may be constituted with Chief Minister as Chairman.
- Commissioner of Local Government is to be appointed.
• Arrangements for introduction of District Planning are to be made.
• A State Finance commission is to be appointed.
• Training for decentralization is to be given for the elected, non-elected, and social functionaries concerned with local governance.
• Financial provision in state budget is to be stipulated.
• Examiner for Local Fund Accounts Organization has to be appointed.
• Detailed policy directive has to be issued with respect to thorough decentralized governance in the State.

The role of Head of Departments

Heads of Departments and District Collectors have raised questions regarding the role of the former in respect of matters transferred to District Councils, their relationship to the officers and staff who will be placed at the disposal of the District Councils and their responsibility for the implementation of the programmes. This is an important matter that has to be clarified to all concerned.

The Officers and staff transferred to the District Council will function entirely under the supervision and administrative control of the District Council. The council will have full powers to grant administrative approval for all the schemes, works and programmes coming within its purview. The departmental officers placed at the disposal of the district council will have powers of technical approval up to a limit. The Head of the Departments, and the Officers delegated on his behalf, will also have powers to give directions on all technical aspects of the work to be done by the District Council and its Officers. It has also been suggested that a specific provision may be included in the Act empowering Government to authorize officers (it is the Head of the Department and Circle Officers who are meant by this) to periodically inspect development schemes and works and give guidance, assistance and advice to the District Council. The officers so authorized are required to forward to the Secretary to the Council a report on the inspection with their observations, suggestions and pointing out any irregularities that might have been noticed.

Briefly stated, what is envisaged is that the District Council shall be responsible for administrative approval and implementation in respect of all matters coming within its purview subject to the technical control and guidance of the concerned technical
department of the Government. In this scheme of things, the Head of the Department and Circle Officers will have to devote more attention to technical aspects of their work than they are able to do at present, burdened as they are with an enormous volume of administrative work, including work on personnel matters. Each Head of the Department will function as a nodal technical agency advising government on the one hand and monitoring and guiding the work of the District Councils on the other. He will have to assess the trends as they emerge and advise on policies, measures and programmes in time, to counteract negative aspects and encourage the positive ones. He will have to appraise and evaluate the projects and programmes proposed for technical approval as well as prepare State wise projects to be posed for external or national institutional assistance – an area in which a great deal remains to be done. He will also have to devote attention to training and orientation programmes for constant upgradation of the skills of the technical personnel of his department. Last, but not least, he will have to work out the needs of the department for applied research and liaise effectively with Universities and Science and Technology institutions.

The performance of these duties will call for a gradual restructuring of the office of the head of the department, from an organisation designed to deal with a vast bureaucracy and its day to day problems and, with implementation of schemes of all sizes to one dealing with the State-wide schemes and more important technical aspects of the work of the department.

**District Planning and District Development Programme**

Institutional arrangements have to be made to ensure that the schemes and programmes involving public expenditure – those to be included in the Annual and Five Year Plans, are approved in time.

**Spatial Planning**

For the preparation of regional plans and their implementation, district councils will require the services of an inter-disciplinary professional team.

Recommendations made by V. Ramachandran Committee consists clear mandate for planning process in grass root level.
i. The spatial planning unit in each district may be under a Town Planner (Executive Engineer's rank). For this purpose the posts in Trichur and Palghat may be upgraded from Junior Town Planner to Town Planner and two new district offices may be created for Kasaragod and Wayanad districts.

ii. At Thiruvananthapuram, Ernakulam and Kozhikode a regional office with a small complement of staff may be formed separately, each under a Senior Town Planner. The Regional Offices will form part of the department of Town Planning and function under the Chief Town Planner and will be responsible for the technical supervision of the working of the district units.

iii. The Town Planner in charge of district unit will be the District Spatial Planning Officer. He along with the complement of staff under him may be placed at the disposal of the District Councils. He will be an Ex-Officio Joint Secretary to the Council.

iv. It is seen from the existing staff strength of district units that the distribution is uneven. Staff once created for a specific purpose seems to continue in the same district even after years. A re-distribution of the available staff among the 14 districts may be done on a rational basis in consultation with the Chief Town Planner and the necessary minimum additional staff may be sanctioned to the new offices.

Agriculture and Land Development

Agricultural extension and development and land development are among the more important functions to be performed by district councils.

Recommendations in this regard are stated as follows:

i. The Principal Agricultural Officer and the entire complement of officers and staff of the Agriculture and Soil Conservation wings in a district, may be placed at the disposal of the District Council.

ii. The Principal Agricultural Officer may be re-designated as Executive Officer. (Agriculture and Land Development).

iii. A Soil Testing Laboratory each may be established

iv. The various agricultural farms and nurseries may continue to be under the respective district units.
v. As a result of the recent reorganization, there is a full complement of officers and staff down to the panchayat level.

Irrigation

The main functions of District Councils under "irrigation" will relate to the construction, maintenance and repair of minor irrigation works and the implementation of field channels and bothies on behalf of Command Area Development Authorities. Renovation and maintenance of tanks, providing necessary bunds and outlets, will also be an important function.

Recommendations of the Committee can be summarized as given below:

1. In view of the impending functional bifurcation of the Public Works Department, into 'Irrigation' and 'Roads and Buildings' branches, four more minor irrigation divisions may be created so that each district will have one division to deal with all irrigation matters to be handled by and through the District Council.

Co-operation and Credit

The District Councils will be playing mainly a catalytic role in the field of co-operation.

Recommendations of the Committee on Co-operatives in nutshell opined that considering the nature of work to be done in this field by the District Councils, it is not necessary to transfer any staff of the Co-operative Department to the Councils. As already stated, the work of co-ordinating the credit requirements will be done by the district planning unit and that unit may deal with co-operative credit also.

Animal Husbandry and Dairying

In the field of animal husbandry', district councils will be responsible for the management of Government Veterinary Services lit the districts including management of hospitals, dispensaries and diagnostic clinical laboratories and breeding farms.

Recommendations of the Committee can be enlisted as follows:
i. As in the case of Agriculture Department, the entire staff in the districts may be placed at the disposal of the respective district council each under the leadership of a District Animal Husbandry Officer (already in position in each district). He will be an Ex-officio Joint Secretary to the Council. The Deputy Director working under him may be re-designated as "Animal Husbandry Officer."

ii. The three veterinary stores may function under the Director of Animal Husbandry. Until alternative arrangements are made in course of time, the districts may indent for and obtain supplies from these stores, except to the extent that the district units and institutions are authorized to make purchases on their own.

iii. The following institutions and programmes may be retained directly under the control of the Director of Animal Husbandry (all other institutions being transferred to the District Councils):
   a. Institute of Animal Health and Veterinary Biologicals, Palode (Trivandrum)
   b. Chief Disease Investigation Laboratory, Palode (Trivandrum).
   c. Livestock Management Training Centres, Kodappanakunnu (Trivandrum) and Mundayad (Cannanore).
   d. Central Hatchery Complex, Chengannoor (Alleppey),
   e. Livestock and Marine Products Inspecting Laboratory, Cochin
   f. Avian Disease Diagnostic Laboratory, Thiruvalla (Pathanamthitta).
   g. Programme for Systematic Control of Livestock Diseases of National Importance (Trivandrum).
   h. Special Livestock Breeding Programme (Trivandrum).
   i. Kinder Pest Eradication Project (Palghat).
   j. Cattle Sterility Scheme, Alwaye (Ernakulam).
   k. Animal Diseases Surveillance Scheme (Trivandrum).

iv. As regards Dairy Development, one district office may be formed

**Fisheries**

In the field of 'fisheries', the important functions of the District Councils will relate to the management of traditional landing centres and welfare institutions for fishermen as well as the development and maintenance of infrastructure in fisheries villages and of inland fisheries and internal fish markets. Fish Farmers Development
Agencies, wherever they exist, will also be merged with the District Councils. The Councils will also be responsible for the implementation of welfare schemes for fishermen as entrusted by the Kerala Fishermen's Welfare Fund Board. The registration of fishing vessels under the Kerala Marine Fishing Regulation Act will also be done by the officers working under the District Councils.

Recommendations made by the Committee shows that in order to attend to the work assigned to District Councils, the 10 coastal districts, the complement of staff under Deputy Director of Fisheries consisting of Extension Officers/Assistant Extension Officers/Fishery Development Officers and Inspector of Fisheries along with their subordinate staff may be placed at the disposal of the District Councils.

Social Forestry

In the field of forestry, the responsibility of District Councils will cover the social forestry programmes including mobilization of public participation and of participation of educational institutions and voluntary agencies. In the forest department, there is already a complement of staff under an Assistant Conservator of Forests in each district to deal with Social Forestry Programmes including those coming under NREP and RLEGP.

Recommendations of the Committee can be confined as the entire complement of staff in each district for social forestry (including those deployed for NREP, World Bank Project, RLEGP) under an Assistant Conservator of Forests, may be placed at the disposal of the District Council.

Rural Development

The District Rural Development Agencies will be merged with the District Councils and the Councils will, therefore, be responsible for the preparation and implementation of local area development programmes as well as the IRDP, NREP and RLEGP. The councils will also be responsible for the promotion of rural energy programmes.

Recommendations in this regard consist of the following measures.
i. The entire staff of the District Rural Development Agencies, the Community Development Blocks and the staff working in the Collectorate as mentioned above may be placed at the disposal of the District Councils.

ii. The Project Officer of DRDA who will be transferred to the District Council may be re-designated as the Executive Officer (Rural Development). He will be an Ex-officio Joint Secretary to the Council.

Household and Small scale Industries

In the field of industries, apart from the management of Government industrial estates, the main function of the District Council will be to promote household, co-operative and private small-scale industries including improvement schemes for handicrafts, handloom, coir and village and cottage industries.

Recommendations of the Committee can be enumerated as follows

i. The question naturally arises whether the entire staff of the (District Industrial Centre) DIC as well as those working in the field should be transferred to the District Council. The general pattern followed in this report in assigning staff to district councils is to keep the staff dealing with co-operatives with the departments concerned. This is based on the principle that the registration and statutory control of Co-operatives should be with the technical department of Government and that other organizations like local governments should be engaged in promotion and assistance (as part of development activities). In the Industries Department, those dealing with regulation are themselves dealing; with assistance etc., and this creates problems in allocation of staff. For the present, it seems' adequate to transfer one post of Deputy Director from the District Industries Centre as Executive Officer (Industries) and Ex-officio Deputy Secretary to the District Council along with a small complement of ministerial staff. The field level staff in charge of Industrial Estates and the Assistant Director of Industries and Industries Extension Officers at the block level may also be transferred to the District Councils.

ii. The District Industries Centre itself as well as the senior and junior Co-operative Inspectors in the field may continue to be with the department for the time being.
Roads and Inland Waterways

The District Councils will be responsible for the construction and maintenance of 'other district roads', which amount to a total of about 8650 Kilometres in all the 14 Districts. As regards inland waterways, they will be responsible for the construction, maintenance and management of such stretches of waterways as may be notified by the Government.

Recommendations of the Committee in this regard can be mentioned as follows:

i. Out of the 40 divisions, taking into account the quantum of work to be retained with the department and the work to be transferred to District Councils, 28 divisions may be transferred to the District Councils—two each in a District. The balance 12 divisions will remain with the Public Works Department as its roads, buildings and special bridges divisions.

ii. The 28 divisions to be placed under the District Council will have to deal with the construction and maintenance of other roads in the districts, the construction and maintenance of all buildings coming under the purview of the District Councils and the construction of local works on behalf of the local bodies.

Education

In the field of 'education', in addition to working as Local Education Authority, the main function of the District Council will be the management of all Government pre-primary, primary and high schools in the district.

Recommendations of V. Ramachandran Committee team can be enumerated as:

i. There are 11 District Adult Education Officers in the State each with a small complement of staff. They are in the grade of District Educational Officers. Three more posts may be created for the districts of Pathanamthitta, Wayanad and Kasaragod along with staff as in other districts. All these 14 Officers and their staff may be transferred to the District Councils.

ii. The District Adult Education Officer so transferred to the District Council will be the Executive Officer (Education) and Ex-Officio Deputy Secretary.
to the Council and will attend to all items of work relating to 'education' under the District Council.

Public Health and Medical Services

The District Councils will be responsible for the public health activities in the Districts as well as the management of district-level hospitals, dispensaries and other medical institutions. They will also be responsible for the family welfare programmes and for the promotion campaigns against drugs, alcoholism and smoking, as well as for improvement of environmental conditions.

Recommendations of the Committee in this regard is to be summarized as:

i. In the Department of Health Services, all the institutions in the districts except the Medical College Hospitals, Mental Hospitals, Leprosy Hospitals Sanatoria, Tuberculosis Sanatoria and State level Public Health Laboratories may be transferred to the District Councils for management;

ii. The District Medical Officer of Health, the entire staff working in the District Office as well as the staff working in the institutions to be transferred under (i) above be placed at the disposal of the District Councils;

iii. The medical stores in the district may continue to get the supply as arranged by the Director of Health Services. The extent to which powers may be delegated to the District Council for the purchase of medicines may studied in detail and an early decision taken;

iv. In the Department of Indigenous Medicine, all the institutions in the districts except the hospitals attached to the Ayurveda Colleges may be transferred to the concerned District Councils. The Ayurveda Colleges and Hospitals attached to them and the Post Graduate Research Centre in Ayurveda will remain with the Department. The Department will also deal directly with all grant-in-aid institutions

Housing

The extent of involvement of District Councils in housing activities will depend on the schemes that are prepared and got approved by the State Government and the financial institutions.
Recommendations stated by the Committee is that for the time being, creation of a Housing Division or appointment of staff is not suggested here. With the preparation of schemes and their approval by the State Government/Financial Institutions and the tapering off of the actual construction works by the Housing Board, a mutual arrangement for deputation of staff may be worked out by the Government in consultation with the Housing Board and District Council concerned.

Scheduled Castes, Scheduled Tribes Welfare and Development

After making a detailed analysis, V. Ramachandran Committee has suggested that

i. All the institutions in the district under the Departments of Scheduled Castes Development and Scheduled Tribes Development may be transferred to the District Councils concerned.

ii. The Project Officers of ITDPs and the Tribal Development Officers along with the staff in their offices and in the field as well as in the institutions in the districts may be transferred to the District Councils concerned.

iii. Since the implementation of welfare programmes and management of institutions will be done from the District level and one of the subjects of decentralization is to bring about co-ordination at the district and field levels, once the institutions are transferred to the District Councils, the most appropriate arrangement for management of individual centres has to be decided upon. Management of some of the institutions could be transferred to the concerned divisions. The various centres run by the two Departments need to be upgraded, especially the Production and Industrial Training Centres. Some of the obsolete ones may have to be closed down and new ones started in their place. It is suggested that a group may be constituted under the Chairmanship of the Secretary to Government for SCST Development and with the DSCD and DSTD and the District Collector concerned as members.

Social Welfare and Social Reform Activities

The District Councils will have a wide range of functions in the field of Social Welfare and Social Reform. Apart from the management of Government Social Welfare Institutions, they will be responsible for the formulation and implementation of
programmes for the welfare and development of women and children including the Integral Child Development Scheme. They will also be sanctioning and distributing all social welfare pensions and allowances and grants-in-aids to non-governmental institutions. They will also be responsible for organizing campaign for social reform.

Recommendations related to social welfare and social reforms can be enlisted as follows:

i. The District Social Welfare Officers along with their office and field staff in the Districts as well as the staff in the various institutions in the Districts may be transferred to the district councils concerned.

ii. The District Probation Officers will continue to be with the Department of Social Welfare as powers under the Juvenile Justice Act are not being given to the District Councils.

iii. A composite unit has to be formed under each District Council for the sanctioning and distribution of all welfare pensions and allowances. The intention is the while the required certificates of eligibility etc., continue to be with the concerned departments of the Government (where they are not being transferred to the District Councils like Revenue, Labour and Employment Departments) or by the concerned division of the District Council (like Social Welfare and and Divisions). The sanctioning and distribution will be done by a single unit at the District level in order to avoid overlap, duplication etc. Even though this is a social welfare function, this unit is perhaps more appropriately located in the Finance and Accounts Division. If the recommendation to entrust the function to District Councils is accepted, it is suggested that the Expenditure Commission, which is studying the subject from the point of view of economy, may be requested to suggest the staff necessary as well as the methods to be followed. It is expected that the entire staff necessary for this purpose can be found by redeployment.

**Local Resource Mobilization**

For all the above activities in effective manner, economic resources and its earmarking is a very relevant factor. The District Councils will be responsible for the mobilization of local resources, for enlisting people's participation and contribution.
These have to be organized through the entire field machinery of the District Councils especially those dealing with rural development and other development programmes. No separate organization is suggested for this purpose under the District Councils. Central assistance and scheme-based funding, state plan and non-plan allocations, share of taxes as per statutory provisions, own funds including revenue and non-revenue income, assets accrued from movables and immovables etc. can be scientifically distributed to this local government institutions for enhancing their resource base.

4.6 S. B. Sen Committee Report

After the enforcement of 73rd and 74th constitutional amendment and the State legislation on Panchayat and Municipal administration in the State, the Government of Kerala attempted to ascertain the mode of decentralized governance in Kerala through the Sen Committee.

The Committee on Decentralization of Powers (CDP) submitted its interim report in August 1996. In a sense, that report contains the nucleus of the entire report. It encapsulated the vision of the Committee202. The basic principles were laid down in the interim report and to a large extend this final report is an expansion and elaboration of the ideas contained in germinal form in the initial report.

The Committee on Decentralization of powers adopted a rigorous methodology in identifying various issues concerning decentralization and suggesting measures to tone up the Local Self-Government Institutions (LSGI,s in the State. As mentioned earlier, while preparing the final report the Committee was guided by the basic principles laid down in its interim report which was also the inception report, In order to identify the issues the Committee has detailed discussions with all the concerned groups. It interacted closely with senior officials of the Government departments concerned with decentralization including the State Planning Board. It met the representatives of all the major organizations of Government employees, both gazetted and non-gazetted. It had separate intense exchange of views with individual heads of department accompanied by their senior staff. These meetings focused on the issues relating to functions transferred, powers given and the staff re-deployed from related

departments and explored the possibilities of further decentralization. It also helped in identifying changes in laws and procedures with reference to individual departments.

The Committee has attempted to bring about a restructuring of the Kerala Panchayat Raj Act, the Kerala Municipality Act and the allied Acts besides making appropriate recommendations to strengthen the LSGIs with adequate staff support. In making these recommendations, the Committee has been guided by vision of an effective local self-government capable of providing good governance at the local level with the full participation of the people. In order to realize this vision, the Committee has focused on certain critical areas.

**People's participation**

The corner stone of decentralized democratic governance is people's participation anywhere in the world and notably in Kerala. Mobilization and not even consultation is participation. Genuine participation consists of dialogue and partnership leading to full involvement in decision making in the allocation and utilization of resources meant for collective good. That constitutes genuine participation. Thus it is a people centred view of local self-government that the Committee has taken. The citizen is seen on the center stage; it is his voice that has to be listened to; it is his choice that has to be accepted and it is his interest that has to be preserved. The Committee has endeavoured to fashion the legislative framework, which embodies this vision. People's institutions like grama sabhas, ward sabhas and ward committees have been considerably strengthened. They are being given definite functions, powers and responsibilities. Besides these, special purpose vehicles of people's participation in the form of beneficiary committees and social audit groups are to be created. In order to ensure people's participation there has to be an enabling environment. Thus the right of information is incorporated as a prominent feature in the Act and rules governing LSGIs. The Committee believes that accountability to the people is best ensured through transparency. Transparent administration enables people to achieve an on-line monitoring of the administrative process. Citizen's charter is being recommended as an important instrument to formulate the local bodies' concern for the people in the form of assured quality of services. In participatory governance patronage has no place. This can be ensured only through a due and fair process protected by well-published criteria of eligibility and prioritization and transparent selection.
Even when a general enabling environment exists for people's participation, it is possible that certain groups get excluded due to their backwardness and powerlessness. In order to achieve the constitutional objective of social justice, it is necessary to empower such excluded groups. In Kerala the Scheduled Tribes belong to this category. It has been recommended that groups of Scheduled Tribe hamlets would constitute sub-committee of gram sabhas enjoying all the powers of the gram sabha for the purpose of tribal development. Similarly special measures have been suggested to ensure that funds earmarked for SCs and STs under Special Component Plan and Tribal Sub Plan are not diverted for other purposes. Any such diversion would be deemed to be mis-utilization of local body funds inviting punitive action of recovery of funds thus mis-utilized.

The Committee has recommended that there be an enabling provision to create participatory community structures to enable the poor to have a say in development matters like neighbourhood groups, ward level and local body level organizations.

Towards institutionalizing Local Self Governments

The Constitution envisages the functioning of Panchayat Raj and Nagarapalika (municipal) bodies as institutions of local self-government. The Committee on Decentralization of Powers strongly feels that every effort should be made to attain the goal set by the Constitution. Therefore the Committee has recommended that the powers, functions and responsibilities be redefined more clearly so that the sphere of activity of each local body is fairly clear. It has suggested amendments to the third, fourth and fifth schedules accordingly. For the local self-government to function, it has to be relatively free of interference and executive control from above. In order to protect the autonomy of the local bodies, the Committee has reduced the scope of Government interference in their day today affairs. The resolutions can be cancelled only in extraordinary circumstances. Similarly the dissolution of local bodies has also to be resorted to only as a last step and that too after following the due process and getting the opinion of an independent authority in the form of Ombudsman. Even the appellate functions in respect of statutory matters need be removed from the governmental setup and made the responsibility of independent quasi-judicial authorities.

Local self-government implies control over its staff and the power to utilize staff transferred to it according to the division of responsibilities to be decided by the local
bodies, of course in accordance with the expertise and qualifications of the staff. The Committee has recommended that the power to allocate work should be given to the LSGIs. This would mean that they can have an integrated staff set up not divided by artificial departmental barriers. The division of work would be more functional rather than departmental. This flexibility can be achieved without compromising the legitimate interest in terms of status and promotion prospects of the staff transferred. While the LSGIs would have full control over the staff transferred to them the original parent cadres would remain un-described for some time to come.

A kind of delayering is required to protect the autonomy of the LSGIs by removing superfluous committees and bodies which run parallel to them. Thus the Development Authorities, Metropolitan Planning Committees and High Level Committee are recommended to be abolished. In tune with this recommendation, the Committee recommends that whenever certain structures are to be created to carry out functions which are not restricted to the boundaries of one local body, Government may have recourse to joint committees. This would enable special functions to be carried out without reducing the power of the LSGIs.

**New Checks and Balances**

The Committee feels that with the reduced role of Government a new system of checks and balances has to emerge with accent on control from below. In order to ensure fairness in decisions, propriety in expenditure, legality in actions and legitimacy in policy, these new checks and balances will have to be in place. Of course social audit both formal, through groups of professionals and independent persons of eminence, and informal through Grama Sabhas, WardSabhas/Committees, community structures and people's committees, is expected to be the main deterrent against possible waywardness in performance of duties of the LSGIs. The rights of people's groups coupled with the duties of LSGIs in maintaining transparency and providing information would provide a powerful check on the LSGIs. At the same time the audit system needs to be strengthened. Here what is important is the quality and regularity of audit which means that mere adding to the number of auditors would not be sufficient. A thorough overhaul of the existing system is required. In the preliminary report itself, the Committee had suggested strengthening of audit. An Audit Commission as autonomous as the Public Service Commission could be set up. The Commission could be headed by expert
members and should have the independent authority to decide on the type and manner of audit. Till such time the Audit Commission is set up and gains experience, it is essential to entrust the audit of at least the Municipal Corporations and District Panchayats with the Comptroller and Auditor General. This is necessary as the system should not afford to face any slip up during the transitional period as it is likely to affect the very credibility of the system.

For quite some time to come in addition to conventional audit the local bodies need a corrective on-line system of audit which can double up as a monitoring mechanism as well. It is with this objective that the performance audit units are being set up to cover the different LSGIs.

The Committee supports the view that more and more of self-regulation should be introduced with Government laying down the broad parameters. The due process and proper procedure have to be prescribed clearly and any mal-administration needs be controlled not by Government but by an independent system. This would foster autonomy and self-responsibility among the LSGIs.

**New Institutions**

As decentralized governance becomes a reality, some of the existing institutions need be strengthened and new institutions created. As mentioned earlier, institutions of people's participation like Grama Sabha/Ward Sabha would need to get strengthened considerably. Also the State Election Commission would have to be given more powers particularly in delimitation of constituencies, reservation of constituencies and offices of President and in disqualification of members. This reinforcement of the State Election Commission would go a long way in ensuring the independence of the electoral process from the executive arm of the Government. Among the new institutions which become inevitable are the Appellate Tribunal and the Ombudsman. The Tribunal is intended to dispense justice quickly without tedious delays seen in the courts and with higher credibility than the Governmental hierarchy. Such Tribunals can deal with most of the appeals against the decisions of the LSGIs in exercise of their statutory regulatory powers. Similarly in matters concerning mal-administration, particularly corruption and nepotism the Ombudsman system could be an effective and acceptable remedial mechanism. What is needed is an Ombudsman system with more powers than is traditionally assigned. Instead of just pointing out deficiencies and reporting about them
it has been suggested that corrective measures and punitive action should also be taken up by Ombudsman. Of course the effectiveness and credibility of the system would depend on the selection of the best person for the purpose recognized by one and all for their integrity, merit and capacity for impartial functioning.

**Development Orientation**

Traditionally, local authorities in Kerala as in most parts of the world have been concerned with activities which could be termed more welfarist than developmental. Importance was always given to provision of civic amenities and in rendering other social services. But now with the Constitution laying down the twin objectives of the Local Self Government system as promotion of economic development and social justice, the legislation needs to reflect these new perspectives. Therefore the Committee has suggested several changes which would reflect a development orientation. Thus the schedules listing the powers and functions have been completely restructured. As the different local bodies are seen not as hierarchy but as distinct spheres in overall governance it is necessary to apportion developmental functions to the various LSGIs to make the best use to their comparative advantages. Even within the developmental functions transferred to a particular level of LSGIs there should be a range of functions from a mandatory sole-responsibility item to an agency function on behalf of the Government. Thus the Committee has attempted to give a greater role clarity to the LSGI in the discharge of their developmental functions.

**New Work Culture**

The Committee desires to provide a facilitative environment for a new work culture in the local bodies. Traditionally, there has been a separation of powers of the political executives and the official executives, with policy making being the function of one and the carrying them out, the function of the other. At the level of local bodies there is a mingling of both functions. Of course policy making in the larger sense of the term is not applicable to LSGIs. However in laying down priorities there is always a policy element involved. There is need for professional support in deciding priorities which has to be provided by the officials both at the local level and even from the levels not transferred to the LSGIs. Similarly the elected members have a definite role in implementation. Thus a new work culture is required for the elected members and for the officials and a creative interface is needed.
Elected members would have to spend more time and energy in the running of the LSGIs. Heads of LSGIs have to be full time functionaries. The Committee feels that in due course other functionaries like Chairpersons of Standing Committees too would have to be full-time functionaries. The Committee envisions a non-divisive functioning of the elected members whatever be their political loyalties. Only this will lead to a political development where a consensus emerges based on local opinion and local priorities to sort out local problems. In order to permit this type of functioning the Committee has recommended that every elected member be given a role in the running of the LSGIs by becoming members of the Standing Committee. Similarly the Leader of Opposition would be given special importance by being made the ex-officio head of the Public Accounts and Vigilance Committee-a role akin to the Public Accounts Committee in the Parliament and State Legislatures.

As regards officials it is a new opportunity for by hard work and sincere advice, they can get the professional satisfaction of helping design appropriate projects for the local level and observing the results of the implementation. These officials would have to enrich their knowledge and improve their skills to play their role better. In the long run there would have to be integration of various administrative services, but in the short run it is not fair to meddle with the career prospects of present employees. Therefore while they are under the disciplinary authority of the local bodies during their tenure with them, their cadre conditions would remain undisturbed. Inevitably there will be dual control over the staff. The LSGIs will have administrative control over the staff while the senior officers in the cadre will have more of professional control and can check on the professional performance.

The interface between the official and elected representatives is very critical for the functioning of the local bodies. It has to be based on mutual respect, respect for the representative status of the elected member and respect for the professional qualities of the official. This has to be blended with mutual understanding of the service, role of the elected represent actives and the procedural system to be followed officials. In order to underline the importance of this interface, a code of conduct is recommended to be enshrined in the legislation. This will uphold the power of in dependence and impartial advice of the officials while protecting the decision making authority of the elected members.
New Politics

It is the desire of the Committee that local self-governments would throw up a new political culture marked by co-operation in matters relating to local development. Of course there would be constructive criticism resulting in corrective action but there should be no room for unnecessary conflicts and clashes dividing people and excluding sections of the society from the developmental process.

For the new politics to emerge, it is necessary that the elected members have credibility and capability. The Committee has suggested several new conditions for disqualification. These conditions relating to moral uprightness are quite strict and will include the criminal, corrupt and immoral persons from getting into the local government system.

The Committee has suggested the incorporation of the provisions to prevent political defections in the Kerala Panchayat Raj Act and the Kerala Municipality Act. Also open declaration of assets by every elected member has been recommended.

Resource Mobilization

An important raison d'etre of local government is the capacity to mobilize resources locally and innovatively. As the finance Commission has gone into several aspects of this issue, the Committee has confined itself to certain broad aspects only. It is necessary to underscore the fact that the growing expenditure responsibilities must not be seen independent of revenue-raising responsibilities. The "You-Pay-I-Spend" syndrome should not be allowed. The local bodies need to be enabled to raise user charges and fees besides institutional finance. Similarly Government need only fix the minimum level of taxation, as the upper limit can be determined by the local body in accordance with the willingness to pay of its people for the level of service it is capable of providing. It is also hoped that the emphasis on participation will lead to greater contribution in financial terms by all the participants.

Capacity Building and Nurturing

The capacity of an LSGI depends to a large extent on the staff transferred to that body by the Government. The Kerala Panchayat Raj Act and the Kerala Municipality Act make it mandatory for the Government to assign staff to LSGIs commensurate with
the functions transferred to them. The Committee considers such a rational norm-based transfer is absolutely essential.

It is not merely enough to transfer staff and functions to the LSGIs. Their skills have to be updated and they are to be appropriately equipped to perform the tasks expected of them in the new context. So also the elected representatives need systematic training to improve their managerial capacity. A rigorous training schedule has to be implemented by the Kerala Institute of Local Administration, both in-house and in the field, in association with other institutions like Institute of Management in Government and the State Institute of Rural Development.

While the capacity building process goes on the Government should have a caring and nurturing attitude towards LSGIs. It should play a guiding, advising and correcting role rather than a punitive or retributory role. It is possible that an LSGI may make mistakes in the early stages. There should be enough flexibility to detect the mistakes sufficiently early and correct them rather than allowing them to grow to malignant proportions. At the same time malafide action should be severely dealt with. All this calls for a proactive role on the part of Government through all is related departments. Of course Local Administration Department is the key co-ordinating department in the decentralization process. But in order to enable it to play an effective co-ordinating role it is necessary for the partner departments to take an active interest and play a supporting role. There is a tendency to view functions transferred to LSGIs as functions transferred to the Local Administration Department. This is fallacious. Governmental responsibility now vesting in various departments regarding sectors of development would remain unchanged e.g. Agriculture, Health or Rural Development Department would continue to be responsible for development of agriculture, protection of public health or alleviation of poverty at all the levels of Government right up to the gram sabha. To a large extent, decentralization can succeed only if these departments continue to play their professional roles with commitment and involvement.

The elected office bearers and members of LSGIs have been saddled with tremendous responsibility with the transfer of new functions. They have to work hard to realize the expectations placed on them by the people as well as by the Government. Of course, at the level of the LSGIs it is the motto of service which should be the guiding principle for the members. But since much of their time has to be devoted for affairs
related to the LSGIs, it is only fair that their present honoraria be stepped up. This has to be viewed not as a remuneration but as a token compensation to eke out their own income.

The system also encourages arbitrariness to favour and disfavour individuals. Such complaints are common in tax assessments and in the selection of beneficiaries for subsidized schemes. Most of the LSGIs do not seem to follow the due process in identifying beneficiaries like laying down the criteria for selection, publicizing them, calling for applications, processing the applications with respect to the criteria and making the selection and explaining the rationale of the selection to the public.

Thus there is every need for the system to be opened up to bring administration closer to the people and more acceptable and accountable. In the context of decentralized governance, people need to know how decisions are taken and how responsibilities are discharged and how funds are utilized. Also they need to know about the various alternatives possible and the criteria for deciding the final choice. At the cutting edge level, fairness is something to be see and judged by action and corroborated by documentary evidence. The will help reduce suspicions and fears about the Government and enhance the credibility of the system. A transparent administration would reduce chances of corruption, particularly in a high literate state like Kerala. Certainly, transparency is the best audit; sunlight is the best disinfectant, fresh air is the best tonic and open Government is the best Government. This idea is in keeping with the general trend in participatory development. There is growing attention on standards of performance and service delivery and widespread consultations with and participation of the citizen groups for whom benefits are intended. These are possible only when there is free flow of information about the public agencies. Though the right of public access to information has been well received in political and social activists' levels and it has received judicial backing there is no specific law guaranteeing public access to information. Such legal provisions need to be incorporated in the Panchayat Raj Act.

The Committee recommends that offices and agencies at the LSGIs level should have a regular system of providing public information *suo moto*. This would include information relating to functions and responsibilities, decision making processes, statutory applications, procedures, concessions, services and financial matters. This can
be achieved by proper maintenance of existing records without necessitating creation of new records. In addition to this practically every information at the LSGI level should be available for scrutiny, note taking and providing copies to the public. The Committee believes that ordinarily information giving should be the rule and exceptions should be clearly defined. In the case of LSGIs it would mean that only information relating to health records of individuals, contracts where giving of information before finalizing would either harm or benefit individual interests, formulation of taxation proposals, action affecting enforcement of a regulation etc. need be kept confidential. Wherever there is refusal, the reasons have to be given and there would be a general right of appeal.

**Complaint and Grievance Redressal**

The Kerala Panchayat Raj Act as hopefully amended based on the recommendations of the Committee on Decentralization of Powers would empower panchayat raj institutions substantially. The power vested with the panchayats, particularly the village panchayat can be classified into two - regulatory power and development power. In the case of exercising regulatory power, it is more a question of fact and question of concerned legal provisions applied in the strict judicial sense in accordance with principles of justice. Examples of such power would be taxation, grant of license, enforcement of building regulations and abatements of nuisance from the public health, public safety or public peace points of view.

The exercise of development power would include running of the office, providing of services, taking up development programmes, selection of beneficiaries, public spending etc. Here there would be more of policy, norms and criteria and greater autonomy at the local level. Here rules and laws have less rigid application but concepts of fair-play, impartiality, prudence and natural justice would come into play.

While grass root level institutions have distinct advantages in planning and implementing development schemes, in providing responsible administration and in securing larger participation of the people in Government particularly in the developmental process, they also face local pressures politically and socially which they cannot ignore easily. The traditional theoretical virtues of public administration like impartiality, neutrality and anonymity are very difficult to realize at the local level. It
has to be recognized that in Kerala all the LSGIs are political institutions and the elected members have a constituency both in the geographical and socio-political sense.

At the same time the elected members have executive authority. Here they are different from the M.Ps and M.L.As. They have the right to take decisions having financial implications besides having the power to authorize expenditure from public funds. In a limited sense, they have the power to decide the level of taxation and they have the larger power of collecting taxes due to them. In addition they have regulatory powers which are of a quasi-judicial character. Thus it is clear that the elected members enjoy tremendous powers in the exercise of which values like impartiality, fairness and propriety have to be adhered to and accountability becomes all the more important.

Therefore new systems have to be created to check the continuance of old tendencies and to foster the positive possibilities of the new institutions. Such systems need to enjoy the full confidence and trust of the public, elected representatives and the officials. At present the Government has the power to cancel resolutions if it is found to be unfair or unjust. As this power has to be delegated to various officials, in practice, it could result in executive control over the elected bodies. In a sharply politically polarized society like Kerala even if the Government exercises its control in a reasonable and just manner it may not be perceived as such by the affected parties. Also Government is physically distant from the ordinary complainant. It would create hardships for the people in distant villages to come to the Government even if its officers have delegated power, for redressal of grievances. And executive control over the elected institutions except in rare cases would be inappropriate. As has been stressed at several places the ultimate objective of the constitutional amendment is to empower the ordinary man and this empowerment would be ineffective if he does not have recourse to an independent system to redress his grievance if any. As the old checks and balance have no relevance new safeguards against any possible excesses or shortcomings of the LSGIs would have to be built up through credible alternative systems. Therefore there is need for quick, effective and accessible institutions for public grievance redressal which are outside both the LSGIs and the Government system.

The need for such systems has been made all the more stronger by the massive devolution of powers and resources to the LSGIs. Most of the institutions of public
service in health, agriculture, animal husbandry, school education, social welfare and practically the entire resources for poverty alleviation and SC/ST development are placed at the disposal of LSGIs. Therefore the committee recommends creation of two sets of institutions to ensure responsible administration and quick redressal of public grievances. Such a set is expected to have a double salutary effect. The autonomy of the LSGIs would be ensured while at the same time arbitrary functioning could be checked and the Government would be spared of many of the routing supervisory activities so that it can concentrate on key areas of policy for effective decentralization.

4.7 M. A Oommen Committee Report

During 2009, in the third phase of democratic decentralization process in the State of Kerala, the government has decided to examine the existing scenario of local governance and for that purpose an envoy in the leadership of Dr. N. A Oommen was appointed for this purpose203.

The Conceptual Framework

Decentralized governance is a process, a meaningful march towards participatory democracy. It has intrinsic value and instrumental importance. It is a value that enhances the quality of citizenship. It is a way or process of building capabilities to participate. Equally important is its instrumental importance for development and freedom. To make democracy effective it should progressively improve. Since the concept of decentralization is variously defined and differently understood, we have to define the concept. Administrative reorganization in the nature of ‘deconcentration’ or ‘delegation’ is sometimes described as decentralization. Deconcentration refers to the transfer of administrative authority from the higher levels of government to the lower ones in order to give more freedom to the latter in delivering services or producing public goods. When a government at the Centre or at a state entrusts the implementation of certain poverty alleviation projects to the panchayats or to some specially constituted bodies, it becomes an instance of ‘delegation’. There may be different degrees of either ‘deconcentration’ or ‘delegation’, but in both cases, the political power to take the ultimate decision does not get transferred. The staple of political power consists in

making value judgments (e.g. what should or should not be done for people) and allocating resources (who should get what, when and how). The agents exercising deconcentrated or delegated power remain accountable to the higher authority and not to people directly, as the authority to take ultimate decisions rests with the former. Although a local government may take up an agency function or functions of a higher government it is not primarily an agent. The agency concept is antithetical to the very idea of self-government.

Administrative reorganizations such as deconcentration or delegation cannot be equated with what is called democratic decentralization, which envisages devolution of political power to the democratically elected local councils. Under such decentralization, the functions or activities are transferred from higher level government to the local level governments and the latter bear full responsibility of the devolved functions or activities. Accordingly for all such transferred functions or activities or institutions, the local governments remain accountable to people. In fact, the intrinsic value of democratic decentralization lies in deepening and enriching the practice of democracy by making government more accessible and responsive to the people. That way the avenues of people’s participation and the possibilities of ensuring transparency and accountability are enhanced. Decentralization is often advocated by many, particularly the international donor agencies, for its unique potentiality for improving the delivery of public services at the local level. But, that is the instrumental value of local democracy. We may define decentralization as the empowerment of the common people through the empowerment of the local governments.204

Autonomy is the essence of empowerment. In the context of empowering and building the capabilities of local governments five aspects are crucial in a federal system.

1. Autonomy with reference to assigned functions - In a federal polity like that of India most local government functions are state – concurrent. It is difficult for a local body to take suo moto action even in their functional domain. (The 11th and 12th schedules of the Indian Constitution lose all operational significance here). However, considerable confusion and overlapping can be avoided through

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clear activity mapping\textsuperscript{205}. Scope for initiatives and independent action in regard to the assigned activity domain is not constrained.

2. Fiscal decentralization - It is a logical corollary of functional devolution. It refers to the revenue raising powers that match expenditure responsibilities assigned and the arrangements made for efficient vertical and horizontal transfers.

3. Administrative autonomy - The local governments should have adequate administrative and engineering personnel to carry out the financial responsibilities they are mandated to perform. They should enjoy adequate power to manage them. Surely local governments should not to be treated as appendages to any department be they rural department or panchayat or urban affairs or whatever. Here it is important to note that under a federal system of multi-layered governments, autonomy does not mean complete independence. National goals (e.g. poverty reduction) and regional developments need guidance. Even untied grants must be subjected to a clear set of guidelines evolved through a consultative process. A department that wants to control or a local government that waits always for guidance or ‘orders’ from above are enemies of meaningful decentralization. Coalition politics that nurses departmentalism needs to be guarded against.

4. Institutional decentralization - Although the literature on the subject is totally silent on this, it is important that all major institutions that have a direct bearing on the functions devolved must be transferred to the appropriate level of government. In Kerala critical institutions of public service like primary health centres, schools, anganwadis, veterinary institutions, krishi bhavans, hostels for scheduled castes and so on have been transferred to local governments. This enhances the need and compulsion for more devolution of resources, personnel and administrative control. Decentralization is a will full result oriented socio-political and economic intervention into the administrative development and service delivery component of the Government. All efforts towards decentralization can be torpedoed if we create parallel institutions and structures outside the local governments to do the same set of functions. It may also be that

\textsuperscript{205} Kerala which pioneered activity mapping in India has done a commendable feat of preparing a detailed responsibility mapping outlining the role and responsibilities of the grama panchayat, the block panchayat, the district panchayat, the municipality / corporation and the state.
different agencies exert pressure on the same set of institutions for the delivery of almost identical services or programmes. Taking into account practical difficulties, the best that can be done is what the second Round Table Conference of State Panchayati Raj Ministers laid down: “If for reasons of institutional constraints, parallel bodies have been set up or are to be set up, these must be brought into an organic symbiotic relationship with the PRIs at the appropriate level so that PRIs are fully involved with the work of the parallel bodies.”

5. Need based and right based governance - It is another important aspect of public administration. The fifth aspect refers to responsiveness. Decentralization brings government closer to the people spatially and institutionally. Decisions that a local government make should reflect the felt needs of the community. The raison detre of the institution of gram sabha/ward sabha is based on this. The creation of effective, accessible and transparent grievance redressal machinery should be an integral part of the local government accountability system. Without addressing the satisfaction of basic amenities of the people there is no scope or relevance for rule of law in a society. So decentralization of governmental functions attains much attention in the existing society.

The Constitutional Framework

While it is not our purpose to outline the salient features of 73rd /74th constitutional amendments, here we may spell out some aspects that are crucial to our approach. One, it is important to firmly acknowledge that a multi-tiered third stratum is added to the Indian federal polity. By ensuring quinquennial elections as in the case of the centre and the states, and by giving one third representation to women and population-based representation to the traditionally marginalized communities for the various tiers of local governments one can say that political decentralization is well laid down. Two, accountability to the people is the basic rationale of the two amendments. The acknowledged centrality of the gram sabha (see Article 243 A) is meant to facilitate participatory democracy. It is the vehicle to recapture the rights of the people from the bureaucracy, the proverbial steel-frame. Since the hiatus between those who rule and the ruled has yawned wide even after independence, any step towards empowering the citizen and influencing the material conditions of her living is to be underlined as important. Three, the task of creating institutions of self-government with the
responsibility to plan for ‘economic development and social justice’ (Articles 243G and 243W), local level spatial planning, conservation of natural resources are now left in a substantial measure on to the shoulders of the local governments (Article 243ZD). Four, rural decentralization with a three-tiered structure is the major and vital component of the two amendments. Of these three tiers, gram panchayats should occupy the premier position. In brief the basic objective of the decentralization amendments is to enhance the quality of governance and ensure better state society relationships to promote participatory democracy.

**Approach of the Committee**

It is clear to anyone who studies the progress of decentralization among the Indian states that the State of Kerala is way ahead of all others. The necessary conditions for decentralized governance are well laid down. In some important sense Kerala faces second generation problems. Also, Kerala has to strengthen the sufficient conditions that will progressively promote participatory democracy at the local level. The challenging task is to provide autonomy to the assigned activities and reverse many of the age-old departmental traditions and create new conventions which are enabling rather than controlling.

**Summary and Recommendations**

Decentralized governance is a great leap forward in democratic development. Kerala’s decentralized planning was a great experiment. More than a decade has passed since its launching. It is time to evaluate what happened and make mid-course corrections. Our findings and recommendations are summed up in this chapter.

Decentralized governance cannot be and should not be seen independent of the fostering and sustained support by the state. Looking back we feel that the ethos and urgency that characterized the Public Private Co-operation (PPC) in the 1990s must be recaptured.

**Service Delivery Improvement**

Role of transferred institutions and functionaries in local government process has been already identified but not endorsed. As regards development services like Krishi Bhavan, Veterinary services etc., clear management manuals have been prepared
by Working Groups after due consultation with not only experts, but also with people’s representatives. We recommend that these manuals should be made operational in everyday use. Therefore we are not addressing the issues of service delivery with reference to these items. More such manuals should be prepared and made operational.

No local body has prepared a cadastral map on which the town planning schemes can be overlaid and read. Even major cities like Thiruvananthapuram, Kochi and Kozhikode are yet to go for Geographical Information System, (GIS) mapping and cadastral mapping. Land maps of the Department of Survey and Land Records are not updated and modernized and are also not matched with GIS mapping. A major malady confronting us today is that although spatial planning is one of the basic responsibilities of the urban and rural local governments they still do not have scientifically prepared land maps.

Front Offices: All Local Governments (LG) notably the Grama Panchayats (GP) should have Front Offices (Information Desks) where copies of the Citizens’ Charter should be made available free to all citizens of the locality. KILA has published excellent guidelines regarding the creation and management of Front Desks and a book on panchayat governance in January 2009. Front desk shall function as a public relation counter, transparency instrument, and opening or queuing point of the institution in between the service holder and the in-office of the local government system.

In brief, once we affirm and underscore the fact that service with reasonable standard and quality to the people is the ultimate goal of governance, we set out the necessary condition for good governance. All others are but sufficient conditions although they are equally important.


The third Administrative Reforms Committee has been constituted at a critical juncture in the administrative history of the State. Two major initiatives have been launched by Government to make administration responsive and effective; one is the impetus given to decentralization, particularly through the People’s Planning Campaign and the other is the decision to carry out administrative reforms in the State. The two

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initiatives are organically linked. Thus the contextual relevance of the Administrative Reforms Committee is very high.

Historically, Kerala has been following a welfare-oriented developmental strategy often described as the Kerala model, which has yielded very good results as seen in its human development indicators. Such a strategy implies effective and efficient delivery of social services through government officials particularly in sectors relating to education, health, social security and food security. This necessitates a heavy dependence on the governmental machinery. In order to make the strategy work, the State has been spending an increasing proportion of its revenue on the salaries of its public servants. Now with the financial crunch faced by government on the one hand and decline in the service ethos of government servants, the growing indifference of the staff and the increasing laxity in supervision on the other, the sustainability of the very development strategy is at risk. In fact serious inadequacies have crept into the reach and quality of the public services. As substantial part of the State revenues is spent on establishment costs, it is imperative that the social return from such expenditure has to improve for which urgent reforms are necessary. We have reached a stage where even to make our past attainments sustainable, basic reforms have to be attempted immediately.

There are certain problems affecting bureaucracy in India, particularly in Kerala. There is a general consensus that a perceptible decline has taken place in the standards of public service. Though several reasons could be attributed to this phenomenon one cannot but pinpoint to the lack of discipline, both imposed from above and flowing from within. The culture of rights and demands probably had some justification in the beginning when Government servants were poorly paid and were victims of whimsical decisions by superior officers. But over the years, it has hardened into a negative behavioural pattern showing unwillingness to take on responsibility, incapacity for professional improvement and propensity for rude behaviour. This problem is compounded by an apathetic attitude on the part of supervisory officers who also act as if they are not accountable and feel that they have not been given the freedom required for being accountable. A general mood of cynicism is apparent.

Though an important recommendation of the first ARC was for recognising merit as the critical factor for promotions, it has been totally ignored in practice. And
in the absence of any meaningful assessment of performance, promotions have become routine related only to age and seniority and this has totally eroded the motivation to perform well. Departmentalism has also proved itself to be a bane of civil service; it has been exacerbated in the context of the coalition political set-up in the State. Vertical hierarchies have sprung up impervious to even suggestions of coordination or convergence. Departments have become compartmentalized to such an extent that rational redeployment of staff is very difficult as terms of service vary considerably from department to department, even for related categories. All these have contributed to the degeneration of administrative systems, rendering the old but well-thought out Tottenham system, weak and ineffectual, with only the outer shell remaining in a cracked form and the kernel having gone musty due to disuse either from willful disregard or sheer ignorance.

Over the years, civil servants have been facing an increasingly severe handicap. In the discharge of his responsibilities he is constrained by extra-constitutional checks on his authority and freedom. And he is held accountable for things beyond his control. In fact responsibility, authority and accountability go together and there has to be a natural balance among the three.

In this context, the perception of the people has been one of cynicism. Afraid of rude treatment, sensitive to callous behaviour and suspicious of corrupt motives, the ordinary man does not feel confident of walking into a government office with the expectation of receiving even the minimum respect due to a human being, let alone getting his work done or his grievance redressed. In such an environment, no wonder, middlemen and agents have thrived paving way for corruption.

All over the world, bureaucracy is under attack from all ideological points of view. The failure of governments to rise to the expectation of the people is now widely accepted. The spirit of the times is for radical administrative reforms. The conservative opinion finds fault with bureaucracy for inefficiency and rent seeking behaviour. It calls for shrinking role to government. Social activists and populist opinion berates bureaucracy for distancing government from the people and for serving its own interest. Neutral opinion of experts in public administration and management also finds fault with archaic procedures and anachronistic practices followed by the bureaucrats and blames it for not adopting modern methods and efficient systems. In the
face of such onslaught from all sides, the credibility of the bureaucratic system is at stake. It is a reform or perish scenario. All over the world, in developed and developing countries, administrative reforms have been introduced in a systematic manner either suo-moto or induced. And Kerala cannot isolate itself from the all-pervasive mood for reform.

At the national level, Government of India has accepted the need for administrative reforms and is making special efforts to introduce reforms at all levels in partnership with the State Governments. A conference of Chief Ministers held in 1996 has resolved to give special importance to administrative reforms in the states.

Of late, Kerala has been showing great commitment in decentralizing administration. It was the firm and clear espousal of democratic decentralization by the first ARC that brought this aspect into the reform agenda of the State. After several abortive and half-hearted attempts at decentralizing power to local bodies, the vision of the first ARC has been realized in spirit only now, after nearly four decades. It required a Constitutional amendment to set off the process. And now the constitutionally mandated decentralization process has been given a big push in the State with the massive devolution of funds and the launching of the People’s Planning Campaign. In fact, Kerala has deliberately chosen a ‘big bang’ approach to decentralization, instead of an evolutionary gradually reformatory approach. A lot of functions both regulatory and developmental have been transferred to the local governments along with staff and funds.

This has several implications for the administrative system calling for fundamental reforms. The present system is tailored for a centralized system of governance. It is office and officer – centered and relies on checks and balances based on controls emanating from centralized authorities. Decentralization cannot be effective in such an administrative environment. Hereafter there would be more of functional and less of formal hierarchy, more of professional guidance and less of administrative control, more of horizontal consolidation and less of vertical integration. Government has to become an active facilitator and a vigilant monitor and cease to be a directing and controlling authority. Decentralization brings in a new set of inter-relationships, among officials and elected representatives, among the various tiers of government and among different levels of administrative hierarchy. There is scope
for greater people’s participation. As decentralization ultimately means giving more power to the people, and giving the common man the central place in government, there is need to have more control from below. New systems and institutions need to be set up to ensure proper governance. The Committee on Decentralization of Powers has done considerable work in improving the functioning of local governments. Decentralization creates new domains of governance radically altering existing domains. Contrary to general impression, it is not only the departments, which have transferred functions and powers to the local bodies, which would undergo a change, but the entire system of governance would have to change. Even the regulatory departments have to recognize the local governments and form new relationships. As a lot of development functions have been devolved to the local governments, there will be a natural downsizing of State government as a good portion of developmental staff would have to be hived off and given to the lower tiers. The staff thus given will have to perform new roles working under the guidance and control of elected representatives at every tier of local government and the remaining staff also will have to assume different responsibilities. New opportunities for improving efficiency of staff have thus arisen. All these call for major reforms in the administrative set-up, which have to be looked into by this Committee.

The Administrative Reforms Committee sees a lot of opportunities in this context. There is a felt need for reform and unanimity of opinion on this among political leaders, experts and the ordinary public. And it is heartening to note that the bureaucracy itself had recognized the need to change. In the last decade there have been various innovations in administrative reforms from all over the world. There is much to learn from the best practices, many of which can be adapted to serve the development interests of the State. The rapid strides in information technology made in the last few years, particularly in the use of computers in day-to-day administration, is again a very favourable factor. Information Technology has become very affordable and extremely user-friendly and any further delay in the application to administration would be retrograde.

Thus every effort should be made to utilize this favourable environment and push for radical administrative reforms with a view to making administration serve the interests of the ordinary man.
The Vision of the Committee

The Administrative Reforms Committee has developed a vision of responsive administration and its recommendations would be designed to attain this vision. The salient features of the vision are outlined below.

Government at all levels has to give utmost importance to the citizens, and the common man in particular. The Government has to be responsive to the needs of the ordinary man and has to change the systems for faster satisfaction of his needs. To make Government people-friendly, a lot of demystification is required, and a situation where there is a lot of transparency and where information flows freely is required. There needs to be more opportunities for interaction with the people through formal and informal consultations, so that administration can reach out to the people.

Decentralized governance resulting in the creation of vibrant Local self-governments with clear functional domains, and the power, authority and resources to discharge the assigned functions autonomously, is most conducive for genuine people’s participation. The local self-governments should not only give people the voice, but hand over the power to choice as well to them, in order to enable people to have the development they need and they want. Grama sabhas and Ward Committees should blossom into dynamic fora of direct, face-to-face democracy. Accordingly, the system of governance at various levels has to be radically restructured to further participatory development.

Administration has to become more efficient for which greater professionalism is called for which can be achieved through constant training and through scientific methods of performance assessment. If merit were given the central place, it would enhance efficiency and bring out the best in public servants. Modern methods of management would improve efficiency; use of modern technology can definitely increase output per unit.

The administration has also to be effective achieving the objectives for which it exists. This calls for role clarity and clear definition of responsibility. Convergence of services is a must to achieve synergy in the delivery of public services. Similarly a higher delegation of administrative and financial powers accompanied by a reduction in
the number of levels in the decision making process would help in making the administrative system more effective.

There is need for greater accountability to the people. This can be best achieved by creation of systems and institutions facilitating people’s participation. There is every need to control arbitrary behaviour in government and define discretion. Corruption, nepotism, wastage and delays are antithetical to a people-centered system of government and need to be combated marshaling all the resources available, administrative, legal, institutional, social and political.

The Committee has vision of a simple and rational administrative system which is understood by all the actors and which is capable of rising up to the expectations of everyone. A good working environment can go a long way in installing pride and satisfaction among public servants in discharging their duties. Contented and motivated public servants can serve the people better.

There is a heavy cost in running government and there has to be a constant assessment of costs and returns. Society has to get the value for the money it spends on administration. A cost-conscious and cost-effective administrative machinery is essential.

In order to attain this vision, one time reform alone would not be sufficient. There has to be a dynamic process with constant refining and redefining.

The Approach of the Committee

The Committee envisages a three-stage process in reform. The first stage is to make simple correctives in areas where there are deficiencies, which are prima-facie, evident and which are recognized and accepted by all. Minor changes of procedure, reiteration of some useful decisions of the past, revitalization of certain practices, which have fallen into disuse, designing of simple new systems, all these would be focused on, in the first stage. Recommendations at this level would be mostly in keeping with current policy and within the existing framework. There would be no difficulty in accepting them straightaway. They would be of the kind that allows easy application in areas where significant results could be obtained with minor changes.
At the next stage more fundamental changes in procedures, systems and institutions would be suggested. This may call for policy changes and necessitate restructuring. Such recommendations would involve detailed study, discussions, analysis of various options etc.

In the third stage, changes in the legislative framework where Acts and Rules need to be re-written would be suggested. Of course these three stages need not be there in all areas where recommendations are made and it is not necessary that in all cases they have to be in three stage sequentially; they could be taken up simultaneously in some areas.

As far as decentralization is concerned, the Committee on Decentralization of Powers (popularly known as Sen Committee) has suggested drastic legislative changes. This Committee would focus on concomitant reforms required in the non-decentralized areas of government besides suggesting measures for deepening and expanding the scope of decentralization.

In keeping with the approach adopted by earlier Committees a flexible method would be followed in grouping of recommendations. Where there is commonality, recommendations spanning the various sectors of administration would be given and where there is specificity a sectoral or departmental approach would be followed.

The Committee intends to give its reports in several parts. This would help easy processing and also facilitate valuable feedback to flow to the Committee on practical issues encountered at the time of processing, so that the Committee itself could modify its approach if required. This would enable the Committee to give necessary clarifications and suggestions for implementing the recommendations already made. Thus the Committee would be able to guide initially in implementing some of its recommendations.

The Committee would try to avoid as much as possible terse, general recommendations and would endeavour to give specific ready-to-use recommendations. Though the recommendations would be prepared in consultation with the departments, it does not imply that their consent is obtained. The Committee would decide, based on its judgment, on what is most needed, in consultation with the user groups and in keeping with the overall vision. In each of the part reports there would
be suggestions for monitoring and for presentation of action taken reports at regular intervals. In the early stages the Committee itself would be involved in the monitoring.

**Methodology**

The Committee has followed an essentially interactive process for finalising its recommendations. A series of discussions were held with departments, mainly, to identify problems and possibilities as perceived by the departments, to harness internal expertise, to identify specific issues and peculiar circumstances prevailing in individual departments, and to spur departments to take a new look at things.

These intense discussions have helped create an ambiance for reforms. They have made the department partners and can help the Committee to lead them step by step on the path to reform. Of course, the Committee would modify the departmental perspectives by interaction with citizens groups and analysis of prevalent procedures and practices.

For preparing the interim report the Committee has used the following methods.

The Committee has analyzed the earlier reports of the Administrative Reforms Committees to ensure historical linkages, to know the action taken, to identify pitfalls in implementation and to resurrect unimplemented but relevant recommendations.

The Committee held ice-breaking sessions with Secretaries to Government and Heads of Departments. These discussions helped clarify mutual positions and forge a bond and partnership. These sessions encouraged loud thinking and helped the Committee to identify reform issues.

The Committee has collected various documents relating to reforms in the three areas chosen and analyzed them in detail. This has helped the Committee to ensure the necessary linkages with existing instructions.

The Committee has constituted Task Forces in 73 departments and 5 public sector undertakings. General terms of reference have been circulated to all of them. A general interaction with key members of the Task Forces was held in respect of 18 departments. In these discussions additional department-specific terms of reference were finalized. The Task Forces were asked to report on the areas chosen by
the Committee for the first report. These reports were thereafter discussed with the Task Forces and clarified.

The ARC team conducted its own study of enquiry counters in 12 offices.

**Decentralization and Administrative Reforms**

Kerala Government has embarked on the path of decentralization with a clear vision of what it means and what it intends to achieve. Decentralization is the process of setting up local self-governments with a well-defined area of autonomous functioning. Also it implies transferring power to the people through the local elected representatives who would act as trustees for the people. Thus it implies the empowerment of the ordinary man.

In the Kerala context, the local governments do not constitute a hierarchy. Each type of local body has its own functional domain. Thus there are 1214 local governments in existence in the State. They will be now dealing with almost every developmental matter and every welfare activity having direct interface with the citizens. Grama panchayat and municipal bodies also exercise a substantial portion of regulatory power. Thus direct contact with the people will be more at the local body level. Since they exercise functions and responsibilities hitherto discharged by the Government, there is need for a relationship of trust and understanding between local governments and people.

The recommendations made so far in this report all relate to bettering the services of the State to its people and making it more responsive in its day to day activities. Since a large number of such activities are carried out by the local governments, these recommendations would mutatis-mutandis apply to them also.

The Committee on decentralization of Powers has already recommended incorporating of Citizens’ Charter and Right to Information in the statutes relating to local bodies. These legal provisions need to be translated into practice at the earliest for which the recommendations made in Chapter 2 and 3 would be relevant.

In the new context there could be a large number of public grievances related to the functioning of local bodies that may be brought before the Government. This would lead to a sensitive situation where the Government has to discharge its inherent
obligation to the citizen even while protecting the freedom of local governments. The recommendation of the Committee on decentralization of Powers to set up an Ombudsman type of system for redressal of citizen’s grievances assumes special relevance in this context. It is desirable to have an independent mechanism, which can take care of public grievances concerning local governments. Till such time this recommendation is put into practice, it is necessary to evolve a public grievance redressal system for the government in relation to local bodies.

1) District level Committee - District Collector
   - District Planning Committee expert member
   - Deputy Director of Panchayats
   - Regional Joint Director
   - Assistant Development Commissioner
   - District Examiner of Local Funds

2) State level Committee - Addl. Chief Secretary – Chairperson
   - Secretary (Local Administration)
   - Secretary (Rural Development)
   - Chief Technical Examiner
   - Director of Local Fund Audit

These Committees could verify facts through any officer they deem appropriate for the purpose and sort out matters with the local governments through advice; but if the grievance cannot be settled through advice and dialogue, the matter has to be referred to Government for statutory remedies.

To sort out public grievances relating to implementation of public works, technical audit panels may be constituted at the district level and State level consisting of technical experts of outstanding credibility. These panels could look into specific complaints and their reports acted on by the Committees mentioned earlier, following the same procedure.

The local bodies require a public grievance redressal system in cases where the grievances are directly given to them.
Kerala’s developmental experience shows that the State has invested heavily in providing public services and social welfare. A large part of this investment is towards payment of government servants to provide the services. Therefore, reforms in this sector are particularly crucial in the Kerala context.

**Personal Administration**

Personnel reforms are perhaps the most critical area for administrative reforms in Kerala. In a sense, reforms in matters relating to Government staff and their functioning constitute the critical core of administrative reforms. Reforms in other areas basically revolve round this central point. Personnel reforms, if carried out sincerely, could turn out to be the prime mover in making governance more efficient and responsible. The Administrative Reforms Committee feels that initiatives in this regard would bring adequate returns.

With decentralization becoming a priority, personnel reforms have become a necessity. The capacity of a local body depends largely on the capacity of its staff. In the local government context, averages have no significance; it is the actual performance of a public servant, which matters. As governance is brought closer to people, attention is focused directly on the provider of services.

In spite of the importance of personnel reforms, governments have tended to tread cautiously in this area. Probably, there is fear of organized resistance of government servants. The strong departmental identities in the State have only reinforced the natural inertia of bureaucracy and made it doubly resistant to change from outside and incapable of change from within. Of course, to bring about effective reforms in this area is a tough task but, unless it is carried out with firmness and commitment, it will not yield results. The Committee feels that a positive environment has been created by decentralization, which has had several spin off effects, an important one being the new responsibility placed on public servants. Fortunately, public servants individually and collectively seem to have realized that there is need for fundamental reforms.
PART II

LEGISLATIVE OUTPUTS ON DECENTRALIZED ADMINISTRATION
CHAPTER V

BACKGROUND AND OVERVIEW OF 73RD & 74TH AMENDMENT TO THE INDIAN CONSTITUTION

The state governments effectively enjoyed power in the holding of elections to local bodies. The 73rd and 74th amendments take away an option that the state government previously had though it chose not to exercise it. And in politics, as in finance, options have value even if not ultimately exercised.

Until the passage of the 73rd and 74th constitutional amendments, the states were the only sub-national units officially recognized by the Indian constitution. And the constitution grants individual states considerable legislative autonomy.

Schedule Seven of the Constitution explicitly demarcates the respective legislative domains of the state legislatures and the national parliament. The functional areas over which the national parliament has exclusive domain are specified in List I, also called the "Union List". On the other hand, state legislatures have exclusive authority to enact legislation dealing with the items in List II, known as the "State List". Included in this list are items such as law and order, public health, agriculture, wealth taxes, land tenure and land reforms, and most notably in the current context, functions of local governments. List III, the "Concurrent List" includes items such as electricity, newspapers, education, price controls, etc., over which the national parliament and the state legislatures share jurisdiction.

The legislative origins of the 73rd and 74th constitutional amendments date back to the Constitution (64th Amendment) Bill, which was introduced in the parliament in July 1989\(^1\). The introduction of this bill represented the first attempt to confer constitutional status on rural local governments.

\(^1\) See Appendix I, the 64th Constitution (Amendment) Bill, 1989
5.1 64th Constitutional Amendment

64th Constitutional amendment was introduced in the parliament due to different reasons, such as, weak and ineffective functioning of panchayat raj institutions owing to a variety of reasons, including failure to hold regular elections, prolonged suppressions, inadequate representations of weaker sections, backward people and women, lack of financial resources and inadequate devolution of powers and responsibilities. Having regard to those inadequacies and keeping in view the directives to the state policy enshrined in article 40, to enable the local governments to function as the units of self-government, the said amendment was proposed. The bill envisaged:

- to establish a three tier system of panchayat in states having a population of more than twenty lakh and two tier system in those states having population less than twenty lakhs.
- Direct election to local self-government authority and to provide for representation without voting rights to the members of House of People and State Legislators.
- Ensure mandatory representation to women and backward classes
- Ensure fixed tenure for the panchayats, and time bound election.
- Provide for devolution of adequate funds and finances to local governments securing authorisation from state legislators
- Provide for the devolution state powers and responsibilities to local governments.
- Provide for the constitution of state finance commissions and entrust central election commissions in order to deal with corresponding subject matter related to local governance.
- Ensure audit through the Comptroller and Auditor General of the government.

Though the bill's broader aim of revitalizing rural local government was greeted favorably, some of the details were criticized and the bill was ultimately defeated in the Rajya Sabha. It is worth noting that the main criticism levelled against the bill was that it offered the states little discretion in the design of local government reforms.
The 73rd and 74th Constitutional amendments were introduced in parliament in September, 1991 by the government in the form of two separate bills: the 72nd Amendment Bill for rural local bodies (also known as panchayats) and the 73rd Amendment Bill for urban local bodies (generally known as municipalities). They were referred to a Joint Select Committee of Parliament and were ultimately passed as the 73rd and 74th Amendment Bills in December, 1992. After the bills were ratified by the state assemblies of more than half the states, the President gave his assent on 20th April, 1993. The amendments were then officially enacted through the issuance of government notifications the Constitution (73rd Amendment) Act, 1992 (commonly referred to as the Panchayati Raj Act) went into effect on April 24, 1993, and the Constitution (74th Amendment) Act, 1992 (the Nagarpalika Act), on June 1, 1993.

5.2 The Constitution (73rd Amendment) Act, 1992

With local governments being a state subject in Schedule Seven of the Constitution, any legislation reforming the structure of local government has to; ultimately, be enacted at the state level. The first task of the states was therefore to pass conformity acts, which either introduced new legislation or amended existing legislation, to bring the state laws into line with the provisions of the amendment. Under the amendments, states had a year, from the date the amendment went into effect, to do so. Because the amendments contain both mandatory and discretionary provisions, the degree of flexibility afforded the states in this task varied with the provision in question. The distinction between mandatory and discretionary provisions is embodied in the specific language adopted in the Acts and carried over into the newly inserted articles of the Constitution.

The mandatory provisions were those that contain the word "shall" in referring to the steps that individual states needed to take. In the discretionary provisions, on the other hand, the word "may" figures prominently. And so, while many of the discretionary provisions laid out a vision and created a space for individual states to legislatively innovate in reforming local government, ultimately, the design and scope of particular reforms was left to the discretion of individual state legislatures. Of the mandatory provisions of the Panchayati Raj Act, the most critical are those that strengthen the structure of representative democracy and political representation at the local level.
The key mandatory provisions

Most important mandatory provision is the establishment in every state (except those with populations below 2 million) of rural local bodies (panchayats) at the village, intermediate and district levels\(^2\). The idea for linking intermediary panchayat with the National Extension Scheme Blocks was an original proposal given by the first Administrative Reforms Committee in Kerala.\(^3\)

i. Direct elections to all seats in the panchayats at all levels\(^4\)

ii. Compulsory elections to panchayats every five years with the elections being held before the end of the term of the incumbent panchayat in the event that a panchayat is dissolved prematurely, elections must be held within six months, with the newly elected members serving out the remainder of the five year term\(^5\)

iii. Mandatory reservation of seats in all panchayats at all levels for *dalits and adivasis* in proportion to their share of the panchayat population \(^6\)

iv. Mandatory reservation of one-third of all seats in all panchayats at all levels for women, with the reservation for women applying to the seats reserved for *dalits and adivasis* as well \(^7\)

v. Indirect elections to the position of panchayat chairperson at the intermediate and district levels \(^8\)

vi. Mandatory reservation of the position of panchayat chairperson at all levels for Davits and Advises in proportion to their share in the state population \(^9\)

vii. Mandatory reservation of one-third of the positions of panchayat chairperson at all three levels for women \(^10\)

viii. In addition, the act mandates the constitution of two state-level commissions: an independent election commission to supervise and manage elections to local

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\(^2\) article 243B  
\(^3\) *Report of the Administrative Reforms Committee*, Government of Kerala, 1958, p. 145  
\(^4\) article 243C  
\(^5\) article 243E  
\(^6\) article 243D  
\(^7\) article 243D  
\(^8\) article 243C  
\(^9\) article 243D  
\(^10\) article 243D
bodies, much as the Election Commission of India manages state assembly and parliamentary elections\(^\text{11}\); and

ix. a state finance commission, established every five years, to review the financial position of local bodies and recommend the principles that should govern the allocation of funds and taxation authority to local bodies\(^\text{12}\).

Two other points need to be mentioned. The first is that while, for the most part, the 74th Amendment act deals with urban local bodies, a key article contained in that amendment applies to rural local bodies as well. The article in question mandates the constitution of District Planning Committees\(^\text{13}\) to consolidate the plans prepared by both rural and urban local bodies. In order to facilitate a well-planned husbanding of available resources, panchayats and municipalities should be informed as early as possible of what they might be expected to receive by way of tied and untied funds under various budgetary heads for implementing various schemes.

This is an essential pre-requisite for each tier of the panchayati raj system to prepare plans for its areas of responsibility, as defined through Activity Mapping, and then for all these plans, along with plans of municipalities, to be "consolidated" by the District Planning Committees (DPC) as mandated by Article 243 ZD of the Constitution. It needs to be underlined that the Constitution does not provide for DPCs to prepare district plans on their own, but to "consolidate" local area plans drawn up at lower tiers in both rural and urban areas of each district. A different provision of the Constitution covers district planning for Metropolitan areas.

**Significance of the amendment**

This amendment implements the Directive Principles of State Policy (DPSP)\(^\text{14}\) which says that “State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government” and have upgraded them from non-justifiable to justifiable part of the constitution and has put constitutional obligation upon states to enact the Panchayati Raj Acts as per provisions of the Part IX. However, states have been given enough

\(^{11}\) article 243K

\(^{12}\) article 2431

\(^{13}\) article 243ZD

\(^{14}\) article 40
freedom to take their geographical, politico-administrative and others conditions into account while adopting the panchayati raj system.

**Salient Features - Gram Sabha**

Gram sabha is a body consisting of all the persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level. Since all the persons registered in electoral rolls are members of gram sabha, there are no elected representatives. Further, gram sabha is the only permanent unit in panchayati raj system and not constituted for a particular period. Although it serves as foundation of the panchayati raj, yet it is not among the three tiers of the same. The powers and functions of gram sabha are fixed by state legislature by law. Three tiers of panchayati raj Part IX provides for a three tier panchayat system, which would be constituted in every state at the village level, intermediate level and district level. This provision brought the uniformity in the panchayati raj structure in India. However, the states which were having population below twenty lakh were given an option not to have the intermediate level. All the members of these three levels are elected. Further, the chairperson of panchayats at the intermediate and district levels are indirectly elected from amongst the elected members. But at the village level, the election of chairperson of panchayat (sarpanch) may be direct or indirect as provided by the state in its own Panchayati Raj Act. Corresponding provision for ward sabha, and ward committee has been incorporated in the 74th Constitutional amendment in connection with urban local bodies. Constitution of ward committee for each constituency of local government was originally proposed by the first Administrative Reforms Committee in Kerala during 1958.15

**Reservation in Panchayats**

There is a provision of reservation of seats for SCs and STs at every level of Panchayat. The seats are to be reserved for SCs and STs in proportion to their population at each level. Out of the reserved seats, one-third has to be reserved for the women of the SC and ST. Out of the total number of seats to be filled by the direct elections, 1/3rd have to be reserved for women. There has been an amendment bill pending that seeks to increase reservation for women to fifty percentage. The reserved

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seats may be allotted by rotation to different constituencies in the Panchayat. The State by law may also provide for reservations for the offices of the Chairpersons. Increased participation of Scheduled Caste, Scheduled Tribe and women representatives helped us to strengthen the LSG Institutions and the said social groups also in respective areas of the society. In Kerala the percentage of mandatory representation for women has been increased up to fifty.

**Duration of Panchayats**

A clear term for five years has been provided for the panchayats and elections must take place before the expiry of the terms. However, the panchayat may be dissolved earlier on specific grounds in accordance with the state legislations. In that case the elections must take place before expiry of six months of the dissolution. This will ensure time bound election to local government authorities. But the partisan and partial decision to avoid the local government elections became a constitutional question during the last two decades.

**Disqualification of Members**

The Act makes provisions for disqualifications from the membership\(^\text{16}\). As per this article, any person who is qualified to become a Member of Legislative Assembly (MLA) is qualified to become a member of the panchayat, but for panchayat the minimum age prescribed is twenty one years. Further, the disqualification criteria are to be decided by the state legislature by law. The presence of legislators and parliamentarians in local bodies may be questioned in due course of practice.

**Finance Commission**

State Government needs to appoint a finance commission every five years, which shall review the financial position of the panchayats and to make recommendation on the following:

a. distribution of the taxes, duties, tolls, fees etc. levied by the state which is to be divided between the panchayats
b. allocation of proceeds between various tiers,
c. taxes, tolls, fees assigned to panchayats grant in aids.

\(^{16}\) article 243F
This report of the Finance Commission would be laid on the table in the State legislature. Further, the Union Finance Commission also suggests the measures needed to augment the Consolidated Funds of States to supplement the resources of the panchayats in the states.

**Powers and Functions**

The state legislatures are needed to enact laws to endow powers and authority to the panchayats to enable them functions of local government. The Constitution enshrines the distribution of powers between the State legislature and the panchayats\(^{17}\).

Further, the state legislature can authorize the panchayats to collect and appropriate suitable local taxes and provide grant-in-aids to the panchayats from the Consolidated Funds of the states.

**Audit of Accounts**

State Government can make provisions for audit of accounts of the panchayats. But the real transfer of such subjects depends on the political ideology and attitude of the state / provincial government.

**Elections**

The law enshrines the provisions with respect to elections of the panchayats\(^{18}\). This article provides for constitution of a State Election Commission in respect of the Panchayats. This State Election Commission would have the power to supervise, direct and control the elections to the Panchayats and also prepare the electoral rolls. The article maintains the independence of the election commission by making provisions that the election commissioner of this commissioner would be removed only by manner and on same grounds as a Judge of the High Court. If there is a dispute in the Panchayat elections, the Courts have no jurisdiction over them. This means that the Panchayat election can be questioned only in the form of an election petition presented to an authority which the State legislature by law can prescribe. The election commissioner for this reason is to be appointed by the Governor. The terms and conditions of the office of the Election commissioners have also to be decided by the Governor.

\(^{17}\) 11\(^{th}\) & 12\(^{th}\) schedule of the Constitution of India, 1950

\(^{18}\) article 243K
Bar on interference by courts

Now the law bars the courts to interfere in the panchayat matters\textsuperscript{19}. The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in a court. No election to any panchayat is to be questioned except by an election petition presented to such authority and in such manner as provided by the state legislature.

The positive impact of the 73rd Amendment in rural India is clearly visible as it has changed power equations significantly. Elections to the panchayats in most states are being held regularly. Through over 600 district panchayats, around 6000 intermediate panchayats and 2.3 lakh grama panchayats, more than 28 lakh persons now have a formal position in our representative democracy. Still, this law lacks the proper definition of the role of the bureaucracy. It does not clearly define the role of the state government. On practical level, people are illiterate in India and they are actually not aware of these novel features. The panchayats are dominated by effluents in some parts of the country. The three tiers of the panchayati raj have still very limited financial powers and their viability is entirely dependent upon the political will of the states.

5.3 The Constitution (74th Amendment) Act, 1992

Background

Towns and cities contribute substantially to the economic development of the country. These urban centres also play an important support role in the development of rural hinterland. To keep this economic transformation in line with needs and realities at the grassroot level, it is necessary that the people and their representatives are fully involved in the planning and implementation of the programmes at local level. If democracy in Parliament and State Legislatures is to remain strong and stable, its roots must reach towns and villages and the cities where the people live. The Constitution of India has made detailed provisions for ensuring protection of democracy in Parliament and in State Legislatures. Hence, democracy in these institutions has survived and flourished. However, the Constitution did not make Local Self Government in urban areas a clear-cut constitutional obligation.

\textsuperscript{19} article 243 O, the Constitution of India, 1950
While the Directive Principles of State Policy refer to village panchayats, there is no specific reference to municipalities except implicitly in Entry-5 of the State List\(^{20}\), which places the subject of Local Self Government as a responsibility of the State. As a consequence of inadequate Constitutional provision for local self-government, democracy in municipal governance was not stable. Though the respective municipal acts of the States provided for regular elections to municipal bodies, they were frequently suspended and superseded for indefinite periods of time. Frequent and indefinite suspensions or supersessions eroded the very basis of local self-government and had a negative effect on democracy at the grass root level. The general position with regard to financial resources of the municipal bodies was also not satisfactory. Over the years, there was a steady encroachment on the assigned functions and revenues of urban local bodies (ULB) by specialized agencies of the State Governments. As a result, many urban local bodies became weak and were not able to perform effectively. The weakened status of urban local bodies crystallized public opinion in favour of need for a Constitutional guarantee to safeguard the interests of urban local bodies in order to provide for

- Regular and fair conduct of elections to these bodies
- Holding of elections within a specified time limit in case of supersession
- Adequate representation of SC/ST and women in the elected bodies
- Placing on firm footing the relationship between the State Governments and the urban local bodies with respect to functions and taxation powers of the urban local bodies, arrangement for revenue sharing between the State Government and the urban local bodies.
- Involvement of elected representatives at grass root level in planning at the district and metropolitan levels.

Accordingly, the Constitution (73rd Amendment) Bill was introduced in the Parliament in 1991, which was referred to the Joint Parliamentary Committee with Members from both Lok Sabha and Rajya Sabha for consideration. The Committee held several sittings and also took oral evidence and written comments from various organisations and individuals. The Committee had the opportunity of visiting various

\(^{20}\) Entry-5 - “Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-Government or village administration.”, list II, schedule VII, the Constitution of India, 1950.
municipalities and held detailed discussions with their officers and elected representatives as well as with several State Governments. This was probably the first time that the Parliamentary Committee had deliberated so extensively on a legislation concerning local self-government.

The Bill as reported by the Joint Parliamentary Committee was taken up for consideration and passed by the Lok Sabha on 22nd December, 1992 and by the Rajya Sabha on 23rd December, 1992 and it received the assent of President on 20th April, 1993. It was published in the Government Gazette on 20th April, 1993 as the “Constitution (Seventy Forth Amendment) Act, 1992”. The above Constitution Amendment Act came into force on 1st June, 1993. The Constitution (Seventy Forth Amendment) Act, 1992 has introduced a new part namely, Part IXA in the Constitution, which deals with the issues relating to municipalities.

**Constitution of Municipalities**

74th Constitutional Amendment Act provides for constitution of three types of municipalities depending upon the size and area namely (i) Nagar Panchayat for an area in transition from rural to urban area; (ii) Municipal Council for smaller urban area; and (iii) Municipal Corporation for larger urban area. Demographic and other conditions, which are determining factors for constituting a particular type of municipality differ a great deal from one State to another. It has, therefore, been left to the State Legislatures to decide which specific type of municipality will be constituted for particular urban area. Owing to this liberal approach, the States like Kerala used to avoid Nagar (Town) Panchayats.

**Composition of Municipalities**

The seats shall be filled by direct elections. Besides the seats filled by direct elections, some seats may be filled by nomination of persons having special knowledge and experience in municipal administration. Persons so nominated shall not have the right to vote in the meetings of the municipality. The Legislature of a State may, by law, also provide for the representation in a municipality of members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area and also the Members of the Council of States and the members of the Legislative Council of the
State registered as electors within the municipal area. The manner of election of Chairpersons of municipalities has been left to be specified by the State Legislature. Provision for nomination of members was not incorporated in the present law on local governments in Kerala.

**Constitution of Ward Committees**

This provides for constitution of Ward Committees in all municipalities with a population of 3 lakhs or more. This provision was also violated or watered by several states and there is no monitoring regarding ward sabha or ward committee.

**Reservation of seats**

In order to provide for adequate representation of SC/ST and of women in the municipal bodies, provisions have been made for reservation of seats. The proportion of seats to be reserved for SC/ST to the total number of seats shall be same as the proportion of the population of SC/ST in the municipal area. The reservation would be made in respect of seats to be filled by direct elections only. Not less than one-third of the total number of seats reserved for SC/ST shall be reserved for women belonging to SC/ST. This is a mandatory provision. In respect of women, the seats shall be reserved to the extent of not less than one-third of the total number of seats. This includes seats reserved for women belonging to SC/ST. These reservations will apply for direct elections only. This is also a mandatory provision. There will be no bar on State Legislatures from making provisions for reservation of seats in any municipality or office of Chairperson in the municipalities in favour of backward class of citizens. This is an optional provision.

**Duration of Municipalities**

The municipality has a fixed term of five years from the date appointed for its first meeting. Elections to constitute a municipality are required to be completed before the expiration of the duration of the municipality. If the municipality is dissolved before the expiry of five years, the elections for constituting a new municipality are required to be completed within a period of six months from the date of its dissolution. Delimitation and reconstitution of municipalities have been a conflicting matter before the government and the state election commission. The policy resolution is taken by the
executive government and the delimitation measures are taken by the commission. Hence stipulations shall be provided to this regard.

**Powers and Functions of the Municipalities**

All municipalities would be empowered with such powers and responsibilities as may be necessary to enable them to function as effective institutions of self-government. The State Legislature may, by law, specify what powers and responsibilities would be given to the municipalities in respect of preparation of plans for economic development and social justice and for implementation of schemes as may be entrusted to them. An illustrative list of functions that may be entrusted to the municipalities has been incorporated as the twelfth schedule of the Constitution. The extent and limit of this transfer is not mentioned in the Constitution and hence there is no uniformity in such transfer among the states.

**Finances of Municipalities**

It has been left to the Legislature of a State to specify by law matters relating to imposition of taxes. Such law may specify:

- Taxes, duties, fees, etc. which could be levied and collected by the Municipalities, as per the procedure to be laid down in the State law
- Taxes, duties, fees, etc. which would be levied and collected by the State Government and a share passed on to the Municipalities
- Grant-in-aid that would be given to the Municipalities from the State
- Constitution of funds for crediting and withdrawal of moneys by the Municipality.
- Derive principles to govern sharing and distribution of the revenue of the State among the local bodies with State.

**Finance Commission**

The Finance Commission constituted\(^{21}\) to review the financial positions of panchayat raj institutions shall also review the financial position of the municipalities and will make recommendations to the Governor. The recommendations of the Finance Commission will cover the following:

\(^{21}\text{article 243 I}\)
• Distribution between the State government and municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State
• Allocation of share of such proceeds between the municipalities at all levels in the State
• Determination of taxes, duties, tolls and fees to be assigned or appropriated by the Municipalities
• Grants-in-aid to municipalities from the Consolidated Fund of the State
• Measures needed to improve the financial position of the municipalities.

Elections to Municipalities

The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to the panchayats and municipalities shall be vested in the State Election Commissions.

Audit and Accounts

The maintenance of the accounts of the municipalities and other audit shall be done in accordance with the provisions in the State law. The State Legislatures will be free to make appropriate provisions in this regard depending upon the local needs and institutional framework available for this purpose.

Committee for District Planning

Planning and allocation of resources at the district level for the panchayat raj institutions are normally to be done by the zilla parishad. With regard to urban areas, municipal bodies discharge these functions within their respective jurisdictions. However, some important questions may arise, which would concern the urban-rural interface, and it may be necessary to take an overall view with regard to development of the district as a whole and decide on allocation of investments between the rural and urban institutions. Provision has, therefore, been made for the constitution of a Planning Committee at the district level with a view to consolidating the plans prepared by the panchayats and the municipalities and preparing a development plan for the district as a whole. The district planning committee in preparing the draft development plan shall have regard to:
• Matter of common interest between the panchayats and the municipalities including spatial planning
• Sharing of water and other physical and natural resources
• Integrated development of infrastructure and environment conservation
• Extent and type of available resources, whether financial or otherwise.

The draft district development plan so prepared and recommended by the District Planning Committee shall be forwarded by the Chairperson of the Committee to the State Government.

**Metropolitan Planning Committees**

It is provided in the Act that in every Metropolitan area (with a population of 10 lakhs or more), a Metropolitan Planning Committee shall be constituted for preparing a draft development plan for the metropolitan area as a whole. The Metropolitan Planning Committee shall take into account the following for preparation of the draft development plan:

• Plan prepared by the municipalities and the panchayats in the metropolitan area
• Matter of common interest between the municipalities and panchayats including coordinated spatial plans of the area
• Sharing of water and other physical and natural resources
• Integrated development of infrastructure and environmental conservation
• Overall objectives and priorities set by the Government of India and the State Government
• Extent and nature of investments likely to be made in the metropolitan area by agencies of the Government
• Other available resources, financial and otherwise.

In terms of the Constitution, nothing in Part IXA shall apply to Scheduled areas and Tribal areas as referred to in Article 244 of the Constitution\(^{22}\). However, Parliament may by law, extend the provisions of Part IXA to these areas subject to such exceptions and modifications as may be specified in that law.

\(^{22}\) article 243ZC
Implementation of Part IXA

In order to provide time to allow changes to be made in the then existing laws which were inconsistent with the provisions of the Constitution (74th Amendment) Act, a transition period of one year was provided for. Immediately after the Constitution (74th Amendment) Act came into force on 1st June, 1993, the Ministry of Urban Development took necessary steps to ensure that the provisions of the State Municipal Laws are brought in conformity with the provisions of the above Act. As a result of various steps taken up by the Ministry of Urban Development through correspondence and also organising meetings of the State level Secretaries, the State Governments brought in place the conformity legislations by target date i.e. 31st May, 1994. The amended state municipal laws provide for detailed provisions for constitution and composition of municipalities, reservation of seats for SC/ST and women, fixed term of five years and re-election of municipalities within a period of six months in case of dissolution, functions and financial powers of municipalities, setting up of State Finance Commission etc.
CHAPTER VI

THE KERALA PANCHAYAT RAJ ACT, 1994

The present Kerala Panchayat Raj Act, 1994 repeals the Kerala Panchayats Act, 1960. The new Act aims to establish a three-tier panchayat raj system in the State in line with the Constitution (Seventy third Amendment) Act, 1992, for securing a greater measure of participation of the people in planned development and in local governmental affairs, by constituting village, block and district panchayats. It also endows such panchayats with such powers and authority to enable them to function as institutions of self-government and entrusting such panchayats the preparation of plans and implementation of schemes for economic development and social justice including the implementation of schemes in relation to the matters listed in the eleventh schedule to the Constitution.


It is expedient to replace the then enactments relating to panchayats and district councils by a comprehensive enactment to establish a three-tier panchayat raj system in the State in line with the Constitution (Seventy-third Amendment) Act, 1992, for securing a great measure of participation of the people in planned development and in local governmental affairs, by constituting village, block and district panchayats and endow such panchayats with such powers and authority to enable them to function as institutions of self-government and entrusting such panchayats the preparation of plans and implementation of schemes for economic development and social justice including the implementation of schemes in relation to the matters listed in the eleventh schedule to the Constitution. It extends to the whole of the State of Kerala except the areas which are within the limits of the cantonments, nagar panchayats, municipal councils, municipal corporations and the industrial areas of the State.
6.1 Statement of Objects and Reasons

In order to enshrine in the Constitution certain basic and essential features of Panchayat Raj Institutions, to impart certainty, continuity and strength to them, the Parliament has added a new Part relating to the panchayats in the Constitutions (Seventy third Amendment) Act, 1992.

Provisions in accordance with the Constitution (Seventy third Amendment) Act, 1992 have to be made in the state enactment relating to panchayats before 23/04/1994. The Government considered that instead of making amendments to the existing Kerala Panchayat Raj Act, it would be better to enact a new panchayat act incorporating the provisions in accordance with the Constitution (Seventy third Amendment) Act, 1992.

On the coming into being of the district panchayats as envisaged in article 243B of the Constitution, it would be necessary to continue to the existing district councils. Government, therefore consider it necessary to repeal the Kerala District Administration Act, 1980.

Constitution and Composition of Panchayats

Subject to the provisions of the Constitution, the legislature of the State may by law make provisions with respect to the composition of panchayats, provided that the ratio between the population of the territorial area of a panchayat at any level and the number of seats in such panchayat to be filled by election shall, so far as practicable, be the same throughout the panchayat area. The legislature of the state may provide for the representation of the chairpersons of the panchayats at the village level, in the panchayats at the intermediate level or in case of a State not having panchayats at the intermediate level, in the panchayats at the district level.

The chairpersons and members of panchayats at different levels are to be elected according to the provisions of the Act and corresponding rules, published thereunder. Reservation of seats for SC / ST, mandatory representation of women in membership as well as leadership is also provided by the corresponding provisions of the Act according to the Constitutional prescriptions. Duration of elected panchayats is also stipulated by the Act. Conditions of qualifications and disqualifications of candidates and elected
representatives in different tiers of panchayats are also envisaged in the Kerala Panchayat Raj Act.

### 6.2 Powers, authority and responsibilities of Panchayats

During 1958, the first Administrative Reforms Committee in Kerala proposed three categories of functions which shall be entrusted to local government institutions such as:

i) Having full devolution of powers – raising own tax, deciding policies, implement decisions.

ii) Function as agents of government – with executive delegation.

iii) Functions involving necessarily higher option level for policy making and organization – mostly advisory functions.

These functions shall be provided with mandatory and discretionary powers for local governments.  

This initiative has not been fulfilled till today, even after two decades of the constitutional reforms.

Subject to the provisions of this Constitution, the legislature of a State may, by law, endow the panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to the preparation of plans for economic development and social justice and the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the eleventh schedule. Policy making and judicial decision making powers are not transferred to those local bodies.

### Power to impose taxes by, and Funds of, the Panchayats

The Legislature of a State may, by law:

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• authorise a panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
• 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;
• provide for making such grants-in-aid to the panchayats from the Consolidated Fund of the State; and
• 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.

The absolute dependency of local governments upon the state legislature and state government with respect to their revenues, resources and funds still continues.

6.3 Constitution of Finance Commission to review financial position

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

• the principles which should govern
  o the distribution between the State and panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this part and the allocation between the panchayats at all levels of their respective shares of such proceeds
  o the determination of the taxes, duties, tolls and fees which may be assigned to or appropriated by the panchayats,
  o the grant-in-aid to the panchayat from the consolidated fund of the State.

• The measures needed to improve the financial position of the panchayats,
• Any other matter referred to the Finance Commission by the Governor in the interest of sound finance of the panchayats.

The legislature of a State may, by law, provide for the composition of the Commission, the qualifications which shall be requisite for appointment as members
thereof and the manner in which they shall be selected. The commission shall
determine their procedure and shall have such powers in the performance of their
functions as the legislature of the State may by law, confer on them. The Governor
shall cause every recommendation made by the Commission together with an
explanatory memorandum as the action taken thereon to be laid before the legislature of
the State. Experience of the State Finance Commission in Kerala reveals that the State
administration is very keen to follow the awards in their policy whereas in detailed
practice certain shortcomings are existing till today.

**Audit of accounts of panchayats**

The Legislature of a State may, by law, make provisions with respect to the
maintenance of accounts by the panchayats and the auditing of such accounts. Multiple
audit measures are prescribed such as, Test Audit by the Accountant General, the
Statutory Audit by Local Fund Audit Department, internal or domestic audit by the
Department officials, performance audit by delegated officials, social audit by people as
part of good governance. This will result in absolute hindrance to the smooth
functioning of the LSGIs.

**Elections to the panchayats**

The superintendence, direction and control of the preparation of electoral rolls
for and the conduct of all elections to the panchayat shall be bested the State Election
Commission consisting of a State Election Commissioner to be appointed by Governor.
Subject to the provisions of any law made by the legislature of the State, the conditions
of service and tenure of office of the State Election Commissioner shall be such as the
Governor may by rule determine, provided that the State Election Commissioner shall
not be removed from his office except in like manner and on the like grounds as a Judge
of a High Court and the conditions of service of the State Election Commissioner shall
not be varied to his disadvantage after his appointment. The Governor of a State shall
when so requested by the State Election Commission make available to the State
Election Commission such staffs as may be necessary for the discharge of the functions
conferred on the State Election Commission. Subject to the provisions of this
Constitution, the legislature of State may by law, make provision with respect to all
matters relating to or in connection with, elections to the panchayats.
Though the panchayat raj institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people’s bodies due to a number of reasons including absence of regular elections, prolonged supersessions, insufficient representations of weaker section like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.

The Constitution enshrines the Directive Principles of State Policy lays down that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the shortcomings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of panchayat raj institutions to impart certainty, continuity, and strength to them.

**Delimitation of constituencies**

The government shall by notification in the gazette, constitute a Delimitation Commission consisting of the State Election Commission as the Chairman and four Officers, not below the rank of Secretary to Government, as Member Secretary. The said Delimitation Commission shall, as soon as may be after fixing the strength of a panchayat at any level\(^\text{24}\) and after determining the number of seats to be reserved for Scheduled Castes, Schedules Tribes and for Women. The State Election Commission or the officer authorized by it in this behalf shall, on determination by the government of the number of seats to be reserved, earmarked the constituency or constituencies to be reserved for Schedules Castes, Schedules Tribes or Women. Where the State Election Commission in deciding any question\(^\text{25}\) considers it necessary or proper to make an inquiry, and the commission is satisfied that on the basis of the affidavits filed and the documents produced in such inquiry by the parties concerned of their own accord, it cannot come to a decision in the matter which is being inquired into the Commission shall have, for the purposes of such inquiry, the powers of a civil court, while trying a suit under the Code of Civil Procedure 1908.

\(^{24}\) section 6 of the Panchayat Raj Act, 1994  
\(^{25}\) sub-section (2) of section 34 or section 36
6.4 Grama Sabha

Each constituency of village panchayat may be specified as a village\(^{26}\). All persons whose names are included in the electoral rolls relating to a village comprised within the area of a village panchayat shall be deemed to be constituted as grama sabha of such village. Grama sabha shall meet at least once in three months at the place fixed by the village panchayat and to such meetings, the convener of the village panchayat shall, compulsorily invite the member of the block panchayat, the district panchayat and the legislative assembly representing the area of the grama sabha, provided that the convener shall, on a request in writing made by not less than ten per cent of the members of any grama sabha, convene a special meeting of the grama sabha within fifteen days with the agenda given along with the request. Provided further that such special meeting shall be convened only once within the period between two general meetings. The member of a village panchayat representing the constituency comprised in the area of a village shall be the convener of that grama sabha; however due to any reason, physical or otherwise, the convener is unable to perform his functions as such, the President may appoint a member representing any adjacent constituency as the convener. Every meeting of the grama sabha shall be presided over by the President of the village panchayat or in his absence the vice-president or in the absence of both of them by the convener of grama sabhas. The village panchayat shall place before the grama sabha a report relating to the developmental programmes relating to the constituency during the previous year and these that are proposed to be undertaken during the current year, and the expenditure therefor, the annual statement of accounts and the administration report of the preceding year. If in any circumstances, any decision of the grama sabha could not be implemented, the president shall report the reason therefore, before the Grama Sabha. The village panchayats, the block panchayats and the district panchayats shall give due consideration to the recommendations and suggestions, if any, of the grama sabha. But this does not happen in reality and hence the democratic decentralization concept of grama sabha itself failed in the State of Kerala. Special grama sabha for planning, education, health, beneficiary selection etc. also resulted in a falsification due to different reasons. The efforts made by last few years to vitalize grama sabha also resulted in failure. Neighbourhood

\(^{26}\) clause (g) of article 243
groups, subcommittees, and executive committee for grama sabha also could not work according to its philosophical basis.

**Powers, function and rights of the Grama Sabha**

Grama sabha shall perform different powers and functions as mentioned in the corresponding provisions of Kerala Panchayat Raj Act\(^\text{27}\).

**Grama sabha meetings**

The grama sabha shall, in its ordinary meeting or in the special meeting convened for the purpose; discuss the annual administration report\(^\text{28}\) of the Panchayat and it shall have the right to know about the budgetary provisions, the details of plan outlay, item wise allocation of funds and details of the estimates and cost of materials of works executed or proposed to be executed within the area of the grama sabha. The Audit report of the performance audit report placed for the consideration of the grama sabha shall be discussed in the meeting and its views, recommendations and suggestions shall be communicated to the concerned village panchayat. The quorum of the grama sabha shall be ten per cent of the number of voters of its area and the procedure for convening and conducting meetings of the grama sabha shall be such as may be prescribed, provided that the quorum of the meeting of a grama sabha which was adjourned earlier for want of quorum shall be fifty when convened again. The Officers of the village panchayats shall attend the meetings of the grama sabha as may be required by the President and an officer nominated by the village panchayat as the co-ordinator of the grama sabha shall assist the convener in convening and conducting the meetings of the grama sabha and in recording its decisions in the Minutes Book and also in taking up follow up action thereon. The grama sabha may appoint, elect or constitute, general or special sub-committees for the detailed discussions on any issues or programmes and for the effective implementation of the schemes and the decisions and in furtherance of its rights and responsibilities. Provided that such committees shall consist of not less than ten members of whom, not less than half shall be women. Resolutions may be passed on majority basis, in the meetings of the grama sabha in respect of any issue within its jurisdiction, however, effort should be made to take decision on the basis of general consensus as far as possible. In actual practice the above

\(^{27}\) See section 3A, Kerala Panchayat Raj Act, 1994

\(^{28}\) sub-section (6) of section 3, ibid
said provisions have not realised and hence grama sabha ended as a futile exercise for namesake.

**Responsibilities of Grama Sabha**

In addition to the powers and rights, the law provides that the grama sabha is vested with the following responsibilities, namely:

- dissemination of information regarding developmental and welfare activities;
- participating in and canvassing of programmes of Health and Literacy and such other time bound developmental programmes;
- collecting essential socio-economic data;
- providing feedback on the performance of development programmes;
- resort to moral sanction to pay taxes, repayment of loans promote environmental cleanliness and to maintain social harmony;
- mobilize local resources to augment resources of the panchayat;
- supervising development activities as volunteer teams and
- make arrangements for reporting urgently incidence of epidemics, natural calamities, etc.

The grama sabha shall make periodical reports to the village panchayats in respect of matters specified by law.\(^29\) Even after two decades the grama sabha are not established in such a way so as to perform all such functions or to deal with all such responsibilities due to different reasons. This will tamper the concept of grass root level administration.

**Incorporation and administration of panchayats**

Every panchayat shall be a body corporate by the name of the panchayat specified in the notification issued under law\(^30\). A district panchayat, a block panchayat and a village panchayat shall exercise such powers, perform such functions and duties and shall have such responsibilities and authorities as are provided by or under this Act or any other law for the time being in force. A panchayat is competent to file an

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\(^{29}\) Section 3 A, the Kerala Panchayat Raj Act, 1994  
\(^{30}\) Section 4, ibid.
original petition under Art 226 when any of its legal right is infringed by the authorities including the Government.

6.5 Standing Committees

In every panchayat standing committees as stated below shall be constituted, namely:

- In a Grama Panchayat
  - Standing committee for Finance
  - Standing Committee for Development
  - Standing Committee for Welfare.
  - Standing Committee for Health and Education

- In a block Panchayat
  - Standing Committee for Finance
  - Standing Committee for Development
  - Standing Committee for Welfare
  - Standing Committee for Health and Education

- In a District Panchayat
  - Standing Committee for Finance
  - Standing Committee for Development
  - Standing Committee for Public works.
  - Standing Committee for Health and Education
  - Standing Committee for Welfare

Every standing committee shall consist of such number of members, including its chairman as decided by the Panchayat, so that all other elected members except the President and Vice-President shall be elected as a member in any of the standing committee and the number of members elected to each standing committee shall, as far as possible, be equal.

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Subjects to be dealt with by the standing committees

The following subjects shall be dealt with by the standing committees of the panchayat, namely:

- The standing committee for finance shall deal with the subjects of finance, tax, accounts, audit, budget, general administration, appeal relating to tax and subjects not allotted to other standing committees;
- The standing committee for development shall deal with the subjects of development planning, socio-economic planning, spatial planning, agriculture, soil conservation, social forestry, animal husbandry, diary development, minor irrigation, fisheries, small-scale industry, public works, housing, regulation of building construction, electricity, etc;
- The standing committee for welfare shall deal with the subjects of development of scheduled caste-scheduled tribe, development of women and children, social welfare, social security, slum improvements, poverty alleviation, public distribution system,
- The standing committee for Health and Education shall deal with the subjects of Public Health, Sanitation, Education, Art and Culture and entertainment, water supply, sewerage and environment.
- The standing committee for Public works in district panchayat shall deal with the subject matter of construction, maintenance and improvement of public assets, infrastructure and connectivity facilities.

Steering Committee

There, shall be a steering committee in every panchayat consisting of its President, Vice-President and the Chairman of standing committees and the President shall be the chairman of the said committee. The steering committee shall co-ordinate and monitor the functions of the standing committees and shall perform such other powers and functions as may be entrusted to it by the panchayat.

Constitution of Functional Committees

Every panchayat may subject to such rules as may be made in this behalf, constitute functional committees for different subjects like agriculture, sanitation,
communication, public health and education consisting of members of panchayat and others who are interested in public welfare and who are nominated by the panchayat, provided that members nominated by the panchayat shall not have any right to vote. The powers and functions of the Functional Committees shall be such as may be prescribed in this behalf.

**Sub-Committees and Ward Committees**

Every Panchayat may constitute subcommittees to assist the Standing Committee or Functional Committees for the execution of any work, scheme, project or plan, which may consist of members of the Panchayat and others interested in public welfare who may be nominated by the Panchayat, provided that the nominated members shall have no right to vote. If not less than fifty persons enrolled in the voters list relating to a constituency of village panchayat belongs to Scheduled Tribe, they shall be deemed to be a sub-committee of the grama sabha comprised in the territorial area of that constituency and that sub-committee shall have the same powers and rights as that of the grama sabha regarding the development of Scheduled Tribe. The village panchayat may constitute ward committee for each constituency with the member of the constituency concerned and other local inhabitants who may be nominated by the village panchayat to study and report on the needs of the constituency. The composition, term, procedure, nature of functions of the committees constituted shall be as laid down in the bye-laws of the panchayats concerned.

**Constitution of Joint Committee**

A panchayat may, along with one or more local self-government Institutions constitute a Joint Committee for any purpose for which they are jointly responsible, if the panchayat so decided or the Government so requires. The constitution, powers and procedure of a joint committee and a method of settling differences of opinion arising in the committee shall be such as may be prescribed.

**Powers, duties and functions of village panchayat**

It shall be the duty of the village panchayat to meet the requirements of the village panchayat area in respect of the matters enumerated in the Third Schedule,

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32 sub-section (1) and sub-section (2) of section 164, the Kerala Panchayat Raj Act, 1994
provided that it shall be the duty of the village panchayat to render services to the inhabitants of the village panchayat area in respect of the matters enumerated as mandatory functions in the Third Schedule. Subject to the other provisions of the Panchayat Raj Act and the guidelines and assistance financial, technical or otherwise, of the Government, the village panchayat shall have exclusive power to administer the matters enumerated in the Third Schedule, and to prepare and implement schemes relating thereto for economic development and social justice. Village panchayat shall also have powers to enhance employment facilities and to undertake developmental activities and to start manpower banks, under the leadership of the village panchayats. Corresponding functions can be undertaken by block and district panchayats as per the provisions of the Act.

All grants-in-aid sanctioned by the Government in respect of the matters enumerated in the Third Schedule shall be distributed through the village panchayat concerned. The Government shall, as soon as may be, after the commencement of this Act, transfer all institutions, schemes, buildings and other properties, assets and liabilities connected with the matters referred to in the Third Schedule to the Village Panchayat, and every institution so transferred shall be in the name of the said village panchayat and shall be known accordingly.

The village panchayat shall administer the institutions and schemes transferred to it, subject to the guidelines and technical assistance of the Government and in accordance with the state and national policies. The village panchayat shall not have any power to sell, transfer, alienate or pledge the properties transferred to it.

6.6 Transfer to village panchayats of functions, institutions and functionaries

Subject to such rules, as may be prescribed, the Government, the district panchayat or the block panchayat may transfer to the village panchayat the management and maintenance of any institution or the execution or maintenance of any work or the exercise of any power or the discharge of any duty within the village panchayat area whether provided in this Act or not. The Government may, in addition to the powers and functions herein before, mentioned as exercisable by the village panchayat authorize by general or special order, subject to such rules and conditions as may be
prescribed, a village panchayat to exercise any power or discharge any function such as collection of land revenue, maintenance of survey and village records, collection of village statistics, supervision and control over Government primary schools, medical, public health, child welfare and maternity institutions as may be specified by the Government from time to time, and execution of community development work including improvement of agriculture, animal husbandry, communication and village industries, soil conservation, protection of environment, conservation of forest, wild life protection, protection of orphans, protection of the aged, cultural activities and informal education. Subject to such rules as may be prescribed a person or body of persons may transfer to the village panchayat, with its consent and subject to such conditions as may be agreed upon, the management and maintenance of any institution, within the panchayat area.

Maintenance of Common Dispensaries, Child Welfare Centres etc.

Subject to the provisions of the Panchayat Raj Act and the rules made there under, a village panchayat or two or more village panchayats together may establish and maintain common dispensaries, child welfare centres and institutions of such other kind as may be specified by the Government. According to the orders issued by the State Government institutions in their hierarchy of functions are transferred to the other tiers of local government. Authorities at corresponding levels are also transferred accordingly. Agriculture, rural development, health education, social justice, etc. are such areas of functions are also transferred to LSGIs.


All public roads other than those classified by the government as national highway, state highway or major district roads, bridges, culverts, ditches, dykes, fences on or beside the same protective devices and all adjacent land, not being private property appertaining thereto, within the panchayat area may be entrusted to the local government institutions at corresponding level. Here also it is seen that public roads are demarcated into block and district panchayats.

Any property or income which by custom belongs to or has been administered for the benefits of the villagers in common, or the holders in common of village land generally or of lands of a particularly description or of lands under a particular source of
petty irrigation shall vest in the village panchayat to be administered by it for the benefit of the villagers or holders aforesaid.

**Managing Committee for Public health Institution**

There shall be constituted a Managing Committee, in the manner prescribed, consisting of not more than fifteen members including the Chairman, for every public health institutions transferred to the panchayat from Government. For educational institutions Anganvadis (ICDS centres) etc., institutional management committee or development committee can be constituted. It shall be formed for larger public participation in institutional management and furtherance of decentralization beyond the level of panchayats.

**Delegation of powers and functions of Government to Panchayat**

The Government may, by notification in the gazette, from time to time delegate to the Panchayat at any level, any of the powers and functions of the Government as may be specified in the notification in respect of any matter which is not provided in this Act subject to such restrictions and conditions as may be specified therein. Where the Government delegates a function to panchayat at any level, it shall allot to that panchayat such fund and personnel as may be necessary to enable the panchayat to discharge the functions so delegated.

**Preparation of development plans by panchayats**

The panchayat at every level shall prepare every year a development plan for the next year in respect of the functions vested in it, for the respective panchayat area in the form and manner prescribed and it shall be submitted to the District Planning Committee before the date prescribed. The village panchayat shall prepare the development plan having regard to the plan proposals submitted to it by the Grama Sabhas. Where the District Planning Committee directs to make changes in the draft development plan on the ground that sector-wise priority and criteria for subsidy specified by the Government had not been followed or sufficient funds for Scheduled Caste, Scheduled Tribe development schemes have not been provided in the draft development plan for that the scheme was prepared not in accordance with the provisions of the Act or rules, the panchayat shall be bound to make such changes. The panchayat shall in addition to the annual and five year plans, prepare a perspective plan
foreseeing a period of fifteen years, with special focus on spatial planning for infrastructure development and considering the resources and the need for further development and such plan shall be sent to the concerned District Planning Committee.

**Entrustment of schemes to panchayats for implementation**

Notwithstanding anything contained in any law for the time being in force, the Government may subject to the conditions as they may think fit to impose entrust, by an order published in the gazette, to a panchayat at any level the implementation of such schemes of economic development and social justice including the schemes related to the matters enumerated in the eleventh schedule to the constitution as they think fit. Where the Government entrust a scheme to a Panchayat at any level it shall allot to that panchayat such fund and staff as may be necessary to enable the panchayat to implement the scheme. Hence it is evident that local government institutions have only very limited autonomy. Decision making power and policy making power are vested with the State Government. The powers for financial allocation are also vested with the State government even after the appointement of state Finance Commission.

**Power to accept donations and trusts**

A panchayat may accept donations or trusts relating exclusively to the furtherance of any purpose to which its funds may be applied and shall apply the same solely for such purpose.

**Acquisition of immovable property required by the panchayat**

Any immovable property which is required by a panchayat for a public purpose connected with the discharge of the functions imposed on it under this Act, or the rules or bye-laws made there under, or any other law, may be acquired under the provisions of the Land Acquisition Act, 1894, and on payment of compensation awarded under that Act in respect of such property and of any other charges incurred in acquiring it, the said property shall stand transferred to and vest in the Panchayat: Provided that nothing contained in this section shall be deemed to prevent any panchayat from acquiring immovable property either through private purchase or any free surrender.

Road Development is undoubtedly a purpose to which panchayat funds if available could have been utilised. Therefore, the contention of the petitioners that
since it is not public funds which are being utilised for the acquisition, the purpose of acquisition cannot be treated as a public purpose cannot be upheld. Just because the acquisition proceedings have been preceded by litigations resulting in order or decrees in favour of the petitioners who are owners of the land, the acquisition will not become bad on the reason that the same is initiated after unfavourable results in the previous litigations.

There is no doubt that establishment of parking, space for taxis is a public purpose and it is the duty of the panchayat to provide such space. But section 178 did not oblige the Government in all such cases and government should acquire the land as proposed by the panchayat. It only enables the panchayt to make a request to the Government to acquire a particular land for public purpose. But the Government is the ultimate authority to decide whether it should take proceedings for acquisition of land or not whether all such requests of local authority shall be accepted or not. Government has got power to reject such requests for valid reasons.

**Appointment of Secretaries**

For every panchayat there shall be appointed a Secretary who shall be a Government Servant. The panchayat shall pay the secretary such salary and allowances as may from time to time, be fixed by the Government and shall also make such contributions towards his leave allowance, pension and provident fund as may be required by the condition of his service under the Government to be made by him or on his behalf. Subject to the provisions of the Act the Government shall by rules made under the Kerala Public Services Act, 1968, regulate the classification, method of recruitment, conditions of service, pay and allowances, and discipline and conduct of the Secretaries appointed under the Act. Such rules may also provide for the constitution of separate service or cadre either for the whole state or for each district including the Secretary along with such other Government Servants as are considered necessary by the Government. The Government of any authority authorised by Government may, at any time, transfer secretary from a panchayat and shall do so if such transfer is recommended by a resolution of the panchayat passed at a special meeting called for the purpose and supported by a simple majority of votes of the

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34 *Shahul Hamed v. State of Kerala*, 2005 (4) KLT SN 48
allowed strength of the panchayat, provided that before considering such a resolution by the panchayat, the Secretary shall be given an opportunity to make a representation before the Panchayat or the President and shall be heard by them if necessary. A panchayat shall be competent to impose minor penalties on its secretary subject to such rules as may be made in this behalf.

Where disciplinary proceedings have to be initiated against the Secretary; the President shall have the power to make an enquiry and where a major penalty is to be imposed, to initiate further action under the rules applicable to the Secretary with the approval of the panchayat and to report it to the Government or to the authority competent to appoint the Secretary and the Government or such authority, immediately after the receipt of such a report, shall take appropriate action and intimate the final decision thereon to the President. The Government may, by a general or special order appoint any officer of the Government transferred to the service of the panchayat as ex-officio secretary of the Panchayat and the persons so appointed shall have all the powers and functions of the secretary on the subjects dealt with by them.

The Act makes it clear that the Government have the power to transfer Secretary from one panchayat to another. There is no fetter on that power. Second part of the section makes it clear that it is obligatory to the Government to transfer a Secretary, if the panchayat requests for that. But it does not enable a panchayat to pass a resolution that a particular Secretary shall be posted to that panchayat and a particular Secretary shall be retained to that panchayat. That is why the second part of the section makes it clear that “if such transfer is recommended by a resolution of the panchayat”. So the power of the panchayat is only to request the Government to take away the services of an unwanted Secretary and it cannot seek retention of its blue eyed boy as the Secretary.

**Officers and Employees of Panchayat**

The officers and employees of the Panchayat, other than contingent employees shall be Government Servants. The control of the officers of the Panchayat shall be with the Panchayat. The Panchayat shall pay the officers and employees such salary and allowances as may from time to time be fixed by the Government and shall also make

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35 Section 179 (4), the Kerala Panchayat Raj Act, 1994
36 Poruthisseri Grama Panchayat v. Director of Panchayats, 2000 (2) KLT 776
such contributions towards their leave allowance, pension and provident fund, as may be required by the conditions of their service under the Government, to be made by them or on their behalf.

A panchayat shall be competent to impose minor penalties on any officer or employee of that panchayat, subject to such rules as may be made in this behalf. An appeal against the order of the Panchayat imposing any minor penalty shall be to the authority entrusted by the Government in this behalf. Ultimately the disciplinary powers are vested with bureaucratic authorities or supervisory officers and the local government institutions have only the advisory capacity in this regard.

On receipt of an appeal, the ‘authority’ shall after giving the appellant an opportunity of being heard, confirm, cancel or modify the order appealed against or pass such other order as it deems fit. The Government may either *suo moto* or on application call for the records of any order passed and review any such order and pass such order with respect there to as they think fit, provided that no application for review shall be entertained after the expiration of thirty days from the date on which the order sought to be reviewed was received by the applicant. Provided further that Government shall not pass any order affecting any party unless such party has had an opportunity of making a representation: Provided also that no *suo moto* revision shall be made by the Government more than one year after the date of the order to be reviewed. Where disciplinary proceedings are to be initiated against any officer or employee of the Panchayat, the President may make an enquiry against that officer or employee and where a major penalty is to be imposed, he shall have the power to report it for further action to the authority competent, to appoint him in service of the panchayat with the approval of the panchayat and such authority, shall, immediately on receipt of the report, take appropriate action and intimate the decision taken thereon to the President.

Disciplinary powers in respect of official functionaries are vested with the State government itself owing to the dual control system existing today. Sanction for prosecution of public servant, person appointed in state administrative services, appointing authority is the state government, which can impose penalty over or remove the person from service, as per the decision of the State government. The mayor is not the authorised person with competent authority to decide so in case of a government
servant. Decision of J. A.K Ganguly was substantiated under the Madhya Pradesh legislation on local government.  

6.7 **Power of the Government to lend the service of their officers and employees to Panchayat**

Subject to such terms and conditions as may be prescribed the Government shall lend the services of Government officers and employees to the panchayats as may be necessary for the implementation of any scheme, project or plan assigned or delegated to the Panchayat under the Panchayat Raj Act. The full control and supervision of the institution and employees transferred to the panchayat under this Act shall rest with the panchayats concerned. The Government shall give fully the existing state plan contribution and the annual budget contribution in respect of the subjects transferred to the panchayats to the panchayat concerned. When disciplinary proceedings have to be initiated against an officer or an employee the President of the panchayat concerned shall be entitled to make an enquiry and report against such officer or employee to the Government. Notwithstanding anything contained in the corresponding provision, a panchayat shall be competent to impose minor penalties on any officer or employee subject to such rules as may be made in this behalf. The government Officers and employees transferred to the panchayat shall, in addition to their normal function, perform other related functions delegated to them by the panchayat, as if they are officers and employees of that panchayat. The officers and employees transferred to the panchayat shall be responsible to execute the works including the implementation of any scheme, projects or plans of the Government which are not assigned or delegated to the panchayat under this Act or any other law. The Government shall pay the salary, allowances and other benefits in the officers and employees transferred to the panchayat from the Government, till the Government decides that the concerned panchayat is able to meet such expenses.

The statutory rule is to complete the proceedings at the earliest as evident from sub-rule 6 of Rule 8 which provides the time limit of three months. Therefore, the delay is not justified. Since consequence is not provided for not completing enquiry within the time limit, it can be assumed that the said provision is only director. In other

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37 *M. P. State v. Pradeep Kumar Gupta*, AIR 2011, SC 2334
38 Panchayat Raj (Control over Officers) Rules 1997 R. 8 (6)
words, the violation of sub-rule 6 may not result in nullification of the entire proceedings as the said rule is only directory\textsuperscript{39}.

In the case of a government school teacher transferred to Panchayat, it cannot be said that their services have been lent to the Panchayat. The president cannot conduct an enquiry. The petitioner being a government school teacher, is not working in any scheme, project or plan assigned or delegated to the panchayat, as such school had not been transferred to the panchayat. Therefore, it cannot be said that the petitioner’s service had been lent to the panchayat. When her services are not lent to the panchayat, the President of the panchayat cannot conduct an enquiry or make a report against the petitioner thereof. Equally the panchayat cannot impose any penalty, exercising the powers. On that reason also the action initiated by the President as well as the panchayat against the petitioner is incompetent\textsuperscript{40}.

**Powers and functions of the Secretary**

Subject to the provisions of this Act and the rules grade there under, the Secretary as executive officer of the panchayat shall, attend the meetings of the panchayat and of the standing committee and may take part in the discussions purely in an advisory capacity, but shall have no right to move any resolution or to vote, provided that

- The Secretary shall record his views on any matter that may come up for the consideration of the panchayat and each item of the agenda shall be placed before the panchayat with the specific remarks of the Secretary.
- If the Secretary considers that any resolution passed by the panchayat shall be referred to the Government, he shall record such remarks in writing.
- Secretary shall attend any meeting of a committee of the panchayat if required to do so by the person presiding thereon, carry in the effect the resolutions of the Panchayat.
- Where the Secretary is of the opinion that any resolution passed by the Panchayat has not been legally passed or is in excess of the powers conferred by this Act or any other Act or is likely to endanger human life, health or public safety, if implemented, he shall request in writing to the panchayat to review the resolution

\textsuperscript{39} Pushpavally v. Seethathode Grama Panchayat, 2002 (2) KLT SN 111
\textsuperscript{40} Sarada v. Nagalassery Grama Panchayat, 1999 (2) KLT 436
and express his views at the time of its review by the panchayat and if the panchayat upholds its previous decision, the matter shall be referred to the Government after intimation to the President and if no decision of the Government is received within fifteen days, the said resolution shall be implemented and information there of shall be given to the Government.

- Control the officers and employees working under the Panchayat, subject to the general superintendence and the control of the President
- Discharge all the duties and exercise all the powers specifically imposed or conferred on the Secretary by or under this Act.
- Meet the expenses delegated by the President;
- give amounts either by cheque or cash for all kinds of expenditure authorised by the Panchayat;
- be responsible for the safe custody of the Panchayat fund;
- maintain and keep the accounts of receipts and expenditure of the Panchayat;
- Keep the record of the meeting and proceedings of the Panchayat;
- have power to initiate disciplinary action against the employees of the Panchayat
- place before the standing committee for finance the monthly accounts of the panchayat before the tenth of the succeeding month or at the first meeting of the succeeding month;
- prepare the annual accounts and demand collection and balance, statement of the preceding financial year and place before the panchayat before the thirtieth or June of the succeeding financial year;
- furnish the returns, accounts statements and other details when called for by the Government or any audit authority;
- inspect or cause to be inspected the accounts of the institutions under the control of the panchayat;
- keep the records of the Panchayat, the Standing Committees, the Executive Committees, such other Committees and the Grama Sabhas;
- Co-ordinate the preparation of the annual plans and five year plans within the time specified by the Government so as to enable the District Planning Committee to approve the same;
- disburse the plan funds to the officers concerned and to render utilisation certificate to the Government as ordered by it.
Whenever the officials of transferred institutions were not included here as ex-officio secretary, at least within their respective jurisdiction has not happened here.

**Exercise of functions of Secretary by other officers in certain cases**

The Government, or any authority, authorised by Government may, by general or special order, authorise any officer working in the Panchayat to exercise all or any of the functions of the Secretary in his absence.

**Delegation of functions of the Secretary**

The Secretary, may with the permission of the President, delegate by order in writing any of his functions to any officer of the Panchayat, subject, to such restrictions and control, as he may, specify.

**Relationship between the elected authorities and officers**

The Government shall prescribe a code of conduct in respect of the relationship between the elected authorities and employees of the Panchayat for the purpose of protection of the rights of the officers and employees under the control of the panchayat to render advice on matters dealt with by them and professional freedom and statutory rights. The dual control mechanism is evident here in the personal management of official functionaries in local government institutions. The rules are prescribed and enforcement of such rules are by the State Government and not by the local bodies.

**Finance Commission**

A Finance Commission may be constituted by the Governor pursuant to the provisions of the Constitutions. The Commission shall consist of such number of members not exceeding three including the chairman as may be determined by the Government, provided that members of the commission may be appointed on part time basis.

Persons who are to be appointed as member of the Commission shall be:

- One shall be a person having special knowledge and experience in financial matters and economics; and
• The other two shall 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.

Every member of the commission shall hold office for such period as may be specified in the order of the Governor appointing him, but shall eligible for re-appointment. The chairman or a member of the commission may resign his office by writing under his hand and addressed to the Governor, but shall continue in office until his registration is accepted by the Governor. A casual vacancy caused by the resignation of a member or chairman or for any other reason, may be filled by fresh appointment and a member or chairman so appointed shall hold office for the remaining period for which the member or chairman in whose place he was appointed would have held office. The Commission shall meet at such time and place and shall observe such procedure in regard to the transaction of business at it meeting as may be determined by the Commission. The commission shall in the performance of its functions have all the powers of the civil court under the Code of Civil Procedure, 1908, while trying a suit it respect of the following matters, namely

• summoning and enforcing the attendance of witness;
• requiring the production of any document;
• requisitioning any public record from any office.

The commission shall have powers to require any person to furnish information on such points and matters as in the opinion of the commission may be useful for or relevant to, any matter under the consideration of the commission. Commission shall review the financial position of the panchayats and submit recommendations to Governor regarding,

(a) (i) the sharing among the Government and panchayats of the net-income of the taxes, duties, cess and fees which are being levied by the Government and which may be shared with the panchayats as per the constitution and dividing among the panchayats at all levels, their shares in such incomes;
(ii) for fixing the taxes, duties, cess and fees which may be ear marked for the panchayats and may be expended by them;
(iii) to impose the criteria regulating the financial aid etc. for the panchayats from the State Consolidated Fund;
steps necessary for improving the financial position of the panchayats; and
any other matters which is being left to the commission by the Governor taking
into account of the interest of the financial security of the panchayats.

Governor shall cause to be laid before the Assembly each recommendation submitted by the Commission along with explanatory memorandum regarding the steps taken on it. Officers having knowledge and experience in financial matters shall be appointed as staff of the Commission in order to assist the Commission.

6.8 Administrative set up of Panchayat

The administrative set up of panchayat in the State shall consist of village panchayats, block panchayats, district panchayats and grama sabhas. Power to design and enforce such administrative set up for local government institution is also vested with the State Government. This is another imperative upon the democratic decentralization process.

In 1958 itself, E.M.S. Namboothiripad opined that for the mobility of staff from the State to the local government complete reshaping of panchayat staff structure is essential.41 Two important categories, administrative functionaries under the government and civic functionaries under the local body are to be ensured in local government institutions as part of this administrative set up. It is evident that this proposal has not been operationalized till today.

Power to inspect records etc. of Panchayats

The Government or any officer empowered by the Government in which behalf, may,

- call for any record, register or other document in the possession, or under the control of any panchayat, provided that, the document, register, or records furnished by the panchayat shall be returned in original to the panchayat, within ninety days of its receipt by the Government, and attested copy of the same shall be retained by the Government if necessary.

• require any panchayat to furnish any return, plan, estimate, statement of accounts;
• require any panchayat to furnish any information or report on any matter connected with such panchayat;
• require any panchayat to obtain their previous sanction before giving up a claim or closing down any institution which is a source of income;
• record in writing for the consideration of any panchayat any observation in regard to the proceedings or duties of the Panchayat; and
• have power to inspect any office or any records or other documents of the panchayats or movable properties kept therein or any work or institution or property under the control of the panchayat

Every Panchayat, President, Secretary and Other Officer shall be bound to give facilities for exercising duties. The Government may, in the manner prescribed arrange periodical performance audit in respect of the administration of the panchayat.

Technical supervision and inspection

The heads of departments concerned and other technical officers nominated by them may inspect the works and development schemes implemented by any officer of that department under the control of any panchayat and also inspect relevant records pertaining to such works and development schemes, in the manner specified by the Government.

6.9 General power of Government to issue guidelines and to conduct enquiry

Notwithstanding anything contained in the Act, the Government shall have the power to issue general guidelines to the panchayats in accordance with the national and state policies in matters such as finance, maintenance of accounts, officer management, formulation of schemes, selection of sites and beneficiaries, proper functioning of grama sabha, welfare programmes and environmental regulations and panchayats shall comply with such directions. If there is any default in the implementation of schemes or maintenance of accounts or complaint is received in the matter, Government may

42 section 129 sub-section (1), the Kerala Panchayat Raj Act, 1994
arrange for enquiry into the matter and the panchayat shall co-operate with such enquiry. After such enquiry, Government may take such action as is necessary and permissible under the Act.

**Power to take action for default by a panchayat president, or secretary**

If, at any time, it appears to the Government that a panchayat, or its president or its secretary has made default in performing any duty imposed by or under this Act or in carrying out any orders lawfully issued by the Government may, by order in writing, fix a period for the performance of such duty, or the carrying out of such order. If such duty is not performed or such order is not carried out within the period fixed under the law, the Government may, after giving a reasonable opportunity to the panchayat or its president or its secretary, as the case may be, to explain why further action under this section may not be pursued, appoint any officer, or authority to perform the duty or to carry out the functions and may direct that the expenses incurred therefore shall be paid from the fund of the panchayat within such time as may be specified by the Government. If the expenses which the Government may direct under law to be paid from the fund of the panchayat are not paid as provided, the Government may make an order directing the persons having the custody of the said fund to pay it in priority to any other charges against that fund, except charges for the service of authorized loans. The person referred to, shall as far as the funds to the credit of the panchayat admit, be bound to comply with the order made by the Government.

**Power of cancellation and suspension of resolutions etc.**

Government may either *suo moto* or, on a reference by president, secretary or a member, or on a petition received from a citizen, cancel or vary a resolution passed or a decision taken by the panchayat if in their opinion such decision or resolution under the following incidents.

- is not legally passed or taken; or
- is in excess of the powers conferred by this Act or any other law or its abuse; or
- is likely to endanger human life, health public safety, communal harmony or may lead to riot or quarrel; or
- is in violation of the directions or provisions of grant issued by Government in the matter of implementing the plans, schemes or programmes.
Before cancelling or amending a resolution or decision as per the said provision, the Government may refer the matter for consideration either to the ombudsman\(^43\) or the tribunal\(^44\) constituted under the law and the ombudsman or the tribunal, as the case may be; after giving the panchayat an opportunity of being heard, send a report to the Government with its conclusions and the Government may, on its basis cancel, amend or confirm the resolution or decision. If another remedy is available to the petitioner through the tribunal, the Government shall not consider any petition for cancelling or amending any resolution or decision of the panchayat. If the Government consider that a resolution or decision of the Panchayat has to be cancelled or amended, it may suspend such resolution or decision temporarily and may direct the panchayat to defer its implementation till the final disposal after the completion of the procedure.

The decision that emanates out of the election is the expression of the decision of the body consisting of the members of the panchayat. Such a decision of the body of the members of the panchayat is essentially a resolution of the panchayat. The word resolution is not defined either in the Act or in the relevant rules, nor has any such definition in the relevant statutory provisions been brought to my notice by either side. Resolutions in relation to a body corporate or a committee means and includes decisions taken at one of its meetings. In the backdrop of law governing meetings, the result of an election under R. 5 of the Standing Committee Rules essentially finds expression as the decision of the body of the members of the panchayat and is hence a resolution of the meeting of the members of the committee of the panchayat. So much so, such a resolution is one, which would be amenable to action by the Government in accordance with law, under section 191 of the Act and hence is a resolution which can be subjected to a procedure provided by the illegal resolution or rule\(^45\).

**Government’s power of cancellation and suspension of resolution etc.**

Impugned order passed by Government in exercise of the power under the law, without notice to the panchayat and without the report from concerned authority

\(^43\) section 271G, the Kerala Panchayat Raj Act, 1994

\(^44\) section 271S, ibid.

\(^45\) *Suresh v. State of Kerala*, 2006 (1) KLT 669
regarding the resolution can be cancelled or suspended by the Government. Hence such a cancellation or suspension is not proper and in accordance with law\textsuperscript{46}.

The law empowers the Government to cancel or vary a decision taken by the panchayat which is not legally passed or taken in exercise of the powers conferred by the Act or any other law or its abuse, as the case may be. Hence appeal before Government is maintainable\textsuperscript{47}.

In the Committee constituted for the construction of a road\textsuperscript{48}, chairman is only a figure head and convenor is the person who has to represent the committee in every matter. Government interfering in the matter of appointment or removal of chairman is not justifiable\textsuperscript{49}.

\textbf{Administration report of the Panchayat}

Every panchayat shall prepare a report in respect of its administration every year in such form and with such details as may be prescribed by the Government in accordance with the provisions of this section and publish the same before the thirtieth of September of the succeeding year and if the report is not published within the said time limit, Government may withhold the payment of grants due to the panchayat thereafter. The draft of the administration report in respect of the institutions and offices under the administrative control of the panchayat shall be prepared by the heads of such institutions and offices and shall be furnished to the Secretary of the panchayat and he shall prepare the draft of the administration report of that panchayat in consultation with the president of the panchayat and shall be submitted before the panchayat for its approval. The panchayats within a district shall immediately after the approval and publication of the administration report, forward it to the officer authorised by the Government in this behalf and the village panchayats and block panchayats also shall furnish their administration reports to the District Panchayat. The officer authorised by the Government shall submit a consolidated report containing the abstracts of the administration reports of the village panchayats, block panchayats and district panchayats, to Government before the 31st of December every year. The Government shall, as soon as may after the receipt of the consolidated report cause it to

\textsuperscript{46} Anikadu Grama Panchayat v. Baiju, 2005 (2) KLT 153  
\textsuperscript{47} Marykutty George v. State of Kerala, 2005 (2) KLT 515  
\textsuperscript{48} See the Kerala Panchayat Raj (Conduct of public works) Rules 1997  
\textsuperscript{49} Ahamed Kutty v. State of Kerala, 2001 (1) KLT 614
be laid before the Legislative Assembly in its next session along with a review report of the Government and it shall be so laid within forty five days from the first day of that session.

**Dissolution of Panchayats**

If a panchayat fails to pass the budget of the panchayat for the succeeding financial year before the end of a financial year, which causes financial crisis or majority of its members resign from office or is disqualified, the Government shall, by notification in the gazette, dissolve the panchayat from the date specified therein and a copy of the same forwarded to the State Election Commission by the Government, provided that, the panchayat shall be given a reasonable opportunity of being heard before such dissolution. If the Government is of the opinion that the panchayat persistently makes default in performing the duties imposed on it by law or in carrying out the orders or directions lawfully issued by the Government or exceeds or abuses its powers, the Government may by notification in the gazette, dissolve the said panchayat and shall forward a copy of the same to the State Election Commission, provided that, before such dissolution, the Government shall communicate to the panchayat the proposal to dissolve it along with the reasons for the same and give the panchayat a reasonable opportunity to show cause against it and shall consider the objections or explanation, if any. If it is proposed to dissolve the panchayat after considering the objections or explanation of the panchayat, it shall seek the advice of the Ombudsman constituted under law and take a final decision on the basis of such advice. Upon the publication of a notification under such decision in the government gazette, all the members of the panchayat including the president and vice-president shall forthwith be deemed to have vacated their offices as such, and fresh election, shall be held in accordance with the provisions of this Act.

The members of a reconstituted panchayat shall enter upon their offices on the date fixed for the reconstitution of the panchayat and shall continue only for the remainder of the period for which the dissolved panchayat would have continued under the provisions of the Act had it not been so dissolved. The administration of the panchayat during the interval between the dissolution and reconstitution of panchayat shall be exercised by the special officer or administrative committee appointed under the law. When a Panchayat is dissolved and the administrative committee or the special
officer appointed by the Government until the date of reconstitution thereof, and the reconstituted panchayat thereafter shall be entitled to all the assets and be subject to all the liabilities of the panchayat as on the date of dissolution and on the date of reconstitution respectively. Every notification issued under this procedure, shall be laid, as soon as may be after it is issued, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions; and if before the expiry of session in which it is so laid or the session immediately following the Legislative Assembly makes any modification in the notification or decides that the notification should not be issued, the notification shall thereafter have effect only in such modified form or have no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

Powers of officers taking action on behalf of or in default of Panchayat and liability of Panchayat fund.

The Government or any other officer lawfully taking action on behalf, or in default, of a Panchayat under this Act shall have all such powers as are necessary for the purpose and shall be entitled to the same protection under the Panchayat Raj Act as the panchayat or its employees whose powers are exercised; and compensation shall be recoverable from the panchayat’s fund by any person suffering damage from the exercise of such powers to the same extent, as if the action had been taken by the Panchayat or its employees. An order from the government prohibiting the sarpanch from drawing grama panchayat funds in spite of show cause is malafide.50

Preparation and sanction of Budget

Subject to such directions as may be issued by Government from time to time and rules as may be prescribed, the budget proposals containing detailed estimate of income and expenditure expected for the next year including the expenditure on the development plans prepared and sanctioned shall be prepared by the respective standing committee considering the estimates and proposals submitted by the secretary and the officers dealing with the respective subjects, before the 15th January every year and the same shall be submitted to the standing committee for finance. The standing committee

50 Ch. Rajalingam v. Govt. of AP and others, AIR 2010 (NOC) 126 (AP)
for finance, after considering the proposals submitted and all the requirements under the
Act shall prepare a budget showing the income and expenditure of the panchayat for the
ensuing year and the Chairman of the said standing committee shall, not later than the
first week of March, in a special meeting of the panchayat regarding the development
and declaration therein by the president regarding the development and welfare works
that are proposed to be taken up by the panchayat, present the same before the
panchayat for its approval. The panchayat shall consider the budget proposals and
finally pass the budget estimate with alterations if any, before the beginning of the year
to which it relates.

The working balance shown in the budget shall not be less than five per cent of
the current year’s estimated receipts, excluding receipts from endowments, government
grants contributions and debt account. Receipts anticipated shall be accurate and
elaborate and shall be accompanied by detailed notes and explanations of any specific
difference from the preceding years actual receipts. It shall contain necessary
provisions to meet all the prescribed charges and repayment of debts. If in the course
of a year a Panchayat finds it necessary to modify the estimates shown in the budget
with regard to its receipts or expenditure on the different services undertaken by it, the
Standing Committee shall frame a supplemental or revised budget and forward it to the
Panchayat for sanction. Save in the case of a pressing emergency no sum shall be
expended by or on behalf of a Panchayat unless such sum is included in the budget
estimates in force at the time of incurring the expenditure. As soon as the budget is
passed, copies thereof shall be furnished to the Government and to the officers
authorised by the Government in this behalf and also to the auditors and such authorised
officers shall prepare a consolidated statement of the budget estimate of the panchayats
in each district, provided that, the village panchayats and the block panchayats in a
district shall furnish copies of the budget passed by them to the district panchayat and
the District Planning Committee concerned. A panchayat shall not either incur any
expenditure in excess of the provision in the budget or where the budget of the year has
not been passed before the first day of April, make any expenditure from that date.

Accounts and audit

The Panchayat shall maintain such books of accounts and other books in relation to
its accounts and prepare an annual statement of accounts in such form as may be
prescribed. Accounts of receipts and expenditure of every Panchayat shall be maintained for every financial year in such form as may be prescribed. The examiner of Local Fund Accounts and his nominees shall be the auditors of the panchayat. The auditors shall conduct a continuous audit of the accounts of the panchayat and shall after completing the audit for a year or for any shorter period or for any transaction or series of transactions, send a report to the panchayat concerned and duplicate copies thereof to the officer authorised by the Government in this behalf. The auditors shall specify in the report, all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property due to the panchayat, or any loss or waste of money or other property thereof caused by neglect or misconduct of the officer and authorities of the panchayat. The auditors shall also report on any other matter relating to the accounts of the panchayats as may be required by the Government, to the officer authorised by the Government in this behalf. The panchayat shall forthwith remedy any defect or irregularity pointed out by the auditors and report the action taken to the officer authorised by the Government in this behalf. The auditors shall in the performance of their functions under this Act have all the powers of the civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:

- summoning and enforcing the attendance of any person and examining him on oath;
- requiring the discovery and production of any document;
- receiving evidence on affidavits;
- requisitioning any public record or copy thereof, from any court of office; and
- such other matters as may be prescribed.

The auditors shall, after giving a reasonable opportunity to the person concerned to explain his case, disallow every item of expenditure incurred contrary to law and surcharge the same on the person incurring, or authorising the incurring of, such expenditure and may charge against any person responsible therefore the amount of any deficiency, loss or unprofitable outlay occasioned by the negligence or misconduct of that person or of any sum which ought to have been but is not brought into account by that person and shall, in every such case certify the amount due from such person, provided that no surcharge under this sub-section shall be made after a period of four years from the date on which the expenditure in question was incurred. It shall not be open to any person whose negligence or misconduct has caused or contributed to any
such deficiency or loss, to contend that notwithstanding his negligence or misconduct the deficiency or loss would not have occurred, but for the negligence or misconduct of some other person. The auditors shall state in writing, the reasons for their decision in respect of every disallowance, surcharge or charge and a copy of such decision shall be served on the person against whom it is made in the manner laid down for the service of summons in the Code of Civil Procedure, 1908.

Any person aggrieved by any disallowance, surcharge or charge may, within fourteen days after the date of service on him of the decision of the auditor, make an application to the district court to set aside such disallowance, surcharge or charge and the court, after taking such evidence as is necessary may confirm, modify or remit such disallowance, surcharge or charge with such orders as to costs as it may think proper in the circumstances. Where an application is made to the court, the auditors shall be the sole respondents thereto and the applicant shall not make either the Government or any other person a party to the proceedings. From the decision of the district court an appeal shall lie to the High Court. Every sum certified by the auditors to be due from a person under this Act shall be paid by such person to the secretary of the panchayat concerned within thirty days after the date of service on him of the decision of the auditors unless within that time such person has made an application to the court against the decision; and such sum, if not so paid, or such sum as the court declares to be due shall be recoverable as if it were an arrear of land revenue.

An abstract of every annual report of a panchayat as certified by the auditor showing its income under each head of receipt, the charges for the establishment, works undertaken, the sum expended on each work the balance, if any, remaining unexpended together with the audit report thereon shall be submitted to the officer authorised by the government in this behalf not later than fifteenth day of the second month of the next financial year. On receipt of the report referred to in the law, the officer shall forthwith consolidate the report and submit it to the Government. The government shall

- cause the accounts of the panchayat together with the audit report thereon received by it under sub-section (16) to be laid before the Legislative Assembly; and
- cause the accounts of the panchayat to be published in such manner as may be prescribed.
Recovery of loans and advances made by the Government

Notwithstanding anything contained in the Kerala Local Authorities Loans Act 1963, the Government may, by order, direct any person having custody of the funds of the Panchayat to pay to them in priority to any other charges against such fund, except charges for the service of authorised loans any loan or advance made by them to the panchayat for any purpose to which its funds may be applied under the Panchayat Raj Act.

Vesting of watercourse, springs, reservoirs, etc., in Village Panchayats

Notwithstanding anything contained in the Kerala Land Conservancy Act 1957 or in any other law for the time being in force, all public water courses (other than river passing through more areas, than the panchayat area which the Government may, by notification in the gazette, specify), the beds and banks of river streams, irrigation and drainage channels, canals, lakes, back waters and water courses and all standing and flowing water, springs, reservoirs, tanks, cisterns, fountains, wells, kappus, chals, stand pipes and other water works including those used by the public to such an extent as to give a prescriptive right to their use whether existing at the commencement of this Act or afterwards made, laid or erected and whether made, laid or erected at the cost of the panchayat or otherwise, and also any adjacent land, not being private property appertaining thereto shall stand transferred to and vest absolutely in the village panchayat.

A person has right to extract water from his property, unless it is prohibited by the statute. Extraction of ground water cannot be legal. The permissible restrictions in public interest can only be to compel him to ensure that by his conduct he does not bring about a drought or any imbalance in the water table\(^{51}\).

State and panchayat has got a duty to protect ground water against excessive exploitation and inaction in this regard will amount to infringement of rights of people guaranteed under article 21 of the Constitution\(^{52}\).

\(^{51}\) Hindustan Coco-cola Beverages (p) Ltd. v. Perumatty Grama Panchayat, 2005 (2) KLT 554 (1997 (1) SCC 388 – referred to, 2004 (1) KLT 731 – reversed)

\(^{52}\) Perumatty Grama Panchayat v. State of Kerala, 2004 (1) KLT 731 (1997 (1) SC 388 & 1981 (2) SCC 205 relied on, AIR1946 Mad. 334 referred to)
The order of the Panchayat to close down the unit on the finding of excessive extraction of ground water is unauthorized. The Panchayat can at best, say, no more extraction of ground water will be permitted and ask the Company to find out alternative sources for its water requirement. So, the Government's order to the extent it interfered with the closure of the unit has to be upheld53.

A writ petition under article 226 is maintainable at the instance of a panchayat. The panchayat, while granting the licence, acts as a statutory authority. Apart from that it is a body corporate constituted under Article 243 B of the Constitution of India read with Section 5 of the Kerala Panchayat Raj Act. If the decision of a Panchayat is reversed by the Government on perverse grounds, it must have the right to challenge it54.

River puramboke does not vest with the panchayat. It is only such of the water courses as are mentioned therein, that would vest in the panchayat. A major river such as Baliapattam River does not fall under Section. 8255.

River passing through many panchayat areas, when vests in panchayat, the term water course taken in a river, the river in this case meanders through the areas of many panchayats. Not being one notified by the Government as envisaged under the section, the river is not vested in the Government, it is vested in the panchayat56.

Land which is part of water course of major river flowing through more than one panchayat, whether vests in the Panchayat, the word “may” has been used to convey that the Government has a discretion to declare that a particular river shall not stand transferred to and vest in the Panchayat. If the Government intends that a particular river should not stand transferred to and vest in the Panchayat then it is required to issue a notification. As a matter of fact, The Act does not make any difference between a major river or a minor river. What it really adverts to is the water-courses which include the rivers as defined in the Act. Therefore, it is only such of the rivers which are included in the notification published in the gazette that shall not stand transferred to and vest in the panchayat. In the absence of a notification, the river in question which

53 Perumatty Grama Panchayat v. State of Kerala, 2004 (1) KLT 731
54 Perumatty Grama Panchayat v. State of Kerala, 2004 (1) KLT 731 (1996 (1) KLT 419 relied on)
55 Mattool Grama Panchayat v. Abdurahim, 1982 KLT 252
56 Parameswaran Nair v. Elitumanoor Panchayat, 1986 KLT 951, 1986 KJ 784
flows through more areas than one Panchayat area stands transferred to and vest in the Panchayat.\textsuperscript{57}

**Village panchayat to arrange for the removal of rubbish, solid, wastes and filth**

Every village panchayat shall make adequate arrangements for

- the regular sweeping and cleaning of the roads and removal of sweeping there from;
- the daily removal of the fifth and the carcasses of animals from private premises;
- removal and burial of unclaimed dead bodies under intimation to the police;
- the removal of solid wastes;
- the daily removal of rubbish from dustbins and private premises and with this object, it shall provide
  - depots, receptacles and places for the deposit of filth, rubbish and the carcasses of animals;
  - Covered vehicles and vessels for the removal of filth;
  - vehicles or other suitable means for the removal of the carcasses of large animals and rubbish; and
  - dust bins, receptacles and places for the temporary deposit of domestic waste, dust, ashes, refuse, offensive matter, trade refuse, institutional refuse, carcasses of animals.

Rubbish and other solid waste collected by the employees or contractors of the village panchayat and the carcasses deposited in any public receptacles, depots or place shall be the property of the village panchayat and the village panchayat may dispose of the same by auction or otherwise.

**Provision for the final disposal of solid waste**

Every village panchayat shall identify and notify suitable places within or outside the village panchayat area for the purpose of final disposal of waste. While notifying the land health and environmental aspects shall be taken into consideration by the village panchayats. Every village panchayat may make adequate arrangements for the utilisation of solid wastes for the preparation of compost and the disposal of it by

\textsuperscript{57} State of Kerala v. Venmony panchayat, 1986 KLT 562, 1986 KLJ 367
sale. Where composting of waste is not found possible, practicable sanitary landfill methods shall be adopted for the disposal of waste at the landfill sites in the manner specified by the village panchayat. Incineration of waste may be resorted to by the village panchayat for the disposal of infectious waste rejected from the hospitals, nursing homes or health care centres and non-industrial hazardous waste as specified by the village panchayat from time to time.

**Provision for processing of solid wastes**

The village panchayat may for the purpose of recycling, treating, processing and disposing of solid wastes or converting such solid wastes into compost or any other matter, construct, acquire, operate maintain and manage any establishment within or outside the village panchayat area and run it on a commercial basis or may contract out such activity.

**Removal of rubbish and solid waste accumulated on non-residential premises**

The secretary may if he thinks fit by notice in writing of any premises used as

- a factory, workshop or a place for carrying or any manufacturing process, or
- a market or trade premises, or
- a slaughter houses, or
- a hotel, eating house, or restaurant, or
- a hospital or a nursing home, or
- a warehouse or godown, or
- a place to public resorts, where rubbish offensive matter, filth, trade refuse, special wastes, hazardous wastes or excrementitious and polluted matters are accumulated in large quantities

to collect such matters accumulated thereon and to remove the same to a depot or place provided or directed by the secretary at such time and in such manner and by such routes as may be specified in the notice, provided that, where such solid wastes cannot be removed to such place or depot as required by the secretary on health reasons, the secretary may direct the owner a occupier of such, premises to make his own arrangements for disposal of such wastes and for noncompliance of such direction, he may on conviction, be punished with a fine which may extend to rupees ten thousand.
and a further fine at the rate of rupees one hundred for each day during which the offence is continued. Where the owner or occupier fails to dispose of the waste in pursuance of the notice, the cost for such removal shall be fixed and realised by the village panchayat from the said owner or occupier.

**Prohibition of improper disposal of carcasses rubbish and filth**

No person shall after due provision has been made by the village panchayat for the deposit and removal of rubbish, solid waste, carcasses or filth, deposit the same,

- in any street or on a verandah of any building or any unoccupied ground along the side of any road or an any public quay, jetty or landing place or on the bank of a water course or pond; or
- in any dust bin or vehicle not intended for the removal of the same; or
- in any vehicle or vessel intended for such removal except to ameliorate or to prevent the spreading of bad smell.

Without prejudice to the generality of the provisions, no person shall deposit or cause to be deposited any building rubbish on any streets or on any public or private land without the previous permission of village panchayat, provided that, no permission shall be granted without paying the fee as determined by the village panchayat. The secretary may, for reasons to be recorded in writing refuse to give such permission.

**Prohibition of keeping filth on premises**

No owner or occupier of any premises shall keep or allow to be kept for more than twenty four hours any filth on such premises or in any building or on the roof thereof or in any out house or any place appurtenant thereto, or fail to comply with any requisition of the secretary as to the construction, repair paving or clearing of any latrine belonging to premises.

**Prohibition against allowing outflow of filth**

No owner or occupier of any premises shall allow the water from any sink, drain, latrine or stable, or any other filth to flow out of such premises to any portion of a street except a drain or a cess-pool or to flow out of such premises so as to cause an
avoidable nuisance by the soakage of the said water or filth into the walls or ground at
the side of drain forming a portion of a street.

**Prohibition of disposal of skin**

No person shall deposit the skin of a carcass or dispose of the carcass at a place
other than that provided for the purpose.

**Prohibition of using any cart without cover for the removal of filth etc**

No person shall, for the removal of filth use any cart or receptacle not having a
proper covering for preventing the escape of the contents thereof or of the stench there
from, or intentionally or negligently spill any filth while removing or fail to sweep and
clean carefully the place any such filth has spilled or place or deposit in any public place
any filth whether in a closed or open vessel or otherwise.

**Prohibition of deposit of rubbish or filth in public places**

No person shall deposit or cause to be deposited any rubbish or filth or other
debris into any public place not intended for deposit of rubbish or filth or debris.

**Prohibition against causing nuisance in public streets etc.**

No person shall cause any nuisance by relieving himself in any street, public
place or public path or permit any person under his control to do so.

**Presumption as to offender**

Where any rubbish, offensive matter trade refuse, special waste, hazardous
waste or excrementitiously and polluted matter accumulated on any premises is
deposited in any place in contravention of the provisions of the Act it shall be presumed
unless the contrary is proved, that such contravention has been committed by occupier
of such premises.

The employees of village panchayat engaged in rubbish and solid waste
management service prohibited from depositing waste at a place other than specified
etc.- No employee of the village panchayat engaged in rubbish and solid waste
management service shall throw or place any domestic waste, dust ashes, refuse,
rubbish or trade refuse on any street or in any place not provided for the purpose or
place or keep in any road any vehicle or carriage for the removal of solid waste excrementitious or polluted matter or suffer the same to remain in any road or any greater length of time than it reasonably necessary.

Power to inspect premises for sanitary purposes

The secretary or any officer authorised by him may at any time inspect any premises for the purpose of ascertaining the compliance of the provisions of this Act.

Punishment for depositing or throwing any rubbish or solid waste, in contravention of the provisions of the Act - Whosoever deposits or throws any rubbish, solid waste or carcasses in contravention of the provisions of the Act shall, on conviction, be punishable with fine which shall not be less than rupees fifty but may extend up to rupees two hundred and fifty.

Prohibition of constructions in or over public roads, etc.

Not-withstanding anything contained in the Act no person shall,

- build any wall or erect any fence or other obstruction or projection or make any encroachment whatsoever, whether permanent or temporary, in or over any public road;
- Construct any building or structure other than a compound wall in any land abutting any National Highway, State High way, District roads or any other roads notified by the village panchayat within a distance of three metres from the boundary of his land abutting the road, provided that, the said limit of three metres shall not be applicable for the construction of 1st floor or 2nd floor or both upon a building, existing on the date of coming into force of this Act. Any path, bridge or similar constructions used solely for entering into any building or weather shade or sun-shade forming part of the building may, subject to the rules regarding construction of building, be constructed within the said three metres limit. When an existing portion of a building is to be demolished for the implementation of a Town Planning Scheme it shall not be in such a manner that it would adversely affect the remaining building or the additions to be made, and the full responsibility of the safety and stability thereof shall vest with the owner of the building, and when he has to undertake such a demolition it shall be done
at his own expense and responsibility, and he shall not be eligible for any
damages for the said construction and for this purpose a consent certificate shall
be produced along with the application

- make any hole or deposit any material in or upon any public road;
- work a quarry to remove stone, earth, rubble or other material from any place
  within twenty metres of a public road or of other immovable property vesting in
  or belonging to a panchayat, provided that nothing in this clause shall be deemed
to apply to any work which in the opinion of the village panchayat, is done in
connection with a bonafide agricultural operation;
- erect any building over any sewer or drains or part thereof;
- plant any tree on any public road or other property vesting in or belonging to a
  village panchayat; or
- fell, remove, destroy, lop or strip, bark, leaves or fruits from, or otherwise
damage, any tree which is growing on any such public road, other property,
poramboke or land, the use of which is regulated by a village panchayat and the
right of which has not been established by such person or vesting in or
belonging to him.

**Public markets**

The village panchayat may, provide places, or use as public markets or close any
such market or part thereof. All public markets within a village panchayat area shall be
under the control and management of the village panchayat.

Rooms belonging to panchayat rented out for fixed period, there is no right to continue
in occupation after the period fixed. Panchayat has power to conduct auction and allot
rooms to other persons. We have to see that there will be other aspirants also in the
Panchayat area, who might be desirous of starting business and it will be illogical to say
that once the petitioners have stepped in their occupancy it is for all time. It has to be
borne in mind that since the Rent Control Statutes are not applicable to the local
authorities, and the petitioners had agreed to the terms with open eyes, the rights of the
landlord cannot be circumscribed for any such reasons.

Business of PWD road side, levy of market fee is illegal, neither the PWD road nor shop
buildings on side of roads are owned, constructed, repaired or maintained by panchayat.
Premises where petitioners are carrying on trade cannot therefore be part of public market with respect to which panchayat is entitled to collect fee for goods brought under rule 758.

Issue of licence for private market, there is no absolute bar against issue of a licence within the prescribed substance. Provisions are made for public interest. There is no absolute bar under R. 26 against the issue of a licence for a private market within a distance of 3 Kilometres mentioned therein. The only restriction is the requirement of a prior sanction of the director of panchayats for the licensing and opening of a new private market within the aforesaid distance. If the requirements of the locality warrant, there is nothing preventing the director of panchayats from permitting the licensing and opening of a new private market not far away from an existing licensed market. The mere fact that the commercial interests of the plaintiff will suffer if a licence is granted to the defendant to run a private market in the B schedule property is not a ground for injunctioning the defendant from obtaining a licence and running a private market in his own land59.

No provision to conduct auction of the right to vend meat except in public markets & public slaughter houses does not enable panchayat to auction the right to vend meat from stalls constructed by bidder. It has nothing to do with a public slaughter house. As Panchayat can only farm out the collection of rents and fees in public slaughter houses and as the Act does not enable the Panchayat to auction the right to vend meat from stalls constructed by the petitioner, it could not have collected amounts from him. As there is no provision s in the Act and Rules to conduct auction of the right to vend meat except in the public markets and public slaughter houses, the money collected from the petitioner cannot be justified60.

**Licensing of private markets**

No person shall open a new private market or continue to keep open a private market unless he has obtained a licence from the Village Panchayat to do so. Such, licence shall be got renewed by the licensee every year.

58 *Prabhakaran v. Methala Panchayat*, 1983 KLT 1025
60 *Cherian John v. Mundakkayam Panchayat*, 1991 (2) KLT 698, 1991 (2) KLJ 804
Issuance of licence and control of public and private markets, the panchayat has to clarify whether it is authorised to levy toll in respect of every basket of fish when such levy is not referred to in the rules. Simply for generating funds, the tolls are not to be hiked and definitely if not authorised by the statute. Any change that might follow in this levy of toll consequent to such deliberations and decisions, will be permissible to be implemented and binding on the parties after appropriate adjustments\textsuperscript{61}.

There is no absolute bar against issue of a licence within the prescribed distance. Provisions are made for public interest. There is no absolute bar under rule 26 against the issue of a licence for a private market within a distance of three kilometres mentioned therein. The only restriction is the requirement of a prior sanction of the director of panchayats for the licensing and opening of a new private market within the aforesaid distance. If the requirements of the locality warrant, there is nothing preventing the director of panchayats from permitting the licensing and opening of a new private market not far away from an existing licensed market. The mere fact that the commercial interests of the plaintiff will suffer if a licence is granted to the defendant to run a private market in the B schedule property is not a ground for injunctioning the defendant from obtaining a licence and running a private market in his own land\textsuperscript{62}.

Licencing of private markets, levy of amount whether sustainable either as a tax or fee or as licence fee, levy whether can be sustained under police power of the state. The scheme of the act seems to indicate that the levy was meant to operate as a fee. It is well settled that before a levy can be sustained as a fee there must be special benefit to the payer of the fee in addition to what is enjoyed by the general public. The special benefit has been described as service rendered to the markets in greater measure and continuity that in the case of an ordinary tax payer, the private market owner needing more than ordinary municipal service. On the materials available in this case the element of \textit{quid pro quo} has not established between the levy and the services. It follows that levy in question cannot be sustained as a fee\textsuperscript{63}. No person shall open a private market or continue to keep open a private market unless he has obtained a licence from the village panchayat. Also so far as private markets are concerned, there is no right for the panchayat to auction the right to conduct the same.

\textsuperscript{61} Kassim Rawther v. Nedumkunnam Grama Panchayat, 2002 (3) KLT 419
\textsuperscript{62} Gopalan v. Chamiyar, 1987 KLT 454, 1987 (1) KLJ 352
\textsuperscript{63} Sankaran Nair v. Vaniamkulam Panchayat, 1971 KLT 264 FB, 1971 KLJ 171
Public slaughter houses

A village panchayat may provide places for use as public slaughter houses and charge such rents and fees for their use not exceeding the maximum as may be prescribed, provided that if any complaint with respect to the conduct of such slaughter houses has been received from the nearby residents, action for starting such slaughter houses shall be taken only after detailed examination of such complaint. The village panchayat may farm out the collection of such rents and fees for any period not exceeding three years at a time and on such terms and conditions as it may think fit.

Licence for slaughter houses

The owner of any place within the village panchayat area which is used as a slaughter house for the slaughtering of animals or for the skinning or cutting up of any carcasses shall in the first month of every year or in the case of a place to be newly opened one month before the opening of the same, apply to the village panchayat for a licence.

Whereas, the local government has no power to grant licence through auction sale in private market to conduct vending of meat, as the licensee of private market is the empowered person to do so as stated in the case64.

Dangerous and offensive trades and factories - Purpose for which places may not be used without a license

The village panchayat may notify that no place in the panchayat area shall be used for any of the purposes specified in the rules made in this behalf being purposes which in the opinion of Government, are likely to be offensive or dangerous to human life or health or property, without a license issued by the secretary and except in accordance with the conditions specified in such licence.

Permission for the construction of factories and the installation of machinery

No person shall, without the permission of the village panchayat and except in accordance with the conditions specified in such permission:

64 Salim v. Dy. Director of Panchayat, 2003 (3) KLT 516
• construct or establish any factory, workshop or workplace in which it is
proposed to employ steam power, water power or other mechanical power, or
electrical power; or
• install in any premises any machinery or manufacturing plant driven by any
power as aforesaid, not being machinery or manufacturing plant exempted by
the provisions of this Act or the rules made there under.

If an entrepreneur produces sufficient positive certification from the competent
authorities, then the panchayat president is liable to act on the same and issue
permission / licence unless bound by valid policy reasons65.

After granting licence to construct building and to start an industry, panchayat
cannot cancel the licence on a complaint based on actual facts. If there is a chance for
pollution, it is open to the authority to require the certificate from State Pollution
Control Board. District Collector had to test by a trial run of the plant and then come to
the conclusion that pollution that the ice plant will be harmful. On the basis of a mere
surmises, District Collector came to the conclusion that pollution will be caused if the
ice plant is allowed to operate. Panchayat may require the petitioner to get certificate
from the State Pollution Control Board as to the precautions to be taken by the
petitioner66.

In a case before Deputy Director of Panchayats67, it was decided that the licensing
process is a quasi-judicial function from the panchayat. Therefore, the panchayat
cannot be said to be an aggrieved party to agitate the question before the higher
authorities68 or to challenge the order passed thereon in a writ petition under Article 226
of the Constitution. The panchayat has to function in accordance with the provisions,
and has to decide as a quasi-judicial authority. In the process the role in question could
not be one that can be understood to be a role of adversary in the system where there is
a question on ‘res’ in the sense of the normal litigation as is understood. As a
consequence, this decision in the matter becomes a subject matter of challenge strictly
in accordance with the statutory provisions of the Act being available to the person
aggrieved as a result thereof. It is plain in the process that the role of the panchayat as

65 Annu Thomas v. Mathew Thomas, 2001 (2) KLT 688
66 Pathrose v. State of Kerala, 1996 (2) KLT SN. 48 P.43, 1996 (2) KLJ 177, AIR 1977 Ker.48
67 Karoor Panchayat v. State, 1996 (1) KLT 112
68 section. 144, the Kerala Panchayat Raj Act, 1994
an aggrieved party is not available under the provisions of the said section. The person has a right to appear by way of an appeal with regard to his grievance.

**Abatement of nuisance caused by factory, workshop etc.**

Where any factory, workshop, workplace or machinery causes, in the opinion of the village panchayat nuisance by reason of a particular kind of fuel being employed or by reason or the noise or vibration created, or effluent discharged or by reason of noxious odour, smoke or dust omitted, the secretary may direct the person in charge of such factory, workshop, workplace or machinery for the abatement of such nuisance within a reasonable time to be specified for that purpose.

**Power of Government to make rules in respect of the grant and renewal of licences and permissions**

The Government may make rules for:

- prohibiting or regulating the grant or renewal of licences and the period for which such licences shall be valid;
- as to the time within which application for such licences or renewals thereof shall be made; and
- prohibiting or regulating the grant of permission under section 233.

The panchayat has got such powers and duties to enable them to function as institutions of self-government. Over and above the powers vested in the Pollution Control Board under Pollution Control laws, as well as the powers vested in the District Medical Officer of Health under the T.C Public Health Act, panchayat itself has got statutory duties and obligations under the Act. Panchayat itself could independently consider as to whether by setting up a metal crusher unit within its area, it would affect the people of the locality.  

Only one licence under item 101 is necessary. Separate licence under item 84 is not necessary. The appellants have taken out a licence under item no. 101 the purpose being rock stone cutting or storing. Licence is required because rock stone cutting is likely to cause offence or danger to human life or health or property. Cutting rock stone

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69 Manjappara Grama Panchayat v. State of Kerala, 1996 (2) KLT 719
70 Concrete Aggregate Industries v. Kummanode Poura Samithi, 1995 (2) KLT 720, IR 1996 (1) Ker. 2061
may involve breaking, sizing, crushing etc. and in that process of manufacture it is that smell, fumes, dust or noise which are offensive or dangerous to human life are likely to occur. Therefore, item 101 overlaps the requirement of item 84 which generally is in the nature of manufacturing articles\textsuperscript{71}.

**Administrative powers of the panchayat in respect of the existing water supply and sewerage schemes**

Notwithstanding anything contained in the Kerala Water Supply and Sewerage Act, 1986 or in any other law, the maintenance and administration of the water supply and sewerage schemes which cannot be vested in and transferred to the panchayat\textsuperscript{72} and is beneficial to the residents within the area of more than one Local Self Government Institutions shall vest in the committee to be constituted by the Government for the purpose.

**Requirement of prior approval of site**

The secretary shall not grant permission to construct or reconstruct a building unless and until he has approved the site on an application made under the law.

**Prohibition of commencement of work without permission**

The construction or re-construction of a building shall not be commenced unless and until the Secretary has granted permission for the execution of the work.

**Power to regularize the unlawful building construction**

Notwithstanding anything contained in the Act, if any person or institution unlawfully developed any land or constructed any building on or before 31st December 1998, the Government may, on realisation of a compounding fee as prescribed, regularise such land development or building construction, provided that such regularisation shall not adversely affect any planning scheme or master plan, approved under the existing provisions of the Town Planning Act.

\textsuperscript{71} see also *Concrete Aggregate Industries & Anr. v. Abdul Khder and others*, 1995 (2) K LJ 589

\textsuperscript{72} section 234A of the Kerala Water Supply and Sewerage Act, 1986
Power of Panchayat for carrying out their functions

A panchayat shall exercise all the powers conferred on, and perform all the functions entrusted to that Panchayat by or under this Act or any other law and shall also exercise such other powers and perform such other functions as may be conferred on or entrusted to it by the Government for carrying out the provisions of the Act. A panchayat shall have power to do all acts necessary for and incidental to, carrying out the functions entrusted or delegated to it. Without prejudice to the generality of the foregoing power, a village panchayat shall have power:

- to require by notice, the owner or occupier of any land or building which is a nuisance to the neighbourhood on account of:
  - its insanitary conditions; or
  - the collection of any drainage, filth or stagnant water thereon; or
  - the existence of will or noxious vegetation thereon; or
  - the presence of poisonous reptiles or other harmful animals or insect.
- to take such action as it deems necessary to abate the nuisance within a reasonable period to be specified in such notice;
- to prohibit the use of the water of any stream, well, pond or any other excavation believed to be dangerous to public health; and
- to regulate or prohibit the watering of cattle or bathing or washing in any stream, well, pond or other excavation reserved for drinking water.

Power to call for information from village officers

The secretary of a panchayat may, with the approval of the panchayat by an order in writing require the village officer of any revenue village in the panchayat area to furnish him with the information on any matter falling within such categories as may be prescribed in respect of such village or any part thereof or any person or property therein and every such order shall be complied with by the village officer.

Duties of Police Officers

It shall be the duty of every police officer:
• to communicate without delay to the president and secretary any information which he receives of the design to commit or of the commission of any offence under the Act or any rule or bye-law made thereunder; and
• to assist the president or the secretary or any officer of the panchayat demanding in writing his aid for the lawful exercise of any power vesting in the president, the secretary or in such officer or employee of the panchayat under this Act or any rule or bye-law made thereunder, or for the performance of any function entrusted to any of them.

Any police officer who omits or refuses to perform any duty imposed on him by the Act shall be deemed to have committed an offence under the existing law73.

6.10 Right to Information

For the purpose of the law:

• ‘Information’ means any materials or information contained in a document relating to the administrative, developmental or regulatory functions of a panchayat and includes any document or record relating to the affairs of the panchayat.
• ‘right to Information’ means the right to have access to information and includes the right to take certified copies or relevant extracts of a document.
• ‘Notified document’ means any document of the Panchayat notified by the Government under the law

Every person bonafide requiring any information shall have the right to get such information in accordance with the procedure prescribed. Notwithstanding anything contained in the Act, the Government may, in the interest of public and local administration by notification in the Gazette, classify any document containing special categories of information as notified document and no person shall have any right to such information and the panchayat may reject any application to get such information. The Government may, by general or special order, direct the panchayat to publish, the categories of information mentioned in such order for the general information of the people living in the area of a panchayat.

73 section 41 of the Kerala Police Act, 1960
Procedure for furnishing information

A person, requiring any information from a panchayat, shall make an application to the secretary of that panchayat in such form and in such manner and paying such fees as may be prescribed in that behalf and the secretary or the officer authorised by the panchayat shall, furnish such information to the applicant within the prescribed period unless the application is rejected or otherwise disposed of within that period. If any application for information is rejected, the reason for such rejection shall be given in writing.

Penalty for withholding information

The secretary or any officer of the panchayat responsible for furnishing any information shall be personally liable for furnishing the same within the period prescribed unless such information is in respect of a notified document. Where such information is not furnished within the time specified, the officer responsible for not furnishing the information shall be punishable with a fine of rupees fifty for each day of delay after the due date for furnishing the information and the fine so collected shall be credited to the fund of the panchayat. Where the secretary of the panchayat or any other officer bound to furnish the information fails to do so or furnishes false information in respect of its material particulars which he knows or has reason to believe it to be false or not true, he shall be punishable with a fine which shall not be less than rupees one thousand.

6.11 Ombudsman for Local Self Government Institutions

The Act provides for constitution and establishment of local government ombudsman in the State of Kerala to deal with the act or omissions of local government authorities, allegations against such authorities and maladministration in such bodies. Here,

Action means action taken by way of decision, recommendation, resolution or finding or in execution thereof or in exercise of administrative or legal functions in any other manner and includes wilful default in taking action or omission and all other expressions connoting such action shall be construed accordingly;
Allegation denotes in relation to a public servant, any affirmation that such public servant,

- has abused his position as such for any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;
- was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives;
- is guilty of corruption, favouritism, nepotism or lack of integrity;
- is guilty of any action as public servant which facilitates or causes to make any loss, waste or misapplication of money or other property of the Local Self Government Institution.

In relation to a Local Self Government Institution means any affirmation that such Local Self Government Institution has defaulted or acted in excess of its powers in the discharge of its functions imposed on it by law or in implementing the lawful orders and directions of the Government.

Complaint means a statement of allegation that a public servant or a Local Self Government Institution is guilty of corruption or mal-administration and includes any reference to an allegation in respect of which suo moto enquiry has been proposed or recommendation for enquiry has been made by Government.

Corruption includes anything publishable under Chapter X of the Indian Penal Code or under the Prevention of Corruption Act, 1988 and Maladministration means action taken or purporting to have been taken in the exercise of administrative function in any case,

- Where such action, administrative procedure or practice governing such auction is unreasonable, unjust, oppressive, discriminatory or nepotic and will make illegitimate, gain or loss or will deny deserving benefits; or
- Where there is wilful negligence or delay in taking such action, or the administrative procedure or method regulating such action will cause undue delay and includes the action leading to loss or waste or misuse of fund by mal-feasance or misfeasance.

Public Servant means an employee or officer under the Local Self Government Institution or an elected member of the Local Self Government Institution including its
President or Chairperson and includes an employee or officer of any office or institution transferred to the Local Self Government Institution under the Provisions of the Act;

Investigating officer means an officer authorised by the Ombudsman to conduct investigation in respect of an allegation or complaint.

**Functions of the Ombudsman**

The Ombudsman shall perform all or any of the following functions, namely:

- Investigate into any allegation contained in a complaint or on a reference from Government, or that has come to the notice of the Ombudsman;
- Enquire into any complaint in which corruption or maladministration of a public servant or a Local Self Government Institution is alleged;
- Pass an order on the allegation in the following manner, namely:
  - Where the irregularity involves a criminal offence committed by a public servant, the matter shall be referred to the appropriate authority for investigation.
  - Where the irregularity causes loss or inconvenience to a citizen, direct the Local Self Government Institution to give him compensation and to reimburse the loss from the person responsible for the irregularity;
  - Where the irregularity involves loss or waste or misuse of the fund of the Local Self Government Institution, realise such loss from those who are responsible for such irregularity, and
  - Where the irregularity is due to omission or inaction cause to supply the omission and to rectify the mistake.

In addition to the functions enumerated above, the Ombudsman may pass interim order restraining the Local Self Government Institution from doing anything detrimental to the interest of the complainant if it is satisfied that much loss or injury will be caused to the complainant due to the alleged act. The Ombudsman may by order, impose penalty in addition to compensation if it is of opinion that the irregularity involves corrupt practice for personal gain.
Powers of the Ombudsman

The Ombudsman shall, for the purpose of any investigation or enquiry under the Act, have 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, namely:

- summoning and enforcing the attendance of any witness and examining him;
- requiring the discovery and production of any document;
- receiving evidence on affidavits;
- requisitioning any public records, or copy thereof from any Court or Office;
- issuing commissions for the examination of witness;
- such other powers as are prescribed.

Where the Ombudsman finds that the allegation contained in a complaint is without any substance or trivial in nature it may by order direct the complainant to pay the opposite party so much of the amount specified in the order by way of cost. Where the allegation contained in a complaint is about the 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 Ombudsman may, during enquiry, collect evidence, determine the loss and direct in its order the amount to be realised from the person responsible. If the amount paid as per the order passed by the Ombudsman is not paid within the period specified by it, the same shall be recoverable by Revenue Recovery Proceedings as if it were an arrears of land revenue.

According to the existing law, there is only a state level ombudsman with one officiationg person as the quasi-judicial authority to deal with all such subject matters. This will subvert the basic idea and ideology behind such an institution due to pendency of cases before them and delay in administration of justice.

6.12 Tribunal for Local Self Government Institutions

The Government shall constitute a Tribunal for every district or for more than one district, to consider and dispose of the appeal of revision filed against the decisions of the Local Self Government Institutions under the Kerala Municipality Act, 1994. A Tribunal shall consist of one judicial officer having the rank of a District Judge,
appointed by the Government in consultation with the Chief Justice of the High Court of Kerala and by notification in the gazette. A Tribunal shall have the same powers as are vested in a Civil Court under the code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:

- Summoning and enforcing the attendance of any person and examining him on oath;
- Demanding the discovery and production of any document or other material object producible as evidence;
- Receiving evidence on affidavits;
- Requisitioning any public document or a copy thereof from any court or office;
- Appointing commissions for the examination of witnesses or in respect of documents.

Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of the Indian Penal Code. The Tribunal shall be assisted by the officers and staff as the Government may decide. There is only one tribunal for all the local bodies in Kerala, established in Thiruvananthapuram. Here also the pendency of cases, large number of cases etc. causes blockage in administration of justice.

**Rendering of opinion on matters referred to by the Government**

The Tribunal shall, on a reference from the Government with regard to the legality or sustainability of any decision of the Local Self Government Institution, render its opinion to the Government there on after giving the President or the Local Self Government Institution concerned, an opportunity of being heard, if necessary. Effects of the orders of tribunal, matter of references, procedural formalities, appeal and revisions etc. shall be decided by the State government. Hence that is not advisable to exert constraints from such tribunals upon the function of local bodies of the State.

**Citizen Charter to be published**

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

**Power of Government to alter Schedules**

The Government may by notification and to any of the entries in the Schedules to the Act. Any schedule in the Act or any entry to such schedule shall not be omitted otherwise than in exercise of the power conferred by a law made by the legislature of the State.

**Delegation of powers**

The Government may, by notification in the gazette, authorise a superior officer to exercise in any panchayat area in regard to any panchayat or any class of panchayats or all panchayats any of the powers vested in them by this Act except the power to make rules, and may in like manner withdraw such authorisation. The government may, by notification authorise any officer to exercise in any panchayat in each district or any class of panchayats or all panchayats any power vested by the Act or the rules made thereunder and may in like manner withdraw such authorisation. The exercise of any power delegated shall be subject to such restrictions and conditions as may be prescribed or as may be specified in the notification. The Government shall also have power to control and revise the acts or proceedings of any person so empowered.

From the briefing it is evident that the dependency of local bodies upon higher level governments still exists. They are also bound to comply the controls and regulations imposed by the State and the Centre. Much issues are there to be resolved by the legislative, administrative and social efforts by democratic and political heads, officials and the general public.

**Dispute settlement**

At the time of constitution there were village courts in Malabar under the Madras Village Courts Act to try minor civil disputes and in Travancore – Cochin area, village courts were there under respective TC Act. In 1957, village courts with six members – one chairperson and one member nominated by the government and four
members elected from the panchayat council members was proposed in Kerala. In 1958, E.M.S Namboothiripad opined that village courts have to be established for the settlement of disputes and arbitration of local disputes. These proposals were not enforced even after the introduction of panchayat raj and nagarapalika legislation.

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74 The Kerala Village Courts Bill, 1957
75 Report of the Administrative Reforms Committee, Government of Kerala, pp. 40-42
The Kerala Municipality Act, 1994 which came into force on the 30th day of May 1994 replaces the Kerala Municipality Act, 1960. The new Municipality Act, 1994 has incorporated into it several provisions in tune with the Constitution (Seventy fourth) Amendment Act. In fact prior to the enactment of the 1960 Act, the laws regarding municipalities in force were the Travancore District Municipalities Act, 1116 in the Travancore area and Cochin Municipal Act, 1113 in Cochin region. Similarly the Madras District Municipalities Act, 1920 was in force in the Malabar area of the State. The reason for the enactment of 1960 Act was to enforce a uniform law on the subject applicable to all the municipalities in the State of Kerala and the Act came into force on 01/09/1961. After reviewing the above said Act the government felt that changes are to be made in the Act in order to bring into conformity the Constitution (seventy fourth) Amendment Act and accordingly instead of making amendments to the then existed Kerala Municipalities Act, 1960, the Government enacted the new Kerala Municipality Act, 1994 applicable uniformly to the municipal councils, municipal corporations and town panchayats.

The Constitution (Seventy fourth) Amendment Act, 1992 added part IX-A and the twelfth schedule into the Constitution. Part IZ-A contains 18 new Articles i.e., Art 243G to Art 243ZG and the twelfth schedule which incorporates 18 items. By this amendment, constitutional sanction has been provided for the urban self-governing institutions like municipalities and municipal corporations, ensuring regular elections and enabling them to play a greater role and participation in the development of urban areas.

The 1999 Amendment to the Kerala Municipality Act has made drastic changes in the Act. All those changes and other amendments have been incorporated at its appropriate places. In the appendix, law relating to Ombudsman for Local Self Government Institutions and its Inquiry of complaints and Service Conditions Rules, Tribunal for Local Self Government Institutions, Special Rules of employees are incorporated. Towards the end, the Municipal Solid Wastes (Management and Handling) Rules and
Rules for Assignment of Land with Corporation and Municipal Areas have been appended.

An Act to replace the present enactments relating to municipalities and municipal corporations by a comprehensive enactment in line with the Constitution (Seventy Fourth) Amendment Act.

Whereas the Kerala Municipalities Act, 1960 and the Kerala Municipal Corporations Act, 1961, the laws with respect to the functioning of urban local bodies prevailing in the State are not in conformity with the provisions of Part 1XA of the Constitution of India inserted by the Constitution (Seventy Fourth Amendment) Act, 1992. And whereas it is expedient to replace the said enactments by a comprehensive enactment in line with the Constitution (Seventy Fourth Amendment) Act, 1992 for securing a greater measure of participation of the people in planned development and in local Governmental affairs by constituting town panchayats, municipal councils and municipal corporations;

- To endow such municipalities with necessary powers and authority to enable them to function as institutions of self-government;
- To entrust such municipalities with the functions of the preparation of plans and implementation of schemes for economic development and social justice including the implementation of schemes in relation to the matters listed in the Twelfth Schedule to the Constitution.

7.1 Statement of Objects and Reasons

In order to enshrine in the Constitution certain basic and essential features of municipal bodies and to impart certainty, continuity and strength to them, a new part, namely part IX A has been added in the Constitution by the Constitution (Seventy-Fourth) Amendment Act, 1992.

Provisions in accordance with the Constitution (Seventy-fourth Amendment) Act, 1992 have to be made in the state enactments relating to the municipal councils and municipal corporations before 31-5-1994. The Government consider that instead of making amendments to the existing Kerala Municipalities Act and the Kerala Municipal Corporations Act, it would be better to enact a new Municipalities Act applicable
uniformly to the municipal councils, municipal corporations and nagar panchayats, incorporating the provisions in accordance with the Constitution (Seventy-Fourth) Amendment Act, 1992. With effect on and from the commencement of this Act, the Government consider it necessary to repeal the Kerala Municipalities Act, 1960 the Kerala Municipal Corporations Act, 1961 the Guruvayur Township Act, 1960 and the provisions of the Kerala Local Authorities (Constitution and Preparation of Electoral Rolls) Act, 1994 in so far as they relate to municipalities.

**Constitution and composition of Municipalities**

Subject to the provisions of the Constitution, the legislature of the State may by law make provisions with respect to the composition of municipalities, provided that the ratio between the population of the territorial area of urban local bodies at any level and the number of seats in such urban local bodies to be filled by election shall, so far as practicable, be the same throughout the municipal area. The legislature of the state may provide for the representation of the chairpersons of the municipalities at the corresponding level.

The chairpersons and members of urban local bodies at different levels are to be elected according to the provisions of the Act and corresponding rules, published thereunder. Reservation of seats for SC / ST, mandatory representation of women in membership as well as leadership is also provided by the corresponding provisions of the Act according to the Constitutional prescriptions. Duration of elected urban local bodies is also stipulated by the Act. Conditions of qualifications and disqualifications of candidates and elected representatives in different urban local bodies is also envisaged in the Kerala Panchayat Raj Act.

**Constitution and composition of Wards Committees**

There shall be constituted ward committees, consisting of one or more wards, within the territorial area of a municipality having a population of three lakhs or more. The legislature of a State may, by law, make provision with respect to

- the composition and the territorial area of a ward committee;
- the manner in which the seats in a wards committee shall be filled.
A member of a municipality representing a ward within the territorial area of the Wards Committee shall be a member of that committee. Where a wards committee consists of

- one ward, the member representing that ward in the municipality; or
- two or more wards, one of the members representing such wards in the municipality elected by the members of the wards committee, shall be chairperson of that committee.

Nothing in this article shall be deemed to prevent the legislature of a State from making any provision for the constitution of committees in addition to the wards committees.

### 7.2 Powers, authority and responsibilities of Municipalities

Subject to the provisions of this Constitution, the legislature of a State may, by law, endow

- the Municipalities 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 Municipalities, subject to such conditions as may be specified therein, with respect to:
  - the preparation of plans for economic development and social justice;
  - the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

- the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule

### Power to impose taxes by, and Funds of, the Municipalities

The Legislature of a State may, by law:

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

Finance Commission

The Finance Commission constituted under Article 243-1 shall have the power to review the financial position of the Municipalities and make recommendations to the Governor as in the case of panchayat raj institutions. The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

Audit of accounts of Municipalities

The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts. State Audit Department is vested with the authority under corresponding law to audit the accounts of municipal institutions.

Constitution, alteration and conversion of Municipalities

The Government shall, by notification in the Gazette, constitute with effect from such date as specified in the notification,

• a "Town Panchayat" for a transitional area;
• a "Municipal Council" for a smaller urban area; and
• a "Municipal Corporation" for a larger urban area, and specify the name of such Municipalities.

The Government may, by notification,

• exclude any municipal area from the operation of this act; or
• exclude from a municipal area comprised therein and defined in the notification; or
• divide any municipal area into two or more municipal areas; or
• unite two or more municipal areas; or
• unite the territorial area of a Panchayat geographically lying adjacent to a Municipal area, with the Municipality; or
• convert a Village Panchayat into a Town Panchayat or a Municipal Council; or
• convert a Town Panchayat into a Municipal Council; or
• convert a Municipal Council into a Municipal Corporation:

Provided that, before issuing such a notification the requirements under the law shall be fulfilled and the suggestions and opinions of the village panchayat or town panchayat or Municipal Council or Municipal Corporation concerned, shall be considered. Any notification issued shall not be brought into force except in such a way as to coincide with the expiry of the term of the existing Municipal Council or village panchayat in that territorial area. The Government may at the request of a Municipality or after consultation with the Municipality, at any time, alter the name of a Municipality, after previous publication of the proposal by notification in the Gazette. Where any village panchayat area is constituted as, or included in, a Municipality, the Government may pass such orders as they may deem fit as to the transfer to the Municipality or disposal otherwise of the assets or institutions of such panchayat in that area, and as to the discharge of the liabilities if any, of such panchayat relating to such assets or institutions. Where any village panchayat area is constituted as, or included in a Municipality, all taxes, fees or other charges levied in that area under the enactments or regulations then in force shall, from the date of constitution or inclusion, as the case may be, cease to have effect and all such taxes, fees or other charges shall be levied in that area in accordance with the provisions of the Act and the rules, regulations and bye-laws made thereunder.

Where a Municipality is abolished, the Act and all notifications, rules, regulations, bye-laws, orders, directions and powers issued, made or conferred under the Act shall cease to apply to the area comprised within the Municipality, the balance of the Municipal fund and all other property vested in the Municipality at the time of its abolition shall vest in the succeeding local authority coming into existence or if a local authority does not come into existence in that area, in the Government and the liabilities.
of the Municipality shall be transferred to such local authority or as the case may be, the Government. All funds and property vested in the Government shall be applied to discharge the liabilities transferred to the Government and for the promotion of the safety, health, welfare or convenience of the inhabitants of the area comprised in the Municipality. The delinking of certain urban areas from the municipalities for being treated as rural areas is unconstitutional and void. A rural area after its transition to be an urban area thereby becoming a smaller urban area or a larger urban area cannot be converted to be rural area. No such exercise can be done under the provisions of Part IX A of the Constitution of India or otherwise.

**Incorporation and Administration of Municipality**

Every Municipality shall be a body corporate by the name of the Municipality specified in the notification issued shall have perpetual succession and a common seal, and shall, subject to any restriction or alteration imposed by or under this Act or any other law, be vested with the capacity of suing or being sued in its corporate name, of acquiring, holding and transferring property, movable or immovable, of entering into contracts, and of doing all things necessary, proper or expedient for the purpose for which it is so constituted. Every Municipality, shall exercise such powers, perform such duties and functions and shall have such responsibilities and authority as are provided by or under this Act or any other law for the time being in force.

**Constitution of Council**

The Government shall, in accordance with the criteria specified, notify the total number of seats of the Councillors to be filled up by direct election in a Town Panchayat, Municipality and Municipal Corporation considering the population of the area of the Municipality concerned. The Government may, after publishing the

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77 section 4, the Kerala Municipalities Act, 1994
78 sub-sections (1) to (4) substituted by Act 14 of 1999. Prior to the substitution sub-section (1) to (4) read as:
1. "A Municipality other than a municipal corporation, shall consist of such number of seats to be represented by Councillors, as notified by the Government.
2. A Municipal corporation shall consist of such number of seats to be represented by Councillors as may be notified by the Government, provided that such number shall not be less than forty or more than fifty.
3. The Councilors of every Municipality shall be chosen by direct election.
relevant data according to each census, vary the total number of seats of Councillors in a Municipality notified under the law.

**Functions of the Chairperson**

The Chairperson of a Municipality shall-

- convene the meetings of the Council;
- exercise the powers and discharge the duties specifically conferred or imposed on him by this Act; and
- exercise overall supervision over the working of the Municipality and shall coordinate the functions of the Municipality, the Secretary and the Committees thereof.

### 7.3 Powers of Chairpersons

Subject to the provisions of this Act, the Chairperson shall have powers of inspection and may give such directions and orders as he thinks fit with regard to the implementation of any resolution of the Council or Committees in the discharge of any function of a Municipality and the Secretary shall be bound to comply with such direction. Except as otherwise provided in this Act or thereunder, the administrative powers to implement the provisions of this Act and the resolutions passed by a Council, shall be vested in the Chairperson and he shall be directly responsible for the proper discharge of the functions imposed by or under this Act. Without prejudice to the generality of the foregoing provisions the Chairperson shall-

- preside over and control the proceedings of the meetings of the council of the Municipality of which he is the Chairperson;
- supervise and control the acts done and steps taken by the officers and employees of the Municipality, prepare the confidential report of the Secretary and also review the confidential reports prepared by the Secretary in respect of other employees;
- meet the contingent expenses to such extent, as may be fixed by the Government from time to time;

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4. The Councilor may nominate not more than two persons having special knowledge or experience in municipal administration to be Special Councilors. The Special Councilors shall have all the rights of a Councilor except the right to vote.
• authorise the payment and repayment of money relating to the Municipality;
• cause to be prepared the statements and reports required to be prepared by or under the Act.
• exercise such other powers and perform such other functions that may be conferred or entrusted under the provisions of this Act or the rules made thereunder.

The chairperson may, in emergent circumstances, direct the execution of any work or performance of any act, in respect of which sanction of the council is necessary and in his opinion the immediate execution or performance of which is necessary for the safety of the public and may also direct that the expenses incurred for the execution of such work or performance of such act be paid from the fund of the municipality. The chairperson shall call the secretary or any officer or employee under the control of municipality including the Government Officer or employee transferred by the Government to the service of the municipality to discuss with him on any matters relating to the functions and administration of the municipality which are vested in or delegated to the municipality by or under the Act, and it shall be the duty of such officer or employee to attend such discussion or the meetings convened by the chairperson. The chairperson shall have the power to suspend from service any officer or employee in the service of municipality if necessary, other than the secretary and other Government Officers in the gazetted rank, transferred to the service of the municipality, where disciplinary action have to be taken against them, on grounds of gross negligence of duty, dereliction of duty and violation of rules and standing orders, provided that the chairperson shall place the order of suspension before the council in its next meeting and get the order ratified by the council, failing which the order shall stand invalid. The chairperson shall have the power to call for from the secretary or any other officer under the municipality, any file and record in writing relating to the administration of the municipality and issue directions and orders thereon in accordance with the provisions of the Act, rules or standing orders made thereunder, provided that the chairperson shall not call for the files and records which are related to the exercise of statutory functions regarding municipal administration vested only in the secretary or any other officer. The chairperson shall refer to the Government for decision at once, any resolution passed by the council which in his opinion has not been legally passed or is in excess of
power conferred by the Act or any other law or if carried out is likely to endanger human life or health or public safety.

The administrative power to implement the provisions of this Act and the resolutions passed by a Council shall be vested in the Chairperson\(^{79}\). Therefore, if there are other provisions of the Act, the power of the Chairperson under section 15(2) is subject to such other provisions contained in the Act. Further the later provision of sub-section (2) of section 15 clearly states that "the administrative powers to implement the provisions of this Act and the resolutions passed by a Council". Hence, there has to be a decision by the Council. Section 29 does not give an overriding effect to the other provisions of the Act. Further it is the Municipal Council which is the authority who can assign the exercise of the power in the manner prescribed which functions are assigned by or under this Act to any person including the Chairman, Secretary or a Standing Committee, as the case may be.

The Chairperson is authorised to write the confidential report of the Secretary and under the statutory scheme, the Secretary is bound to respect the views of the Chairman\(^{80}\). So, when power is conferred on two statutory authorities to suspend an employee and when the superior authority orders that the employee need not be suspended, the inferior authority though having concurrent power, cannot exercise the power to suspend the delinquent. The power under Rule 15 of the Municipal Common Service Rules is subject to the power of the Chairperson under Section 15(6) of the Act. The power conferred by a subordinate legislation can never override the power conferred by a plenary legislation on a superior authority. So, when the Chairperson having regard to the facts of this case that the petitioner need not be suspended, the Secretary has no power to overrule the same and suspend her from service.

**Standing Committee**

In every Municipality there shall be constituted Standing Committees as follows, namely,

- In a Municipal Council
  - Standing Committee for Finance

\(^{79}\) *Paraman v. Kodungallur Municipality*, 2005 (3) KLT 53

\(^{80}\) *Maheswari v. Alappuzha Municipality*, 2003 (1) KLT 833, 2003 (2) KLJ 587, 2003 (1) KLJ 670
Constitution and Election to the Standing Committee

Every Standing Committee shall consist of such number of members as may be decided by the Council including its Chairman and it shall be in such a manner that every Councillor, except the Chairperson and the Deputy Chairperson shall be elected as a member of any one of the Standing Committee and the number of members to be elected to each Standing Committee shall, as far as possible, be equal.

Function of the Standing Committee

The powers and functions of the Standing Committees of the Municipality shall be as follows, namely,

- The Standing Committee for Finance of Municipal Council shall supervise the utilization of the budget grants and watch carefully the timely assessment and collection of taxes, fees, rents and other sums due to the Municipal Council, shall dispose of appeals on taxation and to give directions to the Secretary to levy tax in respect of cases which escaped assessment and to reassess undervalued cases and allied matters.

- The Standing Committee for Development of the Municipal Council shall deal with matters of agriculture, soil conservation, social forestry, animal husbandry,
dairy development, minor irrigation, fisheries, small scale industry, co-operation and institutional finance and shall prepare the development plans for the Municipal Council integrating the proposals of other Standing Committees;

- The Standing Committee for Welfare of the Municipal Council shall deal with matters relating to the welfare of women and children, development of scheduled castes and scheduled tribes, social welfare, social security pension and financial assistance, poverty alleviation, slum improvement and public distribution system;

- The Standing Committee for Health of the Municipal Council shall deal with the matters of public health and health services, sanitation, control of dangerous and offensive trade;

- The Standing Committee for Works of the Municipal Council shall deal with matters of public works, housing, town planning including regulation of building constructions, environment, electricity, water supply, drainage and sewerage;

- The Standing Committee for Education, Arts and Sports of the Municipal Council shall deal with respective subject matter in corresponding areas.

Similar functions are performed by the respective standing committees in municipal corporations also.

- The Standing Committee for Town-Planning of the Municipal Corporation shall deal with matters of town planning including regulation of building constructions, environment, urban beautification, promotion of art and culture and preservation of monuments and places and buildings of archaic importance; heritage value and natural beauty;

- The Standing Committee for Appeal relating to Tax of the Municipal Corporation shall dispose of appeals on taxation and give directions to the Secretary to levy tax in respect of cases which escaped assessment and to reassess undervalued cases.

The Standing Committee of the municipalities may, exercise such other powers and discharge such other functions as entrusted to it by the Council in the respective subjects in addition to the powers and functions conferred on it under sub-section (1). Every resolution passed by the Standing Committee shall be placed in the next meeting of the Council and the Council shall have power to modify the same if found necessary.
Steering Committee

In every Municipality there shall be a Steering Committee consisting of the chairperson, deputy chairperson, and chairmen of standing committees and chairperson shall be the chairman of the said Committee. Steering Committee shall,

- co-ordinate and monitor the functioning of the Standing Committees,
- discharge the powers and functions entrusted to it by the Council.

Functions of the Chairman of the Standing Committee

The Chairman of a Standing Committee shall preside at its meetings and in his absence, a member chosen by the members present from among themselves shall preside over the meeting. A member presiding at a meeting of the Standing Committee shall, while so presiding, have all the powers and be subject to all the obligations of the Chairman. The person presiding over the meeting shall control the meeting and shall decide all points of order and procedure arising at or in connection with a meeting.

7.4 Administration of Municipality

Subject to the provisions of the Kerala Municipality Act, the Administration of the Municipality shall vest in the Council, and the Council shall, if necessary, be entitled to exercise, in the manner prescribed, the functions expressly assigned by or under this Act or any other law to the Chairperson, the Secretary, a Standing Committee or any other Committee.

Powers, functions and responsibilities of Municipality

The administration of a municipal area in respect of the matters enumerated in the first schedule shall, subject to the provisions of the Act and such other provisions as may be prescribed in this behalf and the provisions of other Acts and the rules made thereunder vest in the municipality and it shall have the power and responsibility to prepare and implement schemes for economic development and social justice in relation to the matters enumerated in the First Schedule, provided that, it shall be the duty of the municipality to render necessary service to the inhabitants of the municipal area in respect of the matters enumerated as mandatory functions in the first schedule. Municipality shall have such powers, authority and responsibilities of the Government,
to enable it to function as an institution of self-government in respect of the matters entrusted to it. The Government shall, as soon as may be after the coming into force of the Act, transfer all institutions, schemes, buildings, other properties, assets and liabilities connected with the matters mentioned in the First Schedule, to the municipalities concerned. The Central and State Plan allocations, for the time being in force and the annual budget allocation in respect of the subjects transferred to the municipalities by the Government shall be wholly allotted to the respective municipalities. The municipality shall manage to institutions and administer the schemes transferred to it, subject to the guidelines and technical directions from the Government and in accordance with the State and National policies.

Every institutions transferred by Government to the municipality shall be in the name of that municipality and shall be known accordingly. The municipality shall not have power to sell, transfer, alienate or mortgage any property transferred to it under the law. Government may resume any property transferred to the Municipality, if it is no more required by the municipality for the purpose for which it was so transferred. There shall be constituted a managing committee consisting of not more than fifteen members including its chairman in the prescribed manner for public health institutions transferred to the municipality. Where any scheme, project or plan involves selection of beneficiaries, the criterion for the eligibility and priority for such selection shall be determined by the municipality subject to the terms and conditions of the scheme, project or plan and such criteria shall be published in the prescribed manner and shall be intimated to the ward committee or the ward sabha concerned. The municipality shall invite applications for the selection of beneficiaries and prepare the draft priority list after making enquiry on the applications received in this behalf and send it for the consideration of the ward committee or the ward sabha concerned. The ward committee or the ward sabha shall scrutinise the draft priority list for the selection of beneficiaries in a meeting convened inviting the applicants also and prepare the final list and forward it for the approval of the council. The Council shall not alter the priority of the list prepared by the ward committee or the ward sabha.

Appointment of Committees

The Council may, subject to the provisions of the Act, constitute Committees for the purpose of exercising such powers, discharging such duties or performing such
functions, as it may delegate to them, and may appoint any Councillor or Committee to
enquire into and report or advise on any matter referred to him or it. (2) The Council
may specially invite as members of any Committee, persons who are not Councillors
but who may, in the opinion of such council, possess special qualifications for serving
in such Committee, provided that the number of persons so invited shall not, in any
case, exceed one-third of the total number of members of that committee.

**Constitution and proceedings of a Joint Committee**

The council of a municipality may, if the local self-government institutions so
decide or if so required by the Government, join with any other local self-government
institutions to constitute a joint committee for any purpose in which they are jointly
interested or for any matter for which they are jointly responsible. The joint committee
shall not include any person as member who is not a councillor or a member of a
panchayat, but any person who in the opinion of the committee, possesses special
qualifications for serving in that committee, may be allowed to participate as special
invitees in the meetings of the committee. The constitution and proceedings of a joint
committee shall be governed by such regulations as may be made by the local self-
government institutions concerned with their mutual agreement, which shall include
provisions for all or any of the following matters namely

- the total number of members of a joint committee;
- the number of councillors and other persons who shall be members of the joint
  committee;
- quorum of the joint committee;
- the appointment of the chairman of the joint committee and the manner of
  appointment;
- the term of office of the members and the chairman;
- the powers [of the local self-government institution concerned which may be
  exercised by the joint committee; and
- the procedure to be followed by the joint committee.

The local self-government institutions concerned may, with their mutual
agreement vary or revoke regulations made under sub-section(3). Notwithstanding
anything contained in sub-section(3), Government may issue such directions as they
think necessary or desirable in respect of all or any of the matters referred to therein and the joint committee shall be bound to comply with such directions. Where any dispute or difference of opinion arises between the local self-government institutions in respect of the constitution or functioning of a joint committee under this section it shall be referred to the Government, whose decision thereon shall be final.

**Constitution of Ward Committees**

In every municipality where the population exceeds one lakh, there shall be constituted a ward committee for each ward of that municipality as provided in Section 43, within three months from the date of its constitution.

**Constitution of Ward Sabhas**

In every municipality where the population does not exceed one lakh, there shall be a ward sabha for each of its ward and all persons included in the electoral roll of that ward shall be members of that ward sabha. The councillor who represent a ward shall be convener of that ward sabha, but due to any reason, physical or otherwise, the convener is unable to perform his function as such the chairperson may appoint a councillor representing any adjacent ward as the convenor. The ward sabha shall meet at least once in three months at a specified place and every meeting of the ward sabha shall be presided over by the chairperson or in his absence, deputy chairperson or any standing committee chairman authorised by the chairperson or in their absence by the convenor. The convenor of the ward sabha shall convene an extraordinary meeting of the ward sabha within fifteen days when a request is made in writing by not less than ten per cent of the electors in the ward for discussing the matters raised in the request, provided that such special meeting shall be convened only once during the period between two ordinary meetings.

**Composition of Ward Committee**

The Ward Committee shall consist of the members as envisaged in the Act. The ward committee shall meet at least once in three months for discharging the duties and performing the functions as may be assigned to it by the Council, from time to time.

(2) The meeting of a Ward Committee shall be convened by its Chairman. (3) The

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81 section 43, the Kerala Municipalities Act
Chairman, or in his absence, a member chosen, by the members present, from among themselves, shall preside over the meeting. (4) The Secretary and the Heads of Departments in the services under the Municipality shall attend the meetings of the Ward Committee and produce any document or furnish any information or report required by that Committee.

**Functions of Ward Committees and Ward Sabhas**

The functions of the Ward Committee or Ward Sabha shall be subject to such manner and procedure as may be prescribed in the Act\(^{82}\). The Ward committee or the Ward Sabha as the case may be, may in its ordinary meeting or in a special meeting convened for the purpose, discuss the development programmes of the previous year and it is entitled to know the amount earmarked in the budget, the details about the plan out-lay and the object-wise allocation of funds and also the details of the estimates and cost of materials of the works executed or proposed to be executed in the Ward. The audit report or performance audit report coming for the consideration of the Ward Committee or Ward Sabha shall be discussed in its meeting and its opinion, recommendations, and suggestions be communicated to the council concerned.

**Duties and rights of Ward Committees and Ward Sabhas**

The Ward Committees and Ward Sabhas shall have the following duties, namely,

- disseminate information regarding the development and welfare activities;
- participate and propagate the programmes regarding health and literacy and other similar time-bound development, programmes;
- Collect essential Socio-economic basic data;
- provide information by collecting the progress regarding development activities;
- adopt moral means for payment of taxes, repayment of loans, improvement of environmental cleanliness and maintenance of social harmony;
- mobilise, resources locally to augment the financial sources of the Municipality;
- (vii) supervise development activities as voluntary groups;
- make arrangements to report immediately the occurrence of epidemics, natural calamities etc.;

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\(^{82}\) section 45, the Kerala Municipalities Act, 1994
• co-ordinate and implement the activities for the protection of nature to import knowledge to the people on environmental problem.

The Ward Committee and the Ward Sabha shall have the following rights, namely,

• to get information regarding the services to be rendered and the activities proposed to be carried by the officers concerned during the next three months;
• to get information on the detailed estimate regarding the works proposed to be undertaken;
• to know whether each decision of the council of the Ward area is logical;
• to know about the follow up actions taken, decision of the Ward Sabha and the Ward Committee, as the case may be, and about the detailed reasons for not implementing any decision;
• to get information regarding detailed town planning schemes building construction permits etc. in the ward

Absence of political will from the side of the councillor, non-co-operation of general public, involvement of beneficiary people and non-influential nature etc. lead to inactive and on-effective character of ward sabha and ward committee.

7.5 The Secretary of Municipality

For every Municipality there shall be a Secretary appointed by the Government, in consultation with that Municipality, who shall be an officer of the Government borne on such cadre, as may be prescribed, and shall be the Executive Officer of the Municipality and the other officers and employees of the Municipality shall be subordinate to him. The Secretary shall not without the sanction of the Municipality or the Government, undertake any work unconnected with his office. The pay and allowances of the Secretary, as fixed by the Government from time to time, shall in the first instance to be paid from the State funds. The whole of the pay and allowances paid to the Secretary and the contributions towards his leave salary and pension to the extent required shall be credited monthly to the State funds by the Municipality. The Government may grant leave to the Secretary and appoint a substitute or nominate an officer to hold charge of his office during his absence. The Secretary shall be the custodian of all Municipal properties and records including all papers and documents connected with the proceedings of the Council and the Standing Committees and other
Committees, and shall arrange for the performance of such functions, as may be entrusted to him by the said bodies. The Government may, at any time, transfer the Secretary, from a Municipality and if the Council, on the strength of a resolution, passed at a special meeting convened for this purpose, by a simple majority vote of the approved strength of the Council, recommends a transfer, the Government shall do so, provided that before considering such a resolution by the council the Secretary shall be given an opportunity to give a representation and if requested of being heard by the Council or the Chairperson. The Government may, either *suo motu* or on application, call for the records of any order passed by the authority under sub-section and may review such order and pass such order in that regard, as it deems fit.

Where disciplinary proceedings have to be initiated against the Secretary, the Chairperson shall have the power to conduct an enquiry against him and in the case of imposition of a major penalty, to report to the Government with approval of the council to take further action under the rules applicable to the Secretary and the Government shall as soon as the report is received, take appropriate action and intimate the final decision taken thereon, in writing to the Chairperson. The Government may by a general or special order designate any officer of the Government transferred to the service of the Municipality as an ex-officio Secretary and the person so appointed shall have all the powers and functions of the Secretary, in respect of the subjects dealt with by them, provided that no application for review shall be entertained if it is preferred after 30 days from the date of receipt by the applicant of the order sought to be reviewed. The Government shall not pass any order affecting any party if that party had not been given an opportunity for submitting a representation and the Government shall not *suo motu* review an order, if more than one year has elapsed since the date of the order sought to be reviewed.

**Functions of the Secretary**

Apart from the Panchayat Raj System, considerable number of functions are delegated to the chief executive of urban local bodies. Hence, the secretary shall,

- record his opinion in writing on all matters with which he is concerned and which require the decision of the chairperson, the council or the standing committee; and
- implement the resolutions of the council and the standing committee,
Provided that where the secretary is of opinion that any resolution has not been legally passed or exceeds the powers conferred by the Act or by any other law or by the rules made thereunder or that if carried into effect it may endanger communal harmony or public safety or it is contrary to the Central-State Policy, the secretary shall request the council in writing to review the matter and express his views during review by the council and if the council sticks on to its earlier decision, he shall refer it to the Government for appropriate action and decision, after intimating the matter to the chairperson. Where, on review of the resolution, the council decides to implement the same and the decision of the Government have not been intimated within fifteen days from the date of reference to the Government, the secretary shall implement the said resolution and the matter be intimated to the Government. Provided also that no approval of the chairperson is required for the secretary to refer the matter to the council or the Government as aforesaid, but he shall give a copy of the report sent to the Government, to the chairperson.

- furnish periodical reports to the council and the standing committees, as the case may be, regarding the action taken or progress made in implementing the resolutions of the council or the standing committees and
- implement the directions of the Chairperson, provided that where the Secretary is of opinion that any direction given by the Chairperson is in excess of the powers conferred under the provisions of this Act or any other law or the rules made thereunder, he may first bring the matter to the notice of the Chairperson and if the Chairperson repeats his direction and if the Secretary sticks on to his earlier opinion, he shall report that matter to the council in the manner as may be prescribed;
- exercise such of the powers and perform such of the functions as may be specifically conferred or delegated by or under this Act;
- incur the expenditure authorised by the council or the Chairperson, subject to the budgetary provision;
- make payments for all kinds of expenditure authorised by the Municipality, either by cheque or in cash;
- maintain and keep the accounts as to the receipts and expenditure of the Municipality;
be responsible for the safe custody of the Municipal fund;

- keep the records in respect of the meetings and proceedings of the council, standing committees and other committees;
- take disciplinary action against the Municipal employees with the knowledge of the Chairperson; and
- assist the Chairperson and the council to co-ordinate the functions of the officers and institutions transferred to the Municipality.

All litigations for or against the municipality shall be conducted by or against the secretary.

Regarding commissioner's power to review orders, there is nothing stated in any of the provisions that after effecting the alteration in the registry, the Commissioner has got the power to reopen the matter and make alterations in the alteration already made.

It is reasonable to think that the Legislature did not intend to confer on the Secretary the power to suspend the employees from service and that intention is reflected in the Act. Legislature has conferred the power to the Chairperson to suspend the employees by an express provision making its intention clear. A plain reading of the corresponding section makes it clear that the power of the Secretary is confined to the act of taking disciplinary action and the same has to be done with the knowledge of the Chairperson. The section does not say that the Secretary has got the power to suspend the employee from service. Justice S. B. Sinha ordered that execution of contract by commissioner, and requirement of prior approval by the standing committee is not an essential formality. Requirement of certain documents for such approval cannot be dismissed on grounds of locus standi.

Rights and duties of Secretary

The secretary shall attend the meetings of the council and the meetings of the standing committee or any other committee of a municipality and may take part in the discussions thereat; as an advisor, but shall not have the right to move any resolution or to vote. Subject to any direction given or any restriction imposed by the Government or

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83 Abdul Salam Hajee v. Municipal Commissioner, ILR 1976(1) Ker. 393
84 Pradeep Kumar v. State of Kerala, 2005 (4) KLT 396 (2003 (1) KLT 833 referred to)
85 Narendra Kishore Ganesh Joshi v. Commissioner, Municipal Corporation of Kalyan & Dombivali and others, AIR 2005 SC 34
the municipality, the secretary may, by order in writing, delegate any of his functions to any officer or employee of the municipality who shall be bound to carry out such functions. The discharge of the functions so delegated shall be subject to such restrictions, limitations and conditions as may be laid down by the secretary and shall also be subject to his control and revision. The officer or employee to whom the power is delegated under the law shall have all the rights, privileges and authority of the secretary with respect to such functions and shall like-wise be subject to all liabilities arising out of the exercise of such powers, privileges or authority. The secretary shall for the discharge of his functions vested in him by or under the Act or in any other law, have the power after informing the chairperson to incur expenditure not exceeding Rs. 25,000 out of the municipal fund. The secretary shall give the required information regarding the functions of the municipality to the Government or to the officers or to the agency authorised by it. The secretary shall be responsible for furnishing necessary information to the legislative committee or answer the legislative assembly interpellations and in order to avoid delay, such information may be sent directly to the Government or to the officer authorised by it in this behalf and thereafter submit to the chairperson for information. The secretary shall take follow up action on performance audit reports and other audit reports.

**Preparation of Development plans by Municipalities**

Ward committee or ward sabha as the case may be shall prepare every year in such form, as may be prescribed, a development plan for the ward along with an estimate of the expenditure therefor, for the next year and after finalising it in a meeting held three months before a financial year, submit the same to the Municipality concerned. Every municipality shall prepare every year a development plan for the succeeding year considering the development plans submitted by the ward committees or ward sabhas of the municipality in the prescribed manner for that municipal area and submit the same to the District Planning Committee before such date as prescribed. For the purpose of this section "development plan" means a development plan for economic development, social justice, Improvement of living conditions, creation of employment opportunities and increase of production capacity] in relation to matters enumerated in the Twelfth Schedule to the Constitution including the matters to which the administrative power vests in the Municipality under the provisions of this Act or any other law. Every Municipality shall prepare a master plan for its development in the
prescribed manner with focus on scientific spatial planning taking into account its resources and as per the fiscal investment and submit the same to the District Planning Committee. Municipality shall have the power to prepare and implement detailed town planning schemes as per the laws relating to Town Planning for the time being in force subject to the master plan approved by the Government.

7.6 District Planning Committee (DPC)

Kerala Legislature envisaged the provision for District Planning Committee within the Municipalities Act according to the constitutional framework. DPC has jurisdiction over both panchayat raj and nagarapalika institutions. The Government shall constitute in every district, a District Planning Committee at the district level to consolidate the plans prepared by the panchayats and the municipalities in a district and to prepare a draft development plan for the district as a whole. The committee shall consist of fifteen members of whom;

- twelve members shall be elected, in such manner as may be prescribed, by and from amongst the elected members of the panchayats at the district level and of the municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district;
- the president of the district panchayat in that district;
- one shall be a person having considerable experience in administration and planning, nominated by the Government;
- the district collector concerned, ex-officio member in DPC
- the members mentioned shall be elected under the guidelines, supervision and control of the State Election Commission;
- the president of the district panchayat mentioned shall be the chairman of the committee;
- the district collector referred to shall be the secretary of the committee.

The district level officers of the departments of the Government in the district shall be the joint secretaries of the committee. The members of the House of the People (Lok Sabha) and the members of the legislative assembly of the State, representing any area comprised in a district shall be permanent invitees of the District Planning Committee of that district, provided that where the area which a Member of the House
of the People (Lok Sabha) or a member of the Legislative Assembly of the State represents, comprises partly in one district and partly in another district, he shall be a permanent invitee to the District Planning Committee of both the districts in which the area he represents is comprised. A member of the Council of States (Rajya Sabha) representing the State shall be a permanent invitee to the District Planning Committee of the district in which he is registered as elector in the electoral roll of any municipality or panchayat. A member nominated to the Legislative Assembly of the State shall be a permanent invitee to the District Planning Committee of the district in which he ordinarily resides.

Where a member of parliament or a member of the legislative assembly of the State is appointed as Minister or elected as speaker or deputy speaker or appointed as the Government Chief Whip or recognised as Leader of the Opposition, he may nominate a person from the area he represents as Member to represent him in the District Planning Committee or the District Planning Committees of the district or districts to which he was a permanent invitee. The committee shall consolidate the plans prepared by the panchayats and the municipalities in the district and prepare a draft development plan for the district as a whole and perform such other functions relating to district planning, as may be assigned to it by the Government, from time to time, by notification in the gazette. The committee shall, in preparing the draft development plan

- have regard to,
  - matters of common interest between the panchayats and the municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of the infrastructure and environmental conservation; and
  - the extend and the type of available resources, whether financial or otherwise;
- consult such institutions and organisations as the Governor may, by order specify.

The chairman shall forward the development plan, as recommended by the committee, to the Government for approval. The Government shall, while preparing the state plan consider the proposal and priorities included in the draft development plans
prepared for each districts by the District Planning Committee. The District Planning Committee shall monitor the quantitative and qualitative progress, especially its physical and financial achievements, in the implementation of the approved district planning schemes and State plans relating to the district and it shall evaluate the action programmes already completed. The procedure to be followed in the meeting of the committee, including the quorum for such meeting, shall be governed by such rules as may be prescribed.

**Metropolitan Planning Committee**

The Government shall, by notification in the Gazette, constitute a Metropolitan Planning Committee in a Metropolitan area to prepare a draft development plan for such area as a whole. The Metropolitan Planning Committee shall be constituted and is supposed to function according to the corresponding provisions as in the case of DPC.

The Secretary shall forward the development plan, as recommended by the Metropolitan Planning Committee, to the Government for approval. The procedure to be followed in the meeting including the quorum for such meeting shall be governed by such rules as may be prescribed.

**7.7 Power of Government for purposes of control**

Government or the officer authorised by them in this behalf may inspect any office under the control of the Municipality or any movable property kept therein or any immovable property or any work which is in progress. The Government or the officer authorised by them in this behalf may

- call for any document in the Custody of the Municipality
- require the Chairperson or the Secretary to furnish any return, plan, estimate, statement, account or statistics;
- require the Chairperson or the Secretary to furnish any information or report or any matter relating to the Municipality; and
- record in writing any observation for the consideration of the Council, Chairperson or Secretary, as the case may be, in regard to the proceedings or functions of the Council, Chairperson or Secretary.
The Chairperson, Secretary and other officers shall be liable for facilitating the exercise of the powers and for fulfilling the requirements under the Act. The Government or the officer authorised by them shall return to the municipality any document, register or records received from it within ninety days from the date of its receipt and if necessary, the Government may keep certified copies of the same. The Government may arrange for the conduct of periodical performance audits with respect to the administration of the municipality and the works and schemes implemented or being implemented by the municipality in the manner prescribed.

**Power to suspend and cancel resolutions**

The Government may, *suo-moto* or on a reference by the Chairperson the Secretary, or a Councillor of the Municipality or on a petition received from a citizen, cancel or amend a resolution passed or a decision taken by the council, which in their opinion,

- has not been legally passed or taken; or
- is in excess or abuse of the powers conferred by this Act or any other law; or
- is likely to endanger human life, health safety, communal harmony or public peace, or is likely to lead to a riot or quarrel; or
- has violated the guidelines issued by the Government in the matter of implementation of plans, schemes or programmes or the conditions of grants.

Before cancelling or amending a resolution or decision, the Government shall refer the matter for the consideration of the Ombudsman\(^{86}\) or to the Tribunal for the Local Self Government Institutions\(^{87}\) and the Tribunal shall, after giving the Municipality an opportunity of being heard, furnish a report to the Government with its finding based on which the Government may cancel, amend or approve that resolution or decision. The Government shall not entertain any petition for cancellation or amendment of any resolution or decision of the council if an alternate redressal is available to the petitioner through the Tribunal. Where the Government are of opinion that a resolution or a decision of the Council shall be cancelled or amended they may temporarily stay the implementation of Such resolution or decision and may direct the

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\(^{86}\) section 271 G of the "Kerala Panchayat Raj Act, 1994

\(^{87}\) section 271 S, ibid.
council to keep its implementation in abeyance till it is finally disposed of by completing the procedure under the law.

**Power of the Government to issue direction to Municipality**

Notwithstanding anything contained in the Act, the Government shall have the power to issue directions to the municipality in accordance with the national and state policies in matters of finance, maintenance of accounts, office management, selection of schemes, sites and beneficiaries, proper functioning of ward sabhas and ward committees, welfare programmes, environment control etc. and the municipality shall comply with such directions. Where default or abuse of power in the implementation of schemes or maintenance of accounts is reported or specific complaint has been received in the matter, the Government may arrange for such enquiry as it deems fit and the municipality shall co-operate with that enquiry. After such enquiry, the Government may take actions which are necessary and permissible under the Act.

**Delegation of powers**

The Government may, by notification in the gazette, authorise one or more officers to exercise any of the powers vested in them under the Act, except the power to make rules, in respect of any municipality or all municipalities and in like manner withdraw such authorisation. The exercise of any of the powers delegated under the Act shall be subject to such restrictions and conditions as may be specified in the notification. The Government shall also have the power to control or review the acts or proceedings of any person so authorised.

**Action by Government in default of Municipal Authority**

Whereas, at any time, it appears to the Government that a municipal authority has made default in performing any duty imposed on it by or under the Act or any other law for the time being in force, they may, by order in writing, direct such authority to perform the duty within such period, as may be specified, therein, and such authority shall be bound to comply with such direction. If such duty is not performed or such order is not carried out within the period specified, the Government may, after giving a reasonable opportunity to the municipality, to its chairperson or to the Secretary, as the case may be, to show cause why further action should not be taken, appoint any officer or authority to perform the duty or to carry out the functions and the expenses to be
incurred for that shall be paid from the funds of the municipality within such time as
determined by the Government. If the expenses directed by the Government to be paid
from the fund of the municipality is not paid in the manner specified, orders may be
passed directing the person having the custody of the said fund to pay it in priority to
any other charge against that fund, except service charges of authorised loans, or deduct
that amount from the share of taxes or any grant due to the municipality. The person
referred to in law shall, as far as the funds in the account of the municipality permits, be
liable to comply with the order passed by the Government.

Power of Government to undertake certain works

The Government may, with the consent of a municipality, undertake on its
behalf the construction of water supply, drainage or any other work, appoint any officer
or person to carry out the construction of such works and direct that the expenses
including the pay and allowances of such officers be paid from the municipal fund in
priority to any charges except charges for the service of authorised loans.

7.8 Annual Administration Report

Every municipality shall in accordance with the provisions of the Act publish a
report of its administration in each year in such form and with such details as the
Government may direct, within the thirtieth day of September of the succeeding year
and where the report is not published within the said time limit, the Government may
withhold the payment of grants due to the municipality thereafter. The draft of the
Administration Report in respect of the institutions, offices and officers under the
control of the municipality shall be prepared by the heads of such institutions and
offices and furnish to the secretary of the municipality and he shall prepare the draft of
the administration report of that municipality in consultation with the chairperson and
place it before the standing committee for finance for scrutiny and then to the council
for approval. The Administration Report of the municipality as approved council and
published shall be forwarded to the officer authorised by the Government and that
officer shall before the thirty first day of December every year submit to Government a
consolidated report containing abstracts of the administration reports of the
municipalities. The Administration Report of the municipality as approved council and
published shall be forwarded to the officer authorised by the Government and that
officer shall before the thirty first day of December every year submit to Government a
consolidated report containing abstracts of the administration reports of the municipalities. The Government shall, as soon as may be, after the receipt of the consolidated report lay the same, along with a review report of the Government before the Legislative Assembly in its next session and such laying shall be within forty-five days from the first day of the session.

**Power of Government to dissolve Municipality**

Before the expiry of a financial year, if the council fails to approve, the budget of the municipality for the succeeding financial year, and if, for that reason, there is financial crisis to the municipality or if the majority of the councillors resign or have been disqualified, the Government may, by notification in the gazette, dissolve the municipality from such date as may be specified therein and shall forward a copy thereof to the State Election Commission, provided that before such dissolution, the municipality shall be given a reasonable opportunity of being heard. Where the Government are of opinion that a municipality consistently makes default in performing the duties imposed on it by law or in carrying out the orders or directions issued in accordance with law by the Government or exceeds or abuses its powers, they may, by notification in the gazette, dissolve the said municipality and shall forward a copy thereof to the State Election Commission, provided that the Government shall, before such dissolution communicate to the municipality their intention to dissolve the Municipality giving reasons therefore and give the municipality a reasonable opportunity to show cause against the same and consider its objection or explanation, if any. After considering the objection or explanation of the municipality, it is considered that the municipality shall be dissolved the advice of the Ombudsman shall be sought and the final decision shall be taken on the basis of that advice.

A municipality dissolved shall be reconstituted within such time as the Government may specify in that behalf which shall not be later than six months from the date of dissolution, provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election for reconstituting the Municipality for such period. Upon the dissolution of a Municipality all the Councillors, including the Chairperson and the Deputy Chairperson shall forthwith be deemed to have vacated their offices. A

88 section 271G of the Kerala Panchayat Raj Act, 1994
Municipality which is constituted upon dissolution before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued had it not been so dissolved. Every notification issued shall, as soon as may be, after it is issued, be laid before the Legislative Assembly while it is in session and if it is not in session, at the commencement of the ensuing session and the approval of the Assembly obtained.

**Appointment of Special Officer or Administrative Committee for the administration of Municipality**

Where the term of a municipality has been expired and a new municipality has not been constituted or where a municipality has been dissolved, Government shall, by notification in the gazette, appoint a Special Officer or an Administrative Committee consisting of not less than three members who are Government employees for the period as may be specified in the notification for the administration of the municipality, provided that, the term of appointment shall, not in any case be exceeded six months. The Administrative Committee or the Special Officer appointed shall, subject to the control of the Government and to such instructions or directions as the Government may issue, from time to time, have all the powers and functions of the council, the chairperson, the deputy chairperson and the committees of the municipality and take all such actions as may be required in the interests of the municipality.

**Vesting of Public Streets and appurtenance in Municipality**

Notwithstanding anything contained in the Kerala Land Conservancy Act, 1957 (8 of 1958) or in any other law for the time being in force all public roads, streets, lanes and paths, the bridges, ditches, dykes and fences on or beside the same, and all adjacent land not being private property appertaining thereto in any municipal area other than National Highway or State Highway or major district road or roads classified by Government as such shall stand transferred to, and vest absolutely in the municipality together with all pavements, stones and other materials and other things provided therein, all sewers, drains, drainage works, tunnels and culverts, whether made at the cost of the municipal fund or otherwise in, alongside or under such roads and all works, materials and things appertaining thereto. Notwithstanding anything contained in the Act the Government may, by notification in the Gazette, at any time, withdraw such public roads and or streets, sewer drain, drainage work tunnel or culvert adjacent to it
from the control of the Municipality for the purpose of classifying, it as any public road, street National Highway, State Highway or Major District road under the control of Municipality and thereupon it shall revest in the Government on issuing such a notification, provided that before issuing such a notification, the Government shall consult the Municipality concerned and give due regard to the objections, if any.

**Duty of Municipality in respect of public streets withdrawn from its control**

Where any public street has been withdrawn from the control of a Municipality under the law, and placed under the control of the Government or under the control of any other authority by the Government, it shall be the duty of the Municipality to provide at the cost of the municipal fund, to such extent as the Government may, by general or special order, direct

- for the lighting, watering, scavenging and drainage of such street;
- for the provision, maintenance and repair of the water-supply mains, drains and sewers in, alongside, or under such street;
- for the provision, maintenance and repair of footways attached to such street.

provided that where in the discharge of such duties, it is necessary for the Municipality to open and break up the soil or pavement of any such street, the Municipality shall obtain the previous consent of such officer as the Government may by general or special order, specify. In cases of emergency, the Municipality may, without such consent, open and break up soil or pavement of any such street, but shall, as far as practicable, restore such soil or pavement to the condition in which it was immediately before it was opened and broken up; and a report of the action so taken and the reasons therefor shall be sent forthwith to the officer specified under the foregoing proviso.

Under section 307 of the Orissa Municipal Act, 1950, unauthorised occupants in the pavement of the corporation, erection of or handling of corporation property without permission has no legality in that respect\(^89\).

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\(^89\) *Footpath Khayudra Byabasai Sangha, Bhubaneswar v. State of Orissa and others*, AIR 2010 (NOC) 125 Orissa
Transfer of water courses, springs, reservoirs, etc, to Municipalities

Notwithstanding anything contained in the Kerala Land Conservancy Act, 1957 or in any other law for the time being in force, all public watercourses including those which the public have been using so as to give them easement rights over them, (other than rivers flowing through the municipal areas and other areas as may be specified by Government, by notification in the gazette) whether existing at the commencement of the Municipality Act or were made; set up or constructed, thereafter whether made or constructed at the cost of the Municipality or not, along with their river beds, banks, springs, channels for irrigation and drainage, canals, lakes, backwaters, water courses all water whether standing, or flowing streams, reservoirs, ponds, water beds, fountains, wells, 'kappus' channels, stand pipes, and other water reservoirs and any land appertaining there to other than private property shall stand transferred to and shall absolutely vest in the Municipality, provided that nothing contained in this sub-section shall apply to an irrigation project or any work connected therewith or any land appertaining thereto. Subject to the provisions of this Act, all rights and liabilities of the Government in respect of the water-courses, springs, reservoirs, ponds, water beds, fountains, wells, channels, standpipes and other works connected with water shall be vested on the municipality and shall be the rights and liabilities of the municipality from the date of such vesting.

Management of public institution

The management, control and administration of every public institution maintained exclusively out of the Municipal fund shall vest in the municipality. When any public institution has been placed under the direction, management and control of the municipality, all property, endowments and funds belonging thereto shall be held by the municipality in trust for the purposes to which such property, endowments and funds were lawfully applicable at the time when the institution was so placed.

Power of Municipality to acquire and dispose of property

A municipality may in the manner prescribed, acquire any property such as land or building within or outside its municipal area or dispose of any of its properties with the prior approval of the Government for providing any arrangement or facility for a public purpose. A municipality may construct commercial or other buildings and let
them out to the public who need them on licence and may charge such fees as it may fix for the use and occupation of the same, provided that after the said period, a licence may be renewed subject to such terms and conditions as may be fixed at that time.

**Power of Municipality to execute works on contract or otherwise**

The council may determine, either generally in the case of any class of works or specially in the case of any specific work, as to whether the works shall be executed through a contractor or directly or through any beneficiary committee, provided that if any work is done by a benami contractor, in the guise of a beneficiary committee or of direct execution the amount expended on such work shall be deemed to be misappropriation of funds and the amount shall be recovered from those who are responsible for such expenditure. Every municipality, may, if it is found necessary in the interests of administration, enter into contracts with any person or agency for the performance of any work which the council is under a duty to discharge under the Act, for such period and subject to such conditions as it may deem fit. The preparation of estimates of works, its execution, the supervision thereof and incurring the expenditure thereto shall be done in the manner as prescribed.

**7.9 Constitution of a common municipal service**

The Government may, subject to such rules as may be prescribed, constitute a common municipal service for the employees under the service of the municipalities in the State and regulate the recruitment and conditions of service of the employees of the municipalities. Subject to such rules as may be made the power to sanction leave to the officers and employees of the municipality shall be vested in the secretary. The municipal council shall subject to such rules as may be made in this behalf, have the power to impose minor penalties on any officer or employee of the municipality. An appeal may be preferred against an order of the Council imposing a minor penalty to the authority empowered (hereinafter referred to as "authority") in this behalf. An appeal shall be in such form and shall be filed within such time and manner as may be prescribed. The Authority shall, on receipt of an appeal give the appellant an opportunity of being heard and may either confirm, cancel or modify the order appealed against or may pass such other order as it deems fit. The Government may, either *suo motu* or on application call for the records relating to any order passed as above stated in order to review such order and may pass such order in respect of the same as they deem...
fit. In the case where disciplinary proceedings, which may result in the imposition of a major penalty, have to be initiated, against officers or employees of the municipality, the Chairperson shall have the power to report to the authority competent to impose major penalty on such officer or employee. Under the rules applicable to such officer or employee, and the authority shall consider the report and inform the chairperson the final decision taken thereon. Every municipality shall, make available the services, of its officers and employees, for the performance of the functions, entrusted by the Government, which involved the implementation of any scheme, project or plan, provided that no application for review shall be entertained after the expiry of thirty days from the date the order sought to be reviewed was received by the applicant. An order affecting any party shall be passed only after giving that party an opportunity of submitting a representation. No review shall be done by the Government *suo motu* after the expiry of one year from the date of the order sought to be reviewed.

**The Health Officer, the Engineer, the Electrical Engineer**

The Government may, after consulting a municipality, sanction a post of health officer and a post of municipal engineer for that municipality. The Government may, after consulting a municipality, which has undertaken the generation, transmission or supply of electrical energy, sanction a post of municipal electrical engineer for that municipality. The Government may sanction the post of deputy secretary, finance manager, accounts officer, revenue officer and such other posts in a municipal corporation and giving due regard to the necessity and financial soundness of a municipality may also sanction similar posts in a town panchayat and a municipal council. The finance manager shall, in addition to his duty as such, function as the advisor and secretary to the standing committee for taxation, finance and accounts of the municipality concerned.

**Control of Chairperson over health Officer**

Notwithstanding anything contained in Travancore-Cochin Public Health Act, 1955 or Madras Public Health Act, 1939, the functions vested in the Secretary under this Act relating to public health matters and which are conferred upon the Health Officer by the Travancore-Cochin Public Health Act, 1955 or the Madras Public Health Act, 1939, except the functions involving expenditure from the Municipal fund, shall be exercised by the health officer subject to the control and supervision of the chairperson.
Where there is no health officer in any municipality the senior medical officer of hospital, or public health centres or dispensaries under the control of the municipality, shall be the health officer ex-officio of the municipality.

**Special Provisions regarding Government servants lent to Municipality**

Subject to the terms and conditions as prescribed, the Government may transfer their officers and employees to the service of the municipalities for the implementation of schemes, projects and plans entrusted or vested in the municipality under the Act. The Government officers and employees transferred to a municipality, shall perform, in addition to their normal functions, any other connected functions assigned to them by the municipality as if they are officers and employees of the municipality. The officers and employees so transferred shall be under the control and supervision of the municipality, and the terms and conditions in regard to their services including disciplinary actions, shall continue to be the same as that applicable to them under the Government subject to the other provisions of the Act. The salary of the Government employees transferred to the municipality shall be paid by the Government, until the Government decides that it shall be paid from the municipal fund.

**7.10 Control of Secretary over establishment**

Subject to the provisions of the Act and bye-laws and regulations for the time being enforced, the secretary shall specify the duties of the officers and employees of the municipal establishment and secretary shall exercise supervision and control over them.

**Power of Chairperson over establishment**

The chairperson shall exercise supervision and control over the work of all officers and staff under the municipality, including the Government officers and employees who have been transferred to the municipality by the Government, and may require the secretary, to make available all necessary reports and information relating to their work and shall have authority to issue all directions necessary for the speedy implementation of the decisions of the Council, or a Committee thereof.
Exercise of statutory functions of the officials.

Where any officer of the municipality is vested with any statutory powers or functions to be independently and solely exercised by such officer, the council, the chairperson, the chairman of standing committee or any councillor, shall not interfere with or influence in the exercise of such powers or functions by such officer.

Enumeration of taxes and duties

Every Municipality may levy

- a property tax;
- a profession tax;
- a tax on animals and vessels;
- a show tax;
- a tax on advertisements;
- a tax on timber brought into the municipal area;
- a duty on certain transfers of immovable property in the shape of an additional stamp duty subject to the rules framed by Government.

The Municipality may, for the purpose of providing any specific civic service or amenity levy a surcharge on any tax other than profession tax levied by the Municipality, Provided that no surcharge shall be levied if a tax or cess is already being levied for the same purpose. Such surcharge shall, in no case, exceed ten per cent, of the amount of the tax\(^90\).

It is open to the State legislature to pass a law on advertisements\(^91\). Therefore, S. 126 which authorizes the municipality to levy a tax on advertisements is perfectly valid. A tax on such an advertisement would certainly have nothing to do with the profession calling or of the person making the advertisement and will not be considered as a tax on profession, trade or calling. The fact that the advertisement in this case is in connection with the trade, calling or profession of the petitioner would not alter the character of the tax and make it one on the trade, calling or profession of the petitioner.

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\(^90\) See section 230 of the Kerala Municipalities Act
But levy of general tax upon dwelling house constructed on land within environment green belt was held as arbitrary by J. S. B. Sinha.\textsuperscript{92}

**Prohibition of advertisement without written permission of the Secretary**

No advertisement shall, after the levy of the tax under section 271 has been determined upon by the council, be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure within the municipal area or shall be displayed in any manner whatsoever in any place in that area without the written permission of the secretary. The Secretary shall not grant such permission if;

- the advertisement contravenes any bye-law made by the council under clause (32) of section 567; or
- the tax, if any, due in respect of the advertisement has not been paid.

Subject to the provisions of the Act, in the case of an advertisement liable to advertisement tax the Secretary shall grant permission for the period to which the payment of tax relates and no fee shall be charged in respect of such permission, provided that the provisions of this section shall not apply to any advertisement erected, exhibited, fixed or retained on the premises of a railway administration relating to the business of a railway administration.

An advertisement is a matter that draws attention of the public or segment of public to a product, service, person, organization or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organization or line of conduct intended to promote sale or use of product or range of products\textsuperscript{93}. An advertisement is an information that producer provides about its products or services. An advertisement tries to get consumers to buy a product or a service. An advertisement is generally of goods and services and is an information intended for the potential customers and not a mere display of the name of the company unless the same happens to be a trade mark or trade name.

Advertisement sign means any sign either free, supported or attached to a building or other structure which advertises an individual, a firm, a society an

\textsuperscript{92} Municipal Corporation v. Rishiraj Jain and others, AIR 2006 SC 3268
\textsuperscript{93} ICICI Bank v. Municipal Corporation of Greater Bombay, 2005 (4) KLT SN 33
establishment or a product displayed on the said premises for identification purposes. Hoarding put up even in a private land would fall within the definition of the building under the Building Rules. Once it falls within the definition of the building, Corporation has got the right to seek removal of the structure if erected without their permission. Before erecting the hoarding, permission has to be obtained from the Corporation.

**Power to assess in case of escape from assessment**

    Notwithstanding anything to the contrary contained in the Act or the rules made thereunder, where for any reason a person liable to pay any tax or fees leviable has escaped assessment in any half-year, the secretary may at any time within four years from the date on which such person should have been assessed, serve on him a notice assessing to the tax or fee due and demanding payment thereof within fifteen days from the date of such service and thereupon the provisions of the Act and the rules made thereunder shall, so far as may be, apply as if the assessment was made in the half-year to which the tax or fee relates.

**Municipal Fund**

    All moneys received by a municipality under the Act or the rules made thereunder or any other law for the time being in force, shall constitute a fund which shall be called the Municipal Fund and shall be utilised and disposed of subject to the provisions of the Act or any other laws. The items of income to be credited to the Municipal Fund consist of the following, namely

    - Taxes, duties cess and surcharge levied under the Act or any other law, the rent from properties, fees from licences and permissions and its income from other miscellaneous items;
    - Share of the taxes levied by the Government and transferred to the municipality and the grants released to the municipality by the Government;
    - Grants released by the Government for the implementation of schemes, projects and plans formulated by the municipality;

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94 Vimal Arakkal v. Corporation of Cochin, 2005 (1) KLT 121, (2004 (3) KLT 413 confirmed, 2002 (2) KLT 625 referred to)
• Grants released by the Government for the implementation of the schemes, projects and plans assigned or entrusted to the municipality under the Act; and
• Money raised through donations and contributions from the public and non-governmental agencies.

All fees for licences and permissions received by the Municipality under this Act or any other law shall be accounted separately and shall be utilised for the purpose for which such fees are levied. Grants released by the Government to the Municipality for the implementation of the schemes, projects and plans shall be utilised only for that purpose for which such grants are released. The share of taxes levied by the Government and transferred to the Municipality and the grants released to the Municipality shall be fixed by the Government with due regard to the recommendations of the Finance Commission and the needs of development and the cost of the Municipal administration and services, provided that any sum due from a Municipality to the Government or any fund established or operated or administered under any rules made under, this Act or any fund borrowed from any public sector undertaking or any agency on Government guarantee may be adjusted by the Government from any grant or sum due to the Council then and thereafter. No expense, financial assistance or grant for a purpose not directly concerned with the function of the Municipality specified in this Act or rules made thereunder or any other law shall be made by a Municipality in excess of the annual limit that may be specified by the Government. All amounts accounted to the Municipal fund and of its release under this Act, shall Kin full rupee.

**Annual report regarding grants**

The Chief Secretary of the State shall submit an annual report to the Governor, immediately after the expiry of each financial year, regarding any amount of grants to be received annually by the municipality as per any law or otherwise, and the actual amount given to the municipality and the criterion adopted by the Government for such payment. Annual report shall be laid before the Legislative Assembly, within the first six months of the next financial year.

**Constitution of poverty alleviation fund**

Every Municipality shall provide in its Annual Budget two per cent of the revenue receipt of the Municipality for constituting a separate fund to be called Poverty
Alleviation Fund for implementing poverty alleviation programmes in the municipal area, which shall be utilised subject to such guidelines as the Government may issue from time to time.

Estimates of receipts and expenditure to be prepared annually by the Secretary

The secretary shall, subject to such rules as may be prescribed and such instructions as may be issued by the Government, in this behalf from time to time on or before the fifteenth day of January each year prepare and submit to the standing committee concerned a budget containing a detailed estimate of receipts and expenditure for the ensuing year, and, if in his opinion, it is necessary or expedient to vary taxation or to raise loans, shall submit his proposals in regard thereto.

Budget estimate to be prepared by the Standing Committee

The Standing Committee concerned shall by considering the estimate and proposals of the Secretary and the officials dealing with the respective subjects concerned submit their proposals to the Standing Committee for finance and after considering those proposals and all the requirements of this Act the Standing Committee for finance shall prepare budget estimate of the receipts and expenditure of the Municipality for the next year. The budget estimate shall;

- provide for the payment, as they fall due, of all instalments of principal and interest for which the Municipality may be liable on account of loans; and
- allow for a cash balance at the end of the year of not less than 65A[five per cent] of the revenue of the Municipality.

Annual Financial Statement

The secretary of a municipality shall publish, not later than the first week of June, an annual financial statement of the preceding year, approved by the Council, in such form as may be prescribed embodying a classified abstract of receipts and payments of the municipality under revenue, capital and debt heads, a demand, collection and balance statement and a statement of the general financial position of the municipality. As soon as may be, after the publication of the financial statement, the Secretary shall forward a copy thereof to the auditors.
Accounts and Audit

The Municipality shall maintain its accounts and other books connected with the accounts in the manner and form as prescribed and shall enter the receipt and expenditure accounts forthwith in such books. The responsibility to maintain or cause to maintain the accounts and the connected books of the Municipality in the manner and form as prescribed and to submit or cause to submit such accounts to the Local Fund Examiner for conducting audit in the time shall west with the Secretary. The Examiner of Local Fund Accounts and his nominees shall be the auditors of the Municipality. The auditors shall maintain a continuous audit of the accounts of the Municipality and shall, after completing the audit for a year or for any shorter period or for any transaction or series of transactions, send a report to the Municipality concerned and a copy thereof to Government. The auditors shall specify in the report all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property due to the Municipality or any laws or waste of money, or other property thereof caused by the neglect or misconduct of the officers or authorities of the Municipality. The auditors shall also report to Government on any other matter relating to the accounts of the Municipality as required by the Government.

Power of Municipality to borrow money

The Municipality may in pursuance of any resolution passed at a special meeting of the Council borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees, service charges, and dues authorised by or under this Act, any sums of money which may be required

- for the construction of works; or
- for acquisition of lands and buildings; or
- for slum clearance and construction of tenements; or
- to pay off any debt due to the Government; or
- to repay a loan raised by the Municipality; or
- for town improvement Schemes; or
- for any public utility Schemes maintained or proposed to be maintained by the Municipality, provided that
no loan shall be raised without the previous sanction of the Government or otherwise than in accordance with the provisions of the Kerala Local Authorities Loans Act, 1963 (30 of 1963) and the rules issued thereunder;

- the amount of the loan the rate of interest and the terms including the date of floatation, the time and method or repayment and the like shall be subject to the approval of the Government.

When any sum of money has been borrowed no portion thereof shall, without the previous sanction of the Government, be applied for any purpose, other than that for which it was borrowed.

**Maintenance and investment of sinking funds**

The Municipality shall maintain sinking funds for the repayment of money borrowed on debentures issued and shall pay by quarterly instalments into such sinking funds such sum as will be sufficient for the repayment within the period fixed for the loan of all moneys borrowed on debentures issued and in the event of default in payment of quarterly instalments, the grants due from Government shall be remitted to the Sinking Fund.

**Vesting of existing water supply and sewerage, services under the water authority in the Municipality**

Notwithstanding anything contained in the Kerala Water Supply and Sewerage Act, 1986 or in any other law, from the date specified by the Government by notification in the gazette, in respect of water supply and sewerage for any of the Municipality and situated only within its area and vested in the Water Supply Authority immediately before such date

- all assets including other equipments, all plants, machineries, water works, pumping station, as the case may be, in, along, over or under any public streets in the area of municipality, all buildings lands and other works, materials, stores and things appurtenant thereto, all the water supply and sewerage service, sewerage works and sewage forms and all buildings, lands, other works, materials stores, and things, execution of works, conduct of water supply,
distribution, fixing water charge, collection etc., shall vest in and stand transferred to the municipality referred in the notification; and

- all the rights, liabilities and obligations of the Water Authority as the case may be, whether arising out of any contract or otherwise relating to the water authority, the right to recover arrears of sewerage charge, water charge, meter rent and of any cost of fees relating to water supply and sewerage services, shall be the rights, liabilities and obligations of the municipality specified in the notification.

The properties, assets, rights, liabilities and obligations referred shall be valued in such manner as may be fixed by the Government and shall be given to the water authority by the respective municipality in the manner prescribed. Where any doubt or dispute arises as to whether any property or asset has vested in the municipality or any rights, liabilities or obligations have become the rights, liabilities and obligations of the municipality under this section, such doubt or dispute shall be referred to the Government whose decision thereon shall be final and the Water Authority and the concerned. The municipality to which the properties, assets, and service relating to water supply and sewerage construction have been transferred, necessary staff of the Water Authority as may be required to continue such service shall be conceded to that municipality as decided by the Government. On issuing a notification by the Government, from the date specified in the notification, the Water Authority shall be excluded from all the powers and rights which it had under the Kerala Water Supply and Sewerage Act, 1986 within the area of the said municipality and the concerned municipality shall perform all such powers and rights.

**Administrative power of the Municipality with regard to the existing water supply and sewerage schemes**

Notwithstanding anything contained in the Kerala Water Supply and Sewerage Act, 1986 or any other law, the water supply and sewerage schemes useful for the residents in the land area of more than one local self-government institutions which cannot be vested or transferred to the municipality, the power with regard to the maintenance and operation of such schemes shall be vested in the committee constituted for this purpose by the Government.
Power of Municipalities to prepare and implement schemes with regard to water supply and sewerage

Notwithstanding anything contained in the Kerala Water Supply and Sewerage Act, 1986 or in any other law, each Municipality have the power and right to prepare and implement the water supply scheme or the sewerage scheme within its Municipal area. The Municipality which prepare and implement the water supply scheme and drainage scheme may realise water charge and service charge for sewerage from the beneficiaries in the manner as prescribed.

Provision for lighting public streets

Municipality shall cause the public streets in its land area to be lighted and for that purpose shall provide such lamps and works as it deem necessary. The Kerala State Electricity Board shall provide the required electrical energy and technical assistance to the Municipality, at the rates fixed by Government and on other conditions, as prescribed.

Power to carry wire, pipes, drains etc., through private property

The secretary may, for the purpose of implementation of any scheme for water supply or drainage entrusted to a municipality or for its maintenance or for the establishment or maintenance of any lighting of public streets carry any cable, wire, pipe, drain or channel of any kind through, across, under, or over any road, street or place laid out for road or street and after giving fifteen days’ notice in writing to the owner or occupier, through, across, under, over or up the side of, any land or building in the Municipality, and may place and maintain posts, poles standards, brackets or other contrivances to support wires and lights on any pole or post in the Municipality not owned by the State or the Central Government and may do all acts necessary or expedient for repairing or maintaining any such cable, wire, pipe, drain, channel, post, pole, standard, bracket or other similar contrivance in an effective state for the purpose of which it is intended to be used or for removing the same.
**Provision of public latrines**

A Municipality shall provide and maintain in proper and convenient places a sufficient number of public latrines and shall cause the same to be daily cleansed and kept in proper order.

**Licensing of public latrines**

The Secretary may issue licence, for the period as fixed by the Council, for providing and maintaining latrines for public use. No person shall keep a public latrine without a licence. Every licensee of a public latrine shall maintain it clean and in proper order.

**Removal of solid waste, rubbish and solid waste accumulated on non-residential premises**

The Secretary may, if he thinks fit, by notice in writing, require the owner or the occupier of any premises used as:

- a factory, workshop or a place for carrying on any manufacturing process, or
- a market or trade premises, or
- a slaughter house, or
- a hotel, eating house, or restaurant, or
- a hospital or a nursing home, or
- a warehouse or godown, or
- a place to which large number of persons resort, where rubbish, offensive matter, filth, trade refuse, special wastes, hazardous wastes or excrementitiously and polluted matters are accumulated in large quantities, to collect such matters accumulating thereon and to remove the same to a depot or place provided or directed by the Secretary at such time and in such manner and by such routes as may be specified in the notice.

**Prohibition of improper disposal of carcasses, rubbish and filth**

No person shall, after due provision has been made under section 326 by the Municipality for the deposit and removal of rubbish, solid waste, carcasses or filth deposit the same;
in any street or on the veranda of any building or on any unoccupied ground alongside any street or on any public quay, jetty or landing place, or on the bank of a water course or tank; or
• in any dustbin or in any vehicle not intended for the removal of the same; or
• in any vehicle or vessel intended for such removal save for the purpose of deodorizing or disinfecting the same.

Without prejudice to the generality of the provisions in sub-section(l) no person shall deposit or cause or permit to be deposited any building rubbish on or along any street, public or private land without the previous permission of the Municipality.

Prohibition of commission nuisance in public streets

No person shall commit a nuisance by relieving himself in any street, public place or thoroughfare or permit any person under his control to do so

Power to inspect premises for sanitary purposes

The Secretary or any officer authorised by him may, at any time, inspect any premises for the purpose of ascertaining compliance with the provisions of this Act.

Punishment for depositing or throwing any rubbish or solid waste

Whosoever deposits or throws any rubbish, solid waste, filth or carcasses in contravention of the provisions in this Chapter shall on conviction be punishable with fine which shall not be less than fifty rupees but may extend to two hundred and fifty rupees.

Power of Municipal authorities

The Municipality may,
• lay out and make new Public streets;
• construct bridges and sub-ways;
• turn, divert or with the special sanction of the Government permanently close any public street or part thereof; and
• widen, open, extend or otherwise improve any public street.
Reasonable compensation shall be paid to owners or occupiers, as the case may be of any land or buildings which are required for or affected by any such purposes.

**Prohibition of obstruction in or over streets**

No person shall build any wall or erect any fence or other obstruction, or projection, or make any encroachment in or over any street.

**Removal of encroachments**

The Secretary may, by notice, require the owner or occupier of any premises to remove or alter any projection. Encroachment or obstruction other than a door, gate, bar or ground floor window situated against or in front of such premises and in or over any street. Where the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or may with the permission or licence of any authority duly empowered in that behalf, and that the period, if any, for which the permission or licence, is valid has not expired, the Municipality shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same. Where the Secretary is satisfied that any road or public street including footpath, if any, thereof belonging to the Municipality or vested in it or otherwise is encroached upon by any person in any form, either temporarily or permanently so as to cause obstruction or hindrance or inconvenience to traffic and users of the street, the Secretary may summarily evict such encroachments and may seize and dispose of any belonging or article that may be found on such road or street and no person shall be entitled to claim compensation for any action taken by the Secretary in this behalf.

Dr. A. R Lakshman observed that, unauthorised construction and its demolition, the power to order is the discretion of the commission. The High Court cannot issue mandamus for demolition, under section 351(l) of the Mumbai Municipal Corporation Act. Under section 345A of the Delhi Municipal Corporation Act, 1957, searching of premises can be exercised on use of or change of uses of premises either before or after demolition order is passed. Misuse of residential premises for commercial purpose, the misuse cannot of condoned in the ambit of unauthorized development under section

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95 *Muni Suvarat Swami Jain, SMP Sangh v. Arun Nadhuram Gaikwad and others, AIR 2007 SC38*
31A of Delhi Development Authority Act, 1957. 96 Under J&K Municipality Act, (sections 229(1)(d) and 229 (4) in unauthorized construction, the order of demolition is valid. Construction of commercial complex in contradiction of sanction plan and converting land use from residential to commercial was held as unlawful by J. Srikrishna. 97

Power to allow certain works

The Municipality may grant a licence, subject to such conditions and restrictions as it may think fit, to the owner or occupier of any premises to cover drains necessary for access to the premises. A Municipality may grant a licence, subject to such conditions and restrictions as it may think fit, for the temporary erection of pandals and other structures in a public street vested in the Municipality or in any other public place the control of which is vested in the Municipality. A Municipality shall have power to lease roadsides and street margins vested in it for occupations on such terms and conditions and for such period as it may fix. No licence or a lease under shall be granted if the construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such. The Government may, by notification, restrict and impose such control in, as they may think fit, the exercise by Municipalities in general or by any Municipality in particular, of the powers. On the expiry of any period for which a licence has been granted under this section, the Secretary, may, without notice, cause any construction to be removed, and the cost thereof shall be recovered in the manner provided in section 538 from the person to whom the licence was granted.

The Corporation can remove unauthorised bunk ships without giving notice 98. However, the corporation may evolve necessary schemes with the aid of the Government for rehabilitation of the evictees and allot such bunks according to seniority of course reserving a percentage for handicapped and socially backward. This will reduce hardship, if any, that may be caused to petitioners, as they are earning their livelihood by carrying on business in these shops occupied by them.

96 M. C. Mehta v. Union of India and others, AIR 2006 SC 1325
97 Kewal Kishan Gupta v. Jammu & Kashmir Special Tribunal and others, AIR 2005 SC 2578
98 Vijayalekshmi v. Corporation of Trivandrum, 2003 (3) KLT SN 141 (19918 (2) KLT SN 64, 1995 (1) KLT 100, AIR 1985 SC 1206, AIR 1992 SC 1153 referred to)
The local authorities are empowered to give licence for occupation on the road side margins, if it not likely be injurious to the health of general public or public use. In the situation, it could be held that the corporation has absolute powers in these regions and of course State Government is empowered to issue appropriate instructions, if they are of the opinion that occupation is permitted indiscriminately. The corporation apparently has taken a decision to remove bunks which had originally been sanctioned, after the expiry of the term, or in any case, exercising the powers reserved with them at the time of allotment. This cannot be termed as objectionable. It has to be held that as at present the persons are unauthorisedly occupying road margins without licence. It is possible for the corporation therefore to exercise the powers of eviction even without notice. Power is vested on them to remove the constructions at their discretion.

**Building Rules**

The Government may make rules on the regulation or restriction of use of sites for building purpose without prejudice to the generality of the powers conferred rules made under that clause may provide that

- no insanitary or dangerous site shall be used for building construction; and
- no site shall be used for the construction of a building intended for public worship, if the construction thereon will wound the religious feelings of any class of persons and other prescriptions as per the law.

If there is any contradiction in dealing with building permits by the local body and any parallel development authority, legal binding is to be vested with the decision of the concerned municipality. In contravention of that, a Development Authority performs its function, it will amount to a grave illegality in allotting residential plots for non-residential purposes. The open space in a residential area or in busy townships is treated as lung space of the area. It provides fresh air and refreshment to the persons in the neighbourhood. Its presence ameliorates the hazards of pollution and it has to be preserved and protected for the sustenance of the men around.

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While granting exemption, Government shall have due regard to the right of privacy, right to light and air, right of easement of the neighbour, right of public in general and the problems of traffic, flood and rain. Apart from showing reasons in the order granting exemptions, order also should show the Government have bestowed its attention to the right of privacy, right to light and air, right of easement of the neighbour, right of public in general and the problems of traffic, flood and rain. After the commencement of the Act, power to grant exemption can be exercised by the Government only in accordance with the Act. In, it was held that municipal corporations cannot levy charges on the lands and buildings owned by the Union of India.

Requirement of prior approval of site

The secretary shall not grant permission to construct or reconstruct a building unless and until he has approved the site on an application made under the Act.

Prohibition of commencement of work without permission

The construction or reconstruction of a building shall not begin unless and until the secretary has granted permission for the execution of the work.

Stoppage of work endangering human life

Notwithstanding anything contained in any of the provisions in the Act, the secretary may, at any time, stop the construction or reconstruction of any building if, in his opinion, the work in progress endangers human life.

Power to regularise the unlawful building construction

Notwithstanding anything contained in the Act, if any person or institution unlawfully, developed any land or constructed any building on or before 15th October 1999, the Government may after consultation with the concerned municipality on realisation of a compounding fee as prescribed, regularise such land development or building construction.

101 Thajudin v. District Collector, Kannur, 1996 (2) KLT 525, 1996 (2) KLJ 271, ILR 1996 (3) Ker. 720
Order of stoppage of buildings or works in certain cases

Where the erection of any building or the execution of any work has been commenced or is being carried on (but has not been completed) without obtaining the permission of the secretary or in contravention of any decision of the council or any of the provisions of the Act or any rule or bye-law made thereunder or any lawful direction or requisition given or made under the Act, or the rules or bye-laws, the secretary may, without prejudice to any other action that may be taken under the Act, by order require the person at whose instance the building or the work has been commenced or it being carried on, to stop the same forthwith. Where such order is not compiled with, the secretary may require any police officer to remove such person and all his assistants and workmen from the premises within such time as may be specified in the requisition, and such police officer shall comply with the requisition accordingly.

Precautions in case of dangerous structures

Where any structure is deemed by the secretary to be in a ruinous state and dangerous to the passers-by or to the occupiers of neighbouring structures, the secretary may by notice require the owner or occupier of such structure to fence off, take down, secure, demolish or repair the same so as to prevent any danger therefrom. Where immediate action is necessary, the secretary shall, before giving such notice or before the period of such notice expires, cause to fence off, take down, secure, demolish or repair such structures, or fence off a part of any street or take such temporary measures as he deems fit to prevent danger, and the cost thereof shall be recoverable from the owner or occupier in the manner provided in the Act. Where in the opinion of the secretary the said structure is imminently dangerous to the inmates thereof, the secretary shall order the immediate evacuation thereof, and any person disobeying the order may cause to be removed if necessary, with the assistance by a police officer.

Precaution in case of dangerous trees

Where any tree or any branch of a tree or the fruits of any tree deemed by the secretary to be likely to fall and thereby endanger any person or any structure, the secretary may, by notice, require the owner of the said tree to secure, lop or cut down the said tree or any branch thereof so as to prevent any danger therefrom. Where immediate action is necessary, the secretary shall before giving such notice or before the
period of such notice expires cause to secure, lop or cut down the said tree or branch thereof or remove the fruits thereof or fence off a part of any street to take such other temporary measures as he deems fit to prevent danger, and the cost thereof shall be recoverable from the owner of the tree in the manner provided in the Act.

An authority which yields extensive powers must own corresponding responsibilities. Any failure of the authorities in carrying out such statutory duties can be only at their risk and liability. Under the Act, the duty is cast on the Commissioner to be vigilant about a tree likely to fall and thereby to endanger any person or structure. It is for him to evaluate the intensity or the imminence of the danger. It is for him to take a remedial action. The situations where immediate action is necessary are dealt with in the Act. It is open to the commissioner to take action without issue of a notice to the owner of the tree or before the expiry time fixed in the notice already served. The basic requirement is to obviate danger from the dangerous tree to any person or to a structure. Discharge of this statutory duty is independent of any complaint preferred in that behalf by an aggrieved person. The commissioner should certainly ensure that such periodic supervision is made effectively and efficiently.

**Power to stop dangerous quarrying**

Where in the opinion of the secretary, the working of any quarry or the removal of stone, earth or other material from any place is dangerous to persons residing in or having legal access to the neighbourhood thereof or creates or is likely to create a nuisance, the secretary may, by notice, require the owner or person having control of the said quarry or place to discontinue working the same or to discontinue removing stone, earth or other material from such place or make such order as he deems necessary for the purpose of preventing danger or abating the nuisance arise or likely to arise from such quarry or place.

**Duty of Municipality in respect of public well cess pools**

The municipality shall keep and maintain in a clean condition all wells, ponds and reservoirs which are not in private property and operate it in a manner useful to the public.

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103 Municipal Commissioner v. David J. Bhanu, 1988 (1) KLT 675
Public wells open to all

All wells, tanks and reservoirs maintained by a municipality shall be open to use and enjoyment by all members of the public.

Prohibition on regulation of washing of animals or clothes or fishing or drinking in public water courses and tanks

A municipality may in the interest of public health, regulate or prohibit washing of animals, clothes or other things or fishing in any public spring, tank, well, public water course or part thereof within the municipal area and may set apart any such place for drinking or for bathing or for washing clothes or animals, respectively or for any other specified purpose.

Secretary to act in default

Where any person fails to comply with a requisition made by the secretary, the secretary may, without prejudice to any other action that may be taken against such person, cause the act or the work to be done and the expenses incurred thereby may be recovered from such person in such manner as arrears of property tax under the Act.

Abatement of overcrowding in dwelling house or dwelling place

Where it appears to the secretary that any dwelling house or other building which is used as a dwelling place or any room in such dwelling house of building is so overcrowded as to endanger the health of the inmates thereof, he may with the approval of the standing committee concerned, by a written order, require the owner of the building or room within a reasonable time not exceeding four weeks to be specified in the said order, to abate such overcrowding by reducing the number of lodgers, tenants or other inmates of the building or room or may pass such other order as he may deem just and proper to abate such overcrowding. A municipality may by written order declare what amount of superficial and cubic space shall be deemed for the purposes to be necessary for each occupant of a building or room. Where any building or room referred above has been sub-let, the landlord of the lodgers, tenants, or other actual inmates of the same shall, for the purposes deemed to be the owner of the building or room. It shall be incumbent on every tenant, lodger or other inmate of a building or room to vacate on being required by the owner so to do, in pursuance of any requisition
Prohibition of feeding of certain animals on filth

No person shall feed or permit any animal, which is kept by him for dairy purpose or which may be used for food, to be fed on filth.

Prohibition of keeping of animals so as to cause nuisance or danger

No person shall keep any animal on his premises so as to cause nuisance or danger to any person in the neighbourhood.

Licensing of dogs

No person shall keep any dog except with a licence obtaining from the Secretary and every owner shall cause his dog to be inoculated against rabies.

Purpose for which places may not be used without licence

A Municipality may notify by publication in the Gazette or in any other manner as may be prescribed that no place within the Municipal area shall be used for any one or more of the purposes specified in the rules made in this behalf or for any other trade without licence and except in accordance with the conditions specified therein and where the licence is for running hostels, restaurants, eating houses, coffee houses, Abkari shop, laundries, travel agency or barber saloons, the licence shall always contain and be deemed to contain a condition that admission or service therein shall be available to any member of the public, provided that no notification shall take effect before the expiry of sixty days from the date of its publication. The owner or occupier of every such place shall within thirty days of the publication of the notification apply to the Secretary for a licence for the use of such place for such purpose. The Council shall, within thirty days from the date of receipt of the application, by order and subject to such terms and conditions as it deems fit, either grant a licence for the use of a place for conducting a dangerous or offensive trade or in the interest of the public refuse to grant such licence. The Secretary shall, within fifteen days from the date of receipt of the application, by order and subject to such terms and condition as he deems fit, either grant licence for using a place to conduct a common trade or in the interest of the public refuse to grant such licence. Every application for any licence or permission or for its renewal under this Act or the rules or bye-laws made thereunder, shall be made not less
than thirty days and not more than ninety days before the earliest day on which such licence or permission is required or the licence expires.

The legislature made it absolutely clear that the Municipal authorities have to issue licence to abkari shops and their authority is not altogether taken away by the said amendment. Apart from this, the deleted Sub-section 6 of Section 447 provided for previous permission from the Municipality for starting abkari shop within the Municipality prior to its deletion. Therefore, it was within the powers of the Municipality whether to permit or not to permit any abkari shop within the municipal area.

There cannot be any levy of licence fee from the private hospitals working in the municipal area unless the rules are framed authorising the grant of licence and levy of fee for the same.

The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden while a fee is a payment for a special benefit or privilege. For sustaining the imposition of a fee there must be special benefits to the payer. The fact that the levy of fee ensures not only the payers but also some others will not in any way go to defeat the levy. In any case, the levy of the fee must be for some special benefit to the payer.

Consultation with the Municipality for establishing the Industrial estate or Industrial development area by the Government

The Government or any agency controlled by the Government shall consult a Municipality before opening an Industrial Estate or Industrial Development Centre or Industrial Area or Industrial Growth Centre or Export Processing Sector or Industrial Park within the Geographical area of that Municipality.

Abatement of nuisance from factory, workshop etc.

Where any factory, workshops, workplace or machinery causes nuisance, which in the opinion of the Council, is by reason of a particular kind of fuel being used or by reason of the noise or vibration created, or discharge of poisonous gas or emission, of

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104 *Noushad v. Kayamkulam Municipality*, 2006 (2) KLT 319
105 *Shaji v. State of Kerala*, 2004 (1) KLT 118
106 *K. P Oil Mills v. Commissioner, Ponnanni Municipality*, 1987(1) KLT 123
foul odour or smoke or dust, the Secretary may direct the person in charge of such factory or workshop or workplace or machinery for the abatement of such nuisance within a reasonable time.

**Provision of Municipal Slaughter house**

Every Municipality shall provide sufficient number of places for the use as municipal slaughter houses and may charge rents and fees at such rates as it may think fit for use thereof. But, if any complaint is received regarding the conduct of such slaughter houses from nearby residents, steps shall be taken to start such slaughterhouses only after examining such complaints in detail.

Presently the provision is available only for slaughtering cattle, goat, sheep and pig, within the Corporation limits\(^{107}\). There is no qualified Veterinary Surgeon, who can certify the fitness of a camel or the suitability of its meat for human consumption or a licensed person, to slaughter a camel. There are no licensed persons within the Corporation limits, for the sale of also. The licence to sell beef will not enable the sale of camel's meat.

**Regulation of milk trade**

No person shall without or otherwise than in conformity with a licence from the secretary;

- carry on within a municipal area the trade or business of a dealer in or importer or seller or hawker of milk or dairy produce;
- use any place in a municipal area for the sale of milk or dairy produce; Provided that no such licence shall be granted to any person who is suffering from a dangerous disease.

\(^{107}\)Siraj v. District Collector, 2006 (1) KLT 47
Public market

All markets which are acquired, constructed, repaired or maintained out of the municipal fund shall be deemed to be public markets and such markets shall be open to all members of the public.

Though it is open to the municipality to provide storage space for ice, that does not mean that other persons cannot bring ice blocks for sale in limited quantity which does not require any special storage space. Such a right is inherent in S. 457. Ice, unlike articles like fish, meat etc. does not cause any health hazards. No specific reason has been pointed out, during hearing as to why sale of ice cannot be held along with other articles in the ordinary area where sale of different articles take place. Of course, they will be liable to pay whatever fees that other vendors also are liable to pay to the municipality, but merely because there is one specific storage space for ice provided in the market, one cannot be flushed out from the market altogether with regard to their sale of ice in blocks in the open.

Powers in respect of public markets

A municipality may provide places for use as public markets. The municipality may, in any public market, levy any one or more of the following fees at such rates and may place the collection of such fees under the management of such persons as may appear to it proper or may farm out collection of such fees for any period not exceeding three years at a time and on such terms and subject to such conditions as it may deem fit;

- fees for the use of or for the right to expose goods for sale in such markets,
- fees for the use of shops, stalls, pans or sands in such markets;
- fees on goods for sale brought to such markets on vehicles or pack animals or by head load;
- fees on animals brought for sale into or sold in such markets, and
- licence fees on brokers, commission agents, weigh men and measures practising their calling in such markets.

The municipality may, with the sanction of the Government close any public market or part thereof.

It cannot be held that occupants of the municipal stalls in public market are not liable to pay the fee prescribed\(^{109}\). Municipal council’s power is entirely different from the collection of monthly rent from the occupants of its stalls in public market. Merely on the ground that the agreement between the municipal council and the person in occupation of the stall does not mention anything about occupants liability to pay the fee contemplated it cannot be said that the occupant has no liability to pay the fee as per the statute.

**Licence for private markets**

No person shall open a new private market or continue to keep open a private market except on a licence from the Municipality. Application for a licence shall be made by the owner of the place in respect of which the licence is sought to be renewed, not less than six weeks before the expiry of the period for which the licence has been granted and in the case of a new market, six weeks before the date on which the market is proposed to be opened. The Municipality shall, as regards private markets already established and may, at its direction as regards new private markets grant the licence applied for subject to such regulations as to supervision and inspection and to such conditions as to sanitation, drainage, water supply, width of paths and ways, weights and measures to be used, and rents and fees to be charged in such market as it may think proper or it may, for reasons to be recorded in writing, refuse to grant any such licence for any new private market. The Municipality may, however at any time, modify the conditions of a licence to take effect from any specified date or suspend or cancel any licence for breach of any conditions thereof. Where a licence is granted, refused, modified, suspended or cancelled under this section, the Municipality shall cause a notice of such grant, refusal, modification, suspension or cancellation in English and the language of the locality to be pasted in some conspicuous place at or near the entrance to the place in respect of which the licence was sought or had been obtained. Every licence granted under this section shall expire at the end of the year in which it is granted.

The corporation cannot refuse to renew the licence for the reason that the application is belated. It is always the duty of the licensee to apply for the renewal of licence within the time stipulated. If it is not done, the municipality has every power to close down the market. But that does not mean that once an order for closing down is made, the licensee cannot apply for the renewal of licence. The delay in filing the application for renewal of licence does not enable the authorities to refuse to grant licence.

The Act does not prescribe any prohibition in establishing a market by the side of a busy highway. A renewal application cannot straight away be dismissed on the ground that the conducting of the market will create traffic problems. It enables the municipality to prescribe conditions for avoiding traffic jam and regarding parking. Hence, straight away the application cannot be dismissed. Further, the municipality itself has allowed three persons to have their stalls in the market. It was also held that it will allow others also to open new stalls in fish, etc. this itself goes against the case of municipality that the conducting of the trade in the market will create traffic hazards.

**Power of Municipality in respect of private market**

A Municipality may, by notice, require the owner, occupier or farmer of any private market to:

- Construct approaches, entrances, passages gates, drains and cess pits or such market and provide it with latrines of such description and in such position and number as the Municipality may think fit;
- roof and pave the whole or any portion of it or pave any portion of the floor with such materials as will in the opinion of the Municipality secure imperviousness and ready cleansing;
- ventilate it properly and provide it with supply of water.
- provide passages of sufficient width between the stalls and make such alterations in the stalls, passages, shops, doors or other parts of the markets as the Municipality may direct; and
- keep it in clean and proper state and remove all filth and refuse therefrom.

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110 Elamkulam Village Co-operative Society Ltd. v. Corporation of Kochi, 1999(3) KLT SN. 74, P. 72
111 ibid
Suspension or refusal of licence in default

Where any person after notice given to him in that behalf by the municipality fails within the period and in the manner specified in the said notice to carry out any of the works specified in the Act, the municipality may suspend the licence of the said person or may refuse to grant to him a licence, until such works have been completed. No person shall open or keep open any such market after suspension or refusal of the licence.

Under section 460 of the Kerala Municipalities Act, 1994, application of renewal of licence for a private market is filed after the expiry of the prescribed period for renewal of licence. The finding of the High Court is that there is no law in making an application beyond the time of expiry is not proper and retrospective renewal is improper. The court stated that as per the principle of law ex turpi causa non oritor actio, i.e., an agreement which opposes public policy as laid down could be void and of no effect.112

Butcher's fishmonger's and poulterer's Licence

No person shall without or otherwise than in conformity with a licence from a Municipality carry on the occupation of butcher, fishmonger or poulterer or use any place for the sale of flesh or fish intended for human food in any place within a Municipal area, provided that no licence shall be required for a place used for the selling or storing for sale of preserved fish or flesh kept in airtight and scaled containers. The Secretary may, by order and subject to such restrictions as to supervision and inspection as he thinks fit, grant or refuse to grant such licence.

The resolution restricting trade in dry fish outside the market is reasonable113. The phrase reasonable restriction connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interest of public. It was in the interest of general public health that the council passed the resolution that trade in dry fish should be conducted only in Chalil market. The resolution only imposes a reasonable restriction upon the fundamental right of the petitioner.

112 Corporation of Kochi v. Elamakkara Village Cooperative Society Ltd., AIR 2006 SC 3093
Duty of Secretary to inspect

The Secretary shall make provision for the constant and vigilant inspection of animals, carcasses, meat, poultry, flesh, fish, fruit, vegetables, corn, bread, flour, milk, ghee, butter, oil and any other articles exposed or hawked about for sale or deposited in or brought to any place for the purpose of sale or preparation for sale.

Power of Secretary for purposes of inspection

The Secretary or any person authorised by him in writing for the purpose may, without notice, enter any slaughter house or any place where animals, poultry or fish intended for food are exposed for sale or where articles of food are being manufactured or exposed for sale at any time by day or night when the slaughter, exposure for sale or manufacture is being carried on and inspect the same and any utensil or vessel used for manufacturing, preparing or containing any such article. Where the Secretary or any person authorised by him has reason to believe that in any place any animal intended for human food is being slaughtered or any carcasses, is being skinned or cut up, or that any food is being manufactured, stored, prepared, packed, cleansed, kept or exposed for sale or sold without or otherwise than in conformity with a licence, he may enter any such place without, notice, at any time, by day or night for the purpose of satisfying himself whether any provision of laws, byelaws or regulations or any condition of a licence is being contravened. In any legal proceeding in respect of the powers exercised under the Act in which it is alleged that any animal, poultry, fish or articles of food were not kept, exposed, hawked about, manufactured, prepared, stored, packed or cleansed for sale, or were not intended for human food, the burden of proof shall lie on the party so alleging.

Power of Secretary to seize deceased animal, noxious food, etc.

Where any animal, poultry or fish intended for food appears to the Secretary or to the person authorised by him, to be diseased, or any food appears to him to be noxious, or if any vessel or utensil used in manufacturing, preparing or containing such articles appears to be of such kind or in such state as to render the article noxious, he may seize or carry away or secure such animal, article of food, utensil or vessel.
Provision of burial and burning grounds and crematoria within or without Municipal area

Every Municipality shall, where there is no necessary land or arrangement to be used as burial or burning grounds or crematoria, arrange land to be used as burial or burning grounds or crematoria within or outside the limits of the Municipal area, by meeting the expense from the Municipal fund, in accordance with the provisions of Section 484 and may charge rent and fees for the use thereof, Provided that in providing burial or burning grounds or crematoria outside the limits of the Municipal area, the opinion of the District Medical Officer also shall be sought and the prior permission of the Local Self Government Institution, within the area of which it is intended to be provided, shall be obtained. The Municipality may farm out the collection of such rents and fees for any period not exceeding three years at a time and on such terms and conditions as it may think fit. Where the Municipality provides any such place without the limits of its municipal area, all the provisions of this Act and all bye-laws framed thereunder for the management of such places within the municipal area shall apply to such place.

Compulsory registration of births and deaths

Every Municipality shall register all births and deaths occurring in the Municipal area under the Registration of Births and Deaths Act, 1969 and the rules made thereunder and make the registration compulsory.

Power of Municipality to prohibit use of water likely to spread infection

Where the health officer or local medical officer certifies that the water in any well, tank or other places within a municipal area, if used for drinking is likely to endanger or cause the spread of any dangerous disease, the Municipality may, by public notice, prohibit the removal or use of such water for drinking and domestic purposes during a specified period mentioned in the notice.

Power to order closure of places of public entertainment

In the event of the prevalence of any dangerous disease within a municipal area the municipality may, by notice, require the owner or occupier of any building, booth or
tent used for purposes of public entertainment to close the same for such period as it may fix.

7.11 Appeal and revision

An appeal may be preferred to the council against any notice issued or any order passed or action taken by the chairperson or the secretary under any of the provisions of the Act or the rules or bye-laws or regulations made thereunder. An appeal against any notice or order of the Secretary on the levy of tax, may be preferred to the Standing Committee for Finance in the case of Town Panchayat or Municipal Council and to the Standing Committee for appeals on taxation in the case of Municipal Corporation. Pending decision on an appeal filed under sub-section (1) the Chairperson may, if an application is made, stay the operation of the notice, order or other proceedings on which the appeal is based. Every case in which an order has been passed under sub-section (3) shall be reported to the Council at its next ordinary meeting or at its next meeting along with the reasons in full for passing such order by the Chairperson and the Council shall either ratify the said order with or without modification or revoke failing which it shall lapse. An appeal shall be filed within thirty days from the date of receipt of the order and dispose of the same by the Council or the Standing Committee, as the case may be, in the manner as it deems fit, within sixty days from the date of its receipt.

General provisions regarding penalties

Whoever

- contravenes any provision of this Act or the sections specified in column (I) of the Fourth Schedule: or
- contravenes any order made under any section specified in the said schedule; or rule thereunder;
- fails to comply with any direction lawfully given to him or any requisition lawfully made upon him under or in pursuance of the provisions of any of the said sections or rules, shall, on conviction, be punished with fine which may extend to the amount specified against each item

Provided that in all cases the court shall, taking into account the nature and circumstances of each case, order in addition to a sentence of fine, compliance
with the direction or requisition made or issued under this Act or the rules made thereunder within such time as may be specified in such order.

Whoever, after having been convicted of-

- contravening any provision of this Act or the sections specified in column (1) of the Fourth Schedule; or
- contravening any order under any section specified in the said Schedule or rule thereunder; or
- failing to comply with any direction lawfully given to him or any requisition lawfully made upon him under or in pursuance of any of the said sections or rule, continues to contravene the provisions of the said sections, rules or orders or to neglect to comply with the said direction or requisition, as the case may be, shall on conviction, be punished for each day during which the offence, continues, with fine which may extend to the amount specified against each item. Provided that in all cases, the Court shall, in addition to a sentence of fine, order simple imprisonment of the offender or defaulter till the order of direction is, or caused to be, complied with.

**Right to Information**

Regarding right to information as part of good governance in urban local bodies, similar provisions as in the case of Panchayat raj institutions incorporated in Municipalities Act also. Respective functionaries are entrusted to dispose of allied subject matters.

**Power of persons conducting enquiries**

Every inspecting or superintending officer holding any enquiry into matters falling within the scope of their duties shall have, for the purposes of such enquiry, the same powers in regard to the issue of summonses for the attendance of witnesses and the production of documents as are conferred upon the revenue officers by the Kerala Enquiries and Summonses Act, 1960 and the provisions of that Act shall apply to summonses issued and to persons summoned by virtue of the powers conferred by this section.
Power of Government to make rules

The Government may, by notification in the Gazette, make rules, either prospectively or retrospectively, to carry out all or any of the purposes of this Act in particular and without prejudice to the generality of the foregoing power.

Power of Government to amend the Schedules

The Government may, by notification in the gazette, make additions to the entries in a Schedule to the Act. No Schedule to the Act or any entry in such Schedule shall be omitted except by the authority of a law made by the State Legislature.\(^{114}\)

Power of Council to make bye-laws

The Council may make bye-laws not inconsistent with the provisions of this Act and the rules made thereunder or any other law, to provide for its own procedure formalities, process of functioning and other concerned matters. Such bye-laws are to be submitted before the government accordingly to take concurrence therefrom.\(^{115}\)

Power to give retrospective effect to certain bye-laws

The Council may, with the previous sanction of the Government, and subject to the provisions hereinafter contained in this Chapter make bye-laws with retrospective effect.

Power of the Council to make regulations

The Council may make regulations not inconsistent with the provisions of this Act and the rules made thereunder on any matter and in respect of which regulations are to be, or may be, made under this Act.

Confirmation of bye-laws or regulations

No bye-law or regulation or any cancellation or alteration thereof shall have effect until the same is approved and confirmed by the Government. A bye-law or regulation or cancellation or alteration thereof approved and confirmed shall be published in the

\(^{115}\) section 567 of the Kerala Municipalities Act, 1994
Gazette and shall come into operation on the date of such publications unless a different date is provided therein.

**Cancellation of Bye-laws or Regulations**

The Government, may for the reasons to be specified in the order in this behalf, cancel any Bye-law or Regulation and thereafter such Bye-law or Regulation shall be of no effect, provided that before cancelling any Bye-law or Regulation under this section, the Council concerned shall be given an opportunity to express its opinion in respect of the cancellation.
CHAPTER VIII

LOCAL SELF GOVERNMENT INSTITUTIONS:
A COMPARATIVE STUDY

A comparative study on panchayat raj system in different states country will be relevant. A general assessment on the bodies may be evolved through the comparison. The analysis may be considered as a rapid appraisal of the system of local self-governance in India.

Arunachal Pradesh

The State of Arunachal Pradesh held first election to panchayat raj institutions only in 2003. Panchayat Raj Election Tribunal was also constituted in 2003. There was one member representing hundred voters in the State.

Grama sabhas function without specific quorum rule and has no power to approve the number of beneficiaries selected by them under the panchayat raj laws. There is no provision for social audit and no provision for standing committees. The panchayat raj system was separated from District Rural Development Authority (DRDA) and the Mahatma Gandhi National Rural Employment Guarantee Scheme (NREGS) was implemented under DRDA as the nodal agency instead of institutions as implementing agencies.

There was no representation by the Institution, panchayat members and no role to Local Government bodies such as National Health Mission (NHM) and Sarva Siksha Abhiyan (SSA) etc.

Arunachal Pradesh was the last state to enact Panchayat Raj Act under the Constitution. Apart from the delayed establishment, the local government institutions in the State are malfunctioning owing to lack of funds, non-devolution of powers and responsibilities. Reason behind the default was higher politicization of the subject matter with respect to the local power equations. Low awareness on schemes, programme, powers, features and possibilities of panchayat raj system was another reason for failure. Low level of legal and institutional enablement was yet another
reason. The low morale of the elected representatives contributed much discredit and
distress to the local governance in the State.\textsuperscript{116}

\textbf{Assam}

Historically mosaic of tribal and non-tribal institutions prevailed under Alous
(1228 -1826AD) who ruled Assam. Under the British Rule Assamees Gentry and
panchayat with Criminal and Civil administration duties existed there. By 1882 under
Rippon’s Resolution, panchayat system was installed. By 1915 the Assam Local Self
Government Act was promulgated. A series of local government legislation were
formulated in 1926, including the Assam Panchayat Act. In 1959 new Assam
Panchayat Act was prepared. During 1974, the two tier system of panchayat and by
1989 even before the constitutional mandate in self-governance, three tier system of
panchayat was introduced in Assam. Unfortunately, no effort was taken to harmonize
other laws with the local government legislation in Assam till 2007. Thereafter the
local governance in rural area was structured as gaon panchayats, anchallick panchayats
and zilla parishads.

Information Technology (IT) enabled panchayats system to be introduced in the
State. The District Rural Development Authority (DRDA) is chaired by the President of
zilla parishads. Hence it is evident that DRDA has existence and survival even after
decentralization of power to local government authorities, which is against the basic
concept of decentralized governance.

Out of 29 subjects scheduled in the 11\textsuperscript{th} Schedule of the Constitution, 23
subjects were transferred to the local government authorities in Assam, whereas the
power to transfer funds and functionaries still remains with the State and District level
administrations. Parallel bodies under live departments up to the village level also
paralyze the decentralization process in the State. Absence of institutionalization of the
system is another drawback. Lack of social audit up on the elected representatives and
their unawareness are other hurdles on the local governance in Assam\textsuperscript{117}.

\textsuperscript{116} The State of Panchayat 2007-08: An Independent Assessment, Vol II, State and Union Territory
Report, (IRMA), p.31
\textsuperscript{117} Ibid. at 57
Bihar

There was limited local self-governance in Bihar such as Lichavi and Sakya Ganatantra. Originally they were administered under Bengal Local Self Government Act before 1920. In 1922 Bihar / Orissa Village Administration Act was introduced. After independence, in 1952 Bihar Local Self Government Act was enforced. But a focus shift occurred through the Bihar Panchayat Act in between 1961 and 1964. According to the suggestions of Ashok Mehta Committee - three tier systems from village to block level were introduced during 1970s. In 1993 itself Panchayat Raj Institution Act was passed in the State. By the 2006 Amendment, the reservation of seats was limited up to 50 per cent.

No effort to harmonize allied legislation with the provisions of local self-government laws was made in the state. But an important step towards justice administration at grass root level was taken by the state Government through the establishment of Nyaya Panchayats called as Grama Katcheri. Nyayamitra and grama katcheri secretary were appointed to assist Sarpanch and Panch in the local government institutions.

IT enabled panchayats were established in the State by 2010. Bihar also reformed the law so as to incorporate women in 50% of the elected representative posts. The reserved seats are rotated during every five years. Different statutory committees were provided to further decentralize the democratic process and improved participation of the public in the governance process. Parallel bodies like water users association etc. create blockade to the smooth function of local government system within the State.

Chattisgarh

Before the establishment of State of Chattisgarh on 1st November, 2000 the Madhya Pradesh Panchayat Raj system was in existence in the region. The corresponding details are given along with Madhya Pradesh. The new legislation was

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118 The Bihar Grama Katcheri Sankadan Niyamabali, 2007
119 Committee system was a half on its process by 2001-06 period and in full-fledged stage by 2006 onwards
120 Ibid. at 71
introduced in 1993\textsuperscript{121} and subsequently amended in 2004. As a result State Election Commission was constituted in 2005. Out of 29 subjects listed in 11\textsuperscript{th} Schedule of the Constitution, 27 subjects were transferred to panchayats. But harmonization of other legislation along with local self-government laws, concerning the state government departments are yet to be completed. IT enabled administration in panchayats was provided in the State in 2005.

Whereas there was no provision of social audit of the institutions or functionaries, grama sabha membership was mentioned only for village heads, and matters were managed according to tradition. Thus grama sabha was empowered to maintain the cultural identity and tradition.

Gram janpad at zilla panchayat had its significant head start from panchayat systems of Madhya Pradesh. But there is a long way to go in the devolution of functions, functionaries and empowerment of elected representatives.\textsuperscript{122}

Most important demerits of the State local governance systems are:

- Lack of awareness of people and also elected representatives
- The restrictions and constraints created by government officials at janpad and zilla parishad level.
- Statutory committees under panchayat raj institutions are not effective
- Need for harmonization of governance in all matters with corresponding laws.
- Institutionalization process of local self-governance happens at very slow pace.

Goa

During Portugese regime decentralized administrative mechanism was initiated in Goa. \textit{gankars} and \textit{comunidades}, as autonomous villages, were established during that period, with members such as \textit{zoneioros}, \textit{acscarcars}, \textit{gaunkars} etc. Also \textit{camera municipale} with urban and rural jurisdiction at Taluka level were also established in Goa. Powers on tax collection, distribution and utilization of grants, and other civil functions were vested with local bodies. By 1959 Juntas de frequesias (rural self-government bodies) were established. By 1961 single-tier system was introduced in

\textsuperscript{121} The Chattisgarh Panchayat Raj Adhiniyam, 1993
\textsuperscript{122} The State of Panchayat 2007-08: An independent Assessment, Vol II, (IRMA), p.86
local governance.123 By 1961 itself women representation was ensured in Goa through reservation of one seat in each of the committees for women.

Thereafter three types of rural panchayats were established with five members, seven members and nine members respectively. Tenure of four year period was also imposed during that time. By 1994 the two tier panchayat system was initiated and subsequently amended in 1999, so as to constitute an Interim Panchayat.

Delimitation of powers is a matter of local authorities vested with the Director of Panchayat. Most relevant point is that Goa Administrative Tribunal was constituted with jurisdiction to hear election petition arising from panchayats by the 1994 legislation. The annual report is yet to be prepared or published.

The State Finance Commission recommendations were not enforced in the State due to sheer unwillingness to devolve state funds and functions to local authorities. The State Government has failed to implement the recommendations incorporated in the reports.

The local government institutions were established as mere promotional agents and implementation tools of the State Government. The State line departments and government corporations performed the enlisted functions of the local self-government instead of elected bodies.

There was only a single level of grama sabha and no ward sabha constituted. In order to prepare development plans, two or more development committees were entrusted. The panchayat consolidates plan documents so prepared and place them before the grama sabha. The District Planning Committee has power to consolidate district level plans. There were minimum two supervising committees for grama sabha. But the role of steering committee was nominal. Two types of meetings of grama sabha exist: Ordinary sitting and Special meeting. The parallel bodies like DRDA created restraint the elected functionaries.

Most of the power devolution was only in paper, and the actual power devolution was very poor. Various functionaries have dual controls and they are mainly responsible to the line department. There was no serious concern on grama sabha and

123 The GD and D Regulations on Panchayats (1961)
was considered only as recommendatory bodies, but subsequently transformed into statutory bodies.

Elected representatives are dissatisfied because real powers were not transferred to them, and the transfer of power process is not yet complete. There was only small or meagre budgetary allocation to local government institutions. Yet, those allocations were under control of the state government departments. Financial activities were administered by the departments only and panchayat raj institutions have consultative powers only.

Lack of finance and functions and adequate staff, instability of sarpanchs in their posts, bureaucratic interference at all levels of administration etc. affect the local governance process in Goa. Structured and socio-political hurdles also create bottlenecks in local governance. Different levels of governance suffered owing to multiple types of frictions such as:

- Friction between elected representatives in panchayats and State legislature
- Friction between elected representatives and government officials
- Friction in between different tiers of local government

Control of dominant powers is still vested with the State departments. Panchayat members were encroaching into their areas of influence. Hence the resultant invisible conflict amounts to slowdown of devolution and decentralization process. In addition to that the conflict between department officials and pachayat raj officials and the governmental power structure also disturb the local governance in Goa. Socio-political bias of community based organization and their influence in people’s plan programme was another issue of concern in Goa.124

**Gujarat**

Three-tier village administration was introduced in the state by 1963 itself. Gujarat Panchayat Act was passed in 1994 and State Election Commission started functioning thereafter. Harmonious villages known as samras village existed in Gujarat which was controversial in order to provide Rs. 1 lakh per month for grama panchayats

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whose sarpanches were elected as unopposed. But there is no statutory requirement for annual report and there is no practice of tabling the report before the State legislature.

In the scheme of transfer of functions also lacunae may be observed. Fourteen out of twenty nine subjects were fully transferred, five other subjects partially transferred and 10 remaining subjects were not at all transferred to the local government institutions.

Two grama sabha meetings out of four were mandatory. But no ward sabha was prescribed by law. Village panchayats have the responsibility to facilitate the process of social Audit and to strengthen the activities of grama sabha. The responsibility to identify below poverty line (BPL) beneficiaries was entrusted to the grama sabha in Gujarat.

Social Justice Committees were constituted at local government level to ensure social justice to disabled groups, Scheduled Tribes, caste people, and women. In taluka panchayat and district parishad such committees functioned. But no provision for social audit in such schemes was provided under law.

Regarding the constitutional mandate to establish District Planning Committee (DPC) existed in Gujarat. Instead of constitutionally provided DPC, there were two committees envisaged in the State such as,

i) Executive Planning Committee (EPC)
ii) Taluka Planning Committee (TPC)

These were to assist the District Planning Board (DPB). The District Collector was the Chairperson of DPB. Three-tier panchayat budget exists in Gujarat. But there was a lapse in District level plan consolidation and co-ordination due to the constitutional lack of DPC. Hence, there was no convergence in between local government institutions in the State.\textsuperscript{125} It was against the concept of Mahatma Gandhiji that independence begins at the bottom, thus every village should be a republic or panchayat having full powers.

\textsuperscript{125} Ibid at 128-129
Haryana

In 1952 itself there existed Punjab Grama Panchayat Act and its practice of decentralization. Thus there was three-tier system of panchayats from 1962 onwards\textsuperscript{126} i.e., grama panchayat, panchayat samithi and zilla parishad. In 1994 Haryana Panchayat Raj Act came into force. State Election Commission for local body election process and State Finance Commission for disbursal of finances to local government were constituted thereunder. As per the Election Rules, the preparation of electoral rolls, delimitation of constituencies of local bodies, fixation of reservation seats, their rotation mechanism, code of conduct of election process, qualification of candidates etc. were entrusted to the State Election Commission.

Only sixteen out of twenty nine enlisted subjects were transferred to the local government institutions. But such transfer existed only in paper, and not in actual practice. Main block was the intervention of PRIA a Non-Government Organization (NGO) in the process of decentralization. Such intermediary organizations will evolve as a power breaker and restrict the real democratic institutions from developing as local self-government authorities.

There was no effective role to elected members of the panchayat raj institutions especially in activity mapping and avoidance of the zilla parishad in the planning process. The considerably small functions are transferred to local governments. It has contributed to the failure in mapping and planning activities. There was no attempt to harmonize the State laws with panchayat raj enactment. Hence the function of District Law Officer was to protect the interests of the panchayat raj institutions. Untied Programmatic Funds (UPF) was allotted to panchayats.

Revenue-earning schemes and interest free loans were provided to local governments but were under-performing. Regarding the major source of income, leasing of land, sale of grass land, commercial utilization of ponds, trees, shops etc. departmental audit was prescribed for grama panchayat and panchayat samithi, whereas Comptroller and Auditor General audit was provided for zilla parishads.

Grama sabha is prescribed for a village or part of village with a population of 500 citizens. Three meetings per year and an extra ordinary general body meeting is

\textsuperscript{126} The Punjab Panchayat Samithi and Zilla Parishad Act, 1961
also prescribed for the grama sabha. If a sarpach fails to convene three consecutive meetings of the grama sabha, he will be removed from the post from the date of the second meeting. He may be reinstated on showing reasonable cause for the failure. 1/10 quorum was fixed for grama sabha meeting but not adhered to often. Grama sabha was empowered to pass budget. But usually the role of grama sabha was performed by the secretary or the sarpanch. There shall be a call to the PRIs but only rare participation was there by officials as well as members of panchayat samithi and zilla parishad.

Parallel bodies like Village Development Council and DRDA also functioned in Haryana. Critical observations on Haryana local governance system may be summarized as follows:

- Activity mapping was encouraged by state government department, but executive orders in this regard were issued only by few departments.
- Actual fund devolution is not commensurate with the functions transferred.
- Lack of peoples’ participation in grama sabha.

Most important criticism against the State was regarding the experience with traditional panchayats – bhaichara the Community Panchayat. No reasonable change has happened in the State. Regional tensions have arisen out of devolution of powers under the socio-political conditions prevailing in State. The State Government and bureaucracy are reluctant to devolve powers to local government institutions.127

It was pointed out that the major reason for failure in the working of the local government institutions was excessive and undue influence and interference of the bureaucracy and political elites.128

Political leadership of the State is reluctant to share power with panchayats and apprehend that panchayat members will emerge as rival centres of power. The zilla parishad members and members of the legislature are in direct conflict and competition in both resource and influence. The State leadership keeps zilla parishad as an advisory body and this reduce the influence. Bureaucrats are not enthusiastic to transfer power because the devolution of power and resources will reduce their importance and power

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128 Ibid at 148 See Report of the ad-hoc committee on the working of Panchayat Raj, Haryana, 1972 (Maru Singh Committee)
they hold over the people. Power lies where the focus of control over resources exist. By devolution of power to the lowest unit of governance, there is a substantial threat of gradual erosion of existing power holders. In democracy, the people are supposed to be the final decision-makers but officials, sarpanch and elected members exercise all powers by-passing the gram sabha. Common man faces two structures, the centralized one and decentralized one, through which he has to interact to get his needs satisfied and aspirations fulfilled.129

Another important element in decentralization process in the State was the social caste structures prevailing in villages. The “khap panchayats” played important role in village life, which can interfere with personal life of people. In decentralized democratic process, people participation was limited by the position they occupy in the social hierarchy. The traditional caste structure tries to prevent weaker sections from raising their voices to the maximum extent.

The structure of panchayat raj is an alien system with different norms of social structure and interaction, and is antithetical to the existing caste dominated social structure. The existing structure does not want the common man to understand that the government can be so nearer to him. Government was always away from him in real practice. Increased awareness among people on panchayat raj, higher involvement of social groups in governance process, persuading the State Government and bureaucracy to devolve more powers to people etc. shall be essential to strengthen the local governance system in the State.130

Himachal Pradesh

Under the British regime, there was no pachayat raj system in the area. By 1948 in Himachal Pradesh, 186 panchayats were established under the Punjab legislation.131 Thereafter in 1952 a State legislation was prepared and subsequently tahasil panchayats were constituted in 1954132, and zilla parishads were established in 1957. Later on in 1968 new Panchayat Raj law was introduced with committee system. 27 subjects rested with them but only very limited funds were allotted for this purpose. The real powers

129 Ibid at p. 149, See Status of Panchayat Raj in the State and Union Territories of India, ( ISS New Delhi),2000
130 Ibid at 149
131 The Punjab Village Panchayat Act, 1939
132 The Himachal Pradesh Panchayat Raj Act 1954
were vested with the District Collector and Sub-divisional Magistrates. The Panchayat Department enjoyed substantial powers than the elected representatives.

The three tier system of panchayats, zilla parishad, panchayat samithi, and grama panchayat were established under the new law introduced in 1994. Functions of fifteen departments were transferred to local government institutions. Activity mapping was not completed. Transfer of functionaries was also not contemplated. Only operational responsibilities of primary services devolved to the panchayat raj authorities.

Power to report the physical attendance of service personnel was delegated to the panchayat, without any backup authority of initiating punitive action against erring functionaries. There were no separate panchayat raj administrative or technical services or employers in the State. There was no comprehensive effort or measures to harmonize other existing laws with the panchayat raj legislation.

The grama sabha was empowered to select the beneficiaries for social security schemes, to approve the village budget, review the accounts of the panchayat, to approve the administrative report of the panchayat for the last financial year, to approve the micro level development plans etc. Grama sabha can seek clarification about the activities, schemes, income and expenditure of the panchayat.

Up-grama sabha was also established in the State for increased public participation. Vigilance committee was established under the grama sabha. Two general meetings per year were prescribed as mandatory for grama sabha. 1/5 of the total families was essential for quorum. The meeting shall be adjourned if there is a lack in the number of minimum participants. For up-grama sabha 15% of total families i.e., 1/3 was the quorum. Mahila grama sabha (MGS) was also prescribed in 2007, but not fulfilled as per the objective because of the lesser public interest. People are interested in beneficial schemes only. There are different number of statutory committees at each level of panchayats, but were not vested with adequate power or responsibilities.

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133 The Himachal Pradesh Panchayat Raj Act, 1994
Parallel institutions like District Planning and Development Committee (DPDC) and the existence of implementing agencies like DRDA caused constraints to the functioning of District Planning Committee (DPC), the constitutional body. No activity mapping was held and hence, panchayats as local self-governance authorities were yet to be functional. In fact no government initiative was shown in this respect.

Comparatively and relatively, grama panchayat are functioning well even without much power. Whereas panchayat samithi and zilla parishads are not effectively functioning in the State. Serious efforts are needed to make them function as responsible self-governance institutions.135

In Himachal Pradesh, the sub-divisional Magistrate and the panchayat secretary of the Panchayat Raj Department enjoy substantial powers. In 1994, the three tier system, i.e. zilla parishad, panchayat samithi and grama panchayat along with an up-grama sabha were established in the State. Each grama panchayat was intended to cater the needs of around 200 persons in the rural sector. There were relevant provisions for annual reports and participatory planning in the enactment. Effective devolution of fifteen functions was transferred to the local government authorities. No department functions or functionaries were transferred. The official functionaries were under the control of the State. Provision for financial sanction (FS), administrative sanction (AS) and technical sanction (TS) were required by the State Government department or designated officials.

Levy system of taxes including house tax, service fee, mine tax, shop fee, liquor, cars, animal registration, mobile phone registration, television cable fee etc were transferred to local government authorities. Untied funds also were released to local government institutions. The loan raising facility was granted to the three tier panchayats through grants by 11th Finance Commission. Schematic as well as untied funds were provided through corresponding bank accounts only. Internal institutional audit and test audit were imposed over these institutions.

For the purpose of training to elected and official personnels, Institute for Public Administration (IPA), Regional Training Institute (IRD) and training provided through PRIA, the accredited non-accredited non-governmental organization (NGO) etc. were  

135 Ibid at p.182
introduced in the State. But there were no infrastructure or government agencies to undertake such massive training activities. In the result there was no scope for providing massive training to elected representatives.

Grama sabha was entrusted with finalization of beneficiary selection list, consider and pass the annual accounts statement, sort clarifications on different administrative matters from pradhan and unpradhan to ensure mandatory attendance of functionaries in general and special meetings of the grama sabha. Quorum and its compliance were not followed in grama sabha. As part of participation in decision-making the general, finance, social justice, education and health, agriculture and industry standing committees were constituted in the State. Social audit and village vigilance court system were introduced in the panchayat raj system.\textsuperscript{136}

Reservations for women were maintained here also. None of the grama panchayats has passed any resolution and did not equate grama sabha with grama panchayat. Forest rights were very relevant in the local governance of the state. No Schedule Caste areas existed with large area of forest land. Panchayats were facing problems of landless Schedule Caste and tribe issues.

Regarding planning process the DPC was chaired by the Minister of Finance. The DPC rates were inadequate and limited role of panchayat samithi and no minister was prepared or kept valid records in pachayats. There were parallel bodies which reduced the decentralization spirit. DRDA, DPDC, rural business hubs, village forest development committee (VPDC) under forest department, district forest development committee (DFDC) etc. were such parallel bodies.\textsuperscript{137}

\textbf{Jharkand}

Santhals, Mundas, Oraon, Ho-Bhumija and Kharia tribes are the main rural population of the State. Revenue administration, law and order, tribal council administration were maintained in the customary hereditary manner. There was regular election process from 1964 onwards. The Panchayats (Extension of Scheduled Area) Act, 1996 was applicable to the State. Powers and functions were vested with grama sabha. Prompt formulation of the Panchayat Raj Act happened in the State, but not a

\textsuperscript{136} Section 7 of the Himachal Pradesh Panchayat Raj Act, 1994
\textsuperscript{137} The State of Panchayat 2007-08, An Independent Assessment – Vol II IRMA pp 165-186
single election was held to constitute these panchayats. There was strong opposition from several quarters of the society against the adoption of panchayat raj system as a form of local self-governance. Most important issue was the conflict of interest between tribes and non-tribes of the State. Re-interpretation of democratic jurisdictional and domiciliary issues is essential to vitalize the local governance of the State.138

Jharkand, the 28th state in India established on 15th November, 2000 is a homeland of tribes. Mundas, Oraon, Bhumij, Kharia etc. are the different tribes. There was no activity mapping, therefore no effective devolution of power happened in the state. Only one state Finance Commission was appointed in the state. For the training of elected and official person, State Institute for Rural Development (SIRD) was established. Grama Sabha was established with powers, functions and funds. But parallel bodied like DRDA created blockade to local governance.139

Jammu & Kashmir

The history may be traced back to 1935 as Jammu & Kashmir Village Panchayat Regulation No. 1. There were five to seven panch, one among them was appointed as panchayat officer or wazir-e-wazarat”. By 1936 Department of Panchayats and Rural Development with the power to levy taxes and collecting revenue was established. During 1951, the Panchayat Act was introduced. According to the suggestions of Balwant Rai Mehta Committee, in 1958 the Village Panchayat Act was redefined. Gram panchayat and block panchayat were constituted in the State.

The Jammu & Kashmir Panchayat Act, 1989 was passed and was considered radical one in Panchayat Raj systems. Halque Panchayats for preparation of plans in primary sector, Block Development Committee (BDC) and District Planning and Development Boards (DPDB) also were established during that period. However, no juristic effort was taken in consonance with panchayat raj jurisprudence in order to harmonize the administrative mechanism.

138 Ibid p.201
139 Ibid at pp.187-202
Panchayat Adalats\textsuperscript{140} was established to hear and dispose of suits specified under the law and up to valuation of Rs. 3000\textsuperscript{141}. As a result number of litigations was reduced considerably and racial as well as social friction was reduced to a large extent. There was also provision for appeal from District and Sessions Court.

Grama sabha was established with monitoring committee with functions of social audit and empowered in following aspects:

- Finalise plans in the micro level;
- Halque majlis meeting twice in an year;
- Plan approval and evaluation meeting of grama sabha twice in an year

Another radical aspect was mandatory representation of Scheduled Castes, Scheduled Tribe, Women and under-privileged groups up to 33\%, separate quorum being prescribed for such privileged groups. But there was no provision for Mahila grama sabha.

Periodical appraisal of the functions of panchayat, issuance of community schemes, effective information dissemination to beneficiaries, quality upgradation of basic amenities, cost effective management of development schemes were ensured.

Though 33\% of women representation was provided under the law, they were not voluntarily coming forward to participate in democratic process. 1.6\% of Sarpanches were women in the State. The State administrative has to take effective measures to overcome the attitude of women.

District Planning and Development Board (DPDB) is a body consisting of representatives of Panchayat, Line Departments, MPs and MLAs as well as the persons of DRDA. It was empowered to conduct periodic review of plan process. Block Development Committee (BDC) was entrusted to approve the plan document of halque panchayats. They were also entrusted to assist and promote the functions of cooperatives at the local level.

Local level action plan was required for implementation of state and centrally sponsored schemes. Hence BRGF, NREGS, NRHM, Bharat Nirman, SSA, ICDS and

\textsuperscript{140} section 49, Jammu & Kashmir Panchayat Raj Act, 1989
\textsuperscript{141} section 67 (1),ibid
other schemes were transferred to local self-government institutions. Subsequently halque panchayats with participation of voters to halque panchayats was empowered to sanction yearly estimate of income and expenditure of plans.\textsuperscript{142}

**Karnataka**

Primarily the erstwhile state of Mysore had a large and glaring history of decentralization since 1881. But there was limited public participation because representatives or members of the royal family were holding power during that period.

In between 1949 and 1962, different committees were constituted to study the decentralization process in the State.\textsuperscript{143} Hence the State evolved a law for integrated village, panchayat and district board system from Bombay, Madras, Hyderabad etc. as a national policy measure.\textsuperscript{144} Though another committee headed by Balwant Rai Mehta was appointed during 1957, which gave birth to the then panchayat raj system, the earlier enactment continued to be in practice till 1983. Within this period yet another committee chaired by Ashok Mehta was constituted in 1978 to study and report on decentralization of power, by the then Central Government. They had proposed for two tier elected bodies named as zilla panchayat and mandal panchayat as part of the system.

A revolutionary legislation in decentralized administration was proposed in 1983 during the ministry headed by Ramakrishna Hegde. An intermediate body known as Panchayat Samithi also was introduced but which was not constituted by direct electioneering. DRDA was merged with the zilla panchayat and the chief secretary of the zilla panchayat was made accountable to the elected body. Power to prepare the confidential reports of the officials was entrusted with the ‘adhyaksha’ of the zilla panchayat. Another relevant contribution was the establishment of nyaya panchayat system through a legislation.\textsuperscript{145}

Through the 1994 legislation, 29 subjects were transferred to the panchayat raj institutions.\textsuperscript{146} Karnataka was the first to respond to the draft Bill prepared by the

\textsuperscript{142} The State of Panchayat 2007-08, An Independent Assessment – Vol II, (IRMA) pp. 203-206
\textsuperscript{143} Venkattappa Committee (1949), Chandrasekharan Committee (1952), Kondajji Basappa Committee (1962)
\textsuperscript{144} The Mysore Village Panchayat and District Board Act, 1962
\textsuperscript{145} The Karnataka Panchayat Raj Act, 1983, The Nyaya Panchayat Act, 1983
\textsuperscript{146} The Karnataka Panchayat Raj Act 1994
Centre to standardize the elections to panchayat bodies, but unfortunately the elections were delayed in the State.147

Characteristic distribution of functions may be observed among the local self-government system in Karnataka such as,

- grama panchayat – promotional responsibilities
- taluka panchayat – planning, implementation, maintenance responsibilities
- zilla panchayat – district centric local governance responsibilities

Devolution of functions happened on the basis of a detailed and thorough activity mapping held during 2001. Functions funds and functionaries were transferred as a result. The functionaries transferred to the panchayat raj system was under dual control because their salaries drawn from respective local self-government institutions met with the non-plan grant from the State Government. Chief executive officer (CEO) to the zilla panchayat and taluka panchayat as well as secretary to grama panchayat were appointed by the State Government itself, either by direct appointment or by promotion and posting. But there was staff resistance from employees in the redeployment process.

During the last three decades financial stabilization of local government was seen, with the following characteristics:

- Substantial devolution of funds
- Rationalization of schemes
- Statutory grants
- Direct release of funds
- Enforcement of State Finance Commission (SFC) recommendations
- Own resource mobilization
- Higher rate of honorarium to the elected members
- Detailed audit mechanism

There were different types of audit including C&AG audit, Public Accounts Committee audit, and Technical Group audit etc.

In Karnataka, grama sabha was the basic unit of panchayat raj and they were assigned with specific power, functions and responsibilities such as:

- Power to prepare development plans
- Power to fix priorities of plans
- Power to select beneficiaries
- Power to information dissemination
- Power to ensure social welfare
- Power to convene mandatory meetings

Ward sabha was held two times in a year with 1/10 minimum quorum or otherwise participation of 20 members. 30% women participation was mandatory for grama sabha and ward sabha meetings. Social audit was also imposed through grama sabha and ward sabha.\(^{148}\)

Higher rate of public participation was ensured through mandatory reservations to women, Scheduled Caste and Tribes. Statutory standing committees were the platform of participation in local administration such as:

**Grama Panchayat**
- Productions
  - Social Justice
  - Amenities

**Taluka Panchayat**
- General
  - Finance
  - Social Justice

**Zilla Panchayat**
- General
  - Finance
  - Social Justice
  - Education / Health
  - Agriculture / Industries

\(^{148}\) See the Karnataka Panchayat Raj (Maintenance of Panchayat Jamabandi) Rules (2004)
But existence of parallel administrative bodies acted as restraints in the decentralization process. In DRDA, NRHM, NREGS etc these parallel bureaucratic mechanism exists.

Transparency in local governance was ensured by constitution of management committees at the institutional level. The commitment of the political policy makers of the State, towards the panchayat raj system was evident from the Belur Declaration.\textsuperscript{149} Several characteristic elements were included with in the ambit of the declaration such as

- Principles of decentralisation
- Regional balancing of development
- Integration of sectoral plans
- Transfer of functions, funds and functionaries
- Strengthening of grama panchayat
- Integration with village administration
- Strengthening of technical and financial management
- Equipping grama sabha
- Co-operative development
- Enhancing financial powers
- Devolution of urban planning
- Enabling urban water supply systems
- Integrated urban and rural sewerage system
- Provision of professional staff structure

Through these exercises the State has emerged as a pioneer in the local governance. But the additional hindrance of political parties has acted as a blockade over the decentralization stabilization in the State of Karnataka.\textsuperscript{150}

\textbf{Kerala}

From the earlier period of Travancore, Cochin and Malabar, there was a history of local governance. Panchayat Finance Committee headed by Avukadarkutty Naha

\textsuperscript{149} See the Belur Declaration for Panchayat Raj Institutions and Urban Local Bodies, Karnataka State Government, 23\textsuperscript{rd} January 2004

\textsuperscript{150} The State of Panchayat 2007-08: An Independent Assessment - Voll II (IRMA), pp 217-250
during 1985 discussed the independent history of local governance in the State of Kerala\textsuperscript{151}.

By 1925, in Travancore and Cochin sates the local self-government system was introduced.\textsuperscript{152} In Travancore Administrative and judicial functions were delegated to local government, land tax, professional tax, vehicle tax, and other government contributions were consolidated to the funds of local governments. Another category of panchayat was introduced by 1940 with full judicial capacity known as village unions.\textsuperscript{153} Since then two different categories of panchayats, one the village panchayat and the other, village union were functioning in Travancore.

From 1914, in Cochin, village panchayats started functioning. By 1940, eighty seven village panchayats were constituted. The main source of income was receipts from usufructs, civic duties, charges for services, government grant etc.

The first local government election was held in State of Travancore-Cochin in 1953, which was initiated to function by 15\textsuperscript{th} April 1953.\textsuperscript{154}

In Malabar region, which was part of State of Madras, two types of local administration authorities functioned during that time. Village panchayats\textsuperscript{155} in Kasargode Taluka and Malabar District Board in other areas, which comprised non-panchayat area.

After the Constitution of the State of Kerala, as per the recommendations of the first Administrative Reforms Committee headed by the then Chief Minister, EMS Namboothiripad, detailed revisit and law-making happened in Kerala in this regard.\textsuperscript{156}

Kerala Government was dismissed in 1959 and the bills were not passed. Thereafter another legislation on panchayat was introduced in 1962 in order to codify the local governance mechanism in Travancoreo-Cochin and Malabar areas.\textsuperscript{157} The Panchayat Manual was also prepared there under so as to manage the functions of the local authorities. Subsequently, between 1964 and 1967 some futile exercise were made

\textsuperscript{151} See the Report of the Panchayat Finance Committee, Government of Kerala, 1985
\textsuperscript{152} Village Panchayat Regulation VII of 1100 M.E
\textsuperscript{153} The Village Union Act, 1940
\textsuperscript{154} The Travancore-Cochin Village Panchayat Act, 1953.
\textsuperscript{155} The Malabar Village Panchayat Act, 1950
\textsuperscript{156} The Kerala Panchayat Bill (1958) and the Kerala District Council Bill (1958)
\textsuperscript{157} The Kerala Panchayat Act, 1962.
to introduce Kerala Panchayat Union and District Panchayat Bill. But this was not passed owing to the political unrest and instability that prevailed in the State during that period. The District Administration Bill was once again introduced in the State Legislature and passed only in 1980. During 1967 the elected state government was resigned from power before the enforcement of the said legislation. Whereas in 1978, the coalition front was subject to changes and political adjustments and then State Government was resigned from power without enforcing the District Administration Act. Due to these political reasons, the enforcement of the district administration legislation failed in Kerala for thirty years period of time. During 1989, on the basis of V. Ramachandran Committee Report, the District Councils were established, but did not survive owing to the political opposition existing in the State at that period.\(^{158}\)

According to the constitutional mandate in 1993, the State legislation for rural panchayath and urban local government institutions were introduced in Kerala.\(^{159}\) Corresponding rules in different subject matters were prepared for the effective enforcement of local governance. 127 institutions were transferred to different levels of local government bodies through a Government Order in 1995. But proper devolution of functions, funds, and functionaries did not follow. Hence by 1996, the Committee on Decentralisation of Power was constituted and a set of principles for devolution of power was introduced according to its recommendations in to the different tiers of local governance.\(^{160}\) Functions of the State Election Commission (SEC), the State Finance Commission (SFC) and District Planning Committee (DPC) was streamlined through the suggestions of the Sen Committee. During the IX\(^{th}\) plan period (1996-2001) the decentralised planning programme named as the People’s Plan Campaign was initiated during 1997 for participatory, decentralized planning and economic development in the State. To harmonize the system of local administration thirty seven other allied legislation were amended by 2000.\(^ {161}\) In order to strengthen the local governance process, the 3 Fs i.e., Functions, Funds and Functionaries were ensured by the then State Government. Higher level of institutionalization of local governance happened during that period. In the functional domain characteristic changes were visible, such as

\(^{158}\) The District Administration Bill 1978 and the District Administration Act 1950
\(^{159}\) The Kerala Panchayat Raj Act, 1994 and Kerala Municipalities Act, 1994
\(^{160}\) The Committee on Decentralisation of Power in Kerala (Sathya Bradha Sen Committee), (1996)
\(^{161}\) The Decentralisation of Power Act, 2000
subsidiary rule by exception, complementary and supplementary transactions, role clarity of local bodies etc.

Institutional design for orientation to elected and official administrators was formulated and implemented. Resource mobilization to a considerable extent, freedom from unnecessary governmental control, watchdog mechanisms under local government ombudsman etc. also were introduced.

Within two decades after 1993 a panchayat raj jurisprudence has been developed in Kerala. There may be merits and demerits. In such SWOT (Strength, Weakness, Opportunities & Threat) analysis, it may be identified that there are considerable criticism on the transfer of functionaries and their redeployment, including,

- Lack of role clarity
- Existence of dual control
- Absence of interface between elected and non-elected personnel
- Delay in adequate re-deployment process
- Resistance from the department officials.

In the case of resource mobilization, fund utilization and asset management also, there is a scope of critique such as:

- Development of instrumentality
- Lack of financial autonomy
- Functional control from the higher ups of the State
- Lack of adequate asset management rules.

Inadequacy in the functioning of independent institutions under the panchayat raj such as State Election Commission, Local Government Tribunal, Local Government Ombudsman etc. also exists in the State.

Multiplicity of audit and lack of sufficient audit laws also affected the local governance in Kerala. There existed different types of auditing such as:

- Local Fund Audit by State Audit Department;
- Test Audit by C&AG;
- Performance Audit under Panchayat Raj;
➢ Internal or Domestic Audit by the Department authorities; and
➢ Social Audit by the local people or group of experts.

Reluctance from elected and official authorities towards the audit system and lack of correctional measures from such auditing causes restraints against decentralization process.

Efforts made for capacitization through community based measures, statutory and institutionalized for training etc. was not adequate or up to the mark stereotype training mechanism and ad-hocism etc. causes deterioration in result.

The participatory democratic institution was provided with powers, functions, and responsibility through statutory measures.\textsuperscript{162} Grama sabha was strengthened with administrative measures also. One among the transferred functionaries was designated the Secretary for each grama sabha, and the elected body was empowered to decide such designation. Separate grama sabha at grama, block and district level for planning purpose were also prescribed in the State.

Different statutory committees were provided for better participation of people and furtherance of decentralization into lower level, such as:

➢ Sub Committees;
➢ Joint Committees;
➢ Functional Committees;
➢ Works Committees;
➢ Standing Committees;
➢ Steering Committee;
➢ Beneficiary Committee;
➢ Institutional Management Committee;
➢ Development Committee;
➢ Ward Committee;
➢ Neighbourhood Committee; and
➢ Technical Advisory Committee

\textsuperscript{162} The Panchayat Raj (Amendment) Act, 1999
Four meetings were prescribed a year as mandatory for grama sabha. Special sitting for planning, health, gender and educational purpose were also insisted in grama sabha. 10% or minimum 100 members for quorum of grama sabha meeting were also fixed. Unfortunately such participatory meetings and functioning of grama sabha did not happen in real practice.

Transparency in governance process was ensured through right to information, social auditing, citizen’s service charter, grievance redressal mechanism, accountability provisions etc. Parallel bodies such as DRDA, BDC, DDC, Development Authorities, non-governmental organisations, Centrally and State sponsored schemes etc. cause considerable restraints to the central devolution of powers and real performance of local governance in the State of Kerala.

**Madhya Pradesh**

The Madhya Pradesh Panchayat Raj system existed from 1950 and during 1962 the Madhya Pradesh Panchayat Raj Act was passed. During 1957 the State Government constituted Kashi Prasad Pandey Committee and in 1971 M.P Dubey Committee with respect to local governance in the State. In 1981 Panchayat Raj with three-tier system was introduced in Chattisgarh region also. The Madhya Pradesh Panchayat Raj Adhiniyam was amended by the *Grama Sabha Adhiniyam* and it has made significant changes in the Panchayat Raj systems of the State. Separate village level committees for health, education, infrastructure, social security, agriculture, public property and social justice were constituted under the 1994 enactment. State Election Commission (SEC) was set up for the conduct and superintendence of election. Along with the delimitation powers, district collector was entrusted with enforcement of delimitation criterion and such other measures enforced during that time.

Panchayat Raj jurisprudence has been evolved in the State through the entries and programmatic practicing of entries in the State. There was the State Finance Commission to determine the devolution of grants including

- Grama Panchayat Grant;
- Special Grants;

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164 *The State of Panchayat Raj 2007-08 An independent Assessment* - Vol II (IRMA), pp 251-288
Agency Grants;
Infrastructure Grants;
Establishment Grants;
Non-recurring Grants; and
Specific Institutional Aids

The transfer of funds to separate bank accounts of the panchayats was prescribed. The capacity building was also implemented. Grama sabha was vested with powers for tax collection, beneficiary selection, approval of plan documents, standardizing the block panchayat plans, schemes and programmes along with its budget. Recommendations of the grama sabha were treated as resolution which may guide the decision of the panchayat.

Rules were framed for establishment of Panchayat services. Appointment of janpad and zilla parishad by recommendation of grama panchayat, separate legislation for planning gram nyayalaya, land revenue, agricultural production and marketing etc were introduced during that period.165

Three levels of fund transfer, zilla panchayat, taluk panchayat and grama panchayat was carried out through the treasury at the zilla and taluk level and through bank accounts in the third level. Grama sabha functioned according to State Finance Commission recommendations. 10% of surcharge and up to 30% commercial taxes were earmarked to grama panchayat. Minor minerals extraction right was distributed to the grama panchayat. Resources sharing through tax assignment in between such local government bodies and inter-se allocation of funds. No ward sabha was established there. But village level gram sabha was incorporated by the statute. Grama sabha meetings with 1/10 population as essential quorum, once in every three months was prescribed by the statute, whereas power to the State Government was incorporated to add or withdraw any function in the case of grama sabha.

Participatory committees were envisaged under the law at zilla and taluka level such as:

- General Administration

Education
Works
Corporations
Industries

Funds are collected as per delegation at each level, incurred expenditure as per designated functions, re-appropriation of government funds, establishment of proper account at each level etc was prescribed by the enactment.¹⁶⁶

The State intervention and control over the local governance system was established through the district planning committee (DPC). The local administration minister is to be the chairperson of DPC, which was designated to consolidate the district development report; whereas the local bodies were entrusted to spend 30% of funds. Hence the existence of parallel bodies such as DRDA, DDC, etc created the restraints on decentralization of powers.

Maharashtra

Bombay Village Panchayat Act, 1920 was the earlier law in this regard established in the State, which was replaced by a detailed legislation during post-independence period.¹⁶⁷ During 1994 the Maharashtra State Election Commission was established.

Annual report was stipulated for local government institutions, because legislature devolution was on paper and that required executive orders for enforcement. Administrative, financial and technical sanctions were prescribed for local works under the State PWD Code.

Independent activity mapping and devolution of functions existed in the State, but separate assessment was essential as per the prescriptions. State Government control over the staff structure and functionaries still continued in Maharashtra.

Power to generate funds, as well as sharing of taxes such as building tax, land tax, shops and hotels tax, trade tax, fair and festival tax etc., water supply cess, fee and

¹⁶⁷ The Maharashtra Zilla Parishad and Panchayat Samithi Act, 1961
fares on services etc. existed in the State. Zilla parishads were entrusted with stamp
duty, land revenue cess, water supply cess, forest resource revenue etc.168

According to State Planning Commission’s recommendations 124 schemes were
transferred to different tiers of local government institutions.

The crucial criticism upon the system is as follows:

- Continuation of DRDA as a parallel body;
- Weakness of DPC as planning agency;
- Limited jurisdiction of grama sabha;
- Devolution dependant on state legislation;
- Concentration of powers with in the state administration;
- Lack of adequate training facility;
- Lapses in the quorum of meetings; and
- Lack of commitment from state government towards district planning

**Manipur**

Twenty Nine functions were listed to be transferred to the Panchayats. Activity
mapping of sixteen departments and devolutions of corresponding offices and
functionaries, functions and funds thereof were carried out. The zilla panchayat chief
executive officer was the selection grade State Administrative Service Personnel and
grama panchayat secretary was the selection grade superintendent in government
service. Technical and support services were revested at the panchayat level but line
department officials were generally separated from Panchayats.

Rural and urban local body grants were provided to local authorities by the State
Government. Separate municipal service was constituted in the State. Manipur attained
better appraisal in decentralization process through their conceptional clarity in
following issues:

- Transfer of functions;
- Principles of devolution;
- Levying taxes;

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168 The State of Panchayat Raj 2007-08: An independent Assessment - Vol II (IRMA), pp 325-346
Transfer of staff;
Conducting regular elections; and
Electronic transfer of funds.

But the State faces criticism owing to their inadequate legal learning process and lesser extension training and awareness creations.

Strengthening of grama sabha was another essential feature. Grama sabha was entrusted with considerable responsibilities such as:

- Social audit on service delivery;
- Consider and approve annual allotment of funds;
- Consider and approve annual budget;
- Consider and approve the annual report and departmental programmes;
- Assistance for project and plan implementation;
- Identification of beneficiaries;
- Mobilise voluntary labour;
- Promote adult education; and
- Promote unity and integrity.

Grama sabha was mandated to convene meeting with 1/10 quorum of its membership. Ward sabha also may be convened without any official sanction, according to the discretion of the local body.

*Pradhan* was the chair-in-council of the elected body in the panchayat. He was the convener of the grama sabha. Panchayat secretary was the only employee at the grama panchayat level. Joint account was maintained for each transferred institutions.

For higher level of public participation Village Education Committee (VEC), Village Health Committee (VHC), Self Help Groups (SHGs) etc were organized under the local government institution. Block level administrative committee was also constituted. But no citizen service charter was prepared or published here.

District Planning Committee consisting chairman of zilla parishad and its members, MPs and MLAs was vested with the functions to integrate the plans of different levels and sectors. DPC was entrusted to frame budgets and determine plan provisions to each local body, whereas parallel programmes, centrally sponsored
programmes and department programmes still continues there. Quite a few schemes may be there with intervention of local government institutions.\textsuperscript{169}

\textbf{Orissa}

There was conscious effort to bring in legislation for local governance in the state from 1948 onwards.\textsuperscript{170} List of 11 items were transferred from State departments to local bodies. Secretary to grama panchayat, executive officer (Block Development Officer) and secretary to district panchayat were vested with fund utilization power. State plan funds, non-plan funds, share of centrally sponsored schemes, Central plan schemes etc were transferred to local bodies. Sectoral integration and expenditure monitoring was also entitled to local government institutions.

There was no plan proposal at grama sabha level. There was no district planning committee in the State until 2005. Assembly constituency level development committees were convened by the MLA. Implementation of development project was a very complex issue in the State. Joint accounts were maintained for such schemes by the secretary, sarpunch and the convener of voluntary committees. There was no provision for social audit in the legislation. Corresponding government orders were not issued. Political culture of the state was the most important critical factor in the decentralization process.

Application of PESA through local authorities helps to deal with the issues of the tribal society including,\textsuperscript{171}

- Consumption of Intoxicates;
- Ownership of minor forest land;
- Prevention of alienation of land property;
- Control of money lending; and
- Control over local marketing.

The political culture of the State regulates the decentralization process in Orissa even today. Hence the legal and jurisprudential changes are not reflected so much in this respect.\textsuperscript{172}

\textsuperscript{169} Ibid at pp.347-364
\textsuperscript{170} The Orissa Grama Panchayat Act, 1948
\textsuperscript{171} The Panchayat (Extension to Schedule Areas) Act, 1996
Punjab

Since 1912 onwards the history of village panchayats may be traced in Punjab. In 1939, during the British rule, Village Panchayat Raj Act was enforced in Punjab. After independence the first attempt was made in 1952. The Panchayat Raj system was primarily introduced during 1962 under the state legislation.

By 1994, the present Panchayat Raj system was introduced according to the constitutional mandate. A State Election Commission was established there under. In the administration side a consolidated Annual Report was prescribed for local government sector. The then State Government has decided to devolve seven items to lower tiers. Regarding such transfer of functions and functionaries, need-based activity mapping was also conducted, whereas DRDA continued as a parallel administrative authority in development and poverty alleviation sector. Panchayat secretaries were made answerable to the elected panchayats. Health and education sectors in the primary level were entrusted with local bodies. Increased accountability was endorsed upon such institutions and officials.

External governmental control was imposed over panchayats. The sarpanch in panchayat was suspended from grama sabha by the Director of Panchayats. Provisions were included for no-confidence motion over elected representatives by the grama sabha and cessation of the tenure of elected members from their office in the panchayat raj system of the State. The Deputy Director of Panchayats was the final authority in this regard.

Plan funds are transferred to the District Planning Committee. Grama sabha was treated as the unit of panchayat raj mechanism. Approval of budget and annual report was entrusted to the grama sabha. But there was no provision for village sabha or ward sabha in the legislation. 1/10 quorum was prescribed for ordinary and special meeting of grama sabha. But no specific quorum was prescribed for SC/ST/women representation in grama sabha in the legislation.

Interesting factor was the constitution of three different standing committees, viz. (i) Production, (ii) Social Justice and (iii) Amenities.

172 The State of Panchayat Raj 2007-08: An independent Assessment - Vol II (IRMA), pp. 365-380
173 The Punjab Panchayat Raj Act, 1952
174 The Punjab Panchayat Raj Act, 1961
For conducting planning process, 15 to 25 elected persons at block level known as panchayat samithi functions in the State. MLAs and MLCs were also included as members of such planning bodies at the district level. Department committees and parallel authorities still existed in the State, which affects the real decentralization spirit and practice of the state.175

**Rajasthan**

Functions and functionaries in agriculture, watershed, hut marketing, irrigation etc. were transferred to local government authorities. Corresponding financial allocation was also provided to them. The sarpanch was vested with a power to give financial sanction for amount up to Rs. 1 lakh.

Training for elected representatives and officials were ensured. Grama sabha was entrusted with powers to approve budget and annual reports. Civil society organizations were involved in the participatory governance process. Many defaults were observed in the planning process from step I to III in local government sector as follows:

- No Urban and Rural coordination;
- Grama Sabha based plans had not been incorporated in the district plan;
- No official consultation process;
- No prescribed duty of roles;
- No technical expertise; and
- No participatory exercises.

Vulnerability of head of panchayats and possibility of suspension of sarpanch by the State Panchayat Department officials exists in the state. Parallel bodies like DHS, SDS, DWDA, WSC, FDC etc also causes much trouble.

**Sikkim**

The Chogyal Monarchy kingdom was annexed to India by the referendum held in 1975, i.e. in Sikkim. Before that, Sikkim had panchayats under their own legislation.176 A two tier panchayat raj system as grama panchayat and zilla panchayat

\[\text{175} \text{ The State of Panchayat Raj 2007-08: An independent Assessment - Vol II (IRMA), pp. 381-388}\]
\[\text{176} \text{ The Sikkim Panchayat Act, 1965}\]
was introduced under the 1993 referendum. Sabhpathi and upa sabhpathi were elected by the people. 40% of the seats were reserved for women and was entrusted to grama sabha and ward sabha. A State Election Commission (SEC) with powers of delimitation of panchayats and deciding reservation of constituencies was also constituted.

The chairperson of a zilla panchayat was vested with status of cabinet minister, and vice-chairperson with the status of deputy ministers. The principle of subsidiary was followed in devolution of powers. Eighteen to twenty nine subjects were transferred to zilla panchayats and grama panchayat in the State, according to the Report of the task force appointed for conducting activity mapping. Agriculture, co-operative social justice and miscellaneous subjects including centrally sponsored schemes were transferred under Schedule I of the Act. Functionaries of the state departments were also transferred under schedule II.

Block development officer (BDO) was the administrative officer of grama panchayat. Rural department assistant (RDA) and panchayat assistant were acting as a link between local bodies and State departments. Salaries and allowances of employees were met by State government. Hence there was limited administrative control over the functionaries by the local bodies. Most often the doubling of such administrative control goes against the decentralization process.

Rural Development and Rural Management department funds 10% of the funds collected as land resources, house tax etc were transferred to local self-government institutions, but were inadequate. Untied funds were handed over with broad guidelines but were not practised in real sense. Such funds were used for infrastructure development, but the payments were neglected in development activities.

A high level committee was constituted for utilization of funds with creation of a database, maintenance of accounts and operations and management of civic services. But there was a poor draw of share from 12th Finance Commission award in the State. There was no proper maintenance of accounts and the audit was conducted by hired chartered accountants, instead of department officials.

The grama sabha was vested with the following responsibilities:

177 The Sikkim Panchayat Raj Act, 1993
➢ Mobilise voluntary labour;
➢ Funds for community welfare;
➢ Identifying individual beneficiaries;
➢ Rendering assistance in development functions;
➢ Promotion of social unity and harmony; and
➢ Promotion of Adult Education.

Higher participation of women in grama sabha can be observed. The social audit functions were vested with grama sabha. Examination and evaluation of annual statements, sorting clarifications, seeking completion certificate etc. were also entrusted to grama sabha. The consolidation of planning activities was performed by grama planning forum and district planning committee (DPC) with vetting of DPC. The need for much coordination was visible in the decentralization process in the State of Sikkim.\textsuperscript{178}

**Tamil Nadu**

Tamil Nadu was the pioneer to introduce the town panchayat system in between the rural and urban local bodies.\textsuperscript{179} After the 73\textsuperscript{rd} and 74\textsuperscript{th} constitutional amendment, town panchayats were constituted.

The Uthiramerur stone inscriptions in Kancheepuram District of Tamil Nadu denote that there was village republic with community groups which undertake many activities for local development in early period of history. During 10\textsuperscript{th} and 11\textsuperscript{th} centuries of Chola Period, the village councils were used to levy taxes, implemented programmes to improve community life and enforced administration of justice in their local limits. *Kuda olai murai* i.e. a secret ballet system prevailed during that time for the election of village council members.

With the fall of Cholas, decline of village autonomy happened, and there was centralized feudal administration thereafter. During British rule, they introduced local self-governance system for administrative convenience.

There were a series of legislative reforms after independence in local governance.\textsuperscript{180} Two tier village panchayat and panchayat union system was then

\textsuperscript{178} *The State of Panchayat Raj 2007-08: An independent Assessment* - Vol II (IRMA), pp 419-430
\textsuperscript{179} The Tamil Nadu District Municipalities Act 1920
\textsuperscript{180}
established. Panchayat union was constituted at the block level. Development and welfare functions were entrusted to panchayats. The then district boards were abolished and instead the district councils were reintroduced. Panchayat union and district panchayat were with single member wards and having advisory capacity, whereas village panchayats had double member or multi-member wards.

After the introduction of new panchayat raj regime, up to 2009 direct election to post of heads of local bodies and thereafter indirect election system was introduced.

Functions vested with the local bodies denote the relevance of decentralization of power. Elected presidents were vested with executive authority and power of official correspondent of local government institutions. Control over the official functionaries was also vested with local government authorities. Implementation of the service delivery system was also entrusted with the local bodies. The administrative power of the local government institutions was vested with the elected presidents of local bodies. The local bodies were given power to grant administrative and technical sanction to plan projects up to 21 lakhs. Regarding Centrally sponsored schemes and State sponsored schemes, model implementation power was vested with local government institutions, but with the prior consent of the District Collector.

Activity mapping delivered a higher level picture, with respect to local government institutions, but limited on the functionaries in the governance system. Part time and temporary or permanent staffs are not answerable or accountable to panchayat authorities. Block or district panchayats have no power to levy taxes. But village panchayats have possibility to share tax and non-tax revenues and grant as well as untied funds.

The State Finance Commission (SFC) report denotes the area of funds utilization under the local bodies, such as,

- Salaries, pensions and office expenses;
- Drinking water supply;
- Street lighting, electricity charges;
- Panchayat roads and rural connectivity;

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- Minor irrigation and water supply; and
- Public Health and sanitation.

Effective functioning of local fund audit department existed in Tamil Nadu. The fiscal responsibility measures are made applicable on local government institutions.\textsuperscript{181} Flexible character of local panchayats towards grama sabha resolutions and improved social audit, capacity-building among the self-help groups (SHGs), panchayat level federations and clientele, reservation for women, Scheduled Castes and Tribes etc. are other notable features of local governance of the State.

But the District Planning Committee (DPC) is chaired by the District Collector apart from the elected president of district panchayat as in the State of Kerala. No expertise or institutional support was provided to the DPC. Another drawback is that of the function of five standing committees as parallel bodies instead of integration and coordination at the local level.\textsuperscript{182}

**Tripura**

The princely state of Tripura, ruled by Manikya Dynasty, merged with Indian Union on 15\textsuperscript{th} October 1949, with union territory status without legislature. After the constitutional amendment in 1963, Tripura started with a legislative assembly. The Panchayat Raj department was started in 1959. Single tier panchayats were introduced during 1947 known as gaon sabha.\textsuperscript{183} Nyaya panchayats were also introduced during the period. Secret system of ballots was introduced during 1978. By the 1983 amendment, nyaya panchayats were abolished. Gaon sabha was replaced with gaon panchayats. Reservation for Scheduled Castes and Tribes was also provided there under.\textsuperscript{184} Subsequently during 1993 the three-tier panchayat raj system with grama panchayat, panchayat samithi and zilla parishad was established.\textsuperscript{185}

Activity mapping of local governments was held during 2005 and many of the functions were transferred through executive orders. Five broad subjects were so transferred under the activity mapping. Respective functionaries were also so transferred.

\textsuperscript{181} The Tamil Nadu Fiscal Responsibility Act, 2003
\textsuperscript{182} The State of Panchayat Raj 2007-08: An independent Assessment - Vol II (IRMA), pp. 455-478
\textsuperscript{183} The Tripura Provincial Panchayat Rules (1961) under the United Provinces Panchayat Raj Act, 1947
\textsuperscript{184} The Tripura Panchayat Raj Act, 1983
\textsuperscript{185} The Tripura Panchayat Raj Act, 1993
Regarding powers, the panchayat were not empowered to impose taxes or collect tax revenues but tax revenues are collected by the local bodies such as ORR Fees, leasing of fishery user charges and fines etc. There was a raise in own fund revenue through innovative ways such as seedlings tax etc. Audit of funds and reports were by the Comptroller and Auditor General as well as in the State Government department. Nehru Yuva Kendra and Grameen Vikas Samithi were involved in training programme. Though grama sabha was established no social audit mechanism was introduced, whereas such social audit was conducted by the grama sabha meetings during their semester meetings. The quorum for meeting is 1/5. Complaint boxes were furnished as part of transparency. Panchayat executive officers were appointed by the Panchayat Department. District Planning Office was also established thereunder. PESA provisions were not applicable in the State.186

Parallel systems such as village committees analogous to grama panchayats and autonomous district councils at the footing of the district panchayats were established in the State. Standing committees and sub-committees were established for agriculture, education and public works. Officials were participatory as ex-officio in standing committees and sub-committees. Special purpose vehicles such as DRDA, NRHM, SSA, NREGA, rogi kalyan samithi and vigilance committee etc. seem to be bottlenecks before the local governance and public participation in democratic administration system.187

**Uttar Pradesh**

During 1947 itself, there were about 3500 gaon panchayats and 8100 panchayat adalats established under the law existing at that time.188 During 1995 April the new Panchayat Raj law was promulgated in the State of U.P. Delimitation of powers of the local government with the State Government was performed according to recommendations of Bajaj Ayog Committee on Administration Reforms and the Report of Decentralization Commission (1994). Thirty two subjects were listed and sixteen of which were devolved by that time.

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186 The Panchayat (Extension to Scheduled Areas) Act 1996
188 The Uttar Pradesh Panchayat Raj Act, 1947
An activity mapping was held during 2001 upon the task force report. Other functionaries were controlled by department themselves. The taluka samithi was vested with power to examine the attendance of functionaries. There were only state employees in kshetra panchayat, whereas the zilla parishad were furnished with employees appointed by the Public Service Commission.

Chairperson of kshetra panchayat and president of the grama panchayats were subjected to expunching from the post on alternation in local governance.

Funds were transferred to local government institutions on discretionary grants-in-aid. State sponsored and Centrally sponsored schemes (SSS & CSS) were allocated in civic services like drainage, garbage collection etc. State Finance Commission (SFC) funding was provided for sanitation, drinking water, lighting village, roads connectivity etc.

Regarding assignment of taxes, gaon nidhi, land taxes, entertainment taxes, house tax, etc were granted to grama panchayats. But zilla parishads were having narrow and shallow fund resources, whereas available tax resources were not tapped or exploited. Infrastructure development funds were transferred to LSG institutions. Networked implementation system and monitoring system was evolved in U.P. Audit was enforced by the Comptroller and Auditor General. TGS System was also introduced here.

Grama sabha social auditing was enforced in the State. Annual administrative report, annual accounts statement and the annual budget were used as base materials for social audit. Voluntary resource fund mobilization is possible, whereas industry and labour sector was not so co-operative with LSG initiatives.

Six different standing committees including planning and development, education, works, health and welfare administration, and water management were functional as media of collective decision-making. Participatory planning process did not exist in rural areas and lack of confidence among people, absence of official participation in plan formulation were the hindrances.

Backward Regions Grant Fund (BRGF) provides much possibility for resource base. But reluctant attitude from government employees and outsourcing and in-take of
temporary employees create more hurdles. Flaws of local government in UP may be listed out as follows:¹⁸⁹

- Disjoints of three-tier panchayats systems;
- Less amount of resource mobilization and allocation;
- Distribution of functions and functionaries not happened;
- District Planning Committee was not functioning; and
- Parallel bodies like DRDA and their interventions.

Uttarakhand

In Uttarakhand the three tier Panchayat Raj system was introduced by 2008, but PESA was not applicable there. A rapid appraisal study was conducted as local governance and annual status report was prepared by the LSG institutions of the State.¹⁹⁰

An activity mapping was also held in 2007-08. But no deployment of officials was made under the Panchayat Raj system. Also tax and non-tax revenue were shared among LSG Institutions along with the State. Grant allocation was under the a classification based on distance and remoteness of places. Audit was by the C & A-G mechanism as well as the Public Accounts Committee (PAC). Monitoring control by the Central legislation was not enforced upon LSG Institutions.¹⁹¹

Most relevant participatory force behind the decentralized governance was the Panchayat Mahila Sakthi Abhiyan (PMSA). Gram sabha and social audit were not ascertained by legislation. Reservation of seats was prescribed for the Scheduled Tribe, Scheduled Caste and other backward classes. The District Planning Committee was not effective because of the presence of parallel institutions like DRDA and Vigilance Committee etc.

West Bengal

There is socio-political and historical relevance in the analytical evaluation of local governance mechanism of West Bengal. Panchayats have been an instrumentality to introduce far reaching agricultural and welfare reforms in the State, which in terms

¹⁸⁹ The State of Panchayat Raj 2007-08: An independent Assessment - Vol II (IRMA), pp. 479-498
¹⁹⁰ The Uttarakhand Panchayat Raj Act, 2008
¹⁹¹ The Fiscal Responsibilities Act, 2003
have had strong equity effect in rural areas. Fairly good rate in many human development indications accelerated the economic growth without jeopardizing egalitarian ethos. Panchayats continue as responsible for bottom up planning under the constitutional mandate.

During British rule chaukidari panchayats existed to maintain law and order. In 1885 itself local governance system was introduced in Bengal. District boards, sub district boards and village union committees were established during the period.\(^{192}\) Subsequently more autonomy was recommended for local governments during 1907-09.\(^{193}\) Thus the Bengal Village Self-Government Act was introduced during 1919. Three tier system having choukidari unions, interim level union committee and union board were constituted in 1950.

According to the Report of Belwant Rai Mehta Committee (1957) two-tier system with village panchayat and union committee was established.\(^{194}\) Subsequently two-tier system with block panchayat and district panchayat were established in 1963.\(^{195}\) Thereafter four-tier system was also introduced in the State such as:

- Zilla Parishad;
- Anchalik Parishad;
- Anchal Panchayat; and
- Gram Panchayat.

During 1973 three-tier system was established with district panchayat, block panchayat and gram panchayat. Twenty eight amendments were introduced in 1973 itself.\(^{196}\) Subsequently twenty nine items of functions were devolved to the Panchayat through legislation.\(^{197}\) An activity mapping was conducted in 2006. The State Government has initiated a process to build up a cadre of functionaries in panchayats. Zilla panchayat executive officer was made the appointing authority except in the gram panchayat *karmees* in which executive officer of panchayat samithi was made the appointing authority. Strict operational terms for panchayat cadre were prepared. Forest, public distribution, engineering, education etc. were transferred to panchayats.

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\(^{192}\) The Bengal Local Self Government Act, 1885  
\(^{193}\) The Royal Commission on Decentralisation (1907-09)  
\(^{194}\) The West Bengal Panchayat Act, 1957  
\(^{195}\) The West Bengal Zilla Parishad Act, 1963  
\(^{196}\) The West Bengal Panchayat Act, 1973  
\(^{197}\) The West Bengal Panchayat (Amendment) Act, 1994
Panchayat elected representatives had power to initiate disciplinary proceedings against official functionaries.

A panchayat raj jurisprudence was evolved in the State with six Central legislation and thirty eight State statues. Another thirty nine enactments were subjected to amendment corresponding to decentralization process. Most of the recommendations of the State Finance Commission after 2005 were accepted by the State Government. Untied and programmatic funds were granted to local bodies along with their own sources earmarked. Electronic fund transfer system was also established. Centrally sponsored schemes were also implemented through local bodies. A panchayat window was established in the State budget. Multiple mechanisms for auditing was introduced including,

- Internal Audit;
- Statutory Audit; and
- Comptroller and Auditor General Audit.

Hence, appropriate maintenance of panchayat accounts was ensured in the State. Financial and accounts officers were appointed at zilla parishad and joint executive officers were there in Panchayat Samithi. Automation and computerization were implemented at panchayat level.

Capacity building mechanism was another characteristic element. Separate training for office superintendent, pradhan, upa pradhan, standing committee, and elected members were introduced. Information technology enabled service delivery system was launched with LAN, V-SAT, NIC, P&RD, PIS Software support. Web based monthly report was generated in local governance.

Gram sabha was established as guide and advisor to the gram panchayat in economic development, social justice, beneficiary selection, poverty alleviation, etc. Gram sabha and ward sabha were bound to submit their resolutions to Gram panchayat and panchayat were bound to consider the grama sabha and ward sabha resolutions in respective subject matters. But there was no provision for mahila sabha. Formal and social audit on functional matters was introduced. Standing committees and sub committees functioned as participatory bodies. Reservation for women, Scheduled Caste and Tribes was also provided. Bottom up planning process was ensured.
Statutory function of district planning committee (DPC) was also established. Parallel administrative bodies like DRDA was not allowed to function in the State. In addition to all these gram unnay samithi (GUS) was established as watchdog in local governance.¹⁹⁸

**Andaman & Nicobar Islands**

Union Territory of Andaman and Nicobar was with a sub-divisional economy-growing society. There are around 25 lakhs of population in Andaman and 18 lakhs in Nicobar Island. Three districts, six sub-divisions, nine tahsils, five community development blocks and two hundred and four revenue villages were established under the Administrative mechanism.

By 1994 the new Panchayat Raj system was introduced with Pradesh Council as the apex body and forty four grama panchayats at lower level.¹⁹⁹ Three tier panchayat raj system was introduced by the said Regulation. Deputy Commissioner was appointed as the Director of Panchayats. The superintendence, directions and control was vested with the Election Commission.

Functions according to the 11th Schedule of the Constitution deployed down to differed activities and further devolved into panchayats. Functionaries and power on their tour diaries, work reports, leave sanctioning, field duty, distribution and assignment of works, performance appraisal etc were transferred to the panchayats. Three hundred and twelve posts and five hundred and forty five functionaries were transferred to local bodies. Tied and untied funds such as levying of taxes, cess, fees, duties etc. were assigned to panchayats to collect revenue for local governance under the rules introduced in 1998. An audit mechanism was also established.

As part of improved public participation, grama sabha and mahila sabha were introduced. But no provision for social audit followed. Right to select beneficiaries was vested with grama sabha. Grama pachayats were made accountable to grama sabha. Plan process was characterized with Below Poverty Line (BPL) planning process.

¹⁹⁸ *The State of Panchayat Raj 2007-08: An independent Assessment* - Vol II (IRMA), pp. 511-574
¹⁹⁹ Andaman & Nicobar Islands Panchayat Regulation, 1994 promulgated by the President of India. See Gazette
Most relevant feature was the establishment of nyaya panchayat with power to resolve money suits, recovery of immovable and movable property, compensation suits, damages, cattle trespass etc. Women and SC/ST people were provided with reservation in representation. Higher number of standing committees provided ensures much public participation in governance, as follows:

- Finance;
- Taxation;
- Accounts;
- Audit;
- Public Health;
- Sanitation;
- Works;
- Water supply;
- Education; and
- Social Justice.

At the district level, DPC was also established. Apart from these the civic society movements expressed much involvement and influence in local governance.\textsuperscript{200}

**Chandigarh**

The Union Territory of Chandigarh did not have its own panchayat raj legislation. Punjab Panchayat Raj Act, 1994 with corresponding amendments were applied with three tier administrative system. Functions, funds and functionaries were transferred to local bodies but no restriction on expenditure was imposed. Considerable resource generation sources were entrusted to village panchayats. These are:

- Building, Profession, Vehicle Taxes;
- Water Cess;
- Sanitation Fees;
- Lighting Charges; and
- Conservancy Charges.

The panchayat samithi was also empowered with certain resources like

\textsuperscript{200} The State of Panchayat Raj 2007-08: An independent Assessment - Vol II (IRMA), pp. 575-608
- Levy of tolls for vehicles, ferry and animals;
- Fee for registration of vehicles; and
- License fee for vehicles etc.

In addition to these, State Finance Commission awards transferred of state fund to local bodies. Social audit over works was imposed by grama sabha in their meeting twice an year, ie. June and December. C&AG audit was also prescribed. Reservation for women, SC/ST was ensured. No parallel establishments were allowed to function here.\textsuperscript{201}

**Dadra & Nagar Haveli (D&NH)**

There are 72 villages including Silvasa, the capital and varishtha panchayat, an advisory body of the administration since liberation. By 1989, the village panchayath was abolished and pradesh council was established. Then single-tier village panchayat system prevailed there up to 1994. Thereafter, two-tier panchayat raj system was introduced under the 1994 Regulation.\textsuperscript{202}

Funds, functions and functionaries (3Fs) including administrative and technical staff officials were transferred to local governments. Village panchayats were only empowered to collect tax from people. District Panchayat has no taxation power. Audit was administered through C & A.G.

Grama sabha has to be convened four times in an year with a minimum of 1/10 quorum and with higher rate of women participation. Five days notice period was fixed for grama sabha meeting. Audit report and annual administration report have to be submitted before grama sabha. Reservation for SC/ST and women was envisaged by the law. Three standing committees including finance, works and education were constituted. However, parallel bodies like SSA, NRHM, NREGS etc. were functioning simultaneously.\textsuperscript{203}

\textsuperscript{201} Ibid at pp. 609-620
\textsuperscript{202} D & NH Village Panchayat (Amendment) Regulation (1994)
\textsuperscript{203} *The State of Panchayat 2007-08: An independent Assessment* - Vol II (IRMA), pp. 621-636
Daman & Diu (GDD)

Before 1994 only single tier panchayat existed in Daman & Diu, regulated by the Village Panchayat Regulation.\textsuperscript{204} That Regulation was amended accordingly on the basis of activity mapping held in 1996, and twenty nine subjects were transferred to the local governments. The department’s funds were diverted and their staffs were deployed to assist village panchayats and district panchayats. Executive power, executive staff and funds for execution including revenue were entrusted to local governments. Audit by C&AG was established. Reservation for SC/ST and women was provided. Grama sabha had to be regularly convened so as to consider the annual administration statement, audit report, programme assessment, community service, monitoring etc. The District Planning Committee was entrusted to establish broad parameters of planned development. Village Planning Committee was constituted to evolve village level plans. But DRDA was still continuing in the territory as a parallel body.\textsuperscript{205}

Lakshadweep

Lakshadweep is the tiniest Union Territory in India. Kavaratti is the administrative headquarters of Lakshadweep and its first village panchayat was established in 1977. District Panchayat was constituted during 1994. Funds, functions and functionaries (3Fs) were transferred to local governments. But revenue by taxation was meagre. Audit was conducted by the Accountant General of Kerala. Representation of SC/ST and women was also provided. Planning and implementation was entrusted upon District Planning Committee (DPC). Administrative function was headed by the Chief Executive Officer (CEO). Village Panchayats were supposed to submit their plans to the DPC. The DPC will meet once in each village. Member of the Parliament and the Chief Counsellor were members of the Planning Committee. DRDA was established as a parallel body in poverty alleviation programmes.\textsuperscript{206} Formal meeting of grama sabha was to be held twice in an year.

\textsuperscript{204} The Goa, Daman & Diu Village Panchayat Regulation, 1963
\textsuperscript{205} The State of Panchayat 2007-08. An independent Assessment - Vol II (IRMA), pp 637-656
\textsuperscript{206} Ibid at pp. 657-674
Puducherry

Local Self Government Department was constituted in this Union Territory by 1963 under the Bureau des Affaires Politiques. Re-organization of the local government Board was made in 1973. The two-tier panchayat administration system including village panchayat and commune panchayat was established during 1973\textsuperscript{207} and continued till the 1993 amendment.

Separate electoral roll was stipulated for the election to local bodies. On the basis the activity mapping held in 2007-08, nine items of functions were transferred to the panchayat. Local governments were entrusted with civil and criminal jurisdiction in Puducherry.

Own revenue and tax revenue and plan fund grant were transferred to the LSG Institutions. Building tax, professional tax etc. were also transferred to LSGIs. There was a panchayat window for budget after 2007-08, so as to improve tax revenue. House tax was also stipulated. A self-assessment facility was administered thereafter in tax collection. Parking fee, market fee, certificate fee, duty on transfer of property, additional tax on minerals, trade revenue tax etc. were also enumerated as LSG revenue resources.

A double entry system of accounting was suggested there and internal and external audit mechanism was also introduced. Grama sabha was convened twice (August and October) in an year. Whereas the acceptance and assistance of grama sabha was minimum in Puducherry. Reservation of SC/ST and women was prescribed here also. DPC and other bodies like DRDA function as parallel bodies.\textsuperscript{208}

\textsuperscript{207} The Pondicherry Village Commune Panchayat Act, 1973

\textsuperscript{208} The State of Panchayat 2007-08. An independent Assessment - Vol II (IRMA), pp 675-696 and see General the Status of Panchayat Raj in the State and Union Territories of India (ISS, New Delhi), 2000.
PART III

ADMINISTRATIVE ASPECTS OF LOCAL SELF GOVERNMENT AUTHORITIES
CHAPTER IX

NATURE AND EXTEND OF DELEGATION OF POWERS

The sub-committee of S. B. Sen Committee observed that, necessary reforms have to be made in relevant legislation to materialise local governance in the State. For that they insisted to suggest necessary amendments to the said allied Acts and Rules, so that power can be delegated effectively to the lowest level administration and to enable local self-government institutions to enjoy full autonomy in the exercise of such power and to define the administrative and financial powers to be delegated to local self-government institutions and to suggest procedures in critical areas such as financial powers and propose appropriate modifications to the existing Acts and Rules\(^1\).

Far reaching institutional and structural changes and a series of amendments to the legislation of 1994, including the amendment Act of 1999, were enacted to ensure that the local bodies enjoy functional, financial and administrative autonomy. Forty four state legislation affecting various line department functions such as education, health, co-operation, drinking water, irrigation, and so on, and parastatals were amended to broaden the delegation and powers of local government authorities.

Both plans and non-plan schemes had been transferred to local bodies\(^2\) under the detailed heads of provisions earmarked to local governments in the budget. Concerned functional revenue expenditure, major / sub major heads of departments are transferred to local governments including funds of centrally sponsored schemes. Besides the above funds, the local self-government institutions may receive a number of non-plan grants which are distributed on the basis of recommendations of the State Finance Commissions as accepted by the State government. New procedures for allotment are prescribed for transferred schemes and grant-in-aid. The concerned administrative department will have to decide the norms of devolution after the budget presentation

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\(^2\) See Appendix IV of the State Budget from 1997-98 onwards
and communicate the entitlements of each local body. The heads of department will have to assign appropriate allotments to the local bodies through authorized officials.

The secretary of local body has to present separate grant-in-aid bill with the letter of allotment to the treasury for transfer, crediting it to the account of the local body. As soon as the local body receive the allotment under grant-in-aid, it should formally decide the schemes on which the funds are to be utilized, and each scheme shall be implemented through corresponding implementing officer. To facilitate accountability and to promote monitoring and mid-term correction, a system of ongoing performance also was introduced through the quarterly performance audit system. Social auditing through grama sabha also can be undertaken by the local body. New formula for distribution funds, functions and functionaries were adopted in Kerala since 1998-99 onwards. Plan funds, as well as special component and tribal sub-plan allocations are made on the basis of this population based formula. According to the recommendation of the state finance commission, a composite index, with geographical specifications, like area of local body, area under cultivation, backwardness of people, households without latrine electricity, shelter, and drinking water etc. shall be considered as criteria for allocation and distribution of funds.

This type of delegation denotes certain inferences such as

i. Unsuitable theories of decentralization and un-adaptable institutions in the context of western market economics

ii. Mismatch of fiscal autonomy and fiscal responsibility owing to lack of link between revenue raising powers to expenditure responsibility.

iii. Misleading distinction between plan and non-plan functions at the state level

iv. Low quality of public services because of dichotomy in budgeting and expenditure.

v. Multiple agencies with same or distinct objectives imposing or employing different criteria of transfers which allow much room for bureaucratic discretion on transfers.

vi. Systematic failure in the process of decentralization and local governance.

vii. Gap existing in between the delivery of core services, requirements and achievements yawns wide.
viii. Lack of unanimity in evolving criteria based transfer system in local governance.

ix. Need for considerable capacity building to support a new style of management and administration in local governments with respect to devolution of additional powers and functions.

x. Role of clarity and specifications of the rules of the game in intergovernmental relations, so as to reduce or avoid overlapping, ensure efficient coordination, sharing of responsibilities between various tiers of governance.

The local government authorities can function more as independent entities than as coordinated agencies for economic development and social justice in the society. There is not a hierarchical relationship and they cannot be expected to function as higher level governments.

The vital need is to redesign the transfer arrangements in India on a more rational, objective and equitable basis. The functional domain of local governments, quality and adequacy of services they provide, the resources they raise, the autonomy they enjoy and their accountability to the electorate are crucial aspects of democratic decentralization. At present the real democratic decentralization remains as a distant goal in its administrative and governance aspects. Probably the greatest challenge is to evolve as appropriate framework for functional devolution in Indian federalism in order to effectuate the local governments.
CHAPTER X

ADMINISTRATIVE CONTROL ON LOCAL GOVERNANCE BY THE STATE

The existing local government laws drastically reduce the power of direct control over local governance by the higher governmental bodies. The Central and State governments can issue general guidelines regarding national and state policies of public governance, which cannot meddle in day to day affairs or individual decisions of local government authorities.

The State government can cancel resolutions of the local government only through a process and in consultation with the local government ombudsman or appellate tribunal according to the subject matter of the resolution.

A local body can be dissolved directly by the State government, only if it fails to perform its functions because majority of its members have resigned or disqualified, or if it fails to pass the budget according to law. In all other cases a due process has to be employed, and the ombudsman has to be consulted before dissolution takes place. This unique feature of inter-institutional relationship does not exist even in the present centre-state relations.

10.1 Inter-governmental Transfers

The usage inter-governmental transfer with respect to local governance have multi-fold meaning and connotation, such as transfer or sharing of grants, taxes, public financing instruments in inter-governmental relations etc. Another meaning is the transfer of functions and corresponding functionaries to the different tiers of local governments. Yet another connotation is the transfer of institutions to the corresponding levels of local government. Here we can see the essential need in revenue resources and expenditure responsibilities, due to inter-jurisdictional imbalances in taxable capacity and expenditure goals. Regarding human resources and institutional capability also there is grave imbalance existing in local governance sector.
In Kerala, with the intergovernmental transfer system, the goal is to usher the decentralized governance and local democracy that works towards greater efficiency and equity. Here efficiency means capability to respond to the needs and priorities of the local people. Equity means taking care of poor, backward, deprived people and places. Guidelines, criteria or conditionalities are provided or prescribed by the Centre or State governments in order to control or regulate grass root level institutions in financial matters. Up to a certain extent the grant system affected or slackened the revenue efforts and reduced the tax and non-tax income of the local governing institutions in the State.

Intergovernmental transfer shall be treated as an exercise to fill up vertical gaps and to reduce horizontal imbalance, relating to this objectives, processes, performance, and the shared responsibilities of each government within the federal setup. Most of the revenue resources are under the direct control of the state or central government even today. The power to appoint, manage, dispose the functionaries are still in the hands of the State government. Local governments are functioning only as the executive arms or instrumentality of the State. They have only little functional control over the officials or bureaucracy. The dual control ends in another type of dichotomy.

In a fully decentralized regime, things are to be viewed in a different perspective because along with finance, functions and functionaries must be devolved or provided. This needs a scientific function-finance-functionary mapping in the state.

In the case of service sector institutions the functional differentiation is rather clear and sharp, but in productive sectors it is difficult to clearly earmark functions separately for each tier. Regarding the infrastructure and management of public institutions, precise and possible attempt was made in Kerala, to define the functional area of different local government tiers. The natural functional areas of such institutions and sectors, get marked only through practical experiences.

There is a clear recognition of role-range for local governments such as an agent, advisor, manager, partner, actor, organiser, promoter and consumer, with an objective to reduce the agency role. In this respect, the mandatory role, general functions and sector-wise responsibility are classified and entrusted with the local government authorities.
10.2 Functional Supremacy

Elected President / Chairman / Mayor of the concerned local government has been declared as the executive head of the local authority. Senior officials or head of institutions of various transferred departments brought under the control of the local government authorities have been declared as ex-officio secretaries for the concerned sector. The local governments have full administrative control over the staff including powers of disciplinary action over its own staff as well as transferred staff. Certain code of conduct is prescribed by the law to ensure healthy relationship between elected and official functionaries. Polite behaviour and respect for elected authorities and protection of freedom of the civil servant to function freely and fearlessly are envisaged by the law.

Apart from mere creatures of law, the local governments are entitled to legal space in all legislations having something to do with their functions, thus becoming the third tier of government below the Central and State governments.

Transfer of staff to local government is a very difficult task. There would be a lot of resistance from employees and by politicians to move on to control by the elected bodies in the lower level. Uncertainty of service conditions, fear of salary payment, fear of whimsical political treatment, loss of service aspirations, ego problems etc. may cause such resistance.

In Kerala these issues are handled in a salient manner like:

i. The principle of work and worker going together was enunciated and it enabled the government to transfer institutions and officers along with staff to the local governments.

ii. Surplus staff both professional and ministerial in development departments at state, regional, and district level are transferred to local governments.

iii. Cadre staff strength is not disturbed and hence service aspirations are not prevented and inter institutional movement is protected.

iv. Full managerial part disciplinary power is vested with local government so as to assign work, give directions, impose minor penalties on all staff including transferred functionaries. In case of non-gazetted officials,
resort to suspension from service whenever warranted is provided with the local government laws for the time being.

v. Salaries and other emoluments are paid by the government. Recruitment and appointment is through the Public Service Commission. Transfer norms are formulated and imposed by the State Government.

vi. Dual control is carried out through the government department so as to implement the departmental functions through such functionaries.

vii. Information technology enabled service delivery mechanism has been introduced through evolved software applications for local governance. Citizen friendly public governance process is established through these systems.

viii. Local government ombudsman and tribunal system has been used to reduce conflict of interest in governance process.

The objective of decentralized administration is to enhance the quality of governance and ensure better quality services, better state-society relations through participatory governance. Decentralized governance cannot be and should not be seen independent of the fostering and substantial support by the State.

It shall be the vehicle to recapture the rights of the people from the steel-frame and red-tape of bureaucracy. To create institutions of local self-governance, substantial measures on to the shoulders of the local self-governments. Unless and until, the priorities and pattern of local governments are actually reinforced in favour of greater population, development and welfare of the state will stand to suffer.

The Central and State government projects along with the local projects have continued to increase the work load of local authorities. The local governments cannot function with their increased manifold work load, without corresponding increase in staff strength and staff capability. The staff pattern of local government shall be designed under their new dispensation with new rational and efficiency. Redeployment of functionaries must be expedited.

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The Kerala service rules originally designed and enforced for a centralized governance system shall be actually reoriented to suit decentralized governance. Comprehensive, functional, integrated and converged functional manual shall be prepared and imposed in this respect. The proposed service manual shall be made operational and functional in everyday use. Individual based, institution based, and department based service delivery components shall be included in the recommended manuals.

Spatial planning on the basis of cadastral mapping and resources mapping with a watershed orientation shall be ensured in infrastructure development activities administration. Absolute and fine-tuned road connectivity mapping and energy audit mapping also shall be utilized for further service quality assurance in local government institutions. Geographical Information System (GIS) and similar technology devices may be effectively used for this purpose.

Reasonable service quality goal shall be ensured through human power management, redeployment, and restructuring. Effective and scientific work study shall be conducted in a time bound manner. Front office and in office linkage is to be ensured in order to maintain affirmed service quality standards and bench marking.
CHAPTER XI

CONTROL OF DELEGATED POWERS BY THE HIERARCHICAL INSTITUTIONS

What is the central purpose of our policies, laws, and programmes? The constitution answers that the State to secure a social order for the promotion of the welfare of the people\textsuperscript{4}. The directives are fundamental in the governance of the country though they are not justiciable.

The most powerful indictment of Central and State Government for their failure to abide faithfully with the constitutional mandate is provided by the parliamentary standing committee which regretfully concluded that “the implementation of decentralization of the Central and State governments was not only woeful, but they were wilfully floating constitutional provisions\textsuperscript{5}.” The committee was constrained to note that most of the States are yet to fully and consciously implement the constitutional mandate on local governance.

The standing committee also looked at the state of functional empowerment of these institutions of self-government. They can discharge their constitutional responsibilities only when they are endowed, as per the provisions of the Constitution\textsuperscript{6}, with power and authority necessary to enable them to function as institution of self-government. The committee observed that it cannot be a piece meal or haphazard entrustment of a function here, a function there and a functionary elsewhere. They opined that it will be unfortunate if the states remain insensitive to the constitutional mandate. The open court also held that any legislative device of the government which comes into direct conflict with the mandatory provisions of article 243E of the Constitution, such device has to be declared \textit{ultra vires} of the said provision of the Constitution.

\textsuperscript{4} article 38, the Constitution of India, 1950
\textsuperscript{6} article 243G, The Constitution of India, 1950
The standing committee stated that the devolution of functions, functionaries and finances as required by the Constitution is to be devolved only to the elected accountable local bodies and not to any parallel bodies. They recommended that all such parallel bodies shall be abolished and their functions and programmes entrusted to local self-government institutions.

Little has been done to abide by the constitutional amendments, brought into effect in April 1992, envisage a major reform of governance in the country. So great are the changes needed in attitude, administration, planning, financial and personal systems; institutions and methods of working and so entrenched are an existing more in all these respects, which is not surprising that very limited progress has been made in the last two decades. It can be concluded that all across the space the practice continues to violate the principles.

Parallel bodies are those set up as directed by the Central or State governments to plan or execute development projects in areas which are in the functional domain of local governments using funds provided by the Central or State governments or donor funds. They have separate system of decision making on resource allocation and execution of projects which is independent and departed from the local government set up. These parallel bodies could have in them bureaucrats, elected or non-elected politicians, non-officials and community representatives. They have considerable autonomy, flexible procedure and functions in isolation. They are directly reporting to the Central or State governments.

There are District Rural Development Authority (DRDA), Forest Development Agency (FDA), Sarva Siksha Abhiyan (SSA), District Project Management Unit of Externally Assisted Projects (DPMUEP), User Group Based Organizations (UGBO), Community Based Organizations (CBO) as parallel bodies, but they could become so if there is no conscious decision to structure or efforts for their relationship with local government institutions.

Reasons for such horizontal and vertical bodies may be cited as

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7 ibid
- Multi-disciplinary and extra departmental professional support, non-official participation, reception, parking, tracking, utilization, accounting of funds, flexible organizational system etc.

Whereas in new legal context created by the constitutional amendments and state legislation on local governance, political and administrative context brought in by the functionary of elected bodies, participatory developmental context, administrative context of transparency and accountability there is a need for revisiting the raison d’être of these bodies. In the existing constitutional mandate with planning and implementation of development schemes, as responsibility of local government authorities, transferring of schemes in the functional domain of local governments, the parallel bodies have become redundant. There is no need for semi-bureaucratic structures with partial role for non-officials, in the presence of fully elected democratic bodies at the local level.

Similarly, the MP / MLA local area development funds and schemes also can be considered as hierarchical influence or hindrance on local government authorities. Relevance of such parallel development intervention is to be revisited by the policy makers in the light of the existing constitutional mandate of the democratic decentralization and local governance.

Another important instance is existence of missions and authorities in cases where their functions are completely in the domain of local government authorities, they shall be wound up. Development authorities and special purpose vehicles are there in this regard. In case of technical support to facilitate the local government it can be allowed to continue, in no case they shall be allowed to function as horizontal implementing agencies. Otherwise, they can be used as technical or professional or coordinating units of local government concerned.

State of Kerala can cite the best example in this regard the convergence of Panchayat Department and Rural Development Department at the governance level and abolition of DRDA after the establishment of District Poverty Alleviation Unit (PAU) as the technical support mechanism for the District Planning Committee. These types of

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mergers will ensure a harmonious integration of the different agencies in service of the common objective of governance. Democratic decentralization is based on certain fundamental principles like subsidiarity and rule by exception etc. The vertical and horizontal relationship in governmental structure depends on those practical principles. Panchayat raj institutions are correlated in horizontal plane and hence there is no hierarchical control in between them. They are bound with mutual interface. Higher level of governments exerts considerable extend of hierarchical control over local government institutions. There must be a balance of convenience in this subject matter, which is to be derived through trial and error in this sector.
CHAPTER XII

INTERFACE AND CORRELATION OF DIFFERENT TIERS OF LOCAL SELF-GOVERNMENT INSTITUTIONS

Three categories of functions and powers are classified and transferred to local government institutions as per the existing law.

1. General administrative functions
2. Social development, welfare and security functions
3. Executive functions for works and maintenance\(^{10}\).

And the three tiers of panchayat raj as well as municipal bodies are ordained to perform these functions through three categories of functionaries as follows\(^{11}\):

i. The generalists
ii. The specialists
iii. The multi-purpose workers

In addition to this, voluntary, technical and managerial personnel are there to support local government institutions as experienced in several local bodies of Kerala. Ministerial, supervisory, professional and technical hands of functionaries are available at different tiers of local governance. In Kerala, Assistant Secretaries, Accountants and Engineers are also appointed in the local bodies. In order to provide information technology support such expertise is also provided to local government institutions in Kerala.

Among these functions grama panchayats are provided with major number of functions and responsibilities. In addition to productive infrastructure development and service delivery functions certain regulatory functions are also vested with grama


panchayats. Regulation of liquor shops, regulation of building construction, regulation of solid and liquid wastes etc. are such powers entrusted to local bodies.

The middle level panchayats are vested only with coordination and support functions apart from few construction and welfare activities earmarked for them. District panchayats are entrusted with general responsibility of overall supervision, coordination, consolidation, integration and implementation of grass root level functions. District plan preparation, technical advisory role, etc. are also vested with the District panchayats.

The functions and responsibilities assigned to the three tier of panchayat raj and nagarapalika institutions are clearly overlapping in their implementation. This is the source of confusion and lack of accountability on the part of local government institutions which are to “commonly” perform the “common” functions and share “common” responsibilities. This will happen in two ways, first a clear cut demarcation of areas of responsibilities or functions of different levels is not made and second the existence and functioning of two or more different agencies or officials in the same area or subject matter.

Available information shows that the distribution of funds, functions and functionaries to LSG Institutions in Kerala is given below. Among the three tier rural local bodies, large share of funds, functions and functionaries are transferred to grama panchayat whereas the minimum share of such transfer happens in the case of block panchayats. Similarly larger share of transferred facilities is availed by municipal corporation due to different grounds like geographical area, population, civic amenities, public services etc.
Rigid and elaborate procedures, compartmentalization, and departmentalization of functionaries, weak monitoring and evaluation systems etc. also impede delays and cause inefficiency in the local government system. Adoption of clear principles or criterion for assignment of responsibilities, clear demarcation of schemes and funds, effective monitoring and evaluation of public service delivery systems shall be kept in
time of allocation of powers and functions to local government authorities. Otherwise
local government institutions in effect, on paper are being entrusted with the burdens
that the national and state government have failed to shoulder.

Constitution and establishment of divisional tribunals for local government
institutions, having judicial and administrative members as a panel or cell, with
administrative and managerial experiences will be helpful to resolve such transitional
conflicts in between local authorities\textsuperscript{12}. They shall also serve as independent and
impartial bodies, which could reduce resentment against the control, supervision and
interventions exercised by the hierarchical bodies in the political and executive
bureaucracy.

State legislation, rules and orders there under, authorising officials to overrule or
nullify the decisions of elected local bodies in certain circumstances. Such scrutiny and
review shall be undertaken only by elected representatives of the next higher level, in
which the leaders of the lower level are also mandatory members, on the principle of
peer group evaluation and that too only when law or propriety requires so\textsuperscript{13}.

Administrative gaps or mismatches due to departmental concerns, limitations,
and non-cooperation shall also be addressed properly. Hence substantial powers and
authorities to check and regulate the extraneous activities of the officials shall be vested
with elected local governments at the corresponding levels. The official and non-
officials shall shoulder together the responsibilities, they can reduce the burden of the
implementing authorities. Both administrative and deliberative wings shall function
together as able counter parts to accomplish the larger goals of the local governance and
democratic decentralization.

\textsuperscript{12} Voice from Below, Summary of Sub-Regional Workshops on Panchayats, Issues and
Recommendations, Task Force on Panchayati Raj, Rajiv Gandhi Foundation, New Delhi (1997), pp. 4-6
\textsuperscript{13} Proceedings of National Seminar on Panchayats, Task Force in Panchayati Raj, Rajiv Gandhi
Foundation, New Delhi, December 22-23, 1997, pp. 149-150
CHAPTER XIII

CONSTITUTIONAL AUTHORITIES AND INSTITUTIONS OF NEW GENERATION LSG SYSTEM

Most relevant characteristic element of the 73rd and 74th Constitutional amendments is that the constitutional status and integrity of the local government institutions themselves. Apart from that certain new generation constitutional institutions are established through the corresponding laws, such as:

1. Grama sabha / ward sabha
2. State Election Commission
3. State Finance Commission
4. District Planning Commission

13.1 Grama Sabha and Ward Sabha

People’s participation and accountability to the people are sought to be ensured through constituency level gram sabha or ward sabha in village panchayats and urban local bodies respectively. For municipalities having population more than 10 lakhs, ward committee was proposed as a substitute for ward sabha. Ten percent of the total voters to constitute quorum of grama sabha or ward sabha meeting has been not normally satisfied. In special grama sabha / ward sabha meeting mentioned for beneficiary selection, the participation of interested groups or corresponding stake holders will be higher. The prescribed number of meetings (quarterly mandatory meetings) is not conducted in meaningful manner. Participation of implementing officers in grama sabha / ward sabha is not rated up to the mark. Role of officials as designated secretary of grama sabha / ward sabha is not in a satisfactory manner. The needs, aspirations, resolutions of the grama sabha has not been considered or recognized properly in the local government level. Of course, women participation is rather increased, but mostly as fudging of numbers or figures. Sustaining enthusiasm or constant mobilization has not been taking place in grama sabha / ward sabham, the basic
constitutional democratic body with direct participation of citizen. Meaningful participation of people in decision making is not realised in those bodies.

Certain efforts were made to substantiate grama sabha / ward sabha. But such collateral bodies like neighbourhood groups (NHG) have not been functioning as a remedial measure. Sometime it has resulted in reduction of participation in grama sabha / ward sabha owing to its representative influence in people. The only practical remedy here is that to reduce the jurisdictional area and limit number of households in each gram sabha / ward sabha in the magic number of hundred. Another possibility is to convene general meetings of grama sabha / ward sabha at the constituency level only for twice a year in order to consider the plan and budgetary document and to consider the annual administrative and development report. Grama sabha executive committee, grama sabha sub committees can be constituted for regular functioning. Women’s committee and children’s committee also can be constituted at the corresponding level. Social auditing and public vigilance whistle blowers committees in the name of “Local Public Ombudsman” (LPO) also can be constituted to strengthen the grama sabha / ward sabha.

13.2 State Election Commission

State Election Commission (SEC) is envisaged as per the state legislation rather than the constitutional mandate. Hence the appointment, the delegation, the ministerial infrastructure and functional powers and responsibilities of the commission is subject to the political will and interest of the existing State government. The delimitation power, reservation of seats, disposal of subject matters on qualification and disqualification of members and candidates, oath taking by elected officials, filing of property statement by elected representatives, preparation of voters list, prescription for voting and allied activities, convening grama sabha attending meetings etc.

In reality the State Election Commission is a relatively new constitutional body. The policies, procedure and determinations of the SEC are still in the making. The decision of the commission related to local body elections cannot be questioned in courts apart from seeking the possibility of filing election petition before corresponding courts. Here the commission’s function requires interpretation by constitutional courts.
and the extent\textsuperscript{14} of their orders shall not be prohibited by the constitution are subjected to judicial review. The level of efficiency of the SEC is inhibited by inadequate staff support, budget provision for funding, lack of delegation of financial and administration powers, within budgeted amount, notify dates of election etc. These issues are to be considered and resolved in future. Legal measures are also to be ensured for this purpose.

13.3 State Finance Commission

The State Finance Commission (SFC) can play an important role for awarding autonomy to the local authorities. They can examine the gap between responsibilities and requirements of resources for local government at different levels, and suggest the devolution of resources from the Central and State to downstairs\textsuperscript{15}. SFC is created to review the financial position of local governments and suggest measures required for financial strengthening of those bodies so as to enable them to function as institutions of self-government. But in real experience in most of the states it is evident that there are serious gaps in the functioning of SFC in almost all States.

Time bound constitution of SFC, prescription of their terms of references (ToR), provision of adequate and efficient human power, sufficient measure for consultation etc. have to be ensured. The actual relevant issue is the delay in decisions of the State government over the recommendations of SFC. The State government must prepare their own action taken report (ATR) within six months from the date of submission of report by the SFC. Otherwise, the report loses its importance and relevance. SFC shall be considered or intended to create enabling conditions and impart its certainty, continuity and strength of local government seeds to sprout without being adversely affected by weeds. Certain criterion like population, geographical area of the respective local bodies, infrastructural facilities available, internal resource generation potential of different tiers of local government institutions, completion of plan objectives, performance appraisal and social audit report etc. shall also be taken into account for the stipulation of fund flow system to decentralized governance institutions.

\textsuperscript{14} L. C. Jain, “First Principles First”, Workshop of Writers and Thinkers on Local Governance and Panchayati Raj, Ministry of Panchayati Raj, Government of India, June 23-25, (2006), New Delhi, p. 3

13.4 District Planning Committee (DPC)

The one and only planning body having constitutional back up is District Planning Committee. It derives its legal authority from the constitution itself\(^{16}\). In Kerala DPC is constituted with the District panchayat president as the Chairperson, 4/5 members are elected from among the members of the district panchayat and urban local bodies of the district. The other local bodies, the village panchayats and block panchayats have no official representation in DPC. The district level heads of departments are the joint secretaries of DPC. Sub-committees may be constituted to prepare plans, for different development sectors. It can consult with experts in concerned field to improve the quality of planning.

Approval of plans and projects prepared by all tiers of local governments (LGs), scientific track keeping of development status, monitoring and evaluation of development schemes integration and consolidation of local level plans, preparation of district plan etc. are the responsibilities vested with DPC.

Categorically speaking, in playing these roles, the DPC in the State have to go long way\(^{17}\). Time consumption for plan approval, mechanical and technical plan vetting process, unscrupulous application of guidelines, prescriptions and orders, reluctance of district administrators in the function of DPC, lack of planning secretariat, duplication of plan approval process etc. shall be rectified. But this cannot be satisfied with or strengthened by isolated exercises but part of revisiting and revitalizing the decentralization process itself in the State.

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\(^{16}\) article 243 ZD, The Constitution of India, 1950

Chapter XIV

NEED FOR ADDITIONAL POWERS AND FUNCTIONS

AND

FURTHER DELEGATION TO STRENGTHEN

LSG SYSTEM

14.1 Institutional capability of Panchayati Raj Institutions:

An Empirical Study

On the basis of the institutional insceptional analysis in connection with the local self-governments in Kerala, the potential remarks and inferences evolved are the following.

i) In accordance with anticipated panchayat raj institutional involvement, to optimize management responsibility of local government, community participation in planning, implementation and management of community facilities and services is essential;

ii) Strengthen the operation and financial management capacity of panchayat raj community driven development initiatives; and

iii) Evolve a strategic and functional inter-departmental integration and intra-organization restructuring for a comprehensive local self-government department in the State of Kerala.

Experience goes to show that the impact of policies and programmes depends upon the capacity of the institutional responsibility for planning and implementing them. Institutional machinery has a crucial role to play in articulating issues, priorities, planning and implementing projects, forging inter-sectoral linkages and ensuring community participation. The future involvement of panchayati raj institutions in sector activities will require that they possess necessary capacity to effectively undertake responsibilities ensuring such involvement.

The purpose of the Study is to critically assess the operational capacity and financial viability of village panchayat and block panchayat with particular reference to
public participation, organizational and financial management, responsibilities undertaken, legal basis of operation, financial status and areas of strength and weakness.

The preliminary assessment of the existing capacity of the district, block and gram panchayat in the programme’s concentration areas would enable appropriate institutional strengthening and support requirements to be identified and incorporated in the programme. It is anticipated that community would represent a valuable resource to supplement the scarce resources of existing implementing agencies and the PRI would serve as the most critical intervening factor through which money and human skills are utilized for sector activities.

The 73rd Constitution Amendment Act, 1992 came into force on April 24, 1993. Article 243G of the Constitution, which is the key to the whole scheme of devolution, empowers State legislatures to endow the panchayats with such powers and authorities as may be necessary to enable them to function as institutions of self-government. Legislating for local government institutions remains the power and responsibility of the State, but such legislation has to be in line with the mandatory provisions of Part IX of the Constitution, which provides for three tier system of panchayati raj, gram sabha as participatory democratic forum, compulsory representation of women and Scheduled Caste, Scheduled Tribe people among members and office bearers of panchayati raj institutions.\(^{18}\)

The main objective of enacting the 73rd Amendment Act was to improve the participation of people in the process of development and to transform panchayati raj institutions into vibrant institutions performing necessary development, regulatory and general administrative functions. Different directions provided by it to decentralized democratic system are:

i) Effective leadership will emerge from weaker sections, Scheduled Castes, Scheduled Tribes, women etc. and enabling them to voice aspirations;

ii) Women’s entry into panchayat raj institutions, which enables them to manage the resources and to govern the community, will eventually lead to empowerment;

\(^{18}\) See Part IX of Constitution of India (73rd Amendment) Act, 1992 (articles 243B, 243C and 243D)
iii) Women’s participation in decision-making will strengthen the programmes for literacy, education, sanitation, water supply and primary health;

iv) Grama sabha provides a channel through which rural development issues and priorities are articulated. Upper echelons of government have an obligation to consider the aspirations of local people;

v) A large number of people are involved in the art of self-government and decision-making as well as implementation process;

vi) It will lead to responsive administration with maximum accountability and transparency. People’s participation means accountability to the people and to ensure efficiency and quality in service delivery mechanism;

vii) Panchayati raj institutions will provide institutional base for community participation in the rural development process and equitable distribution of benefits;

viii) It endows greater extent of autonomy to local bodies;

ix) Local government becomes the integral part of the polity;

x) Provides opportunity for local resources mobilisation and optimum utility of socio-economic and natural resources; and

xi) It enhances good governance opportunity.

In addition to these positive points it empowers panchayat to impose taxes and have their own funds.\textsuperscript{19} It provides for the Constitution of State Finance Commission\textsuperscript{20} and District Planning Committee\textsuperscript{21}. However, the administrative powers and responsibilities, financial resources, power to exercise authority and discharge duties, are entirely derived from the legislation.

\textbf{A Profile of Kerala Panchayat System}

Kerala Panchayat Raj Act, 1994 (being in force from 23\textsuperscript{rd} April 1994) co-existing with the constitutional provisions has set up village, block and district level panchayats as local government bodies. It also provides for grama sabha for each village panchayat wards or constituencies. It prescribes powers, duties and penalty for violation of any of

\textsuperscript{19} article 243G read along with article 243H, Constitution of India, 1950.

\textsuperscript{20} article 243I, ibid

\textsuperscript{21} article 243Z, ibid
its provisions. On the basis of the enactment, the newly elected local democratic bodies have come into existence\textsuperscript{22}.

The Act provides for reserving seats on the basis of population for Scheduled Tribes and Scheduled Castes and one-third of total number of seats for women at different levels of local bodies, including the post of Chairman\textsuperscript{23}. By 2009, the reforms introduced in panchayat raj and municipality legislation in Kerala has caused much higher rate of women representation in governance owing to mandatory election to posts of members, chairperson, vice-chairperson and standing committees. Higher percentages of seats are occupied by women in local bodies, as the table reveals. The president/chairperson/mayor of the concerned local body has been declared the executive authority. Fifty percent and more seats are earmarked for women as mandatory representation. Fifty percent of office bearers of each panchayat and urban local body are prescribed as mandatory women representation on rotation basis. Heads of the local government institution and chairpersons of standing committees are also specifically reserved for women and Scheduled Caste and Scheduled Tribes.

As the basic unit of decentralized democratic system at each grama panchayat ward, a grama sabha is constituted comprising all the persons whose names are included in the voter’s list\textsuperscript{24}. Four mandatory meetings, 10\% minimum quorum for each meeting, majority acceptance of resolutions etc. are prescribed for grama sabha functions. An employee has to be designated by the panchayat as coordinator of grama sabha to assist convenor. Whereas recently the experts pointed out that such grama sabha cannot be realised and hence the laws are to be reformed. In reality the grama sabha has not been functional in Kerala according to its pristine concept.

Gram sabha is expected to assist the panchayat in the preparation of village development programme, supervise their implementation, mobilise voluntary labour and contribute kind and cash for community development programmes and to assist the selection of beneficiaries\textsuperscript{25}.

\textsuperscript{22} See the provisions in Chapters 2 & 3 of Kerala Panchayat Raj Act, 1994
\textsuperscript{23} See sections 7, 8 and 9 ibid
\textsuperscript{24} See section 3, ibid
\textsuperscript{25} See section 3(8) ibid
Grama sabha also has power to discuss in its first annual meeting, the programme implementation in the ward during the previous year, developmental activities proposed to be undertaken during the current year, its financial implications, annual accounts, administrative reports etc. and hence it can function as a corrective form in checking leakages and malpractices.

In order to conduct the business of local bodies, certain standing committees are also constituted at different levels\(^\text{26}\). To perform the functions and to undertake duties certain sub-committees, joint committees and work committees are also envisaged in the Act\(^\text{27}\). Essential functions which are transferred to grama panchayat and the duties of grama, block and district panchayat are specifically stated in the Schedules of the Act\(^\text{28}\). The higher levels of government can entrust other powers or functions to the grama panchayats in addition to those enumerated in the Schedules\(^\text{29}\).

In each district a 15 member committee has to deal with the planning affairs. Twelve among them are to be selected from the elected members of the local bodies, and the district panchayat president will be the chairperson, the district collector will be the member secretary and a nominated expert member is also there in the district planning committee\(^\text{30}\).

At the same time the Kerala Panchayat Raj Act provides for considerable powers to the State Government with extensive control over the panchayat, and empowers the State Government to control, supervise, inspect, amend, modify, withdraw or cancel a resolution, a decision or an action of the panchayat. The Panchayat Raj Act empowers the Government to dissolve an elected panchayat\(^\text{31}\) and to remove any elected president, vice president, or chairman or member of standing committee on certain grounds\(^\text{32}\) and even to alter the Schedule under the Act\(^\text{33}\).

\(^{26}\) See section 162, the Kerala Panchayat Raj Act, 1994
\(^{27}\) See sections 163-165, ibid.
\(^{28}\) See schedule III, IV and V, ibid.
\(^{29}\) See section 154, ibid.
\(^{30}\) See section 534 of Kerala Municipalities Act, 1994
\(^{31}\) See section 193, ibid.
\(^{32}\) See section 159, ibid.
\(^{33}\) See section 283, ibid.
14.2 Analysis and findings of institutional capability

Field study held in different tiers of local bodies and focus group discussions (FGD) with the district level officials and elected representatives were also held to finalise the inferences, and to make it represent a cross section of the present panchayat institutions of different grades.

Preliminary findings

After the introduction of new Panchayat Raj Act, 1994, only two categories of panchayats have been proposed, viz. lower grade and higher grade, on the basis of annual income, area, population, labour availability, etc. But the special rules for fixing up the criteria for classification and gradation of panchayat raj institutions are yet to be formulated. So the grading under 1960 Act is still followed. But in urban areas, town panchayats or metropolitan corporations are not established in Kerala.

Availability of Executive functionaries – Personnel capability

While analysing the personnel capability, the availability of executives was also examined. The existing status of availability of executive functionaries in different panchayats was studied. In addition to the chief of the staff, the secretary, posts of assistant secretary, junior superintendent, head clerk, upper division clerk, lower division clerk, bill collector, peon / last grade, part time / temporary staff, panchayat / municipal common service personals etc. exists in local bodies. LSGD Engineering officials are also attached with the local government institutions.

Among village panchayats and block panchayats, the availability of executives of different levels is almost equal. But in several panchayats notable difference in the availability of human resource may be observed owing to administrative constraints in corresponding departments. In the case of special grade panchayats also inadequacy of executive personnel is observable. Whereas in urban local bodies departmental,

34 The gradation of panchayats categories has been made on the basis of the Kerala Panchayat Raj Act, 1960. No attempt has been made to revise the grade of panchayats after 1972. At present there are four grades of panchayat in the State on the basis of the actual annual income of the panchayat institutions as mentioned below.

<table>
<thead>
<tr>
<th>Grade</th>
<th>Description</th>
<th>Income Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>III Panchayat</td>
<td>- Income below Rs. 50,000/-</td>
<td></td>
</tr>
<tr>
<td>II Panchayat</td>
<td>- Income above Rs. 50,000/- and below Rs. 1,00,000/-</td>
<td></td>
</tr>
<tr>
<td>I Panchayat</td>
<td>- Income above Rs. 1,00,000/- and below Rs. 1,75,000/-</td>
<td></td>
</tr>
<tr>
<td>Special Grade Panchayat</td>
<td>- Income above Rs. 1,75,000/-</td>
<td></td>
</tr>
</tbody>
</table>
common service and contingent service persons are there without much co-ordination in their managerial or functional matters. This is causing considerable lapses in service of the local self-government system.

It may be observed that regarding appointment of contingency staff, there is no proper rule or budget limit to appoint persons as contingency staff for different purposes.

One of the important findings regarding availability of executive staff is that there is no uniform staff pattern in different tiers of panchayat. The present pattern is based on the 1963 reforms of the constitution of the panchayats institutions. Absence of executive personnel with supervisory capacity in panchayat institutions is a major drawback. Most of the rural panchayats are not getting the service of a junior superintendent. The post of junior bill collector was created during the period in 1960s, and the appointing authority was the concerned panchayat council. Now the responsibility has been entrusted to Public Service Commission. Certain new appointments like assistant secretary, accountant etc. has been made during the period. But this has led to the unavailability of junior bill collectors, once the existing staffs retire from service. So nowadays the field work is carried out by the clerical staff. It has created many difficulties in the day-to-day affairs, including revenue collection and office functioning. There are a number of part-time and temporary employees as sweepers, pond keepers, librarians and nursery teachers working for a consolidated salary fixed by the State Government from time to time. But there are no clear guidelines regarding the number of employees to be appointed and their service conditions. For example, the part-time sweepers are only for sweeping the office premises. They will not in any way engage in street cleaning. Only few panchayats are engaged in such public health and environment cleaning activities.

None of the panchayats has made any move to appoint additional staff at present and at present they are managing the day to day affairs using the existing staff. But when the new panchayat raj system is implemented in its full strength and concept, more and more man power in different areas will be required. There are no technical persons in any of these panchayats who can bring in technical expertise in various activities taken up by new panchayat institutions.
Educational qualifications, selection process, induction training, continuous training, effective functional tenure for each functionary in ministerial, technical and professional services shall be considered as relevant and essential matter for reforms in local self-governance in Kerala. Newly established functionaries like assistant secretary, accountant, accredited engineers etc. shall be specifically incorporated. The functions of village extension services, social security services etc. also shall be specifically mentioned while designing a well-established local governance system.

The most important suggestion expressed by the different personnel is regarding reorganization and refixation of staff pattern in the panchayat institutions in order to cope up with new functional and administrative activities. They also suggested a uniform staff pattern for different grades of panchayats which will help the easy placing of staff from one panchayat to another, as a common service. Regarding the non-availability of technical hands they have the opinion that the executives, such as assistant engineer, overseer etc. available at block panchayats may be deployed to carry out technical functions of the grama panchayat on a work arrangement. Such utilization will help to avoid additional financial expenditure.

Most of the panchayat functionaries hold the common opinion that the present staff pattern and strength should be reorganized in order to cope up with the increasing responsibility to be taken up by grama panchayats during the coming years. The technical expertise, presently available with the block panchayats, may be made available to grama panchayats so that it will not make any additional financial commitment to the State.

Shortage of employees at block level panchayat can be resolved through amalgamation of staff of block office, under the rural development department with the block panchayat office under local administration.35

In municipalities, the staff pattern and nature of work are entirely different and which is established through two parallel system of municipal common services and own functionaries of the urban local bodies appointed and engaged by them.

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35 This could be done with the implementation of G.O (p)40/95 RDD dt. 28 September 1995 and G.O No. 13005/3B3/95/RDD dt. December 1995
Personnel capability

In the present panchayat raj system, the secretary is empowered to perform the duties entrusted by the council from time to time and the total management of the functions as per the direction from the president. The secretary has a major role to play in implementing the various activities formulated by the panchayat body. Qualification and expertise in planning and formulation of programmes are the relevant factors in this regard. In most of the panchayats, the secretaries have good educational background and experience. Retention of executive staff in one place at least for three years is necessary for proper implementation of programmes. During the present study, it was observed that in a number of panchayats, secretaries could remain only for a maximum of two to three years. By and large the governance at local level is in the reverse order owing to lack of convergence among line department as well as transferred functionaries and LSGD functionaries.

Most of the panchayat staff, whether regular, contingent or transferred are experienced in different activities of the panchayat. But most of the panchayat raj institutions are not utilizing their service properly.

The panchayat bodies should see to it that available expert persons in the panchayat are used for different developmental activities.

Most of the managerial staff and the elected representatives of the panchayat institutions have attended different training programmes related to planning, development, implementation etc. conducted by different institutions like the Kerala Institute of Local Administration (KILA), Institute of Management in Government (IMG), State Institute of Rural Development (SIRD) etc. The managerial staff generally are interested in such quality improvement programmes, but ministerial staff do not have much exposure and opportunity for training facilities.

There is a general opinion among elected members that they should be given freedom to choose competent person as secretary and they should not be transferred for a period of three to five years. They shall also be given regular training for improving their capacity to cope up with the increasing demand of capability to carry out different responsibilities. Another opinion expressed is that a general pooling of competent persons, who may be appointed as secretaries, shall be made and the power of
appointment shall be vested with the elected panchayat at each level. The transfer of such persons shall also be made only in consultation with the elected bodies.

**Financial capability**

In order to evaluate the financial position of the Panchayat, analysis of three different aspects is made here. They are:

i. Study of proprietary position;
ii. Study of budgetary position; and
iii. Study of income and expenditure

Study of proprietary positions includes collection of information about ownership of permanent assets of the panchayat such as building, land and other immovable property. All the panchayats have their own office complex and most of them own some land also. Most of the local bodies have constructed shopping complexes consisting of shops and markets. Some of these constructions were made with the financial support and technical backup of Rural Development Board (RDB). Urban and rural local bodies have constructed and maintain bus stand complex with parking place as well as shopping complex, community hall, shopping complex cum conference hall as part of development programme with the support of RDB. Most of the panchayats provide free space for library, cultural centre, veterinary hospital, ayurveda hospital, children’s centre (anganwadis or IDCS centre) etc. This indicates that panchayat council is interested not only in the physical development of the society but also in cultural as well as social development and welfare of the people. An assessment of the assets owned by each panchayat based on the present market value shows that each panchayat owns properties with total value of more than Rs. 10 lakhs.

The budgetary provisions of each panchayat for respective financial year were also examined. The budgets are prepared under the new panchayat raj system, according to the provision of the Act including section 175 and the guidelines provided by the State Government. During the preparation of budget they could get advice and support from Government and panchayat raj institutions at higher levels. The involvement of the community in decision-making was also obtained through the grama sabha meetings. In each panchayat standing committees are also functioning effectively and have helped in the preparation of plans and budget.
Budget Allocation to LSGIs in Kerala during 2015-2016

Table I

<table>
<thead>
<tr>
<th></th>
<th>Grama panchayat</th>
<th>Block panchayat</th>
<th>District panchayat</th>
<th>Municipalities</th>
<th>Corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budgetary Allocation</td>
<td>20545841</td>
<td>4727594</td>
<td>1192018</td>
<td>2475793</td>
<td>7564100</td>
</tr>
</tbody>
</table>

Figure III

One may observe a clear change from budget records of the past and the current budget in the increase of anticipatory income. The anticipatory expenditure also has increased proportionately. But this is due to the enhancement of developmental and welfare schemes proposed to be taken up by local bodies. Even then they expect a higher rate of closing balance by the end of the year. This may be achieved through effective money management as well as public participation.

It is also observed that panchayat bodies are now willing to take up financial and other administrative responsibilities to implement any scheme independently. Most of them are preparing to develop capability for identification, planning and implementation of developmental projects.

The income and expenditure of the panchayat also may be analysed to get corresponding inferences. All the panchayats have promptly kept their account
statement and administration report. They are very punctual in recording the financial details and keeping registers regarding different dealings. Almost all panchayats are using the facilities of treasury accounts, bank accounts and post office account for their financial dealings. Day-to-day financial transactions are made by the secretary according to the directives of the panchayat president. Money provided through specific schemes like JRY etc. are deposited under the joint account of president and secretary.

The main sources of tax revenue are building tax, professional tax, entertainment tax, and duty on transfer of property. Part of basic tax collected through the revenue department is also made available as income. Advertisement tax and service charges are nominal in all panchayats. In the case of non-tax revenue the position of panchayat is not so sound. Owing to this, sometimes they have to depend on government grants provided by both Centre and State Governments. In addition to such grants rent from certain buildings, parking areas, money collected from sand auction etc. are other sources of non-tax revenue. From the available data it is found that the amount assessed as taxes and amount collected as taxes are almost equal. But the assessment system should be evaluated properly. Block and district panchayats absolutely depend upon the State Government grants for their functions.

On the expenditure side major amount is utilized in the general administration head, i.e. for the salary and allowances for officials and non-officials along with establishment charges. Unfortunately the water supply and sanitation have been given a low priority rather than other expenses like public work, lighting, education etc. But nowadays one may see a clear distinction between the necessities of developmental activities among the people as well as panchayat functionaries. They are trying to give much importance to shelter, food, social security, health care, sanitation and drinking-water problems.

The auditing and other aspects of panchayats were also examined during the study. Presently two different types of audit systems exist in panchayats. First, the detailed audit conducted by the local fund audit department of the State Government. Secondly, the audit conducted by the Chartered Accountant into the accounts of JRY programmes. Apart from this, test audit by Accountant-General is conducted. But one could see the lack of concurrent auditing in all panchayats. There is no clear cut
periodicity in auditing. In almost all panchayats their accounts are pending before the audit wing for long periods and hence current statutory audit and time bound correction do not happen in local self-government institutions.

The three major objections pinpointed by inspectors during auditing in most of the panchayats are:

1. Expenditure without permission;
2. Excess payment; and
3. Tax evasions

In addition to these drawbacks, various technical objections have also been raised by the auditors about the complex nature and multiplicity of accounting and increased number of registers as well as records. In most of the cases such audit objections are neglected by officials so that they will be forgotten in course of time.

Regarding purchase of materials, panchayats are free to use necessary amount for stationery and office purpose. There is no ceiling here. But in case of other purchases including projects, bulk purchase is allowed. They may utilize maximum amount of money within the limits. The limits are prescribed by the State Government from time to time. More fund may be utilized if it is possible to mobilize revenue through collective or individual contributions. For spending more money the panchayat should seek prior sanction of the State Government. At present a panchayat can utilize an amount up to Rs. 4,68,000/- on 39 different items prescribed. At the same time delay in getting sanction from the Government is considerable.

The non-availability of funds at the proper time and delay in obtaining Government sanction are creating problems to panchayats and this can be avoided by giving necessary powers to the concerned panchayat raj institutions. Deputy Director of the Panchayats at district level may be entrusted with such scrutiny income and expenditure in programmes and projects. Time bound performance audit never occur in its conceptual or practical sense. In real experience the performance audit becomes normal expenditure audit, a mere repetition of statutory financial audit. Multiple type of audit causes purposeless impact in local government mechanism of the State.
Drawbacks in the audit system may be resolved by effective internal auditing by concerned panchayat itself and filing a statement of the same to the higher level panchayat. In addition to this, audit inspectors should be provided at block level to scrutinize panchayat accounts. Social auditing through grama sabha should be legalised for critical evaluation of the conduct of development projects directly by people. Another suggestion is that power to provide administrative sanction for development programmes and to distribute necessary funds as per priority concern is to be vested with the district panchayat.

**Organizational capacity**

On evaluation of the ability of panchayats to organize independent and other development programmes with or without the support of other organs of the Government, assessment is made based on the following aspects.

1. Independent scheme;
2. Public participation scheme; and
3. Centrally and State Sponsored Schemes (CSS & SSS)

Instead of providing sufficient independent powers to panchayats to formulate own schemes, the policy of the Government is to treat them as implementing agencies for schemes conceived by other bodies. This sometimes leads to failure of some of the independent schemes taken up by panchayats. Even under adverse circumstances panchayats have proposed schemes and have completed them successfully. Construction of roads and canals, housing development schemes, construction of cultural / children’s centres etc. are such programmes. Panchayats had constructed water supply schemes and they were managed by beneficiary group support and women co-operative of that locality. In certain other panchayats check dams were constructed with the help of local people for facilitating increased water recharge and irrigation. From these it is obvious that if independence and autonomy are provided to panchayats, they may be in a position to take up development schemes and implement them with community participation. This is clearly demonstrated by data regarding reasonability of amount of expenditure and period of completion of activities.

If one considers the schemes implemented by panchayts with public mobilization, the record is not so bad. They have implemented eleven schemes in the area of water
supply and sanitation. In grama panchayat small village water supply programme and ESP schemes were implemented. During the last years panchayats had also succeeded in completing different schemes and beneficial programmes with the help of local people. This can be considered as model to all local bodies in social welfare and development activities.

The number of projects conceived under Jawahar Rozgar Yojana (JRY), Prime Ministers Rozgar Yojana (PMRY) and Prime Ministers Suvarna Jayanti Rozgar Yojana (PMSJRY) are also thoroughly examined in the study. This goes to show the efficiency of panchayats in obtaining financial support from external bodies and implementing programmes as per the prescriptions. Here the nature of work, number of completed works for the given period, amount used for the programme etc. are evaluated. Construction of houses under IRDP scheme, Rural Employment Guarantee Programme (RLEG), Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS), construction of open wells under Million Well Scheme, construction and maintenance of village roads, construction and distribution of ESP and CRSP type latrines and sanitary materials, construction of buildings for anganwadis etc. are the main projects undertaken thus. Seventy-five to ninety per cent of the projects were completed within the same financial year and remaining were completed in the next year. There was no lapse in utilizing the funds. All the panchayats have attained the limit and above within the project period itself.

This demonstrates that the amount utilised for water supply schemes is comparatively greater in the hard soil areas, but maximum amount is used for construction of infrastructure facility like roads and houses. The reason behind the phenomenon is the approach of the people towards development. Public attitude towards development activities should be changed. It is clear from the above data that government authorities are capable of understanding their problems and to realise their abilities. They are also willing to assume their role in implementation of projects in relation to socio-economic development.

Hence the selection of beneficiaries and projects, utilization of funds, implementation of programmes, maintenance and management of such programmes should be fully entrusted to grama panchayats. The co-ordination and advisory functions should be entrusted to block level panchayats. Then only the system can
achieve better result in independent and sectoral programmes. At the same time one should consider the main drawback like absence of uniform staff pattern reorganization, absence of technical staff, inadequacy of concerned norms and rules to guide the local authorities, dependency of local bodies on the government in introduction of schemes, existence and interference of line departments, general attitude of public towards environmental protection and pollution control activities, lack of knowledge about priority needs, necessities, available sources and possibilities from the side of panchayats, incapacity due to prefixed structure and guidelines along with different sponsored schemes, which restrain the decision-making capacity of panchayats.

While considering the participation of people in grama sabha, the first experience was bitter. The rate of participation varied from 60 to 175 votes and the actual participation in grama sabha varies from 613 to 1356 in different panchayats under the study. The rate and real number of participation in grama sabha gradually reduced owing to various reasons and deprived the possibility to strengthen the grass root democratic system in the society. To remedy this evil, neighbourhood groups consisting of twenty to fifty households, having democratic platform for sharing their needs and necessities, ideas for development and capacity building measures within the parlour of panchayat raj system shall be provided there36.

Though these constraints exist, certain potentialities are also present as discussed above, in order to strengthen the panchayat institutions in their task. Side by side, the weakness can be resolved through better intervention by experts, planners and policy makers. Maximum effort to mobilize public participation is another important medium for enhancing institutional capability of local self-government institutions.

14.3 Recommendations

The basis of the above analysis shows certain points for future discussion and action are proposed. The steps taken under these proposed points will empower the panchayat raj institutions in their organizational set up to a considerable extent. It will help them to take over the challenges from developmental crisis and living issues of

36 See the neighbourhood group organizational system of the State Kudumbasree Mission, LSG Department, Government of Kerala.
public life. As a whole, this will be helpful to the panchayats to satisfy the expectations of the people.

i) The basic changes intended and introduced through the 73rd amendment and the Kerala Panchayat Raj Act and the motivation of democratic decentralization behind those legislation shall be compulsorily implemented.

ii) Administrative action shall be taken for reflecting the proposed changes in actual practice.

iii) The role and limit of each line department and each official shall be made clear under the new establishment. LSG manual and performance guidelines, Institutional Management guidelines etc. shall be introduced.

iv) Sufficient rules and orders shall be formulated for prescribing the powers and duties of each level of panchayats in their day to day affairs.

v) The existing limits of transactions shall be refixed to suit the new circumstances.

vi) Complex rules regarding administrative and technical sanction procedures shall be liberalised.

vii) Along with co-ordination of activities at higher levels of panchayats, the villages should be provided with adequate professional support.

viii) Independent power to plan development programmes shall be vested with decentralised local authorities.

ix) 50% of State budget shall be provided to the local bodies in the new circumstances and legal provision shall be included in the Act for this purpose.

x) Activities of village office (Revenue Department), grama panchayat (Local Administration Department) and rural development (Rural Development Department) shall be unified at the grama panchayat level in order to improve the performance and reduce the expenditure to public money. It will help to reduce the difficulty of the people to satisfy their general needs through these departments.

xi) Redefinition of duties shall be made between the village-block and district level panchayats. Allocation of staff should also be made suitably.

xii) Authority to collect taxes and utilise the amount shall be vested with panchayat institutions, avoiding departmental interventions.
xiii) In the area of water and sanitation programmes a detailed organization network shall be formulated before its implementation. In this network the most important position with capacity to conceive and implement programmes shall be provided to gram panchayat. Thereafter, block panchayat shall be vested with power of technical supervision and guidance. Only co-ordination activity is to be vested with district panchayat in order to control the functions at lower levels. Hence programme beneficiary unit may be formulated at the district level.

xiv) At the lower level of panchayat, i.e. the ultimate implementation stage, a detailed classification of functions is necessary and it may be proposed.

xv) The state level integrated system of employees and allied functionaries shall be reconstituted accordingly as follows:

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Panchayat Committee (president, secretary and elected members)

i) Local Development Council (standing committee and selected members of panchayat and sub committees for each specific purpose).
ii) Functional Committee (officials, non-officials and volunteers)
iii) Ward Committee (ward member – convener)
iv) Grama Sabha Executive Committee / sub-committee
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Gram Panchayat

Local Development

Functional

Ward Committee

Neighbourhood Association
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v) Neighbourhood associations of every 50 houses (Two volunteer convenors – one woman compulsory)

The basic Neighbourhood Association shall be utilized for supervision and management of village water supply and environment sanitation programme. The ward committee shall be entrusted with the awareness programme and environment creation. The functional committee shall be empowered to conceive different projects, construct and maintain them and manage the functions with active public participation through ward committees. The financial and planning activities shall be vested with panchayat committee as a matter of policy and principle.

xvi) Integration of administrative and executive departments into an umbrella system as local self-government ministry incorporating panchayat, rural development, municipal administration and municipal common services, town and country planning, LSGD Engineering wing, as well as State planning department is essential for proper and efficient implementation decentralized governance in the State.

   a. The existing functionaries and institutions under the existing line departments integrated and amalgamated together including the State services, State subordinate services and last grade services along with their posts and vacancies into a common LSGD services.
   b. The existing employees under municipal common service shall be recognized as government service for integration purpose.
   c. Along with enforcement of integration, corresponding special rules for establishment of selection, appointment, promotion and other service conditions of each category of employees without negating their existing benefits and aspirations in the service and protecting the existing seniority in corresponding departments.
   d. Re-designation, re-deployment, restructuring of State level, district level and block level and local level functionaries is essential as per a detailed work study and the post of secretary to the village panchayat, block panchayat and district panchayat in the rural sector as well as secretaries
of municipalities and corporations shall be emphasized with a status of chief of the executive in the concerned level. So the working conditions shall be specified accordingly for those posts.

e. In order to feel the benefit of such an integration to the people at large, there must be relocation of lowest level of executive establishment as zonal office especially for nine to twelve wards in village panchayats with more than 18 constituencies and municipalities with more than 26 constituencies, as well as for 10-11 divisions in corporation to render basic services to the local people. This will help us to reduce the work load of the LSG offices and difficulty in access to those offices for the public can be considerably reduced.

f. There shall be a town and country planning office for each municipal town and five to six village panchayats at the outskirts of that municipality as a cluster office so as to function in matters like spatial planning, implementation of building rules, protection of green belt etc.

g. Existing block level, municipal level and region level of corporations shall be considered a rationalized common level in order to establish integrated and converged LSG Engineering and town and country planning offices.

h. The STATE level establishment of LSG Umbrella Department shall be under a senior civil servant as Chief Commissioner or Principal Commissioner of local self-government and the existing line department heads shall be consolidated under the Principal Commissioner as commissioners for each wing along with the Chief Engineer for LSG Engineer wing, Chief Town and Country Planning Officer, Chief State Planning Officer as specialised services.

i. At the district level apart from the secretary to the district panchayat and corporations all other service functionaries shall be envisaged under the oversight of senior joint commissioner for LSG Department.

j. Considering the LSG integrated services in practice there shall be a performance audit wing at each block panchayat, graded municipalities and municipal corporations so as to enforce time bound correctional monitoring and audit in the performance of local bodies.
k. There shall be a detailed performance manual for integrated LSG Department so as to define the role, responsibilities, functions, audit, and accountability of each and every functioning in the following LSG integrated services.

l. Restructuring of the integrated LSG Department can be represented as follows: (See the figure overleaf)

m. For conformity of planning process, especially for planning and enforcement of Scheduled Caste – Special Component Plan (SC-SCP), Schedule Tribes – Tribal Sub-plan (ST-TSP) and plan formulation for other weaker or marginalized sections of the society, mandatory budget allocation, distribution and utilisation of funds and resources a separate, detailed legislation for the purpose is to be promulgated along with district level and state level overseeing agency in the planning process. Detailed content of such a legislation shall be prepared according to effective consultation with concerned stake holders in this regard.

n. For dispute settlement and adjudication in the grass roots, *Lok Adalats* or People’s Courts have to be established with Head of the Council as presidency person, and equal number of elected and legal personals as members to consider cases with small causes, adversarial and non-adversarial matters. Alternative Dispute Resolution (ADR) measures can be used by these *lok adalats* in order to determine disputes.
Legislative, administrative, financial and socio-political reforms are essential in this regard. Political will and social commitment are prerequisites for the purpose. Scientific, legal and practical restructuring and implementation in decentralized democratic governance should be present for administering Kerala as a real and reasonable model in local self-governance for the country as well as the world.
CHAPTER XV

ALLIED INSTITUTIONS

WITHIN THE LOCAL GOVERNANCE

Several functions and powers were transferred to the three tier system of panchayats. But most of these are effectuated through several other enactments. Some of those enactments had their origin in the pre-independence period. Certain others have generated from Travancore and Cochin residencies. Some such laws are made by the legislative assembly of the unified State.

Functions vested in the local bodies under the allied enactments relate to economic development, social service, social welfare, infrastructure developments etc. Hence to enable these bodies to carry out the functions effectively as units of local self-government, it is necessary and expedient to consolidate such allied legislation and modify them to cope with corresponding provisions in the Panchayat Raj Act.

Functions of panchayat under allied enactments evince two characteristics. One, devolution of powers to make policies and implement them and the other, delegated powers to execute certain functions within specified limits. These functions and duties may be effectively performed only when necessary changes are incorporated within the existing legislation in order to equip and empower local bodies with such powers. Main enactments and their provisions which necessitate reforms and modifications are discussed below.

The Cattle Trespass Act, 1961

Under the III schedule to Kerala Panchayat Raj Act, 1994, management of cattle pounds is a mandatory function of the grama panchayat\textsuperscript{37}. Similarly pound keeping is the duty of the municipalities also.\textsuperscript{38} The Act consolidates and amends the law relating to trespass by cattle on lands causing damage to crops and other produce.

\textsuperscript{38} Item No.15, Schedule 1, The Kerala Municipalities Act, 1994.
thereon. The Act is very much in frequent application in Panchayats and municipalities, where there are farms and agricultural fields. A local authority under the Act means any municipal corporation, municipal council and local panchayat. The State Government can appoint any other authority anywhere if it feels to do so. Director of Panchayat is the person authorized under the Act.39

But Director of Panchayat is not a functionary either under Kerala Panchayat Raj Act or Kerala Municipalities Act. Further his role is to notify officers stationed at the State capital to consider and dispose such complaints effectively, and to consider complaints if any. It is preposterous to assume that therefore section 2 (2) may be deleted. Interim level panchayat and district level panchayat have no jurisdiction over the matter. Hence the word ‘grama’ may be inserted before the word ‘Panchayat’ in section 2(3)40.

Under this enactment ‘Director’ is the authority to determine the area and to establish pounds. This is against the concept of democratic decentralization. It is a vestige of the bureaucratic dominance over the elected representatives of the people. So the power may be given to grama panchayat or municipality.

Similarly, it is not necessary to open cattle pounds in each panchayat. One pound in one particular panchayat may be used by nearby panchayats. In such circumstances neighbouring panchayats can pass resolution reorganizing a pound in one local authority for its purposes. And a panchayat having its own pound may accept a pound of another panchayat nearer to the place where the cattle is caught. In order to effect these changes there must be new subsection added to the provision.41 Corresponding amendment is to be incorporated in respective sections of the Act.

At present the law requires that the seized is to be sent to the pound within 24 hours. This will lead to starvation of the seized cattle for the next twenty four hours. This may amount to cruelty towards the animal. Therefore the time may be reduced

39 sections 2(2) 2(3) of The Cattle Trespass Act, 1961.
40 sections 5(3), (4),11(3) and 17(1) of the Cattle Trespass Act, 1961 also may be amended in a corresponding manner.
41 section 3, ibid
to twelve hours.\textsuperscript{42} Usually the cattle seized may be severely hurt or injured. If the person in charge of the pound, on production of a cattle, finds that it has been severely injured or hurt has to report the fact to the secretary of the panchayat. Secretary has to at once assure the service of veterinary surgeon to assess the hurt and injury as well as to provide treatment to the animal. He should realize the actual expense for treatment from the person who produced the cattle. In addition to that feeding charges, watering charges and other maintenance charges as well as fine from the owner of the seized cattle should be realized by the local authority. Provision which empowers the director to fix and notify the rates in the present enactment shall be amended accordingly to give such power to the concerned local authority\textsuperscript{43}. Amount may be realized at double the rate if the cattle of the same owner is seized and produced more than once.

Chapter V of the Act provides for complaint against illegal seizure and detention of cattle before the collector or district magistrate. This is against the spirit of panchayat raj concept. In addition to this, if there is any complaint a suit may be filed after giving thirty days’ notice to the panchayat\textsuperscript{44}. This can take care of complaint and Chapter V may be deleted from the Act. Section 31 deals with delegation of power vested with the Director. The provision is superfluous as no power is given to the officer delegation. Hence the section also has to be omitted.

\textbf{Local Authorities Loans Act, 1963}

Aim and objective of the enactment is to unify and amend the law relating to borrowing powers of local authorities in the State. A local authority may subject to prescribed condition, borrow money from the Government or with the previous sanction of the Government from any other person on the security of its funds or any portion thereof, for any of the following purposes.\textsuperscript{45}

(i) To carrying out any legally authorized work;
(ii) To establish or maintain relief works during famine, scarcity, epidemic, floods, droughts etc;

\textsuperscript{42} section 9 (1), ibid
\textsuperscript{43} sections 10,11,12,13 and 15, ibid
\textsuperscript{44} section 249 of the Kerala Panchayat Raj Act, 1994.
\textsuperscript{45} section 3 of the Kerala Local Authorities Loans Act of 1963.
(iii) To prevent the outbreak of dangerous epidemic and any measures connected with or ancillary to the above said situations; and

(iv) To repay any previously borrowed money within a limit of sixty years.

The Act denotes that funds includes any local, panchayat or municipal fund under the control or management, where such authority is legally entitled to impose and any property vested in the authority. But such an approach is against the provisions of Kerala Panchayat Raj Act. Under that Act secretary cannot be said to have control over the fund of the local authority, and power to impose any tax or rate. The local self-government authority alone can impose any rate, change or tax only according to a provision of law enacted by the State legislature. The power is to be used only through a resolution of the elected body. Hence, the secretary who is the Chief of the executive of the local government authority cannot be empowered with such a function. The power may be used by elected chairman or president of a local authority. Hence the provisions may be changed so as to enable decision by the council or committee of the local body and as per the authorization on the basis of the decision of the chairman or president, the secretary shall discharge the duties and functions under the Act46.

Money may be borrowed only with previous sanction of the Government. This provision also militates against the autonomy of local bodies and results in increased dependence on the State. So the prescription also has to be amended. If the purposes and monitory limits are once specified by the State Government, there will not be any necessity for pre sanction. The Act provides for receiving loan from any person, but there is no specification regarding the creditor. This may create confusion. So the provision has to be deleted and a schedule included to enlist who has to be the accepted or recognized creditors for local government authorities47.

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46 sections 2,3, ibid
47 sub-section (1) of the section 3, ibid
Kerala Cinemas (Regulation) Act, 1958

The enactment provides for the regulation of exhibition of cinematographs in the State. The Act and Rules thereunder are regulatory in nature. It may affect the fundamental right of a person to practise any trade under article 19(1) (g) of the Constitution.

By the amendment Act of 1975 it was provided that the authority having power to grant a licence under the Act shall be the executive authority of the local authority within whose jurisdiction the place in respect of which the license is sought. Resolution of Panchayat is not necessary since the licensing authority is the executive officer\(^{48}\). The refusal to grant licence is to be based on relevant considerations. Public interest shall be taken into consideration. Hence the power given to the executive authority has to be strictly interpreted. Judicial review exists in this matter.\(^{49}\)

Under the original enactment, the executive officer of the local authority was vested with powers to grant, withdraw or refuse a licence. Instead of conferring the power on the elected body at the local level, the power is vested with the Executive Officer.\(^{50}\) This was because the power to licence is a discretionary power and cannot be exercised by a group of persons.

The suggestion is that the law has to be reformulated so as to uphold the power of elected democratic bodies. The basic power to discharge the discretionary functions like licensing is to be vested in the secretary of the local body and an appeal should be to the local self-government Authority. Such an amendment will have to meet the objective that a legislative or deliberative body is not suited to exercise judicial power.

The content of Section 4 of the Kerala Cinemas (Regulation) Act has to be amended. Decision making power on an application for license shall be vested with the elected council of the village panchayat or the municipal corporation. Then

\(^{48}\) see section 4, The Kerala Cinemas (Regulation) Act of 1958.

\(^{49}\) State Of U.P. and another vs Raja Ram Jaiswal And Anr, AIR 1985 SC 1108.

\(^{50}\) Section 4, ibid
secretary of the local authority shall carry out the decision in the capacity of the Chief Executive of the local authority.

Under the existing Act there is a provision empowering the government, through a notification to constitute an authority for any specified or notified area to act as the licensing authority.\(^51\) This is an instance of violation of the concept of decentralization. The provision may create State intervention. In the changed circumstances the provision is unnecessary and may be deleted.

Wide administrative powers regarding licensing, approval of plan site and location, construction evaluation, collection of fee, renewal and revocation of licence, inspection etc. are vested with the executive authority and other officials.\(^52\)

Among the powers renewal as well as revocation has to be with the council. This is because the provision will ultimately cause concentration of administrative decision making power in the government functionaries instead of elected representatives of the panchayat. Hence the proviso given to section 4 of the Act may be suitably amended. Rules are also to be modified accordingly.

Revenue divisional officer or district collector may be appointed as appellate authority over the decisions taken by local body \(^53\) and an officer authorized to have revisional power in such decisions of local bodies.\(^54\) This is open to serious criticism, such as governmental control and bureaucratic intervention on the power of elected bodies and concentration of powers in the hands of higher echelons of government servants. It may be avoided only through deleting such a provision. Here also it is to be noted that no appeal power is vested with the elected body.

The Act provides that the State Government may call for and examine the record of any proceeding taken by any local authority under the Act. After giving an opportunity to be heard the State Government may take necessary decision on such matters.\(^55\) In addition to this Government is empowered to issue interlocutory directions or orders in the nature of injunction, pending disposal of a revision

\(^{51}\) section 4, ibid  
\(^{52}\) ibid  
\(^{53}\) section 5, sub-section 7 Clause (i) and (ii), ibid substituted By the Amendment Act of 1975 and Gazette Notification No.1 dated 12-12-1978.  
\(^{54}\) section 4 and section 5(7)(i)and (ii), ibid, substituted by the Amendment Act of 1975.  
\(^{55}\) section 12, ibid
petition preferred before it. An analysis of these provisions proves that powers of local authorities can be easily superseded by the administration. Hence the provision may also be deleted from the enactment. Instead of entrusting the administration to have such powers it may be vested with any specially constituted body for dispute or conflict settlement within the decentralized administrative system. The Government may assist such authority through formulating broad guidelines in the discharge of the functions.

**The Local Authorities Entertainment Tax Act, 1961**

The preamble of the Act provides that the enactment is to unify and amend the law relating to the imposition and collection of tax on amusements and other entertainments in the State. Though the Act was made for entrusting local authorities to collect revenue on entertainments, it includes many provisions against the concept of democratic decentralization and the autonomy of local government. The Act requires the following alterations.

(i) The Act mentions only panchayat, municipal council and city corporation under the definition of the term ‘local authority’.56 This may be due to the absence of multi-layer panchayat raj at the time of the enactment. But now the local bodies under Panchayat Raj Act belong to three tiers. Among these the power to levy tax is given to village panchayats only. Hence to avoid confusion the definition of the term ‘local authority’ shall be reformulated by including ‘village panchayat’ instead of panchayat in the corresponding provision.

(ii) The Act specifies certain areas like educational exhibitions, public health, philanthropic, religious or charitable purpose etc. to be exempted from taxation. And the Act also provides that if any dispute arises on the matter it may be referred to the district collector, whose decision shall be final.57 The power to take, final decision, entrusted with a government official will affect the democratic decision-making power of an elected body. Hence the concerned provision shall be deleted from the Act.

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56 section 2 sub section 6 clause (8) of the Local Authorities Entertainment Act 1961
57 section 7 sub section 2, ibid
Power to grant exemption from tax to certain items is vested with the local authority. But the power may be utilized only with previous sanction of the State Government. Apart from this, the Government is empowered to exempt any particular or any class of entertainments after consultation with the concerned local authority. The method of consultation is not at all specified and an unlimited power of exemption conferred in the administration will hamper the fiscal balance of the local government. Hence the provision has to be deleted.

Local authority may make bye-laws regarding supply and use of tables or stamps or embossed tickets. But in the case of panchayats such byelaws shall have effect when they are approved by the Director of Panchayats or such other officer not below the rank of Deputy Director as may be authorized by the Government and published in the official gazette. In case of municipalities and corporations the approval shall be that of the State Government. These two provisions are also detrimental to the autonomy of local government authorities and shall amount to concentration of power in the State. This may be utilized to control the functions of local bodies by government officials. It may be said that the provision has a laudable objective of achieving uniformity in the tax collection procedure of different local authorities in the State. But such an objective can also be easily achieved by framing model bye laws and requiring the local authorities to abide by them.

The judicial approach towards the taxing power vested in the local body has been proved as “when amount of tax is not shown and no stamping in the ticket but only seal of the local body, the authority has no right to collect tax.” It shall affect the capacity of local authority to control and prevent tax evasion because under such a finding the hands of local authority become tied up. This will cause reduction in revenue of the local authority and will provide evasion by tax payers.

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58 section 7 sub-section 3 of The Local Authorities Entertainment Tax Act, 1961
59 section 12(1) a, ibid
60 section 12(3), ibid, as substituted by section 4 of the Act 15, 1962
61 Bava Cheriyan v Municipal Council, Kottayam, 1967 KLT 381
The Additional Tax on Entertainments and Surcharge on Show Tax Act, 1963

The Act provides for the levy of additional tax on entertainments and surcharge on show tax collected by local authorities. The statute was originally enacted in 1963 to contribute to the State revenue as it stood before. The additional tax and surcharge had to be handed over by the local authority to the State Government after deducting 2% of the amount as collection charges. Now the Act provides that the whole amount has to be credited to the fund of the local authority concerned.

As such there is no necessity to retain such an Act anymore. The enhancement or rate fixation of entertainment and amusement as well as show tax can be sufficiently covered by the necessary amendment introduced in the Local Authorities Entertainment Tax Act 1961. The Rules under Kerala Panchayat Raj Act also have to be reframed accordingly.

Corresponding changes have to be made in Panchayat Raj and Municipality Acts and Rules so as to avoid tax evasion and corrupt practices taking place in this field. For that a minimum of 24% and maximum rate of 38% shall be fixed as permissible limits of tax collection with respect to the classification of the local authority and the place of exhibition etc. Appropriate rate within this limit shall be fixed by the local authority, i.e. the elected council for that place. The duty to impose the tax and collection as well as accounting shall be carried out by the secretary of the local body.

Under the enactment also the absolute power of revision is given to the State Government to meet any difficulties or contingencies. So the power to fix rates as well as power to issue orders will amount to an unwarranted intervention and supremacy to the State over local governments. Hence the provision shall be deleted from the enactment.

62 section 4 of the Additional Tax on Entertainments and Surcharge on Show Tax Act, 1963
63 Ibid, Substituted by the Amendment Act of 1975
64 section 6, ibid
The Kerala Places of Public Resorts Act, 1963

The Act unifies and amends the law relating to the licensing of places of public resort or entertainment in the State. Places of public resort means any place, enclosure, building, tent, booth or other creation, whether permanent or temporary, where music, singing, dancing or and diversion or gain or the means of carrying on the same is provided and to which public are admitted either on payment of money or with the intention that money may be collected from those admitted otherwise than for bona fide charitable or religious purposes, and shall include a race course, circus, theatre, music hall, billiard room, bagatelle room, gymnasium and fencing school etc. except the places licensed for the purpose of cinematographic exhibition, provided that such enclosed space shall not exceed 50 sq. metre. Building in the definition includes a house, hut, shed or roofed enclosure.

The provisions of the enactment have to be changed so as to be in consonance with new Panchayat Raj and Municipalities Acts. For this purpose, terms like village panchayat, municipality, municipal corporations, Industrial township etc. have to be inserted in the definition clearly. Certain terms like township, city corporation etc. have to be deleted.

Along with this the designation of the authority issuing licence has to be changed as the secretary of the local authority concerned. In this case the initial appellate authority shall be vested with the elected local body as the grass root level governance.

The State Government is vested with power to call for and examine the record of any proceeding taken under the Act. It may call for a report, make or cause to make any further inquiry and after notice to parties, and hearing them, pass any order which the authority could have passed. While using power the Government pass interlocutory order of injunction, pending disposal of a revision petition. This is also against the spirit of decentralization of administrative power. Instead of this type of intervention by a higher level government, there may be a provision for a

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65 section 3 (b)of The Kerala Places of Public Resorts Act, 1963.
66 section 3 (a), ibid
67 section 13, ibid
68 Abdul Rahiman v. Executive Officer, Alathur Panchayat, 1977 KLT 78.
settlement and the aggrieved party may approach the local government for resolving the dispute regarding the decision of local authority.

**The Madras Public Health Act, 1939 and The Travancore- Cochin Public Health Act, 1955**

Under the democratic decentralization, responsibility of public health is vested with local authorities. Functions such as control and management of hospitals, maternity and child welfare centres, implementation of health education and vaccination programme, cleaning of public places, removal of waste, destruction of stray animals, control of mosquito breeding, maintenance of public comfort stations, licensing of offensive, dangerous trades and improvement and preservation of public health standards are to be transferred to the local government institutions. Even today different and distinct hierarchical institutions and officials are there to deal with public health matters.

Many of the above functions, except the management and control of hospitals and dispensaries, were in vogue in panchayat and municipalities for more than half a century. The Madras Public Health Act, 1939 allotted the functions to local authorities. Thereafter the Travancore – Cochin Public Health Act, 1955 followed suit. Now the question which arises for consideration, is whether the Kerala Panchayat Raj Act and Kerala Municipalities Act need be amended to bring within its folds the functions of the local bodies in the area of public health or whether the corresponding public health Act be amended to accord with the functions newly introduced in Kerala Panchayat Raj and Municipalities Acts in regard to control and management of hospitals and dispensaries. Along with this, the provision for registration and licensing of private hospitals and medical institutions should be added. It seems that the latter course would be more conducive. It is high time to redraft the public health enactments. Hence a thorough reformulation of the acts with respect to the changed scenario in the State is necessary.

With above objective in view, there are certain important suggestions to be proposed in Madras Public Health Act and Travancore – Cochin Public Health Act.

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69 Items 9 of Schedule I of The Kerala Municipalities Act, 1994 and items 9-24 of Schedule III of the Kerala Panchayat Raj Act, 1994
1. The terms “Local Authority, District Councils, Executive Authority” etc. shall be redefined accordingly to denote village panchayat, in the matter of public health centres, and in the case of community health centre as well as general hospitals, the block panchayat, municipalities and district panchayat, respectively.

2. For the conduct of functions the post of a public health officer has to be provided in each municipality and panchayat. The function may be entrusted with one medical officer of the headquarter hospital or the primary health centre. In addition to this, each village panchayat shall be provided with the post of one health Inspector as the field staff of primary health programme. Here the terms like “may and if the government so direct” shall be deleted from the respective provisions of the Act.

   In case of village panchayat, block panchayats and municipalities, a primary health centre, community health centre or dispensary functions within the area of which, the senior medical officer of that centre or dispensary shall be re-designated as the health officer of that local body.

3. Regarding the control and management of public health institutions by local authority following new provisions have to be incorporated within Chapter III of the Act viz.

   (i) The village panchayat/municipality will exercise control and management over primary health centre and dispensaries within its local limits. Community health centre shall be under the control and management of block panchayats, and municipality will have the control and management over the taluk hospitals, district panchayat is to be in charge of district hospitals and such other institutions within the district.

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70 section 2 of the Travancore-Cochin Public Health Act, 1955
71 section 7 (1), Ibid
72 Ibid
73 chapter III section 14 of the Act of 1955, Ibid.
(ii) Allopathic, ayurvedic, homeo and other systems of medicine shall be under the institutional control and management of local authorities at each level.

(iii) Integrated sanitation and education programme, immune vaccination programme etc. shall be made under the control and management of local bodies.

(iv) The standing committee on health and education of the local body shall be entrusted with the power to supervise, control and administer the day to day functions of public health institutions established under health department within their territorial area. They shall look after the basic amenities like food, patient, bed and other articles of furniture, maintenance of building and other infra-structure facilities providing public comfort system etc.

(v) For effective administration of institutions and programmes maximum effective public participation has to be mobilized. For this purpose a beneficiary committee may be constituted for maintenance and management of the institution. Its powers, functions and duties shall be clearly defined in the Act.

(vi) Complaints, if any, regarding the function of health authorities will be heard by the standing committee and after consultation with the medical officer concerned, redress the grievances.

(vii) If the services rendered by the staff of the establishment are found unsatisfactory, the standing committee will inquire and report the matter to the council or committee of the local authority which shall take up the matter with the Director of Health Services and seek remedial measures.

(viii) The controlling power is now entrusted with the State Government. But it is against the concept of decentralization. Hence corresponding changes shall be made in this regard so as to provide, inspection, control and supervisory powers to local authority but policy and
rulemaking as well as appointment powers remain with the State Government.\textsuperscript{74}

4. Regarding private hospitals and health institutions registered with the local authority, the following provisions shall be included. It includes private hospitals, dispensaries, midwifery centres and para-medical institutions like clinical laboratories, x-ray laboratories, scanning centres, blood bank etc.\textsuperscript{75}

(i) The private institutions registered with the local authority shall maintain the standard of facility, treatment and other services as may be prescribed by the Government or laid down by a local authority or an authority constituted for this purpose by the Government as per the Rules thereunder.

(ii) If any complaint is received by the local authority in regard to lack of facilities or services or of service by unqualified hands, they shall be referred to the appropriate authority to conduct inquiry and report. Based on such report the local authority, may after giving due notice, demand the institution to rectify the defect or provide adequate compensation.

If the establishment fails to comply the direction so given, the registration shall be suspended or cancelled for such period till the defects are rectified.

(iii) Registration fee or tax may be imposed on such establishment at the rate prescribed by the State Government according to the number of beds for in-patients and other facilities provided by the institution.

(iv) In addition to registration fee and tax a hospital cess may be imposed with respect to water supply and waste water disposal and management of other waste material from such establishments.

(v) In the case of specialized and large institutions a district-wise authority shall be appointed as registration authority.

\textsuperscript{74} chapter II Section 4 of the Act of 1955
\textsuperscript{75} chapter XXV Section 269 of Kerala Panchayat Raj Act, 1994
(vi) It shall be provided that such institution shall furnish a detailed statement regarding staff strength, infrastructure, services rendered, income and expenditure before the concerned authority. The council or standing committee concerned shall have power to verify the statement and take appropriate decisions.

(vii) The registration authority shall be vested with powers to inspect premises, examine records and registers and refuse or withdraw registration etc.

(viii) Every private hospital or dispensary shall maintain correct account of income and expenditure which shall be open for inspection by local authority or a chartered accountant authorized by them.

(ix) Where the rent and other amenities charges exceed rupees fifty per bed, per day, there shall be provision to levy hospital cess at a rate fixed by the State Government, (say 2% of such rental charges) payable to the local authority on the date of discharge of the patient.

(x) Where the strength of bed is more than 25, the private hospital establishment shall be liable to pay rupees five hundred per month towards charges for removal of solid and liquid waste from its premises. The charges may be increased by multiples of 25 on bed strength.

(xi) If there is failure to maintain correct account or default in payment of cess and charges, the local authority may suspend or cancel the registration. Under Panchayat Raj and Municipalities Act supply of drinking water is a function of village panchayat and municipality. Public health Acts also provide so. But now water distribution is entrusted to Kerala Water Authority. Hence corresponding amendments have to be made in Kerala Water Supply and Sewerage Act, 1986 in order to transfer the function to local authorities. Provisions of public health Acts also shall be reformulated so as to achieve the goal.

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76 Chapter III Section 15, The Travancore- Cochin Public Health Act, 1955
The remaining chapters also call for no material amendment. The Madras Public Health Act is also on the same lines. It is high time that one should seriously think of a reformed law on the subject for the whole of Kerala. In addition to this the Panchayat Raj and Municipalities Act also shall be amended to include following points.

(i) Standing committee of the concerned local body for health shall be entrusted with development and management of hospitals. Government hospitals, dispensaries and paramedical institutions as well as private institutions shall be under the control of such committee. Under the direct control of the standing committee there shall be a hospital development committee. It shall collect funds and use it for the health, public sanitation and hygienic programmes. Registration fee of patients, fee for gate pass, etc are to be used for the development fund.

(ii) Waste management facilities shall be established and effectively maintained, and used by hospitals. Standing committee shall be entrusted to confirm the presence of such waste disposal system.

(iii) Staff strength of the hospital/institution shall be disclosed to the standing committee, through annual statement furnished by hospital. It shall be made an essential requirement for registration also.

(iv) Effective and integrated health education, sanitary literacy, drinking and bathing water facility immunization etc. should be brought under the functions of local bodies and implemented through the concerned official network transferred to them. Neighbourhood committees shall be organized for the effective implementation of these programmes. It was discussed in detail while considering the institutional capability of local authorities.77

Two important points remain to be dealt in detail and separately. One is the power of local authority to abate nuisance and the other is the disciplinary power of the executive authority of the local body. The local authority is to be entrusted with the power to inspect or cause to be inspected any premises from time to time to

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77 Supra note 36
ascertain existing nuisance. Satisfaction of the health inspector, not to be inspired and it is the condition precedent to any order. An order of health officer prohibiting use of a place for any particular purpose cannot be ignored by district collector or police on the ground that they are not satisfied with its legality or correctness. But there is a public duty and obligation on this part that there are no flagrant violations of the order. Regarding abatement of nuisance, corresponding provisions are incorporated in Kerala Panchayat Raj and Municipalities Act also. Thus the final administrative capacity shall be vested with the local authority and in case of dispute, if any, an independent tribunal shall be constituted to resolve such disputes.

For the effective implementation of the power, regulative and controlling as well as decision-making, authority shall be vested with the local body and shall implement the decisions through health officials. The authority to discharge discretionary function is to be vested with the health officer and essential or appellate decision-making power be vested upon the local self-government authority so as to establish it as the grass root governance body. Amendments to enable such an integrated functioning shall be made in the Public Health Act.

Regarding the second point, the disciplinary action against members of public health establishment of a local authority by the executive officer is not maintainable. In case of misconduct of corporation servant, after enquiry and acquittal, subsequent enquiry into the same charges and dismissal is illegal. The government has no power to direct such a revival of disciplinary action. This will create difficulties in effective performance of health protection measure. Otherwise it may create dissatisfaction among persons in health profession. The problem may be resolved through empowering the local body and its elected president as the executive authority with disciplinary powers under corresponding service rules, and health officials as well as secretary of local body as implementing officers.

78 sections 40 to 45, The Travancore- Cochin Public Health Act, 1955
79 Rev. Fr. Antony v. Health Inspector and others, 1964 KLT 15
80 Thomas A. Ninan v Krishna Pillai Karthikeyan Nair, 1963 KLT 967
82 Padmanabha Pillai v. State, 1960 KLT 197
Kerala Rural Development Board Act, 1971

The Act provides for the establishment of Kerala State Rural Development Board for arranging water supply, shopping and marketing, infrastructure facilities and other development schemes in rural areas in the State of Kerala. The board now functions as a financial agency to provide funds to village panchayats, principally for construction of shopping complexes, community halls etc. The board engages in execution of construction works also. At present the assistance is provided only to village panchayats. Hence the enactment shall be amended so as to make it available to all levels of panchayats. The functions of the board shall be redefined in order to make it a model funding or financing agency for all kinds of developmental activity having effective repayment capability. A thorough study must be prescribed for such projects within the new Act. Hence the following substantial changes may be included in the Act

(i) The definition of ‘panchayat’ shall be changed according to the definition of Kerala Panchayat Raj Act;  
(ii) Functions and duties shall be redefined with respect to the new decentralized planning and development programme;  
(iii) An effective cost-benefit analysis and environment impact assessment study for each project shall be made compulsory;  
(iv) Functions of the board shall be restricted only in the area of funding or resource mobilization. Construction and maintenance of proposed projects shall be the responsibilities of local authorities. This will help the panchayats to avoid delay in execution and reduce unnecessary increase in expenditure. The autonomy aspects require that implementation of scheme and execution of work be made the responsibility of the panchayats; and  
(v) Definition of the term ‘development’ shall be changed so as to include more productive, economically viable and need-based, job-oriented and sustainable progressive activity. Water supply, shopping complex, community hall sewerage etc. may be included as some of such activities but not the main

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83 section 2 of the Kerala Rural Development Board Act, 1971  
84 Ibid, Section 7
activities or functions. Such projects may be included as part of an integrated development plan of the concerned area.

The Kerala Parks, Playfield and Open Spaces (Preservation and Regulation) Act, 1968.

Name and long title of the Act denotes the objects of the enactment. But in its definition clause it defines executive functionaries of local authorities as commissioner and executive officer. But at present these two posts are abolished. Instead of these terms the designation of secretary shall be included in the provisions.\(^85\)

Act entrusts the secretary of the local body to prepare, publish and file the list of parks, playfields and open spaces, and to report the same to the Government.\(^86\) If any objections or suggestions are there against the decision taken by the secretary or against the approval of list by the decision of the local body, an appeal may be preferred to the State Government.\(^87\)

These provisions are not in tune with the spirit of autonomy of local government. Hence these provisions have to be changed. If it is to be considered whether the secretary may be given the power to prepare and publish the list after hearing objections, the power to hear appeal and take final decision shall be provided to the elected council of the Panchayat and Municipality. Any aggrieved party may approach on appeal before the elected body to resolve the issue and the resolution made by the local government authority shall be complied as part of the administrative mechanism in the local level.

Housing projects and land development projects shall be proposed in advance and implemented in a more transparent manner.

The power of the local authority to prepare a list and declare public resorts, parks etc. is also subject to government control.\(^88\) The provisions are analogous to

\(^{85}\) clause (a) of section 2 of the KPPOS (P&R) Act, 1968.
\(^{86}\) section 3, ibid
\(^{87}\) sub-section (4), ibid
\(^{88}\) section 13, ibid
those in the Panchayat Raj and Municipalities Act. It will affect the autonomy of the local authorities. Hence these provisions have to be amended accordingly.\textsuperscript{89}

**The Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968**

The Act provides for eviction of unauthorized occupants from public buildings and objects many occupants without proper authority or continue to occupy even after the expiry of the lease period. Municipalities and panchayats rent out shopping complexes and there occur defaulters among the lessees. Such lessees become unauthorized occupants, liable to the evicted.

The definition of ‘local authority’ does not help to cope with panchayat raj system. Hence the term panchayat shall be introduced in the definition so as to include village, block, and district level panchayats.\textsuperscript{90} As per the notification issued under the Act, the executive authority and commissioner of municipality are estate officers empowered to evict unauthorized occupants. The notification will have to be amended to replace the term ‘executive authority’ by ‘secretary of the local authority’.

An enabling provision has to be incorporated in the enactment to empower the secretary to inquire matter and issue orders and execute them on behalf of the local authority to evict unauthorized occupation.

This is a matter involving rule of bias. Hence it shall be tested either with ‘real likelihood’ nature or ‘reasonable suspicion’ test. This review function may effectively be done either by the concerned standing committee or a sub-committee specifically constituted for the purpose by a resolution of the local body or the local authority itself can dispose of the matter, through appeal. In case of dispute if any, the elected council of the local authority shall be empowered with an appellate power.

\textsuperscript{89} section 188 and 194 of The Kerala Panchayat Raj Act of 1994 as well as sections 58 and 61 of the Kerala Municipalities Act of 1994.

\textsuperscript{90} section 2 (b) of the Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968
The Town Planning Act, 1108 and Madras Town Planning Act, 1920

These enactments aim to regulate development of towns to secure present and future inhabitants sanitary facilities, amenity and convenience. The Constitution of India provides that urban planning including town planning is the foremost function of local governments.91

Rural housing, rural planning, development projects and their implementation are the function of panchayats. Corresponding rules, regulations, manuals, guidelines and prescriptions are also to be administered by the respective local government.

Therefore it becomes a subject of serious discussion whether a separate department on town planning should function independently of the local bodies or whether the local bodies may be given more responsibility and functions on the subject of town planning, and be given more participation and involvement in relative activities within their area. Hence the town planning department may also outline duties and functions that may be delegated to local authorities. The rules shall be amended so as to redeploy the staff of the department as implementing wing of local governments.

Hence the present set up shall be thoroughly reconsidered and reformed so as to equip and empower the local governments to survive with these functions and play the key role in development and public participation in a sustainable manner.

Registration of Birth and Death Act, 1969

This is a Central legislation providing for regulation of registration of birth and death and for matters connected therewith. Under the enactment the State Government may appoint a chief registrar for the State and such other officers for the purpose of discharging functions under the Act.92 The Director of Panchayat has been appointed as the Chief Registrar for the State.93 Additional director and deputy-director of panchayat and statistics departments are appointed as additional chief registrars. The executive officer, commissioner and health officer are the

91 Ibid, section 13
92 section 4 of the Registration of Birth and Death Act, 1969
93 Notification issued on 31-3-1970 under the Act of 1969.
registrars of births and deaths. District panchayat officer is the district registrar. All these appointments are made by the State Government.

The matter for consideration is whether the set up may continue in the existing circumstances. In addition to this it may be noted that the procedure prescribed is rather simple by way of which the elected council is excluded. Circulars, directions and other interpretation given at different levels have created much confusion among the implementing officers and the complaints against them are increasing.

Therefore, what is necessary for effective implementation of the Act is.

i) Empower Secretary of local body as the Registrar of birth and death.
ii) If there is any delay, dispute or restraints the decision-making shall be empowered to the elected local body.
iii) Prepare and publish a manual or handbook to lay down a simple procedure for registration of birth and death and issuance of certificates.
iv) Create awareness and provide sufficient information to the public regarding the subject.
v) A provision must be included so as to declare the birth certificate from local authority is mandatory for proving guardianship and date of birth of a person at any instance of legality and death certificate issued by such local body is an essential evidence for getting legal heirship or succession certificate.

Marriage Registration Act, 1956

In exercise of powers under the Hindu Marriage Act, 1955 the Government of Kerala has made a rule for the registration of the Hindu marriages. The Special Marriage Act 1956, also provides for registration of marriage in the sub-registrar’s office.

In order to avoid difficulties caused by different sets of law as marriage registration the existing marriage registration rules may be redrafted so as to make it compulsory for any person under any religious belief to register marriage within the local authority having corresponding jurisdiction and the local government shall be

94 sub-section (1) of section 8 of the Birth and Death Registration Act, 1955.
empowered with the duty to register marriages solemnized within their jurisdiction and dispose off any dispute regarding the registration of marriages.

If certain provisions are incorporated so as to issue prior consent for marriage it will help to regulate and control different kinds unwanted expenses and luxury in connection with marriage. Hence the following provisions may be included in the new rule.

i) Empower the secretary of village panchayat and municipality as the marriage registrar of the concerned local authority.

ii) If there is any objection or dispute regarding the registrar’s decision, the elected council may be empowered as an appellate authority. Further disputes may be settled by the local authority, tribunal or court.

iii) Marriage certificate issued by the registrar shall be made as a mandatory proof and evidence for any further rights and liabilities of the couple.

**Kerala State Housing Board Act, 1971**

The enactment provides for organized direction and planning in preparation and execution of housing and improvement schemes and for the establishment of a State Housing Board in the State. The village panchayat has a function under the heading 'housing’ which includes implementation of rural housing schemes and identification of homeless families and to develop schemes for providing dwelling place to all persons etc.\(^95\)

Construction of housing colonies under centrally-sponsored and state-sponsored schemes and own projects, distribution of such houses etc. are functions of district level panchayat. Here also beneficiaries shall be selected and enlisted by the lower level panchayats. Apart from this, implementation of housing schemes entrusted by the State Government and housing board is another function of the district panchayat.\(^96\) In municipal areas of urban places, the municipality has similar functions under the housing sector.\(^97\)

\(^95\) Item number 7 of schedule III of The Kerala Panchayat Raj Act, 1994.
\(^96\) Item number 6 of schedule V, ibid
\(^97\) Item number D23 of schedule I of Kerala Municipalities Act of 1994
These circumstance demand certain duties and functions of housing board in the matter of housing accommodation to be transferred to the local bodies. Otherwise there will be duplication of projects mis-utilization of funds, maladministration of schemes and concentration of power in the administrative board rather than elected democratic bodies. Hence the duty to conduct research and develop new models for preparing housing projects, rehabilitation of homeless people, pavement dwellers, puramboke dwellers, slum dwellers etc. may be entrusted to the housing board apart with state level large scale housing schemes. Decision-making on the implementation of such projects, its distribution maintenance etc. shall be entrusted with local authorities. Identification, selection and recognition of beneficiary list, distribution of houses among such beneficiaries on priority basis, allocation of housing loans etc. shall be vested with local bodies. Mobilization of funds and financial assistance for such projects can be entrusted with the housing boards, on this basis the following amendments to the present Kerala Housing Board Act are suggested.

1. Under definition clause, the term ‘local authority’ shall be redefined so as to include village, block and district level panchayats and municipality as well as town panchayats, if any.98

2. Constitution of the housing board shall be remodelled so as to include such number of nonofficial members as decided by the State legislature to represent the elected presidents of local authorities and 50% of whom shall be women.99

3. The removal of non-official member on the board, in case of elected presidents of local authorities, shall be done only if the member ceases to hold office of the president of the local authority. The provision shall be introduced as an addition.100

4. Regarding formulation, planning and implementation of housing projects the following provision may be added. At the instance of the local authority and with approval of the State Government the housing board shall frame and execute such schemes for puramboke dwellers and homeless poor as may be proposed by the local authority within a maximum period of one year from the date of approval of the scheme by the Government. In addition to this under plan

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98 section 9(A) of the Kerala State Housing Board Act, 1971.
99 section 4C, ibid
100 section 10, ibid
projects the local authority may entrust housing board with their own projects for housing.\textsuperscript{101}

For such schemes the State Government may provide land, the local authority may provide building materials and expenditure can be met by contribution and public participation. The board may contribute a part of the expenses under the corresponding schemes.

5. Regarding the types of house, lowest environment friendly, housing schemes for the homeless and \textit{puramboke} dwellers to be included and they may be executed in association with local authorities with prescribed form of beneficiary participation and public contribution.\textsuperscript{102}

6. Regarding sanction of housing loans an amendment shall be made so as to prescribe that the loan application shall be distributed through \textit{grama sabhas}, the selection of eligible applicants and enlistment shall be made by the \textit{gramasabha}, and the final priority list of loan applicants shall be certified and send through the concerned local authority. The eligible applicants may be recommended by ward members,\textsuperscript{103} as per the beneficiary selection guidelines.

7. For expansion, extension and development of existing schemes, previous permission from the concerned local authority shall be made mandatory.\textsuperscript{104}

8. Framing of street schemes require prior approval of local authority including scheme drafted by the board. This shall be prescribed in the Act\textsuperscript{105}

9. Regarding purchase of land, acquisition of land, land conversion and utilization also prior consultation of the board with concerned local authority and giving due respect to resolution of such authority shall be provided. Disputes can be settled according to the award of local authority tribunals or Ombudsman respectively.\textsuperscript{106}

10. Regarding mobilization of funds, provision may be included to acquire distress fund collected by public participation and the maintenance and utilization of such fund for housing purpose of slum and pavement dwellers, homeless and land-less poor people. This may be executed by the board.\textsuperscript{107}

\textsuperscript{101} section 39, ibid
\textsuperscript{102} sub-section (1) of section 41 of the Kerala State Housing Board Act, 1971
\textsuperscript{103} Ibid
\textsuperscript{104} sub-section (1), ibid
\textsuperscript{105} sections 46,47,48 and 49, ibid
\textsuperscript{106} section 72, ibid
\textsuperscript{107} section 104A, ibid
11. An enabling clause also may be included in the Act to entrust the board to execute schemes proposed by local authorities.\textsuperscript{108}

\textbf{The Kerala Tolls Act, 1976}

This enactment provides for levy of tolls in respect of certain bridges and roads in the State of Kerala. As per the Schedule of the Kerala Panchayat Raj Act \textsuperscript{109} the maintenance of village roads, now under the village panchayats and transferred by the Government vests in the panchayat. The bridges, culverts and arenas for these roads are also transferred along with the roads. The construction and maintenance of new village roads is also a transferred function of the village panchayats. Supervision and maintenance of roads within the limit of panchayat is the function of village panchayat.\textsuperscript{110} Construction and maintenance of roads transferred by the government and the bridges there on is the function of the district panchayat.\textsuperscript{111}

The provisions of the Kerala Tolls Act empower the Government to levy of toll on every motor vehicle entering a bridge constructed at the expense of the Government and declared open for traffic after 1\textsuperscript{st} January, 1983.\textsuperscript{112} The Government may farm out of the collection of toll.

“Fund, namely, Bridges and Roads Fund is to be constituted to which the proceeds of the toll levied and collected shall be credited after deducting the expenses of collections as determined by the Government.\textsuperscript{113} This amount will be first credited to the consolidated fund of the State. After deducting the expenses, the remaining amount under appropriation duly made by law, is entered into and transferred to the Fund called as Bridges and Roads Fund. Bridge Toll is collected only in respect of bridges whose cost exceeds Rs.35 lakhs. Any company, State or Central Government can levy toll at the rate fixed by the Government till the recovery of amount expended constructions.\textsuperscript{32}

In the above circumstances it is necessary to entrust or empower panchayat and municipalities to collect tolls in respect of bridges and roads vested upon or

\textsuperscript{108} section 156A, ibid
\textsuperscript{110} Item number 16 of schedule III, ibid
\textsuperscript{111} schedule V, ibid
\textsuperscript{112} section 3 of The Kerala Tolls Act, 1976, Amended by 34\textsuperscript{th} Act, 1986.
\textsuperscript{113} section 12, ibid
transferred to them. If such benefits are to be conferred on these the cost of the bridge above which tolls can be collected has to be decided and a new provision on the lines of section 3A will have to be introduced in the Act entrusting the panchayats or municipalities to collect tolls.

**The Madras Canals and Public Ferries Act, 1890**

The enactment aims to make better provisions for establishment of canals and public ferries in the presidency of Madras during the British period. It is applicable to Malabar region also.

The enactment empowers the Government to declare any line of navigation to be subject to the provisions of this Act. It also requires vessels to be registered or licensed by the Government. It enables Government to prescribe the licensing authority. At present the officials of public works department are the licensing authorities. To secure safety of passengers, the Act empowers the Government to declare that such ferries are not public ferries. But the power is to be used without prejudicing the foregoing powers under the Act.

The management of ferries may be arranged by the Government to a local board or municipal council according to the provisions of the Act. Local bodies may levy toll upon vessels or passengers etc. according the rate prescribed by the Government. The revenue derived from the management of ferry shall be distributed between the authorities including the State Government, maintenance of approach road at either sides of the ferry, in such proportions and subject to such conditions as the State Government may direct through notification from time to time. The local board or municipal council which is entrusted with the authority of a ferry shall exercise all the powers under section 7 of the Act subject to the control of the State Government or its servants upon whom such powers are conferred. The State

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114 section 4 of the Madras Canals And Public Ferries Act 1890  
115 section 5, ibid  
116 section 7, ibid  
117 section 7 (A), ibid  
118 sections 10 and 11, ibid
Government may from time to time lease out to any agents or servants the canals or ferry according to the law.\footnote{119 section 12, ibid}

Obviously the power to collect rent and other expenses incurred under the provisions of the Act, due to a canal or ferry or to recover any dues thereof was rested upon the district collector in like manner as if they were arrears of revenue\footnote{120 section 14, ibid}. In addition to this the Act empowers the State Government to delegate all or any of their powers under the enactment to any officer not below the rank of District Collector or Superintending Engineer\footnote{121 section 21, ibid}.

Above description shows that very few powers are vested with local bodies in this regard. But high concentration is reserved in the powers of State Government or its authorities, whereas canals and ferries can be converted as a better service of income to the local bodies, and which may be effectively managed and maintained through the intervention of local public and local bodies.

It is desirable in this regard that a unified legislation be enacted covering the construction, maintenance and management and also the safety measures for the public. Village panchayats and municipal council may be given all powers in this regard including fixing of the toll rate. District level panchayat may be entrusted with larger schemes under this especially the inter district water navigation and ferry services.

**Laws Relating to Irrigation**

Water is a precious resource for any society not only for their existence but also for their economic sustenance and growth. As far as Kerala State is concerned there is a special relevance in regard to its water resources. This is because its geographical character, production sectors and environmental elements are different from other States. Hence water resources shall be preserved, protected, managed and effectively utilized for better productivity and maximum benefit to the society. Such a contrast prevailed from early forties and fifties. This is because a number of fundamental legislations were formulated during the periods which were related to
water resources protection, water distribution and usage especially for agricultural purposes.  

But in the present situation the laws are outdated and ineffective because the basic approach of these legislations is the maximum use of water through irrigation and other artificial methods. These laws are least bothered about the natural impact and environmental calamities of such an unscientific and unlimited use of water. In addition to this such legislations are not comprehensive and incapable to be implemented in a decentralized peoples-partnership system to resources management and usage.

In this regard it is high time to envisage an updated, comprehensive, eco-friendly water irrigation policy for the state of Kerala and it is very much relevant to codify the allied legislations under a common parlor. In order to formulate such an ideal legislation, the examination of existing legislation may be helpful.

(i) The Madras Irrigation Works Act was to provide for repair and improvement of private irrigation works, construction of new irrigation works on private land and supply of water from government to private irrigation works in the province of Madras. But still the provisions of the enactment are applicable in the State of Kerala.

The Act empowers the District Collector or anybody entrusted or authorized by him to enter into and inspect any premises including an irrigation work. In the changed circumstances this power shall be vested with the executive of the concerned local government authority. Hence it shall be redrafted as “The Secretary of the District Panchayat or the Village Panchayat, as the case may be, or an officer authorized by the Panchayat in this behalf” and may be substituted.


Under the Kerala Panchayat Raj Act, 1994 the village panchayats are empowered with two important functions in relation to water resources. First one is construction and maintenance of open wells and bore wells for irrigation purposes and drinking water distribution. The other function is implementation of water supply projects entrusted by the Kerala Water Authority and other water supplying schemes for the local public. And the District Panchayat is empowered to construction and maintenance of minor irrigation and lift irrigation schemes benefiting above five hectares and below fifteen hectares, if the entered command area is compared within the district. Otherwise it may be entrusted as a joint effort by more than one district panchayats or collaboration between the State and the district prescribed. Whereas the Madras Irrigation Act was amended in 1978 so as to delegate the powers of the State Government under the Act to the district councils subject to the restrictions, limitations and conditions as may be prescribed.

Hence the provision also shall be amended so as to empower, the village panchayat and district panchayat as the case may be under Kerala Panchayat Raj Act, the functions relating to construction, improvement and maintenance of water irrigation projects in the corresponding areas. In addition to this, the provision related to Fort St. George shall be deleted from the Act. The Act shall include sufficient provision so as to prescribe the role and functions of panchayats and local authorities as well as the State irrigation department. It must include adequate provision for issuing notifications under the Act.

(ii) The Malabar Irrigation Works (Construction and levy of cess) Act, 1947 primarily deals with construction of irrigation works and the levy of water cess by the Government in the district of Malabar. Due to the constitution and establishment of the State of Kerala, distinction between Malabar and other regions have disappeared. District councils are also not present in the State for the time being. Hence there is no relevance in preserving such a legislation with regional territorial limits and out dated provisions and new provisions shall be introduced in the corresponding law.

124 Item numbers 2 and 3 of schedule III of the Kerala Panchayat Raj Act, 1994.
125 Item number 3 of schedule V, ibid
126 section 7 of the Madras Irrigation Works Act, 1943.
127 section 2 A of the Malabar Irrigation Works (Construction And Levy of Cess) Act 1947
In regard to area of irrigation less than five hectares the village panchayat and area of irrigation is between five hectares to fifteen hectares the district panchayat shall be prescribed as the authority for construction, improvement and maintenance of irrigation projects.

Power to issue permit in respect of the lands where irrigation is sanctioned, come within the functions of district panchayat. The duty to collect water cess at the fixed rate shall be vested with corresponding panchayat which provides the facility. Hence corresponding charges shall be introduced in the related provisions128.

In addition to this, implementing authority or enforcement power is vested with the district collector and district council in the existing enactment129. These provisions and other consequential provisions shall be adequately modified130. Similar amendments are suitable and essential in the relevant provisions of the Malabar Irrigation Act, 1955131.

The Travancore – Cochin Irrigation Tanks (Preservation and Improvement) Act, 1952, is an enactment to preserve, and improve the existing irrigation tanks in the State of Travancore-Cochin. Some amendments were made in 1979 but are not adequate for the present purposes.132 The designation of district collector as secretary to district council and empowerment of district council with duty to deal with preservation and improvement of irrigation facilities in its local limits are also to be amended accordingly. The secretary of corresponding local panchayat or any officer authorized by him shall be entrusted with such powers.133 Delegation of powers also shall be made to corresponding panchayat at each level.134 In respect of irrigation tanks within one village the powers may be conferred with local village panchayat, and if the scheme is applicable to more than one village the power may be conferred upon district level panchayat as the case may be. If it

128 sections 10 and 12 of the Malabar Irrigation Works Act of 1947
129 sections 2(a) and 2(b) of the Malabar Irrigation Works Act of 1947.
130 sections 5(i) (iii) 10(5) and 17(3), ibid
131 The Malabar Irrigation (Levy of Betterment Contribution) Act of 1955
132 section 2 clause (i) of the Travancore Cochin Irrigation Tanks Act 1952 corresponding to the Kerala District Administration Act of 1979
133 section 2 (i)(iii) of the Travancore Cochin Irrigation Tanks Act, 1952
134 section 3A,ibid
is a scheme in connection with one complete watershed the powers may be
given to the block level panchayat.

No person shall convert an irrigation tank into wet land or dry land
without the previous sanction in writing from the Collector. Any person acting
in contravention of the provision shall be liable to penalty not exceeding two
hundred rupees as may be fixed by collector.\textsuperscript{135}

The collector may by written notice require such person within such time
as may be fixed by him to restore the irrigation tank to the original state. If the
person so required fails to follow the direction, then without any prejudice to
any other action that may be taken under the Act the collector can cause such
work to be executed or measures to be adopted to restore the tank in its original
state. For this purpose he can enter or authorize any person to enter into the
irrigation tank or adjacent land for execution of such work and the expenses
incurred due to the restoration work shall be recoverable from the person, who
was required to execute the work, as arrears of land revenue. In case an
irrigation tank is not maintained in good condition, proper repair, and usable
condition, similar steps can be taken by the collector in order to satisfy good
maintenance of the irrigation tank\textsuperscript{136}. Here the powers are vested on the
discretion of district collector. Whereas under the new situation the function of
irrigation has transferred to the panchyat at different level, the powers also
should be transferred from the collector to the secretary of the respective
panchayat.

In appeal against the order of the district collector has to be preferred
before the Board of Revenue.\textsuperscript{137} But at present the provision has no relevance
due to the fact that at present no board of revenue exists and the Panchayat Raj
Act empowers the panchayat to hear any appeals against the order issued by
secretary.

The State Government enjoys revision power to re-examine any pending
case or disposed one by the Board of Revenue at any time on a reference to it

\textsuperscript{135} sections 4 and 5, ibid.
\textsuperscript{136} section 6, ibid
\textsuperscript{137} section 7 of the Travancore Cochin Irrigation Tanks Act of 1952
and with notice to affected parties. These provisions shall be amended accordingly so as to entrust the concerned panchayat committee with the power to decide appeal or revision as the case may be.

(iii) Kerala Irrigation Works (Execution) Act, 1967 is an enactment aimed to facilitate, control or execution of irrigation or training projects to be done by joint labour of cultivators in the State.

In the State there is a local custom or accepted practice by which any work connected with irrigation or drainage for agricultural purpose should be done by the joint labour or cost and effort of the proprietors of all the fields benefited by such a work. If any person fails to provide his share or to contribute to the cost or labour, the district collector or the panchayat special officer or any authorized by the Government on its behalf on an application of one or more affected proprietors who are interested in such work but injured or likely to be injured owing to the refusal of another peasant, shall investigate the matter and pass adequate order with direction to execute that portion of the work within the prescribed time schedule and within the estimated cost and manner prepared by the authority. If the required person fails or refuses to obey such direction, the authority can order the recovery of the cost for execution of the work. In the case of installation of machinery or incidental works or construction and repair or removal of obstructions in drainage channels, advection of canals, the authorized officer or authority may order execution of any such temporary work.” But majority proprietors do not want the work to be executed, then such work or any portion in connection with that shall not be executed and such a direction in writing shall be issued by the concerned authority. Regarding the above legislations and provisions the power entrusted to the district collector, panchayat special officer, or any authorized officer shall be transferred to the concerned panchayats at the corresponding levels as the case may be. This can be substantiated because the functions scheduled in the III and V schedules of the Panchayat Raj Act incorporated the functions of rosier irrigation for the purpose of

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138 section 7 (2), ibid
139 section 3(1) of the Kerala Irrigation Works (Execution) Act 1967
140 section 4, ibid
141 section 5, ibid
agriculture, water resource maintenance and management, drainage, deterring, environment protection etc. have entrusted with the corresponding panchayat.142

After an overall examination of the provisions, it may be suggested that the secretary of the local panchayat and the transferred functionary of agriculture in the Agriculture Department or the panchayat special officer or any authorized person by the corresponding panchayat shall be empowered with those functions as mentioned in the Kerala Irrigation Act. Hence necessary amendments shall be made there also.

Provisions envisaged in the legislation empower the State government with rule mating powers, revision powers, appeal powers etc. as the case may be. In petty irrigation works the construction, repair and maintenance are developed to the local Panchayat in which the same is located.143 The panchayat shall levy annual cess on any once benefitted by such petty irrigation project as per the direction of the State Government. In the case of minor irrigation, the powers are vested in the State Government.144 Implementation and execution of new irrigation work is entrusted to the collector. In case of any accident to any petty or minor irrigation work which need and urgent repair or failure of which may cause serious damage the collector is empowered with the execution of such work notwithstanding any provision of the Act. Such works shall be at the cost of the State Government. In case of major irrigation work the powers shall vest in the State Government. The power to conduct investigation, to issue notice, to establish machineries, to construct the project and to levy cess etc. is vested upon the Government. These functions are customary departmental functions of the irrigation and Works Department of the State. The State Government, if satisfied to the need and necessity, may entrust the construction running maintenance of a lift irrigation assign to some cooperative societies of farmers.145 The provisions are against the concept and implementation of domestic and functional decentralization. The practice is against the concept of empowering the local government authorities and participation of people in developmental and administrative powers. Hence the legislation should be amended or readopted completely so as to message a grass root level democratic decision-making and enforcement. Approach of the law makers that the distribution of water of all minor

143 section 4 of The Travancore Cochin Irrigation Act of 1956.
144 section 5, ibid
145 part III, ibid
and major irrigation projects in the State Government or an authority prescribed or appointed by the State Government from time to time goes against the public ownership of natural resource and neighbourhood control over utility and management of such resources.146 Hence a thorough revision of legislation is necessary so as to provide the power of planning implementation, maintenance of and regulation of water supply projects to the local self-government authority.

The State Government is also provided with powers to levy betterment contribution sale of certain lands, classify the benefited land hold notwithstanding any action or inaction on the part of the person, and power to make rules regarding construction, expansion, or alteration of any water supply work.147 Under the modern concept of participatory and partnership governance the empowerment of State or Central Government in these concerned areas are undemocratic and anti-people policy. Hence considerable changes are necessary here.

Power to acquire land as part of construction of water courses, power to cut off the supply of water, power to levy water cess, enhancement or surcharge etc. are concentrated in the State Government rather than in the local government.148 Concentration of decision-making power as well as disorientating power along with appeal powers upon the State Government is another drawback affecting local self-governance.149

During modern period or later period of the 20th Century another, important legislation has been made by the State legislature with an objective to provide for establishment of an atomized authority for the development and regulation of water supply and water collection and disposal. For this purpose an authority is constituted under the Act. But once again the enactment and the Kerala Water Authority have revolted in concentration of powers with State entrusting compartmentalized authorities for satisfaction of basic services.150 The enactment

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146 section 16 A, ibid
147 section 30, ibid
149 sections 4,11,12 and 14 of the Malabar Irrigation Works (construction Act of 1947
150 The Travancore-Cochin Irrigation Tank Act 1952
has characteristic provisions related to water supply and sewerage disposal in panchayats and municipalities as follows:

i) All the water supply and sewerage schemes in local bodies shall be vested in the Water Authority with its assets and liabilities.\textsuperscript{151}

ii) All water supply and sewerage schemes executed by the Kerala Rural Development Board in rural areas shall be vested in the Water Authority with its assets and liabilities.\textsuperscript{152}

iii) All existing water supply and sewerage scheme of the local bodies shall be vested in the Water Authority and shall be transferred to the Authority on or after completion of the three year period from a notified day.\textsuperscript{153}

iv) The power to fix the assets and liabilities, properties etc. of the schemes to be referred is to be determined as the prescription and decision of the State Government.\textsuperscript{154}

v) All the employees of the local body exclusively employed in connection with water supply and sewerage schemes shall be transferred to the Water Authority with effect from the date of transfer of the scheme to the authority.\textsuperscript{155}

vi) The Authority is authorized to borrow any sum of money for water supply and sewerage works for any locality; from the date of establishment of the authority, notwithstanding anything contained in any law for the time being in force.\textsuperscript{156}

vii) Charges for water supply wholesome to the public through drinking water taps with in the limit of a local authority shall be fixed and collected by the water authority. But the number and places for public water supply taps shall be decided by the local body with respect to the payment made by them. The cost of water prescribed by law shall be remitted on quarterly installments by the local body to the water authority. In case of disputes regarding this, the

\textsuperscript{151} The Kerala Water Supply and Sewerage Act of 1986 renamed as Kerala Water Authority Act
\textsuperscript{152} section 16(1) (c), ibid
\textsuperscript{153} section 16(1) (d), ibid
\textsuperscript{154} section 18, ibid
\textsuperscript{155} section 16(1), ibid
\textsuperscript{156} section 20 ibid
government is empowered to dispose of the matter of dispute with its final decision. 157

viii) Here the Local Authorities are required to file information, records, and assist or help the authority and the state government to enable the Water Authority to perform its functions.158

From the above stated provisions it is abundantly clear that the preparation, execution, maintenance of water supply and sewerage schemes are the monopoly of the Kerala Water Authority though there is no engineer’s provision which prohibits the local bodies from undertaking such schemes. The Authority has established as the sole agency for water supply and sewerage. Hence the local bodies are restricted and unable to take up water supply and sewerage schemes, mobilising money for such schemes, establish and maintain such schemes as per the provision of this enactment.

The Constitution of India provides that the panchayat shall be endowed with such powers and authority as may be necessary to enable them to function as institutions of local self-government. The law made by the state legislature contains provision for devolution of powers and responsibilities on panchayats at appropriate level on subjects including drinking water.159 Hence provision of drinking water to the inhabitants is the function and responsibility of panchayat as a constitutional power. Relevant provision regarding the water supply for domestic, industrial and commercial purposes is there as entrusted to the municipal authorities under the corresponding laws.160 Implementation of water supply schemes whether entrusted by Kerala Water Authority or not is a mandatory or essential function of the Village Panchayat.161 Digging of tube wells and other wells for irrigation and water supply and their maintenance is another mandatory function of the village panchayat.162 District Panchayats are also entrusted with implementation and management of water

157 section 25 ibid
158 section 40 ibid
159 article 243 G, the Constitution of India, 1950
160 Item number 11 of schedule 11, ibid as amended in 1992
161 article 243 of the Constitution of India and item number 5 of Schedule 12 of the Constitution of India, 1950 as amended on 1992
162 Item number 3 of schedule 3 of the Kerala Panchayat Raj Act of 1994.
supply schemes entrusted by Kerala Water Authority and drinking water supply during drought\(^{163}\). Corresponding powers are entrusted to Municipalities also.

Hence it is clear that the village panchayats can implement water supply schemes independently or as entrusted by the Kerala Water Authority whereas the District Panchayat and Municipalities can do on entrustment from the Water Authority. It is a constitutional requirement that the local bodies should have the mandatory function to provide drinking water to the local public. Under the provincial legislation also it is the primary duty of the local authority to provide drinking water.

The Water Supply and Sewerage Act 1986 at this point of time, entrusting the water supply with local authorities and the management of local units of water supply schemes are inevitable. Kerala Water Authority is empowered to mobilise funds from financial institutions like World Bank for installation of water supply schemes whereas the Kerala Water Authority can be entrusted only for the purpose of mega projects with a state wide importance and multi-level coordination as well as to associate with the local authorities in planning, implementation, management of local water supply schemes for an uninterrupted water supply within the local authority.

Some important amendments shall be included as follows:

(i) In Section 2 in item (xiii) to the definition of the term “local body at village level or district level as the case may be” is to be added.

(ii) Unit Authority shall be defined as the Authority constituted under Section 156 and a unit scheme either in existence or proposed, within the local body or efficient local bodies right from source of water to the delivery end and includes those, engaged in maintenance, development and functioning of scheme and the functions used, shall be added with section 2.

(iii) In Section 4 after Clause (a) the following clauses may be added.

(aa) A Vice Chairman nominate by the government from among the Mayors of City Corporations or Chairman of Municipal Councils

\(^{163}\) Item number 2, ibid
(iv) In Item (g) the words "appointed by the Government" may be replaced by the words, “nominated by the Government from among the members of Village Panchayats and District Panchayats”.

(v) In Section 6, Sub Section (1) after the words “members referred to in” – the words in Clause (aa) “shall be inserted.

In Section 14

(vi) In item (i) the following words may be added viz.”At the request of or on a proposal from the local bodies”.

(vii) In item (ii) the following words may be added viz.,

“in a recommendation from the concerned local body, and rendering service to the Grama Panchayats in preparation and implementation of a unit scheme for supply of drinking water within that Panchayat.

(viii) In Section 15, in item (ii) of sub clause following proviso shall be added, viz. Provided further that before finalising any scheme for water supply in any area, the Authority shall call for and consider the requirements of the local bodies of that area and supply a copy of the scheme to each of the local body.

(ix) In Section 15(2) under item (iii) the following proviso shall be added viz.,

“Provided further that services to the local body shall be changed only if the water charges under the unit scheme is liable to be collected and appropriated by the local body”.

In Section 15(2)

(x) In item (vi) the word Government may be substituted by the “local body concerned”.

(xi) The word ‘and’ occurring after the words ‘natural sources may be deleted and

(xii) The words “for other purposes and dispose of waste water” shall be replaced by the words “and for the purpose of disposing waste water’.

(xiii) After chapter II the following chapter may be added viz.

Authority to associate with local bodies

Authority to act on behalf of the local body

1. the supply of drinking water’ being the constitutional function of the local bodies, the Authority shall consult with and associate with the local
bodies concerned in preparation, execution, promotion, operation and maintenance of any unit scheme covering the area of such local body.

2. The consultation will be done, in writing, with the secretary of the local body, who shall cause the proposal of the local body presented before the Authority and the proposal of the local body shall be duly considered by the Authority in preparation, execution and maintenance of any unit scheme.

Unit Authority to be in charge of unit scheme:-

1) A unit scheme shall be administered by a Unit Authority consisting of the following members, viz.

(a) A Chairman, nominated by the local body from among the members of the council or where the unit scheme covers area of more than one local body, the Chairperson of the local body covering the largest area of the unit scheme.

(b) A Vice Chairman, the senior Engineer of the Authority in charge of the Unit scheme.

(c) A Secretary, the head ministerial staff in the unit scheme,

(d) One member, an officer dealing with the accounts of the unit scheme, and

(e) One member, the Secretary, of the local body covering the largest area in the unit scheme.

2) The Unit Authority shall have sitting on any day in the last week of every month and evaluate the progress in execution, maintenance or development work in the scheme during the current month and propose steps to be taken during the next month. The minutes of the meeting shall be forwarded to the Authority and to the local body within three days from the date of sitting. The achievements and shortfalls shall be recorded in the minutes after evaluation of the work.

The staff of unit scheme

1. The staff of the Authority responsible for maintenance and supply of drinking water shall be at the disposal of the concerned local body and in their control, subject to the supervision of Unit Authority. Such control shall be exercised by the Health Officer of the local body and he shall report the performance of
any member of the staff to the Secretary of the local body and shall place before the Council/Committee any matter calling for immediate action.

2. Where any irregularity, lapse, or laxity is found by the Committee/Council on the part of any member of maintenance staff, the secretary of the local body shall call for explanation from him.

3. If the explanation is found not satisfactory, the Committee may impose any minor punishment on the member of the staff, notwithstanding anything contained in the rules applicable to such member of the staff.

4. Where the irregularity or lapse involve moral turpitude or adversely affects public health or causes irreparable loss to the local body or general public the responsible staff is liable to be placed under suspension proceedings, if the Committee or Council so decides.

Entrustment of execution of any unit scheme with local body

1. The Authority may, and if the Government so direct, shall entrust the execution of any unit scheme with the local body in which case the local body shall incur the expenses for execution of the scheme and shall pay service charges to the Authority at the rate as fixed by Government.

2. In the case of unit scheme executed by a local body, its maintenance shall be the responsibility of the concerned local body and the water charges will be levied at the rate fixed by bye-laws framed for this purpose and collected by the local body.

The further provisions in the Act, inconsistent with the amendment proposed above may be deleted or amended suitably.

The Slum Area (Improvement and Clearance) Act, 1981

This is an Act to provide for the prevention, improvement, and clearance of slum areas, for the acquisition of slum areas and of land required for the rehabilitation of slum dwellers and for the protection of tenants in slum areas from
eviction. The enactment has envisaged for slum improvement and slum clearance simultaneously.

“A slum should not just be patched up, or hidden behind posters such that visitors and passengers cannot see it. A slum and its people must not be pushed to another waste place to become another new slum. A slum must not be converted into a cement block, identical in planning and services to the old original slum. A slum is probably where it now is because there was waste, difficult, dirty, unusable patches of land which was tackled away between and behind desirable price, good city property which, for some reason or other is lying unused, or set aside for some government scheme but those in authority had retired or been moved and people that forgotten about its improvement scheme was or money for such a scheme had not materialised or covered by sewage or drainage channels and pond and is improvable.  

The Act defines the term slum clearance as the clearance of any slum area and the devolution and removal of buildings there on. Whereas improvement of slum means the execution of works in relation to repairs, structural alterations, lighting, water supply, sanitation, drains and channels, additional fixtures and fittings, court yards, removal of rubbish and any other work in violation to slum clearance.

But under enactments for the establishment of local self-government, the slum improvement and clearance is the function of the Village Panchayat or Municipality. Such works include construction and maintenance of drains, latrines, paving of yards, removal of rubbish etc. The local authority is given the power to serve notice to the occupier to execute improvement work and if the occupier fails to do so, the local authority shall execute the work and to realize the expenses incurred from the occupier. But in most of such improvement works, the expenses of which cannot be recovered from any particular occupier. Therefore it is expedient to provide an enabling section so as to empower the local authority to allocate separate fund in its budget for slum area improvement and execute such work. It shall also be

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164 see general Laurie Baker “Are Slums Inevitable” (1999)
165 section 2(k) of The Slums Area: (Improvement And Clearance ) Act, 1981.
166 section 2 (n), ibid
167 chapter III, ibid
provided to declare an area as slum area in consultation with the local government authority instead of any other authority including town planning authority.\footnote{168} While taking decision with respect to slum clearance and improvement the local authority should consider the opinion endorsed by Dr. Laurie Baker.

The other provisions dealing with land acquisition, protection of tenants etc., the local authority need have no role. In addition to this mandatory provision shall be included to make it the part of essential function of the village panchayat to prepare plan for slum clearance and allocate appropriate fund for the same and mobilize resources from other sources and through contribution of the beneficiaries so as to implement them with participation of the slum dwellers.

**The Kerala Land Reforms Act, 1963**

This is the comprehensive legislation relating to land reforms in the State of Kerala. The object of the Act is to effect agrarian reforms in the State and hence applicable to agricultural lands. Whereas the functions like and improvement, implementation of land reforms, land consolidation and soil conservation are the responsibilities of Panchayat\footnote{169} the Kerala land reforms legislation in its original form and after the amendments, incorporate provisions for fixity of tenure, ceiling on land holdings, assignment of excess land, land improvement etc. For the effective implementation of the enactment, land tribunals and land boards were constituted from taluk level onwards up to state level.

But as a result of practical realities or misuse of the legal provisions the land assignment to tillers has not occurred. Instead of that the agricultural land was segmented and small and nominal holding were diverted into the hands of non-cultivating land holders. This segmentation of land has resulted as a negative element which caused decrease in agricultural production and productivity of the State. Another important defect of this legislation is the absence of control over estate land as well as non-ceiling of urban landed property. Yet another weakness of the land reforms legislation is the not effectiveness of that law against land conversion and non-utilization of land. Pattern of crops have changed and land

\footnote{168} chapter II section 3 (ii), ibid\footnote{169} Item number 2 of schedule 11 of the Constitution of India, 1950
utilization pattern is also changed along with cropping pattern. Mining activities in connection with brick and tile production is another important issue in this regard. Conversion of agrarian land into commercial purpose land, reclamation activities, consolidation of land holdings in to non-agricultural persons, etc. are some other problems.

These issues can be resolved only through the intervention of local public as the part of their collective activity. Hence the Grama Sabha as the direct democratic institution and Village Panchayat can involve in the following activities as primary decision makers.

i) Distribution of excess land.
ii) Improvement of agricultural land.
iii) Consolidation of small and nominal agrarian land so as to facilitate participatory land management.
iv) Beneficiary selection in respect of land distribution and assignment.
v) Control over land conversion and land utilization.
vi) Land and water management as well as soil conservation.

Hence corresponding provisions shall be inserted in the Land Reforms Act. This will be essential due to the abolition of land tribunals and land boards as a policy decision and because ineffective enforcement of regulatory measures through ravens and other executive officials at present.

**The Kerala Public men’s Corruption (Investigation and Inquiries) Act, 1987**

This is an enactment to make provisions for the constitution of Commission to deal effectively with the investigation or inquiry into, complaints against public men and for matters connected there with. The definition of the term ‘public men’ includes a Minister or Chief Minister, Member of Legislative Assembly, Member and President of statutory boards, Mayor, Deputy Mayor, Commissioner or Secretary of a local authority and a Member of local authority etc. Whereas the term “local authority” is defined as a Municipal Corporation or a Municipal Council or a Development Authority, or a Township Committee, District Court or Panchayat. This definition shall be revised so as to include the Panchayat at various levels.
according to Kerala Panchayat Raj Act 1994 and Town Panchayat, Municipality and Municipal Corporation under the Kerala Municipalities Act 1994 or a development authority.

In this enactment there is no other provision directly or indirectly affecting the administration of the local authority and therefore no further amendment is necessary in those provisions.

**The Kerala Motor Vehicles Taxation Act, 1976**

This is an enactment to consolidate and amend the laws relating to the levy of tax on motor vehicles and on passengers and goods carried by such vehicles in the State of Kerala.

The local authorities construct roads and therefore they are eligible for a portion of the tax collected by government from vehicles and road carriages. Hence it is provided under this Act for the payment of compensation as may be fixed by the state government to the local authorities from time to time.\(^{170}\)

It is rather desirable that the rate of compensation is also statutorily fixed at a reasonable level, so as to provide a supplementary resource basis for the local authorities who are statutorily empowered to construct and maintain roads within their territory as their mandatory function.

**The Kerala Tolls Act 1976 (as amended by Act 34 of 1986)**

This is an Act to provide for the levy of Tolls in respect of certain bridges in the State of Kerala.

Section 3 of the Act provides for levy of toll, by Government on every motor vehicle entering a bridge constructed wholly or partly at the expense of the Government and declared open for traffic after 1st January 1983. The Government may frame out the collection of toll. As per Section 12, a fund namely “Bridges and Roads Find” is constituted to which the proceeds of the toll levied and collected shall be credited after deducting the expenses of collection as determined by Government. It may be noted that this amount is first credited to the Consolidated Fund of the

\(^{170}\) section 19 of the Kerala Motor Vehicles Taxation Act, 1976
State, and after deducting the expenses the remaining amount, under appropriation duly made by law, is entered into and transferred to the Bridges and Roads Fund.

As per the definition to the term, "bridge" the toll can be collected only in respect of bridges the cost of which exceeds Rs.35 lakhs. Section 3A introduced by 1986 amendment enable a Company or a Corporation under the State or Central Government to levy the tolls at the rate fixed by the Government, till the recovery of amount expended upon such bridge.

As per the 3rd Schedule of the Kerala Panchayat Raj Act, 1994, maintenance of village roads, now under the village panchayats and transferred by Government and the bridges, culverts and drains for these roads and the construction and maintenance of new village roads are functions of the village panchayats. Among other functions of the village panchayats, under item 16, supervision and maintenance of roads within the limit of Panchayat is the function of the village Panchayat.

Under 5th Schedule, ‘construction and maintenance of roads transferred by Government and the bridges thereon’ is the function of the District Panchayat.

In the above circumstances it is for consideration whether panchayats Municipalities should be made eligible for collection of tolls in respect of bridges on roads vested in or transferred to them. If such benefits are to be conferred on them the cost of the bridge above which tolls can be collected has to be decided and a new section on the lines of section 3A will have to be introduced in the Act enabling the panchayats and Municipalities to collect such tolls.

**The Kerala Education Act, 1958**

It is an enactment to provide for the better organization and development of educational institution in the State, so as to provide a varied and comprehensive educational service throughout the State. The Act was subsequently amended for three times. The control of Lower Primary Schools in the Village, Panchayat etc. is the functions of the Village Panchayat. Control and supervision of Upper

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171 Amendments of 1960, 1969 and 1985
Primary Schools and management of government technical schools, Secondary Schools etc are functions of District Panchayat. Constitution of a District Education Committee for supervision of all Educational institutions except the professional College is also contemplated under this item. Control and supervision of government lower primary, upper primary and secondary schools, construction and maintenance of school buildings etc. are functions of the Municipality. Hence for proper management of schools under panchayats and municipalities the law related to education in Kerala and its corresponding rules shall be amended.

The Act provides for establishment of local educational authorities to exercise jurisdiction in any local area specified in such notification. It also dealt with the functions of the local educational authorities. Purpose of the local educational authority is to associate with the local people in the administration of education and to pressure and stimulate local interest in educational affairs. But the duty to establish such an authority is vested with the State Government. It shall be performed through a notification.

According to the Act each local authority shall consists the members like District Educational Officer, one elected representative from aided school manager, each elected representatives of graduate and non-graduate teachers of government and aided school teachers from the local area, one elected representative of the Panchayat and Municipality in the local area, and two educational experts having sufficient experience nominated by the government. From among the members, the government shall nominate a president of the Local Educational Authority.

These two provisions denote that there is not much role vested with the local government authority in the composition and constitution of local educational authority. The functions of the local authority are to assess the educational needs of the local area and prepare each year schemes for the development of education and submit the same to the Government, supervision of noon day feeding, implementation, promotion of competitors, exhibitions and other measure to create

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173 Item number 11 of schedule V, ibid
175 The Kerala Education Act 1958.
176 sections 17,18, ibid
177 section 17(2), ibid
public interest in education and carry out other prescribed functions for the time being. These provisions denote that local level implementation and progress of education, construction and maintenance of infrastructure etc. are empowered with the local area authority. But their constitution and financial resources are under the state power. There is an element of state control and intervention. It also denotes that there are no independent powers vested with the local government authority which are under a duty to organize primary and compulsory education to all citizens. The power to appoint local education committee so as to carry out compulsory elementary education to all etc. is also in the hands of State Government. But here there is a positive element in the enactment that the constitution and function of a Local Area Educational Committee and Authority, which may be treated as a subsystem for the local government authority in order to serve their duties in the field of education. Apart from other enactments this possibility can be utilized to enhance the participation in governance by the local people and institutionalization of powers by a local body than an organized State Government.

**Travancore – Cochin Fisheries Act 1950**

This is an Act corresponding to a Central Legislation in the field of fisheries and allied matters. Hence these must be consistent to each other. Whereas the Panchayat Raj legislation provided that development of inland fisheries through shearing of public water and licensing of private or individual entrepreneur for collection, distribution and sale of fish, management and upkeep of traditional fish landing centers etc. are the functions of the village Panchayat. Production and distribution of fish seeds, promotion of fish marketing co-operative societies are the functions of district level panchayat. Similar powers are entrusted to municipalities also. In the Fisheries Act the decision-making powers are vested with the State and authorities appointed by the State. This is to be treated as one kind of paralyze. Another problem is the absence of effective implementation

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178 section 18, ibid
179 sections 23,24,25, ibid
180 The Indian Fisheries Act 1897.
181 Item number 4 of schedule III of the Kerala Panchayat Raj Act 1994.
183 Item number 22 of schedule I, the Kerala Municipalities Act 1994.
machinery transferred to the local government bodies. Hence corresponding amendments shall be made in the existing legislation such as:

i) The definitions of the terms “local authority” may be amended so as to incorporate Village Panchayat, District Panchayat and Municipality.\textsuperscript{184}

ii) In respect of inland waters, back waters, ponds, paddy fields temporarily used for fishing area, the licensing authority shall be Secretary of the concerned local authority.\textsuperscript{185}

iii) In case of such licensing capacity vested with the secretary, thus an appeal shall be preferred before the concerned local authority. Hence, the secretary can only be acted up under the control of the local government and it may be treated as the institutional basis for implementing the policy taken by the local government authority.\textsuperscript{186}

iv) In addition to any police officer, the prosecution power or penalizing power shall be vested with the licensing authority also in case of any violation of the provisions of this enactment.

In addition to this the power to lease out ponds and inland waters may be bestowed on the local government authority as per the provisions of these enactments under the existing provisions the State Government is vested with the power of licensing, leasing, controlling and penalizing and to enforce such powers through its officials in Fisheries Department. But the local government authority has no such institutional network. Instead of that, the powers are transferred to the Secretary and the local body. Hence the absence of an institutional set up for implementing the powers will affect its results. The amended provisions will include the proposal to transfer or constitute extensive machinery for enforcement of powers and performance of functions.

**The Marine Fishing Regulation Act, 1980**

This is an Act to provide for the regulation of fishing by fishing vessels in the sea along the coastal line of the State. Implementation, management, maintenance and extension schemes relating to fisheries are the responsibilities of the Village

\begin{footnotesize}
\begin{enumerate}
\item section 2 of the Travancore-Cochin Fisheries Act 1950.
\item section 9, of ibid
\item section 18, ibid
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The implementation of welfare schemes, establishment of housing schemes for fishermen, promotion of fish marketing co-operative societies and production, distribution, nourishing etc. of fish seeds are the functions of the District Panchayat. The District Panchayat has a supervisory function over the office of the Deputy Director of Fisheries at the district level. In these circumstances the following changes and modifications may be suggested to the existing Act.

(i) The term “authorized officer” may be defined to mean such officer as the District Panchayat may by notification in the gazette, authorize, below the rank of Assistant Director in the Fisheries Department in that district and attached under the district panchayat.

(ii) If so, the proviso to the above said clause may be deleted.

(iii) In case of an appeal against the orders in grant or refuse of license etc. the District Panchayat may be made the first appellate authority. If there is a chance of second appeal it shall be preferred before an adjudicating officer at the district level.

(iv) Regarding the penalties the authorized officer reports the offence, the adjudicating officer shall make the inquiry and impose penalty. Hence the District Collector appears as the appellate authority with regard to penalty imposed. But under the Panchayat Raj system the Deputy Director of Fisheries Department under the supervision of the District Panchayat. Hence the words “District Collector” may be replaced from the corresponding provisions and the term of ”Deputy Director” may be inserted there as the penalizing authority in consistence with Panchayat Raj legislation. It means that a system for implementation, investigation and prosecution shall be developed through Fisheries Inspector, Assistant Director and Deputy Director of the fisheries department who are the transferred officials of local government authority and an adjudicating mechanism will be established.

187 see schedule III of the Kerala Panchayat Raj Act 1994
188 see the schedule V, ibid
189 Item number 20 of schedule V, Ibid
190 section 2 clause (c) of the Marine Fishing Regulations Act 1980
191 Ibid
192 section 13 Kerala Panchayat Raj Act 1994
193 chapter III sections 14 – 16 of the Marine Fishing Regulation Act 1980
under the supervisory power of district level panchayat. Similar changes shall be made in other provisions also to replace the Deputy Director as the implementing authority of the Act instead of District Collector. 194

The Marine Fishing Regulations Act deals only with the licensing and control of fishing in sea. It will be sufficient if the officers in Fisheries Department under control of District Panchayat are made functionaries under the Act. The Act does not contemplate any development or welfare activities. Whereas the Panchayat Raj enactment envisages such welfare and development function also with the local governments authorities. Hence detailed provisions regarding such functions shall be included in the Act in order to facilitate the transferred functionaries in this sector.

**The Kerala Prevention and Control of Animal Diseases Act, 1967**

This is an enactment relating to the prevention and Control of diseases affecting animals in the State of Kerala. It is a consolidated enactment so as to repeal several other former legislations in this regard. The Act provides for declaration of infected area in public or private places. 195 The enforcement authorities are the Veterinary Surgeons and Inspectors. They are transferred functionaries to the Village Panchayats according to the provisions of Panchayat Raj Act 196. Hence the reference of “Panchayat” shall be amended as “Village Panchayats” 197. The words “National Extension Block if any “ shall be substituted with the words “Block Panchayat” 198. The executive functionaries under Deputy Director of Animal Husbandry Department can be contemplated as the institutional network for the implementation of this Act.

**The Kerala Livestock Improvement Act, 1961**

This is an enactment to provide for the improvement of the livestock in the state of Kerala. Animal husbandry is a function and subject entrusted to Village Panchayat. Under the Kerala Livestock improvement Act there is no such function provided to panchayats. But they are under a duty to prevent the commission of an

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194 chapter IV Clause (k) of sub section (2) of section 24, ibid
195 section 14 to 16 of the Kerala Prevention and Control of Animal Diseases Act 1967.
196 see schedule III of Kerala Panchayat Raj Act 1994
197 section 17 (5) (a) (i), ibid
198 section 17 (5)(a)(ii), ibid
offence under this legislation and to assist the authorized licensing officer to enforce the provision of this Act. The primary administrative function involved in the Act is of licensing of bulls, inspection etc. They are highly technical matters. The delegation of authorities is departmental. Hence there is no much scope to empower the local authorities under the Act. But corresponding change may be proposed so as to transfer the power of State Government to District Panchayat, because production, maintenance and distribution of seeds and other accessories, specimen for artificial or other insemination process is a duty vested with the district level panchayat.

The Kerala Plants Diseases Pests Act, 1972

This is an enactment to prevent the introduction, spread or reappearance of plant diseases, pests, parasites and noxious weeds. At present the District Collector is the functionary and the Village Officers as well as Village Extension Officers are the reporting officers. There is no reference to panchayats and municipalities anywhere in this Act. Under the heading of agriculture, provision of implements, store, accessories, pesticides, insecticides and protection of plants are the functions to be attended by the Village Panchayats.

As per the provision of Panchayat Raj Act, technical guidance to and supervision of agricultural development and extension programmes at the village level is to be attended by the Block Panchayats and the arrangement of purchase, sale of insecticides, pump set, implements, improved seeds etc. by the District Panchayats. Similar functions are bestowed with the Municipalities also.

The functionary at Village Panchayat level should be the Agricultural Officer in charge of Krishi Bhavan in a Panchayat. At district level the District Agricultural Officer in charge of subjects allotted to the District Panchayat should be the functionary. At the Block level the Assistant Director of agriculture may be made as responsible officer. These functionaries should act in consultation with and in supervision of the concerned Panchayat at each level. So the panchayats shall be provided with the policy making and regulatory authorities under the Act. For that

199 sections 3,4,7,8,9 and 12 of the Kerala Plant Diseases and Pests Act 1972.
201 schedule IV, ibid
202 schedule I of Kerala Municipalities Act 1994
corresponding amendments may be considered. Additional functions and responsibility shall be provided to these functionaries in this regard. Instead of District Collector as the appellate authority against a decision of the inspecting officer under the present enactment, the District Agricultural Officer shall be made the first appellate authority. If a second appeal is preferable it shall be made before an Adjudicatory Officer designated by law. 203

The Inspecting Officer shall be entrusted to demand the cost of any preventive or remedial measure carried out, from the occupier of a premises and such amount shall be payable by such occupier204. The District and Regional level authorities may be prescribed as the co-ordinating and appellate authorities.

The Kerala Khadi and Village Industries Board Act, 1957

This is an enactment to provide for the organization, development and regulation of Khadi and Village Industries in the State of Kerala and to constitute a Board to carry out the said objects. During the enactment of this legislation democratic decentralization was not realized, but only in the conceptual form. After the formulation of constitutional measures, for effective decentralization of administrative and developmental powers, as well as state level legislation and to enforce such constitutional formulations, the situations have to change.

Small scale industries including food processing industries, khadi, village and cottage industries are the functional area of Village Panchayat on which they have to prepare and implement their own plans and projects.205 Under the provisions of Kerala Panchayat Raj legislation Small Scale Industries (SSI) including Village Industries are the subject allotted with Village Panchayat.206

Providing infrastructure facilities for the development of Small Scale Industries (SSI) is the function of the Block level Panchayat.207 Promotion of marketing of products of Small Scale and Cottage Industries and organizing training programme on the subject, encourage entrepreneurship etc. are the functions of

203 section 9 of the Kerala Plant Diseases And Pests Act 1972
204 section 7 of the Kerala Panchayat Raj Act 1972
205 article 243 G and Schedule 11 of the Constitution of India, 1950
206 see the schedule III of the Kerala Panchayat Raj Act 1994
207 see schedule IV, ibid
Among the subjects allotted to the municipalities Khadi and Village or Small Scale Industries is not included. But the Kerala Municipalities Act of 1994 provided that the Management and Control of Khadi and Cottage Industry, Handlooms, Coir, Handicrafts and other traditional industries are included as the subject allotted to the Municipality.

As per the existing enactment Kerala Khadi and Village Industries Board Act 1957, it shall be the duty of the Board to organize, develop and regulate Khadi and Village Industries. The Board should perform the functions as the State Government may prescribe from time to time. During 1957 this legislation was made with a revolutionary objective to organize and co-ordinate village level industrial initiatives, to assist the village level industrial establishment to protect and maintain traditional and cottage industries and to provide better employment opportunities to the village people. Hence certain relevant functions were entrusted to the Board there under.

(i) to start, encourage, assist and run Khadi and Village Industries.
(ii) to provide employment.
(iii) to grant loans and other assistance.
(iv) to conduct training centers.
(v) to carry on trading activities.
(vi) to endeavor to educate public.
(vii) to seek advice from experts.
(viii) to promote researches.
(ix) to supply raw materials.
(x) to organize co-operative societies.
(xi) to perform other incidental functions.

But through the new legislation on Panchayat Raj and Municipalities almost all of these functions are shifted to the different local bodies at the corresponding levels. At the very same time the state level board is still continuing as a parallel organization with similar functions and activities.

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208 see schedule V, ibid
209 see schedule XII of Constitution of India, 1950 as amended in 1994
Hence this is an ideal situation to analyse the diarchal establishment in the field of decentralization of power and its performance in ideological and actual practical concerns. Along with such an analysis the institutional capability of local government authorities to perform all these functions, and their incapability to act as direct entrepreneur in this field etc. also should be examined. On the basis of the scientific, legal and administrative capability, strictly a clear demarcation of powers, functions responsibilities and duty must be introduced here so as to empower the decentralized democratic institutions for the self-governance in their own fields of activities. With respect to the parallel functions, the board shall be restrained from superseding the local government authorities. Instead of that the board shall be entrusted with a duty to assist and advice the local bodies to perform their functions. But the board shall be empowered to perform certain specific functions, which cannot be entrusted to the local bodies and which are not workable with themselves, such as:

(i) Mobilisation of loan, linking up of loans etc. with village and small industry sector.
(ii) Co-ordinating and channelizing central and lateral assistance and resources for the village and small scale industries.
(iii) Establish research centers, marketing centers, and technical assistance center.
(iv) Develop expert oriented programmes and link up local units with such programmes.
(v) Maintenance of standards in quality and quantity of collection of raw material, production of finest goods and their distribution.
(vi) Facilitate the entrepreneurs with clinical support to resolve their problems and smoothen the industrial activities and labour relationship.

Other activities and functions including planning, controlling, supervising, training and incidental duties may be entrusted to the concerned local government institution at each level.
**Functional overview on the Allied Legislations**

Under the separation of power doctrine, the local government institutions cannot be placed on the status of autonomous bodies with legislative, executive and judicial organs of the governance system. Instead of imparting the legislative and judicial powers to local authorities, these legislation and their provisions are instituted with limited objective to impart or delegate administrative functions as pure executive power to those local authorities. Adequate administrative system is not established in the grass root level in this regard. Hence appropriate measures shall be taken to transfer the administrative machinery to the local level among the rural and urban sectors.

It is evident that functions like licensing, permitting, regulating etc. are not deliberate delegated functions. They are purely administrative or quasi-judicial functions. Hence finality in decision making or determination is essential. Hence it cannot be entrusted to a collective body as an original power. Appellate power or overseeing power can be entitled upon the elected body in order to authenticate the functions of the officials thereunder.

It is advisable to evolve and develop an institutional subsystem or system in the local level to deal with the democratic governance functions transferred to them. But it is highly expensive to establish such a sub system. Too many practical constrains may be pointed out in this regard. In a pragmatic way the policy makers have decided to keep the welfare, development and executive functions as local self-government functions and all other powers and functions are entrusted to the state level system of political governance.

By ruling out the basic facts or fallacies in the historic analysis and literature review, undoubtedly it can be established through an administrative investigation that the traditional outlook and concept of local governance is still continuing in the democratic system of polity in India even today.
CHAPTER XVI

ADMINISTRATION OF ECONOMIC DEVELOPMENT AND PUBLIC PARTICIPATION

Structural imperatives, lack of genuine will to decentralize, absence of pressure groups, role of vested interest, weak base of grama sabha, lack of faith in decentralization, need for strengthening the evaluation of democratic decentralization, lack of fixed contours of democratic decentralization, adhocism in development planning etc. leads to the paralyzing condition of local self-governance in local development initiatives211. Such issues are not specifically or effectively addressed or resolved in the evolution of local governments.

16.1 Doctrine of PR / NP System in Indian Legal Framework

Lack of centrally sponsored schemes, lack of effective functioning of panchayat raj institutions, poor staffing pattern, ineffective project planning and monitoring, no release of finance at time, domination of employees than elected representatives, duplication and multiplication of projects and programmes due to three tier functions of LSGIs, shortage of staff, existence of grama sabha only in paper etc. also can be pointed out as reasons for the back shot of decentralized planning and development212.

Here there is the relevance of Kerala experimentation can be highlighted. The peoples plan programme was initially introduced as a political determination and social engineering process. For the last three plan periods it was established as an economic model and fixed parameter of the state financial system.

The statutory status of grama sabha, the increased role of women, role of executive functionaries, the social audit, empowerment of people, the systematic guidelines, interventions of the State Planning Board (SPB) and the Government etc. influenced those planning exercises in Kerala.

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211 S. L. Goel, Salini Rajesh, Panchayati Raj in India, Theory and Practice (2003), pp. 33-37
212 Ibid at pp 41-69
Whereas the imperatives of performance audit and social audit, oversee and failure of grama sabha, weak attendance of bureaucrats in the development process, inadequacy of peoples participation, absence of proper political will, non-enforceability of PESA etc. can be cited as grounds for the demerits in the local level planning and development\textsuperscript{213}.

The roots of local level planning and economic development can be located from the United Nations prepositions made in 1952 itself\textsuperscript{214}.

Issues identified can be enlisted as follows:

- Low levels of efficiency, effectiveness, accountability, transparency and dynamics
- Secrecy in public service, high degree of centerization in public decision making.
- Weak instruments of control and accountability through local governments
- Dual control over and multilevel management of executive mechanism
- Repetition, doubling and multiplication of schemes, project and programmes.
- Departmentalization and compartmentalizing in bureaucratic functioning rather than a local government mechanism.
- Over sizing and over staffing in certain levels but lack of adequate staff and functionaries in certain other levels.
- Inefficiency of public employment system to match with social needs and necessities.
- Weak enforcement of laws and rules, absence of functional manual and corrupt practices in administration.
- Politicization of public service delivery and wastage of public funds.
- Supremacy of political or executive functionaries amounts to nepotism and bias

\textsuperscript{213} Ibid at pp. 70-91
\textsuperscript{214} United Nations Organization, Decentralization for National and Local Government, Department of Economic and Social Affairs, U.N New Delhi (1952) p. 70
Informed Public Participation in economic development process will help us to overcome the said drawbacks and to strengthen the socio-economic initiatives for future development. Most important platform for this purpose is the gram sabha. It can be materialized as follows:

There shall be effectively evolved and properly administered training, awareness, communication system for the environment creation in this respect. Such an Information, Education and Communication (IEC) system shall be organized with the following components.
16.2 Financial Policy Measures on PR System

Financial autonomy of local government institutions has been a relevant consideration for all the attempts for democratic decentralization. During the earlier days of post-independence period itself it was recommended that unconditional assignment of at least 15% of land revenue raised in a panchayat area and the proceeds of the surcharge levied on the transfer of property to the panchayats, apart from raising their own revenue\(^\text{215}\).

It is further recommended that certain taxes on land, and building, octroi, tax on non-mechanical transport, tax on property, tax on profession, tax on advertisement, tax on entertainment, duty on transfer of property etc. to be reserved and earmarked to the local government bodies during the post-independence era\(^\text{216}\).

It was proposed that substantial and growing resources shall be provided entirely within the ambit of power of local governments so as to exploit, to develop and to utilize them\(^\text{217}\). It was also observed that no democratic institution can function depending on external financial agencies only. Ample opportunity to mobilize enough own resources is a necessary condition for that\(^\text{218}\).

There is a constitutional restriction in this respect. The rule of law prevails over the country do not allow those institutions to impose any tax or rate without a legislative back up recognized by the state legislature. In addition to that the existing legal system does not provide any scope or measure to impose taxation upon local government bodies. Hence either the central or state government shall levy and collect taxes, on behalf of the PRIs and shall be disbursed among them. Such a suggestion was raised in 1986 itself\(^\text{219}\). Subsequently, it was proposed to entrust the local bodies to collect taxes as part of their revenue mobilization as per the rates and limits recognized by the State or Central governments.

\(^{215}\) see Report of Local Finance Enquiry Committee, 1956
\(^{216}\) see Report on Taxation Enquiry Committee – 1963.
\(^{217}\) see Report of K. V. Santhanam Committee - 1978
\(^{218}\) see Report of Asok Mehta Committee - 1978
\(^{219}\) see Report of L. M. Singhvi Committee - 1986
In addition to the tax revenue resources other non-tax revenue resources can also be earmarked for local government according to the policy resolution of State or Central Governments in the hierarchy. But ultimately the financial resources of local government authorities depend upon the higher level governments till today.

Seven types of resources are transferred and assigned to the local governments in Kerala such as

i. Own tax revenue from taxes assigned by the state government but collected by the local governments
ii. Taxes assigned to local governments, but collected by the state government and passed to local governments.
iii. Shared taxes.
iv. Non-tax revenue such as fees, charges, rates etc.
v. Grants-in-aid comprising of more than 20 items
vi. Loans from state government or other financial institutions
vii. Funds received on centrally sponsored schemes.

Expenditure was confined largely to traditional civic functions. Apart from that certain development and welfare functions are also delegated to local government institutions.

**State Finance Commission: Concept and Practice**

Under the constitutional mandate of 1992 the State Finance Commissions are envisaged to safeguard the financial autonomy of local self-government institutions. Innovative resource mobilisation and income generation, entrepreneurial activities, project loan, public contribution, tax sharing, tax assignment, general purpose grant, incentives etc. shall be kept under the purview of state finance commissions.

But the appointment, approaches, terms of references, recommendations, recognitions and enforcement of recommendations etc. depends on the attitudinal changes of the State Governments and its political system. This characteristic element is visible from the experiences of Kerala as well as the other States. The consideration towards and effective enforcement of the recommendations and suggestions by such commission shall be treated as a constitutional mandate over the
higher level governments. In addition to this the local governments shall ensure their best in financial matters so as to collect own revenue and improvise their own financial and fiscal responsibility.

Monitoring power is also to be vested with state finance commission regarding the distribution, utilization, accounts, audits and accountability upon the fund flow mechanism of the local self-government institutions.

**16.3 Centrally Sponsored Scheme (CSS)**

In order to achieve the real goal of decentralized planning and development, convergence of a plethora of control and state level schemes to avoid complication and duplication at grass root level. Outlay of all central and state sponsored schemes and programmes shall be released directly to the local self-government at appropriate level through the responsive channel according to the federal sstructure of the nation.

Dr. M. A. Oommen denoted that the certain criterion may be there in allocation of funds with respect to the autonomy, equity, predictability, efficiency, absorptive capacity, simplicity, promotional incentives etc.

Whereas certain factors may be there to be considered as limitation in fund allocation from top to bottom, like

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220 Report of the Standing Committee on Urban and Rural Development 2002 No. 37, p. 40
➢ Lack of will and ability to impose tax
➢ Poor finance position of the state
➢ Narrow tax base of LSGIs
➢ Unfavourable attitude of state governments
➢ Absence of rural industrial sector
➢ Apathy of village community
➢ Least role of credit agencies

From the experience to last two decades in Kerala certain inferences in this respect can be evolved, such as

• Improper account maintenance and management
• Complexity of audit measures (Five category of public audit with respect to LSGI)
• Duplication of schemes and programmes
• Local area development funds for MPs / MLAs
• Non tax revenue crunch of LSGIs
• Out-dated methodology of finance budgeting
• Budget – plan disparity
• Lack of entrepreneurship / investment ventures
• Rigidity of funding norms
• No augmentation of resources

### 16.4 Planning for Panchayat Raj Institutions

Planning provides a frame work of time and space which binds sections, regions, and states together and relates each year’s effort to the efforts in the succeeding years. The essentials of such development planning are:

• Enunciated objectives and targets
• Methods of attainment
• Time schedule and phasing
• Compilation of and integration of resources inventory
• Preparation of draft action plan

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222 Amit Vardhan, Panchayat Raj finance which used to be examined in detail in Panchayat Raj Finance, Kurukshethra April 1996
- Selection of beneficiaries
- Implementation of appropriate programmes with participation of local people.

Participatory planning and development provides much opportunity to establish need based resource mobilization, fund flow, effective utilization, meaningful monitoring, time bound implementation, result oriented evaluation and public accountability.
Community participation is a method for closing or filling the gap between the people’s aspirations and the government’s performance. It will help us to rectify the drawbacks of the existing administrative system. Hence the plus point of participatory governance and planning process can be enlisted and enumerated as follows:

- Higher efficiency and effectiveness
- Higher transparency
- More accountability
- Larger dynamism
- Mass media and social media communication
- Understanding public needs and values
- Informing people
- Advising people
- Environment creation
- Empowering people
- Personal contact and correlation
- Catering disadvantaged sectors of the society
- Ensure attitudinal changes
- Strengthening of community-based systems
- Ensuring administrative reforms
- Speed redressal of complaints
- Enforcement of citizens service charter and service delivery rights
- Right to good governance and right governance

16.5 Personal Administration

This process can be extended to the personal administration of local government institutions. It has now been proved, country after country, that an honest, professionally sound, contented bureaucracy is an essential element of any programme. It is thus of utmost importance that the best brains in the country are attracted to the public services. They should not only be motivated to enter the service but can serve in a professional and dedicated manner. This necessitates a careful handling of all the major parameters from their institution to retention.
Elected representatives, officials of the local government, functionaries in transferred institutions, voluntary functionaries, community volunteers, technical experts etc. shall be utilized as part of planning process. Their administrative and management shall be vested with the LSGIs. Apart from the district planning committee and state development council, there is a larger scope for local development council, at the level of each local government institution. Legal measures have to be incorporated to substantiate local development councils.

16.6 State Control Mechanism

Both the language and methodology of monitoring and evaluation systems, in the modern development context rather than the out dated notions of inspection and supervision, has changed considerably. Instead of scrutinizing and penalising there must be auditing and correction in local governance. The process of the state control shall be reorganized in such a manner.

Hence there must be larger concern with the following aspects in decentralized planning process.

- Change in outlook as the agency of the government
- Attitudinal change as an administrative and implementation agency
- Provide functional and financial autonomy
- Restructuring of the strong hold bureaucracy
- Throw away the political unwillingness
- Reduce lack of consensus
- Undertake decentralization as a state responsibility
- Depend upon integration and convergence instead of schematic implementation
- Utilize subsidiary principle and
- Enforce the rule by exemption along with the following structural mechanism

![Diagram of planning hierarchy]

- State Planning
  - District Planning
    - Panchayat / Municipal Planning
      - Grama Sabha
        - Neighbourhood
          - Planning
            - Recognition
              - Implementation
                - Participation
                  - Consumption
                    - Monitoring
                      - Evaluation
                        - Area Specific / Need Based Development
Devolution in the context of local self-governments means that where the authority in respect of a specific activity is transferred from the state to the local governments, the later have the prerogative of taking decision in respect of planning and implementation of such activities. In fact functions, funds and functionaries in complementing to one another in the process upon the local self-governments.

Equity, efficiency, transparency, autonomy, economy, stability, adequacy, and tax base revenue accountability shall be the resultant benefits in these process of decentralized and participatory planning. It will lead us to higher rate of public accountability and public answerability upon the administrative institutions and personnel to the public, ultimately, for their actions or inactions. Whereas, the standards, the agents, the means of such public accountability also shall be designed and decided as part of decentralized administration system.

16.7 Operationalizing Decentralized Participatory Planning

The campaign made during the ninth plan has succeeded in providing a concrete methodology for participatory planning for local level development. The salient features of this methodology are described below, stage by stage.

1. Needs identification: Through a meeting of grama sabha / ward sabha the felt needs of the community are identified. There is a period of environment creation to mobilize maximum participation in the grama sabha / ward sabha.
2. Situation Analysis: Based on the demands emanating from the first special grama sabha / ward sabha and based on developmental data, both primary and secondary, exhaustive development reports have been prepared and printed in the case of every local government in the State. These reports describe the status in each sector of development with reference to available data, analyse the problems and point out the directions for further development. This is an one-time exercise for a plan period and the reports have been revised before the tenth five year plan.
3. Strategy setting: Based on grama sabha / ward sabha feedback and the development report, a one day seminar is held at the local government level...
in which participation of experts, elected members, representatives nominated by the sabhas, practitioners from among the public is ensure. The development seminars suggest the broad priorities and general strategies of developmental projects to be taken up for a particular year.

4. Projectization: The ideas thrown up by the above three stages are translated in the form of project by working groups at the local government level. For each local government there are about eight working groups dealing with different sectors of development. Each working group is headed by an elected member and is convened by the concerned government official. The vice chairman of the working group is normally a non-government expert in the sector. The projects are prepared in the suggested format outlining the objectives, describing the benefits, explaining the funding and detailing the mode of execution and phasing of the project.

5. Plan finalization: From among the project, based on the allocation communicated, the concerned local government finalizes its plan for the year and this plan is submitted to the District Planning Committees (DPCs) through the Technical Advisory Committees. The panchayat is free to take up any project, irrespective of its cost, subject to the resources actually available and within the sectoral limits as per the policy of the state and the law existing for the time being.

6. Plan vetting: The Technical Advisory Committees at the Block or the District level consisting of official and non-official experts vet the projects for their technical viability and conformity with the mandatory government guidelines on planning and costing and forward them to the DPC. They cannot change priorities or project, they can only ask for rectification of the suggested project proposals.

7. Plan approval: The DPC gives the formal approval to the plan after which the local government can start implementation. It is to be noted that the DPC also cannot change the priority of a local government. It can only ensure that government guidelines are followed. Administrative approval for implementation is given project-wise by the local government. Every local government has unlimited powers of administrative sanctions subject only to the limits of its financial resources.
16.8 Setting up Accountability Systems

Since substantial responsibilities have been passed on to local governments, accountability systems acquire special importance. In harmony with local government functioning and participatory budgeting, in addition to traditional systems of checks and balances, new forms of downward accountability to the people has also been structured in. The key accountability systems are given below:

1. Committee system for decision making – All decisions of local governments are to be taken by itself through consensus or by voting. Power is not concentrated in individuals.

2. Right to Information – All documents of local governments except very few ones like health records of patients, contract documents before finalization etc. have been declared as public documents by law. Any citizen has the right to peruse them or ask for photocopies. In a literate and politically conscious society this is a powerful provision against corruption.

3. Participatory budgeting – The evolution of a budget particularly for development works is through the comprehensive stage by stage planning process which allows space for citizen interaction and intervention, expert involvement and final budgeting before approval by elected bodies. This provides adequate protection against arbitrary decision making.

4. Due process in selection of beneficiaries – This is ensured through the following steps.
   a. Clear enunciation of eligibility criteria and prioritization criteria at the time of scheme formulation.
   b. Assigning weightages to each prioritization criterion.
   c. Calling of application in writing
   d. Enquiry process into applications with awarding of marks to each criterion.
   e. Reading out of marks in grama sabha / ward sabha
   f. Opportunity to each applicant to see all records including application form for others.

5. Technical sanction – The process of giving technical sanction has been taken out of the departmental technical hierarchy. Technical committees have been
constituted at the Block / Municipal / Corporation / District levels consisting of engineering experts drawn from governmental, academic and non-governmental sources. This gives some protection against inflation of estimates and dilution of technical standards.

6. Audit system – The traditional audit system through local fund audit department has been strengthened with the technical support of the Accountant General. A special concurrent audit system has been designed, manned by surplus staff the panchayat and urban affairs departments headed by an officer of the Indian audit and accounts service. This system called Performance Audit acts as an online corrective mechanism helping local governments to put their systems in proper place. Performance audit is conducted twice a year in all the local governments. Since the minimum grant-in-aid to a grama panchayat is Rs. 25 lakhs, the accountant general also carries out grant-in-aid audit including village panchayats. A technical audit team has been put in place at the State level consisting of senior engineers mostly from outside government who are selected for their integrity. This team looks into complaints regarding execution of public works.

7. Social audit – A semi structured social audit is conducted in grama sabhas and ward sabhas where the accounts of the village panchayats, municipalities and corporations have to be presented and queries replied to.

8. Awareness building – IEC campaigns have been conducted through the media of press and TV explaining the right of citizens vi-a-vis local governments. Special meetings of NGOs are held to tell them everything about citizen entitlement vis-à-vis local governments.

9. File of property statement – All elected members have to file their property statements immediately on election.

16.9 New Reforms under implementation

1. Appellate Tribunals – Judicial tribunals are to be set up at the regional level to hear appeals against decisions by local governments in exercise of their regulatory powers. The Acts have been amended for this purpose and negotiations were on with the High Court regarding allotment of judicial personnel.
2. Social audit – A draft social audit policy has been approved by the government and an initiative to take up action research programme to build up good models of social audit has been cleared and Rs. 5.70 crore has been allotted in the current year’s annual plan for this purpose.

3. Citizens charters – This has been legislated for and in order to operationalize them Rs. 3.25 crores has been provided in the current years plan. Once the citizens charters has are brought out accountability for provision of services would improve.

4. Monitoring by independent institutions – Monitoring of local government programmes by independent institutions has been decided upon. Rs. One crore has been set apart in the current years plan for this purpose. Institutions have been identified and the working out of the methodology for concurrent monitoring is on through six pilot projects.

5. IT applications – The State has decided to computerize all its local governments and network them. The Information Kerala Mission has been set up for this purpose. They have evolved 12 softwares for this purpose. In the first stage IT applications would focus on the monitoring of development programmes and development expenditure. In the second stage, different aspects of administration in local governments would be computerized. And in the third stage IT enabled services to the citizen would be taken up. Already a pilot version has been rolled out in Vellanad grama panchayatt of Thiruvananthapuram. It is expected to cover all the local governments after the bids received in response to a BOLT proposal finalized.

6. Citizen education – A massive citizen education campaign programme is planned for. This would include publication of a booklet on citizen entitlements.

### 16.10 Good Governance Features

Government has to play a conscious role to improve governance in local governments. Experience shows that it is relatively easier to introduce good governance features at the level of the local government. To recapitulate, some of the good governance features in the Kerala experiment are:

- Transparency and right to information
Public IEC campaigns
• Insistence on due process
• Participation in all stages
• De-bureaucratization especially in technical matters.
• Accreditation of NGOs to act as support agencies for local governments
• Giving opportunities to young professionals to serve as apprentices in local
governments eg. Civil and agricultural engineers, IT professionals etc.
• Recognition of best practices by selecting beacon panchayats
• Strengthening independent umpiring institutions
• Introducing code of management systems to make them people friendly
• Simplification and modernization using information technology

A quick assessment of performance

Decentralization has had several positive spin-offs. They are summarized below:

1. The formula based devolution of funds has ensured that funds flowed to
every nook and corner of the State including the outlying and backward
areas, facilitating public investment.

2. The cornerstone of Kerala’s decentralization has been people’s participation.
The process have been designed to facilitate intervention by the interested
citizen at all stages of the development process right from generation of
developmental ideas through project planning, project implementation, up to
monitoring.

3. Decentralization has resulted in better targeting especially in the case of
individual benefits by insisting on a due process in the selection of
beneficiaries. The quality of identification has certainly improved.

4. Decentralization has opened up opportunities for wide ranging reforms.
Already right to information, prescription of dire process in giving of
benefits, outsourcing of technical services, community management of assets
and simplification of procedures have taken place. More reforms in the form
of independent regulatory institutions, improved management systems both
financial and administrative, enhanced accountability mechanisms etc. are in
the offing.
5. In development matters local government have significant achievements, the important ones being, provision of minimum needs infrastructure both to household as well as to communities, introduction of the mandatory women component plan, providing more funds to families below poverty line through local government, providing good models in water supply, improvement of quality of education, improving agricultural productivity etc., raising public contributions for water supply schemes, repair of buildings, provision of facilities like latrines in schools and dispensaries, supply of computers to schools etc. There are also certain problems and weaknesses which are as below:

a. the outliers like Schedule Tribes are still to gain from decentralization,
b. the poorest among the poor need social safety
c. the management of services like health and education have not improved
d. the flow of bank credit into local schemes has been limited
e. there is an inherent limitation in local government action against the problems of educated poor.
f. there is a tendency to spread resources thinly with funds being given to every electoral constituency whenever a development scheme is taken up.
g. Vertical integration of local level programmes has proved difficult to achieve.
h. Participatory aspect of planning is often limited to airing of needs and sharing of benefits.
i. The introduction of local planning and development coincided with years of acute financial difficulties of the State government. Due to constant ways and means difficulties, the actual release of finds and implementation of local schemes were not matched leaving or delayed or partial implementation or even abandonment.
j. Redeployment of staff for plan implementation could start only a few years after the programme was started. It is still incomplete.
k. Despite governments overall approach and pro-local government policy, reluctance to change persists in many individuals and departments.

l. The resolution of problems between the local governments and para statals like the Electricity Board and Water Authority continues to be knotty.

16.11 Decentralized planning and development

Planning and implementation of planned project for development is an essential function of local self-governments. But absence of previous experience, inadequacy of guidelines and deficiency of rules and regulations has contributed to disruption and restraints in the process. In order to overcome the void and to supply locally adaptable planning system the following provisions shall be included in the Panchayat Raj Act itself.

i) Local level plan projects shall be prepared by local authorities according to the procedure laid down for formulation of local plans.

ii) State Planning Board may be empowered to formulate such guidelines and procedure with general approval of the State Government. While doing so the board shall make detailed and satisfactory discussion and consultation with local bodies, and concerned governmental departments.

iii) The five year perspective plan and component plan for each constituent year shall be approved by the district planning committee (DPC) concerned.

iv) The plan grant of the local bodies on account of special component plan (SCP) and Tribla sub-plan (TSP) as well as women development plan shall be specifically included in the general plan proposal.

v) Each local body shall strictly confine itself to the allocations indicated in the plan proposal and budget proposal with respect to the State plan grant component of the outlay for the local plans.

vi) All local bodies shall integrate State and centrally sponsored schemes in their local plans.

vii) The departmental officers shall inform the local bodies as to the funds they might receive from State and Central schemes, funds received during the previous years and amount that may be continued during the current year.
Prioritized projects shall be taken up and implemented in such plan schemes, funds allocated shall be used only for productive and material projects in order to increase production and progress of the society.

viii) All new development projects of local body must be part of their annual plan. Therefore, the entire revenue surplus may be treated as a source of plan finance. Any surplus fund after establishment, maintenance and repayment or recurring expenditure, as well as other available funds with the local bodies out of the fund given by government through departments etc. shall become the part of plan fund.

ix) Fund raised from commercial and cooperative banking sector, other financial institutions like NABARD, beneficiary contribution and public contribution shall be treated as components of plan fund.

x) Subsidies, incentives and rates shall be fixed according to the guidelines.

xi) Sectoral and project-wise location shall be fixed according to detailed plan guidelines.

xii) No salary, except short term honorarium or consultancy charges or long run payment shall be made from local authority plan fund.

xiii) Excessive or extraneous use of plan fund shall be strictly prevented.

xiv) Internal performance audit, external local fund audit, social audit, and monitoring shall be strictly provided for each plan project.

xv) Plans of the three tiers of panchayats and municipalities shall be integrated so as to avoid duplication, gaps, contradictions, and inadequacies between the projects in a scientific manner, with the help of experts and departmental officials are each level.

xvi) District planning committee shall undertake a systematic review of the annual plan of each local body and finalise the integrated district level plan for the year.

xvii) A fifteen years long term perspective plan also should be prepared by each local body.

xviii) Beneficiary selection shall be vested with grama sabha and prioritized list may be prepared by the local body.

xix) Individual beneficiary schemes and basic level projects shall be prepared and implemented only through village panchayats and municipalities. Block and
district panchayats shall undertake only comprehensive projects, which cannot be handhold by the village levels panchayats.

xx) Different stages of plan process involving task forces, grama sabha, development seminar, plan documents preparation appraisal and approval of plan proposals, implementation committees, expert committees, evaluation and monitoring committees, auditing, transparency etc. shall be scientifically and systematically practised with measurements participation of all sections of people.

xxi) Rulemaking power, power to issue guidelines and other incidental and auxillary powers may be vested with the State Government through the parent legislation or through rules allied with the law.

16.12 Future of Decentralized and Participatory Planning

International donor agencies advocates for decentralization particularly for its unique potentiality for improving the delivery of public services at the local level. It is to be treated as the instrumental value of local governance and decentralized democracy. In that sense we may define decentralization as the empowerment of the common people through the empowerment of local governments223.

Whereas there is mismatch in overall growth performance and growth rate in the post-amendment regime. In production sector, overall impact of decentralization cannot be cited as good. Issues of convergence and co-ordination in between agriculture, animal husbandry, irrigation, electricity, etc. is essential to overcome this criticism. Instead of subsidy disbursing office, local institutions shall perform their duties to raise the gross production and productivity. Dual control of the transferred institutions and functionaries shall be avoided at the earliest. Production policy shall be formulated in the district level, in order to realise participatory plan formulation and social audit.

Fragmented exercise of decentralized planning which negates the essence of making comprehensive area plans. More mechanical and technical planning process conducted by the district planning committee shall be changed. Approval of

development projects subject to rules and guidelines issued by the government from time to time instead of aspirations of the local people shall also be changed.

Grama sabha shall be made a viable and lively component and platform for decentralized planning and participatory governance. Need identification and decision making shall be entrusted as serious and productive grama sabha formation. Security of the community properties must be entrusted to grama sabha / ward sabha.

Technical support base to decentralized planning is very relevant, to address many of its lacunae. Scientific plan co-ordination and monitoring is to be ensured. Spatial planning, resource planning, watershed planning etc. have to be utilized to achieve better results. Coordination is the essence of multilevel planning. The missing links in intergovernmental sectors, inter-department activities, vertical and horizontal planning process shall be filled up through effective coordination.

Equally important as plan formulation, plan implementation, project management, plan monitoring and evaluation must be introduced. Plan implementation does not mean plan expenditure only. The outcome, timeframe, quality, asset management etc. shall be taken into consideration here. Above all, development planning is to be treated as a political agenda, over and above the sectarian and partisan policies and politics.
PART IV

FUTURISTIC ALTERNATIVES
CHAPTER XVII

FUTURISTIC ALTERNATIVES

17.1 Empirical Analysis

In a socio-legal research work, especially with critical approach on institutional capability and administrative system, a convergent methodology is useful than any particular method of study. Hence in the present study a choice based blending of doctrinal and empirical research has been adopted. In the normative research part, the researcher depended upon literature review and secondary and tertiary informations. Limited number of case laws is also mentioned as part of it to derive a philosophical background for the study.

Whereas in the functional analysis part, on practical problems faced with decentralization of democracy and local governance, determination of their solutions etc., the researcher used empirical research based on field data availed through different methods including interview technique, questionnaire method, group discussions etc..

In local governance system, there are different set of stakeholders like elected persons, official functionaries, voluntary workers, and general public, those who are having different set of interests and perspectives. Within such society, the felt needs of women, children, dalits, sabaltains, differentially abled people etc. may also be different. So their attitude towards grassroot democratic functions and local governance shall be different. Those opinions are relevant and valuable to conceive appropriate inferences in the research problem.

In order to conduct an opinion collection from those different stake holders, a particular methodology is not applicable due to their heterogeneity in character. Hence a coinage of different tools has been used here in the present study. In order to collect information regarding institutional structure and functions, questionnaire method is used. Focus group discussion method has been used for public opinion collection on local governance matters. Delphi method is used for conducting perspective study process to evolve futuristic policy suggestions. A comprehensive collaborative analysis is used for deriving resolutions and arriving into positive suggestions.
Scheme of the study

Theoretical and functional framework of the study has been evolved from the literature review. The philosophical and ideological back up has been proposed through the comparative analysis on the basis of the available literature and case laws. Those perspective elements and conceptual components have been corroborated with field level information. For that purpose, institutional information from selected grama panchayats, block panchayats and district panchayat have been used. Data collection from registers, ledgers, files and software of the concerned local bodies have been used for and compiled for this purpose. Locality based and zone based selection method has been used here in order to identify the local body for the field study.

Focus group discussions have been organized for opinion collection and consolidation of critical comments on local governance. Groups of elected persons, official functionaries and voluntary functionaries have been organised for this purpose. The availed inferences have been compiled together, sorted out and correlated with corresponding information availed through other methods.

Delphi study has been conducted through structured questionnaire containing interrogations on local governance system at general as Part I and Kerala scenario with special emphasis in Part II of the same. Collected opinions have been sorted out and analysed with help of information technology information technology tools and computer aided analysis mechanism, so as to derive corresponding inferences.

A comprehensive and multi-fold correlation between such inferences has been evolved, so as to test the given hypothesis, and to provide feasible solutions for the problems identified through the study. On the basis of that the futuristic policy measures have been derived and incorporated in the conclusion.

As part of the empirical study Delphi method is utilized. Opinion collection and consensus making through repeated interrogations with limited number of population is the typical Delphi method. Here the population consists of different stake holders in local governance such as elected representatives, officials, voluntary functionaries and legal experts. Their responses are analysed with the help of information technology tools. From the given inferences certain conclusions have been derived and are given below. The futuristic perspectives are evolved on the basis of such conclusions.
17.2 Delphi Study – Graphical representation

Part I

1. 73rd and 74th Constitutional Amendment Acts are trustworthy and adequate to satisfy the objectives of grama swaraj in India.

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Figure IV

Trustworthy nature of objectives of 73rd and 74th amendments

Home Rule concept and grama swaraj in India, the ideological objectives were not satisfied in an expected trustworthy manner under 73rd and 74th constitutional amendments. Instead of that those legislations have proposed an induced form of local government instrumentality without any thread bearing relation with grass root democracy.
2. The objectives of 73rd and 74th Constitutional Amendment Acts were sufficient to establish local self-government institutions with absolute autonomy in governance process.

Table III

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Figure V

Limited autonomy to local self-government institutions

73rd and 74th constitutional amendments have failed to entrust real autonomy to local government institutions. Development, executive, welfare and regulation functions are devolved to lower tier of government. Policy making, law making and judicial powers are not entitled to local authorities. Hence absolute autonomy has not been expected from such bodies. Instead, they are only executive tools or instrumentality of the higher ups of the government.
3. Panchayati Raj and Nagarapalika institutions are only dependent arms of the hierarchy of governments owing to the absence of policymaking, legislative and judicial powers.

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Figure VI

Dependency of the local government institutions

Large percentage of responses pointed out that local government institutions are highly dependent on the hierarchy of governments in respect of powers, functions and funds even after the constitutional amendments in 1992.
4. Real decentralisation of powers from the Centre to State and from the State to lower levels not realised due to drawback of the constitutional frame work in 1992.

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Figure VII

Centralization for decentralization

Through the constitutional framework the states are entrusted to perform the duty to decentralize their functions and responsibilities to lower tier, whereas, no such distribution has been happening from centre to states. It has resulted in reduction of the powers of the state and strengthening of powers at the centre. But not so much functional responsibilities from the centre are transferred to the lower tier. Hence the responses pointed out that local governance in India was resulted as concentration of powers in the name of decentralization of democracy.
5. Establishment, subsistence and development of local self-government authorities became the responsibility of state political machinery due to the balance of convenience under the respective constitutional prescriptions.

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Figure VIII

**LSGI and higher level governments**

Large number of stake holders responded that the attitudinal differences and balance of convenience approach of the state and regional political parties and coalitions is relevant and decisive factor in materialising local self-government mechanism under democratic decentralization process. Establishment, structure, distribution of powers, existence and evolution such grass root level authorities depends on the political will of state ruling class and administrative attitude of state level bureaucracy.
6. Regional and State political attitude and aspirations influenced and restricted the real and resultant implementation of the Constitutional scheme on local governance.

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Figure IX

Demarcation of functions

The large percentage of response leads to a conclusion that the framework legislation has failed to demarcate the subjects and functions, their limits of levels to be transferred to the lower tiers. Hence such transfer of power has been considered as a matter of convenience of the political rulers in the state.
7. The proposed division of rural and urban local government institutions resulted as a blockade in establishment of district level administrative system with local government powers.

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Figure X

**District administration under the given law**

Large number of stake holders responded that the mechanical and non-practical division of urban and rural local bodies under two separate legislation has resulted in much hardship to district level administration. It has encouraged the continuance of bureaucratic setup in revenue district governance matters, instead of democratic decision making.
8. Mandatory provisions for interim level panchayat are not practical or fruitful in the present uniform pattern in different states.

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|   | 10 | 18 | 2 | 22 | 48 |

Figure XI

**Relevance of interim level panchayat**

The compliance for the provision for an interim level panchayat has also created administrative block in many states. Scheme implementation and project implementation in the interim level became crucial due to different reasons. Lack of interface between elected and official functionaries of the three tier mechanism also caused hardship to the interim tier.
9. The existing schedule of functions to be delegated and the rule of law behind such
deglegation is not properly administered due to ineffective enforcement provisions
in the Constitutional framework.

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| 7 | 19 | 3 | 21 | 50 |

Figure XII

Transfer of functions to LSGIs

The given responses pointed out that the constitution has no provision for strict or
mandatory compliance for transfer of powers to the lower tiers. Constitution has
provided only list of functions to be transferred to local bodies, within the 11th and 12th
schedules. Due to non-effective implementation of such provisions, the local
governance became name sake process or superfluous.
10. Local government institutions are functioning as only implementation instrumentality of the higher level governments due to the multiple dependants in functional plain.

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Figure XIII

Dependency of LSGIs

The responses given by large stake pointed out that the local government institutions are functioning as executive instruments of the higher level government due to their dependency in funds, functions and functionaries. The existing power structure and limited autonomy of the local bodies also leads to such a situation.
11. Structuring, establishment, time bound elections, role definition to specific classes like SC / ST and women, transfer of powers, funds and functionaries etc. are adequate for the achievement of Constitutional objectives in the country with respect to existing LSGI system.

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Figure XIV

Participation of marginalized

There are positive responses in those matters, and most of the stakes pointed out that the experiences of Kerlala and other such states with higher representation and participation of women, SC/ST people etc. in local governance process.
12. Thorough restructuring and revisit on the Constitutional provisions regarding LSGI is essential for their real implementation.

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Figure XV

Restructuring of Constitutional Provisions
Almost all the stake holders responded positively and proposed different instances for such a revisit to the constitution and respective restructuring of the provisions so as to realise the democratic decentralization and local self-government.
Part II

1. KPR Act and KM Act were evolved in the backup of 73rd and 74th Constitutional framework and hence were lost the historical and political perspectives generated in the Kerala society.

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Figure XVI

Central-state paradox in local governance
Large number of responses pointed out that the said constitutional reforms and corresponding state legislation have failed to identify and consider the historical experiences, the political initiatives and administrative measures in Kerala with respect to local governance. Hence they have lost their generic nature in real operational practices.
2. Original perspectives and provisions of KPR Act and KM Act have considerably changed through the later amendments incorporated therewith.

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| | | | | |
| 10.5 | 7 | 10 | 8 | 65.5 |

Figure XVII

**Legislative reforms in local governance**

Mixed responses received from the population pointed out that considerable change have been made in the original text of enactments, through later amendments. A higher percentage of the responses leads to a conclusion that such amendments helped us to enlarge the perspective and realise the practices of democratic decentralization.
3. The socio-political atmosphere in the State prevailed, imposed much influence and excessive impacts on the existing KPR Act and KM Act in the State.

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Figure XVIII

Socio-political and administrative influence

Higher rate of responses leads to such a positive conclusion that the socio-political and administrative atmosphere prevailed in the State of Kerala has imposed much influence and exerted excessive impacts on the then local government laws in the state.
4. Higher role and ensured participation of SC / ST people and women in local governance have empowered us to establish strong and effective LSG institutions in the State.

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Figure XIX

**Representation of marginalized**

Very few stake holders opined that such mandatory representation will not be helpful for real or right governance and the increased representation of SC/ST people and women shall be achieved through their emancipation and socio-political participation. Large percentage of responses established that the existing law has provided considerable opportunity to such concerned people in democratic governance, who may be otherwise marginalized in the society.
5. Lack of attitudinal and functional changes among the people of the State imposed hindrance on the evolution of LSGIs in their expected manner.

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Figure XX

Evolution of LSGIs in the state

The mixed responses shows that the attitudinal differences existed among the stake holders imposed considerable hindrances in the evolution of LSGIs in their expected manner within the state. The ideological or philosophical differences and practical blockades have caused much limitations in real practice of self-governance in the state.
6. Participatory organs like grama sabha, functional committees, beneficiary committees, social audit committees, etc. are not effectively established or utilized in the State under present LSGI system.

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Figure XXI

Participatory organs in local governance

There is absolute agreement of opinion within the responses which pointed out that the participatory organs are not utilized in the expected manner or with respective spirit in Kerala due to different reasons.
7. Decentralization of power concept is not trickled down to the citizens, instead of that the governance process precipitated around the local power brokers, rather than the real citizen.

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Figure XXII

Self-determination power of the people
The given responses lead to a conclusion that the real decision making or self-determination power is not vested with the people. Instead of that the decision making power is vested with political or official middle men, rather than the real citizen.
8. Dual control over institutions and functionaries creates much restraints and resistance in the appropriate function of LSGI in the State.

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Figure XXIII

Dual control in power structure

The given responses show that dual control is to be there till the present system of power structure continues. The appointment, transfer, posting, disciplinary actions etc. regarding local government functionaries are vested with the state government departments. Funds for the salary head is also generated from the state exchequer. Major portion of plan and non-plan funds are allotted by the state budget. Hence the dichotomy shall be there in local governance till absolute autonomy is vested with local government institutions.
9. Financial outflow and expenditure of funds pattern exists in the State reveals the poor performance of LSGIs in the own revenue generation and resource mobilization.

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Figure XXIV

Fund flow system
Large number of the stakes except the direct political or official representatives of local bodies opined that the present fund flow pattern caused poor performance of LSGIs in own revenue collection and fund mobilization by their own. This will affect adversely the autonomy of the local governments.
10. Allocation of resources, plan formulation and approval, implementation of development plans and projects at the grass root are not yet internalised and institutionalised in the State.

Table XXIII

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<td>80</td>
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</tbody>
</table>

Figure XXV

Decentralized planning system

The responses pointed out that for the last two decades, the different sets of guidelines, rules and orders, with respect to the decentralized planning process, their real practice in local government institutions, shows a considerable nature of adhocism, due to different reasons. Hence the whole planning process is not internalized or institutionalized in the grass roots.
11. Convergence and integration of LSGI system in the State is essential and the existing legislative framework has to be thoroughly changed for this purpose.

Table XXIV

<table>
<thead>
<tr>
<th>Not agreeable</th>
<th>Partially Agreeable</th>
<th>Neutral</th>
<th>Agreeable with reservations</th>
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<tr>
<td>11</td>
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<td>9</td>
<td>8</td>
<td>64</td>
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</tbody>
</table>

Figure XXVI

Convergence and integration in LSG system

Larger percentage of responses absolutely agrees with this preposition and they advocate for the true decentralization through such convergence and integration in order to establish appropriate district administrative system at the state.
12. Real autonomy has to be provided with LSGI through the formulation of Administrative or Governance Manual is essential in the State.

Table XXV

<table>
<thead>
<tr>
<th>Not agreeable</th>
<th>Partially Agreeable</th>
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<td>6</td>
<td>9</td>
<td>68.5</td>
</tr>
</tbody>
</table>

Figure XXVII

Functional manual for LSGI system

Higher rate of responses from the stake holders denotes the essentiality of such a functional manual for local governance in the state. It is absolutely needful for the role clarity and orderly functioning of different tiers of local bodies and their allied functionaries.
13. Integration of existing functional departments like panchayat, municipalities, rural development, town and country planning, LSG Engineering etc. into an umbrella system shall be essential for appropriate function of LSGI in the State.

Table XXVI

<table>
<thead>
<tr>
<th>Not agreeable</th>
<th>Partially Agreeable</th>
<th>Neutral</th>
<th>Agreeable with reservations</th>
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<td>10</td>
<td>8</td>
<td>7</td>
<td>10</td>
<td>65</td>
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</tbody>
</table>

Figure XXVII

Parallel bodies and allied institutions

Departmentalization, compartmentalization and fragmentation leads to absolute anarchy in democratic system, hence the larger percentage of the stake holders responded that integration of existing functional departments, parallel bodies and allied institutions are the need of the government for real decentralized democracy.
14. The District Planning Committee shall be restructured and established with capacity to function as the district planning body is essential for the future.

Table XXVII

<table>
<thead>
<tr>
<th>Not agreeable</th>
<th>Partially Agreeable</th>
<th>Neutral</th>
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<td>3</td>
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<td>74.5</td>
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</tbody>
</table>

Figure XXIX

**District planning restructuring**

Most of the stake holders, especially the experts pointed out that the present structure and function of the district planning committee is not up to the mark or not adequate. Hence they mainly advocate for structural, functional and institutional change for DPC. Institutional, secretarial and professional support is essential for this purpose.
15. Role of grama sabha and other participatory bodies shall be revisited and restructured according to the evolving socio-political and economic equations in the State.

Table XXVIII

<table>
<thead>
<tr>
<th>Not agreeable -2</th>
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<th>Agreeable with reservations 1</th>
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<td>7</td>
<td>6</td>
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<td>10</td>
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</table>

Figure XXX

Grama sabha experience

Higher rate of responses pointed out their concern on the ground level reality of grama sabha and other people’s centeredl organs in the local governance system. They have pointed out the causes and effects of the poor and unsatisfactory performance of such democratic institutions. In that respect, revisiting and restructuring of those organs shall be proposed as a conclusion.
16. Community Based Organisations and Institutions are to be provided with higher relevance and role in the local governance system of the State.

Table XXIX

<table>
<thead>
<tr>
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<td>24</td>
<td>18</td>
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<td>26</td>
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</table>

Figure XXXI

Community organizations and social institutions

Apart from other states in India, Kerala has a better socio-political and community based background in democratic process, hence there is little scope for parallel social or community structures other than the constitutional or statutory bodies. Whereas the supportive role and involvement of voluntary, community, based organizations can be promoted for better results in local governance and participatory democracy.
17. Service delivery manual for LSGI shall be formulated and implemented for institutional management with higher quality in service rights and accountability.

Table XXX

<table>
<thead>
<tr>
<th>Not agreeable</th>
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<th>Neutral</th>
<th>Agreeable with reservations</th>
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<td>0</td>
<td>1</td>
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</tr>
</tbody>
</table>

6.5 7.5 4 9.5 72.5

Figure XXXII

Service delivery mechanism

At present, there is no proper recognized service delivery manual for the core institutions or allied institutions in local governance. The stakeholders pointed out that there is a lapse in the enforceability of a comprehensive, integrated institution based functional service delivery manual and hence they advocated for enhancement of service delivery quality through introduction of such a perfect manual.
18. Good governance measures shall be enforced in a higher assertive manner in order to ensure expected results.

Table XXXI

<table>
<thead>
<tr>
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<th>Neutral</th>
<th>Agreeable with reservations</th>
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<td>26</td>
<td>18</td>
<td>5</td>
<td>23</td>
<td>28</td>
</tr>
</tbody>
</table>

Figure XXXIII

- Not agreeable -2
- Partially Agreeable -1
- Neutral 0
- Agreeable with reservations 1
- Absolutely agreeable 2

**Right governance and good governance**

Most of the stake holders pointed out that mere introduction of good governance provisions in the enactments shall not provide any result in actual experience. Hence they opined that strict practice of good governance components shall be ensured through legal instruments in future to ensure democratic governance at the grass roots.
19. Accountability measures shall be incorporated in the law and effectively administered to ensure higher service delivery quality.

Table XXXII

<table>
<thead>
<tr>
<th>Not agreeable</th>
<th>Partially Agreeable</th>
<th>Neutral</th>
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<th>Absolutely agreeable</th>
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<tr>
<td>-2</td>
<td>-1</td>
<td>0</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

| 24.5 | 18.5 | 3 | 24 | 30 |

Figure XXXIV

Public accountability mechanism

Large number of stakeholders pointed out that the limited extent of provisions in the local government laws related to accountability aspect has not in reality been practical in governance. Hence higher amount of corruption, wider scope of nepotism, larger possibility of arbitrations exist in the present system.
20. LSGI Tribunal and Ombudsman shall be reconstituted with functional mandate so as to ensure correctional administration measures in the LSGI in the State.

Table XXXIII

<table>
<thead>
<tr>
<th>Not agreeable</th>
<th>Partially Agreeable</th>
<th>Neutral</th>
<th>Agreeable with reservations</th>
<th>Absolutely agreeable</th>
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<tbody>
<tr>
<td>-2</td>
<td>-1</td>
<td>0</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

| 6 | 8 | 3 | 10 | 73 |

Figure XXXV

**Watchdogs and whistle blowers**

The tribunal and ombudsman provided at present are not utilized in a fruitful manner. Inadequacy of such institutions, inaccessibility of those bodies etc. are constraints felt by the people. Hence the given population advocated for thorough restructuring and establishment of such administrative watch dogs in a viable and feasible manner.

Based on the above inferences, certain prepositions can be arrived at.
17.3 Conclusion and Suggestions

On the concept of local self-government, we shall owe to Dr. Annie Besant, who have contributed for two great concepts with all progressive forces in the country, firstly Home Rule to India, and secondly, the principle of self-determination for India. Through Theosophical movement, and Wakeup India programme, she demanded to end petty animosities within India, and reform child marriage, caste system women right, and revival of panchayats, the self-governing village council. She started a weekly newspaper ‘commonweal’ in January 1914 and purchased ‘The Madras Standard’ in July 1914, to deal with building up of a complete self-government form village council upwards to a National parliament. She opined that, unless a government is in sympathy with the legitimate aspirations, legitimate desire of the people, then the government in the presence of the true justice of god has no right to govern.

During the 29th conference session of Indian National Congress, at Madras during 1914, Dr. Besant supported the resolution moved by Surendranath Banarjee, demanding self-government and stated as follows:

“Who will be part of self-governing nation to practice the science and art of the government in local bodies … the drudgery of learning local administration, prepared a person for wider powers.”

Dr. Besant’s Home Rule paved for the resolution on self-government which contained specifically an appeal for “a liberal measure of local self-government.” She strongly felt that the freedom of the country and necessary be secured, inless the civil servants are rigidly kept apart from the government and unless the government itself is responsible to the people it governs. She also took active part on student affairs, sports, public action through Boys Scout Organization, by mock parliament. Libraries, reading

1 B. Siva Rao, Dr. Besant as Constructive Statesman, in Annie Besant Centenary Book, p. 83
2 C. Jinarajadasa, The Golden Book of Theosophical Society, quoted in Annie Besant, India A Nation (A Plea for Self-Government), New India Office. P.117 Shodhaganga, inflibnet.ac.in 7.30am 23/01/2017
3 The commonweal, 9th January 1914, p. 22
4 Dr. Besant, Annie Besant Builder (Besant Spirit Series) TPH, Adyar, Madras, 1942, p. 62
5 Annie Besant, “How India Wrought for Freedom”(1915), pp. 582-583
6 Annie Besant, The Future of Indian Politiex, (1922), p. 100
7 Dr. Annie Besant, Presidential Address on District work at Chitoor District Conference on 18th March 1916
rooms etc. were introduced for creating political consciousness among youth and organise discussions mostly based on subjects of Indian finance, local self-government etc.

Dr. Besant believed firmly on the system of self-government of India, based on village autonomy. She pleaded for establishing the administrative reforms in the government of India, in provincial government and in local self-government. She emphasised reforms in local self-government to contain various divisions like

1. Village Administration
2. Panchayat System
3. Taluk or Tahsil Board
4. District Board
5. Local Government Board etc.

to make an efficient administration in India\(^8\).

Gandhiji himself and his forerunners in Indian independence movement, adopted the concept of local self-government from the thoughts of Dr. Annie Besant and the National Congress started to advocate with the resolutions on local self-government on the basis of the ideological perspective propounded by Dr. Annie Besant.

In recent past, the decentralization has transformed the governance structure in most of the countries, through transfer of power, resources and responsibilities to subnational units of governments. In different parts of the world including Latin America and South Africa this phenomenon is visible. In those countries decentralization has appeared in the form of devolution of major functional responsibilities to lower tiers of government at counties or municipalities.

World Bank observes that the dominant force behind decentralization is in the final analysis, political, with broader trend towards democratic governance at grass root level. It can increase the efficiency and responsiveness of government. Devolving resolutions allocation decisions to locally elected leaders can improve the match

\(^8\) Besant, “Spirit Series” Vol I Madras, TPH 1939, pp. 81-82
between the mix of services produced by the public sector and the preferences of local population\textsuperscript{9}.

Here the term decentralization refers to the process of devolving political, fiscal and administrative powers to substantial units of government, which are locally elected by the people. De-concentration, participation, public-private alliance etc. can be effectively utilized for this purpose.

World Bank points out certain downside ricks also in this process, such as:

i. Service delivery decline  
ii. Widening of regional disparities and deprivations  
iii. Recurring central government deficits  
iv. Over expanding public sector  
v. Inability to adjust with economic and fiscal policy shocks etc. as the consequences of decentralization.

Hence certain questions may be raised as How much decentralization is enough? How far to decentralize? Is it always necessary? etc. Here the only resolution is that while decentralization from one tier of government to another may improve efficiency and responsiveness, in some sector, it may not be sufficient in itself, or even the highest priority for structural reform in all cases\textsuperscript{10}. The most consistent reason of recent decentralization experience is that the need to synchronize the elements of reform for better result in intergovernmental relations.

Michel Foucoult’s theory of governmentality can provide sociological insight into how the state feels for programmes and modern participation schemes. Foucoult argued that “governmentality had become the common ground of all modern forms of political thought and action”\textsuperscript{11}.

A mutuality which is to be governed, a desire or acceptance, perhaps subconsciously to have one’s behaviour guided or conducted, a concept labelled as “the conduct of conduct”. At the same time, certain amount of controls and management,  

\textsuperscript{10} Ibid at pp. 22-23  
\textsuperscript{11} Sheffield Hallain University Research Archive, http/shuva.shu.ac.uk, 23/01/2017, 7.00 am.  

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and facilitating models of possible acts, encouraging citizen to govern themselves are essential.

Nikolas Rose explains governmentality as “instrumentalizing the self-governing properties of the subjects of government themselves, where rights and responsibilities can be handed back to the citizen in return for increased participation”. On theory of power, to govern humans is not to crush their capacity to act, but to acknowledge it and utilize it for one’s own objective12.

According to Stanson and Factor, “governmentality is a use of power which attempts to unleash the productive skills and capacities which enable the young people to adapt to a modern society”13. Hence it is evident that the attitude, the motive, the participation, the role and stake of the subjects, i.e., the citizens, in the governance by themselves have vital relevance in the governmentality of the concerned society. Here, there is the scope, relevance and functions of the grama sabha as grass root democratic body exists.

A person who moulds law by the method of philosophy may be satisfying an intellectual craving for symmetry of form and substance14. In that process he is keeping the law true in its response to a deep-seated and impervious sentiment. Wesely Newcomb Holsfield has pleaded that in reality a plea that fundamental conceptions be analysed more clearly, and their philosophical implications, their logical conclusions developed more consistently. These juristic philosophies are highly relevant in the case of local government legislation in India.

Those who think more of symmetry and logic in the development of legal rules than of practical adaptations to the attainment of just result, remain troubled by a classification where the lines of division are so wavering and blurred15.

In law as in every other brands of knowledge, the truths given by induction tend to from the premises for new deductions16. Some conceptions of the law owe their existence from almost exclusively to history. They are not to be understood except as

12 Ibid
13 Ibid. See Reynolds, E.E, A Biography of Lord Baden Powell of Gilwell, Oxford University Press, 1943
15 Jacobs & Youngs Inc. v. Kent, 230 NY. 239
historical growth. In the development of such principles history is likely to predominate over logic or pure reason\textsuperscript{17}. This statement is very much applicable in the case of democratic decentralization and legislative measures in that respect. The logics of local self-government is strengthened and applied by the Indian legal system according to the historic perspective and evolution of Indian politics. Cardozo’s expression as, a page of history is worth a volume of logic\textsuperscript{18}, appropriate with respect to local self-governance and corresponding laws in India.

Maitland pointed out that the forms of action we have buried, but they still rule us from their graves\textsuperscript{19}. The administrative hierarchy may be changed according to the modern social weeds and as per new legal prescriptions. But the political and official bureaucracy are still influential upon the governance process. Effective public participation and social intervention is to be the remedial measure for this problem.

The final cause of law is the welfare of society. The rule that misuse its aim cannot permanently justify its existence. “Ethical considerations can no more be excluded from the administration of justice which is the end and purpose of all civil laws, thus one can exclude the vital air from his room and live”\textsuperscript{20}. Hence the existing and evolving laws and rules on local governance shall be beneficially construed and enforced with an ethical concern on social values, equitable justice and economic judgement of local people. Otherwise, it will become adverse to the social interest and aspiration of people at large.

When they are called upon to say how far existing rules are to be extended or restricted, they must let the welfare of society fix the path, its direction and its distance\textsuperscript{21}. Once again Cardozo’s conclusion may be treated as relevant in the case of local-governance in our society, that, “today in every department of the law that the social value of a rule has become test of growing power and importance”\textsuperscript{22}. Role of gram sabha, different committees to host the involvement of general public, the good

\begin{itemize}
  \item \textsuperscript{17} Ibid. at p. 52
  \item \textsuperscript{18} N. Y. Trust Co. v Eisner, 256 U. S. 345, 349
  \item \textsuperscript{19} Maitland, \textit{Equity and Forms of Action}, Cambridge University Press, (1909), p. 296
  \item \textsuperscript{20} Dillon, “Laws and Jurisprudence of England and America” p. 18 quoted by Paul, 2.7 Harvard L R, pp. 731-733
  \item \textsuperscript{22} Ibid at p.73
\end{itemize}
governance components, and ultimately the participation forums and efforts for planned development etc. are rooms for the above said test.

With respect to the origin and evolution of local government and decentralized governance in India, the opinion of Roscue Pound also may be relevant that perhaps the most significant advancement in modern science of law is the change from analytical to functional attitude\textsuperscript{23}.

This will provide a little but space for more jurisprudential debate on local self-government system. Thus the statutes are designed to meet the fugitive exigencies of the hour. Amendment is easy as the exigencies change in such cases, the meaning, once construed, tends to legitimately to stereotype itself in the form first cast. A constitution states or ought to state out rules for the passing hour, but principles for an expanding future\textsuperscript{24}. The directive to the state policy provided by the founders of the Constitution\textsuperscript{25} and the amendment laws according to that directive in 1992\textsuperscript{26} and state legislation on panchayat raj as well as nagarapalika during the last two decade shall be construed and interpreted with the above said conviction.

Hence another valid opinion made by Cardozo became relevant, with respect to decentralized democratic governance in our society such as “what the legislator have willed a century ago, but what he willed if he had known what our conditions would be\textsuperscript{27}. Instead of looking into the past we should consider the existing realities and inculcate the given law according to the real demands and necessities of the future society. Then only a frame work legislation like panchayat raj and nagarapalika laws will provide their own results. Otherwise it will hamper the resultant social impacts of the law.

It follows from all this that the interpretation of a statute must by no means of necessity remains the same for ever. To speak of an exclusively correct interpretation,
one which would be the true meaning of the statute from the beginning to the end of its
days, is altogether erroneous.\(^{28}\)

It has been applied in the past and with increasing frequency will be applied in
the broad precepts and immunities in state and national constitutions.\(^{29}\) This preposition
can be correlated with the opinion expressed by Cardozo that a Constitution states or
ought to state not rules for the passing hour, but principles for an expanding future.\(^{30}\)
With this basic notion we should examine the logical progression of participatory
governance and planed development process in the grass root level.

**Theoretical Frame Work**

As a result of the slow process of centralization of powers by the union
government, the states have followed the pattern of the centre and started taking away
the powers of the local bodies. Centralization from local to state and from state to
centre has helped the political and administrative bureaucracy to amaze wealth and float
rules and regulations as the governing process distanced the people from governance.

Concentration of financial powers of the centre, allocation of resources through
planning commission, distribution of revenue through awards of finance commission,
implementing agencies for schemes and programmes etc. resulted in that the state and
local governments are converted into mere implementing institutions or instruments.

Concentration of powers at the centre helped a few sections to make use of the
policy options of the governments and the abuse of popular institutional mechanisms.

To change this situation the alternative devise of decentralization of power can
be introduced to enable the people to participate in the process of production, and
consumption as part of the new system of governance.

\(^{28}\) Kohler, “Interpretation of law” translation in “Modern Legal Philosophy” series 192 of the Report of
Prof. Huber on the German code quoted by Geny, “Technic of Codes”, a modern legal philosophy series
p. 548, also Geny, “Methods et sources en droit prive positif”

\(^{29}\) Munro Smith, supranote 28

\(^{30}\) Benjamin N. Cordozo, supra note 25
Evaluation Trajectory

The present local governance system under the evaluation exerts the following inferences:

- The whole process of decentralization of powers has been carried out through the centralization process and the major transitional area is in between centre and state.
- Devolution of powers has not taken shape based on the will of the provisional government.
- Devolution of power meant the sharing of resources.
- Scheduled functions mentioned only directives but not actual distribution of functions and functionaries.
- MP/MLA Local Area Development Programmes is continuing in sharing of resources and projects and implemented in the jurisdiction of LSGIs.
- Competition on welfare programmes between the provincial and central governments intensified the alienation of powers from the people and all the welfare programmes have been operated only by the officials.
- Revenue and financial obligations is very poor and lower attention by officials in this regard leads to inefficiency and mismanagement.

Hence revitalization of grass root level institutions for governance is essential.
## Factors affecting institutional performance at the panchayat level

<table>
<thead>
<tr>
<th>SI No.</th>
<th>Component</th>
<th>Factors affecting institutional performance</th>
<th>Impact</th>
</tr>
</thead>
</table>
| 1.     | Institutional Processes    | - Inadequate procedure  
- Lack of Transparency  
- No accountability of elected representatives  
- Inadequacy of functioning  
- Lack of functional manual  
- Source of interface | - Lack of direction for the functioning. Sometimes it causes confusion  
- Loss of papers and documents, which causes distrust  
- Decisions taken more by personal choice than by rational approach  
- The elected members are not accountable to people, so whatever members do there is a lack of control over that. There are instances of aberrations. |
| 2.     | HRD level of personnel     | - Lack of technical administrative and behavioural capabilities                                               | - Personnel are not able to plan and implement programme properly                                                                       |
| 3.     | Financial System           | - Poor financial base  
- Inadequate tax collection mechanism  
- Lower rate of own fund mobilization | - Lack of financial capacity  
- Panchayats are unable to plan as per their local needs.                                                                                 |
| 4.     | Planning                   | - Inadequate planning unit  
- No proper process and procedure planning  
- Duplication and multiplicity of procedure and projects | - The planning of resources is on adhoc basis, without following rational basis                                                              |
| 5.     | Management of implementation| - Lack of manpower and logistics planning  
- Poor infrastructural support  
- Inadequate management capabilities  
- Weak information system  
- Improper training facilities | - Management of implementation of works and the availability of services to people gets seriously affected |
| 6.     | Control and Monitoring     | - Inadequate control and monitoring system  
- Dual control and dichotomy in administration | - Projects are not properly monitored  
- Financial position of the panchayat income and resources are not known in time                                                             |
| 7.     | Legal system               | - Weak mechanism to settle disputes and aberrations in decision making  
- Complexity of rules and orders  
- Absence of amendments in allied legislation | - There are inter-group conflicts, that disrupt the panchayat functioning and the implementation of works get delayed  
- No check over aberrations of power / control |
### Comparative picture of status of system of decentralization in Kerala and other States

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Elements</th>
<th>Status in Kerala</th>
<th>Status in other States</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Political Decentralization</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Environmental Building</td>
<td>- Awareness building and training programme at panchayat level</td>
<td>- No special efforts for environmental building</td>
</tr>
<tr>
<td></td>
<td>Peoples Participation</td>
<td>- Improved attendance in gram sabhas. Active participation by people due to better educational awareness</td>
<td>- Poor people’s participation</td>
</tr>
<tr>
<td></td>
<td>Role of PR members</td>
<td>- Active involvement by PR members due to their higher educational background, and improved knowledge and skills through training programme</td>
<td>- Little interaction of PR members with people in developmental matters</td>
</tr>
<tr>
<td></td>
<td>Role of grama sabha</td>
<td>- High attendance, active participation by PR members and people</td>
<td>- Lack of initiative by the PR members for development activities</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Low attendance</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Dominance by a few people</td>
</tr>
<tr>
<td>2.</td>
<td>Functional Decentralization</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Transfer of functions</td>
<td>- Transfer of functions for all the subjects has taken place</td>
<td>- Transfer of functions has not been complete</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Also inter-tier demarcation of functions has taken place</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Administrative Decentralization</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Capacity Building</td>
<td>- Well organized training programme at all the three tiers. Close monitoring of programmes by the government</td>
<td>- Only a few programmes at concerned SIRDs but no comprehensive training programme</td>
</tr>
<tr>
<td></td>
<td>Infrastructure</td>
<td>- Good infrastructure with grama panchayats</td>
<td>- Insufficient infrastructure</td>
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<td>- Good number of staff. Placement of staff and other officers of other departments with grama/ block / district</td>
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<td>Manpower support</td>
<td>panchayats</td>
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</table>
| Planning         | - Existing  
|                  | - Prepared for each sector at GP, block and district |
| i. Planning unit | - Well laid out procedure for planning with each tier  
| ii. Data base   | - Full-fledged planning team with experts  
| iii. Planning Methodology | - Formed at block and district  
| a. Procedure of planning | - Formed at block and district  
| b. Planning team at GP, block and dist. | - DPC Constituted  
| c. Technical team | - Proper procedure and techniques developed  
| d. Appraisal team | - Clearly demarcated functions for each tier with regard to all  
| e. DPC | - Well defined procedure  
| f. Project Formulation | - Skeleton staff  
| g. Functions for each tier | - Partially existing  
| h. Integrated GP plan with higher tiers | - Data base not developed  

4 Financial Decentralization

<table>
<thead>
<tr>
<th>Devolution of funds</th>
<th>- About 40% of state plan devolved upon panchayats</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- No devolution of funds</td>
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</table>

5 Overall measures

| Role of Government | - People’s campaign launched which resulted into higher peoples participation  
|-------------------|----------------------------------------------------------|
|                   | - Transfer of functions and devolution of financial powers upon panchayats  
|                   | - No specific plan for strengthening participatory planning  
|                   | - No devolution of financial power                       |
# SWOT Analysis of LSG Institutions in Kerala

## Strength

- Constitutional Status
- Scope of people's participation
  - Constitutional status and support organizations
  - Opportunities for the people to participate in the grama sabha for their village plan
  - Well defined structure
  - Timely elections
  - Representation for weaker section and women
  - Scope for devolution of financial power
  - Transfer of functions and functionaries

## Weaknesses

- Low HRD level
- Poor capacity of PRIs
  - Lack of political will
  - Lack of sufficient and trained manpower
  - Lack of knowledge and skills in PR functionaries
  - Lack of public awareness and vigilance, and lack of accountability
  - Lack of funds at panchayat level
  - Decision making in the hands of a few and failure to observe the rules
  - Influence of elite group in local development
  - Lack of orientation of officials and staff for working with PRIs

## Opportunity

- Local knowledge in development
- Managing basic services
  - Utilization of local knowledge in the plan preparation
  - Involvement of people in their village development planning
  - Mobilization of resources in cash, kind or labour for local development
  - Administration near to people for solving their problems
  - Possibility of positive participation from poor and disadvantaged groups
  - Increasing the sense of responsibility in people for managing their affairs
  - Higher service quality
  - Responsive local governance towards needs of people

## Threats

- Dominance by a few
- Resistance by the existing government and traditional village set-up
  - Resistance at the state and national levels to share power
  - Resistance from rural elites and dominating class to share power with disadvantaged groups
  - Inadequate organizational support at village and block levels for undertaking development works
  - Low level of literacy and awareness among people
  - Fear of concentration of power in a few hands
  - The fear that traditional dominant class may use the political and economic institutions (with legal sanctity) through their dominance to have their privileged position
  - Disintegration of the state into fragmented elite group
Political Decentralization

- Elections marked with certain undesirable activities (like use of money, violence, liquor)
- Lack of proper environment for participatory initiatives from people
- Lack of people’s participation
- Lack of transparency in the functioning of grama sabha
- Lack of accountability of PR members to people

Functional Decentralization

- Adequate transfer of functions to panchayats not taken place
- Function-specific responsibilities for panchayat not demarcated
- Inter-tier demarcation of functions not done

Present status of Panchayat Raj System

- Weak planning unit at district level and no planning system at the block and grama panchayat levels
- Lack of manpower, infrastructural and logistics support to panchayats
- Lack of capabilities in PR members and development functionaries
- No proper institutional mechanism for planning, implementation, co-ordination and monitoring of programmes
- Lack of transparency in the panchayat functioning

- Time motion / work study of LSGI is essential.
- Functional manual for LSGI is inevitable.
- Convergence and integration with allied institutions is mandatory.


**Participatory Paradox**

In his dissent note Sidharaj Dhadda categorically mentioned that recognition of village assembly consisting of all voters in the village, grama sabha, as the primary unit of panchayati raj and as the foundation on which the upper tiers should rest and from which they would derive strength and vitality. This observation is a tagline of the existing grama sabha. Adequate measures are to be taken for materializing this ideology.

Democratic exercise in grass root level denotes some paradoxical inferences in connection with public participation. In rural areas, people are not ready to participate in governance and development process as they feel their say is not accepted or respected. Government programmes are operated through politicians or bureaucrats and not the people adhere, they have no faith in such participation.

Regarding grama sabha, village people are not co-operating, ward members are not willing to organise it as a platform to question them, people have no decision making role in its absolute sense, dominate group equations, reflects in resolutions, officials are not interested in any assignment or association with grama sabha.

Here we can follow the steps of the Republic of South Africa (RSA) for the formulation of their constitution. They ensured that the federal or provincial governments will not impede the autonomy and progress of local self-governments. It gives clear direction to the fiscal and finance commission to provide for reasonable resources for local governments to enable them to perform the responsibilities assigned to them by the rule of the land.

There are few broad areas in this regard,

i) Deepening of democracy and advancing development. 3 million elected people especially one million women, and large number of Scheduled Caste and Scheduled Tribe people are participatory in this process.

ii) Far reaching reforms in law and legal system to empower local governments so as to guarantee their sustainability, fiscal devolution and administrative decentralization.

iii) Citizen centric influences, like gender, education, social capital sectors have increased in local governance process than that of mere power brokers in our community.

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Hence in the given magnitude of changes with respect to decentralized democracy and local governance, in a normative framework, for that, under the constitution and corresponding legislation, a set of guidelines, would help to maintain political stability under pressure to decentralize, responsiveness of public service delivery while pressing macro-economic stability and equity in delivery of social services through higher rate of accountability as well as good governance. This model assures that all citizens have equal access to the political process and there decision makers act simply as the agent or instrument of the people at large.

There must be certain basic relevant principles of public governance under LSGI system:

i) Selflessness – public interest and service shall be the sole concern and criteria for public decision making without common or individual material benefit of kith and kin

ii) Integrity – duties and obligations of holders of public offices under no obligation to outsiders or influences of extraneous considerations, or coercion of power brokers.

iii) Objectivity – concern with justice and principles of justice in decision making and choice making.

iv) Accountability – public scrutiny and procedural justice in handling public resources

v) Openness – absolute transparency and accountability

vi) Honesty – no private interest shall prevent public duty or obligation

vii) Leadership – participatory and partnership with above mentioned principles in practice of local democratic leadership\textsuperscript{32}.

The local self-government system should be reconstructed, reinforced and revitalized as an organic and integral part of our democratic process and that they should be accorded appropriate constitutional status, powers, functions and funds as a socio-political and legal measure.

\textsuperscript{32} See Report of Nolan commission of UK, 1995
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<td>107.</td>
<td>West Bengal Panchayat (Amendment) Act, 1994</td>
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<td>West Bengal Panchayat Act, 1957</td>
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<td>West Bengal Panchayat Act, 1973</td>
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<td>110.</td>
<td>West Bengal Zilla Parishad Act, 1963</td>
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**Website**

1. Sheffield Hallain University Research Archive, http/shuva.shu.ac.uk, 23/01/2017, 7.00 am
Appendix I

Bill No. 50 of 1989

Text of Constitution (64th Amendment) Bill

The following is the text of the Constitution (64th Amendment) Bill, 1989, which has been circulated to the members of Parliament:

A Bill further to amend the Constitution of India:

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

1. Short title.-This Act may be called the Constitution (Sixty-fourth Amendment) Act, 1990.
2. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Insertion of new part IX: After Part VIII of the Constitution, the following Part shall be inserted namely:

Part IX

The Panchayats

Definitions:

243 In this Part, unless the context otherwise requires –

a) “district” means a district in a State;
b) “intermediate level” means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;
c) “Panchayat” means an institution (by whatever name called) of self-government for the rural areas at the village level or at the intermediate level or at the district level;
d) “Panchayat area” means the territorial area of a Panchayat;
e) “Population” means the population as ascertained at the last preceding census of which the relevant figures have been published;
f) “village” means a village specified by the Governor by public notification to be a village for the purposes of this Part

Constitution of Panchayats 243 A

(1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.
(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.
Composition of Panchayats 243 B

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

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

(2) Save as provided in clause (3), all the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation, in such manner and subject to such conditions as may be specified in such law,

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

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

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

(4) The Chairperson of a Panchayat and other members of a Panchayat chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of

a. a panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

b. a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

c. Where the Chairperson of a Panchayat has been elected by and from amongst the elected members of the Panchayat, no resolution by the Panchayat for removing him from the office of the Chairperson shall be valid and effective unless such resolution has been passed by a majority of the total number of the elected members of the Panchayat and a majority of not less than two thirds of such members present and voting.

Reservation of seats 243 C(1)

(1) Seats shall be reserved for the Scheduled Castes; and the Scheduled Tribes in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that
Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area. Provided that where the population of Scheduled Caste or as the case may be the Scheduled Tribes in a Panchayat are is not sufficient for reservation of any seats, one seat for the Scheduled Castes or as the case may be, one seat for the Scheduled Tribes shall be reserved in that Panchayat.

(2) As nearly as may be, thirty percent of the total number of seats reserved under clause (1) shall be reserved for women belonging to Scheduled Castes or as the case may be the Scheduled Tribes:

Provided that where only two seats are reserved for the Scheduled Castes or as the case may be, the Scheduled Tribes, one of the two seats shall be reserved for women belonging to the Scheduled Castes or as the case may be Scheduled Tribes.

(3) Nothing in this Part shall prevent the Legislature of a State from providing for the reservation of the office of Chairperson in the Panchayats for the Scheduled Castes, the Scheduled Tribes and the women.

(4) The reservation of seats under clauses (1) and clause (2) and the reservation of offices of Chairpersons (other than the reservation for women) referred to in clause (3), if any, shall have effect till the expiration of the period specified it article 334 and the proviso thereto shall, so far as may be, apply to such reservations.

(5) As nearly as may be, thirty percent (including the number of seats reserved for women belonging to Scheduled Castes and Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and allotted by rotation to different constituencies in a Panchayat.

Duration of Panchayats, etc. 243 D

(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of that Panchayat.

(2) Where Panchayat is dissolved before the expiration of the duration, an election to constitute the Panchayat shall be completed as soon as may be and in any case before the expiration of a period of six months from the date of such dissolution.

(3) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved and if such period is less than six months, it shall not be necessary to hold any election under clause (2) in constituting the Panchayat.

Powers, authority and responsibilities of Panchayats 243 E

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable
them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to

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

Powers to impose taxes by, and Funds of, the Panchayats 243 F

The Legislature of a State may, by law,

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

Appointment of Finance Commission to review financial position 243 G

1) The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Sixty Fourth Amendment) Act, 1989, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to:
   a. the principles which should govern:
      i. the determination of the taxes, duties, tolls and fees which may be assigned to or appropriated by the Panchayats;
      ii. the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees which are to be or may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;
      iii. the grants-in-aid to the Panchayats from the Consolidated Fund of the State;
   b. any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.

2) The Legislature of a State may, by law, determine the qualifications which shall be requisite for appointment as members thereof and the manner in which they shall be selected.

3) The Commission shall determine their procedure and shall have such powers in the performance of their functions as the Legislature of the State may, by law, confer on them.
4) The Governor shall cause every recommendation made by the Finance Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

**Form of Accounts of Panchayat and Audit of Accounts of Panchayats 243 H**

1) The accounts of panchayats shall be kept in such form as the Governor may, on the advice of Comptroller and Auditor General of India prescribe.

2) The Comptroller and Auditor General of India shall cause the accounts of the panchayats to be audited in such manner as he may deem fit and the reports of the Comptroller and Auditor General shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

**Superintendence, direction and control of elections to the panchayats to be vested in the Election Commission 243 I**

The superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to the panchayats shall be vested in the Election Commission.

**Power of legislature of a State to make provisions with respect to election to panchayats: 243 J**

Subject to the provisions of this part, the Legislature of State may from time to time by law, make provisions with respect to all matters relating to, or in connection with, elections to the panchayats including preparation of electoral rolls, the manner in which the electoral rolls for the time being in force for the territorial constituencies referred to in article 325 may be used for such preparation, the delimitation of constituencies and all other matters necessary for securing the due constitution of such panchayats.

**Application to Union territories 243 K**

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

2) Notwithstanding anything in clause (1) the President may, by public notification, direct that the provisions of this Part shall not apply to any Union Territory or any part thereof or shall apply to any Union Territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

**Part not to apply to certain areas 243 L**

1) Nothing in this Part shall apply to
   a. The States of Nagaland, Meghalaya and Mizoram
b. The Scheduled areas referred to in clause (1) and tribal areas referred to in clause (2) of article 244;

c. The hill areas in the state of Manipur for which District Councils exist and the hill areas of the District of Darjeeling in the State of West Bengal for which the Darjeeling Gorgha Hill Council exists under any law for the time being in force.

2) Notwithstanding anything means constitution;

a. The Legislature of a State referred to in the sub-clause (a) of clause (1) may, by law, extend to this part to that State, except the tribal areas, if any, referred to in sub-clause (b) of clause (1). If the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.

b. The Governor of a State may, in his discretion and subject to such exceptions and modifications as he may specify, by public notification, extend this fact to the Scheduled Areas, referred to in clause (1) of article 244, comprised within that State.

Continuance of Existing laws and Panchayats 243M

Notwithstanding anything in this Part, any provisions of any law relating to Panchayats in force immediately before the commencement of the Constitution (Sixty-Fourth Amendment) Act, 1989, which is inconsistent with the provisions of this part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is better. Provided that all the Panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Council, by each house of the Legislature of that State.

Schedule of Powers

Art 243 E constitutes the Eleventh Schedule which enumerates 20 subjects mentioned here under:

1. Agriculture including agricultural extension
2. Land Improvement and soil conservation
3. Minor Irrigation, water management and watershed development
4. Animal husbandry, dairying and poultry
5. Fisheries
6. Social forestry and farm forestry
7. Minor forest produce
8. Small scale industries, including food processing industries
9. Khadi, village and cottage industries
10. Rural housing
11. Drinking water
12. Fuel and fodder
13. Roads, culverts, bridges, ferries, water-ways and other means of communication
14. Rural electrification, including distribution of electricity
15. Non-conventional energy sources
16. Poverty alleviation programmes
17. Education, including primary and secondary
18. Technical training and vocational training
19. Adult and non-formal education
20. Libraries
21. Cultural activities
22. Markets and fairs
23. Health and sanitation, including hospitals, primary health centres and dispensaries
24. Family welfare
25. Women and child development
26. Social welfare, including welfare of the handicapped and mentally retarded
27. Welfare of the weaker sections and in particular, of the scheduled castes and scheduled tribes
28. Public distribution system
29. Maintenance of community assets
Appendix II

THE CONSTITUTION (SEVENTY-THIRD AMENDMENT) ACT, 1992

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

STATEMENT OF OBJECTS AND REASONS

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

2. Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the short-comings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj Institutions to impart certainty, continuity and strength to them.

3. Accordingly, it is proposed to add a new Part relating to Panchayats in the Constitution to provide for among other things, Gram Sabha in a village or group of villages; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village and intermediate level, if any, and to the offices of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of Panchayats and office of Chairpersons in Panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of 5 years for Panchayats and holding elections within a period of 6 months in the event of supersession of any Panchayat; disqualifications for membership of Panchayats; devolution by the State Legislature of powers and responsibilities upon the Panchayats with respect to the preparation of plans for economic developments and social justice and for the implementation of development schemes; sound finance of the Panchayats by securing authorisation from State Legislatures for grants-in-aid to the Panchayats from the Consolidated Fund of the State, as also assignment to, or appropriation by, the Panchayats of the revenues of designated taxes, duties, tolls and fees; setting up of a Finance Commission within one year of the proposed amendment and thereafter every 5 years to review the financial position of
Panchayats; auditing of accounts of the Panchayats; powers of State Legislatures to make provisions with respect to elections to Panchayats under the superintendence, direction and control of the chief electoral officer of the State; application of the provisions of the said Part to Union territories; excluding certain States and areas from the application of the provisions of the said Part; continuance of existing laws and Panchayats until one year from the commencement of the proposed amendment and barring interference by courts in electoral matters relating to Panchayats.

4. The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;                                           G. VENKAT SWAMY.

The 10th September, 1991.

THE CONSTITUTION (SEVENTY-THIRD AMENDMENT) ACT, 1992

[20th April, 1993.]

An Act further to amend the Constitution of India.

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

1. Short title and commencement.- (1) This Act may be called the Constitution (Seventy-third Amendment) Act, 1992.

(2) It shall come into force on such date_680 as the Central Government may, by notification in the Official Gazette, appoint.

2. Insertion of new Part IX.- After Part VIII of the Constitution, the following Part shall be inserted, namely:-

`PART IX
THE PANCHAYATS

243. Definitions.- In this Part, unless the context otherwise requires,-

(a) "district" means a district in a State;

(b) "Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;

(c) "Intermediate level" means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;

(d) "Panchayat" means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas;

(e) "Panchayat area" means the territorial area of a Panchayat;
(f) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published;

(g) "village" means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

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

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

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

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

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

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

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

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

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

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

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as
electors within-

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of -

(a) a Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

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

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat and the number of seats of reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

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

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

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

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

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

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

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed-

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

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

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

243F. Disqualifications for membership.- (1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat-
(a) if he is so disqualified by or under any law for the time being in
force for the purposes of elections to the Legislature of the State
concerned:

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

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

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

243G. Powers, authority and responsibilities of Panchayats.—Subject
to the provisions of this Constitution, the Legislature of a State
may, by law, endow the Panchayats with such powers and
authority as may be necessary to enable them to function as institutions of
self-government and such law may contain provisions for the devolution
of powers and responsibilities upon Panchayats at the appropriate
level, subject to such conditions as may be specified therein, with
respect to—

(a) the preparation of plans for economic development and social
justice;

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

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

(a) authorise a Panchayat to levy, collect and appropriate such taxes,
duties, tolls and fees in accordance with such procedure and subject
to such limits;

(b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject
to such conditions and limits;

(c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and

(d) provide for Constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom,
as may be specified in the law.
243-I. Constitution of Finance Commission to review financial position.-(1) The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to-

(a) the principles which should govern-

(i) the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayat;

(iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the Panchayats;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.

(2) The Legislature of a State may, by law, provide for the composition of the commission, the qualifications which shall be requisite for appointment as members thereof and the manner in which they shall be selected.

(3) The Commission shall determine their procedure and shall have such powers in the performance of their functions as the Legislature of the State may, by law, confer on them.

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

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

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

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

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

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

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

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

243M. Part not to apply to certain areas.- (1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244.

(2) Nothing in this Part shall apply to-

(a) the States of Nagaland, Meghalaya and Mizoram;

(b) the Hill Areas in the State of Manipur for which District Councils exist under any law for the time being in force.

(3) Nothing in this Part-

(a) relating to Panchayats at the district level shall apply to the hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force;
(b) shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.

(4) Notwithstanding anything in this Constitution,-

(a) the Legislature of a State referred to in sub-clause (a) of clause (2) may, by law, extend this Part to that State, except the areas, if any, referred to in clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

243N. Continuance of existing laws and Panchayats.- Notwithstanding anything in this Part, any provision of any law relating to Panchayats in force in a State immediately before the commencement of the Constitution (Seventy-third Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:

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

243-O. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.'.

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

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

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

"ELEVENTH SCHEDULE

(Article 243G)

1. Agriculture, including agricultural extension.

2. Land improvement, implementation of land reforms, land consolidation and soil conservation.

3. Minor irrigation, water management and watershed development.

4. Animal husbandry, dairying and poultry.

5. Fisheries.

6. Social forestry and farm forestry.

7. Minor forest produce.

8. Small scale industries, including food processing industries.


10. Rural housing.

11. Drinking water.

12. Fuel and fodder.

13. Roads, culverts, bridges, ferries, waterways and other means of communication.

14. Rural electrification, including distribution of electricity.

15. Non-conventional energy sources.


17. Education, including primary and secondary schools.

18. Technical training and vocational education.

19. Adult and non-formal education.


21. Cultural activities.

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

24. Family welfare.

25. Women and child development.

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

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

28. Public distribution system.

29. Maintenance of community assets.".
THE CONSTITUTION (SEVENTY-FOURTH AMENDMENT) ACT, 1992

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

STATEMENT OF OBJECTS AND REASONS

In many States local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government.

2. Having regard to these inadequacies, it is considered necessary that provisions relating to Urban Local Bodies are incorporated in the Constitution particularly for-

   (i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to-

       (a) the functions and taxation powers; and

       (b) arrangements for revenue sharing;

   (ii) Ensuring regular conduct of elections;

   (iii) ensuring timely elections in the case of supersession; and

   (iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.

3. Accordingly, it is proposed to add a new part relating to the Urban Local Bodies in the Constitution to provide for-

   (a) constitution of three types of Municipalities:

       (i) Nagar Panchayats for areas in transition from a rural area to urban area;

       (ii) Municipal Councils for smaller urban areas;

       (iii) Municipal Corporations for larger urban areas.

   The broad criteria for specifying the said areas is being provided in the proposed article 243-0;

   (b) composition of Municipalities, which will be decided by the Legislature of a State, having the following features:

       (i) persons to be chosen by direct election;
(ii) representation of Chairpersons of Committees, if any, at ward or other levels in the Municipalities;

(iii) representation of persons having special knowledge or experience of Municipal Administration in Municipalities (without voting rights);

(c) election of Chairpersons of a Municipality in the manner specified in the State law;

(d) constitution of Committees at ward level or other level or levels within the territorial area of a Municipality as may be provided in the State law;

(e) reservation of seats in every Municipality-

(i) for Scheduled Castes and Scheduled Tribes in proportion to their population of which not less than one-third shall be for women;

(ii) for women which shall not less than one-third of the total number of seats;

(iii) in favour of backward class of citizens if so provided by the Legislature of the State;

(iv) for Scheduled Castes, Scheduled Tribes and women in the office of Chairpersons as may be specified in the State law;

(f) fixed tenure of 5 years for the Municipality and re-election within six months of end of tenure. If a Municipality is dissolved before expiration of its duration, elections to be held within a period of six months of its dissolution;

(g) devolution by the State Legislature of powers and responsibilities upon the Municipalities with respect to preparation of plans for economic development and social justice, and for the implementation of development schemes as may be required to enable them to function as institutions of self-government;

(h) levy of taxes and duties by Municipalities, assigning of such taxes and duties to Municipalities by State Governments and for making grants-in-aid by the State to the Municipalities as may be provided in the State law;

(i) a Finance Commission to review the finances of the Municipalities and to recommend principles for-

(1) determining the taxes which may be assigned to the Municipalities;

(2) Sharing of taxes between the State and Municipalities;

(3) grants-in-aid to the Municipalities from the Consolidated Fund of the State;

(j) audit of accounts of the Municipal Corporations by the Comptroller and Auditor-General of India and laying of reports before the Legislature of the State and the Municipal Corporation concerned;
(k) making of law by a State Legislature with respect to elections to the Municipalities to be conducted under the superintendence, direction and control of the chief electoral officer of the State;

(l) application of the provisions of the Bill to any Union territory or part thereof with such modifications as may be specified by the President;

(m) exempting Scheduled areas referred to in clause (1), and tribal areas referred to in clause (2), of article 244, from the application of the provisions of the Bill. Extension of provisions of the Bill to such areas may be done by Parliament by law;

(n) disqualifications for membership of a Municipality;

(o) bar of jurisdiction of Courts in matters relating to elections to the Municipalities.

4. The Bill seeks to achieve the aforesaid objectives.

NEW DELHI; SHEILA KAUL.


THE CONSTITUTION (SEVENTY-FOURTH AMENDMENT) ACT, 1992

ACT, 1992

[20th April, 1993.]

An Act further to amend the Constitution of India.

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

1. Short title and commencement.- (1) This Act may be called the Constitution (Seventy-fourth Amendment) Act, 1992.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Insertion of new Part IXA.-After Part IX of the Constitution, the following Part shall be inserted, namely:-

`PART IXA
THE MUNICIPALITIES
243P. Definitions.-In this Part, unless the context otherwise requires,-

(a) "Committee" means a Committee constituted under article 243S;

(b) "district" means a district in a State;

(c) "Metropolitan area" means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified
by the Governor by public notification to be a Metropolitan area for the purposes of this Part;

(d) "Municipal area" means the territorial area of a Municipality as is notified by the Governor;

(e) "Municipality" means an institution of self-government constituted under article 243Q;

(f) "Panchayat" means a Panchayat constituted under article 243B;

(g) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

243Q. Constitution of Municipalities.- (1) There shall be constituted in every State,-

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

243R. Composition of Municipalities.- (1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide-

(a) for the representation in a Municipality of-

(i) persons having special knowledge or experience in Municipal administration;
(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality.

243S. Constitution and composition of Wards Committees, etc.- (1) There shall be constituted Wards Committees, consisting of one or more wards, within the territorial area of a Municipality having a population of three lakhs or more.

(2) The Legislature of a State may, by law, make provision with respect to-

(a) the composition and the territorial area of a Wards Committee;

(b) the manner in which the seats in a Wards Committee shall be filled.

(3) A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.

(4) Where a Wards Committee consists of-

(a) one ward, the member representing that ward in the Municipality;

or

(b) two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee, shall be the Chairperson of that Committee.

(5) Nothing in this article shall be deemed to prevent the Legislature of a State from making any provision for the constitution of Committees in addition to the Wards Committees.

243T. Reservation of seats.- (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipally and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.
(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The officers of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

243U. Duration of Municipalities, etc.—(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Municipality shall be completed—

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

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

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

243V. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of a Municipality—
(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

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

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

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

243W. Powers, authority and responsibilities of Municipalities, etc.-
Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a) the Municipalities 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 Municipalities, subject to such conditions as may be specified therein, with respect to-

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

243X. Power to impose taxes by, and Funds of, the Municipalities.-The Legislature of a State may, by law,-

(a) authorise a Municipality 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 Municipality 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 Municipalities 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 Municipalities and also for the withdrawal of such moneys therefrom.

as may be specified in the law.
243Y. Finance Commission.-(1) The Finance Commission constituted under article 243-I shall also review the financial position of the Municipalities and make recommendations to the Governor as to-

(a) the principles which should govern-

(i) the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Municipalities at all levels of their respective shares of such proceeds;

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities;

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

(b) the measures needed to improve the financial position of the Municipalities;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.

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

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

243ZA. Elections to the Municipalities.-(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.

(2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

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

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.
243ZC. Part not to apply to certain areas.- (1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244.

(2) Nothing in this Part shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal.

(3) Notwithstanding anything in this Constitution, Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

243ZD. Committee for district planning.- (1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

(2) The Legislature of a State may, by law, make provision with respect to-

(a) the composition of the District Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district;

(c) the functions relating to district planning which may be assigned to such Committees;

(d) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every District Planning Committee shall, in preparing the draft development plan,-

(a) have regard to-

(i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(ii) the extent and type of available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.
(4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZE. Committee for Metropolitan planning.—(1) There shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.

(2) The Legislature of a State may, by law, make provision with respect to—

(a) the composition of the Metropolitan Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than two-thirds of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area;

(c) the representation in such Committees of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;

(d) the functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees;

(e) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every Metropolitan Planning Committee shall, in preparing the draft development plan,—

(a) have regard to—

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

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

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

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

(b) consult such institutions and organisations as the Governor may, by order, specify.
(4) The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZF. Continuance of existing laws and Municipalities.- Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of THE CONSTITUTION (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:

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

243ZG. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

3. Amendment of article 280.- In clause (3) of article 280 of the Constitution, sub-clause (c) shall be relettered as sub-clause (d) and before sub-clause (d) as so relettered, the following sub-clause shall be inserted, namely:-

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

4. Addition of Twelfth Schedule.-After the Eleventh Schedule to the Constitution, the following Schedule shall be added, namely:-

"TWELFTH SCHEDULE

(Article 243W)

1. Urban planning including town planning.

2. Regulation of land-use and construction of buildings.

3. Planning for economic and social development.

4. Roads and bridges."
5. Water supply for domestic, industrial and commercial purposes.

6. Public health, sanitation conservancy and solid waste management.

7. Fire services.

8. Urban forestry, protection of the environment and promotion of ecological aspects.

9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.

10. Slum improvement and upgradation.

11. Urban poverty alleviation.

12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.

15. Cattle pounds; prevention of cruelty to animals.

16. Vital statistics including registration of births and deaths.

17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries.”.
ANNEXURES
Annexure I

Local Self Government Authorities A Critique

Questionnaire On

Institutional Capability

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<th>Name of Panchayat</th>
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3. Administrative System

3.1 Personnel

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3.2 Staff Strength Position

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4. Property Status (to determine net worth of the institutional asset)

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<td>ii) Veterinary</td>
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<tr>
<td>iii) Rural Development</td>
<td></td>
<td></td>
</tr>
<tr>
<td>iv) Engineering</td>
<td></td>
<td></td>
</tr>
<tr>
<td>v) Hospitals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>vi) Schools</td>
<td></td>
<td></td>
</tr>
<tr>
<td>vii) ICDS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>viii) Others</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5. Vehicle Facility (to assess mobility of staff)

| Own | | |
| Hired | | |
| No Vehicle Facility | | |
| Other Observations if any | | |

6. Management of Functions

| i) Maintenance of Registers | | |
| ii) Projects / Programmes | | |
| iii) Allotment of Funds | | |
| iv) Appropriation of Grants / Loans | | |
| v) Works undertaken register | | |
| vi) Birth & Death Registration | | |
| vii) Property Register | | |
| viii) Fixed / Movable Property | | |
| ix) Inventory of Bio diversity | | |
| x) Complaints / Suggestions Register | | |
| xi) Action Taken Register | | |
| xii) Measurement Book | | |
| xiii) Attendance Register | | |
| xiv) Movement Register | | |
| xv) RTI Registers | | |
| xvi) Service Rights Registers | | |
| xvii) Others | | |
Details of Important Schemes/Projects/Programmes undertaken with community involved

<table>
<thead>
<tr>
<th>7.</th>
<th>Financial Management</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.1</td>
<td>Designation of Person in Charge of Finance</td>
</tr>
<tr>
<td></td>
<td>Persons engaged in financial duties</td>
</tr>
<tr>
<td></td>
<td>i)</td>
</tr>
<tr>
<td></td>
<td>ii)</td>
</tr>
<tr>
<td></td>
<td>iii)</td>
</tr>
<tr>
<td>7.2</td>
<td>Collectives formulated / functions in financial matters</td>
</tr>
<tr>
<td></td>
<td>i) Sub Committee</td>
</tr>
<tr>
<td></td>
<td>ii) Works Committee</td>
</tr>
<tr>
<td></td>
<td>iii) Beneficiary Committee</td>
</tr>
<tr>
<td></td>
<td>iv) Institutional Management Committee</td>
</tr>
<tr>
<td></td>
<td>Monitoring Committee</td>
</tr>
</tbody>
</table>

8. Budget / Audit

i) Standard procedure followed in Budgeting / Accounting / Auditing

ii) Participation of elected representative / officials / experts / public

iii) Institutional support for financial matters / standing committee / officials

iv) Utilization Pattern

v) Performance Audit – Current / Pending

vi) Statutory Audit – Current / Pending

vii) Social Audit – Grama Sabha / Social Audit Team

viii) Annual Accounts Statement / Annual Administrative Report

ix) RTI Measures

9. Sources / Rate of Income / Expenditure

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Building Tax</td>
</tr>
<tr>
<td>2.</td>
<td>Professional Tax</td>
</tr>
<tr>
<td>3.</td>
<td>Advertisement Tax</td>
</tr>
<tr>
<td>4.</td>
<td>Entertainment Tax</td>
</tr>
<tr>
<td>5.</td>
<td>Service Tax</td>
</tr>
<tr>
<td>6.</td>
<td>Other Charges / Fees / Rates</td>
</tr>
<tr>
<td>7.</td>
<td>Non Tax Revenue</td>
</tr>
<tr>
<td>8.</td>
<td>Ferry</td>
</tr>
<tr>
<td>9.</td>
<td>Sand Mining</td>
</tr>
<tr>
<td>No.</td>
<td>Description</td>
</tr>
<tr>
<td>-----</td>
<td>----------------------</td>
</tr>
<tr>
<td>10</td>
<td>Quarrying</td>
</tr>
<tr>
<td>11</td>
<td>Rent / Fees</td>
</tr>
<tr>
<td>12</td>
<td>Grant – in – Aid</td>
</tr>
<tr>
<td>13</td>
<td>Plan / Non-plan</td>
</tr>
<tr>
<td>14</td>
<td>Tied / Untied</td>
</tr>
<tr>
<td>15</td>
<td>CSS / SSS</td>
</tr>
<tr>
<td>16</td>
<td>Loans / Contributions</td>
</tr>
<tr>
<td>17</td>
<td>Others</td>
</tr>
</tbody>
</table>

Observations if any

<table>
<thead>
<tr>
<th>Revenue</th>
<th>Budgeted</th>
<th>Assessed</th>
<th>Demanded</th>
<th>Collected</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax Revenue</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non Tax Revenue</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Expenditure Status

<table>
<thead>
<tr>
<th>Expenditure Status</th>
<th>Capital</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>General purpose</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Productive</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Infrastructure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Services (Health/Education)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Safety / Welfare / Security</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drinking water / Drainage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Connectivity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lighting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Others</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Remarks on DCB Statement / Cheque transfer / Daily collection / Ledger / Stocks etc.
### 10. Participatory Bodies

<table>
<thead>
<tr>
<th>Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Steering Committee</td>
</tr>
<tr>
<td>Standing Committee</td>
</tr>
<tr>
<td>Grama Sabha</td>
</tr>
<tr>
<td>Sub Committee</td>
</tr>
<tr>
<td>Functional Committee</td>
</tr>
<tr>
<td>Works Committee</td>
</tr>
<tr>
<td>Joint Committee</td>
</tr>
<tr>
<td>Management Committee</td>
</tr>
<tr>
<td>Ward Committee</td>
</tr>
<tr>
<td>G. S. Executive Committee</td>
</tr>
<tr>
<td>Beneficiary Committee</td>
</tr>
</tbody>
</table>

### 11. Transferred Institutions / Functionaries

<table>
<thead>
<tr>
<th>Institution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
</tr>
<tr>
<td>Animal Husbandry</td>
</tr>
<tr>
<td>Fisheries</td>
</tr>
<tr>
<td>Education</td>
</tr>
<tr>
<td>Health – Modern medicine / Ayurveda / Homoeo / Sidha / Unani</td>
</tr>
<tr>
<td>Engineering</td>
</tr>
<tr>
<td>Social Justice</td>
</tr>
<tr>
<td>Rural Development</td>
</tr>
<tr>
<td>NREGS</td>
</tr>
<tr>
<td>Other Voluntary Functionaries</td>
</tr>
</tbody>
</table>

### 12. Details of Welfare / Development / Service Schemes / Projects / Plans Undertaken
Annexure II

Local Self Government Authorities A Critique

Structured Questionnaire

For

Focus Group Discussions

<table>
<thead>
<tr>
<th>1.</th>
<th>Attitude of LSGI elected representative and official functionaries towards local participatory governance initiatives</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>i) Administration</td>
</tr>
<tr>
<td></td>
<td>ii) Development</td>
</tr>
<tr>
<td></td>
<td>iii) Service Delivery</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2.</th>
<th>Strength, opportunities, weakness and threat felt in the LSGI functioning</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>i) Operational</td>
</tr>
<tr>
<td></td>
<td>ii) Administrative</td>
</tr>
<tr>
<td></td>
<td>iii) Development</td>
</tr>
<tr>
<td></td>
<td>iv) Legal</td>
</tr>
<tr>
<td></td>
<td>v) Jurisdictional</td>
</tr>
<tr>
<td></td>
<td>vi) Management</td>
</tr>
<tr>
<td></td>
<td>vii) Right to Information</td>
</tr>
<tr>
<td></td>
<td>viii) --------- to service delivery</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3.</th>
<th>Problems felt and resolutions suggested with respect to the institutional management</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>i) Convergence</td>
</tr>
<tr>
<td></td>
<td>ii) Interface</td>
</tr>
<tr>
<td></td>
<td>iii) Manual</td>
</tr>
<tr>
<td></td>
<td>iv) Guidelines</td>
</tr>
<tr>
<td></td>
<td>v) Auditing</td>
</tr>
<tr>
<td></td>
<td>vi) Accountability</td>
</tr>
<tr>
<td></td>
<td>vii) Training / Capacity building</td>
</tr>
<tr>
<td></td>
<td>viii) Assistance / Supportive measures</td>
</tr>
<tr>
<td></td>
<td>ix) Finance / funding</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4.</th>
<th>Legal / Judicial appraisal on LSG functioning</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>i) Enactment</td>
</tr>
<tr>
<td></td>
<td>ii) Rules</td>
</tr>
<tr>
<td></td>
<td>iii) Orders</td>
</tr>
<tr>
<td></td>
<td>iv) Manuals / schedules</td>
</tr>
<tr>
<td></td>
<td>v) Others</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5.</th>
<th>Interface between elected and official administrators</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>i) In the office of the LSGI</td>
</tr>
<tr>
<td></td>
<td>ii) In the transferred institutions</td>
</tr>
<tr>
<td></td>
<td>iii) In Community Based Organisations (CBO)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6.</th>
<th>Participatory institutions of local governance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>i) Grama sabha /ward sabha</td>
</tr>
<tr>
<td></td>
<td>ii) Ward committee / gramasabha committee</td>
</tr>
<tr>
<td></td>
<td>iii) Institution management committee</td>
</tr>
<tr>
<td></td>
<td>iv) Social auditing committee</td>
</tr>
<tr>
<td></td>
<td>v) Monitoring committee</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>vi) Beneficiary committee</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Vertical and horizontal co-relation among the government institutions</td>
</tr>
<tr>
<td></td>
<td>i) Centre – State – Local</td>
</tr>
<tr>
<td></td>
<td>ii) Gramasabha – Grama panchayat – Block Panchayat – District Panchayat</td>
</tr>
<tr>
<td></td>
<td>iii) Ward sabha – Town panchayat – Municipality – Corporation</td>
</tr>
<tr>
<td>8.</td>
<td>Delegation of democratic powers</td>
</tr>
<tr>
<td></td>
<td>i) Financial</td>
</tr>
<tr>
<td></td>
<td>ii) Functional</td>
</tr>
<tr>
<td></td>
<td>iii) Regulatory</td>
</tr>
<tr>
<td></td>
<td>iv) Evaluation</td>
</tr>
<tr>
<td>9.</td>
<td>Suggestions for strengthening of local governance</td>
</tr>
<tr>
<td></td>
<td>i) Transfer of powers</td>
</tr>
<tr>
<td></td>
<td>ii) Transparency</td>
</tr>
<tr>
<td></td>
<td>iii) Participation</td>
</tr>
<tr>
<td>10.</td>
<td>Legislative – Executive – Judicial measures for strengthening of local governance</td>
</tr>
</tbody>
</table>
Local Self Government Authorities A Critique

Delphi Study Questionnaire

The researcher is indulged in the empirical study on the structure, constitution, and functioning of local self-government authorities with a critical consideration. The study is aimed to seek inferences on the existing system of local governance and to suggest practical resolutions for the better functioning and achievements of such authorities.

An integrated methodology of doctrinal and non-doctrinal research is used in this regard. As part of that, the researcher has intended to utilize Delphi method - repeated interrogation and opinion collection from enlisted population through structural questionnaire and assimilation of appropriate prepositions for this purpose. Hence, the questionnaire is provided to you for indepth introspection and comments. Expecting your valuable opinions and sincere cooperation. Proposed suggestions are incorporated with grading respectively.

Sincerely yours,

Part I Constitutional frame work on LSGI

1. 73rd and 74th Constitutional Amendment Acts are trustworthy and adequate to satisfy the objectives of grama swaraj in India.

<table>
<thead>
<tr>
<th>Not agreeable</th>
<th>Partially Agreeable</th>
<th>Neutral</th>
<th>Agreeable with reservations</th>
<th>Absolutely agreeable</th>
</tr>
</thead>
<tbody>
<tr>
<td>-2</td>
<td>-1</td>
<td>0</td>
<td>+1</td>
<td>+2</td>
</tr>
</tbody>
</table>

2. The objectives of 73rd and 74th Constitutional Amendment Acts were sufficient to establish local self-government institutions with absolute autonomy in governance process.

<table>
<thead>
<tr>
<th>Not agreeable</th>
<th>Partially Agreeable</th>
<th>Neutral</th>
<th>Agreeable with reservations</th>
<th>Absolutely agreeable</th>
</tr>
</thead>
<tbody>
<tr>
<td>-2</td>
<td>-1</td>
<td>0</td>
<td>+1</td>
<td>+2</td>
</tr>
</tbody>
</table>

3. Panchayati Raj and Nagarapalika institutions are only dependent arms of the hierarchy of governments owing to the absence of policymaking, legislative and judicial powers
4. Real decentralisation of powers from the Centre to State and from the State to lower levels not realised due to drawback of the constitutional framework in 1992.

5. Establishment, subsistence and development of local self-government authorities became the responsibility of state political machinery due to the balance of convenience under the respective constitutional prescriptions.

6. Regional and State political attitude and aspirations influenced and restricted the real and resultant implementation of the Constitutional scheme on local governance.

7. The proposed division of rural and urban local government institutions resulted as a blockade in establishment of district level administrative system with local government powers.

8. Mandatory provisions for interim level panchayat are not practical or fruitful in the present uniform pattern in different states.
9. The existing schedule of functions to be delegated and the rule of law behind such delegation is not properly administered due to ineffective enforcement provisions in the Constitutional framework.

10. Local government institutions are functioning as only implementation instrumentality of the higher level governments due to the multiple dependants in functional plain.

11. Structuring, establishment, time bound elections, role definition to specific classes like SC/ST and women, transfer of powers, funds and functionaries etc. are adequate for the achievement of Constitutional objectives in the country with respect to existing LSGI system.

12. Thorough restructuring and revisit on the Constitutional provisions regarding LSGI is essential for their real implementation.
Part II - Kerala Panchyaat Raj Act and Kerala Municipality Act

1. KPR Act and KM Act were evolved in the backup of 73rd and 74th Constitutional framework and hence were lost the historical and political perspectives generated in the Kerala society.

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<tr>
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<th>Partially Agreeable</th>
<th>Neutral</th>
<th>Agreeable with reservations</th>
<th>Absolutely agreeable</th>
</tr>
</thead>
<tbody>
<tr>
<td>-2</td>
<td>-1</td>
<td>0</td>
<td>+1</td>
<td>+2</td>
</tr>
</tbody>
</table>

2. Original perspectives and provisions of KPR Act and KM Act have considerably changed through the later amendments incorporated therewith.

<table>
<thead>
<tr>
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<th>Partially Agreeable</th>
<th>Neutral</th>
<th>Agreeable with reservations</th>
<th>Absolutely agreeable</th>
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</thead>
<tbody>
<tr>
<td>-2</td>
<td>-1</td>
<td>0</td>
<td>+1</td>
<td>+2</td>
</tr>
</tbody>
</table>

3. The socio-political atmosphere in the State prevailed, imposed much influence and excessive impacts on the existing KPR Act and KM Act in the State.

<table>
<thead>
<tr>
<th>Not agreeable</th>
<th>Partially Agreeable</th>
<th>Neutral</th>
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<th>Absolutely agreeable</th>
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<tbody>
<tr>
<td>-2</td>
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<td>0</td>
<td>+1</td>
<td>+2</td>
</tr>
</tbody>
</table>

4. Higher role and ensured participation of SC / ST people and women in local governance have empowered us to establish strong and effective LSG institutions in the State.

<table>
<thead>
<tr>
<th>Not agreeable</th>
<th>Partially Agreeable</th>
<th>Neutral</th>
<th>Agreeable with reservations</th>
<th>Absolutely agreeable</th>
</tr>
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<tbody>
<tr>
<td>-2</td>
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<td>0</td>
<td>+1</td>
<td>+2</td>
</tr>
</tbody>
</table>

5. Lack of attitudinal and functional changes among the people of the State imposed hindrance on the evolution of LSGIs in their expected manner.

<table>
<thead>
<tr>
<th>Not agreeable</th>
<th>Partially Agreeable</th>
<th>Neutral</th>
<th>Agreeable with reservations</th>
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</thead>
<tbody>
<tr>
<td>-2</td>
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<td>0</td>
<td>+1</td>
<td>+2</td>
</tr>
</tbody>
</table>

6. Participatory organs like grama sabha, functional committees, beneficiary committees, social audit committees, etc. are not effectively established or utilized in the State under present LSGI system.
7. Decentralization of power concept is not trickled down to the citizens, instead of that the governance process precipitated around the local power brokers, rather than the real citizen.

8. Dual control over institutions and functionaries creates much restraints and resistance in the appropriate function of LSGI in the State.

9. Financial outflow and expenditure of funds pattern exists in the State reveals the poor performance of LSGIs in the own revenue generation and resource mobilization.

10. Allocation of resources, plan formulation and approval, implementation of development plans and projects at the grass root are not yet internalised and institutionalised in the State.

11. Convergence and integration of LSGI system in the State is essential and the existing legislative framework has to be thoroughly changed for this purpose.

12. Real autonomy has to be provided with LSGI through the formulation of Administrative or Governance Manual is essential in the State.
13. Integration of existing functional departments like panchayat, municipalities, rural development, town and country planning, LSG Engineering etc. into an umbrella system shall be essential for appropriate function of LSGI in the State.

14. The District Planning Committee shall be restructured and established with capacity to function as the district planning body is essential for the future.

15. Role of gram sabha and other participatory bodies shall be revisited and restructured according to the evolving socio-political and economic equations in the State.

16. Community Based Organisations and Institutions are to be provided with higher relevance and role in the local governance system of the State.

17. Service delivery manual for LSGI shall be formulated and implemented for institutional management with higher quality in service rights and accountability.

18. Good governance measures shall be enforced in a higher assertive manner inorder to ensure expected results.
19. Accountability measures shall be incorporated in the law and effectively administered to ensure higher service delivery quality.

20. LSGI Tribunal and Ombudsman shall be reconstituted with functional mandate so as to ensure correctional administration measures in the LSGI in the State.