

## **CHAPTER-IV**

### **PANCHAYATI RAJ AND DECENTRALISED GOVERNANCE**

#### **Introduction**

One of the important reasons for SCs and STs not receiving adequate benefits from 50 years of planning and development has been the lack of opportunity for their participation and involvement in the preparation and execution of plans for their economic development and social justice through decentralised institutions. Even in States where legal provisions of reservation for SCs and STs existed, or were promulgated, they were not able to get representation in the Panchayats to any significant extent. Elections to Panchayats were not held regularly in many States. Bihar is an extreme case where Panchayat elections were held as far back as in 1978. But the 73<sup>rd</sup> Amendment to the Constitution vide its Article 243D has reserved seats and offices for SCs and STs, including women belonging to these Groups, at all three tiers of the Panchayati Raj System (PRS). Article 243E requires regular elections to the Panchayats every five years.

4.2 The provisions of the 73<sup>rd</sup> Amendment Act was extended to the 5<sup>th</sup> Scheduled Areas through the Panchayats (Extension to the Scheduled Areas) Act 1996. This Act empowers the Gram Sabhas or Panchayats not only to prepare plans for economic development and social justice but also to protect the traditional rights of tribals on natural resources in these areas.

4.3 Keeping in view the prevailing caste system and acute economic and social inequalities in the rural areas, it is a challenging task for the SCs and STs elected as people's representatives to function effectively in the Panchayats. This chapter examines whether the deprived sections have started exerting some influence in the functioning of the Panchayats or whether the traditional forces continue to be dominant. It is also proposed to focus on the extent to which these disadvantaged Groups have found Panchayats as platforms to ventilate their grievances and the impediments in their genuine empowerment. Based on such analyses, recommendations have been made in the concluding portion of the chapter as to the steps the Centre and the States should take to enable the SCs and STs to participate effectively in the Panchayats so as to make political reservations more meaningful.

#### **Panchayati Raj in Pre - 73<sup>rd</sup> Amendment Act Regime**

4.4 In the Constituent Assembly, there was a lively debate on the subject of Panchayati Raj and many of the Members emphasised the importance of giving due place to villages and village Panchayats in the Constitution. As a result, Article 31-A was added which states "The State shall take steps to organise village Panchayats and endow them to function as units of self-government" This Article was later renumbered as Article 40 and became part of the Directive Principles of State Policy. Necessary legislation was, however, not immediately enacted to bring the Panchayats into being.

4.5 In the post-independence period, instead of establishing Panchayats as vehicles of economic development and social justice in rural areas, the Community Development Programme and the National Extension Service were launched, aimed at bringing about all-round development in the country. But these programmes could not evoke people's participation in rural development. To enquire into the causes of indifferent attitude and apathy of the rural population towards these programmes and to suggest remedies, a team was constituted by the Ministry of Agriculture, Government of India, under the chairmanship of Balvantrai Mehta, which submitted its report on 24<sup>th</sup> of November, 1957. This report laid the foundation-stone of Panchayati Raj in India. In its own words, "So long as we do not discover or create a representative and democratic institution which will supply the local interest, supervision and care necessary to ensure that expenditure of money on local objectives conforms with the needs and wishes of the locality, investing it with adequate power and assigning to it appropriate finance, we will never be able to evoke interest and excite local initiative in the field of development." The Committee recommended establishment of a three tier Panchayati Raj system in the country. Most of the States adopted Panchayati Raj Acts, modelled on the pattern recommended by the Balvantrai Mehta Committee. About the constitution of the Panchayats and representation of SCs and STs on these bodies, the Committee had recommended "The Constitution of the Panchayats should be purely on an elective basis with provision for co-option of two women members and one member each from scheduled castes and scheduled tribes. No other special group need be given special representation." By 1959, all the States had passed Panchayat Acts, and by mid 1960s, Panchayats had been constituted in all parts of the country. More than 217,300 village panchayats, covering over 96 per cent of the 579,000 inhabited villages and 92 per cent of the rural population had been established by this time. On an average, a Panchayat covered a population of about 2,400 in two to three villages. There was enthusiasm in the rural areas and the people felt that for the first time they would have a say in affairs affecting their daily lives. (George Mathew, 1994)

4.6 But interest and support for Panchayati Raj did not last long. Apathy towards Panchayats started emerging. The flow of funds for block development started declining. In many States elections to these bodies were postponed indefinitely. In some States, parallel institutions came into being which marginalised the Panchayats. To evaluate the functioning of Panchayat Raj Institution, a Committee was set up under Shri Ashok Mehta, which submitted its report in August, 1978. The Committee identified a number of factors such as creation of Small Farmers Development Agency (SFDA), Drought Prone Areas Programme (DPAP) and Integrated Tribal Development Project (ITDP), as being responsible for the declining importance of the Panchayats. In some of the States, a separate body parallel to the Zilla Parishad (ZP) was created under the chairpersonship of a Minister through executive order of the State Government. Unwanted staff was transferred to the Panchayats and the resources meant for the Panchayats were not transferred. In a nutshell, the Committee commented that "the lukewarm attitude of the political elite at higher levels towards the strengthening of the democratic process at the grassroots was generally the crux of the matter. Of particular significance in this connection is the relative cooling off of enthusiasm of MPs and MLAs in some States vis-à-vis Panchayati Raj because they perceived a threat to their position in their respective constituencies from the emerging Panchayati Raj leadership. In the ultimate analysis, all this led to a weakening of political support to PRIs and of the administrative will to work through them."

4.7 The Ashok Mehta Committee had made several recommendations for making the Panchayat institutions strong. This Committee also prepared a draft Bill to amend the Constitution to reconstruct, reinforce and revitalise the Panchayati Raj Institutions (PRIs) to make them an organic part of the national democratic process and to elevate Panchayats from being a development agencies to political Institutions for fulfilling people's aspirations. To ensure the participation and involvement of SCs and STs in decentralised governance, the Committee had specifically recommended the following:

- i "In order to provide a fair deal to Scheduled Castes and Scheduled Tribes, their representation in all Panchayati Raj Institutions should be on the basis of their population,
- ii 666 talukas/blocks where the Scheduled Castes constitute more than 20 per cent of the population and in 329 talukas/blocks where Scheduled Tribes constitute a majority of population, the principle of reservation should be extended to elective offices,
- iii the reservation system can be supplemented by formation of Social Justice Committees where the Chairman should be only from Scheduled Castes/Scheduled Tribes,
- iv with a view to provide political support to the objective of protection of the interests of the weaker sections, a Committee of the Legislature with, as far as possible, majority representation of MLAs/MLCs belonging to Scheduled Castes/Scheduled Tribes should be set up to review the working of the programmes meant for these communities. This Committee would also be responsible for Social Audit of funds earmarked for Scheduled Castes/Scheduled Tribes."

4.8 In the mid-1980s, the Union Government had constituted a Committee for preparing a Concept Paper on Panchayati Raj Institutions (popularly known as the L M Singhvi Committee) which submitted its report in June 1986. This Committee also recommended that the PRIs should be constitutionally recognised, protected and preserved by inclusion of a new chapter in the Constitution. Local self-government and more particularly, Panchayati Raj Institutions should be constitutionally proclaimed as the third tier of government. Although the Committee did not make any specific reference to SCs and STs, it referred to social mobilisation in following words "The operational dynamics of Panchayati Raj should be directed to achieve community and social mobilisation, transcending the barriers of caste, religion, sex and disparities of wealth and surmounting social disabilities and disadvantages. The Panchayati Raj Institutions should become vehicles for homogenisation, secularisation and socialisation of national ethos."

### **Constitution 73<sup>rd</sup> Amendment Act 1992: Salient Features**

4.9 It was against this background that the Union Government started the process of consultations and working out modalities for providing a constitutional basis for Panchayat Raj system. After several attempts to get the Constitutional amendment bill passed in the Parliament, the Constitution (73<sup>rd</sup> Amendment) Act, 1992 was finally passed and came into effect from 24<sup>th</sup> April, 1993.

4.10 Provisions of the 73<sup>rd</sup> Amendment Act 1992 can be broadly categorised as mandatory and or discretionary.

### **Mandatory provisions**

- i Establishment of Gram Sabha at village level consisting of people registered in the electoral roll relating to a village falling within the area of the Panchayat.
- ii Establishment of three tier system of Panchayati Raj at village, intermediate and district levels in all States and UTs except those States having a population of less than 20 lakhs.
- iii At all levels, Panchayats will comprise of persons chosen by direct election from the respective territorial constituencies.
- iv All members of Panchayats elected directly or indirectly shall have voting rights in Panchayat meetings.
- v The Chairpersons of the intermediate and the apex tier of Panchayats will be elected from among the directly elected members
- vi Reservation for SCs and STs in memberships and offices of chairpersons will be provided based on their population in a Panchayat. (details may be seen in Article 243 D of 73<sup>rd</sup> Amendment Act in **ANNEXURE 4.I** .
- vii Not less than one- third of the membership and the offices of chairperson will be reserved for women. (details may be seen in Article 243 D of the 73<sup>rd</sup> Amendment Act, in **ANNEXURE 4.I** .
- viii Five year term for all tiers of Panchayats. If a Panchayat dissolves earlier than this for whatever reason, fresh elections will be held within 6 months. In case the term remaining is less than 6 months, it is not mandatory to hold election for this period.
- ix Constitution of State Finance Commission within one year from the commencement of the Act and thereafter at the expiry of every five years. Sub-clause “bb” was also inserted in Article 280 of the Constitution. As per this sub-clause the Central Finance Commission shall recommend to the President, the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State.
- x Constitution of the State Election Commission for supervision, direction and control of the preparation of electoral rolls and conducting elections to the Panchayats
- xi The Act shall not be applicable to the Scheduled Areas referred to in clause (1) and the tribal areas referred to in Clause (2) of Article 244 of the Constitution.

### **Discretionary Provisions**

As the subject of PRIs is under the domain of the State List, the 73<sup>rd</sup> Amendment Act has given discretionary powers to the State on devolution of powers, functions, authority, finance, etc. to the Panchayats. Following are the enabling provisions given in this Act for the States:

- i Powers and functions of the Gram Sabha
- ii Membership of the chairpersons of Gram Panchayat in the Panchayat at intermediate level and of the Chairperson of the Panchayat at the intermediate level in the Panchayats at the district level.
- iii Membership of the MP, MLA and MLCs at intermediate and district levels.
- iv Mode of election of the chairperson at the Gram Panchayat level.
- v Reservation of seats in favour of backward classes of citizens in terms of membership as well such chairpersonship, at different tiers of the PRS.
- vi Vesting of power, authority and responsibility in the Panchayats which may be necessary for them to function as effective institutions of self-government, and to make provisions for devolution of powers and responsibility to Panchayats at the appropriate levels with respect to:
  - (a) The preparation of plans for economic development and social justice,
  - (b) The implementation of schemes for economic development and social justice entrusted to them including 29 subjects contained in 11<sup>th</sup> Schedule of the Constitution. (ANNEXURE 4.I)
- vii Authorise each tier of the PRS to levy appropriate taxes, duties, tolls and fees in accordance with a well defined procedure of levying and allocation of such tax revenue collected by each of three tiers of the PRS. Allocation of taxes, duties, tolls and fees levied by the State government to each tier of the PRS depending on the nature and magnitude of the responsibilities vested in each tier. Decide the amount of grant-in-aid to the Panchayats from the Consolidated Fund of the State.
- viii Composition of the State Finance Commission.

4.11 It may be seen from the above discussion that the 73<sup>rd</sup> Amendment Act provides a broad framework for the states to enable the Panchayats function as institutions of self-government as envisaged in Article 243 G of the Constitution. A uniform three tier structure of the Panchayat system, election every five years, reservation for SC, ST and women etc., are mandatory on the part of the States but devolution of powers, authority and financial resources have been left entirely to the State Governments.

## **Important Features of 73<sup>rd</sup> Amendment Act**

### **Gram Sabha to be set up**

4.12 As far back as in 1963, the Report of the Study Team on the Position of Gram Sabhas in the Panchayati Raj Movement had suggested that the Gram Sabha should statutorily be recognised in each State. But all the States had not incorporated this provision in their Panchayat legislations. With the enactment of the 73<sup>rd</sup> Amendment Act, it has now become mandatory on the part of the States to make the Gram Sabha an integral part of their Panchayati Raj legislations. In this respect, therefore, the Central Act has

established direct democracy at the village level, by enabling each and every voter to take part in the development of the village community.

#### **Regular and timely elections**

4.13 With a few exceptions like West Bengal, the States were not conducting regular elections to the Panchayats. For example, in Bihar, elections to the Gram Panchayat, Panchayat Samiti and Zilla Parishad were last held as back as in 1978, 1979 and 1980, respectively. In Tamil Nadu elections to the Panchayats were held in 1996 after a gap of ten years. According to the 73<sup>rd</sup> Amendment to the Constitution, regular and timely elections to all PRIs are mandatory. The 73<sup>rd</sup> Amendment also provides that, if Panchayats are dissolved, elections must be held within six months.

#### **Reservation for weaker sections**

4.14 Studies reveal that the Panchayats were dominated by powerful sections of rural society, like landlords and money lenders. There was not much scope for SCs and STs to participate in these local democratic and "self-governing" institutions. The Dantwala Committee in 1978 even went to the extent of saying that "Panchayati Raj Institutions act as gate keepers and prevents the flow of benefits to the weaker sections of the rural community." The Constitution (73<sup>rd</sup> Amendment) Act provides for ensuring reservation for SCs and STs to enable them to participate in decentralised governance, planning and development.

#### **Reservation for women**

4.15 Like the weaker sections, women also did not have any say in local governance. The 73<sup>rd</sup> Amendment Act requires that at least one-third of the seats in the Panchayats be reserved for women both as Panchayat members and chairpersons (including women belonging to SCs and STs).

#### **Adequate financial resources**

4.16 Panchayats have been starving for financial resources. Let alone undertaking developmental activities, they have not been able to even properly maintain community assets as sufficient funds were not being allotted by the State Government. According to the Committee of Administrative Arrangement for Rural Development (CAARD) "the tax and non-tax income (including grants) realised by the Panchayati Raj Institutions constituted 4 per cent of the tax and non-tax revenue of all the States and 3 per cent of all State tax and non-tax revenue and capital receipts." Although these observations relate to 1981-82, the ground level situation has not changed much. To ensure sufficient financial resources for the Panchayats, the provision for constituting a State Finance Commission has been made in the Central Act.

#### **State Election Commission**

4.17 The Act also provides for constitution of State Election Commission with the purpose of supervising, directing and conducting free and fair elections to the Panchayats.

#### **Constitution of District Planning Committee**

4.18 Article 243 ZD of the Constitution provides that a District Planning Committee will be established to consolidate the plans prepared by the Panchayats and the municipal sectors. While preparing the draft plan, it will also take into account spatial planning,

physical and natural resources, infrastructure and environmental conservation. This Act thus provides for a statutory body at district level for preparing the development plan for the district. Before the Amendment, planning committees were constituted in almost all the States but they were merely integrating and implementing the sectoral programmes of the State government relating to rural areas.

4.19 Thus, timely elections to the Panchayats will give sustainability to the local governance system, representation of weaker sections and women so as to give an adequately representative character to these bodies, the State Finance Commission will devolve financial resources to them and District Planning Committee will prepare a consolidated plan of the district. These provisions, if faithfully and effectively implemented, can give new lease of life to the PRS in the country.

## **Implementation of The Constitutional 73rd Amendment Act, 1992**

### **Conformity legislations**

4.20 It was mandatory on the part of the State Legislature to amend their Panchayats Acts in conformity with the Central legislation within a year of coming into force i.e. w.e.f. 24<sup>th</sup> April 1993. Out of the 25 States and 7 UTs, the 73<sup>rd</sup> Amendment Act was required to be enforced in 21 States and 6 UTs. This Act was not applicable to Meghalaya, Mizoram and Nagaland as these States form part of the Sixth Schedule Areas. Article 370 of the Constitution gives special status to J&K State and the provisions of the Amendment Act are not applicable in that State also. Among the UTs, it is not applicable in Delhi as it consists of urban areas only.

4.21 All the States/UTs passed their legislations in conformity with the Central Act within the prescribed time of one year from 24<sup>th</sup> April, 1993. This is a milestone in the history of the Panchayati Raj System because it established a uniform pattern of local democracy across the country. Most of the conformity legislations were, however, passed hurriedly without any serious deliberations. For example in UP, the Panchayat Act was passed so hurriedly that the opposition was not even allowed to discuss it in detail. The government pacified the opposition by arguing that if the Act was not passed by April 23, a constitutional vacuum would be created. **ANNEXURE 4.II** gives the Statewise details of the dates of passing of the conformity legislations. It will be seen there from that most of the States and UTs passed the Panchayati Raj Acts only on the eve of the prescribed date.

4.22 The Eleventh Schedule of the Constitution enumerates 29 subjects which could be entrusted to the Panchayati Raj Institutions. These could broadly be categorised as follows:-

- ii Productive activities - agriculture, animal husbandry, poultry, fishery, small scale industries including food processing, cottage industries, fuel and fodder, and irrigation;
- iii Land development programme - land reforms, soil conservation, minor irrigation, water management and watershed development, wasteland development, social forestry and grazing lands;
- iv Poverty alleviation and allied programmes for social and economic upliftment of the weaker sections;

- v Provision of civic amenities - drinking water, rural electrification, non-conventional sources of energy, rural roads, bridges, culverts, waterways, sanitation, rural housing, and health;
- vi Education and cultural activities - primary schools, adult education, technical education and libraries;
- vii Social welfare - welfare of the women and child development, family welfare, care of disabled and mentally retarded;
- viii Maintenance of community assets and public distribution system;
- ix Organisation and control of rural markets and village fairs.

### **Legislative Measures Taken By The States As A Follow-Up To The Central Legislation**

4.23 All the States and Union Territories, where this Act is applicable, have either amended their existing legislations or brought in fresh legislations in conformity with the provisions of the 73<sup>rd</sup> Constitutional Amendment. States have also constituted the State Election Commissions and Finance Commissions. The new Panchayati Raj set up in different States is generally in conformity with the provisions of the Amendment. Though the organizational set up is uniform all over the country, there are some variations in administrative arrangements which have evolved over the years.

4.24 An important measure for assessing the adequacy of the Panchayati Raj system is the extent to which different States have actually complied with the provisions of the Constitution while framing their new legislation or modifying the existing ones. An examination of the new Panchayati Raj Acts of different States clearly shows that all the States have followed the constitutional provisions in terms of organizational structure, functional mechanism and constitution of State Finance Commissions and State Election Commissions. The new Panchayati Raj system has, therefore, been imparted continuity, durability and strength. Also, the Panchayats have been vested with a wide variety of functions and responsibilities for planning and development of local areas. The States have made necessary provisions in their respective Panchayati Raj Acts in conformity with the Constitution. In actual practice, however, the Report of the Working Group of Decentralised Planning and Panchayati Raj (1997-2002) set up by the Planning Commission observed that the legislative provisions remain inoperative. For instance, although Panchayati Raj bodies have been assigned a number of functions in a number of States, they have not been provided with corresponding autonomy in terms of administrative or financial powers or staff support to perform these functions.

### **Devolution of Functions on PRIS**

4.25 Under the Panchayati Raj Acts, the State governments have been given the power to assign or withdraw any of the functions to the PRIs. The different Panchayati Raj Acts, however, differ in scope and coverage of functions to be performed by these bodies.

### **An Appraisal of PRIS in 12 States**

4.26 The Working Group on Decentralised Planning and Panchayati Raj (1997-2002) has given an appraisal of the actual devolution of power to Panchayati Raj Institutions in 12 selected States after the new Panchayati Raj system was introduced in the country.

The position in respect of these States is briefly discussed to have an idea about the extent to which Panchayats have been conferred functional and financial autonomy in their working.

### **Andhra Pradesh**

4.27 Even after the enactment of the A. P. Panchayati Raj Act in 1994, and completion of elections to the three tiers in 1995, the powers and functions, as included in the Eleventh Schedule of the Constitution, have not yet been transferred to the PRIs. These institutions have also not been endowed with adequate resources and staff support.

### **Gujarat**

4.28 The Panchayati Raj bodies have been duly constituted and vested with wide-ranging powers and functions. As a matter of fact the past achievements in this respect have been further consolidated. The democratic decentralisation process in the State of Gujarat has resulted in substantial transfer of development activities, except secondary education and cooperation, to the PRIs. Sectoral staff holding Gazetted rank have also been transferred to the PRIs. As regards funds, besides statutory grants, the State government has been providing grants to the PRIs to carry out activities entrusted to them by the government. Twenty per cent of allocation for district level schemes is given for schemes formulated by the Panchayats. Schemes have also been formulated in some parts of the State to generate financial resources at the village level. For example, rich persons of some villages have devoted huge sums of money to the Gokul Gram Programme that aims at holistic development of Gram Panchayats.

### **Haryana**

4.29 While the Panchayati Raj bodies were constituted in December, 1994, necessary follow up action in respect of devolution of powers, functions and resources is yet to be taken. While 16 functions have been transferred to the elected bodies, modalities to transfer corresponding powers, functions, staff and resources are yet to be worked out. More specifically, though some of the functions such as maintenance of community assets and services to the people have been assigned to PRIs, the corresponding funds, personnel and authority for planning and development responsibilities have not been transferred to these bodies. In general, the role and responsibilities provided for are of supervisory and monitoring nature.

### **Himachal Pradesh**

4.30 The State Government has notified the specific responsibility of each tier of the PRIs in the formulation and implementation of the programme relating to subjects allocated to them. The actual operationalization is, however, yet to take place.

### **Karnataka**

4.31 The Karnataka Panchayat system is characterised by specific devolution of powers and functions at each level. The functions to be performed by each of the three tiers have been spelt out in the Act itself. As Taluka Panchayats have been strengthened both financially and administratively, it has become an ideal unit of planning and implementation of the development programmes. Appropriate staff has also been provided to the three tiers.

## Kerala

4.32 Specific functions have been devolved on each tier of the PRIs in the State. For instance, Gram Panchayats are responsible for primary schools, public health centres, krishi bhavans and Anganwadis, village roads and selection of beneficiaries for IRDP-IAY etc. Block Panchayats are responsible for overall supervision of IAY and beneficiary oriented SCP/TSP schemes. The District Panchayat President is the chairman of the DRDA. All the staff of the institutions transferred have been placed under the respective panchayat. Separate budget has been created for PRIs, with untied grants as well.

## Madhya Pradesh

4.33 The Constitution (73<sup>rd</sup> Amendment) Act provided that its provisions will not apply to the Scheduled Areas and Tribal Areas under Fifth and Sixth Schedules. However, Government of Madhya Pradesh through the M.P. Panchayati Raj Adhiniyam, 1993 applied the provisions to whole of the State w.e.f. 25.01.94. The State Government also conducted Panchayat elections for 45 Districts, 459 Janpads and 30,922 Gram Panchayats. While conducting the Panchayat elections, seats were reserved for the Scheduled Castes and Scheduled Tribes in proportion to their population percentage. Under the three-tier Panchayati Raj System, Zila Panchayat for a District, Janpad Panchayat for a Block and Gram Panchayat for a village have been constituted in the State. Besides, a Gram Sabha has also been constituted under the Act, consisting of persons registered in the Electoral Roll for the village.

4.34 A Committee of Parliament headed by Shri Dileep Singh Bhuria had given recommendation and manner of extension of the provisions of Panchayat Raj to Scheduled Areas. The provisions of Panchayati Raj should have been extended to the Scheduled Areas as per the recommendation of the Committee so as to retain the administrative structure and unique features of Scheduled Areas undisturbed and intact. Under the newly established three-tier Panchayati Raj System in the State, the strategy of Tribal Sub-Plan with its Unit as ITDP has been diluted. The role of ITDP has not been clearly defined in the new system and it is not clear how these projects will function and prepare the plan for the Scheduled Areas/Tribal Sub-Plan Areas for the tribal people falling under the project. There are more than one Janpad Panchayat under one ITDP. Therefore, it would be difficult for the Project Officer, ITDP to prepare the Plan at the Project level and ensure proper implementation and monitoring of the programme.

4.35 Since the inception of the M.P. Panchayati Raj Adhiniyam, 1993 and its implementation, no evaluation has been done by the State Government for assessing the working of three-tier Panchayati Raj System. However, some workshops and studies were conducted by NGOs and academic institutions. On the basis of the findings of these workshops and studies and actual field visits of the Commission to various parts of the State, Commission makes the following recommendations:

- (i) **Scheduled Areas by definition have a preponderance of Scheduled Tribes and in the Panchayati Raj bodies they should be enabled to be office bearers and members of the Standing Committee. Legislation should facilitate this requirement. Otherwise, standardised package of development will continue to be pushed into these areas and in the package there may be schemes, which the tribals neither understand, nor have much use for them. This situation would cause alienation in various ways. On the other hand, adequate tribal representation in the**

**Scheduled Areas in the Panchayat Raj Bodies may bring about required changes in the strategy and content of development at the local level and ensure full involvement of the people in programme implementation.**

- (ii) The process of Multi level planning should get momentum in the PRIs**
- (iii) Necessary amendments are required to be made in the existing Land Revenue Act.**
- (iv) Since Government Departments have transferred schemes to the Panchayats relating to Rural and Tribal Development. There should be clear cut provisions for the supervision, superintendence and control of these schemes.**
- (v) Bureaucracy continues to exercise all the authority leading to lack of effective participation of the local people. The conflict is aggravated by the Ministers who shuttle the bureaucrats from one place to another in pursuit of their whims and fancies.**
- (vi) The root cause of the problem is that the XI Schedule does not clearly demarcate the functions and powers of the three -tiers of the Body.**
- (vii) The training of the Panchayati Raj functionaries about the process of self governance in the State is still unsatisfactory and it should get priority.**
- (viii) A number of women representatives have stated that power given to Panchayats is not real, and they continue to be on the mercy of bureaucrats. Suitable steps may be taken to devolve power to the elected women representatives.**

### **Maharashtra**

4.36 In Maharashtra, even historically, the Zilla Parishads (ZP) have been quite powerful with clear functions and responsibilities, equipped with sufficient staff to handle them. Zilla Parishads can take up schemes from their own funds and also implement schemes transferred with funds and staff provided by the government. There is also provision for government to requisition the staff of Zilla Parishads to carry out government schemes. The technical control is exercised by the concerned Department of the State Government. Funds are provided as ways and means advance and adjusted later. There is a separate account code for the Zilla Parishad. The ZP has a Chief Executive Officer, normally from the Indian Administrative Service who coordinates the nine departments under them. The CEO is also the Chairman of the DRDA. The Panchayat Samitis have independent functions and responsibilities. The Gram Panchayats, however, are relatively less developed and they are being strengthened only now. An innovative feature is the creation of a corpus fund consisting of 5% of the revenue earned by the Gram Panchayat from taxes, duties, fees, etc. and with facilities for Gram Panchayats to take loans from the corpus fund upto 50% of scheme cost, repayable in five years.

### **Punjab**

4.37 Devolution of powers and functions on the Panchayati Raj bodies is still in its infancy in Punjab. Although orders for transfer of powers and functions to the PRIs were

issued at the commencement of the new Act, these are yet to be operationalised. As a result, the elected bodies have not been able to involve themselves in planning and implementation of various development programmes. However, a post of Chief Executive Officer, who is of the rank of Additional Deputy Commissioner has been created with a view to strengthening the administrative set up of Panchayati Raj bodies.

### **Rajasthan**

4.38 In spite of the fact that the new Act has assigned a number of functions to the PRIs, necessary administrative support is yet to be provided to them. The Zilla Parishads continue to function with the erstwhile skeleton staff. At the Panchayat Samiti level, the staff under the BDO continue to maintain a separate identity. Other sectoral staff is yet to be transferred to the Panchayat Samiti from their parent departments. Gram Panchayats and Panchayat Samitis are involved in a limited way in the implementation of development programmes. The District Planning Committee (DPC) headed by the chairperson of the Zilla Parishad is yet to be constituted. The new Act assigns a number of activities to be performed by the different tiers of PRI. But the functions these bodies are actually performing are far less than their designated subjects. In fact, there is hardly any change from their old pattern of functional devolution.

### **Uttar Pradesh**

4.39 The Zilla Parishads have hardly any role in developmental activities. The different departmental heads in the district function independently. Although the Chief Development Officer (CDO) is the Chief Executive Officer (CEO) of the Z. P., he does not have adequate control over developmental activities in the district. Nevertheless, he coordinates the activities of various departments. The District Magistrate is the chairman of (a) the District Planning Committee; (b) the District Rural Development Agency (DRDA)

### **West Bengal**

4.40 In West Bengal certain funds have been earmarked for specific schemes to be implemented by the PRIs. Besides untied funds are also provided. For the district development plans, the District Planning Councils, headed by the chairperson of the Zilla Parishad (ZP), consolidates the plan based on the outlay of the various departments of the State Government. The chairperson of the ZP also heads the DRDA. The District Collector functions as the Chief Executive Officer of the ZP, while the various district level departmental officers are part of the different Standing Committee of ZP. A kind of hierarchy exists among the different tiers of PRIs with the higher level supervising and coordinating the activities of the lower level. Regular concurrent audit of PRIs by a separate audit machinery is a special feature of the West Bengal system. Also unique is the institution of District Councils, which are bodies headed by the leader of the opposition in the Zilla Parishad, with functions similar to the Public Accounts Committee of Parliament.

4.41 On June 3-4, 1999 a conference of State Secretaries of Rural Development, Panchayati Raj and Rural Housing was held in New Delhi. In this meeting, the status of devolution of powers and responsibilities to the PR Institutions in various States was discussed, which is as follows:

4.42 Article 243 (G), among other things, envisages devolution of powers and functions related to the 29 subjects enumerated in the Eleventh Schedule. The State Governments are required to place the functions of 29 Departments including the officials staffing them under the control of the Panchayats. Accordingly, the Government of Madhya Pradesh has transferred 22 departments with full control over finances and officials. The Government of Kerala has transferred Agriculture, Health, Veterinary and Primary Education Departments to the Panchayats. About 40,590 staff and moveable and immovable property have also been transferred to the Panchayats. The staff so transferred is under the control of the Panchayats. The Government of Kerala, however, continues to pay the salaries of the staff. The Government of Uttar Pradesh has also taken some initiatives in the recent past, full details of which are yet to be received. However, most other States have not transferred control to the Panchayats of even village level workers.

### **Finances of Panchayati Raj Institutions**

4.43 As per Article 243-H of the Constitution, State Legislatures have been empowered to enact laws;

- (i) to authorise Panchayat to levy, collect and appropriate some taxes, duties, tolls and fees;
- (ii) to assign to the Panchayat, some taxes, duties tolls levied and collected by the State Government;
- (iii) to provide for making grants-in-aid to the Panchayats from the Consolidated Fund of the State; and
- (iv) to provide for constitution of such funds for Panchayats for crediting all money received by or on behalf of the Panchayats and also the withdrawal of such money therefrom.
- (v) Article 243-I of the Constitution provides for constitution of a State Finance Commission to review the financial position of Panchayats and to make recommendations to the Governor regarding the principles governing the major issues mentioned in Article 243-H.

4.44 According to a Note prepared for the Meeting of the Consultative Committee of the Parliament attached to the Ministry of Rural Areas & Employment held on July 24, 1998 State Finance Commissions (SFCs) of Andhra Pradesh, Assam, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Punjab, Rajasthan, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal have submitted their reports to the respective State Governments. The States of Assam, Karnataka, Kerala, Madhya Pradesh, Punjab, Rajasthan, Tamil Nadu, Tripura and West Bengal have accepted most of the recommendations of the SFCs. Gujarat, Andaman & Nicobar Islands, Dadra & Nagar Haveli and Daman & Diu have received Interim Reports of the SFC on which the concerns State/UT Governments have yet to take action. As per the latest information, the SFCs of Orissa and Goa have also submitted their reports to the Government of these States.

## **Representation of SCs and STs Members at different tiers of the Panchayats**

4.45 Article 243 D of the Constitution provides for reservation for SCs and STs in all tiers of the PRS as members and chairpersons in proportion to their population. As a result, a large number of persons belonging to these groups have been elected as members at different tiers of the PRS. **ANNEXURE 4.III** presents the Statewise and tierwise representation of SCs and STs. It may be seen there from that 343792 (SC) and 240178 (ST) persons were elected as members of Gram Panchayats all over the country. At the intermediate level 18867 (SC) and 8442 (ST) were elected as members and 1904 (SC) and 1247 (ST) were elected as member of Zilla Panchayats.

4.46 It may be mentioned here that due to non-availability of data on the total number of General, SCs and STs members as well as chairpersons of these groups, a comparative analysis of their representation could not be attempted. However, as a result of operationalization of the 73<sup>rd</sup> Amendment to the Constitution, about 34 lakh persons have been elected as members and chairpersons at all the three tiers of the PRS across the country, according to the Agenda for the Chief Ministers' Conference on Panchayati Raj held on August 2, 1997. Assuming that 22½% of these persons are SCs & STs, their number is more than 7 lakhs. What is more, among the SCs/STs one third are women belonging to these Groups.

## **Training Of Panchayat Members And Functionaries**

4.47 In the wake of the 73<sup>rd</sup> Amendment, an estimated 34 lakh elected representatives came into PRIs as members or Chairpersons. Of them, an overwhelming majority consists of new entrants, particularly from the SCs and STs and from women as a direct result of the provision of reservation of seats for them. The Constitution has cast a heavy responsibility on the Panchayats to formulate, execute and monitor various programmes of economic development and social justice. The elected representatives will, therefore, be required to play a major role in developmental administration for which they need appropriate orientation and training. The success of the Panchayati Raj System will depend largely on the extent to which the system is able to respond to the expectations of the people. This, in turn, would depend on efforts made for building up capacities and capabilities of the elected representatives to effectively perform the functions assigned to them.

4.48 Under the new dispensation, the Panchayati Raj Institutions are required to play a central role in (a) preparation of plans for economic development and social justice and (b) implementation of these plans and schemes. Accordingly, the elected representatives will have to play a far more active and constructive role than what they have been doing in the past. To enable them to do so, the elected leadership will have to be provided with adequate knowledge and skills in the management of rural development activities. It is from this standpoint that a time bound programme of training and orientation of the local level leaders is considered a pre-requisite for the success of Panchayati Raj Institutions.

4.49 The Report of the Working Group on Decentralised Planning and Panchayati Raj for the 9<sup>th</sup> Plan (1997-2002) has observed that: "Training has all along been given a prime place in the strategy for overall growth and development of Panchayati Raj Institutions and a network of training institutions from the national level to Block and Village levels were established over the years. Initially, these institutions played a vital role in skill development of the staff associated with Panchayati Raj Institutions. But with the gradual

decline of PRIs, their importance and contribution also diminished over time. These institutions suffered, in almost all States, due to paucity of funds and absence of appropriate policy in respect of human resource development of Panchayati Raj personnel and absence of firm direction with regard to their utilisation. The result was that these institutions became dormant, having either skeleton staff or the staff drawn on deputation from non-academic departmental cadres of the State. Consequently, these institutions reduced their activities to the bare minimum with rather insignificant impact.”

4.50 The existing institutional set up comprises the National Institute of Rural Development, Hyderabad, which is an apex training institution in the field of rural development and the 23 State Institutes of Rural Development. At the lower levels, 110 Gram Sevak Training Centres and other Training Institutions organise programmes for the village-level functionaries associated with rural development and Panchayati Raj.

4.51 **ANNEXURE 4.IV** depicts State wise the total number of elected representatives, the number trained as well as the total number of officials involved in various areas of rural development and the number of them who have been trained upto 1997. It may be seen from this Annexure that the maximum number of elected representatives ( 84.96%) were trained in Haryana followed by Rajasthan ( 48.78%). The number of elected representatives trained in Uttar Pradesh was 1.03%. In some States like Goa no elected representative has been trained.

4.52 However, information is not available as to how many of those trained were SCs and STs. Given that there is a strong need for exposure of SCs, STs and women belonging to these groups to the provisions of Panchayati Raj System, it is very important that the training facilities for these persons be expanded and strengthened.

### **Political Empowerment of SCs and STs under Panchayati Raj: An Assessment**

4.53 Elections to the Panchayats were held in most of the States either in 1995 or in 1996. In these elections, a large number of SCs and STs including women belonging to these Groups were elected as members and chairpersons. Not much data and information are available to assess their performance in terms of the work they have performed and the problems they have encountered as elected representatives. However, whatever examples are available, indicate that, due to strong caste prejudice prevailing in rural areas, SCs and STs have been facing problems in performing their functions in the Panchayats. Examples from some of States given below bear this out.

#### **Madhya Pradesh**

4.54 In Madhya Pradesh, the Institute of Social Science has conducted a study on “Panchayat at work and what it means for the oppressed?” This study found that Draupadi Bai, a woman Panchayat member of Sarvota Village was stripped naked in front of Sarija Block Development Officer of Raigarh District on 9<sup>th</sup> Nov., 1995. Sarman Ahiwar an Upasarpnach of Karki Village was tortured. Shri Muna Lal, Panchayat member of Barbathpur village of Raisen District had been beaten up.

4.55 Recently (The Hindu 21, June 1998) P. Sainath has written about two Dalit Sarpanchs of Phuter and Pipra Gram Panchayats of Tikamgarh District of Madhya Pradesh. In one case, Ms. Gundiyabai, Ahirwar, Sarpanch of Pipra Gram Panchayat was

not allowed to hoist the National Flag on August 15, 1998 by her Upasarpnach and some others, all of them belonged to higher castes. These two Dalit Sarpanches wanted to develop their villages. But they were not allowed by the feudal leaders of the area. Perhaps due to the report of Sainath, the Chief Minister of M. P. directed the officials to ensure that Gundiyabai would unfurl the National Flag at the District headquarter on the Independence Day of 1999.

4.56 On the other hand the example of Sarpanch, Kesbai is worth mentioning because this Dalit Sarpanch waged a war against criminal elements in her village. She was not only able to win the support of villagers but of the district officials also ( Free Press, Indore 14.10.1994)

### **Uttar Pradesh**

4.57 In some cases, reservation for women has become a farce in the sense that in a village where the Presidentship of the Gram Panchayat was reserved for SC women, the former President of the Gram Panchayat who was a Brahmin married a Scheduled Caste woman and got her elected as the Chairperson ( Roma Devi 1996).

4.58 Nimala Devi, 32, is a Zilla Parishad member in Chandauli district of Uttar Pradesh. She won the last ZP elections with the highest number of votes in the State. Yet, she remains an untouchable to the upper strata of the society because she was born a Dalit. She explains her lot with rancour. "The victory would have been real if my supporters and co-workers had accepted the sweets I offered to them on my winning the elections. They didn't because I am a Dalit. It made me realise that even after all these years of political activism I continue to carry the 'untouchable' tag. What really hurts is that people come to me with their problems, seek my help, vote for me and yet consider me an untouchable." ( Panchayat Raj update, January 1999)

### **Rajasthan**

4.59 Recently, Ajmer Anchal Mahila Jan Adikar Samiti, Ajmer, Uthpedan Verodhi Mahila Jan Adikar Samiti, Lok, Bhilwada, Dalit Aadayan ,Sanghthan, Ajmer has brought out case studies of nine Dalit Sarpanches from Rajasthan. These case studies reveal that women Dalits have been tortured and insulted on the ground of their caste. No Confidence Motion were also brought against some of them in the Gram Panchayat on flimsy grounds. It is also found out that the rural elite ( higher castes) and the local bureaucracy worked together to make the political reservation to SCs and STs woman ineffective . But these women fought the struggle with courage and were also able to achieve some constructive work in their villages. Some of them indicated their desire to contest elections for Sarpanches next time also despite the harassment and discrimination they were being subjected to.

4.60 In another Study the Institute of Social Science also found out that worst victims of No Confidence Motions in Gram Panchayats were Dalit and OBC women Sarpanches. The allegation against the women chairpersons in most of cases were based on deep rooted caste prejudices. To quote " Some of the politically and economically dominant caste groups who had to give up control over the Panchayats to the OBC/Dalit women, adopted the medium of no-confidence motion to stage a come back to positions of power to protect their vested interests. To get the required number for a two-third majority is not a problem for them". ( Panchayati Raj Update, March 1998)

## **Haryana**

4.61 Susheela Kaushik's study of 20 SC/ST elected representative from 12 Blocks of Haryana reveals that although most of them were illiterate and poor, they found themselves more aware about Panchayats after getting elected as representatives of the Panchayats. These women although feeling a social distance between them and the general category members were becoming more and more articulate day by day due to the opportunity they got to express themselves under the new Panchayati Raj System.

## **Tamil Nadu**

4.62 On June 30, 1997 persons belonging to the upper castes brutally murdered 6 Dalit persons including the President and Vice-President of the Melavalvu village Panchayat of Melur Taluk of Madurai district in broad day light. The reason of the massacre was the fact that the upper castes were unable to face "encroachment" by Dalits on what they had traditionally considered their domains.

4.63 Such case studies and reports, although few in number and also pertaining only to some States, indicate that neither respect due to the office they hold in the PRIs nor the respect due to them as human beings is given to Dalits in the existing Panchayati Raj System. The elected representatives are almost without power if they belong to 'lower castes'. Officials who are supposed to help elected representatives in their functioning, either succumb to power politics at the local level or just absent themselves from the village concerned. Despite such deprivation, the positive aspect is that the Panchayats have provided an opportunity to the weaker sections to interact with the overall social system through the institution of decentralised governance which the PRIs constitute. Although Gram Sabhas or Gram Panchayats continue to be involved in manipulative politics to the detriment of SCs and STs, they have also provided a forum for Dalits to ventilate their grievances and to grapple with the socio-political problems of decentralised governance.

## **Provisions of the Panchayat ( Extension to the Scheduled Areas) Act, 1996.**

4.64 Article 243 M of the Constitution prohibits extension of the provision of the 73<sup>rd</sup> Constitutional Amendment Act 1992 to the Scheduled Areas referred in Article 244 Clause (1) and (2). But, Article 243 M 4 (b) empowers Parliament to make laws to extend the provisions of the Act to the Scheduled Areas, subject to certain conditions. In view of judicial verdicts that automatic extension of the 73<sup>rd</sup> Amendment Act to tribal areas is unconstitutional and due to demands made by tribal leaders, a need was felt for extending the provision of Part IX of the Constitution to the Scheduled Areas. A High Level Committee was constituted on June 10, 1994 under the chairmanship of Shri. D. S. Bhuria with the objective of recommending how the Scheduled Areas could be covered under the provision of the 73<sup>rd</sup> Amendment. The Bhuria Committee submitted its report on January 17, 1995. Its main recommendations were:

- (i) The Panchayat in Scheduled Area should aim at combating and preventing the exploitation of tribals and building up the political, economic and social strength of the tribal communities.
- (ii) Panchayats should have powers on the pattern of the District Councils in the Sixth Schedule. This includes power of legislation on the use of land, management of forests, use of water resource, inheritance of property,

co-operatives and social customs, regulation and control of money lendings and excise policy.

- (iii) The Gram Sabha should have the power to enforce customary rights on natural resources, responsible for safeguarding the rights of tribals. They should also execute small work of development and regulate manufacture, sale and consumption of intoxicants .
- (iv) Land in Scheduled Area should be acquired with the consent of the Gram Sabha and after making provisions for alternative livelihood for the families who would be displaced because of the acquisition of their land.
- (v) There should be an embargo on sale of tribal land and land should be transferable only to members of Scheduled Tribes, irrespective of whether the transferor is a member of the Scheduled Tribes or not.
- (vi) Gram Panchayats and the Intermediate Panchayats would, under such directions as may be given by the District Councils, prepare development plans and undertake execution of schemes for rural development.
- (vii) The role of the functionaries of departments like police, excise, forest should be minimal. Government servants posted in these areas should be under the control of the District Councils.
- (viii) The traditional tribal bodies should be recognised to enable them to continue to function. There should be no interference in cases under adjudication by tribal bodies.
- (ix) The police should take cognizance of complaints in respect of matters within the jurisdiction of the Gram Sabha only when the Gram Sabhas resolve for it. Professional law officers posted in these areas should be trained in the tribal customary laws.
- (x) Tribal Plan Funds and other funds under different schemes should be placed at the disposal of the Panchayats.
- (xi) Majority of Scheduled Tribes should be ensured in Panchayats. The Chairpersons of these bodies must be a person belonging to the Scheduled Tribes.
- (xii) For the purpose of self-governance, the Panchayats in the Scheduled Area should have powers on the pattern of the district council of the Sixth Schedule. Whenever Panchayats in the Scheduled Areas have to be dissolved in a particular set of circumstances, these can only be dissolved by the order of Governor of the State.

4.65 On the basis of above, it may be said that the overall emphasis of the Committee was on institutionalising participatory democracy at local level in consonance with the customary laws, social practise and traditional management of community resources.

4.66 Accepting the recommendations of the Committee, a Bill to amend Constitution was introduced in Parliament and passed on December 19, 1996. It subsequently got the President's assent on December 24, 1996 and has become part of the Constitution w.e.f that date. According to this Act (hereafter referred to as "the Extension Act") the 73<sup>rd</sup> Amendment has been extended to areas mentioned in clause (2) of Article 244 of the

Constitution. As per this Act, the existing provisions of the concerned State Panchayat Acts have to be amended by the State Legislatures within one year i.e. by December 24, 1997.

### **Distinctive features of the Act**

4.67 This Act (**ANNEXURE 4.V**) extends Panchayats Act to the tribal areas of eight States namely Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Orissa and Rajasthan and aims at enabling tribal communities to control over their own destiny and to preserve and conserve their traditional rights over natural resources. Following are some of the distinctive features of the Extension Act.

- (i) Any legislation on the Panchayats in Vth Scheduled Area shall be in consonance with the customary law, social and religious practices and traditional management practices of the community resources of its inhabitants.
- (ii) Powers vested in Gram Sabha for
  - (a) Ownership of Minor Forest Produce
  - (b) Approval of Development Plans
  - (c) Selection of beneficiaries under various programmes
  - (d) Be consulted on land acquisition
  - (e) Manage minor water bodies
  - (f) Control minor minerals
  - (g) Regulate/prohibit sale of intoxicants
  - (h) Prevent alienation of land and restore unlawfully alienated land of STs
  - (i) Manage Village Markets
  - (j) Control money lending to STs
  - (k) Control institutions and functionaries in all social sectors
  - (l) Give utilisation certificate of funds used for the Projects and Programmes of social and economic development etc. to the Village Panchayats.
- (iii) Reservation of seats for the Scheduled Tribes at all tiers of the PRS shall not be less than half of the total number of seats. Reservation for other communities indicated in Part IX of the Constitution shall be in proportion to the population of these communities.
- (iv) The Chairpersonship of all levels of the PRS shall be reserved for the STs.
- (v) In case the STs do not have representation at intermediate or district level Panchayats, the State Government shall nominate such unrepresented Scheduled Tribes, but such nomination should not exceed one-tenth of the total elected members of the Panchayats.
- (vi) State Legislatures, while devolving powers and authority to Panchayats to enable them to functions as institutions of self-government, should ensure

that the Panchayats at the higher level do not assume the powers and authority of any lower level Panchayats or the Gram Sabhas.

- (vii) The State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing the arrangement in the Panchayats at district level. (Copy of the Act is enclosed at ANNEXURE 4.V)

### **Implementation of the Provisions of the Panchayats ( Extension to the Scheduled Areas ) Act, 1996**

4.68 Within a year of the Act coming into force on 24.12.96, the conformity legislations of the States were required to be amended. All the States covered by the Extension Act except Bihar have passed their legislations on the subject. Not much information is, however, available on the issues connected with the Extension Act having a bearing on the lives of STs in these 8 States. Not much literature is also available on the implementation of the Extension Act on the basis of which a detailed assessment could be carried out. Besides, confusion still prevails about operationalising various provisions of the Act e.g. those pertaining to Minor, Forest Produce etc., at grassroots level. However, available information reveals the following about the implementation of the Extension Act:

- (i) According to the Extension Act, "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 re-settling or rehabilitating persons affected by such project in the Scheduled Areas." But the Report based on the visit of a Team of the Council for Social Development to Rayaguda and Bhubaneswar on 11-18 January 1999 revealed that the State Government of Orissa has acquired tribal land for an Alumina Project in Raygada district without even consulting the Gram Sabha let alone securing its agreement.

The extent to which some of the bureaucrats appreciate the needs and realities of the general population may be gauged from the following comments made by Sh. J. P. Vyas, Collector of Bastar on a proposal to set up a steel plant "There has never been any precedent of informing the people beforehand about their impending displacement. If the people were consulted they might refuse. And then where would the Government be? In any case, he argued, the people were ignorant and once the experts had decided where a project was going to be located, there was nothing more to be said ..... Mobility is a sign of progress, he said ....as to the demand for shares in the factory to be given to those displaced by it. This is a very wrong demand and totally alien to their culture. It will create possessiveness as tribals are very selfless people." (Savyasaachi, 1998)

- (ii) The preliminary results of a study undertaken by the Society for Participatory Research in Asia and its Network Collaborators in the Jharkhand area covering parts of West Bengal, Madhya Pradesh and Bihar States in order to compare the functioning of the Gram Sabha in Scheduled and Non- Scheduled Areas, indicates the following:

“ In the newly formed Gram Sabhas, the leadership has been taken by young and educated, and the elders have by and large been by-passed in these Gram Sabhas. The formation of the Gram Sabha has been through consensus and all the villagers have participated and contributed for the Pathalgadi (planting a stone with the powers of the Gram Sabha). The Gram Sabhas are also acting as pressure groups at the Block level to get benefits of development programmes. Meetings are held regularly and the minutes of the meetings are also kept in villages. However, there seems to be ambiguity regarding the power conferred under the Extension Act because the terms “Gram Sabhas” & “Pranchayats” have both been used at different places in the Act, thereby not giving clear direction to the State Legislatures.”

## **Problems of Implementation of the Extension Act**

4.69 A note prepared for a meeting of the Consultative Committee of Parliament attached to the Ministry of Rural Areas and Employment held on July 24, 1998 identified the following problems with both certain Central and State Laws .

- (a) Definition of Minor Forest Produce: The Indian Forest Act, 1927 defines timber as including within its definition, bamboo as well as cane. The Ministry of Environment and Forests, however, defines Minor Forest Produce to exclude timber. While doing so, they have adopted the definition of timber as given in the Indian Forest Act, 1927 according to which timber includes not only trees but also bamboo and cane. In most States, tribals have been traditionally depending on bamboo and cane for their livelihood. However, for the last many years, Forest Corporations and Forest Departments have prevented tribals from access to bamboo and cane while at the same time giving these to private industry at highly concessional price. In many cases, tribals have been driven to desperation on account of this policy of State Forest Departments. It is felt that the definition of timber in the 1927 Central Act is neither scientific nor equitable. It is a colonial definition and goes against the spirit of the provisions of the Extension Act.
- (b) There are also issues arising from the interpretation by the Ministry of Environment and Forests of the intention of Parliament in vesting of ownership of Minor Forest Produce in Gram Sabhas. The proposals made by the Ministry of Environment and Forests interpret the intention of Parliament as not of giving ownership to individuals but of making available to the Gram Sabhas, residual profits of State Forest Corporations/Federations. Thus, according to the Ministry of Environment and Forests, State Forest Corporations/Federations will continue to trade in Minor Forest Produce and if there is any surplus, that surplus will be given to the Gram Sabhas. The continued application of the Forest Produce Trade Nationalisation Acts of the States of Maharashtra and Gujarat contravene the provisions of the Extension Act under which the control over Minor Forest Produce is vested in Gram Sabha.

4.70 The Ministry of Rural Areas & Employment has already taken up these issues with the Ministry of Environment and Forests. The matter was also referred to the

Ministry of Law for advice. The Ministry of Law have advised that the definition adopted by the Ministry of Environment & Forests regarding Minor Forest Produce is not binding. The Ministry of Law have stated that the definition given in one statute is for effectuating the provisions of the statute and not for effectuating the provisions of another statute. They have also pointed out that it is dangerous to interpret one Act to travel beyond the same and apply definitions of other Acts, except those of the General Clauses Act, 1897. The Ministry of Law have also pointed out that the Indian Forest Act, 1927 does not define Minor Forest Produce explicitly. Under this law, there are mainly two components in the definition of "Forest Produce," namely, Timber and all produce other than timber. Further, the Extension Act nowhere says that the definition of the term 'Forest Produce' given in the India Forest Act, 1927 shall apply to the said Act.

4.71 In so far as interpretation of ownership is concerned, the Law Ministry has been unequivocal in its opinion that no Ministry can circumscribe or limit the scope of ownership vested in the Panchayats in the Extension Act.

4.72 The Conference of Secretaries of Rural Development and Panchayati Raj held on 3-4 June 1999, identified the following major issues in the implementation of the Extension Act.

- i. Whether all State Subject Laws have been amended to bring them in consonance with Extension Act.
- ii. Extension Act is not an additional law, but is in supersession of all existing laws on the subject. Whether this has been brought to the notice of all concerned.
- iii. Are the amended State laws in conformity with the Central Act.
- iv. What have the State Governments done to implement the legislation.
- v. Have the people in Schedule V Area been informed of the changes in the legislation.
- vi. Have they been made aware of their rights over natural resources.

4.73 In view of the above, it has become essential to urgently amend various Acts of the State and Central Governments which have a bearing on the Extension Act. A comprehensive review of various Acts and laws is needed to enable the tribals to be able to protect and preserve their traditional values, resources and environment.

## **Recommendations**

4.74 The 73<sup>rd</sup> Amendment to the Constitution and its Extension to the Vth Scheduled Areas is a watershed in decentralised governance, planning and development. Reservation to SCs and STs including women belonging to these Groups has enabled them to participate in execution and monitoring of plans for economic development and social justice. But to make SCs' and STs' participation in Panchayats more effective and assertive, following recommendations are made:

- (i) **Article 243 G of the Constitution empowers the State Legislatures to endow Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-governmece and such law contains provisions for the devolution of powers and**

responsibility to Panchayats at appropriate level with respect to : (a) preparation of plans for economic development and social justice (b) implementation of such plans and schemes as may be entrusted to them, including those in relation to the matters listed in the Eleventh Schedule. This is the heart and soul of the entire scheme of decentralisation. Although the term “institution of self-government” is not used in the Act, the expression is well-understood. Only those institutions which fulfil three basic conditions viz (a) institutional existence, i.e., decisions are taken by the people’s representatives, (b) institutional capacity, i.e., the institution is empowered to make rules independently and ( c ) financial viability, i.e., it is sufficiently empowered to raise financial resources to meet its responsibilities, can qualify for being called “institutions of self government.” For this purpose there is need to define clearly functions at different tiers keeping in view the cardinal principle that what can be done at a particular level should be done at that level only. Hence, there is a need to evolve a separate list of functions for the Panchayat which may be termed the local list. For performing assigned functions effectively the Panchayats should also enjoy financial and administrative autonomy. In other words, they should have adequate financial resources at their disposal and required personnel for undertaking planning and implementation of development programmes.

- (ii) Gram Sabha presents direct democracy at grassroots level. It provides an opportunity to each and every member of Gram Panchayats to participate in preparing and monitoring the implementation of plans for economic development and social justice. It is generally found that people are not participating in Gram Sabha meetings due to lack of enthusiasm which is largely due to the powers actually vested with the Gram Sabha being inadequate and marginal. If the Gram Sabha meetings are to be viewed as a useful forum by the villagers, it would be necessary to vest in the Gram Sabha the power to sanction and disburse benefits in open meetings, to approve and sanction plans prepared by the Panchayat. Meetings of the Gram Sabha may be organised at such a time of the day when women and weaker sections are not busy either at home or in wage employment.
- (iii) As mentioned earlier, there are more than 7 lakh elected representatives from SCs and STs including women ( about 2.50 lakhs) belonging to these Groups. It is, therefore, necessary to impart requisite knowledge and skill about the management of Panchayat affairs to its members, particularly the weaker sections. Moreover, government officials dealing with programmes and subjects transferred to the PRIs also require sensitisation and reorientation. The Ministry of Rural Development, as a nodal Ministry at the Centre and the State Govts should formulate such training modules which should also include the constitutional safeguards provided to SCs and STs. In this connection, necessary training infrastructure should be created at National, State, District and Sub-District levels. Awareness

about constitutional safeguards particularly POA Act 1989 and PCR Act, 1955 is necessary to enable SCs and STs to protect themselves from atrocities from the higher castes. Besides, a multi-media approach consisting of the preparation of : (a) Attractively produced Self- learning print materials; (b) Audio and video programmes and (c) training programmes to the elected representatives of the Panchayats.

- (iv) To make the Provisions of Panchayats Act ( Extension to Scheduled Areas) Act 1996, more effective for development of the Scheduled Areas, Central and State Laws, like Forest Conservation Act, State Excise Act, Minor Minerals Act, Money Lenders Act, Land Acquisition Act etc., having bearing on the Extension Act should be suitably amended.
- (v) A comprehensive data base has to be developed on SCs, STs including women (both national and state levels) covering their number, socio-economic profile and their performance as members and chairpersons of the PRIs . On the basis of such database a comprehensive policy may be evolved for making their political reservation in decentralised governance more effective.
- (vi) Voluntary organisations and SCs and STs Associations should also come forward to support SC and ST elected representatives by conducting Training and Awareness Building camps, seminars, conferences and workshops etc. Central and State Governments should provide liberal grants to the NGOs and Association for this purpose.

# THE CONSTITUTION (SEVENTY-THIRD AMENDMENT) ACT, 1992

(20<sup>TH</sup> April, 1993)

## An Act further to amend the Constitution of India

Be it enacted by Parliament in the Forty-third Year of the Republic of India as follows:-

**1. Short title and commencement.**-(1) This Act may be called the Constitution (Seventy-third Amendment) Act, 1992.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Insertion of new Part IX.**-After Part VIII of the Constitution, the following Part shall be inserted, namely:-

### PART IX

#### THE PANCHAYATS

**243. Definitions.**- In this Part unless the context otherwise requires,-

- (a) “district” means a district in a State;
- (b) “Gram Sabha” means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;
- (c) “intermediate level” means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;
- (d) “Panchayat” means an institution (by whatever name called ) of self-government constituted under Article 243-B, for the rural areas;
- (e) “Panchayat area” means the territorial area of a Panchayat;
- (f) “population” means the population as ascertained at the last preceding census of which the relevant figures have been published;
- (g) “village” means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

**243-A. Gram Sabha.**-A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide.

**243-B. Constitution of Panchayats.**-(1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause(1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

**243-C. Composition of Panchayats.**-(1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats: Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation-

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the member of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within-

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of -

(a) a Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide, and

(b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

**243.D. Reservation of seats.**-(1) Seats shall be reserved for-

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State.

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of office of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

**243-E. Duration of Panchayats etc.**-(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed-

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.

**243-F. Disqualifications for membership.**-(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat-

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned.

Provided that no persons shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

**243-G. Powers, authority and responsibilities of Panchyats.**-Subject to the provisions of the Constitution, the Legislature of a State may, by law, endow the Panchyats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to-

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

**243-H. Powers to impose taxes by, and Funds of, the Panchayats.**-The Legislature of a State may, by law,-

(a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

(c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom

as may be specified in the law.

**243-I. Constitution of Finance Commission to review financial position.**-(1) The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992 and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to-

(a) the principles which should govern-

(i) the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;

(ii) the determination of the taxes, duties, tools and fees which may be assigned to, or appropriated by, the Panchayats;

(iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the Panchayats;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.

(2) The Legislature of a State may, by law, provide for the composition of the Commission, the qualifications which shall be requisite for appointment as members thereof and the manner in which they shall be selected.

(3) The Commission shall determine their procedure and shall have such powers in the performance of their functions as the Legislature of the State may, by law, confer on them.

(4) The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

**243.J. Audit of accounts of Panchayats.-** The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts.

**243-K. Elections of the Panchayats.-** (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine;

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause(1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

**243-L. Application to Union Territories.-** The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under Article 239 and references to the Legislature or the Legislative Assembly of a State were references, in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union Territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

**243-M. Part not to apply to certain areas.**-(1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause(1), and the tribal areas referred to in clause(2), of Article 244.

(2) Nothing in this Part shall apply to-

(a) the State of Nagaland, Meghalaya and Mizoram;

(b) the Hill Area in the State of Manipur for which District Council exist under any law for the time being in force.

(3) Nothing in this Part-

(a) relating to Panchayats at the district level shall apply to the hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force.

(b) Shall be constituted to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.

(4) Notwithstanding anything in this Constitution,-

(a) the Legislature of a State referred to in sub-clause(a) of clause (2) may, by law, extend this Part to that State, except the areas, if any, referred to in clause(1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause(1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

**243-N. Continuance of existing laws and Panchyats.**-Notwithstanding anything in this Part, any provision of any law relating to Panchayats in force in a State immediately before the commencement of the Constitution (Seventy-second Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:

Provided that all the Panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

**243-O. Bar to interference by courts in electoral matters.**-Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State;

**3. Amendment of Article 280.**- In clause (3) of Article 280 of the Constitution, after sub-clause(b), the following sub-clause shall be inserted, namely:-

“(bb) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;”

**4. Addition of Eleventh Schedule.**—After the Tenth Scheduled to the Constitution, the following Schedule shall be added, namely:—

### **ELEVENTH SCHEDULE**

(Article 243-G)

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.

### Statewise Distribution of Dates of the New Conformity Acts

States and UTs	Date of the New Act
Andhra Pradesh	21-04-94
Arunchal Pradesh	18-04-94
Assam	02-04-94
Bihar	23-04-94
Goa	09-07-94
Gujarat	26-08-93
Haryana	22-04-94
Himachal Pradesh	23-04-94
Jammu & Kashmir	Part IX of the Constitution is not applicable to the State
Karnataka	30-04-93
Kerala	23-04-94
Madhya Oradesh	25-01-94
Maharashtra	22-04-94
Manipur	23-04-94
Meghalaya	Part IX of the Constitution is not applicable
Mizoram	
Nagaland	
Orissa	1-11-93 (ZP) & 1993 ( GP & PS)
Punjab	21-04-94
Rajasthan	23-04-94
Sikkim	11-10-93
Tamil Nadu	24-04-94
Tripura	07-11-93
Uttar Pradesh	22-04-94
West Bengal	22-04-94
Andaman & Nicobar Islands	23-04-94
Chandigarh	23-04-94
Dardra & Nagar Haveli	23-04-94
Delhi	Part IX of the Constitution being made applicable
Daman & Diu	23-04-94
Lakshadweep	23-04-94
Pondicherry	19-04-94

Source: Panchayati Raj Development Report 1995, Institute of Social Science, New Delhi. 1996 .

## Elected SC/ST Members at different level of the Panchayats

As on May 31, 1998

S. No.	States/ UTs	G. P. Members			P. S. Members			Z. P. Members			% of SC/ST Population	
		SC	ST	Total	SC	ST	Total	SC	ST	Total	SCs	STs
1.	Andhra Pradesh	38674	15304	53978	789	803	1592	128	66	194	15.93	6.31
2.	Arunchal Pradesh	-	5733	5733	-	1205	1205	-	77	77	0.47	63.66
3.	Assam	Election due									7.4	12.83
4.	Bihar	Election due									14.56	7.66
5.	Goa	-	-	-	-	-	-	-	-	-	2.08	7.66
6.	Gujarat	4739	9550	14289	279	561	840	57	114	171	7.41	14.92
7.	Haryana	11793	-	11793	519	-	519	64	0	64	19.75	-
8.	H. Padesh	3824	672	4496	289	74	354	46	14	60	25.34	4.22
9.	J & K	-	-	-	-	-	-	-	-	-	8.3	-
10.	Karnataka	17918	7575	25993	601	169	770	165	47	212	16.38	4.22
11.	Kerala	1256	136	1392	179	17	196	30	4	34	9.92	1.1
12.	M. P.	64997	132638	197635	1345	2780	4125	143	267	410	14.54	23.37
13.	Maharashtra	40766	35150	75916	409	453	862	206	232	438	11.1	9.27
14.	Manipur	35	44	79	-	-	-	1	2	3	2.02	34.41
15.	Meghalaya										0.51	85.53
16.	Mizoram										0.1	94.75
17.	Nagaland										-	87.9
18.	Orissa	7394	11823	9217	478	809	1287	85	131	216	16.2	22.21
19.	Punjab	-	-	-	338	-	338	84	-	84	28.31	-
20.	Rajasthan	17902	15616	33518	943	804	1747	177	154	331	17.29	12.44
21.	Sikkim	40	298	338	-	-	-	6	40	46	5.93	22.36
22.	Tamil Nadu	18886	686	19572	1358	41	1399	137	3	140	19.18	1.03

73<sup>rd</sup> Constitution Amendment Not Applicable

23.	Tripura	1237	704	1941	48	26	74	15	7	22	16.36	30.95
24.	U. P.	101939	867	102806	9126	135	9261	389	7	396	21.04	0.21
25.	West Bengal	13644	3319	16963	2354	582	2936	200	50	250	23.62	5.6
26.	A & N Islands	-	-	-	-	-	-	-	-	-	-	9.54
27.	Chandigarh	-	-	-	-	-	-	-	-	-	16.51	-
28.	D & N Haveli	3	103	106	-	-	-	-	11	11	1.97	78.99
29.	Daman & Diu	1	17	18	-	-	-	1	3	4	3.83	11.54
30.	NCT of Delhi	-	-	-	-	-	-	-	-	-	19.05	-
31.	Lakshadweep	-	79	79	-	-	-	-	22	22	-	93.15
32.	Pondicherry	-	-	-	-	-	-	-	-	-	16.25	-
	Total	343792	240178	583980	18867	8442	27309	1904	1247	3151	India 16.73	7.95

Source: Panchayati Raj Update, Institute of Social Science, August 1998.

## Training Of Panchayats Functionaries

S.No.	Name of the State	Total Number of Elected Representatives	Number of elected representatives trained	%age of trained representatives to total elected representatives	Total No. of officials	No. of official trained	%age of trained officials to total officials	Remarks
1	2	3	4	5	6	7	8	9
1.	Andhra Pradesh	222645	42.101	18.91	13060	1046	8.00	
2.	Assam	30372	-	-	6404	NA	-	
3.	Bihar	Nil	Nil	-	Nil	Nil	-	
4.	Goa	1411	Nil		Nil	Nil		Government has decided to impart extensive training to all the elected members in collaboration with the Goa University.
5.	Gujarat	141312	7702	5.45	13710		Nil	Training imparted, number is not given
6.	Himachal Pradesh	26022	5759	22.13	Not	1127	Nil	Lack of infrastructure and finance have been hampering the progress of training. State Govt. has requested the Centre for assistance in this regard.

7.	Jammu & Kashmir								Training of Panchayats shall be taken up after the elections.
8.	Karnataka	84886	25540	30.08					Training for the rest would start after getting financial assistance from the Centre.
9.	Kerala	14248	3305	23.20					Officials details are not given.
10.	Madhya Pradesh	4,84,394	45,000	9.29	37097	17488	47.14		
11.	Maharashtra	317460	45,000	14.18	NA	NA			State Govt. has approached to the Centre for getting Rs.119.75 Lakhs assistance for conducting training for elected persons
12.	Manipur	1783	78	4.37	Nil	Nil	-		-
13.	Orissa	42452	Nil	-	Nil	Nil	-		State has prepared the action plan.
14.	Punjab	93280	3933	4.21	Nil	Nil	-		Still going on
15.	Rajasthan	119687	58393	48.78	8968	4064	45.32		Still going on
16.	Sikkim								Training and Workshops have been regularly holding

17	Tamil Nadu	Nil	13352	-	Nil	Nil	-	Training going on
18	Tripura	5687	488	8.58	566	470	83.04	Training going on
19	Uttar Pradesh	857757	8806	1.03	141060	715	0.50	A comprehensive programme of training have been finalised.
20	West Bengal	157964	76028	48.13	Nil	2915	36.52	
21	Haryana	63049	53571	84.96	Nil	Nil	-	Action Plan for 9 <sup>th</sup> Plan not prepared
22.	A&N Islands	810	162	20.0	115	42	36.52	Training to Sarpanch, Up-Sarpanch will be imparted in August, 1997.
23.	Chandigarh	126	Nil	-	11	Nil	-	Provision has been made in 9 <sup>th</sup> Plan for training
24.	Pondicherry	Nil	Nil	-	100	All Supeervisory level functionaries have been trained.	-	Training will be imparted to Panchayats after the elections.

Source: State-wise information on Panchayati Raj, Government of India, Department of Rural Development, August, 1997

Note: Percentages in cols, 5 & 8 have been worked out

# MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 24<sup>th</sup> December, 1996/Pausa 3,1918(Saka)

The following Act of Parliament received the assent of the President on the 24<sup>th</sup> December, 1996 and hereby published for general information:-

## THE PROVISIONS OF THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996

No. 40 OF 1996

(24<sup>TH</sup> December, 1996)

**An Act to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas.**

Be it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:-

1. This Act may be called the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996.
2. In this Act, unless the context otherwise requires, "Scheduled Areas" means the Scheduled Areas as referred to in clause(1) of article 244 of the Constitution.
3. The provisions of Part IX of the Constitution relating to Panchayats are hereby extended to the Scheduled Areas subject to such exceptions and modifications as are provided in section 4.
4. Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely:-
  - (a) 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.
  - (b) 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,
  - (c) 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;
  - (d) 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;
  - (e) every Gram Sabha shall-
    - (i) approve 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;

- (ii) be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;
- (f) 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 referred to in clause(e);
- (g) 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 level shall be reserved for the Scheduled Tribes;
- (h) 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 the Panchayat;
- (i) 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 re-settling 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;
- (j) planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;
- (k) the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas;
- (l) 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.
- (m) 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-
  - (i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;
  - (ii) the ownership of minor forest produce;
  - (iii) 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;
  - (iv) the power to manage village markets by whatever name called;

- (v) the power to exercise control over money lending to the Scheduled Tribes;
  - (vi) the power to exercise control over institutions and functionaries in all social sectors;
  - (vii) the power to control over local plans and resources for such plans including tribal sub-plans;
  - (n) 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 Panchayat at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha;
  - (o) the State Legislature shall endeavor 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.
5. Notwithstanding anything in Part IX of the Constitution with exceptions and modifications made by this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas immediately before the date on which this Act receives the assent of the President which is inconsistent with the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from the date on which this Act receives the assent of the President:

Provided that all the Panchayats existing immediately before such date shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having Legislative Council, by each House of the Legislature of that State.

**K.L. MOHANPURIA**  
**Secy. to the Govt. of India**