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***Panchayati Raj***

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The Central government cannot oversee the minute workings of all the smallest units in the country. Therefore, one of the salient features of a good representative government is the percolation of the self-rule mechanism to the grassroots level, leading to more effective decision-making and greater accountability. Keeping this in mind, our Constitution has provided for the creation of Panchayats, Municipalities and Cooperative Societies to manage the affairs of the villages and urban localities in India.

Gandhiji famously stated, "If India is not to perish, we have to begin with a lower rung of the ladder. If that was rotten, all work done at the top of the intermediate level was bound to fall ultimately." Gandhiji advocated the need for decentralisation and liberation of the villages from exploitation.

***Panchayati Raj in Independent India***

The task of Panchayati Raj system fell on the Indian government formed after Independence. It was clear that India a country of villages had to strengthen village Panchayats to strengthen democracy. Mahatma Gandhi who strongly believed in Grama Swaraj pleaded for the transfer of power to the rural masses. According to him the villages should govern themselves through elected Panchayats to become self-sufficient.

But surprisingly, the draft Constitution prepared in 1948 had no place for Panchayati Raj Institutions. Gandhi severely criticized this and called for immediate attention. It is thus, that Panchayat finds a place in the Directive Principles of the State Policy.

Article 40 of the Directive Principles of the State Policy states that 'the states shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them function as units of self-governments'. The most important aspect to strengthen grass root democracy was neglected by the Constitution makers as Directive

Principle of State Policy is not legally binding on the governments.

The first organized effort to tackle the problem of rural India was made through Community Development Programme in 1952 and National Extension Service in 1953. The programme was based on an integrated approach to the various aspects of rural development.

The objectives were to promote self-help and self-reliance among the rural people, to generate a process of integrated social, economic and cultural change with the aim of transforming social and political life of the villagers. Community Development Programme was launched in 55 selected blocks.

The programme was based on an integrated approach to the various aspects of rural development. The programme made provisions for appointing Block Development Officers (BDO) and Village Level Workers (VLW). This programme was intended to bring socio economic development of the rural masses on democratic lines, but failed to take off along the expected lines due to the absence of an effective instrument for people's participation.

***Important Committees regarding Panchayati Raj in India***

***Balwant Rai Mehta Committee (1957):*** The first was the Balwant rai Mehta Commission in 1957. The committee believed that community development would only be effective when the community was involved in the planning, decision, and implementation process. The committee suggested that the basic unit of democratic decentralization was to be at the block (samiti) level since the area of jurisdiction of the local body should neither be too large nor too small.

The block was large enough for efficiency and economy of administration, and small enough for sustaining a sense of involvement in the citizens. Further, the Zilla Parishad (ZP) should play an advisory role.

The committee laid down few fundamental principles:

- ❑ There should be three tier structures of local self-government bodies from village to the district level and these bodies should be linked together.
- ❑ There should be genuine transfer of power and responsibility to these bodies to enable them to discharge their responsibility
- ❑ Adequate resources should be transferred to these bodies to enable them to discharge their responsibilities.
- ❑ All welfare and developmental schemes and programmes at all three levels should be channelled through these bodies, and
- ❑ The three-tier system should facilitate further devolution and disposal of power and responsibility in future.
- ❑ The committee envisaged three tier system of Panchayats known as Gram Panchayat at village level (direct election), Panchayat Samiti at the block level and Zila Parishad at the district level (indirect election).
- ❑ District Collector to be the chairman of Zila Parishad and recommended encouragement of peoples' participation in community work, promotion of agriculture and animal husbandry, promoting the welfare of the weaker sections and women through the Panchayats.

The existent National Development Council accepted the recommendations. However, it did not insist on a single, definite pattern to be followed in the establishment of these institutions. Rather, it allowed the states to devise their own patterns, while the broad fundamentals were to be the same throughout the country.

The PRI structure was introduced in most parts of the country as a result of the Balwantrai Mehta Report. Rajasthan (1959) adopted the system first, followed by Andhra Pradesh in the same year. Some states even went ahead to create four-tier systems and Nyaya Panchayats, which served as judicial bodies.

However, it did not develop the requisite democratic momentum and failed to cater to the needs of rural development. Reasons for this were:

- ❑ Political and bureaucratic resistance at the state level to sharing of power and resources with the local level institutions,
- ❑ the takeover of these institutions by the rural elite

who cornered a major share of the benefits of the various welfare schemes,

- ❑ the lack of capability at the local level, and
- ❑ the absence of political will of the grassroots leaders.

**K. Santhanam Committee (1963):** The K. Santhanam Committee in 1963 was appointed to look solely at the issue of PRI finances.

Its recommendations have influenced the thinking and the debate to date on this issue:

- ❑ The Panchayats should have special powers to levy special tax on land revenues, home tax, etc;
- ❑ all grants and subventions at the state level should be consolidated and untied; and
- ❑ A Panchayat Raj Finance Corporation should be set up which would look into the financial resources of PRIs at all three levels, provide loans and financial assistance to these grassroots level governments and also provide support for non-financial requirements of villages.

**Ashok Mehta Committee (1977):** In this backdrop in 1977, the Janata government appointed a Committee with Ashok Mehta as Chairman and was entrusted with the task of enquiring into the causes responsible for the poor performance of Panchayati Raj Institutions. It was also asked to suggest measures to strengthen Panchayati Raj Institutions.

The committee suggested two tier system of Panchayati Raj consisting of Zilla Parishads at the district level and Mandal Panchayats at the grass root level as against three tier system suggested by the Balwantrai Mehta Committee. The committee recommended constitutional protection to the Panchayati Raj Institutions and further decentralization of power at all levels.

A noteworthy feature of the report is that it recommended regular elections to these bodies and open participation of political parties.

The Ashok Mehta Committee suggested:

- ❑ The 3-tier model suggested by Balwantrai Mehta committee to be replaced by the 2-tier model. The upper tier should be the Zila Parishad, which will be at the district level and the lower tier should be Mandal Panchayat, which would be at the block level, which should be a Panchayat of group of

villages covering a population of 15000 to 20000.

- ❑ The committee recommended that the base of the Panchayati Raj system should be a Mandal Panchayats. Each Mandal Panchayat should contain 15 members directly elected by the people. The head of the Mandal Panchayat should be elected among the members themselves.
- ❑ Zila Parishad should be the executive body and made responsible for planning at the district level. The Zila Parishad members should be elected as well as nominated. The MLA and MPs of the area should have the status of ex-officio chairman of the Zila Parishads. Development functions should be transferred to the Zila Parishad and all development staff should work under its control and supervision.
- ❑ There ought to be Nyaya Panchayat as separate bodies, different from that of development Panchayats and should be presided over by a well-qualified judge.
- ❑ Reservation of seats for the weaker sections
- ❑ Two seats for women
- ❑ Adequate financial resources for the Panchayats
- ❑ Requirement of Constitutional sanctions

To extend people's participation in developmental activities.

Due to the fall of the Janata government, the Ashok Mehta Committee recommendations were not implemented. Karnataka and West Bengal formulated new legislation on the basis of the recommendations of this Committee. Both the Committees overlooked the importance of Panchayats as units of self-government.

**G.V.K. Rao Committee (1985):** The G.V.K. Rao Committee was constituted in the year 1985. The committee was appointed just before the 7th five-year plan in order to give recommendations on the issues of growth and poverty alleviation. The committee was shouldered with the task of:

- ❑ Look into the existing infrastructure for rural development and lay down the key functions on revenue resources of the Panchayati Raj institutions.
- ❑ What steps the government should take in order to promote growth and for poverty alleviation.
- ❑ To recommend and revitalise the Panchayati Raj institutions.
  - Power to safeguard and preserve the traditions

and the customs of the people including their cultural identity, community resources and customary mode of dispute resolution.

- Mandatory recommendation by Gram Panchayat before any areas is granted for mining lease.
- The right to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant.

The G.V.K. Rao Committee gave following recommendations:

- ❑ The Zila Parishad should be the basic unit for the policy planning and for the programme implementation. It should also be the pivotal body for this scheme of democratic decentralisation.
- ❑ The state planning functions should be transferred to the Zila Parishad for effective decentralised planning.

**L.M. Singhvi Committee (1986):** The committee was constituted in 1986, a year after the GVK Rao Committee. The committee was set up in the prime ministership of Rajiv Gandhi and under the chairmanship of L.M. Singhvi. The Gram Sabha (village assembly) was considered the base of decentralized democracy. The PRIs were to be viewed as institutions of self- government which would facilitate the participation of the people in the process of planning and development.

According to the L.M. Singhvi committee, the decline of the Panchayati Raj institutions was because of three reasons:

- ❑ Absence of clear concept
  - ❑ absence of political will
  - ❑ lack of research, evaluation and political planning.
- Few of the important recommendations by the committee were:
- ❑ The Panchayati Raj institutions should be recognised, protected and preserved constitutionally.
  - ❑ Free and fair elections in the Panchayati Raj institutions.
  - ❑ There should be optional and compulsory levies interested in the Panchayats. The government may also disburse money to the Panchayats in the time of needs.
  - ❑ Establishment of judicial tribunals in the state, which would address the election controversies in

the Panchayati Raj institutions.

- ❑ Local self- government should be constitutionally recognized, protected and preserved by the inclusion of a new chapter in the Constitution.

**Sarkaria Commission:**

- ❑ Constitutional status for PRIs was opposed by the Sarkaria Commission. But the idea gained momentum in the late 1980s especially because of the endorsement by the late Prime Minister Rajiv Gandhi who introduced the 64th Constitutional Amendment Bill in 1989.
- ❑ Rajiv Gandhi's commitment to the PRI route to rural development seems to have emerged through a series of workshops he had as Prime Minister with District Collectors, where he got a sense of the insensitivity of District Administration and of wastage of funds for rural development.
- ❑ The 64th Amendment Bill caused much anxiety among opposition parties because they perceived it to support the partisan agenda of Rajiv Gandhi and it was defeated in the Rajya Sabha.

**Thungon Committee (1988):** In 1988, a sub-committee of the Consultative Committee of Parliament was constituted under the chairmanship of P.K. Thungon to examine the political and administrative structure in the district for the purpose of district planning. This committee suggested for the strengthening of the Panchayati Raj system.

Recommendations of Thungon Committee:

- ❑ Constitutional recognition must be granted for Panchayati Raj.
- ❑ Suggested a 3-tier system with village, block and district levels.
- ❑ Zila Parishad plays an important role and acts as a planning and development agency in the district.
- ❑ Panchayati Raj must have a fixed tenure of 5 years.
- ❑ The maximum time for supersession of a body must not be greater than 6 months.
- ❑ A Planning and coordination committee at the state level with the Presidents of Zila Panchayat as members and minister of planning as the Chairman must be set up.
- ❑ The subjects for the Panchayats to administer must be incorporated in the constitution on schedule 7 lines.

- ❑ Reservations for women, Scheduled Caste and Scheduled Tribes.
- ❑ A Finance commission in each state to lay criteria and guidelines for financial devolution.
- ❑ The District Collector should be the CEO of the Zila Parishad.

**Gadgil Committee (1988):** The Committee on Policy and Programmes was constituted in 1988 by the Congress party under the chairmanship of V.N. Gadgil. This committee was asked to consider the question of "how the Panchayati Raj institutions could be made effective"

Recommendations of Gadgil Committee:

- ❑ The Panchayati Raj institutions should be given constitutional status.
- ❑ Panchayati Raj is a three-tiered structure with Panchayats at the village, block, and district levels.
- ❑ Panchayati Raj institutions should be given a five-year term.
- ❑ At all three levels, members of the Panchayats should be directly elected.
- ❑ Women, SCs, and STs should have a reservation.
- ❑ The preparation and implementation of socio-economic development plans should be the duty of Panchayati Raj authorities. A list of subjects should be established in the constitution for this purpose.
- ❑ Taxation and duties should be levied, collected, and appropriated by Panchayati Raj entities.
- ❑ The creation of a State Finance Commission to oversee the distribution of funds to the Panchayats.
- ❑ Establishment of a State Election Commission to oversee the conduct of Panchayat elections.

**73rd Amendment Act (1992)**

Rajiv Gandhi the then Prime Minister of India, introduced the 64th Amendment bill on local government on the 15th May, 1989 in the Parliament, but it failed to get the required support. A second attempt was made in September 1990 to pass the bill in the Parliament. The bill however was not even taken up for consideration. In September 1991, a fresh bill on Panchayati Raj was introduced by the Congress government under P. V Narasimha Rao, the then Prime Minister. It was passed in 1992 as the 73rd Amendment Act 1992 with minor modifications and came into force on 24th April 1993.

### ***Constitutional Provisions of 73rd Amendment Act***

- ❑ Local governments were provided constitutional sanction through the 73rd Amendment Act of 1992 which was enforced on 24th April 1993.
- ❑ The Panchayats are elected for a tenure of 5 years.
- ❑ The 11th Schedule was added in the Constitution through this amendment which contained 29 subject matters of the Panchayats.
- ❑ This act also added Part IX to the Constitution which contained provisions from Articles 243 to 243O.
- ❑ This amendment brought the state governments under constitutional obligation to adopt the new system of Panchayati Raj in accordance with the provisions of the act.

### ***Objectives of the 73rd Constitutional Amendment Act, 1992***

- ❑ The main objective of the 73rd Constitutional Amendment Act, 1992 was to provide constitutional status to the Panchayats.
- ❑ It aimed at democratic decentralisation of power and resources among the central government and local bodies such as PRIs. This will create more engagement of the public in governance.
- ❑ Article 40 of the Indian Constitution states that it is the duty of the government to establish village Panchayats and give them adequate power and authority so that they can function as a unit of self-government. The government came up with this amendment to provide an implementation of this Article.
- ❑ The Amendment was based upon the Gandhian principle that advocates for 3-tier governance where the third level of government can directly deal with the public and solve their issues and problems at the grass-root level.

### ***Essential features of the 73rd Constitutional Amendment Act, 1992***

#### ***Gram Sabha***

- ❑ Gram Sabha is defined under Article 243(b) which states that a Gram Sabha is a body that consists of persons registered on the electoral rolls relating to the village that falls under the area of Panchayat at a village level. It is the foundation of the Panchayati Raj

Institution. Article 243A of the Indian Constitution empowers the Gram Sabha to perform the functions at its village level as is provided by the law or State Legislature.

#### ***Three-tier system***

- ❑ Article 243B of the Indian Constitution provides for a three-tier system in the Panchayati Raj Institution where Panchayats shall be constituted at the village, intermediate, and district levels in every state.
- ❑ Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

#### ***Composition of the Panchayats***

- ❑ According to Article 243C, the composition of the Panchayats shall be as decided by the State legislature. The number of seats at any level of a Panchayat shall be according to the population of that territory.
- ❑ All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area.
- ❑ Further, the chairperson of Panchayats at the intermediate and district levels shall be elected indirectly—by and from amongst the elected members thereof. However, the chairperson of a Panchayat at the village level shall be elected in such manner as the state legislature determines.

#### ***Reservation of seats***

- ❑ Article 243D, provides for the provision of reservation of seats which specifies the reservation of seats for Scheduled Castes and Scheduled Tribes according to the proportion of their population.
- ❑ The Article also provides for one-third of the total seats to be reserved for women that belong to the Scheduled Castes or Scheduled Tribes. This Article empowers the State Legislature to make any provision relating to the reservation of backward class.

#### ***Duration of Panchayats***

- ❑ Article 243E, specifies the duration of Panchayats to be for a term of 5 years if it does not get dissolved before the completion of its tenure.
- ❑ If the Panchayat gets dissolved then the other Panchayat which was constituted would function

till the remaining period of the dissolved Panchayat.

### ***Disqualifications***

- According to Article 243F, a person shall be disqualified for being chosen as or for being a member of Panchayat if he is so disqualified,
  - under any law for the time being in force for the purpose of elections to the legislature of the state concerned, or
  - under any law made by the state legislature.
- However, no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years. Further, all questions of disqualifications shall be referred to such authority as the state legislature determines.

### ***Duties and power of the Panchayats***

- Article 243G, puts State Legislature under an obligation to make laws so as to provide such power and authorities to the Panchayats so that they can function as a unit of self-government.
- It is the duty of the Panchayats to prepare a plan for economic development and social justice for the people. The Article provides authority to the state government to give power and authority to the Panchayats on all the 29 subjects prescribed under the Eleventh schedule for local planning and implementing schemes, i.e., implementing NREGA which is one of the largest employment generating schemes.
- Panchayats implement the schemes made by the central and state governments for the betterment of people at the ground level. Panchayats have the authority to increase employment facilities and work upon the development of the area.

### ***Powers to impose taxes by, and Funds of, the Panchayats***

- Under Article 243H, the State Legislature by law may authorise the Panchayats to levy and collect tax, duties, tolls, or fees.
- The Panchayats may be assigned with the tax, duties, fees, or tolls that are collected by the state government to carry out specific work.
- The Panchayats are provided with a grant-in-aid from the Consolidated Fund of the State.
- The State Legislature may also constitute a fund for crediting and withdrawal purposes by or for the

## Panchayats

### ***Finance Commission***

- Under Article 243I, the Finance Commission is constituted by the Governor of the State to review the financial position of the Panchayats, to recommend the principles for the distribution of taxes between the State and Panchayats.
- The Finance Commission also determines the taxes, duties, tolls, and fees that will be assigned or appropriated to the Panchayats.

### ***Audit of accounts***

- Under Article 243J, the State Legislature is empowered to make provisions for the Panchayats to maintain and audit the accounts of Panchayats.

### ***Manner of election***

- According to Article 243K, the election of members of Panchayats of village, intermediate, and district levels shall be done through direct election by the people. The elections of chairman of the intermediate and district level Panchayat will be elected indirectly by the elected members of the Panchayats.
- State Election Commission is constituted in every state for the superintendence, maintenance, control, and preparation of electoral rolls. The Commission also handles the elections of Panchayats.

### ***Application to Union Territories***

- According to Article 243L, the provisions of this Part are applicable to the Union territories. But the President may direct that they would apply to a Union territory subject to such exceptions and modifications as he may specify.

### ***Exempted States and Areas***

- Under this Article 243M, the act does not apply to the states of Nagaland, Meghalaya and Mizoram and certain other areas. These areas include,
  - the scheduled areas and the tribal areas in the states
  - the hill areas of Manipur for which district councils exist; and
  - Darjeeling district of West Bengal for which Darjeeling Gorkha Hill Council exists
- However, the Parliament may extend the provisions of this Part to the scheduled areas and tribal areas subject to such exceptions and modifications as it may specify.
- Under this provision, the Parliament has enacted

the “Provisions of the Panchayats (Extension to the Scheduled Areas Act”, 1996, popularly known as the PESA Act or the Extension Act.

### ***Continuance of Existing Laws and Panchayats***

- ❑ According to Article 243N, all the state laws relating to Panchayats shall continue to be in force until the expiry of one year from the commencement of this act.
- ❑ In other words, the states have to adopt the new Panchayati Raj system based on this act within the maximum period of one year from 24 April, 1993, which was the date of the commencement of this act.
- ❑ However, all the Panchayats existing immediately before the commencement of act shall continue till the expiry of their term, unless dissolved by the state legislature sooner.
- ❑ Consequently, majority of states passed the Panchayati Raj acts in 1993 and 1994 to adopt the new system in accordance with the 73rd Constitutional Amendment Act of 1992.

### ***Bar to Interference by Courts in Electoral Matters***

- ❑ Under Article 243O, the act bars the interference by courts in the electoral matters of Panchayats.
- ❑ It declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court.
- ❑ It further lays down that no election to any Panchayat is to be questioned except by an election petition presented to such authority and in such manner as provided by the state legislature.

Provisions of Panchayats shall be applicable to the Union Territories in the same way as in case of the states but the President by a public notification may make any modifications in the applications of any part.

The provisions of part IX are not applicable to:

- ❑ Entire states of Nagaland, Meghalaya and Mizoram
- ❑ Hill areas in the State of Manipur for which District Councils are in place.
- ❑ The district level provisions shall not apply to the hill areas of the District of Darjeeling in the State of West Bengal which affect the Darjeeling Gorkha Hill Council.

The reservation provisions are not applicable to Arunachal Pradesh.

### ***Provisions under 73rd Amendment Act (1992)***

The provisions mentioned in the 73rd amendment act can be grouped into two i.e.,

- ❑ Mandatory Provision
- ❑ Discretionary Provision

#### ***Mandatory provisions of the act***

- ❑ Organization of Gram Sabha in villages
- ❑ Panchayat is an establishment at three levels, i.e., Village, Intermediate, and District level.
- ❑ Direct election to all the seats of the Panchayats.
- ❑ Indirect election to the post of Chairman at the intermediate and district level.
- ❑ Voting rights of the chairperson and other members of a Panchayat elected directly or indirectly.
- ❑ The minimum age to contest a Panchayat election is decided to be 21 years.
- ❑ Reservation of seats for Scheduled Caste-Scheduled Tribes (according to population) and women(1/3rd).
- ❑ The tenure of the Panchayats has been fixed for five years.
- ❑ Establishment of State Finance Commission after every five years to review the financial position of Panchayats.
- ❑ Reservation of seats for Scheduled Caste & Scheduled Tribes (according to population) and Women (1/3rd seats) at all three levels.
- ❑ The tenure of the Panchayats has been fixed for five years and fresh elections will be held within six months in the event of supersession of any Panchayat.
- ❑ Establishment of a State Election Commission for conducting elections to the Panchayats.

#### ***Discretionary Provisions of the Act***

- ❑ Allocating representation to MPs and MLAs in Panchayats at different levels within their constituency.
  - ❑ To provide reservation of seats for backward classes in Panchayats at all levels.
  - ❑ To grant power and authority to Panchayats so that they can function as institutions of self-governance.
  - ❑ Granting financial power to Panchayats and authorizing them to levy, collect, and appropriate taxes, duties etc.
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- ❑ Giving the Gram Sabha village-level powers and functions.
- ❑ Choosing the method for electing the village Panchayat's chairperson.
- ❑ Giving representation to the chairpersons of village Panchayats in intermediate Panchayats or, in the absence of intermediate Panchayats in a state, in district Panchayats.
- ❑ Representing the chairpersons of intermediate Panchayats in district Panchayats.
- ❑ Members of the Parliament (both Houses) and the state legislature (both Houses) are represented in Panchayats at various levels that fall within their constituencies.
- ❑ Reservation of seats (both members and chairpersons) in Panchayats at any level for backward classes.
- ❑ Granting Panchayats powers and authority to enable them to function as self-governing institutions (in brief, making them autonomous bodies).
- ❑ Devolution of powers and responsibilities to Panchayats to prepare plans for economic development and social justice, as well as to perform some or all of the 29 functions listed in the Constitution's Eleventh Schedule.
- ❑ Granting Panchayats financial powers, that is, allowing them to levy, collect, and appropriate taxes, duties, tolls, and fees.
- ❑ Taxes, duties, tolls, and fees levied and collected by the state government are assigned to a Panchayat.
- ❑ Making grants-in-aid to Panchayats from the state's consolidated fund.
- ❑ Providing for the establishment of funds for crediting all Panchayat funds.

### **11th Schedule**

It contains the following 29 functional items placed within the purview of Panchayats:

1. Agriculture, including agricultural extension
2. Land improvement, implementation of land reforms, land consolidation and soil conservation
3. Minor irrigation, water management and watershed development
4. Animal husbandry, dairying and poultry
5. Fisheries

6. Social forestry and farm forestry
7. Minor Forest produce
8. Small-scale industries, including food processing industries
9. Khadi, village and cottage industries
10. Rural housing
11. Drinking water
12. Fuel and fodder
13. Roads, culverts, bridges, ferries, waterways and other means of communication
14. Rural electrification, including distribution of electricity
15. non-Conventional energy sources
16. Poverty alleviation programme
17. Education, including primary and secondary schools
18. Technical training and vocational education
19. Adult and non-formal education
20. Libraries
21. Cultural activities
22. Markets and fairs
23. Health and sanitation including hospitals, primary health centres and dispensaries
24. Family welfare
25. Women and child development
26. Social welfare, including welfare of the handicapped and mentally retarded
27. Welfare of the weaker sections, and in particular, of the scheduled castes and the scheduled tribes
28. Public distribution system
29. Maintenance of community assets

### ***Panchayat Extension to Scheduled Areas***

The provisions of Part IX of the constitution relating to the Panchayats are not applicable to the Fifth Schedule areas. However, the Parliament may extend these provisions to such areas, subject to such exceptions and modifications as it may specify. Under this provision, the Parliament has enacted the "Provisions of the Panchayats (Extension to the Scheduled Areas) Act", 1996, popularly known as the PESA Act or the Extension Act.

Based on Dilip Singh Bhuria Committee report, it was enacted on 24 December 1996 to extend the

provisions of Part IX of the Constitution to Scheduled Areas, with certain exceptions and modifications.

At present, ten states have Fifth Schedule Areas. These are: Andhra Pradesh, Telangana, Chhatisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan. All the ten states have enacted requisite compliance legislations by amending the respective Panchayati Raj Acts.

The PESA Act conferred the absolute powers to Gram Sabha, whereas state legislature has given an advisory role to ensure the proper functioning of Panchayats and Gram Sabhas. The power delegated to Gram Sabha cannot be curtailed by a higher level, and there shall be independence throughout.

Section 4 (i) of PESA provides the right to Gram Sabhas to be consulted before land acquisition. The consent of the Panchayats or the Autonomous Districts Councils shall be obtained in cases where the Gram Sabha does not exist or has not been constituted.

***Features/provisions of the PESA Act, 1996 are -***

- ❑ A State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources.
- ❑ A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.
- ❑ Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.
- ❑ Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.
- ❑ Every Gram Sabha shall –
  - approve of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level
  - be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes.
- ❑ Every Panchayat at the village level shall be required

to obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the plans, programmes and projects.

- ❑ The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution;
  - Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;
  - Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes.
- ❑ The State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the district level; Provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat.
- ❑ The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level.
- ❑ Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level.
- ❑ The recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting license or mining lease for minor minerals in the Scheduled Areas.
- ❑ The prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction.
- ❑ While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the

Gram Sabha are endowed specifically with –

- the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;
- the ownership of minor forest produce
- the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;
- the power to manage village markets by whatever name called;
- the power to exercise control over money lending to the Scheduled Tribes;
- the power to exercise control over institutions and functionaries in all social sectors;
- the power to control over local plans and resources for such plans including tribal sub-plans.
- The State Legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government, shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha.
- The State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas.
- At the expiry of one year from the date on which this Act receives the assent of the President, any provision of any law (relating to Panchayats in the Scheduled Areas) which is inconsistent with the provisions of this Act shall cease to be in force.
- But all the Panchayats existing immediately before such date shall continue till the expiration of their duration unless sooner dissolved by state legislature.

#### **Challenges of PESA**

- **Dilution of role of Tribal Advisory Councils:** PESA comes under the Fifth Schedule, which mandates Tribal Advisory Councils to oversee tribal affairs and also gives extrajudicial, extra constitutional powers to the Governors of each State to intervene in matters where they see tribal autonomy being

compromised.

- **Non-Assertive Institution:** The councils, with the Chief Minister as their chairperson, have evolved into a non-assertive institution amid the tactics of upper-class politics, and its representatives hardly speak against the State Governments' policies.
- The Governors, in order to have friendly relations with the Chief Ministers, have desisted from getting involved in tribal matters. Tribal activists have constantly complained that there is not even a single instance where the Governors have responded to their petitions for interventions in threatening crises, such as deepening clashes over land, mining or police excesses.
- **Lack of coordination at Centre:** Even if one were to expect proactive intervention from the Centre, PESA would get entangled in bureaucratic shackles. Two different ministries, the Ministry of Panchayati Raj and the Ministry of Tribal Affairs, have an overlapping influence on the implementation of PESA and they function almost without any coordination.
- **Lack of operationalisation:** In most of the state the enabling rules are not in place more than eight years after the adoption of the Act suggests that the state governments are reluctant to operationalise the PESA mandate.
- **Poor Infrastructure:** A large number of Gram Panchayats in the country do not have even full time Secretary. Around 25 percent of the Gram Panchayats do not have basic office buildings. The database for planning, monitoring etc., are lacking in most of the cases.
- **Ignoring the spirit of PESA:** The state legislations have omitted some of the fundamental principles without which the spirit of PESA can never be realized. For instance, the premise in PESA that state legislations on Panchayats shall be in consonance with customary laws and among other things traditional management practices of community resources is ignored by most of the state laws
- **Ambiguous definitions:** No legal definition of the terms like minor water bodies, minor minerals etc. exist in the statute books. The states in their conformity legislations have also not defined the term leading to ambiguity and scope of

interpretation by the bureaucracy.

In recent years, many reports 'The Report of Expert Group of the Planning Commission on Development Challenges in Extremist Affected Areas' (2008), 'The Sixth Report of the Second Administrative Reforms Commission' (2007), 'The Balchandra Mungekar Committee Report' (2009), etc. have clearly underlined the dismal situation of the implementation of PESA.

### **Forest Rights Act**

#### **Historical Background**

- A large number of people especially the scheduled tribes have lived in and around forests for a long period in symbiotic relationship.
- This relationship has led to formalized or informal customary rules of use and extraction, often governed by ethical beliefs and practices that have ensured that forests are not too degraded.
- During the colonial time the focus shifted from the forests being used as a resource base for sustenance of local communities to a state resource for commercial interests and development of land for agriculture.
- Several Acts and policies such as the 3 Indian Forest Acts of 1865, 1894 and 1927 of Central Govt and some state forest Acts curtailed centuries-old, customary-use rights of local communities.
- This continued even after independence till much later until enactment of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

#### **Why are forest rights important for tribals?**

- Aimed at undoing the "historic injustice" meted out to forest-dependent communities due to curtailment of their customary rights over forests, the FRA came into force in 2008.
- It is important as it recognises the community's right to use, manage and conserve forest resources, and to legally hold forest land that these communities have used for cultivation and residence.
- It also underlines the integral role that forest dwellers play in the sustainability of forests and in the conservation of biodiversity.
- It is of greater significance inside protected forests like national parks, sanctuaries and tiger reserves

as traditional dwellers then become a part of management of the protected forests.

#### **About Forest Rights Act 2006:**

- The symbiotic relationship between forests and forest-dwelling communities found recognition in the National Forest Policy, 1988.
- The policy called for the need to associate tribal people in the protection, regeneration and development of forests.
- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, was enacted to protect the marginalised socio-economic class of citizens and balance the right to environment with their right to life and livelihood.

#### **Provisions of the 2006 Act**

- The Act recognizes that tribal and other traditional forest-dwelling communities would be hard put to provide documentary evidence for their claims.
- Rule 13 of the Act, therefore, stipulates that the Gram Sabha should consider more than one evidence in determining forest rights.
- The rule sanctions a wide range of evidence, including "statements by village elders", "community rights" and "physical attributes such as houses, huts and permanent improvements made to land such as levelling, bunds and check dams"

#### **Features of the Act**

- The act recognizes and vest the forest rights and occupation in Forest land in forest Dwelling Scheduled Tribes (FDST) and Other Traditional Forest Dwellers (OTFD) who have been residing in such forests for generations.
  - The act also establishes the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance of FDST and OTFD.
  - It strengthens the conservation regime of the forests while ensuring livelihood and food security of the FDST and OTFD.
  - It seeks to rectify colonial injustice to the FDST and OTFD who are integral to the very survival and sustainability of the forest ecosystem.
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- The act identifies four types of rights:
  - Title rights
    - ☞ It gives FDST and OTFD the right to ownership to land farmed by tribals or forest dwellers subject to a maximum of 4 hectares.
    - ☞ Ownership is only for land that is actually being cultivated by the concerned family and no new lands will be granted.
  - Use rights
    - ☞ The rights of the dwellers extend to extracting Minor Forest Produce, grazing areas, to pastoralist routes, etc.
  - Relief and development rights
    - ☞ To rehabilitation in case of illegal eviction or forced displacement and to basic amenities, subject to restrictions for forest protection
  - Forest management rights
    - ☞ It includes the right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use.

### ***Significance of Forest Rights Act (FRA) 2006***

The act is significant for the following reasons:

- Community rights and rights over common property resources (CPR) have been recognized for the first time
- Individual rights of the tribal and marginal communities have been highlighted by this act along with other rights too
- The concept of revenue villages has surfaced as the act talks about the conversion of all forest villages, old habitation, un-surveyed villages and other villages into these.
- It ensures the livelihood and food security of the Forest Dwellers Scheduled Tribes and Other Forest Dwellers and strengthens the conservation regime of the forest.
- Community Forest Resources are monitored and managed in a way that protects marginal communities' traditional linkages with these. It is known how these communities have always

traditionally utilized the forest resource for sustainable development.

- This act in a way protects intellectual property rights and the traditional knowledge related to cultural diversity and biodiversity
- It expands the mandate of the 5th & 6th Schedules of the Constitution that protect the claims of indigenous communities over tracts of land or forests they inhabit.
- The displaced communities' rights are secured by the forest rights act 2006. The alienation of tribes was one of the factors behind the Naxal movement, which affects states like Chhattisgarh, Odisha and Jharkhand. The Act through identifying Individual Forest Rights and Community Forest Rights tries to provide inclusion to tribes.
- The rights of marginal and tribal communities over developmental activities are also recognized and secured by Forest Rights Act, 2006
- Forest rights can also be claimed by any member or community who has for at least three generations (75 years) prior to the 13th day of December, 2005 primarily resided in forest land for bona fide livelihood needs.
- The act will ensure that people get to manage their forest on their own which will regulate the exploitation of forest resources by officials, improve forest governance and better management of tribal rights.

Land and its management fall under the exclusive legislative and administrative jurisdiction of States as provided under the Constitution of India. The land reforms are monitored by the Ministry of Rural Development (MoRD) and Department of Land Resources (DoLR) which is the nodal Ministry at the Centre.

### ***Criticism of Forest Rights Act (FRA) 2006***

The act has been criticized on the following lines:

#### ***Administrative Apathy:***

- As tribals are not a big vote bank in most states, governments find it convenient to subvert FRA or not bother about it at all in favour of monetary gains.

#### ***Lack of Awareness:***

- Unawareness at the lower level of forest officials who

are supposed to help process forest rights claims is high and majority of the aggrieved population too remains in the dark regarding their rights.

- ❑ The forest bureaucracy has misinterpreted the FRA as an instrument to regularise encroachment instead of a welfare measure for tribals.

#### ***Dilution of Act:***

- ❑ Certain sections of environmentalists raise the concern that FRA bends more in the favour of individual rights, giving lesser scope for community rights.
- ❑ Community Rights effectively gives the local people the control over forest resources which remains a significant portion of forest revenue making states wary of vesting forest rights to Gram Sabha.

#### ***Reluctance of the forest bureaucracy to give up control:***

- ❑ The forest bureaucracy fears that it will lose the enormous power over land and people that it currently enjoys, while the corporates fear they may lose the cheap access to valuable natural resources.

#### ***Institutional Roadblock:***

- ❑ Rough maps of community and individual claims are prepared by Gram Sabha which at times often lack technical knowhow and suffers from educational incapacity.

The 73rd Amendment Act is an attempt to restructure the Panchayati Raj to reach the grassroot level. The bill for the first time gave constitutional status to Panchayati Raj institutions and it became mandatory on all state governments to implement it. This Amendment brought about uniformity in structure, composition, powers and functions of Panchayats. It gave impetus to Panchayati Raj to promote social and economic development and improvement in living condition of rural India.

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### ***Municipalities / Urban Local Government***

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#### ***Historical background***

The roots of municipal administration in India can be traced to 1687, when a Municipal Corporation was set up at Madras with a view to transfer the financial burden of local administration to the local City Council. Later, the Royal Charter of 1720 established a Mayor's Court in each of the three Presidency towns of Madras, Bombay and Calcutta.

In 1850, an Act was passed for the whole of British

India permitting the formation of local committees to make better provisions for public health. Lord Mayo's resolution of 1870 made arrangements for strengthening the municipal institutions and increasing the association of Indians in these bodies.

Yet, it was Lord Ripon's Resolution of 18 May 1882 that was hailed as the Magna Carta of government and got Lord Ripon the title of "Father of local self-government in India."

The Government of India Act 1919 introduced the system of diarchy and the local self-government became a transferred subject under the charge of powers of local bodies, lowered the franchise, reduced the nominated element and extended the communal electorate to a larger number of municipalities.

#### ***Post-Independence in India***

The Constitution of India, which came into force on 26 January 1950, directs the state through Article 40 to organize panchayats but does not give a corresponding duty to the state with regard to the creation of urban bodies.

The only reference to urban self-government was to be found in two entries:

- ❑ Entry 5 of List 11 of the Seventh Schedule and
- ❑ Entry 20 of the Concurrent List.

The Five-Year Plans also periodically highlighted the problems of the municipal bodies and the inability of these bodies to meet the growing demands of urbanisation.

In 1985, the National Commission on Urbanization was appointed by the Central government which gave its report in 1988. Commission was set up to study and give suggestions on all aspects of urban management.

#### ***Purpose for Urban Local Bodies***

- ❑ Urban Local Bodies were set up to provide urban services efficiently, effectively and equitably.
- ❑ Urban Local governments also plan for economic and social development.
- ❑ They regulate the use of land and the construction of buildings.
- ❑ They regulate the supply of water for domestic, industrial and commercial purposes.
- ❑ They maintain public health, sanitation conservation and solid waste management.
- ❑ They administer various laws and regulations.

- They implement central government plans at the grassroots level.
- They are doing the job of reducing poverty.

### ***The 65th Constitutional Amendment Bill, 1989***

The 65th Constitutional Amendment Bill brought by the then Prime Minister, Rajiv Gandhi, sought to ensure municipal bodies being vested with necessary powers and removing their financial constraints to enable them to function effectively as units of local government.

Three types of Nagar Palikas were envisaged;

- Nagar panchayat for a population between 10,000 and 20,000;
- Municipal Council for urban areas with a population between 20,000 and 3,00,000 and
- Municipal Corporation for urban areas with a population exceeding 3,00,000.

It made provisions for elected Ward Committees, adequate representation for women and SC/ST in the urban bodies, conduct of elections by the Central Election Commission, setting up Finance Commissions in the states to ensure soundness of local body finances, audit of accounts by the Comptroller and Auditor General of India and creation of district level committees to coordinate the plans of Nagar Palikas and Panchayats.

It also envisaged granting of urban bodies with a constitutional status. Though passed in the Lok Sabha, the bill was defeated in the Rajya Sabha in October 1989.

### ***74th Amendment Act***

This Act has added a new Part IX-A to the Constitution of India. This part is entitled as 'The Municipalities' and consists of provisions from Articles 243-P to 243-ZG. In addition, the act has also added a new Twelfth Schedule to the Constitution. This schedule contains eighteen functional items of Municipalities.

It deals with Article 243-W. The act gave constitutional status to the municipalities. It has brought them under the purview of justiciable part of the Constitution. In other words, state governments are under constitutional obligation to adopt the new system of municipalities in accordance with the provisions of the act. The act aims at revitalising and strengthening the urban governments so that they function effectively as units of local government.

### ***Provisions of Urban Local Bodies under 74th Constitutional Amendment Act***

#### ***Three Types of Municipalities***

- Under Article 243Q, act provides for the constitution of the following three types of municipalities in every state.
  - A Nagar panchayat (by whatever name called) for a transitional area.
  - A Municipal Council for a smaller urban area.
  - A Municipal Corporation for a larger urban area.
- But there is one exception. If there is an urban area where municipal services are being provided by an industrial establishment, then the Governor may specify that area to be an industrial township. In such a case, a municipality may not be constituted.
- The Governor has to specify a transitional area, a smaller urban area or a larger urban area, keeping in view the following factors:
  - Population of the area.
  - Density of the population therein.
  - Revenue generated for local administration.
  - Percentage of employment in non-agricultural activities.
  - Economic importance.
  - Such other factors as he may deem fit.

### ***Composition***

- Under Article 243R, all the members of a municipality shall be elected directly by the people of the municipal area. For this purpose, each municipal area shall be divided into territorial constituencies to be known as wards.
- The State Legislature may provide the manner of election of the chairperson of a municipality. It may also provide for the representation of the following persons in a municipality.
  - Persons having special knowledge or experience in municipal administration without the right to vote in the meetings of municipality.
  - The members of the Lok Sabha and the State Legislative Assembly representing constituencies that comprise wholly or partly the municipal area.
  - The members of the Rajya Sabha and the state legislative council registered as electors within the Municipal area.
  - The Chairpersons of committees (other than wards committees).

### ***Wards Committees***

- ❑ According to Article 243S, there shall be a wards committee, consisting of one or more wards, within the territorial area of a municipality having population of three lakh or more.
- ❑ The state legislature may make provision with respect to the composition and the territorial area of a wards committee and the manner in which the seats in a wards committee shall be filled.
- ❑ In addition to the ward's committees, the state legislature is also allowed to make any provision for the constitution of other committees. The Chairpersons of such committees may be made members of the municipality.

### ***Reservation of Seats***

- ❑ According to Article 243 T, act provides for the reservation of seats for the scheduled castes and the scheduled tribes in every municipality in proportion of their population to the total population in the municipal area.
- ❑ Further, it provides for the reservation of not less than one-third of the total number of seats for women (including the number of seats reserved for woman belonging to the SCs and the STs). The state legislature may provide for the manner of reservation of offices of Chairpersons in the municipalities for SCs, STs and women.
- ❑ It may also make any provision for the reservation of seats in any municipality or offices of Chairpersons in municipalities in favour of backward classes.

### ***Duration of Municipalities***

- ❑ According to Article 243U, act provides for a five-year term of office for every municipality. However, it can be dissolved before the completion of its term.
- ❑ Further, the fresh elections to constitute a municipality shall be completed
  - before the expiry of its duration of five years; or
  - in case of dissolution, before the expiry of a period of six months from the date of its dissolution.
- ❑ But, where the remainder of the period (for which the dissolved municipality would have continued) is less than six months, it shall not be necessary to hold any election for constituting the new municipality for such period.

- ❑ Moreover, a municipality constituted upon the dissolution of a municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved municipality would have continued had it not been so dissolved.
- ❑ In other words, a municipality reconstituted after premature dissolution does not enjoy the full period of five years but remains in office only for the remainder of the period. The act also makes two more provisions with respect to dissolution:
  - a municipality must be given a reasonable opportunity of being heard before its dissolution; and
  - no amendment of any law for the time being in force shall cause dissolution of a municipality before the expiry of the five years term.

### ***Disqualifications***

- ❑ Under Article 243V, a person shall be disqualified for being chosen as or for being a member of a municipality if he is so disqualified
  - under any law for the time being in force for the purposes of elections to the legislature of the state concerned; or
  - under any law made by the state legislature.
- ❑ However, no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years.
- ❑ Further, all questions of disqualifications shall be referred to such authority as the state legislature determines.

### ***Powers and Functions***

- ❑ Under Article 243W, state legislature may endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government. Such a scheme may contain provisions for the devolution of powers and responsibilities upon municipalities at the appropriate level with respect to
  - the preparation of plans for economic development and social justice;
  - the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the eighteen matters listed in the Twelfth Schedule

### ***Imposition of Taxes***

- According to Article 243X, state legislature may
  - authorise a municipality to levy, collect and appropriate taxes, duties, tolls and fees;
  - assign to a municipality taxes, duties, tolls and fees levied and collected by state government;
  - provide for making grants-in-aid to the municipalities from the consolidated fund of the state; and
  - provide for constitution of funds for crediting all moneys of the municipalities.

### ***Finance Commission***

- Article 243Y deals with the Finance Commission who shall also review the financial position of the Municipalities and make recommendations to the Governor as to—
  - the principles which should govern—
    - ☞ the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Municipalities at all levels of their respective shares of such proceeds;
    - ☞ the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities;
    - ☞ the grants-in-aid to the Municipalities from the Consolidated Fund of the State;
  - the measures needed to improve the financial position of the Municipalities;
  - any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.
- The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

### ***Audit of accounts of Municipalities***

- According to the Article 243Z, the Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

### ***Elections to the Municipalities***

- Article 243ZA deals with the election of the members of the Municipalities.
- The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the municipalities shall be vested in the state election commission.
- The State Legislature may make provision with respect to all matters relating to elections to the municipalities.

### ***Application to Union territories.***

- Under Article 243ZB, the provisions mentioned in this part are applicable to the Union Territories.
- But the President may direct that they would apply to a Union territory subject to such exceptions and modifications as he may specify.

### ***Part not to apply to certain areas***

- According to Article 243ZC, act does not apply to the scheduled areas and tribal areas in the state.
- It shall also not affect the functions and powers of the Darjeeling Gorkha Hill Council of the West Bengal.
- However, the Parliament may extend the provisions of this part to the scheduled areas and tribal areas subject to such exceptions and modifications as it may specify.

### ***Committee for district planning***

- According to Article 243ZD, every state shall constitute at the district level, a district planning committee to consolidate the plans prepared by panchayats and municipalities in the district, and to prepare a draft development plan for the district as a whole. The state legislature may make provisions with respect to the following:
  - The composition of such committees;
  - The manner of election of members of such committees;
  - The functions of such committees in relation to district planning; and
  - The manner of the election of the Chairpersons of such committees.
- The act lays down that four-fifths of the members of a district planning committee should be elected by the elected members of the district panchayat

and municipalities in the district from amongst themselves.

- The representation of these members in the committee should be in proportion to the ratio between the rural and urban populations in the district.
- The Chairperson of such committee shall forward the development plan to the state government. In preparing the draft development plan, a district planning committee shall (a)
  - Have regard to–
    - ☞ matters of common interest between the Panchayats and Municipalities including spatial planning, sharing of water other physical and natural resources, the integrated development of infrastructure and environmental conservation;
    - ☞ the extent and type of available resources whether financial otherwise; and
  - Consult such institutions and organisations as the Governor may specify.

#### ***Metropolitan Planning Committee***

- Under Article 243 ZE, every metropolitan area shall have a metropolitan planning committee to prepare a draft development plan. The state legislature may make provisions with respect to the following:
  - The composition of such committees;
  - The manner of election of members of such committees;
  - The representation in such committees of the Central government, state government and other organisations;
  - The functions of such committees in relation to planning and coordination for the metropolitan area; and
  - The manner of election of Chairpersons of such committees.
- The act lays down that two-thirds of the members of a metropolitan planning committee should be elected by the elected members of the municipalities and Chairpersons of the Panchayats in the metropolitan area from amongst themselves.
- The representation of these members in the committee should be in proportion to the ratio between the population of the municipalities and

the Panchayats in that metropolitan area.

- The Chairpersons of such committees shall forward the development plan to the state government. In preparing the draft development plan, a metropolitan planning committee shall (a) Have regard to–
  - ☞ the plans prepared by the Municipalities and the Panchayats the Metropolitan area;
  - ☞ matters of common interest between the Municipalities and Panchayats, including co-ordinated spatial planning of the area sharing of water and other physical and natural resources, integrated development of infrastructure and environment conservation;
  - ☞ the overall objectives and priorities set by the Government India and the government of the state;
  - ☞ the extent and nature of investments likely to be made in Metropolitan area by agencies of the Government of India and the Government of the State and other available resources whether financial or otherwise; and
- (b) consult such institutions and organisations as the Governor may specify.

#### ***Continuance of existing laws and Municipalities***

- According to Article 243 ZF, all the state laws relating to municipalities shall continue to be in force until the expiry of one year from the commencement of this act.
- In other words, the states have to adopt the new system of municipalities based on this act within the maximum period of one year from 1 June, 1993, which is the date of commencement of this act.
- However, all municipalities existing immediately before the commencement of this act shall continue till the expiry of their term, unless dissolved by the State Legislature sooner.

#### ***Bar to interference by courts in electoral matters***

- Article 243 ZG bars the interference by courts in the electoral matters of municipalities. It declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court.
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- It further lays down that no election to any municipality is to be questioned except by an election petition presented to such authority and in such manner as provided by the state legislature.

#### **Provisions under 74th Amendment Act (1992)**

The provisions mentioned in the 74th amendment act can be grouped into two i.e.,

- Mandatory Provision
- Discretionary Provision

#### **Mandatory Provision**

- Constitution of Nagar panchayats, Municipal Councils and Municipal Corporations in small, big and very big urban areas respectively;
- Reservation of seats in urban local bodies for Scheduled Castes / Scheduled Tribes roughly in proportion to their population;
- Reservation of seats for women up to one-third seats;
- The State Election Commission, constituted in order to conduct elections in the Panchayati Raj bodies will also conduct elections to the urban local self-governing bodies;
- The State Finance Commission, constituted to deal with financial affairs of the Panchayati Raj bodies also looks into the financial affairs of the local urban self-governing bodies;
- Tenure of urban local self-governing bodies is fixed at five years and in case of earlier dissolution fresh elections are held within six months;

#### **Discretionary Provision**

- Giving voting rights to members of the Union and State Legislatures in these bodies;
- Providing reservation for backward classes;
- Giving financial powers in relation to taxes, duties, tolls and fees, etc;
- Making the municipal bodies autonomous and devolution of powers to these bodies to perform some or all of the functions enumerated in the Twelfth Schedule added to the Constitution through this Act and/or to prepare plans for economic development.

#### **Sources of revenue for Urban Local Bodies:**

- Collection from tax and non-tax sources as assigned to them.
- Devolution of shared taxes and duties as per

recommendation of State Finance Commission.

- Grants-in-aid from the state government.
- Grants-in-aid from the Government of India under Centrally Sponsored Schemes.
- Share of State Govt. against Centrally Sponsored Schemes of Govt. of India.
- Award of Central Finance Commission Grant.

#### **12th Schedule List**

12th Schedule of the Indian Constitution deals with the provisions that specify the powers, authority and responsibilities of Municipalities. This schedule was added by the 74th Amendment Act of 1992. It has 18 matters.

- Urban planning including town planning.
- Regulation of land-use and construction of buildings.
- Planning for economic and social development.
- Roads and bridges.
- Water supply for domestic, industrial and commercial purposes.
- Public health, sanitation conservancy and solid waste management.
- Fire services.
- Urban forestry, protection of the environment and promotion of ecological aspects.
- Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- Slum improvement and upgradation.
- Urban poverty alleviation.
- Provision of urban amenities and facilities such as parks, gardens, playgrounds.
- Promotion of cultural, educational and aesthetic aspects.
- Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
- Cattle pounds; prevention of cruelty to animals.
- Vital statistics include registration of births and deaths.
- Public amenities including street lighting, parking lots, bus stops and public conveniences.
- Regulation of slaughter houses and tanneries.

#### **Types of Urban Government**

##### **Municipal Corporation**

- It is created for the administration of big cities

- They are established by an act of state legislatures and in the case of Union Territories, it is by an act of Parliament
- The corporation has three organs- council, standing committees and commissioner
- The council is the deliberative body consisting of elected and few nominated representatives. They enact laws and policies. The council is headed by a mayor who is to preside over the council meetings. He is elected by the members amongst themselves. He has a renewable one-year term
- Standing committees are created to simplify the working of the council. They take decision in their respective fields for which they have been made responsible. Ex: Health, education, public works etc
- Municipal commissioner is responsible for implementing the policies and decisions taken by the council and the committees

### ***Municipality***

- It is established for administration of smaller towns and cities
- They are established by an act of state legislatures and in the case of Union Territories, it is by an act of Parliament
- It also has three authorities- council, standing committees and chief executive officer
- The council is the deliberative and legislative body. It is headed by a Chairperson.
- Unlike the mayor in a municipal corporation, Chairperson here has executive powers
- The CEO is responsible for day-to-day administration
- The standing committees are created to facilitate the working of the council. They deal with public works, taxation, health, finance and so on.

### ***Notified Area Committee***

- It is created for fast-developing areas that have not yet achieved the numbers to become a municipality
- It is notified by state government gazette
- Only those provisions which are specified in the gazette apply to this area
- It is entirely a nominated body

### ***Town Area Committee***

- It is setup for the administration of a small town
- It is created by a separate act of the state legislature
- It may be a wholly elected, wholly nominated or

party elected and nominated as specified by the state government

### ***Cantonment Board***

- It is setup for the civic administration for civilian population living in cantonment areas
- It is setup under the provisions of the cantonment act, 2006
- It works under the administrative control of the Union defence ministry
- It consists of partly elected and partly nominated representatives
- The commanding officer of the station is the ex-officio Chairperson
- The board will also consist of an executive engineer, health officer, first class magistrate, chief executive officer
- The nominated members hold office as long as they are part of the station
- Elected members have a tenure of 5 years

### ***Township***

- It is established by a public sector enterprise to ensure civic administration of their workers in the region
- The township has no elected members
- It is an extension of bureaucratic structure of the PSE

### ***Port trust***

- It is established in port areas
- Functions of these bodies: to manage ports and to provide civic amenities
- It consists of both elected and nominated members

### ***Special Purpose Agency***

- These are setup to address specific issues which are usually the domain of municipalities
- They are also known as single-purpose or uni-purpose because of the singular role based on which they are created for
- They are established by an act of state legislature or as departments by an executive resolution
- They function as autonomous bodies

### ***Significance of Urban Local Bodies:***

- They provide urban services efficiently, effectively and equitably.
  - They plan for economic and social development.
  - They regulate land-use and construction of buildings.
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- They regulate water supply for domestic, industrial and commercial purposes.
- They maintain the public health, sanitation conservancy and solid waste management.
- They administer various acts and regulations.
- They implement the schemes of the central government at the ground level.
- They perform the task of poverty alleviation.

**Challenges associated with Urban Local Bodies:**

□ **Delegation of powers:**

- Most of the state governments have not devolved the power to the Urban Local Bodies so they have not been able to perform their tasks effectively.

□ **Ineffective leadership:**

- Mayors and Councillors use their positions for their political carrier rather than being change agents bringing out desired urban reforms.

□ **Creation of autonomous agencies:**

- Autonomous agencies such as urban development authorities and public corporations are accountable only to the state governments and not local governments.

□ **Lack of funds:**

- Lack of devolution of funds as per the Finance

Commission recommendations.

- Revenue of the urban local bodies themselves are very limited and skewed.
- One of the main sources of income for local bodies is property tax.
- E.g.; In Kolkata city limits were expanded in 1984—from 100 wards the city was extended to 141 wards—the new areas have never been taxed till date.

□ **Corruption:**

- Administrative machinery at the disposal of these local bodies is insufficient and ineffective.
- The staff is underpaid which indulges in corrupt practices.

□ **Limited capacity:**

- Even if the municipal bodies receive funds, they just don't have the capacity to function effectively.
- Most of the funds given to the Urban Local Bodies are tied funds.

□ **Lack of coordination:**

- Multiple agencies are at work in the city to cater to municipal needs but they rarely cooperate.