

## **DECENTRALISATION AND MUNICIPALITIES**

The 73<sup>rd</sup> and 74<sup>th</sup> Constitution Amendment Acts are sister legislations passed by the Parliament in 1992. The 73rd Constitution Amendment Act provided directions for the creation of Panchayats in the rural areas and the 74th Constitution Amendment Act provided for the creation of Municipalities in urban areas. The two legislations laid a broad framework for the setting up of Panchayats and Municipalities by the states. The legislations also stipulated a time limit within which the state governments were to enact conforming legislations to enable setting up of Panchayats and Municipalities, that is by the 1<sup>st</sup> of July 1994.

Prior to the enactment of these two legislations, the functioning of the local bodies was totally dependent on the whims and fancies of the state governments. The supersession of the local bodies was a very common occurrence. Further, the vital arms necessary for the efficient functioning of the local bodies such as the District Planning Committee, Metropolitan Planning Committee, Wards Committee, State Election Commission etc., are either missing or not in a functional state. Although the setting up of these institutions has been made mandatory by the Constitution, in most states they are still not in place. The reasons for their absence or ineffectivity have been discussed in this paper. The legislation apart from laying broad criteria for constitution, composition of Municipalities, elections/removal of Mayor or Chairpersons, qualification/disqualification of membership, setting up of State Election Commission etc., left it to the state governments to prescribe the actual norms. This was done while keeping in mind the federal nature of our political system and also since a minority government was tabling the Bill in the Parliament and was dependent on other regional parties for its passage.

### **Chapter I - Constitution Of Municipalities, Elections And State Election Commissions**

#### **Constitution of Municipalities**

Article 243Q of the Constitution states that a Municipal Corporation shall be constituted for a larger urban area, a Municipal Council for a smaller urban and a Nagar Panchayat for an area, which is in the process of transition from rural to urban. The Constitution does not define what exactly would constitute larger or smaller urban area or an area of transition from rural to urban. It has been left to the state governments to fix their own criteria. The Article also states that apart from population, other parameters such as density of population, percentage of population in non-agricultural employment, annual revenue generation etc., may be taken into account by the states. But apart from total population, very few states have taken into account the other criteria. Only Andhra Pradesh, Himachal Pradesh, Tamil Nadu and Karnataka have prescribed the criterion of annual revenue generation, most other states do not even specify any such criterion. The other criteria such as density of population and percentage of population in non-agricultural employment have been totally ignored by all the states.

It is, therefore, suggested in the paper that Article 243Q of the Constitution may be amended and at least a minimum population as a base may be prescribed. For a Municipal Corporation a minimum population of 5 lakh, a Municipal Council for a town with at least 50,000 people and a Nagar Panchayat for a town with at least 20,000 people. The proviso to Article 243Q stating that a Municipality may not be constituted in an industrial township 'under certain circumstances' (the reason for which has not been stated) should be reconsidered since this is against the spirit of decentralisation.

## **Composition**

Article 243R of the Constitution states that all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies or wards (similar to constituencies of the Lok Sabha or Vidhan Sabha). This means that a Municipal council would comprise mainly of directly elected representatives or that it is an elected body. It also states that certain members may be nominated by the state government (local MPs/MLAs and persons having special knowledge or experience in municipal administration) with or without the right to vote in the proceedings of the Municipality.

The total number of members in a Municipality varies from state to state. Most states have tried to determine the number of members by keeping in mind the total population of the Municipality. The range in Uttar Pradesh is from 60 to 110 members, in Madhya Pradesh it is 40 to 70, it is 30 to 100 members in Karnataka, while it is 60 to 70 in Rajasthan. Though the states have succeeded in maintaining parity population per ward within a Municipality, they have failed in maintaining a similar parity amongst the Municipal Corporations within the state. In Maharashtra, for example, the average population per ward is 45,000 in Mumbai, 22,000 in Nagpur and 14,000 in Pune. Similarly, in West Bengal, it is 31,000 in Kolkata, 19,000 in Howrah and 8,000 in Siliguri. Such a phenomenon has also been observed in Municipal Councils and Nagar Panchayats within a state. It is necessary to have parity in this aspect because an important component of decentralised governance is that there should be proximity between the elected representative and the local people, but when one elected member is representing such a large population, the whole purpose of decentralised governance may be defeated. However, in the 73rd Constitution Amendment Act relating to the Panchayats, Article 243C specifies the need for parity amongst Panchayats within a state. A similar clause could be considered in respect to Municipalities also.

As far as nominated members are concerned, Andhra Pradesh is the only state which has a provision to nominate one person belonging to the minority community. Regarding representation of persons having special knowledge or experience in municipal administration, some states have made provisions, although the number varies from state to state. In Haryana, the provision was removed in 2002 due to political compulsions. It is important to note here that this provision has been a matter of

debate since the very definition of having special knowledge or experience is ambiguous and the nominations arbitrary. It is proposed that the provision may be dropped. The matter regarding nomination of MPs / MLAs has been debated widely and has been dealt with separately in this paper. The sections on regularity of elections and role of state election commissions in this paper would shed more light on the subject.

### **Election and Removal of Mayor / Chairpersons**

The mode of election of Mayors / Chairpersons was left to the discretion of the State Governments by the Constitution -- Mayors in the case of Municipal Corporations and Chairpersons or Presidents in the case of Municipal Council or Nagar Panchayat. In Rajasthan, Himachal Pradesh, Haryana, Karnataka, Kerala, West Bengal, Maharashtra and Gujarat, the Mayors/Chairpersons are elected from amongst the elected Councillors i.e., indirectly elected. In Andhra Pradesh, Uttar Pradesh, Madhya Pradesh and Tamil Nadu, Mayors/Chairpersons are elected directly by the people. Their term of office also varies from state to state. Uttar Pradesh, West Bengal, Tamil Nadu, Rajasthan, Andhra Pradesh, Kerala and Madhya Pradesh have provided for a five-year term, while Assam, Delhi, Himachal Pradesh, Orissa and Karnataka have provided for a one-year term. Maharashtra and Gujarat have provided for a two and a half year term. In case of Maharashtra, after the term of office of the Mayor was increased from one year to two and a half years, some political parties wanted that the post of Mayor be rotated after every year, so that other members of the party could be given a chance. It has been felt that a term of one year is insufficient. The term of office of the Mayors and Chairpersons in Maharashtra and Gujarat was increased primarily to provide some continuity in municipal administration. But it is also being seen as an opportunity to give a chance to more members thereby satisfying a larger group in the ruling party.

### **Removal of Mayor/Chairpersons**

The provisions in State laws for removing a Mayor/Chairperson through a no- confidence motion is different all over the country and one can confidently say that the procedure is more complex and stringent when compared to a no-confidence motion in the Lok Sabha or the Vidhan Sabha. The table below indicates the procedure of removal of Mayor/Chairperson in some states.

#### **Procedure for No-confidence Motion against Mayor**

<b>State</b>	<b>Tabling of Motion</b>	<b>Notice Requisition</b>	<b>of</b>	<b>Passing Motion</b>	<b>of</b>	<b>Repetition of last motion</b>
<b>Haryana</b>				By a majority of not less than two-thirds		
<b>Kerala</b>	Not within six months of assumption of office	By not less than one-third of the Councillors.	of the	By more than one-half of the elected Councillors.	of the	Cannot be repeated before six months of the last motion

State	Tabling of Motion	Notice Requisition	of	Passing Motion	of	Repetition of last motion
<b>Madhya Pradesh</b>	Not before two years of the assumption of office	two	By not less than half of the total number of elected councillors.	More than three-fourths of present and voting, such majority should be more than two-thirds of the total councillors.	of	Cannot be repeated before one year of the last motion
<b>Himachal Pradesh</b>	Not before six months of the assumption of office	six	By not less than majority of total elected Councillors	To be passed by majority of present, the quorum of which should not be less than one half of its total elected members	of	Cannot be repeated before six months of the last motion
<b>Rajasthan</b>	Not before one year of the assumption of office	one	By not less than one-third of the Councillors	By a majority of two-thirds	of	Cannot be repeated before two years of the last motion
<b>Uttar Pradesh</b>	Not before two years of the assumption of office	two	By not less than one-half of the total number of Councillors.	By more than one-half of elected Councillors	of	Cannot be repeated before two years of last month
<b>Maharashtra</b>			By not less than one-third of the Councillor	Majority of the total number of members	of	
<b>Tamil Nadu</b>	Not before six months of assumption of office	six	By not less than one-half of the total number of elected Councillor	By three-fourth of the total strength of the elected Councillors	of	Cannot be repeated before six months.
<b>West Bengal</b>	Not before six months of assumption of office	six	By not less than one-third of the members.	By a majority of the total number of members.	of	

It should be noted that in some states a simple majority could pass a no confidence motion i.e., more than half of the members. The procedure for removal of Mayor/Chairperson through motion of no confidence should be uniform. A provision should be made in the Constitution requiring at least a two-thirds majority of those present and voting which should amount to at least a majority of the total strength of the House.

### Right to Recall

A significant and revolutionary development in the last few years is with regard to people's awareness of their rights as citizens. This is best exemplified in the provision of the right to recall elected

representatives, which has been granted to the people in Madhya Pradesh and Tamil Nadu. Under this law, the people of a ward have the right to recall their elected representative through a 'referendum'. In Madhya Pradesh, this power has already been exercised in a few Municipalities. It shows that governments can empower local bodies only if there is political will.

### **Qualifications and Disqualifications for Membership in Municipalities**

Article 243V of the Constitution provides that the criteria for disqualification for being chosen or for being a member of a Municipality shall be the same as in the case of Vidhan Sabha election. A state government can stipulate other qualifications also. All the States have made provisions in their respective Acts. Most States specify 21 years as the minimum age, name in the electoral rolls etc., as qualifications required to be eligible to stand for elections to the Municipality.

The Representation of the People Act, 1950 and 1951 lays down the conditions for qualification and disqualification of candidates for elections to Parliament and State Legislatures. A similar set of conditions can also be prepared for all the Municipalities in the country as a whole. Although, the rules in this regard, prescribed by some states, such as the two child norm (a person having more than two children cannot stand for elections) has evoked mixed reactions and their effect needs to be studied in detail before applying it to all the Municipalities. In Haryana and Himachal Pradesh, licensed architects, town planners, surveyors, etc., (basically those who are licensed to take up works contracts of the Municipality) cannot contest elections. Failure to submit accounts of election expenditure is a disqualification in some States. In Kerala, this resulted in the disqualification of more than 12,000 candidates in the Panchayat polls. The State Election Commissions have prescribed various norms in this regard. The need for a uniform set of laws, on the pattern of the Representation of the People Act of 1950 and 1951, for all the local bodies in the country would be worth preparing. Some of the states have experimented with novel methods and the best out of the lot can be adopted.

### **Regularity of Elections**

The Constitution makes elections to the Municipalities mandatory every five years. All the states have held elections to the local bodies. The 74<sup>th</sup> amendment Act is not applicable in Mizoram, Nagaland & Meghalaya. There are no Municipalities in the Union Territories of Dadra & Nagar Haveli and Lakshadweep.

Though elections have been held in most states, the problem arises with regard to holding them regularly. In Uttar Pradesh, since the state government claimed that the delimitation process had not been carried out, it promulgated an ordinance postponing elections. This ordinance was then challenged in the High Court through Public Interest Litigation (PIL) arguing that if elections are not held every five years then it is a violation of the Constitution. The ordinance was quashed by the High Court and the Supreme Court upheld the judgement of the lower court.

Similarly, in Haryana, elections due in February 2000 were postponed due to the announcement of Assembly polls. The Supreme Court had to intervene and direct the State Government to hold elections within a specific time. In Andhra Pradesh also elections have been postponed either due to delay in delimitation of wards or complications in the procedure of reservation of seats for elections. In all cases the courts have had to intervene in response to writs or PILs to ensure timely elections.

Although the Constitution makes timely elections mandatory, issues relating to reservation and delimitation have often been cited as reasons for postponing elections. It is interesting to note here that the constitutional provision of holding timely elections has withstood judicial scrutiny also. The Supreme Court in its judgement (WP Civil No.719 of 1995) clearly stated that articles 243E and 243U on Panchayat and Municipal elections respectively are mandatory and not discretionary. It stated that postponement of elections is a violation of the Constitution unless there are 'supervening difficulties' such as natural calamities like floods, earthquakes etc., which prevent the state from holding timely elections.

It is therefore important that both the state government and the central government (in case of Panchayats and Municipalities located in Union Territories) ensure the completion of elections before the expiry of the five year term of the Municipality as desired by the Constitution. Also the State Election Commissioner in the event of a delay in elections should send a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfil the requirements of the Constitution.

### **Delimitation of Constituencies**

Delimitation of wards is a very crucial factor in elections and constitution of Municipalities especially in light of the fact that time and again failure to delimit wards has been cited as reason for not holding timely elections. Delimitation basically means drawing up of boundaries of wards or territorial constituencies. In Haryana, Madhya Pradesh, Uttar Pradesh, Rajasthan and Punjab, the task of delimitation of territorial constituencies vests with the State Government, while in Gujarat, Maharashtra, Kerala and West Bengal, the responsibility lies with the State Election Commission. Delimitation orders have been passed by most State Governments wherein the parameters for delimitation have been prescribed, but it has been repeatedly felt that the state governments are misusing their powers to delimit constituencies according to their convenience.

In Haryana, it was observed that faulty delimitation by creating islands of another ward within a ward had resulted in a change in the social equation of a territorial constituency thereby favouring one candidate. While in Andhra Pradesh and Uttar Pradesh, the need for fresh delimitation of wards has been cited as reasons for deferring elections. It is also observed that in some States the delimitation

exercise was taken up just before the elections thereby providing a reason for possible postponement of elections.

There is therefore a need that the delimitation process is conducted at least six months or one year before the expiry of the term of local bodies. It has also been felt that fresh delimitation of constituencies is not required each time elections are due. It is important that delimitation is done once in every ten years after the census and at least six months to one year before the elections are due. It would be interesting to note here that for the Lok Sabha and the Vidhan Sabha constituencies, delimitation was last undertaken in 1976.

### **Electoral Rolls**

Under articles 243K and 243ZA, the preparation of electoral rolls is the responsibility of the State Election Commission (SEC). In some states the electoral rolls of the Lok Sabha and the Vidhan Sabha elections are disaggregated and used in the local body polls. While in other states separate rolls are prepared. It is important to understand that preparation of electoral rolls separately for local bodies & Lok and Vidhan Sabha polls is a cumbersome, time taking and an expensive process. The process can therefore be simplified by a 'building block' approach wherein the electoral rolls of the municipal or Panchayat territorial constituency or ward be considered as the smallest unit or polling station. A number of small units or polling stations can form a municipal or Panchayat ward, which in turn can be grouped into Panchayats and Municipalities or Assembly segments and Lok Sabha constituencies.

### **Reservation**

The responsibility of reservation of Wards for municipal election vests in the State Government in Madhya Pradesh, Rajasthan, Andhra Pradesh, Uttar Pradesh, Tamil Nadu, Karnataka, Haryana, and Punjab, the State Election Commission has no role to play in it. In Maharashtra, Gujarat, Kerala & West Bengal the State Election Commission is responsible for reservation.

In Andhra Pradesh, it is the State Government which notifies the reservations and unless this is done, the State Election Commission is not able to issue the election notification. The resultant being a delay in elections due to which the State election Commission had to go to court.

The impact of reservations is another factor that has been widely debated. In all the states rotation of reserved seats takes place during every election; therefore, it is seldom that a member elected on the reserved seat gets an opportunity of contesting the same seat for a second term. This proves to be a disincentive for members to work for their constituency, more so since local body elections are fought on individual rather than party basis. Articles 243D and 243T should be suitably amended so that

reservation of a constituency may be fixed for a ten year period. And reservation and rotation can be taken up together with delimitation after every ten years.

#### **D. State Election Commissions**

Articles 243K and 243ZA stipulate that the “superintendence, direction and control for the preparation of electoral rolls and the conduct of all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner (SEC) to be appointed by the Governor.” These articles further State that the SEC shall not be removed from his office except by procedure similar to that for removal of a Judge of a High Court. The office of the State Election Commissioner is on the lines of the Chief Election Commissioner. Both are Constitutional Authorities.

Articles 243K and 243ZA have kept the Election Commission of India as a model. The successful conduct of elections in a fair and transparent manner has demonstrated the importance of entrusting elections to a neutral and independent authority. Since the elections to both Panchayats and Municipalities elects more than three million representatives, the elections to these bodies is a fairly large exercise. It is, therefore, essential that the office of the State Election is adequately strengthened.

Regarding the appointment of the State Election Commissioner, the Governor of the concerned State has been made the appointing authority. To make the selection impartial, it is felt that a group consisting of the state Chief Minister, Speaker of the legislature and the leader of Opposition recommend a suitable person with adequate administrative experience to the Governor for appointment. The state legislature is to make provisions by law regarding the conditions of service and tenure of office of the State Election Commissioner. The variations regarding the qualifications and service conditions of the State Election Commissioners in different states need to be removed. He/She should have a fixed term of 5 years and the rank and status should be equal to a Judge of the High Court.

#### **Notification of Elections**

The responsibility of issuing notification of local body elections wrests with the State Election Commission in Assam, Madhya Pradesh, Maharashtra, Andhra Pradesh and Gujarat. While in Uttar Pradesh, Rajasthan, West Bengal, Kerala and Orissa, the State Government issues the notification on the recommendation of the State Election Commission. The issuing of notification forms an integral part of ‘conduct of elections’, the power of which has been vested in State Election Commission by the Constitution. It is necessary that this responsibility is vested in the State Election Commission all over the country.



## **Single Election Machinery**

One matter of further discussion and debate is the larger role of the State Election Commission. Since the office of the State Election Commission is based on the model of the Election Commission of India, the SEC can perform its functions as an arm of the Election Commission of India and the responsibility for conducting all elections both for the State Legislature and the Local Bodies can be vested in the SEC.

Article 243K(I) and article 243ZA(I) of the Constitution state that the “superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the Panchayats/Municipalities shall be vested in a State Election Commission.” This basically means that all matters relating to the conduct or holding of elections be it delimitation, reservation of seats, issuing of notification or the preparation of electoral rolls etc., are the responsibility of the State Election Commission. In light of the above, it would not be wrong to assume that the state governments have indeed twisted the interpretation of constitutional provisions and enacted provisions in the state conformity legislations to their own convenience. It is therefore essential that the all the functions regarding ‘conduct of elections’ is clearly vested in the State Election Commission.

## **Wards Committees and Proximity to Citizens**

The provision to constitute Wards Committee came from the idea that there is a need for bridging the gap between the elected representative and his electorate so that activity in any area reflects the aspirations of the people and the elected representative is directly accountable to the people. The need for effective participation of the people themselves in the governance of their cities has become imperative.

In the 65th Constitutional Amendment Bill of 1989, passed by the Lok Sabha but defeated in the Rajya Sabha, it was stipulated that wards committees be constituted within the territorial area of municipal councils having a population range twenty thousand to one lakh. It was also envisaged that the Wards Committee shall consist of 2 or more wards in a Municipal Council. In a Municipal Corporation with a population of more than three lakhs Wards Committee may be set up comprising 1 or more wards. This Bill also envisaged the setting up of a Zonal Committee in between the Wards Committee and the Municipal Corporation, basically a three tier set up was framed. For the Municipal Councils only a two tier set up was envisaged. Therefore, to ensure accountability and people’s participation, a three tier structure in large urban areas and a two tier set up in smaller urban areas was proposed.

During the drafting of the 74th Constitution Amendment Act it was decided that large municipal bodies citizens do not have access to their elected representatives and therefore Wards Committees only

needed to be set up in Municipal Corporations with a population of more than three lakhs. This was a major shift from the earlier proposals. The structure and composition of the Wards Committee was left for the state governments to decide.

In Kerala, there is a Ward Committee for every Ward. The elected councillor of the ward concerned is the Chairman of the Wards Committee. The Committee consists of not more than 50 persons nominated by the Chairperson of the Municipality in consultation with the councillor. The members of the Ward Committee are drawn from various categories such as residents associations, doctors, teachers, etc., and these categories are mentioned in the Act. The Ward Committee will meet at least once in three months. The Committee will prepare and supervise the development schemes for the ward, encourage harmony and unity among various groups, mobilise voluntary labour for social welfare programmes, give assistance for identifying beneficiaries for the implementation of welfare and development schemes related to the Ward. This is besides assisting in timely collection of taxes, fees and rents. The duration of the Wards Committee shall be for five years.

In Andhra Pradesh & Uttar Pradesh, provisions have been made for the constitution of every Wards Committee for not less than five wards in a Municipality. Whereas in the Municipal Corporations in Uttar Pradesh & Himachal Pradesh, Wards Committees are to be constituted for not less than ten wards. In Rajasthan & Karnataka it is for one or more wards. The Madhya Pradesh, Haryana & Tamil Nadu legislations only specify that Wards Committee shall be constituted for Municipalities with a population of not less than 3 lakh. Even though various states have made provisions for the constitution of Wards Committees, but they are not operational in most of the states.

In Maharashtra, Wards Committees have been set up for groups of wards. In the Greater Mumbai Corporation, 16 Wards Committees have been formed out of 221 municipal wards. The wards have been grouped similarly in Pune, Navi Mumbai and Pimpri Chinchwad. It comprises all the councillors from the concerned wards and one to three representatives of NGOs in the area as nominated by the Corporation.

In West Bengal and Kerala, Wards Committees have been set up for each municipal ward. In the case of the Calcutta Corporation, in addition to the Wards Committees, the Borough Committees or in other words Zonal Committees have been in existence for a long time. Since in Calcutta every municipal ward has a Ward Committee, another committee comprising of a group of municipal wards known as Borough Committees have also been formed. Calcutta thus has a three tier set up. In West Bengal provisions have been made to set up Wards Committees in every Municipality, even if the population is less than three lakhs. In Chennai, the 155 municipal wards are grouped into ten Wards Committees, each representing a population of close to four lakhs. Bangalore's Wards Committees cover an average population of about two lakhs.

A major objective of providing for Wards Committees in the 74th Constitution Amendment is that it enables closer interaction between the people and their elected representatives. The setting up of such Committees for groups of wards with large populations defeats the fundamental idea of proximity and accountability. Another issue that has come up for discussion is that members of the Wards Committees also should be elected from the ward. To constitute a Wards Committee elections can be held and its member be elected. This is in line to the belief that increasing the number of elected representatives from territorial constituencies would help in better participation in locally relevant matters and thereby fulfilling local aspirations.

It is therefore suggested that Wards Committees should be mandatory for each of the ward in all Municipal Corporations with a population of three lakhs or more. Its members instead of being nominated should be directly elected. Other residents of the ward who are knowledgeable and can assist the Committee in its work and can be co-opted. Large urban areas especially Municipal Corporations with a population of six lakhs and more, can have Zonal Committees at a level between the Wards Committees and the Corporation thereby having a three tier set up as mentioned earlier.

## CHAPTER 2

# FUNCTIONAL AND FINANCIAL DOMAIN

### Functional Domain

The functional domain basically relates to the functions that have been assigned to the Municipalities to perform. During the pre-independence era, almost all the functions in the city such as water supply, drainage, sanitation, building control, municipal road and street lighting, municipal markets etc., were performed by the Municipality.

In the period after independence, however, there has been a steady diversion of municipal functions to other bodies like development authorities such as Delhi Development Authority, Ghaziabad Development Authority etc., and para-statal organisations such as Jal Nigam in Uttar Pradesh. The phenomenon of frequent supersession of elected Municipalities added to the problem. State level water and sanitation boards as in Uttar Pradesh, Tamil Nadu, Maharashtra, Gujarat and Andhra Pradesh had come into existence. City development or special authorities were also established in most large cities of the country. The Municipalities were only left to performing functions like sanitation and garbage removal.

Articles 243G and 243W of the Constitution provide for the State laws to endow the Panchayats and Municipalities “with such powers and authority as may be necessary to enable them to function as Institutions of self-government”. The 11<sup>th</sup> and the 12<sup>th</sup> Schedules listing 29 and 18 items respectively were added to the Constitution. They are broad headings signifying a whole variety of functions. It was left to the state governments to assign functions and also commensurate finance and human resource.

Since these functions are not mandatory and it is not incumbent on the States to entrust the functions and responsibilities under these Schedules to the local bodies. The 11<sup>th</sup> and the 12<sup>th</sup> Schedules are an integral part of the Constitution and have the same status and force as other Schedules. As part of the 73<sup>rd</sup> and 74<sup>th</sup> Amendments they have also been ratified by the required number of States. The country need not have gone through the elaborate process of amending the Constitution and ratifying the same if the Schedules are regarded as decorative elements to be observed only as per convenience.

In Kerala under Section 30 of the Municipality Act, 1994, 165 functions into 29 groups of items have been transferred to the local bodies. This is the most elaborate list of functions assigned to Municipalities in any state. The functions have been classified as mandatory, sector wise and general functions. A major function entrusted to the Municipalities in Kerala is planning and implementation of various developmental projects in the productive, infrastructure and social service sectors.

Other states have also amended their acts to transfer functions to local bodies. However, changes in the laws alone do not ensure the transfer of functions and responsibilities. Although functions have been assigned to the Municipality, there could still be several restrictions in the exercise of that function.

It would interesting to note that in Kerala a function can be transferred to the local body in any form through an Act, notification or government order, but once a function is transferred it can be taken back only with the consent of the legislature. This is an important aspect because in many States, functions are assigned by regulations or government orders, they subsequently depend on the rules and regulations specified by the Government. The assignment and satisfactory discharge of functions is totally dependent on the intentions of the state government.

Even if functions are assigned to the local bodies through an act of the legislature, it is impossible for the Municipality to discharge the function satisfactorily since the state governments have not transferred the requisite manpower and finances required to perform the functions. In Kerala, elaborate arrangements have been made to transfer the institutions and staff along with functions. Other States have to follow the Kerala example. Functions, functionaries and funds should go together.

It has also been felt that just as the Constitution has a union list, state list and concurrent list, there is a need to have a municipal or local body list in which both the 11<sup>th</sup> and 12<sup>th</sup> Schedules of the Constitution find place.

### **Financial Domain**

The dismal state of finances in Municipalities across the country is a very common feature. The Constitution, even after the 74th Amendment does not provide for an independent set of taxes that the Municipalities can raise. They continue to be determined and regulated by the State Governments. Article 243X states that a state may by law authorise a Municipality to levy and collect property taxes, duties, tolls and fees. And also that the state may lay down the procedure and ceiling for the same. Even with regards to finances, adequate accounting systems are not in place.

The Constitution has made it mandatory for every state to constitute a State Finance Commission (SFC). The SFC is to review the financial position of the Municipalities and make recommendations regarding distribution of taxes between the States and the Municipalities. It is also expected to look into the criteria for grants-in-aid and suggest measures needed to improve the financial position of the Municipalities. But the SFC has to function strictly according to the terms of reference provided to it by the state.

After the 74th Amendment between 1994 and 1997, a total of 22 SFCs were set up. The terms of reference of the SFCs were basically a repetition of article 243Y of the Constitution that elucidates the functions of SFCs. Since funds required and the functions to be performed are interrelated the SFCs could review the existing situation and recommend a functional domain that would serve public interest and also be financially viable. But most of the SFCs did not touch on the subject at all. The table below summarizes the recommendations of 15 SFCs.

#### Recommendations Regarding Transfer of Funds State to Urban Local Bodies

Andhra Pradesh	39.24% of State tax and non-tax revenue to all local bodies
Assam	2% of State tax for local bodies, both rural and urban
Himachal Pradesh	An amount equal to Rs.12.2 crore as grants in lieu of octroi for 1996/97, to rise to Rs.17.9 crore in 2000/01.
Delhi	9.5 per cent of the total tax revenue of the State with MCD getting 96.85 per cent and NDMC 3.15 per cent.
Karnataka	5.4% of the total non-loan revenue receipt for meeting the plan and non plan expenditure
Kerala	40% of State plan funds for plan scheme and 1% of State revenue be transferred to the rural and urban local bodies in proportion to their population
Madhya Pradesh	8.67% of the tax and non-tax revenues of State government
Maharashtra	25% to 100% of entertainment taxes collected from Municipalities of different grades, 25% of vehicle tax and 10% of professional tax are recommended shares for local bodies
Manipur	Maintenance grant equal to Rs.88.3 lakhs to accrue to Municipalities in 1996/97.
Orissa	Rs.179.5 crore is the projected transfer (grant) to urban local bodies between 1998/99 and 2004/5
Punjab	20 per cent of the net proceeds of five State taxes, to be shared with the Panchayats and Municipalities
Rajasthan	2.18 per cent of the net proceeds to the local bodies. The division of these proceeds between rural and urban should be in the ratio of 3:4:1
Tamil Nadu	8 per cent of the total revenue from all State taxes excluding the entertainment tax, of which 15 per cent as equalisation and incentive fund in the ratio of 60 : 40 and 85 per cent in the ratio of 55 : 45 among rural and urban local bodies.
Uttar Pradesh	7% of the net proceeds of State's total tax revenue should be transferred to urban local bodies
West Bengal	16% of the net proceeds of all taxes collected by the State should be transferred to local bodies

Very few SFCs have taken a total view of development needs and financial requirements. Regarding revenue assignments, the SFCs have generally supported more autonomy for the local body in determining the rates. With regard to plan funds, however, some states like Kerala and West Bengal have recommended an allocation from 40 to 60% of State plan to rural and urban local bodies.

## **11th Central Finance Commission**

The 11th Finance Commission was set up in July, 1998. This was the first time that the Central Finance Commission was asked to look into the area of local body finances. The 10<sup>th</sup> Central Finance Commission had recommended an ad hoc award of about Rs.4400 crores for Panchayats and Rs. 1000 crore for Municipalities.

The present condition of Municipalities in India is very dismal in terms of the wide gap between the functions to be performed and the available resources for it. The studies instituted by the 11<sup>th</sup> Central Finance Commission confirmed this fact across all the states. In spite of this, the Commission declared an ad hoc award of Rs. 1600 crores for Panchayats and only Rs. 400 crores for Municipalities. The amount is less than half of what the earlier finance commission had awarded. Nevertheless, the Commission recommended that there should be a separate tax domain for Municipalities. And that there should be a set of taxes that can be divided between the central, state and the municipal governments. This system is similar to the manner in which certain taxes are divided between the state and the central government. The Commission was also of the opinion that there should be a provision in the law that the Action Taken Report of the Government on the SFC recommendations is laid before the State Legislature within six months.

## CHAPTER 3

# DISTRICT PLANNING COMMITTEES, METROPOLITAN PLANNING COMMITTEES AND ORGANIC LINKS BETWEEN MUNICIPALITIES AND PANCHAYATS

### District Planning Committees (DPC)

The constitution of District Planning Committees (DPCs) is mandatory under article 243ZD of the Constitution and is a common item for both Panchayats and Municipalities. The District Planning Committees are to take up integrated planning for urban and rural areas in the district. The draft development plan to be prepared by District Planning Committees has to address critical matters of common interest such as sharing of water and natural resources etc.

### Composition

The composition of the DPC has been left to the discretion of the States. Article 243ZD of the Constitution stipulates that four-fifths of the total number of members of DPC will be chosen from the elected members of the Panchayat at the district level and of the Municipalities in the district. Their numbers will be in proportion to the ratio between the population of the rural areas and of the urban areas in the district. This basically means that if sixty per cent of the population of the district is rural then sixty per cent of the members of the DPC will from the Panchayats and the remaining forty per cent from the Municipalities. The rest are to be nominated.

While most States have made laws to constitute District Planning Committees, very few have actually constituted them. The provisions to constitute DPC are in the 74<sup>th</sup> rather than the 73rd Constitutional Amendment. Rural Development departments have traditionally been performing district level planning functions. But now they find that the provisions for the DPC are now a part of the 74<sup>th</sup> Constitution Amendment. They believe that these committees are now the concern of the Urban Development or Municipal Affairs department in the state, who in turn do not have a clue about the objectives and purposes of the DPC and expect other departments like planning to take care of it.

Another issue has been the relationship between the Zilla Parishad and the DPC. The amended Constitution envisages the DPC as an independent entity. The State Governments have drawn their own interpretations. In Assam, Karnataka, Kerala, Rajasthan and West Bengal the state laws envisage the DPC as a part of the Zilla Parishad. The Chairperson of the Zilla Parishad is also designated as Chairperson of the DPC. In Madhya Pradesh, a Minister of the State Government is the Chairperson of the DPC. The Chairperson of the Zilla Parishad is a Vice-Chairman. Gujarat and Maharashtra have long had District Planning and Development Committees with a minister of the



State Government as the Chairperson. The view of these two Governments has been that these district committees are an adequate substitute for the DPCs.

The designation of a Minister as the Chairman of the DPC virtually makes it an extension of the State Government and goes against the intent of the Constitution. It also defeats the principle of decentralisation.

In the case of Madhya Pradesh, under the State Minister as the Chairman of the DPC and the District Collector as the Secretary, the DPC has emerged as a body distinct from the Zilla Parishad exercising more powers on behalf of the state government. And this certainly does not seem to be the intention of the Constitution.

The highly varied organisational and operational arrangements for the DPC confirm the fact that the provisions of the Constitution have remained very poorly understood and very badly implemented. Moreover till recently most state governments had formed DPCs mainly because it is a constitutional requirement and this body has remained largely defunct. There is also a need to build capacities within the district for the DPC to be able to function as an independent planning body of the district.

The representation of MPs and MLAs is a related issue. Both the 73<sup>rd</sup> and the 74<sup>th</sup> Amendments specifically enable State Legislatures to provide for their representation in Municipalities and Panchayats. The role of MPs and MLAs is crucial in district planning. For this purpose, either MPs and MLAs become honoured invitees of the DPC and contribute to its deliberations or are formally co-opted in the DPC.

It is proposed that the composition of the DPC be changed from four-fifth elected members to three-fifth of the total number. One-fifth can be elected from amongst the MLAs and MPs from the district. Out of these the number of MPs can be fixed as two. It has been observed that in Madhya Pradesh, MPs/MLAs who are members of the DPC often send their representatives for the meetings rather than attending in person. This arrangement needs to be avoided. The remaining one-fifth of the DPC members should be nominated representatives necessary for carrying out the functions assigned to the DPC. This is important because while planning the contribution of representatives of different sectors such as industry, trade and commerce, NGOs, professionals, etc., is important. The officials of the government and its agencies can be ex-officio without being formal members.

It is important to mention here that Chairman of the Zilla Parishad should head the DPC and the Chairman of the largest Municipality in the district can be his deputy. The primary task of the DPC should be to prepare the draft development plan and it should not be dependent on individual plans of the Panchayats and the Municipalities. Though DPC certainly will have regard to the plans prepared by the Panchayats and Municipalities. The Zilla Parishad can facilitate the Panchayats and Municipalities in the process. These plans in turn can become 'building blocks' for preparation of

Development Plan for the district. The Zilla Parishad therefore can be the technical and administrative secretariat for the DPC.

### **Metropolitan Planning Committee**

According to the 1991 Census, we have 23 metropolitan areas or cities with a population of 10 lakhs or more. When the Census figures 2001 are released, the number of such cities is likely to exceed 40. These cities are administered by several Municipalities. Even Greater Mumbai though it is called by that name does not cover all of the Mumbai Metropolitan area. Thane, Bhiwandi, Ulhas Nagar or Navi Mumbai are all different Corporations. The Calcutta Metropolitan area comprises three Corporations and thirty-four Municipalities. The metropolitan areas of Chennai, Bangalore, Mumbai and Hyderabad cover ten to thirty Municipalities. In Delhi, there is the Cantonment Board, the New Delhi Municipal Council and the Delhi Municipal Corporation (MCD). The sheer size of the cities, the scale of economic activity together with its complexity of problems pose a herculean task to its managers.

It is this complex nature of the metropolitan city needs a metropolitan wide perspective, planning, advocacy and action. Sources of water, disposal of waste, traffic and transport, drainage, abatement of air pollution, etc., are examples of items where one Municipal Corporation or the Municipality alone cannot achieve much in isolation. The Metropolitan Planning Committee was thus envisaged as an inter-institutional platform for similar purposes.

Metropolitan areas are also the main engines of growth and economy in the country. Urban transport, water supply, waste management, police, public health, etc., require metropolitan level planning, implementation and co-ordination. Besides the scale of services needed in these metropolitan areas is huge.

In light of the above, article 243ZE in the Constitution provides for the setting up of Metropolitan Planning Committee. As far as these states are concerned, the Metropolitan Planning Committee is a constitutional requirement. However, as in the case of the DPC, while conformity legislation or enabling laws have been passed by more or less reproducing the language of the constitutional amendment and not a single state has set up an Metropolitan Planning Committee so far.

The Metropolitan Planning Committee is expected to be a high level, democratically set up body, which will bring a constitutional mandate to the whole exercise of metropolitan development planning. The development authorities could serve these Metropolitan Planning Committees as their technical secretariat. During discussions with the officials of the state government it was evident that the concept of Metropolitan Planning Committee has not been understood at all.

In the composition for Metropolitan Planning Committee it is envisaged that one-third of its members are to be chosen from amongst the elected representatives of urban and rural local bodies in the

metropolitan areas. The others are to be nominated from central government agencies and various state government agencies, other organizations and institutions responsible for various services in the metropolitan areas. In preparing the draft development plan the Metropolitan Planning Committee should have due regard to the plan prepared by the Municipalities and the Panchayat, matters of common interest to them, objectives and priorities of the Government of India and the State Government, available financial and other resources for integrated development of infrastructure, environmental conservation, etc.

The Maharashtra Government passed an enabling law while responding to a P.I.L. challenging the Government's failure to set up an Metropolitan Planning Committee. Earlier the Government promulgated an Ordinance in June, 1999 to enable the creation of a 45-member Metropolitan Planning Committee in Mumbai, Pune and Nagpur metropolitan areas. The Metropolitan Planning Committee itself has not been set up so far.

Another issue of importance is the representation of the MPs and MLAs in the Metropolitan Planning Committee. Here again the rationale for their participation is more than in individual Municipalities or Panchayats. Their membership can be on the lines of the DPC. There is a need for state laws to specify the organisation which will function as the technical and administrative secretariat of the Metropolitan Planning Committee under its control.

The failure to set up Metropolitan Planning Committee is a violation of the Constitution. It is this fact that needs to be stressed upon and the process of constituting them expedited.

### **Representation and rights of MPs and MLAs in Municipalities**

Representation of the MPs and MLAs in Panchayats and Municipalities has been a controversial issue. In the earlier Bills tabled in 1989, MPs and MLAs did not have any role to play in Village Panchayats. It was left to the states to provide for their representation in Block Panchayats and the Zilla Parishads.

In regard to Municipalities, the 1989 draft Bills contained no provision at all for representation of MPs and MLAs. In the Bill introduced in 1991 the same position was maintained. In the case of the 74<sup>th</sup> Amendment, the concerned Joint Parliamentary Committee added a provision to article 243R for representation of MPs, MLAs and MLCs. But the Constitution remained silent on the issue of their voting rights in the proceedings of the Municipality. This has led to some controversies and court cases as well.

In 1995, in Rajasthan, in certain Municipalities the Chairpersons were removed by votes of no-confidence. These Chairpersons moved the Rajasthan High Court for redressal on the ground that MPs and MLAs had not participated in the motion. A single Judge of the Rajasthan High Court held

that since MPs and MLAs were not 'elected members' of the Municipalities, their non-participation did not vitiate the motion of no-confidence. While the Division Bench in response to an appeal later held that though MPs and MLAs were not 'elected members' of the Municipalities, votes of confidence would have to be carried by a two-third majority of the 'whole house'. The MPs and MLAs should be taken as part of the 'whole house' for the purpose. And since they did not participate, the motions of confidence would fail. It was ordered that the Chairpersons be reinstated (Yogesh Saini and others Vs State of Rajasthan and others. D.B. Civil Special Appeal (Writ) Numbers 794, 799, 800 and 801 of 1998: Judgement dated July 15, 1999).

In a similar judgement of the Punjab and Haryana High Court regarding a case in Haryana recognised the right of MPs to vote in any Panchayat or Nagarpalika even though they are not elected members of these bodies. (Rajpal Chabra Vs State of Haryana and others: Civil Writ petition 1016 of 1995).

The situation is further compounded by the lack of uniformity in the provisions made by the different state governments, some have provided for their representation with voting rights, while others have not.

The provision for the representation of MPs and MLAs in Panchayats and Municipalities appear to go against the spirit of the Constitution and its overall scheme of elected bodies at different levels. Articles 101 and 109 of the Constitution specifically state that no person shall be a member of both Parliament and the state legislature. The issue of dual membership has clearly been rejected by the Constitution itself. It therefore, needs considerable debate as to whether members of Parliament and State Legislatures should be represented at all in Panchayats and Municipalities. And if MPs/MLAs are allowed to be members then should they have voting rights? Moreover, there has been a growing fear that their representation has created another power centre within a local body, thereby posing functional problems.

### **MP LADS and MLA LADS**

Apart from representation, there is another serious matter requiring attention which is the programme of Local Area Development Schemes (LADS), introduced in 1993. Under the scheme, an amount of Rs. 2 crores is allocated to every MP. Construction of building for schools, hostels, libraries and educational institution belonging to government or local bodies, construction of tubewells, roads, bridges, drains, public toilets, cremation grounds, etc., are taken up under the LAD schemes. These activities are primarily within the functional jurisdiction of the local bodies as part of the 11<sup>th</sup> and the 12<sup>th</sup> Schedules to the Constitution. The allocation totals to about Rs. 1600/- crores every year. The 1998 Report of the Comptroller and Auditor General of India (C.A.G.) has brought out several irregularities and lapses in the implementation of this scheme. A similar scheme has also been implemented in the states wherein MLAs have been allocated money for a similar purpose.

All these schemes are operated outside the prescribed budgetary processes of voting, financial sanctions and procedures for execution and accounting. These are basically funds which would otherwise be available to rural and urban local bodies.

## CHAPTER 4

### INTEGRATING THE 73RD AND THE 74TH AMENDMENTS

Although the 73rd and the 74th Amendments are considered sister legislations, in many respects, they are a duplication. Part IX entitled “Panchayats” and Part IXA entitled “Municipalities” have a total of 16 and 18 articles respectively. Out of these as many as 9 articles are nearly identical. Apart from this, the article on District Planning Committees is applicable to both Panchayats and Municipalities. The 11th and the 12th Schedules containing the list of functions for Panchayats and Municipalities are again very similar.

The objectives of both these amendments are decentralisation and empowerment of local self-governments. Unfortunately, the enactment of constitutional provisions in two parts has created a needless and artificial dichotomy in the minds of many people particularly Departments and Ministries of the State and the Union Government. This itself has been an important reason for the tardy and uneven progress in the implementation of these constitutional provisions.

While suggestions have been made in this paper for changes in the existing constitutional provisions in Part IX and Part IXA, serious consideration should also be given on whether these two Parts can be integrated by omitting the provisions which are a duplication of each other and rationalising the arrangement of the other provisions.

Another significant development that merits attention is the introduction of the 87th Constitution Amendment Bill in the Parliament in late 2000. The Bill which has since lapsed proposed to do away with the direct election of members at the Block Panchayat and Zilla Parishad levels. The intention was to draw directly elected members from the Gram Panchayat level and nominate them to the Block Panchayat and the Zilla Parishad levels. It was also proposed that the Chairman of the Zilla Parishad be directly elected by the people of the district. The reasons stated for this is to reduce the cost and the cumbersome process of elections. Although the actual reasons behind this move seems to be much different. Various reasons have been cited by experts, one is that representatives from the Gram Panchayat level are easier to control and by directly electing the Chairman of the Zilla Parishad, the state government can easily pull strings through him, thereby controlling the whole district. Basically reducing power centres within the district and the only power centre being the state capital.

#### Conclusion

It is time that lessons are learnt through the experience of different states in the operationalisation of the 74th Constitution Amendment in letter and spirit. The role of citizen's group and NGOs has become of primary importance. The constitution for the first time has provided for the participation of

such individuals and various citizens organisations in the decision making process. It is time that such groups and individuals take cognisance of this responsibility provided by the constitution and act.

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Note: The recommendations of the National Commission to Review the Working of the Constitution has since been made, a summary list of which has been appended.

## QUESTIONNAIRE

### DECENTRALISATION AND MUNICIPALITIES

#### CONSTITUTION OF MUNICIPALITIES

1. Do you agree to the suggestion that a population classification for a Nagar Panchayat, Municipal Council and a Municipal Corporation is to be provided in the Constitution itself?

Yes No

2. The proviso to article 243Q states that a Municipality may not be constituted for an Industrial township. As this is not in tune with decentralisation and local self-government, do you agree to the suggestion that the said proviso should be deleted?

Yes No

3. Article 243U (1) contains a proviso that where a Municipality is superseded "it shall be given a reasonable opportunity of being heard before its dissolution". Should a similar proviso be inserted in Article 243E relating to Panchayats?

Yes No

4. Do you agree that whenever a Panchayat or a Municipality is superseded a report stating the grounds for such dissolution should be placed before the State Legislature?

Yes No

5. Do you agree that in determining the number of municipal wards and in delineating them, there should be parity in the ratio between a seat and the population and such ratio should be uniform within a State among any category of Municipalities?

Yes No

6. Should a provision be made in the Constitution stipulating that the terms of office of the Mayor/Chairpersons should be coterminus with the term of the Municipality?

Yes No

7. Should the procedure for removal of Mayor/Chairperson through motion of no confidence be uniform?

Yes No

8. Should the Municipal Chairpersons and Mayors be elected only by and from amongst the elected members of the Municipality?

Yes No

#### QUALIFICATIONS AND DISQUALIFICATIONS FOR MEMBERSHIP IN MUNICIPALITIES

9. Should the main principle to be followed for disqualifications for membership in a Panchayat or a Municipality be the same as applied for elections to the State Legislatures?

Yes No

10. (a) Should the State Election Commissions have the authority to prescribe ceiling of expenses and code of conduct?

Yes No



(b) Do you think that the State laws should clearly specify the powers of the State Election Commissions to disqualify candidates or set aside elections in the event of violations?  
Yes No

### **REGULARITY OF ELECTIONS**

11. Do you subscribe to the view that it shall be the duty of a State and the Union (in case of Panchayats and Municipalities located in Union Territories to ensure the completion of elections as stipulated?  
Yes No

12. Do you subscribe to the view that it should also be the duty of the State Election Commissioner to ensure the above and, in the event of possible delay, make a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfill the requirements of the Commission?  
Yes No

13. Do you agree that Articles 243K and 243 ZA may be suitably amended to specify that the responsibility for the conduct of elections shall include all preparatory steps for the same including the electoral roles, delimitation, reservation, rotation and matters connected therewith and the responsibility for the same shall vest in the State Election Commission?  
Yes No

14. Do you agree that the Constitution should specifically stipulate a common electoral roll and the processes for preparing the roll as also its periodical revision should be uniform throughout the country?  
Yes No

15. Should the Representation of the People Act and State laws should specify that common polling stations be used for local, State and Parliament elections?  
Yes No

16. Do you agree that while delimitation of the constituencies for Panchayat and Municipal elections should be under the control and direction of the State Election Commission, the Constitution should stipulate that such delimitation should be adjusted after every census and not for every elections?  
Yes No

17. (a) Do you agree that the State laws should provide guidelines for the delimitation work such as parity in the ratio between the population of a territorial constituency and the number of seats within the same class of Panchayats or Municipalities and the extent of permissible variations?  
Yes No

(b) Should Article 243R relating to Municipalities should be amended to provide parity as a requirement on the lines already stipulated in the proviso to article 243C relating to Panchayats?  
Yes No

18. Do you agree that State laws should specify that changes in the administrative boundaries of districts, sub-divisions, taluks, police stations etc., should not be made within six months prior to a Panchayat or a municipal election?  
Yes No

19. Articles 243D and 243T contain common provisions so far as reservation of seats in Panchayats and Municipalities for SCs/STs and women are concerned. However, there are some ambiguities about the rotation of such reserved seats. The words used in both the articles are "may be allotted by rotation". However, in the State Election Commissions and proviso to article 243D regarding reservation of the offices of chairpersons the words used are "shall be allotted by rotation". The Constitutional provisions also do not specify the frequency of rotation. Furthermore, in clause (4) of article 243T there is no stipulation for rotation. To remove ambiguities, it is suggested that articles 243D and 243T should be suitably amended to provide for rotation and changes only at the time of delimitation and not in between? Do you agree with the suggestion?  
Yes No

20. Should the State laws provide the guidelines for the process of reservation for ensuring transparency and adequate opportunities for eliciting voter response?

Yes No

21. Clause (6) of article 243D and clause (6) of article 243T enable a State legislature to provide for reservation of seats as also offices of Chairpersons in Panchayats and Municipalities in favour of backward class of citizens. Neither of the articles stipulate any ceiling for the total number of reserved seats and reserved offices. Since one-third has been specified as the minimum for women; the reservation additionally made for backward classes can take a larger proportion. Do you agree that for removal of the ambiguities, the overall total of reserved seats and reserved offices should be specified in the Constitution?

Yes No

### **STATE ELECTION COMMISSIONS**

22. Do you agree that the State Election Commissioner should be appointed by the Governor on the recommendations of a group comprising the Chief Minister, the Speaker of the State Assembly and the Leader of the Opposition and the Chief Justice of the High Court?

Yes No

23. Do you agree that the State Election Commissioner should have a fixed term of 5 years?

Yes No

24. Do you agree that, in rank and status, the State Election Commissioner should be equal to a Judge of the High Court?

Yes No

25. (a) Whether the broad qualifications for position of State Election Commissioner may be specified in the Constitution itself or in the laws of the State?

(b) Since the conduct of elections is a major logistical exercise, should administrative experience be stressed?

Yes No

26. Should Notification for all elections to Panchayats and Municipalities be issued by the State Election Commission?

Yes No

27. (a) Should the State Election Commission be the single and common electoral authority in the State for all local body elections and elections to the State Assemblies?

Yes No

(b) Whether the State Election Commission should also carry out the elections to Parliament under the supervision and control of the Election Commission of India?

Yes No

### **WARD COMMITTEES AND PROXIMITY TO CITIZENS**

28. (a) Should Wards Committees be mandatory for each of the ward in all Municipal Corporations with a population of 3 lakhs or more, to comprise of persons chosen by direct election from the territorial area of the Ward?

Yes No

(b) Whether the Chairman of the Committee should be the Councillor elected from the Ward?

Yes No

29. Do you agree to the suggestion that the State laws may determine the number of persons to be so elected but there should be parity, within the city in the ratio between that number and population of a ward?

Yes No

30. Whether the State laws may also enable wards committees to co-opt such residents of a ward who are knowledgeable and can assist in the work of the Committee?

Yes No

31. (a) Whether in all Corporations with a population of 6 lakh and more, Zonal Committees at a level between the Wards Committees and the Corporation Council should be formed?

Yes No

(b) Whether the State laws may determine the number and area of such Zonal Committees?

Yes No

(c) Should the Councillors of all the municipal wards represented in that area be members?

Yes No

(d) Whether, in addition, one other person from each of the Wards Committees elected by and from amongst the elected member of that Committee should be a member of the Zonal Committee?

Yes No

32. Do you agree that the State laws may determine the manner in which elections to the Ward and Zonal Committees are to be held, their functions and responsibilities and the allocation of funds to carry out the same?

Yes No

#### **FUNCTIONAL DOMAIN**

33. (a) Do you agree that there should be a common schedule of functions for both rural and urban local bodies?

Yes No

(b) If so, whether the existing the Eleventh and the Twelfth Schedules which have several common items should be integrated?

Yes No

34. Do you consider that this common schedule should be treated as the Local Bodies List and be incorporated in the Seventh Schedule itself after the Union, State and Concurrent lists?

Yes No

35. (a) Do you consider as to whether the process of assigning the functions and responsibilities should be made mandatory?

Yes No

(b) Do you suggest that the State Governments should exercise the above functions and responsibilities on a State wide basis only for any exceptional reasons?

Yes No

36. Do you consider that the assignment of functions should be by law rather than by rules and regulations?

Yes No

37. The laws should also provide for the transfer to the Municipalities of organisations, funds and staff who were previously responsible for discharging the functions being assigned. The local bodies should have full control over its staff including those transferred to them. Functions, functionaries and funds should go together. Do you agree to the above suggestions?

Yes No

## **FINANCIAL DOMAIN**

38. The concept of a distinct and separate tax domain for Municipalities should be recognised. This concept should be reflected in a list of taxes and should form part of the common Schedule of functions and responsibilities for local bodies or in the event it is decided to continue with the Eleventh and the Twelfth Schedules as separate, the tax domain should figure in the relevant Schedule. Do you agree with the above suggestions:-

Yes    No

39. It is suggested that the concept of a divisible pool of taxes which can be shared between the Union, the States and the Municipalities should also be recognised similar to the provisions in Articles 268 to 274. There should be categories of taxes and other levies specifying who will collect the same and how it will be distributed between the 3 levels? Please give your comments on the above suggestions.

40. Do you agree that in case of taxes and levies the proceeds of which are to be shared with Municipalities, prior consultation will be required before any modification is made in the scope of the tax or its rates?

Yes    No

41. (a) Should Article 276 on taxes on professions, trades and employment be amended as suggested by the 11<sup>th</sup> Finance Commission?

Yes    No

(b) Should the ceiling be specified by Parliament, by law, from time to time, rather than requiring amendments to the Constitution?

Yes    No

42. Should the State laws provide for composition of the State Finance Commission and the criteria for its membership similar to the provisions in the case of the Finance Commission set up by the President under Article 280?

Yes    No

43. Should State laws provide for the establishment of the State Finance Commissions in a periodical manner and determine a time schedule for the same so that the work and output of the State Finance Commissions are synchronised suitably with the Central Finance Commission?

Yes    No

44. Should Articles 243 I and 243Y be amended to ensure that the Action Taken Report by the Government is laid before the State Legislature within six months of the submission of the State Finance Commission recommendations?

Yes    No

45. Should Article 280 (3) (bb) and (c) be amended so that the Central Finance Commission while taking into consideration the recommendation of the State Finance Commissions, is not circumscribed by the same?

Yes    No

46. Should State laws also provide for establishing and maintaining a financial database as suggested by the 11<sup>th</sup> Finance Commission.?

Yes    No

47. Should the State laws specifically empower Municipalities to borrow.?

Yes    No

48. Should the State laws also provide for the preparation and adoption of Municipal Budgets in a transparent manner in keeping with the public right to information?

Yes    No

### **DISTRICT PLANNING COMMITTEES**

49. Should Clause (1) of Article 243 ZD be amended to stipulate that the District Planning Committee shall be constituted within the Panchayat at the district level or Zilla Parishad?

Yes No

50. (a) Should sub-clause (d) of clause (2) of Article 243 ZD be amended to provide for the Chairperson of the Panchayat at the district level to be the Chairperson of the District Planning Committee?

Yes No

(b) Should the Chairperson of the largest Municipality in the District be the Vice-chairman?

Yes No

51. (a) Should the words "consolidate the plans prepared by the Panchayats and Municipalities in the district" occurring in clause (1) of 243 ZD be omitted so that the District Planning Committee's main task of preparing a draft development plan for the district is not contingent or dependent on individual plans prepared by the Panchayats and the Municipalities?

Yes No

(b) Whether Zilla Parishad should help Panchayats and Municipalities to prepare these plans which will serve as building blocks for preparation of Development Plan for the district?

Yes No

52. Should Article 243 ZD also contain a provision to enable the State laws and State governments to entrust to Zilla Parishad additional responsibilities as monitoring of development schemes and programmes in the district, co-ordination of their implementation including powers to modify sanctions to ongoing schemes subject to limits?

Yes No

53. Should the Zilla Parishad be the technical and administrative State Election Commissions secretariat for the District Planning Committee independent of and distinct from the District Collector or the District Magistrate?

Yes No

54. Should the State laws provide for association and involvement of government and non-government agencies and professionals in the District Planning Committees? Should participation of MPs, MLAs and Ministers in the District Planning Committee as invitees is desirable?

Yes No

55. Whether the State law should provide that State agencies, district agencies and district administration assist the District Planning Committee with data and technical know-how in preparation of the development plan for the district?

Yes No

56. (a) Where Metropolitan Planning Committees are required to be set up, whether the State laws and regulations should determine the functional and territorial jurisdiction of the District Planning Committees as distinct from the Metropolitan Planning Committees.?

Yes No

(b) Where Metropolitan Planning Committees exist for predominantly urban districts, whether they should be deemed as District Planning Committees, as no separate District Planning Committee is necessary?

Yes No

### **METROPOLITAN PLANNING COMMITTEE**

57. Whether clause (c) of article 243P of the Constitution be amended so as to provide that the Metropolitan Planning Committees should be limited to metropolitan areas with 20 lakh population or more?

Yes No

58. (a) Should the Chief Minister of the State be the Chairman of the Metropolitan Planning Committee?

Yes No

(b) Should the Mayor of the main city be a Vice Chairman?

Yes No

59. Should Article 243ZE be amended so as to specify the composition of the Metropolitan Planning Committee as suggested in para 3.27 of the Paper?

Yes No

60. Should the State laws specify the organisation which will function as the technical and administrative State Election Commissions secretariat of the Metropolitan Planning Committee under its control?

Yes No

61. Should the functional and territorial jurisdiction of Metropolitan Planning Committees be distinct and separate from the District Planning Committee?

Yes No

#### **ORGANIC LINK BETWEEN MUNICIPALITIES AND PANCHAYATS**

62. Should the provision for representation of MPs, MLAs and MLCs in Articles 243(C) and 243R be deleted?

Yes No

63. If such representation is considered necessary, should it be without voting rights and as invitees?

Yes No

64. If representation is allowed, should it be in District Planning and Metropolitan Planning Committees only?

Yes No

65. Should dual membership in a Panchayat or a Municipality on the one hand and a State Legislature or Parliament on the other hand be specifically prohibited?

Yes No

66. Should MPs and MLAs be debarred from performing executive functions such as the financing or implementation of schemes which are within the functional domain of Panchayats or Municipalities?

Yes No

67. Please give details of any other suggestions/comments which you would like to make on Decentralisation and municipalities (in not more than 300 words).

**Summary Recommendations of the National Commission  
to Review the Working of the Constitution  
Municipalities**

(1) Whenever a Municipality is superseded, a report stating the grounds for such dissolution should be placed before the State Legislature.

[Para 9.13]

(2) All provisions regarding qualifications and disqualifications for elections to local authorities should be consolidated in a single law and until that is done, each State should prepare a manual of existing provisions for public information.

[Para 9.14]

(3) The State Election Commission (SEC) should have the authority to prescribe ceiling of expenses and code of conduct in elections. Further, the State laws should clearly specify the powers of the SEC to disqualify candidates or set aside elections in the event of violations of those laws.

[Para 9.15]

(4) It should be the duty of a State and the Union (in case of Panchayats and Municipalities located in Union territories) to ensure the completion of elections within the stipulated limits. It should also be duty of the State Election Commissioner to ensure this and in the event of possible delay make a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfill the requirements of the Constitution. *Articles 243K and 243 ZA should be suitably amended to specify that the responsibility for the conduct of elections shall include all preparatory steps for the same including the electoral rolls and matters connected therewith and the responsibility for the same shall vest with the State Election Commission.*

[Para 9.16.2]

(5) The functions and responsibilities of delimitation, reservation and rotation of seats and matters connected therewith should be vested in a delimitation Commission constituted by law by the appropriate legislature and not in the SEC.

[Para 9.16.2]

(6) The Representation of the People Act and State laws should specify that common polling stations should be used for elections to local bodies, State Legislatures and Parliament.

[Para 9.17.2]

(7) The State laws should provide guidelines for the delimitation work such as parity, as far as possible, in the ratio between the population of a territorial constituency and the number of seats within the same class of Panchayats or Municipalities.

[Para 9.17.3]

(8) State laws should specify that changes in the administrative boundaries of districts, sub-divisions, taluks, police stations, etc., should not be made within six months prior to a panchayat or a municipal election.

[Para 9.17.4]

(9) *To remove ambiguities, articles 243D and 243T should be suitably amended to provide for rotation and changes only at the time of delimitation and not in between.* State laws should provide the guidelines for the process of reservation which should ensure transparency and adequate opportunities for eliciting voter response.

[Para 9.18.2]

(10) *To clarify the precise position of reservation under clause (6) of article 243D and clause (6) of article 243T to be provided by the State law, the overall total of reserved seats and reserved offices in Panchayats and Municipalities should be specified.*

[Para 9.18.3]

(11) The State Election Commissioner should have a fixed term of 5 years. He/she should be equal to a Judge of the High Court. The broad qualifications for a State Election Commissioner may be specified under the State law.

[Para 9.19.1]

*(12) The concept of a distinct and separate tax domain for municipalities should be recognised. This concept should be reflected in a list of taxes in the relevant schedule. Carving out items from the existing State lists such as item 49 (taxes on land and buildings) and item 52 (taxes on entry of goods into a local area for consumption) should not be difficult.*

[Para 9.21]

Apart from the above, certain other recommendations mentioned under the 'Panchayats' head, but equally relevant to Municipalities are as follows:

(1) The Eleventh and Twelfth Schedules to the Constitution should be restructured in a manner that creates a separate fiscal domain for Panchayats and Municipalities. Accordingly, articles 243H and 243X should be amended making it mandatory for the legislation of the States to make laws devolving powers to Panchayats and Municipalities.

[Para 9.8.2]

*(2) In order to enable the Finance Commission to take a macro-level view, the provisions sub-clauses (bb) and (c) of clause (3) of article 280 should be amended. The words "on the basis of the recommendation" in these sub-clauses should be replaced by the words "after taking into consideration the recommendations."*

[Para 9.8.3]

*(3) In the part of clause (1) of article 243-I which calls for constitution of State Finance Commission (SFC) at the expiration of every fifth year, in line with article 280(1), the words "or at such earlier time as the Governor considers necessary" may be added after the words 'fifth year'. While it is for the State Legislature to ensure that the Government implements fully its assurances, there should be constitutional obligations for placing the Action Taken Report (ATR) before the legislature within 'six months' after the submission of the report. Clause (4) of article 243-I may need to be amended accordingly.*

[Para 9.8.4]

*(180) The necessary legislative power of fixing upper limit of taxes on professions, trades, callings and employment under article 276 should be vested in Parliament by suitably amending that article.*

[Para 9.8.5]

(181) All local authorities may be allowed to borrow from the State Government and financial institutions.

[Para 9.8.6]