

Extra Reading Material on Local Self Governments, Scheduled and Tribal Areas

Jatin Gupta

History of Panchayati Raj in India

Following independence, the first draft of India's Constitution did not include any provision for the Panchayats even though Gandhiji had sought to make village Panchayats the very foundation of democracy in independent India. But it was included finally through the DPSP.

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

Community Development Program

The **Community Development Program (CDP)** was launched in 1952 but failed to reach its full potential due to the lack of effective institutions for people's participation. It included almost all rural development activities that were to be implemented with the help of village panchayats and the participation of the people. In 1953, the **National Extension Service** was also introduced. However, the program did not yield much results. There were various reasons for the failure of CDP, such as bureaucracy and excessive politics, lack of people's participation, lack of trained and qualified staff, and lack of interest from local bodies in implementing the CDP, especially the village panchayats.

Balwant Rai Mehta Committee

A historic breakthrough in establishing Panchayati Raj was effected through the Report of the Balwantrai Mehta Committee in 1957 which recommended "*Public participation in community works should be organized through statutory representative bodies*". It was of the view that without an agency at the village level that could represent the entire community, assume responsibility and provide the necessary leadership for implementing development programmes, real progress in rural development could not come about at all. It was during this period that the term Panchayati Raj gained currency as a process of governance organically linking the will of the people from the Gram Sabha to the Lok Sabha. Prime Minister Nehru inaugurated the **3-tier Panchayati Raj in Nagaur, Rajasthan on 2 October, 1959**. By the **1960s** almost **90% of rural areas were covered under PRIs**.

By the early seventies, however, the Panchayats had gone from a phase of early ascendancy to one of decline and stagnation. Even the 2nd ARC had noted about the demise of the PRIs due to shortage of funds.

Ashok Mehta Committee

The Ashok Mehta Committee (1978) made far reaching recommendations to amend the situation and **recommended that Panchayati Raj be included in the Constitution**. It suggested setting up of a **2 tier Panchayati Raj System** headed by a CEO. It also recommended the participation of political parties in the elections.

In keeping with the spirit of the Ashok Mehta Committee recommendations, some states including West Bengal, Karnataka and Andhra Pradesh revisited their respective Panchayati Raj systems and undertook several new initiatives to endow local bodies with more powers which served as a prime inspiration and example for subsequent reform.

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Subsequent Committees

In subsequent years in order to revive and give a new lease of life to the PRIs, the Government of India appointed various committees. The most important among them were the **Hanumantha Rao Committee (1983)**, **G.V.K. Rao Committee (1985)**, **L.M.Singhvi Committee (1986)**.

The **G.V.K. Rao Committee (1985)** recommended making the "district" as the basic unit of planning and also holding regular elections while the **L.M.Singhvi committee** recommended providing more financial resources and constitutional status to the panchayats to strengthen them.

Constitutional Amendment Bills

In May 1989 the government introduced the Constitution 64th Amendment Bill and 65th Amendment Bill but they failed in the rajya sabha.

Finally, the **73rd and 74th CAA were enacted** by the Parliament in **1992** and came into force after ratification by the states in 1993. These amendments added two new parts to the Constitution, namely, **Part IX titled "The Panchayats" (added by 73rd Amendment)** and **Part IXA titled "The Municipalities" (added by 74th Amendment)**.

Importance of 73rd CAA

- Has made Indian democracy participative in nature
- Helped in institutionalization of grassroots democracy
- PRIs can act as a school of democracy and train future leaders
- Has brought democracy to the doorstep of the people

Positive outcomes of 73rd CAA

- PRI has succeeded in creating another layer of government and political representation at the grass-roots level. We have as many as **2.5 lakh institutions of local self-governance** elected in this country and to these bodies we have elected some **3.2 million representatives**
- With respect to the **mandatory provisions** of the Constitution for panchayati raj, we have achieved almost **100% success**. Today, the **elections to these institutions every five years** have become a norm
- **Women have entered public life in a big way**. In 2015, 13+ lac women got elected to local governments and more than three times of this number contested the elections. There are more elected women in India alone than in the rest of the world put together. At 1.4 million, India has the most women in elected positions.
- Of late, **schemes have been envisaged to promote digital financial transactions** at the village level to promote the benefits of cashless and paperless processes to benefit villagers in rural parts of the country
- **Other schemes** such as financial inclusion projects in tribal areas, working women hostels, geo-informatic block panchayats etc. are all examples of progressive Panchayati raj institutionalism spread across the length and breadth of the nation.
- We have also witnessed steady progress as far as the **inclusion of excluded sections** of our population in the decision-making process from village to the district level is concerned.
- The concept of '**social audit**' has emerged from these innovative steps.

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- Two of fundamental changes have come about in Indian democratic polity:

(i) The democratic base of the Indian polity has widened, and

(ii) It has made India's federalism a multi-level federalism

Issues with the 73rd CAA

- No automatic transfer of powers to the PRIs rather the states have to transfer the power. Many States have not taken effective steps to devolve 3Fs to the PRIs to enable them to discharge their constitutionally stipulated function. On the devolution index performance of states has been non-uniform. **Kerala topped the overall Devolution in Policy rankings in 2014-15.** Kerala was found as the front runner in all the parameters except funds. **Karnataka was the best in transferring adequate funds to the PRIs.** Karnataka came second and Maharashtra came third. While Sikkim was found doing well in transferring functions, it ranked low on other parameters
- **Gram Sabha powers have not been defined** properly anywhere
- **Independence of State Election Commission** has not been ensured
- The act doesn't lay down the **role of bureaucracy**. In some States, the Gram Panchayats have been placed in a position of subordination. Gram Panchayat Sarpanchs have to spend an extraordinary amount of time visiting Block Offices for funds and/or technical approval.
- Recommendation of **State Finance Commissions are not binding** on the state governments
- **Structural variations** in the implementation of the act. Average population in PRIs varies from state to state: AP, UP, MP have less than 3000 population, In Odisha and Rajasthan the figure is between 3000-6000. In Assam, Bihar it is 6000-10000. Rajasthan, Gujarat and Maharashtra have special services for the panchayati raj. For example Rajasthan has Raj Development services

Problem areas in the functioning of the PRIs in India

- **Domination of PRIs by the bureaucracy has been the biggest hurdle.**
 - ❖ Bureaucracy is supposed to provide technical support but it has been seen that they have come to dominate these institutions. DRDAs have deprived the PRIs of their core functions such as poverty alleviation and employment generation.
 - ❖ Several government registered societies have sprung up to implement the schemes of the government and they have by-passed the PRIs in the country.
 - ❖ Central government has launched schemes that have bypassed the mandate of the PRIs. For example the Intensive Agricultural District Program.
 - ❖ PRI service is not really a service in the real term but they are merely on deputation and thus owe their loyalty to the original department
 - ❖ Frequent transfers of the officials also create problems for the functioning of the PRIs
- **Lack of participation**
 - ❖ Meetings of Gram Sabhas are not held regularly
 - ❖ There is no specific agenda to the meeting a lot of times
 - ❖ People's participation has been limited to receiving the benefits in rural programs.
- **Lack of training**
 - ❖ No efforts have been made to motivate, guide and train the rural people. They

District Rural
Development
Authorities

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lack direction and expertise without training

- **Lack of adequate resources**
 - ❖ Their main sources of revenue include taxes, levies and fee but they are mainly dependent on the states for the Grants-in-aid that are not made available on time and are grossly inadequate in nature.
 - ❖ Even the PRIs have shown reluctance in garnering their own resources due to reasons of proximity
- **Corruption and misuse of money**
 - ❖ Provisioning of the funds directly to the PRIs has led to the tussle between different groups to gain control over these resources to misappropriate them
- **Hostility from high level leaders**
 - ❖ MPs and MLAs look at the PRIs as a threat to their existence.
- **Traditional structures in the society**
 - ❖ Traditional elites in the society have not allowed sharing of powers with the marginalized and masses

Problems of financing the local bodies in India

- Taxes devolved to the PRIs are inelastic in nature
- There is also a reluctance on the part of the PRIs to impose taxes
- PRIs generate only 5% of their finances through own sources and are highly dependent on the state government for their functioning
- They possess limited borrowing powers
- States have been reluctant to implement the recommendations of the SFCs

States such as Kerala, AP and Karnataka have done well when it comes to finances and thus the PRIs are more autonomous and function in a more effective manner.

Issues with the State Finance Commissions

As per the Constitutional provisions, setting up of fifth SFC became due in 2014-15 in all the states. Only thirteen states have constituted their fifth SFC till date.

This could be due to a number of reasons namely,

- SFCs have taken a lot of time to submit their reports,
- State governments have taken considerable time in tabling the **action taken report (ATR)** in the state legislatures,
- States have not constituted the SFCs in a timely manner

Other issues with the SFCs

- Not a permanent body and hence no permanent office space. Every time it is constituted, it has to look for office space, recruit technical staff and arrange for office infrastructure. This takes a lot of time.
- Additionally, workings of SFCs have also been delayed by non-availability of data relating to local governments. Considerable time is spent in designing questionnaires and collecting data on the finances of local governments. Moreover, the concerned departments also do not provide data in a timely manner.
- SFC reports are also delayed due to delays in the appointment of chairpersons/members, reconstitution of SFCs and due to state/local body elections which affect the working schedule of the Commission.

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- Another important reason for the delay in SFC reports is the unreasonable time assigned to SFCs by state governments to submit the reports
- We see that the composition of the divisible pool varies considerably across SFCs which makes comparison of SFC awards to local governments across different states difficult.

ARC II recommendations on the PRIs

- Replace the word **may in 243G** with the word **shall** to make the devolution of functions mandatory
- Local legislators should not be made members of the PRIs
- Set up Legislative Councils in all states to provide representation to the members of the PRIs
- State Election Commission should be appointed through a committee consisting of LoP
- SFC report and ATR to be submitted in 6 months
- Abolish the MPLADS and MLALADS scheme
- Parastatal bodies should be shut down
- PRIs should have the right to recruit their own personnel and regulate their conditions of service
- States should adopt the concept of '**activity mapping**', wherein each state clearly delineates the responsibilities and roles for the different tiers of the government in respect to the subjects listed in the Schedule XI.

Karnataka has created a separate bureaucratic cadre for Panchayats to get away from the practice of deputation of officials who often overpowered the elected representatives. Such practices need to be replicated in other states for strengthening the true character of local self-governance.

Recommendations on financing

- Broadening and deepening of revenue base for the PRIs, keeping in view
 1. Their potential for taxation
 2. Fixation of realistic tax rates
 3. Widening of the tax base and improved collection of the taxes
- State government should release timely funds to the PRIs and should be released in **two installments**.
- The center also needs to financially incentivize states to encourage effective devolution to the panchayats in functions, finances, and functionaries.

Impact of 73rd CAA on women

- It's quite clear that a very large number of women have been politically and socially empowered because of panchayati raj. They have gained a **sense of empowerment** by asserting control over resources, officials and most of all, by challenging men.
- **30 lac women** contest elections to the GPs thus taking democracy to the women
- Participation of the women in Gram Sabhas has increased
- They have become **articulate and conscious** of their power.
- Despite their low- literacy level, they have been able to tackle the political and bureaucratic system successfully
- Concept of **Panchayat patis** is showing a declining trend

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- They have used their elected authority to address, critical issues such as education, drinking water facilities, family planning facilities, hygiene & health, quality of healthcare and village development
- Research using PRIs has shown that having female political representation in local governments makes women more likely to come forward and report crimes.

Challenges faced by women

- Women are **overburdened** with family responsibilities and thus are not able to perform official duties efficiently
- They **feel inhibited** to speak especially when they are in large male dominated assemblies. Those who muster up enough courage and strength to speak receive very little respect or attention.
- It has been observed that women are often invited only to **complete the quorum**.
- Further, the officials also pay heed to the needs of upper class women in preference to the needs of poor ones.
- **Lack of literacy** in women has limited their participation **due to restrictive qualifications**
- Problems created due to rotation policy every 5 years
- Women are threatened by increasing number of criminals in the politics
- Women are rarely nominated to the unreserved seats
- Male family members and leaders from the caste groups/community come in the way of the affairs of the Panchayats led by women

Composition and Structure of Municipalities

- According to the constitution, every municipal area shall be divided into territorial constituencies to be termed as wards. The electorate in a ward would choose their representative through direct elections who would be termed as a ward member.
- Every municipal body shall consist of the following:
 - Directly elected ward members
 - Other members to be determined as per the law of state legislature, which may include:
 - (a) Persons having special knowledge and experience in municipal administration
 - (b) MPs and state legislators
 - (c) Chairperson of Ward Committees
- The mode of choosing the chairperson of a municipal body should be determined by the state legislature.

Ward Committees:

- As per article 243S, a ward committee shall be constituted for one or more wards for any municipality having a population of more than 3 lakhs.
- The composition, the manner of election, and the functions of the ward committee shall be determined by the state legislature.
- The chairperson of the ward committee would be the ward member if the

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committee represents one ward. If the committee represents two or more wards the chairperson should be one of the ward members to be chosen by the members of the committee.

- These committees shall perform the function as may be given to them by the state legislature.

Every municipal area shall have a municipal body to be designated as a municipal corporation, council, or a nagar panchayat depending on the notification issued by the state government. Factors to be taken into consideration would include:

- population of the area,
- density of the population,
- revenue generated for local administration,
- percentage of employment in non-agricultural activities,
- economic importance
- Any other factor is to be decided by the state government.

Some context and figures related to Urban Governance

- By 2025 more than 40% population in the urban areas and by 2050 India is expected to become an urbanized nation
- Cities are the engines of growth of any economy and contribute to 65% of the GDP
- Urban Governance refers to management of the cities and administration to ensure that people get access to civic services.
- According to several reports India's urban centers are facing challenges on the front of planning, deterioration of environmental conditions and management of municipal waste.
- As per NITI Aayog urban centers need over 40 trillion investment to improve the urban infrastructure.

Issues with urban governance in India

- **Financial paucity:** Their chief sources of income are the varied types of taxes, most of which are levied by the union and state governments and, the taxes collected by the urban bodies are not sufficient to cover the expenses of the services provided. Currently, the own revenues generated by the municipal entities in India are barely **0.15% of the GDP** compared to **0.6% in developing countries** and **2.1% in developed nations**.
- **Corruption:** The administrative machinery at the disposal of these local bodies is insufficient and ineffective. The staff which is often underpaid indulges in corrupt practices which lead to loss of income.
- **Excessive State Control:** The state governments have the power to supersede and dissolve municipal bodies under certain circumstances. Further, state governments have powers like approval of municipal budgets (except corporations). Even the modified local tax structure needs the government's prior approval and later ratification. States exercise control through accounting and audit systems, etc.
- **Limited Devolution of Functions:** Many states have been slow in transferring functions listed in the Twelfth Schedule to ULBs, impeding their ability to effectively govern urban areas.
- **Unplanned urbanization:** The municipal services have failed to cope with the increasing needs of the population, both qualitatively and quantitatively. The situation is worsening because the rural influx in towns and cities has increasingly converted them

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into ghettos.

- **Multiplicity of Agencies:** Usually works are not well allocated among different agencies which causes overlap of authority and responsibility. This further leads to diffused accountability. Existence of parastatal agencies is another problem.
- **Dilution of Efforts:** Due to multiple layers of planning, administration and resource allocation to tackle deprivations, the efforts are often dispersed in time and space, leading to suboptimal results.
- **Headed by bureaucrats:** The single purpose agencies are all dominated by bureaucrats, which goes against the basic philosophy of local government. The people's representatives have a secondary role to play.
- **Substandard Personnel and shortage:** Urban government increasingly needs professional services of experts.
- **Land titling in urban areas:** A study has reported that most, over 90% by one estimate, of the land titles in India are 'unclear' and land market distortions and unclear land titles cost India around 1.3% of gross domestic product.
- **Limited Capital Expenditure:** Municipalities committed expenditure in the form of establishment expenses, administrative costs and interest and finance charges is rising, but capital expenditure is minimal.
- **Low level of People's Participation:** People's apathy towards participating in the governance system pushes such institutions into a state of complacency and irresponsibility
- **Ecological challenges:** The growth of population and industries presents an unprecedented challenge of ecological degradation and pollution of water, air and land.

Recommendations to improve the functioning of ULBs in India

- Set up a second national commission on urbanization
- Urban local bodies should be made more accountable to their citizens through transparency measures such as open data initiatives and citizen engagement platforms.
- Direct election of the mayors on the lines of developed countries
- Municipal Commissioners should be appointed by the state governments in consultation with the mayor
- Involvement of citizens through RWAs and other similar bodies
- Local governments in urban areas should cooperate with other government levels, as well as with civil society and the private sector, in order to effectively address the challenges facing their communities.

2nd ARC recommendations on finances of the ULBs

- Fast Tracking of property tax reforms
- Enhancement of civic fines eg. Spitting
- Incentivize the revenue collection of the ULBs by linking with the state govt grants
- Provide access to capital markets through the municipal bonds

Issues with the property taxes

- Few states have not delegated and where it has been done it is not clearly defined through the rules
- Inadequacy of database with municipalities
- No frequent revision of Property Taxes
- Several exemptions under the law
- Lack of political will due to populist reasons

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- Rampant corruption in the Municipal bodies

Case Studies

- Ahmedabad Municipal Corporation has implemented AJL, a public-private partnership for bus rapid transit corridors.
- Pune Municipal Corporation has been recognized for waste management practices, including door-to-door waste collection and waste segregation.
- Surat Municipal Corporation has implemented technology for infrastructure projects, a centralized control room, pedestrian-friendly streets, and public parks.

Scheduled and tribal areas

Scheduled areas under **Schedule VI** are called **autonomous regions/districts**. These are restricted to the states of Assam, Meghalaya, Mizoram and Tripura. Inclusion or exclusion of any area from schedule VI shall be done as per the **law of parliament** amending Schedule VI.

Administration of areas dominated by the tribals in other parts of the country is carried out as per the provisions of **Schedule V**. The decision to declare an area as a Schedule V area rests **with the president of India**.

Amending Schedule VI **shall not be deemed** as an amendment under **article 368** in the constitution. The same is the case with Schedule V.

Criteria for declaration as a Scheduled Area

The **Dhebar Commission(1960)**, laid down the following criteria for declaring any area as a '**Scheduled Area**' under the Fifth Schedule:

- ❖ Preponderance of tribal population, which should not be less than 50 percent.
- ❖ Compactness and reasonable size of the area.
- ❖ Underdeveloped nature of the area.
- ❖ Marked disparity in the economic standard of the people as compared to the neighboring Areas

Later, a viable administrative entity, such as a district, block, or taluk, has been also identified as an important additional criterion.

Provisions under fifth schedule

In the states having scheduled five areas or otherwise, the governor by notification may set up a tribal advisory council.

Tribal Advisory Council

- ❖ These bodies have been created to provide inputs to the governor in exercise of

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his powers w.r.t such areas

- ❖ Additionally, they are supposed to advise the governor on welfare measures to be taken for scheduled due to tribes in the state.
- ❖ It consists of a **maximum of 20 members**. **Three-fourths** of the members should be representatives of **Scheduled tribes** in the State legislative assembly.

Powers of the governor towards the administration of fifth schedule areas

Tribal Advisory Council



- ❖ The **functioning, tenure, and conditions** for service related to the TAC are supposed to be determined by the governors under his regulation powers.
- ❖ In general, the governor has the power to make regulations for the peace and good government of these areas.
- ❖ Apart from this, the governor has the power to make regulations for specific purposes as well:
 1. To prohibit the transfer of land by or among the members of scheduled tribes(ST) in such areas.
 2. To regulate the allotment of land to the members of ST in such areas.
 3. To regulate the business of money lending in such areas
- ❖ The governor may notify that the law of parliament or state legislature may not apply or may apply with such modifications as mentioned in the notification. Any such regulation made by the governor must be approved by the president to come into force.
- ❖ The governor is supposed to submit a report to the president either annually or otherwise concerning the administration of these areas.
- ❖ The governor is supposed to take TAC's advice on such matters.

Issues and challenges associated with the administration of fifth schedule areas

- In most states, TAC has not been constituted or the rules have not been made for their functioning.
- The governors have failed to utilize their powers to make regulations resulting in the continued exploitation of the tribals thereby defeating the entire purpose of the fifth schedule.
- Office of the governor has been reduced to a mere annual report-writing institution to the president rather than a guardian of tribal interests.
- There exists an ambiguity about the discretionary powers of the governor
- The governors have failed to submit performance reports to the president regularly, thereby diminishing the accountability of governors.
- The enactment of parallel legislations like the PESA Act 1996 and the Forest Rights Act resulted in chaos and confusion.
- Sometimes, the regulations governing functions of TAC are framed by State governments rather than the Governor, which has allowed the political parties in power to take over these bodies.

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Way Ahead

- Allocate sufficient resources to local bodies for the development of infrastructure, education, health, and other basic amenities in Scheduled Areas.
- Implement provisions of training and education for the ST community members at the earliest to enable them to participate effectively in the decision-making process.
- Promote tribal self-governance by devolving powers to local tribal councils and empowering them to make decisions on matters that affect their communities.
- Change in the attitude of Union and State Governments and their perception towards the welfare of the Scheduled Areas.

Sixth Schedule Areas

Administration of schedule VI has been made the responsibility of the autonomous district(ADC) and autonomous regional councils(ARC). These bodies **shall not consist of more than 30 members** out of which a maximum of 4 may be nominated by the governor and the rest to be elected on the basis of adult suffrage

Powers of Autonomous District Councils

- They have been provided to **make laws** on a variety of matters including the management of forests, allotment and use of land, regulation of jhum cultivation, and matters such as marriage, divorce, inheritance, social customs, etc. Any such laws made by ADCs or ARCs should receive the assent of the governor.
- They have also been provided **administrative powers** including setting up of schools etc with the prior approval of the governor.
- They have the **power to collect revenues** as well as to levy and collect taxes for various purposes such as animals, vehicles, etc. The Councils are given the **power to grant licenses or leases for the extraction of minerals** within their jurisdiction.
- They can also **set up village councils** to decide the disputes between the tribals. However, the Council Courts are not given the power to decide cases involving offenses punishable by death or imprisonment for five or more years.
- Under this schedule, **a district or regional fund** has to be set up and all the money received from royalty or licensing of mining must be added to it.
- One can therefore say, they are **like a mini state** and have been given powers to manage tribal areas.
- The **law of parliament or the state legislature may not apply or apply with such modification** as mentioned in the notification issued by the governor or president as the case may be.

Concerns and challenges associated with the functioning of ADC/ARC

- ADCs suffer on account of irregular conduct of elections to these bodies.
- The ADCs witness shortage of funds which has resulted in their ineffective functioning. The funds should be distributed to local councils on the basis of their level of backwardness rather than their population
- Even though they have been provided revenue powers they are not enough to meet

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their responsibilities and expenses.

- Since the size of the council is limited, at times the smaller tribal groups do not get adequate representation in these bodies.
- A large number of non-tribals also reside in these areas and they feel left out of the functioning of these bodies.
- Often the laws made by councils have failed to get timely approval from the governor reducing the effectiveness of these bodies.
- The ADCs have been accused of corruption and misuse of funds, resulting in a lack of transparency and accountability in their operations.

Way Ahead

- Strengthen the Autonomous District Councils by providing them with adequate resources, administrative and financial powers, and personnel.
- Expand the scope of the Sixth Schedule to include more areas with a substantial tribal population.
- Encourage community participation in the decision-making process along with awareness creation measures
- Conduct regular monitoring and evaluation of the implementation of the Sixth Schedule.

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