

A significant landmark in rural local self-government

THE Constitution (72nd Amendment) Bill, 1991, does not constitute an earth-shaking or epoch-making document for a variety of reasons.

In the first place, barring a few provisions relating to elections, reservation of seats and offices to weaker sections and women, and constitution of a Finance Commission, the Bill does not materially alter the existing position prevailing in the States. In a way the Bill seeks to emphasise, perhaps unintentionally, the status quo, and to reiterate the supremacy of the States over matters concerning Panchayati Raj. Articles relating to: — Gram Sabha (243 A), — constitution of panchayat (243 B), — election of chairpersons (243 C), — disqualifications for membership in panchayats (243 F), — powers, authority and responsibilities of panchayats (243 G), — power to impose taxes, etc., by panchayats (243 H), — audit of accounts of panchayats (243 J), and — elections to panchayats (243 K) are usually taken care of by the statutes in several States at present.

To this extent, the Bill does not make any significant contribution to these issues.

Secondly, the Bill seeks merely to accord Constitutional "recognition" to the Panchayati Raj institutions rather than to ensure Constitutional "protection" to them from encroachment by the State legislature (and the State Governments under the guise of delegated legislation)

over their powers and functions. Frequent use in the Bill of the word "may" in relation to exercise of powers by the State legislatures is testimony of the plethora of their discretionary powers in which effect diluted the essence of the Bill. Examples that could be cited are many and their implications manifold.

The State legislatures under the Bill are endowed with discretionary power to provide for: — Gram Sabha [243 A (1)]; — constitution of panchayats at the intermediate and district levels [243 B (1)]; — mode of elections for the seats in the panchayats at the district level [243 C (3)]; — representation to the chairpersons of lower tier units in the next higher tier units, and of MPs (LS) and MLAs in the panchayats at the intermediate and district levels [243 C (4)]; — reservation of seats or offices of chairpersons to backward class of citizens [243 D (6)]; — endowing the panchayats with powers, authority and responsibilities (243 G); — vesting powers in panchayats to impose taxes and assigning revenue of State-administered taxes (243 H); — maintenance of accounts and auditing of such accounts (243 J), and — matters connected with elections to panchayats (243 K).

Thirdly, the Bill, even if one assumes is drafted after a great deal of thought, does not answer some pertinent questions nor does it specifically make certain provisions which are rather crucial

for the growth of the Panchayati Raj institutions as effective units of local self-government. For instance, the Bill does not specifically or expressly provide for:

- (a) compulsory convening of the gram sabha once or twice in a year;
- (b) Constitution of a two-tier or a three-tier structure of Panchayati Raj in big States on the basis of population, geographical factors and topographical conditions;
- (c) reorganisation of panchayats at different levels on some relevant criteria to make them economically, administratively, and financially viable units before their constitution;
- (d) safeguards or deterrents against arbitrary dissolution of panchayats by the State Governments;
- (e) compulsory conduct of elections to panchayats every five years;
- (f) tenure of office of chairperson which should be coterminus with the duration of Panchayats;
- (g) disqualifications for being chosen as and for being a chairperson of a panchayat (note that Art. 243 C (5) and (6) to differentiate a chairperson from an elected member);
- (h) removal of a chairperson, particularly directly-elected chairperson, through a no-confidence motion, and the checks against arbit-

rary exercise of this power by members of a panchayat;

- (i) list of specific functions or matters that come under the exclusive domain of panchayats;
- (j) inclusion of matters like mobilisation of local resources in cash, kind or labour, emergency relief, prohibition, collection of statistics, minimum wages, communal harmony and national integration;
- (k) reservation of certain local taxes like tax on lands and buildings, octroi, profession tax, entertainment taxes;
- (l) provision of loan capital to panchayats; and
- (m) assistance to the States by the Union Government to meet the financial obligations arising out of acceptance by the States of the recommendations of the Finance Commission.

Fourthly, the Bill contains some provisions which are ambiguous or confusing. For instance: — The word "or" used in Art. 243 C (5), 243 C (7) (a), and 243 D (4), seems to convey the meaning of "either." Perhaps this needs to be substituted with the word "and."

— In Art. 243 D (6), after the words "seats in any panchayats or office of chairpersons," the words "or both" need to be added.

— There seems to be an anomaly between Art. 243 C (3) and 243 C (6) inasmuch as the former provides also for indirectly elected or

ex-officio members in the Panchayat at the district level, while the latter confined the right to vote in the meetings of such panchayat only to its elected members.

Notwithstanding the demerits or deficiencies outlined so far, certain provisions in the Bill relating to periodic conduct of elections to these institutions, reservation of seats and chairpersons to the SCs, STs and women, and constitution of a Finance Commission are bound to have a salutary effect on the system of local Government in rural India.

In fact, even if a Constitutional provision is made only with respect to these three crucial matters, such a step is bound to prove a significant landmark in the history of rural local self-government at the present juncture. Let the provisions of the proposed Bill be few, brief, clear, and fundamental in which case a different scenario of the Bill would emerge. Such scenario would:

- concentrate or focus on a few fundamental issues which will greatly contribute to the efficient and effective functioning of Panchayati Raj institutions; and
- divest the States of their discretionary powers which if exercised, will hinder the growth of Panchayati Raj institutions.

It would also make the following Constitutional obligations cast on the States:

(a) prompt conduct of elections to the Panchayati Raj institutions every five years, after their proper reorganisation wherever needed;

(b) reservation of seats and offices of chairpersons of the Panchayati Raj institutions to the Scheduled Castes and Scheduled Tribes at least in proportion to their population, and to women upto a minimum extent of one-third of the total number of seats and offices of chairpersons at each level;

(c) constitution of a Finance Commission at the State level for every five years or earlier to review the finances of Panchayati Raj institutions, and to make recommendations to the State Government with a view to achieving equalisation of service standards by removing horizontal fiscal imbalance in the rural local Government sector;

Issues or matters such as Gram Sabha, composition of panchayats at different levels, mode of election of members and chairpersons, disqualifications of members and chairpersons, representation of the Chairpersons of lower level units in the upper level units, powers and functions of panchayats at different levels, safeguards against arbitrary dissolution of panchayats at different levels, maintenance of accounts and audit of such accounts, etc., can be taken care of by the State legislatures

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