



“शिक्षा मानव को बन्धनों से मुक्त करती है और आज के युग में तो यह लोकतन्त्र की भावना का आधार भी है। जन्म तथा अन्य कारणों से उत्पन्न जाति एवं वर्गगत विषमताओं को दूर करते हुए मनुष्य को इन सबसे ऊपर उठाती है।”

— इन्दिरा गाँधी

“Education is a liberating force, and in our age it is also a democratising force, cutting across the barriers of caste and class, smoothing out inequalities imposed by birth and other circumstances.”

— Indira Gandhi

Block

1

DEMOCRATIC DECENTRALIZATION

UNIT 1

Decentralisation: An Overview	5
--------------------------------------	----------

UNIT 2

Local Self Government and Panchayati Raj Institutions	22
--	-----------

UNIT 3

Local Self Government and Urban Local Bodies	44
---	-----------

UNIT 4

PESA and its Implementation	66
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MDV-111 LOCAL SELF GOVERNANCE AND DEVELOPMENT

Dear Lerner,

The theme of the course MDV-111 is 'Local Self Governance and Development'. As you all are aware that all developing nations are struggling hard and putting their sincere efforts to achieve the goals of development. The World Development Indicators published by the UNDP provides data and information on the achievements of nations on various areas of development. The developing nations are facing many daunting problems and they are confronting many issues with regard to development, such as education, health, per capita income, gender etc. It is now well realized that Local Self Governance alone can help a great deal in achieving the goals of development. Therefore it is pertinent to study about various parameters and components of local self governance and development. It will also enable you to share your perspectives on development in various forums. The main aim of this course is to make you all aware about the importance and role of local self governance in achieving the goals of development. This course is divided into following four blocks.

Block 1, Democratic Decentralization, deals with the basics of democratic decentralization, the various levels of local self government and Panchayati Raj Institutions in India, how local governance helps the marginalized sections particularly the tribal groups.

Block 2, Extension Teaching Methods and Audio Visual Aids, discusses the meaning of teaching and learning in the context of extension and development in the first part. In the second and third parts, this block discusses the meaning, functions, classification, and description of extension teaching methods, and audio-visual aids, along with their selection for various teaching occasions.

Block 3 'Communication in Extension and Development' with three units deals with an overview of communication, communication channels, important theories and models of communication.

Block 4 'ICT for Development' with two units appraises you about the interface between ICT and development of various sectors and how the ICTs are useful for rural and urban development.

Block 5 'Diffusion of Innovations for Development' with two units gives an overview of diffusion of innovations and innovation processes for development.

Block 6 'Innovation, Innovativeness and Adopter Categories' with four units presents various attributes of innovation, the concept of innovativeness, adopter categories, opinion leaders, diffusion networks and consequences of innovations.

BLOCK 1 DEMOCRATIC DECENTRALIZATION

At present enormous amount of literature has been prepared on decentralization by the scholars all over the world. Institutions like World Bank, UNDP, European Commission and a number of others. They are not only studying the on going process of decentralization but also supporting the process of decentralization with funding heavily. The newly created literature on decentralization has brought different set of experiences both of positives and negatives and yet to conclude the overall experience of decentralization in the world. The primary aim of decentralization is to engage the people in democracy and development, and achieving economic development and social justice through a participatory process is an imperative in the new institutional set-up. The Local Bodies are now strengthened through a process of devolving adequate powers, functions, functionaries and funds build the skill, capacity and capability of the elected leaders and officials and create a support structure for the Local Body leaders.

Unit 1, **Decentralization: An Overview**, focuses on building our understanding on the meaning and concepts of people's participation in the local self governance in development. This unit will give you knowledge about the context, the reasons, the promises and expected risks involved in decentralization. Further it will make you aware about the difference between the new wave of decentralization with the old one.

Unit 2, **Local Self Government and Panchayati Raj Institutions**, describes the role and importance of Panchayati Raj Institutions and local self governance in India. After the 73rd Amendment to the Indian Constitution, Panchayate Raj System has come to occupy a pivotal place in the Indian democratic system. With this land mark amendment, the local governments have become the third-tier in federal system after the union and the states. After reading this unit you will be able to explain the concept of local self government in India

Unit 3, **Local Governance and Marginalized Sections**, unit discusses the meaning, concept and the need for inclusion of the marginalized sections into local governance institutions. The representatives are drawn from different socio-economic segments of Indian Society. The elected representatives are with different conditions, skills, capabilities, perspectives and capacities.

Unit 4, **PESA and its Implementation**, unit discusses about those local bodies which is designed to provide self-rule for tribals. The Act, 1996 (Act No.40 of 1996), popularly known as PESA. This unit provides details about the PESA, its status and operational aspects including gaps and measures for strengthening the system.

UNIT 1 DECENTRALISATION: AN OVERVIEW

Structure

- 1.1 Introduction
- 1.2 Decentralisation – Meaning and Concept
- 1.3 Types of Decentralization
- 1.4 Merits of Decentralisation
- 1.5 Limitations of Decentralisation
- 1.6 New Wave of Decentralisation
- 1.7 Let Us Sum Up
- 1.8 References and Suggested Readings
- 1.9 Check Your Progress-Possible Answers

1.1 INTRODUCTION

Decentralisation has gained currency and prominence in governance discourse since 1990. Contextually a new venture which alters the institutional landscape of governance at grassroots. Majority of the countries and almost 80% of the third countries involved in decentralisation either by compulsion of external pressures or by their own choice. It is being done by the countries with varying levels of commitment and success. A new set of institutional structure has been created at the grassroots very near to citizens. The new institutional mechanism was created by different ways from Constitutionalization to mere passing of executive order. It is mandated to deliver public goods and services effectively to the level of the expectations of the people. At present enormous amount of literature has been prepared on decentralisation by the scholars all over the world. Institutions like World Bank, UNDP, European Commission and a number of others apart from universities have involved in studying the new phenomenon in the World in a comparative perspective. They are not only studying the on going process of decentralisation but also supporting the process of decentralisation with funding heavily. The newly created literature on decentralisation has brought different set of experiences both of positives and negatives and yet to conclude the overall experience of decentralisation in the world. Methodologically also it is incorrect to make quick judgment on the institutions within a short span of time since their inception. Hence the mixed experiences of decentralisation are viewed with difference from varied perspectives.

This unit will give you knowledge about the context, the reasons, the promises and expected risks involved in decentralisation. Further it will make you aware about the difference between the new wave of decentralisation with the old one. It will provide you the scenario of decentralisation in the world very broadly.

After studying this unit you should be able to understand

- Explain the meaning of Decentralization
- the diverse meaning of the concept ‘decentralisation’ and its dimensions

- the promises and hopes with which it is promoted and pushed
- the risks involved in decentralisation
- the difference between the new wave of decentralisation and the old one

1.2 DECENTRALISATION: MEANING AND CONCEPT

Decentralisation has been defined differently by the scholars and institutions. There is no unanimity in definitions. Basically, notions and explanations on decentralisation originate from the basic discipline Public Administration. Some of the definitions and explanations look similar but in reality they are different. So proper understanding is necessary otherwise you will be getting lost in the jungle of expressions and explanations. There are some push factors working in decentralisation. Hence some of the definitions offered by the institutions which are pushing decentralisation have to be understood. World Bank has defined the concept decentralization in following ways. “decentralisation is the transfer of authority and responsibility for public functions from the central government to intermediate and local governments or quasi – independent government organizations and / or the private sector”. It is a complex multifaceted concept. There are different types of decentralisation which should be distinguished from one another, because they have different characteristics, policy implications and conditions for success. Types of decentralisation include political, administrative, fiscal and market decentralisation. But the core element remains intact.

Subsequently the UNDP has also defined it. Decentralisation according to UNDP refers to a restructuring of authority so that there is a system of co-responsibility between institutions of governance at the central, regional and local levels according to the principle of subsidiarity. Based on this principle, functions (or tasks) are transferred to the lowest institutional or social level that is capable (or potentially capable) of completing them. Decentralisation relates to the role of and the relationship between central and sub-national institutions, whether they are public, private or civic.

1.3 TYPES OF DECENTRALIZATION

Decentralization is a process of transferring responsibilities to sub-national levels. There are six types of decentralisation in practice. First, decentralisation by default. When government institutions become so ineffective that they fail almost entirely to make the influence of central authorities penetrate down to lower level arenas and people at the grassroots become negative about government institutions. As government fails, the civil society step into development domain and make development projects. So it is not considered as decentralisation. Second, handing over of tasks and responsibilities previously performed and looked after by the government agencies to private agencies in the event of the failures of government agencies. Hence, this is also not considered as decentralisation. Third, delegation of certain responsibilities of development projects to parasitical agencies. It also happens rarely and hence it need not be considered. It is a school of thought which argues that decentralisation happens outside the purview of public

institutions cannot be considered as decentralisation. There is yet another school of thought which broadly includes all types of decentralisation. But there are other three types of decentralisation which are to be defined as the activities of the institutions which are well within the domain of public institutions. And these definitions will reflect a model of democracy, accountability and legitimacy largely promised on western liberal tradition. But in practice in many of the developing countries you find variations in terms of definitions. Broadly accepted categories of decentralization are explained here.

1.3.1 Democratic Decentralisation

First we will take up democratic decentralisation. It is otherwise called political decentralisation. It refers to the transfer of political power and authority to sub-national levels of government. Elected bodies are in position from the village council to state level bodies. Devolution is also considered as a form of political or democratic decentralisation. It is being widely recognized that political decentralisation is the true mode of decentralizing government by bringing benefits like participation of people in local affairs and accountability of office holders. Democratic decentralization inculcates democratic values at the grassroots to the common citizen. The figure-1.1 explains the bases of political or democratic decentralisation.

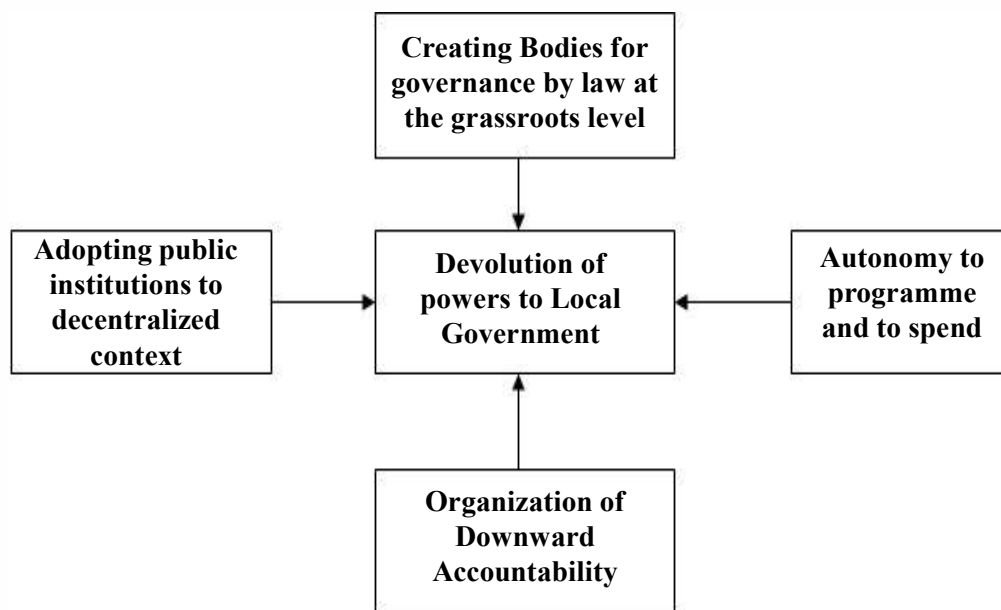


Fig.1.1: Democratic Decentralisation

1.3.2 Administrative Decentralisation

Second, administrative decentralisation which refers to the transfer of decision making authority, resources and responsibilities for the delivery of services and functions from the central government to other decentralized levels of governments. It has got three variants and each having different characteristics: (i) de-concentration (ii) delegation and (iii) divestment. You need to have clear understanding of the above three concepts of Administrative Decentralisation. The key elements of administrative decentralisation are given in the following figure-1.2.

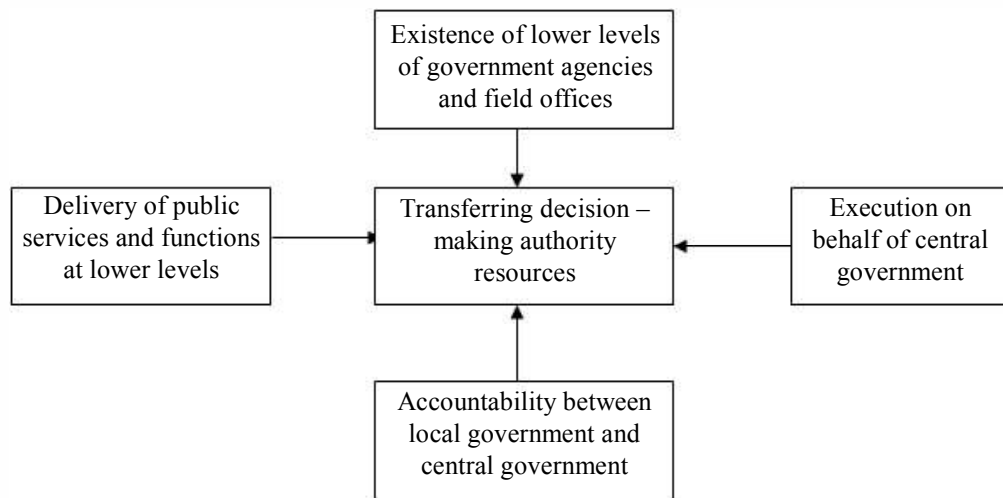


Fig.1.2: Administrative Decentralization

De-concentration is a process in public administration in which a field office or official or a central government department wants some degree of delegated authority to make decisions or to modify regulations to deliver services effectively and efficiently. The main objectives of de-concentration are: (i) to improve administrative efficiency, (ii) to enhance service delivery and (iii) to ensure adequate central government representation and supervision at provincial and local levels. De-concentration happens when the local entities act as agent of central government and it remains accountable to higher levels in the hierarchy. Delegation is a mere extensive form of administrative decentralisation. It redistributes authority and responsibility to local units of government or agencies that are not always necessarily branches of local offices of delegating authority.

Divestment takes place when planning and administrative responsibility or other public functions are transferred from government to voluntary, private or non governmental institutions. It is more contracting out the services and administrative functions partially to units of private agencies.

1.3.3 Fiscal Decentralization

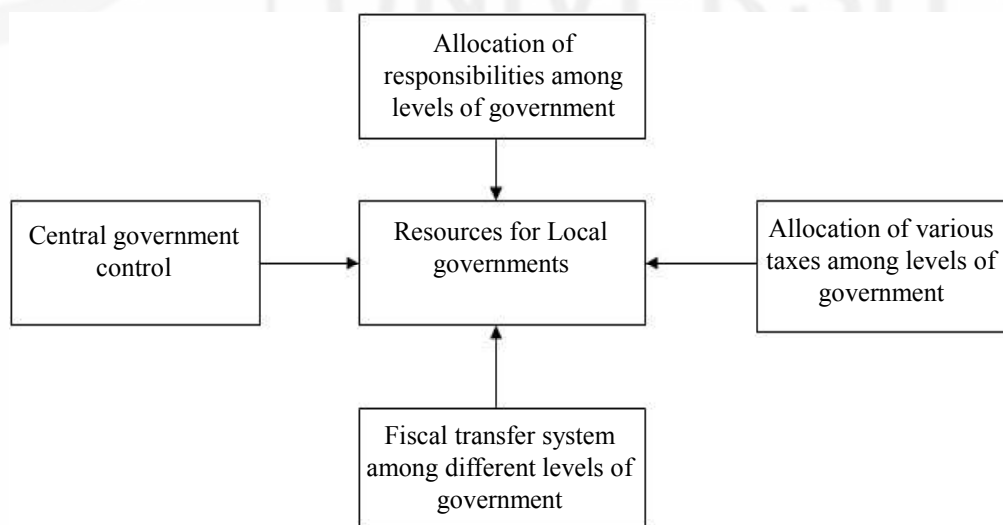


Fig.1.3: Fiscal Decentralisation

Third, fiscal decentralisation refers to resource allocation to sub-national levels of government including the delegation of funds within Sector Ministries to the de-concentrated levels. Fiscal Decentralisation transfers two rights to local governments: a, funds (to deliver decentralized functions) and b, revenue generating power and authority (to decide on expenditure). The essential characteristics of fiscal decentralisation are captured in the following figure-1.3:

There are five major forms of fiscal decentralisation:

- i) Cost recovery of public services through user charges
- ii) Co-financing through which users participate in providing services and infrastructure through monetary or labour contributions
- iii) Expansion of local revenue through prosperity or sales taxes and indirect charges
- iv) Inter-governmental transfers that shift general revenues from taxes collected by the central government to local government
- v) Authorization of local government borrowing and the mobilization of either national or local government resources through loan guarantees

Now that you have read about the meaning and concept of decentralization along with the types of decentralization. Now try to answer the following question in the *Check your progress 1*.

Check Your Progress 1

Note: a) Write your answer in about 50 words

b) Check your answer with possible answers given at the end of the unit

- 1) Analyse the need for democratic decentralization of power.

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- 2) Enumerate the types of Decentralization.

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1.4 MERITS OF DECENTRALISATION

Decentralisation is being attempted with different motives hopes and promises. It has got rich potentials. Some of the merits of decentralization are as follows:

- to deepen democracy
- to enlarge opportunities for citizens to participate in decision making process
- to draw and use local knowledge for development
- to use informal local mechanisms for the management of resources
- to promote effective partnership between state and society
- to give greater sense of ownership to the stakeholders on the development projects for their sustainability
- to enhance associational activities at the lower level
- to facilitate cooperation between government and lower level associations and NGOs
- to enhance the accountability of the officials and the elected representatives and political institutions
- to enhance the responsiveness of government
- to enhance the transparency of government
- to ease the frustration of people with political ambition to enable them to play officials roles
- to equip people with skill of negotiation and bargaining
- to improve the collective action potential
- to promote planning, evaluation and monitoring from below
- to undermine authoritarian enclave
- to build the capacity of the people
- to rediscover the local dimension of development
- to recognize the potentials of the local governments
- to improve the efficiency of service delivery
- to adhere to the global demand of democratization
- to convert the noise of the poor into voice of the poor
- to promote equity
- to alleviate poverty
- to empower women.

i) Deepening of Democracy

Democracy and its practices have to percolate in to the larger society as a culture. It goes beyond national parliament and state legislatures. At every dwelling unit, there will be an unit meant for governance. There will be a process of mutual discussion and deliberation and based on the above, consensus decision will be taken. It is a way of living, respecting each other and treating all equally. From the grassroots to national parliament all

institutions involve in practicing democracy in taking decision collectively through a process of dialogue. Thus decentralisation is a process by which democracy is being widened and deepened.

ii) Ensuring People's Participation

Hitherto beneficiaries and petitioners are made as proud citizens and stakeholders to participate in the decision making process and by which they feel that they decide their destiny on the issues affecting their life. Depending on the opportunity, skill and capacity of the stakeholders, participation will take place in the decision making process. Each and every social segment will get an opportunity to be in the decision making bodies when the powers are decentralized.

iii) Using Local Skills and Knowledge

Through decentralization development becomes local and left in the hands of local people. Considering this the knowledge and skill of the local people will be harnessed through community participation. To make use of the local skills and knowledge for the market, skill up gradation will take place. To produce marketable goods and articles by making use of the skills and knowledge of the people, appropriate technologies are also utilized. Thus local skills and knowledge will be used by adopting newer technologies to global market. Local skills and knowledge will be used by adopting newer technologies to global market also.

iv) Using Informal Local Mechanism

Communities have developed practices and procedures over a period of time to manage resources in the absence of formal institutions which are being used in the process of development and governance at grassroots. To settle many of the problems in resource management at grassroots, the informal local mechanism can be used. While they are being used equity is also achieved in terms of utilization of resources by the communities. Local mechanism evolved, refined and used over a period of time is much more useful and rational manner for adoption even to-day for managing the local resources. Local informal mechanism has got required vibrancy and utility.

v) Promoting Partnership between State and Society

by involving the people in the development activities and service delivery activities not only as participants but also as contributors and partners in the process of implementation of schemes and programmes of the governments. The partnership is established between the society and the state. User groups and stakeholders take responsibility of managing services and government departments mainly act as catalyst. The user groups take full charge of the programmes schemes and service delivery. As a result, people come to the front and government departments remains in the backdrop.

vi) Ownership of Development

Since citizens are made as development participants to participate in the development projects, people have adequate information and understanding about the projects and thereby they take responsibility for the project to deliver the goods. Having got the sense about the whole benefits, they

establish their grip over the project activities and develop a sense of ownership. The beneficiaries are not in a mood or perception of being in the receiving end and feel that they are the owners and guardians of the programmes. Thus the success rate of the schemes and programmes is very high. Greater sense of ownership is built on development schemes and programmes by people or stakeholders for whom the schemes and programmes are actually meant.

vii) Enhancing Associational Activities

Having brought the people closer to the formal institutions at grassroots, people become conscious of what institutions have to deliver and thereby they organize themselves to claim their entitlements and services not as charity but as entitlements and rights. People will organize themselves in to different kind of associations. At the grassroots women, youth, marginalized and others form groups to claim their entitlements. Through the above associations, they resort to settle all the problems. Decentralisation will enable people to form and organize associations. Thus people are mobilized for development activities continuously.

viii) Alliance Building for Development

In order to ensure efficient delivery of services, the local institutions will make partnership with the organizations and associations functioning at the grassroots. The Local Body institutions will collaboration and contact with other civil society organizations with the purpose of efficient delivery of services.

ix) Enhancing Accountability

Since people are provided with opportunity for participation at grassroots for decision making, people can question and make observation about the functioning of the institutions and representatives and thereby accountability is ensured and enhanced. The accountability system mostly is built up internally and upward and not downward. However, through decentralisation accountability is built up downward and towards the people. The existing accountability arrangement is being looked at from the perspective of output. But decentralisation brings a new perspective that it is to be looked at from the perspective of outcome. By turning the process of accountability from internal to external, transparency is ensured.

x) Responsiveness of Government

Regular conduct of meetings of the governing institutions are convened at the grassroots level, people are participating in the institutions not as an on looker but as an assertive stakeholders with necessary information regarding the functioning of the institutions. This makes the government responsiveness towards demands of the people. The practice of entitlement claim by the people made the governing institutions responsive and responsible.

xi) Enhancing Transparency

Hitherto maintained secrecy of the governing institutions has been opened through the participation of the people in all the activities at the local level for development and thereby development activities and functioning of the

institutions are made transparent. Having established grip over the institutions, people make the institutions transparent in all their activities.

xii) Easing Frustrations

The heavy competition for public offices at the National and Regional levels made many aspired individuals for public space frustrated as official positions available in the institutions are limited. But this new institutional mechanism at grassroots provides opportunity for such frustrated individuals to perform functions in the public office and thereby frustrations of the people are eased. In the same way people who are all frustrated over the performance of the government institutions will be given responsibilities for the same task and thereby the frustrations are eased.

xiii) Increasing Negotiating and Bargaining Skills

People of different social segments with different kinds of disabilities and disadvantages will participate in the decision making process and thereby they learn the art of negotiation and bargain through their continued practice of taking part in deliberation. At the local level marginalized groups will bargain and negotiate with the dominant groups, elected representatives will negotiate with officials, representatives of higher level governing institutions like provincial legislatures and national parliament will negotiate with the local governments. By continuing this practice of engagement, negotiating skill of the people at lower segments will be increased.

xiv) Increased Collective Action Potential

Benefits are being distributed not based on external drive but on the efficiency of the participation of the people in the decision making process. In order to get the benefits collective identities are formed and based on the identity arguments are projected and institutions are compelled to make decisions. In such a way collective action potential is enhanced. Water user groups and self help groups are a few best examples.

xv) Planning from Below

So far, planning exercise had been done at the central level which resulted in large scale demands of the people unmet. In the six decade governance, the centralized planning has achieved tremendous results in macro economics of the countries and yet the rural realities have not been changed drastically towards achieving development as expected. In the centralized planning diversity is not accommodated. The development outcome is being captured by only a few groups in the society. In order to provide basic facilities, to make use of the facilities to growth and to bring economic activities, planning exercise has to be done at the micro level. This exercise had been thought of many times. Whether planning institutions could be created at the bottom either at the block level or at the district level. Now this concept gained currency and planning exercise has to be initiated at different levels starting from the lowest unit. By doing so, the needs and aspirations of the people will be met through this planning from below.

xvi) Undermining the Authoritarian Enclave

By giving opportunity at the ground to all the social groups, questions raised

against the ruling elites and the bureaucracy and thereby authoritarian enclave is undermined. In a society like India authorities tendency is always active as the social structure is such that hierarchy is established because of the caste system. A feudal culture is maintained because of its being agriculture based. Since colonial administration continue to dominate, a culture of ruling and dominating has been perpetuated. The new dispensation of decentralisation of powers has opened the gates for access to power and make the people to break the authoritarian enclave.

xvii) Building the Capacity of People

It is an imperative in decentralisation of power that people should take more responsibilities and discharge the same effectively and efficiently to deliver the services to the people. To perform the new responsibilities, capacities of the people have to be increased. Till date, people have developed an attitude that the government would provide everything and people have to receive the same. Now the role has been reversed. People have to manage their affairs on their own. People are involved in the affairs of governance and thereby their capacity will be enhanced. Therefore the new system envisages a new task of building the capacity of the leaders and the people. In a market driven economy for every act people require skill and efficiency. People with skills are to be updated and upgraded to match the requirement of the market. Against this background capacity building assumes significance.

xviii) Local Dimension of Development

Development has dimensions and of which local dimension was missed for decades together. Now it has been realized that local dimension has to play a role in achieving larger macro development goals. In the absence of local development, we have witnessed the imbalance among the regions, blocks and districts. Now because of the initiatives from below, the imbalances will be settled through micro planning for local economic development. Economic development is being the focus of local development. To achieve economic development all initiatives have to be taken from infrastructural development to skill up gradation.

xix) Recognizing the Potentials of Local Government

Though steps had been taken to activate local governments in 1950's, it could not succeed and ultimately failed. Instead of realizing the potentials, the threats were being focused. As a result it failed. Now looking at potentials are being looked. The law of subsidiary brings the arrangement that at every level the unit of governance is capable of delivering the services provided the opportunities are given to the units. Law of subsidiary argues that things that are to be done at the lowest level should be allowed to be done things that could not be done at that level to be shifted to the next higher level. In that way activities have to be carried out from the lowest unit to highest unit of governance.

xx) Improving Efficiency in Service Delivery

Service delivery is a critical issue for many governments. Public institutions have lost their credibility and efficiency and as a result governments have started privatizing such services to increase efficiency and to satisfy the needs of the people. Local body serves as a powerful instrument in delivering

quality service at affordable cost to the requirements of the citizens. Further these responsibilities are with them, through peoples participation efficiency is achieved.

xxi) Responding to Democratization

Decentralisation process responds to the growing demand for democratization. Decentralisation not only democratizes the political institutions but also the society. Many of the societies freed from the colonial yoke have adopted representative form of governance with the intension of democratizing the society. But even political institutions are not democratized. Hence the society is affected with inequality, authoritarian practices. Decentralisation deepens the democracy by democratizing the institutions both in political and social realms.

xxii) Noise to Voice

In democracy, many of the public grievances are expressed through popular and public demonstrations. But decentralisation creates structures at all levels up to the grassroots and thereby the noise of the people is converted into voice as their demands are placed before the institutions for decision making. Even the lowest unit of governance at the grassroots, there is an institutional structure to listen to the voice of the citizens. Thus channels have been opened through decentralisation to channelise the grievance of the people.

xxiii) Equity Promotion

Equity is the casualty in centralized governance and administration. While distributing resources and benefits, in the absence of claim by the stakeholders as entitlements, equity is not maintained. But now the decentralisation process enables the stakeholders to claim their entitlements, as rights, as a result equity is achieved.

xxiv) Poverty Reduction

Macro strategies and approaches have not reduced poverty beyond certain levels. Hence micro and local approach had been tried. Since it has got the potentials, poverty can be reduced further with the active participation of the poverty stricken and the community.

xxv) Empowering Women and other Marginalized

Since decentralisation has enabled all segments to participate in the process of governance and development, it accommodates women and other marginalized in the whole process and thereby the women and other marginalized are empowered. Further, women and other marginalized are given exclusive reservation of seats. After 73rd constitutional amendment, they are coming in large number to Local Bodies and thereby they form a critical mass and they perform critical functions also. Hence, in the whole process women and other marginalized are oriented in governance, political and development process.

What we have seen from the above are the potentials of decentralisation. These potentials are derived from the experience of many countries while decentralizing powers. It does not mean all potentials will be realized in all the societies while decentralizing the powers. Realization of potentials

depends on many factors and of which how the whole process of decentralisation takes place is crucial and important.

1.5 LIMITATIONS OF DECENTRALISATION

Though there are promises and hopes, there are cynicisms and threats in decentralisation. These threats and cynicisms are also on the basis of experience gained in the societies. They are

- To democratize lower levels of the political institutions as a substitute for democratization of the apex
- To draw the elites and dominant figures at the lower level into official positions of power. So that the central government can cultivate them as allies
- To give away the tasks which the central government finds either costly or inconvenient
- To mobilize local resources through tax increases, the blame for which will be borne by people at lower levels
- To make use of local resources which the ruling party can exploit for partisan advantage
- To strengthen the federal government by giving power to the local bodies without strengthening the state governments
- To please the donor agencies who favour decentralisation
- To build the party at the grassroots
- To decentralize the state inefficiency and corruption at grassroots
- To increase the cost of governance
- To create more conflict at grassroots

i) **Substitute Creation**

It is perceived that decentralisation is nothing but substitute creation at the grassroots as political institutions at apex failed to live up to the expected standard. Instead of reorienting the delivery mechanism, the federal government creates institutional mechanism with an investment of huge cost.

ii) **Enabling Elites to Capture Power**

By decentralisation, central government enables the elites at the grassroots to capture power and work as its allies. People who are not able to be accommodated in the apex bodies find opportunity at the grassroots and thereby they serve the ruling elites at the apex as allies.

iii) **Shifting the tasks**

Central government shifts its tasks and responsibilities which it finds costly and difficult to carry out at the grassroots. By doing so, it shifts the blame. Now it escapes from the balance of the people when services are not delivered properly.

iv) Mobilise Resources at the cost of Local Bodies

Local resources are being mobilized through taxes without taking the balance as the duties have been assigned to the grassroots institutions. There are enough potentials at the grassroots to mobilize resources but is not being utilized. But now through decentralisation of powers, these responsibilities have been given to local bodies and thereby the governments at the apex escape from the blame of the public.

v) Local Resources can be used for Partisan Advantage

Ruling party at apex can make use of the local institutions for its own advantages. Election is being fought on poverty line; necessarily responsibilities with political affiliation come to local bodies. The ruling party at the apex can make use of their opportunity to expand the party.

vi) Strengthening the Central Government

It is believed that the decentralization process weaken the strength of the central government and the state government. It is being perceived by many state governments as a ploy to weaken the state governments.

vii) Pleasing the Donor Agencies

Donor agencies have affirmed their faith in decentralisation. Many of the countries which are depending heavily on the funding of the donor agencies for development adhere to the directives of the donor agencies. As a result it becomes a pleasing mechanism to acquire funding.

viii) Party Building at the Grassroots

Ruling political parties are using this decentralisation as a strategy to build the party at the grassroots. This sometimes promotes social conflicts at the grassroots.

ix) Decentralisation of Corruption

Inefficient state has decentralized the inefficiency to the grassroots institution. In the same way the centralized corrupt practices will be decentralized while decentralisation is on.

x) Increasing Cost of Governance

By creating institutionalized structures at the grassroots for governance and administration cost of governance will be increased.

xi) Poor Capacity of the Leaders and Officials

Officials and leaders at the grassroots do not have the needed capacity to handle the powers and responsibilities thrust on them. Without systematic capacity building most of them are working as a puppet in the hands of the functionaries of the government.

xii) Conflict at Grassroots

There are many sources of power at the grassroots and they compete with each other and clash with each other to handle power at the grassroots legitimately as powers are decentralized constitutionally and other means.

Any new venture has its own merits and demerits. Looking at merits one has to handle it. As industrialization, modernization and globalisation, decentralisation has also got some demerits. Humanity by its ability has to make use of the opportunities and to avoid threats.

Now that you have read about the merits, threats and limitations of decentralization. Now try to answer the following question in the *Check your progress 2*.

Check Your Progress 2

Note: a) Write your answer in about 50 words

b) Check your answer with possible answers given at the end of the unit

1) Give few merits of decentralization

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2) Give few limitations of decentralization

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1.6 NEW WAVE OF DECENTRALISATION

Decentralisation is not a new to the world. It was introduced in 1950's with different set of objectives. It was practiced and experimented in many post colonial societies more particularly Afro Asian Countries and also in Scandinavian countries of the Europe. But those attempts failed to live up to the expectations. In many of the authoritarian countries this decentralisation helped to strengthen the authoritarian regime at the higher level government by tightening the grassroots societies. The new initiative of decentralisation now is different from the earlier attempts qualitatively. At the core decentralisation moved from the basic argument that it is a public sector phenomenon.

This decentralisation is part of democratization, and it devolves powers resources and functionaries to the elected local governments as a distinct set of state actors with an own identity, legitimacy and added value in the process of development. This new wave of decentralisation is linked to the emergence of a new paradigm

of local economic development. It aims to activate the local economy through the process of evolving regional plan. Further this new wave of decentralisation is embedded with the broader reforms of the state.

The wave of decentralization is gradually spreading from country to country. Its fruits have been encashed in many of the European Countries those have effectively implemented decentralization of functions, funds and functionaries to the local bodies. However, the success of decentralization depends on the acceptability and attitude of the executives and legislatures.

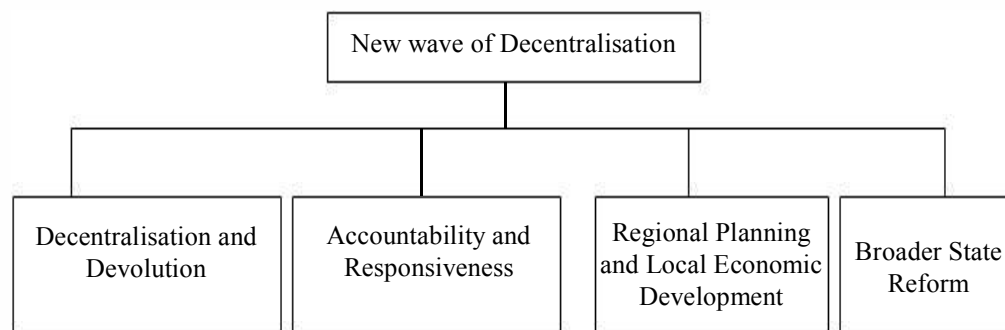


Fig.1.4

1.7 LET US SUM UP

In this unit, we have discussed about the meaning and concept of decentralization. We have also discussed the merits and limitations involved in the process of decentralization. We also emphasized on the new wave of decentralization.

1.8 FURTHER SUGGESTED READINGS/ REFERENCES

European Commission, 2007, *Supporting Decentralisation and Local Governance in Third Countries*, European Commission, Brussels.

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1.9 CHECK YOUR PROGRESS-POSSIBLE ANSWERS

Check Your Progress 1

1) Analyse the need for democratic decentralization of power.

Ans. Democratic decentralisation is otherwise called political decentralisation. It refers to the transfer of political power and authority to sub-national levels of

government. Elected bodies are in position from the village council to state level bodies. Devolution is also considered as a form of political or democratic decentralisation. It is being widely recognized that political decentralisation is the true mode of decentralizing government by bringing benefits like participation of people in local affairs and accountability of office holders. Democratic decentralization inculcates democratic values at the grassroots to the common citizen.

2) Enumerate the types of Decentralization.

Ans. The broad categories of decentralization are:

- (i) Democratic Decentralisation
- (ii) Administrative Decentralisation
- (iii) Fiscal Decentralisation

Check Your Progress 2

1) Give few merits of decentralization

Ans. Some of the merits of decentralization are as follows:

- to deepen democracy
- to enlarge opportunities for citizens to participate in decision making process
- to draw and use local knowledge for development
- to use informal local mechanisms for the management of resources
- to promote effective partnership between state and society
- to give greater sense of ownership to the stakeholders on the development projects for their sustainability
- to enhance associational activities at the lower level
- to facilitate cooperation between government and lower level associations and NGOs
- to enhance the accountability of the officials and the elected representatives and political institutions
- to enhance the responsiveness of government
- to enhance the transparency of government
- to ease the frustration of people with political ambition to enable them to play officials roles
- to equip people with skill of negotiation and bargaining
- to improve the collective action potential
- to promote planning, evaluation and monitoring from below
- to undermine authoritarian enclave
- to build the capacity of the people
- to rediscover the local dimension of development
- to recognize the potentials of the local governments
- to improve the efficiency of service delivery

- to adhere to the global demand of democratization
- to convert the noise of the poor into voice of the poor
- to promote equity
- to alleviate poverty
- to empower women.

2) What are the threats associated with decentralization?

Ans. The threats associated with decentralization are:

- To democratize lower levels of the political institutions as a substitute for democratization of the apex
- To draw the elites and dominant figures at the lower level into official positions of power. So that the central government can cultivate them as allies
- To give away the tasks which the central government finds either costly or inconvenient
- To mobilize local resources through tax increases, the blame for which will be borne by people at lower levels
- To make use of local resources which the ruling party can exploit for partisan advantage
- To strengthen the federal government by giving power to the local bodies without strengthening the state governments
- To please the donor agencies who favour decentralisation
- To build the party at the grassroots
- To decentralize the state inefficiency and corruption at grassroots
- To increase the cost of governance
- To create more conflict at grassroots

UNIT 2 LOCAL SELF GOVERNMENT AND PANCHAYATI RAJ INSTITUTIONS

Structures

- 2.1 Introduction
- 2.2 Historical Background
- 2.3 Panchayati Raj System after Independence
- 2.4 Panchayati Raj System after 73rd Constitutional Amendment
- 2.5 Constitution and Functions of Panchayati Raj Institutions
- 2.6 Issues and Challenges of the PRIs
- 2.7 Let Us Sum Up
- 2.8 References and Suggested Readings
- 2.9 Check Your Progress – Possible Answers

2.1 INTRODUCTION

Local Self Government has been major instrument for the extension of the democratic process at the grass root level and to involve the local communities in decision making in matters concerning their basic civic and other needs. Right from the beginning in 19th century, the local-self government institutions (panchayats and municipalities) in rural and urban areas have remained the main instruments of democratic decentralization in India. The *panchayat* in rural India and municipalities in urban India are defined in the constitution as institutions of local-self government. The popular saying of ‘*panch-pardhan*’ from the ancient times connotes that the *panchayat* had deep roots in the Indian culture. After the 73rd Amendment to the Indian Constitution, *Panchayate Raj* System has come to occupy a pivotal place in the Indian democratic system. With this land mark amendment, the local governments have become the third-tier in federal system after the union and the states. However even after more than a decade of passing of the historic constitutional amendments of 1992, the local governments have not been made effective in many states. Their function varies from state to state and in many states, devolution of functions, functionaries and funds to the local government has not taken place as envisaged in Part-IX and IXA of the Constitution. On the other hand, considerable progress has been made in the member states of European Union in effective decentralization of powers and functions to the communities at the local level. In fact, unlike in India there are no separate local level institutions are regional and area based, covering both-urban and rural communities.

After reading this unit you will be able to:

- Explain the concept of local self government in India
- Describe the evolution of Panchayati Raj in India
- Discuss the three tier Panchayat Raj Institutions
- Describe the essence of landmark 73rd Constitutional Amendment

Panchayats in Ancient Times

The *panchayats* in India have a long history, before earning a covered place in the Indian Constitution. The significance of the system had been chronicled during different periods of Indian history. It is not a flight of fancy, but the truth is that, ancient Indian history has provided evidence of the existence of village *panchayats* comprising five informally elected elderly members to settle dispute in the village. A reference to an organized system of rural local self-government (*panchayat*) has been found in ancient Vedic literature. Rig Veda has mentioned about ‘Gramini’, the village head employed by the king for civil and military purposes; while Atharva Veda envisaged the institution of ‘sabha’, ‘samiti’, ‘sabhapati’ and ‘sabhasad’ primarily performing judicial functions. A mention of village institutions had been made in the great epics, the Ramyana and the Mahabharat, where the *gramini* was responsible for collecting statue dues, keeping village records, settling disputes and controlling crime. Kautaliya’s Artha Shastra gives a comprehensive account of the system of village administration prevailing in ancient India. Besides, evidence of the village *panchayats* is also discerned in the Maurya and Chola dynasties and during the golden era of the Gupta period.

Panchayati Raj System during Medieval Period

With the coming of the Muslim rule in India, local institutions received a setback, as they did not enjoy the same autonomy and prestige, as under the Hindu kings. “Mughal government was highly centralized autocracy. The crown was the motive power of the entire administrative machinery. Where the government is absolute, the supreme authority concentrated in one man’s hand, the territory larger, the means of communications between the districts slow and difficult, the transfer of local officers frequent, no political life or local initiative is left to the people. The muslim rulers recognised local chiefs and zamindars as the repositories of local authority, to the exclusion of the people. “The villages and towns of the Mughal empire enjoyed parochial self-government rather than local autonomy. A people who do not possess political freedom and powers of self taxation for national purposes, can not be said to enjoy local autonomy”. The office of Kotwal was developed as the keystone of the municipal administration and “his functions in connection with the town in his charge were, at least in theory, the most comprehensive conceivable being in certain respects even wider than those of the municipal bodies of the present day”.

While the mughals did not initiate any positive measures of encouragement to local institutions, wherever such institutions existed, they worked in co-operation with the official machinery of the rulers and in certain respects became a part of it. Between the breakdown of the mughal empire and the coming of the British, there was complete anarchy and military despotism in most parts of the country. During this period “the ties of social framework were loosened, and in many places, local institutions had been perverted or sapped, before the British officials had an opportunity to assess their value.” The medieval period was comparatively an uneventful period in the history of *panchayat* system in India. The system was largely ineffective during Mughal rule, except during Akbar’s reign, it appears that no other Mughal ruler assigned importance to the *panchayats*.

Panchayati Raj System during British Period

In the same vein, during the initial years of British rule, the autonomy of the *panchayats* gradually got diluted with the establishment of local civil and criminal courts, revenue and police administration. However the British rulers were well cognizant of the role played by self governing communities at the village level. Sir Charles Metcalfe, a British Governor in India during 1852 called *panchayat* as 'the little republic', but with some reservation because a caste ridden feudal system with power concentrated in the hands of a few landlords would be inconsistent with the sole mission of decentralization. This is amply reflected in the East Indian Company Resolution of 1865 which said:

'The people of this country are perfectly capable of administering their local affairs. The municipal feeling is deeply mooted in them. The village communities are the most abiding of Indian institutions. They maintained the framework of society while successive swarms of invaders swept over the country. The initiative taken by the Viceroy, Lord Mayo, in 1870 although it was a resolution for decentralization of power was aimed at improving administrative efficiency. In 1882 Lord Ripon resolved in favour of imparting political education to the people in general and rural people in particular. The Royal Commission on Decentralization in 1907 recognized the importance of the *panchayats* at the village level, which recommended association of the people with the task of local administration. A few subsequent initiatives focused on decentralization during British Raj are Montague Chelmsford Act, 1919; the Simon Commission report 1925 and Government of India Act, 1935. With these initiatives, by 1925 eight provinces had passed *panchayat* Acts and by 1926 six Indian princely states also passed *panchayat* laws. By 1948, 20 other native states had village *panchayat* Acts.

When India was colonised, there occurred a sharp break from the tradition. The state system, after the advent of the British emerged as a highly centralised set up. Local institutions during the British period were more a creation of the government from whom they derived their autonomy rather than a process of spontaneous growth. No attempts were made to build up the system on indigenous foundations, although a good deal of indigenous taxation was retained in local finance. "The *chungi* of the muslim rulers, the *Sikh dharat*, the *muhtarafa* of Maratha towns have a descendant in today's octroi. But from the structure and procedure of earlier local institutions, almost nothing has been incorporated into modern local government" The form adopted during the British rule was an admixture of the British and continental patterns. The history of local self-government in India under the British rule can be conveniently divided into four phases. "Local finance being a counterpart of local administration and its mainstay, has of course, been an expression of the purpose implicit in different phases of local government." The first phase may be assumed to have ended in 1882, when Lord Ripon issued his well-known resolution on local self government.

The second phase covers developments from 1882 to 1919, when more powers were transferred from the centre to the provinces, and the recommendations of the Decentralisation Commission of 1907, besides discussing other matters, suggested some changes in local self-government. The third phase extended up to 1935, during which the Indian Taxation Enquiry Committee (1925) considered the problems of local taxation, along with central and provincial finances. The Simon Commission of 1930 reversed the process of decentralisation, by

recommending strict control of the state over local bodies. The fourth phase covers developments up to 1947. During this phase, the struggle for independence was intensified and with the introduction of provincial autonomy in 1937, and coming into power of congress ministries in many provinces, local bodies, particularly village panchayats, received a great stimulus and there was democratisation of local bodies. But “local self-government became a mere annexe to the national political stadium, where the struggle for independence was moving towards its climax.”. A rapid survey of local self-government and finances in India under the British rule, reveals certain “well marked characteristics”. Independence opened a new chapter in socio-economic reforms, as embodied in the Directive Principles of State Policy, enunciated in the Constitution which established a federal system of public administration, provided universal adult franchise and the objective of welfare state. Article 40 of the Constitution lays down that the state would take steps to establish autonomous bodies in the form of village panchayats.

After reading this section, you will have gained an idea about the term, rural development. Now you should be able to answer the questions given in *Check Your Progress 1*.

Check Your Progress 1

Note: a) Write your answer in about 50 words

b) Check your answer with possible answers given at the end of the unit

1) Describe the existence of panchayat during ancient period.

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2) Discuss the contribution of British rule to the panchayati system.

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2.3 PANCHAYATI RAJ SYSTEM AFTER INDEPENDENCE

After independence, the process of empowering *panchayats* gathered momentum. Mahatma Gandhi, the father of the nation, while emphasizing on ‘*Gram Swaraj*’ (village autonomy) strongly advocated that: ‘Independence must begin at the

bottom. Thus every village will be a republic of *panchayat* having full power.’ The spirit and importance of *panchayati raj* system found place in Article 40 of the Directive Principles of State Policy of the Constitution of India, which says: ‘The state shall take steps to organize village *panchayats* and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.’

Pandit Jawaharlal Nehru the first Prime Minister of India, considered *panchayats* as an important socio-economic and political institution at the village level. While inaugurating the *panchayati raj* in Rajasthan in 1959, he underlined the importance of people taking responsibilities: ‘To uplift millions of villages is not an ordinary task, the reason for the slow progress is our dependence on official machinery. An officer is probably necessary because he is an expert. But this can be done only if the people take up the responsibility in their own hands. The people are not merely to be consulted, but effective power has to be entrusted to them.

The then Rural Development Minister Shri S K Dey, stated: ‘In Panchayati Raj System, the people of India would govern themselves through their representative institutions, from the Parliament and thus democracy would travel from Gram Sabha (village parliament) to Lok Sabha (Lower House of the National Parliament)’. Former Prime Minister Rajiv Gandhi, while emphasizing on the significance of *panchayats* had remarked. “We must put an end to planning from above. We must put an end to priorities being conceived and decided at ethereal heights, far from ground realities”. While delineating a few functions of the local self-government, Pandit Jawaharlal Nehru, advocated: “The panchayati raj bodies should assume the responsibilities of looking after the needs of everyone in the village and thus become an insurance against illness, unemployment, illiteracy and other disabilities”.

The First Five Year Plan also recognized the need for disaggregated planning through a process of democratic decentralization incorporating the idea of a village plan and a district development council. The Government of India constituted several committees at different points of time to strengthen the local self-government institutions. The first one was the Balwantray Mehta Committee constituted in 1957. The committee recommended the urgency of democratic and elected institution at the lowest level and suggested a three-tier system at the district election commissions. Ashok Mehta Committee (1977) recommended a two-tier set-up at district and village level. The Sarkaria Commission on Centre-State relations appointed in 1983 recommended in its report that the objective of decentralized planning cannot be achieved unless role. Instead of playing their role, ironically, these institutions have been allowed to stagnate. Elections to these bodies had not been held regularly and often they remain superseded for a long period. The Sarkaria Commission recommended that it was that it was necessary to hold elections regularly and adequate funds devolved to these institutions. The GVK Rao committee, 1985, emphasized the need for regular elections to panchayati raj institutions (PRIs). A committee headed by P.K. Thungon, 1986 recommended that panchayati raj bodies should be constitutionally recognized, should have provision for timely and regular elections and their term should be five years. While the L. M. Singhvi Committee of 1987 recommended that the PRIs should get constitutional safeguards and financial resources should be devolved to them.

Since the beginning of the VI five year plan, a number of special programmes for poverty alleviation, employment generation and area development were launched in the country. At this stage, block level was considered important to implement rural development programmes through fuller utilization of local resources. In November 1977, a Working Group under the Chairmanship of Prof. M.L. Dantwala was appointed by the Government of India, to draw up guidelines for block level planning. At the same time, in December, 1977, a Committee on Panchayati Raj, headed by Ashok Mehta was appointed. The Committee considered inadequacy of resources, mainly responsible for failure of PRIs and, therefore, recommended, inter alia, measures for strengthening the financial resources of PRIs. In the light of recommendations of the Committee, gradually PRIs were set up in almost all the states and were contemplated to be developed as instruments of development. Whereas in Maharashtra and Gujarat, power was vested in district panchayats, in Madhya Pradesh and some other states, the responsibility for development was entrusted to development blocks. Another committee headed by Prof. C.H. Hanumantha Rao (1984) went into the question of evolving methodology for district level planning and recommended that planning process at the district level should be sufficiently decentralised, having a good deal of autonomy, administrative and technical capability and financial adequacy.

The above discussion shows that there has been no dearth of ideas and expert opinion but what is lacking is consistency in thinking and political will to implement the concept of decentralised planning and development in a multi-level framework, and create PRIs in that framework which are democratic, autonomous, financially strong, capable of formulating and implementing plans for their respective areas and provide decentralised administration to the people. Elections were not held regularly in a large number of states. Even after three decades since the Balwant Rai Mehta Committee had recommended 3-tier Panchayati raj system as a form of rural self-government and as a mechanism for democratic decentralisation, in most of the states, the position regarding PRIs remained unsatisfactory, and no tangible action was taken to strengthen the local self-government system. Financially these bodies were weak and dependent largely on state governments which did not follow any consistent policies, with the result that most of the PRIs remained defunct or superseded.

The Constitutional Amendment Act, 1992, marks a water-shed in the history of local self-government in the country since it gives a constitutional mandate to the state governments to restructure and revamp rural local bodies in accordance with constitutional obligations. The Act provides for (i) the creation of three tier system of PRIs - gram panchayat at the village level, Janapad Panchayat at the block level and Zila Panchayat at the district level, with sufficient powers and functions contained in schedule XI of the Act; (ii) the creation of State Election Commission to ensure free, fair and timely elections after the expiry of every 5 years, and (iii) the creation of State Finance Commission after every 5 years to recommend devolution of financial resources from the state government to local bodies and also suggest measures for strengthening their financial position.

Taking into consideration all these recommendation and success of West Bengal, Karnataka and Andhra Pradesh experiments and the prevailing mood for decentralization, Prime Minister Rajiv Gandhi introduced the 64th Constitutional Amendment Bill in 1989, which was passed by the Lok Sabha, but failed to get

the concurrences of the Rajya Sabha. Later, a cabinet committee was constituted to look into the contents of the Panchayati Raj Bill of 1989 afresh and a comprehensive amendment was introduced in the form of the Constitution 73rd Amendment Bill in 1992 during the Prime Ministership P V Narasimha Rao, which was passed by both the Houses of Parliament and came into effect on April 24, 1993. Shortly after the aforesaid amendment, in his letter of May 5, 1993 to panches and sarpanches, he had mentioned: 'Democracy and devolution of powers to panchayats have now become part of the most sacred document of this nation: the Constitution of India. No one can now snatch democratic practices from the panchayat. The Constitutional changes will prove to be a major landmark in the history of development of rural areas of this country'.

Panchayati Raj Institutions in Progressive Indian Status

The local self government institutions in Gujarat first came into being under the Bombay Panchayat Act 1933. In the 1960s, the gram panchayat was seen as the focal unit of development through an integrated structure of three-tiers, each organically linked to the other. The new Panchayati Raj Act, after 73rd constitutional amendment was passed and adopted on 1993.

The history of panchayati raj system in Karnataka reveals that in the old state of Mysore, three-tier structure of union panchayats, taluka boards and district boards was established under the Mysore Local board Act, 1902. This was replaced by the Mysore Village panchayats and Local Boards Act, 1959 and a three tier structure was introduced on the recommendations of Blawantrao Mehta Committee. In 1983, on the recommendations of Ashok Mehta Committee, the Karnataka Act of 1983 was enacted. It demonstrated for the first time the willingness of state government to divest substantial powers in favour of sub-state institutions. The new Panchayati Raj Act after 73rd constitutional Amendment came into being in 1993.

The history of panchayat in Kerala shows that before the formation of Kerala in 1956, there were panchayats urban local bodies in the three different regions of the state, namely Travancore, Cochin and Malabar. The Kerala Panchayat Act 1960 provided that government could authorize the panchayats to exercise functions such as collection of land revenue, maintenance of survey and village records, collection of village statistics, supervision and control over primary schools, health centres, public health, child welfare and maternity institutions and execution of community development works. The Act was amended in 1964, 1967 and 1978, before the conformity Act came into operation in 1994.

History of panchayats in Madhya Pradesh dates back to 1920 when the panchayats were setup in the central provinces under the Village Panchayat Act 1920. After the formation of Madhya Pradesh in 1956, the new Panchayat Act was enacted in 1962. The chronology of panchayat legislation in present Madhya Pradesh include: Madhya Pradesh Panchayat Act, 1962; Panchayat Act, 1981; Panchayati Raj Act, 1990; and finally Panchayati Raj Act, 1993 with amendments between 1994 and 1999.

Village panchayats in Maharashtra had traditionally functioned as the main centres of administration. The first formal initiative was taken with the enactment of Bombay Village Panchayat Act in 1920. The panchayat legislation was amended from time to time: Bombay Village Panchayat Act 1933; Bombay Village

panchayat (Amendment) Act 1939; Bombay Village Panchayat Act 1958 before the formation of Maharashtra in 1960. After the formation of Maharashtra state, Zilla parishads and Panchayati Smitis Act was enacted in 1961. Three important committees were set up in the state namely as 'Panchayat Raj Committee' in 1970; Panchayati Raj Review Committee 1973 (Bongirwar committee) and panchayati Raj Review Committee of 1984 (Patil Committee). The District Planning and Development Councils (DPDC) were formed during this period. The new Panchayati Raj Act came into force in the state on 2nd April 1994.

After reading this section, you will have gained an idea about the term, rural development. Now you should be able to answer the questions given in *Check Your Progress 2*.

Check Your Progress 2

Note: a) Write your answer in about 50 words

b) Check your answer with possible answers given at the end of the unit

- 1) Describe the first five commission constituted by Government of India for strengthening of Panchayati Raj Institutions.

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- 2) Discuss the history and growth of Panchayat in Kerala.

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2.4 PANCHAYATI RAJ SYSTEM AFTER 73RD AMENDMENT

The 73rd amendment of the Constitution is an epoch making event in the history of democratic decentralization in India. While introducing the constitutional amendment bill in Parliament on December 1, 1992, the then Cabinet Minister of Rural development observed: 'This casts a duty on the centre as well as the states to establish and nourish the village panchayats so as to make them effective self-governing institutions and by introducing this Act, the government was fulfilling Mahatma Gandhi's dream of Gram Swaraj.'

With 496 panchayats at the district level, known as district panchayats (DP) zilla parishad (ZP); 5905 at the intermediate level, known as block samitis/intermediate panchayat (IP); and 230762, at the village level known as gram panchayat (GP), India today has the world's largest functioning democracy at the grassroots. These elected democratic institutions are manned by 3.4 million Scheduled Castes and 0.26 million Scheduled Tribe (Kurukshetra, 2002).

Table 1 Number of PRIs and its Elected Representatives in Progressive Indian States (2004)

State	Gram Panchayat		Intermediate Panchayat		District Panchayats	
	Number Of GP	Elected Members	Number of IP	Elected Member	Number of DP	Elected Members
Gujarat	13819	83213	225	2768	25	544
Kanataka	5659	53421	175	2162	27	591
Kerala	991	53421	152	1009	14	202
Madhya Pradesh	22029	208356	313	4297	45	486
Maharashtra	28553	178132	349	2877	33	1423
Punjab	12445	48860	140	5257	17	190

Source: Ministry of Panchayati Raj, Government of India, website

In conformity with the Constitutional amendment, all the states have amended their state Acts by repealing the then existing ones. Today the PRIs constitute the potential instruments for effective implementation of India's rural development and poverty alleviation programmes. It is true that, if effectively empowered, the PRIs have the potential to build a progressive India (which veritably lives in its villages) in harmony with the felt needs and aspirations of the people.

Table 2 Structure of Population and at Different Institutions in a Few States

States	Average rural Population per gram panchayat*	Average number of village per gram panchayat*	Average number of gram panchayat per panchayat samities**	Average number of panchayat samitis per zilla parishad**
Gujarat	2294	1.3	73.1	9.6
Karnataka	6152	5.2	4.7	9.0
Kerala	23,785	1.4	-	-
Madhya Pradesh	2010	2.5	41.0	10.2
Maharashtra	1952	1.5	82.8	10.3
Punjab	1289	1.0	92.8	9.8

*Source: * As per census 2001.*

*** Panchayati Raj Institutions in India, Ministry of Rural Development, 1991*

The structure of the PRIs of a few Indian states is given in Table 2. It is interesting to note that in Kerala on an average one panchayat caters to the needs of 23,785 rural populations, where as in Punjab one panchayat deals with 1289 rural population. Each panchayat in Kerala and in Karnataka consists of wards, which are looked after by ward members of the panchayat. The division of panchayat into wards thrust responsibilities on the ward members to look after the needs of their ward population. This results in effective functioning of panchayat in Kerala and Karnataka.

Key Features of 73rd Constitutional Amendment

The main feature of the 73rd Constitutional Amendment are: (i) Establishment of a three-tier structure: village panchayat (gram panchayat); intermediate panchayat (panchayat samiti) and district panchayat(zilla parishad); (ii) Regular elections every five years; (iii) Reservations of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population; (iv) Not less than one-third reservation of seats for women at the three different levels of PRIs; (v) Establishment of State Finance Commissions to recommend measures to improve the finances of panchayats; (vi) Establishment of State Election Commissions to conduct election to the PRIs; (vii) Establishment of District Planning Committees to prepare development plans for the districts; (viii) Preparation of plans of economic development and social justice and implement 29 subjects listed in the 11th Schedule of the Constitution; (ix) Establishment of grama sabhas (village assemblies) and their empowerment as a decision making body at the village level; and (x) Rotation in accordance with the reservation of seats for women and the Scheduled Castes in the PRIs. The key features as envisaged in the 73rd constitutional amendment are given in Table 3.

Table 3 Key features of 73rd Constitutional Amendment

S.No	Key Features	Provision in the Act
1.	Three Tier Structure at the District Level	Article 243-B envisages, Gram Panchayat at Block Level and District panchayat
2.	Elections at every five years	Article 243-E tells, Every Panchayat shall continue for five years from the appointed for its first meeting and no longer.
3.	Reservation of seats for Scheduled Castes and Scheduled Tribes	Article 243-D envisages, reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of panchayat
4.	Reservation of seats for women	Article 243-D (3), provides that not less than one third (including the number of seats reserved for women belonging to Scheduled Castes and Scheduled Tribes) of the total number of seats to be filled up by direct election in every panchayat shall be allotted by rotation to different constituencies in panchayat
5.	Establishment of State Finance Commissions	Article 243-I provides for constitution of States Finance Commission to review financial position of the PRIs and to make recommendations to the Governor and

		distribution between the state and the PRIs of the net proceeds of the taxes, duties, tolls and fees leviable by state
6.	establishment of State Election Commission	Article 243-K provides for the establishment of State Election Commission. 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 the State Election Commission
7.	Establishment of District Planning Committee (DPCs)	Article 243ZD provides for the constitution of DPCs to consolidate the development plans prepared by the gram panchayat
8.	29 duties and responsibilities	Article 243(G) made addition of Eleventh Schedule and assigning duties and responsibilities on 29 subjects.
9.	Establishment of Gram Sabha	Article 243 provides for Gram Sabha to exercise such power and perform such function at the village level as the legislature of a State may by law provides

With the enactment of 73rd constitutional amendment and formulation of Panchayati Raj Acts by different state governments the State Election Commissions have been established, helping the state governments in holding periodic elections to PRIs. Almost all states have constituted State Finance Commission; despite the fact that their recommendations are being poorly implemented by many state government. A large number of women, Scheduled Caste and Scheduled Tribe have been elected to these bodies and a tradition of justice and gender equality in political representation has been widely established. Bihar government has declared 50 per cent reservation of seats for women in PRIs.

Table 4: Representation of Women,SCs, and STs in PRI and on 1.4.2004

PRIs	Scheduled Castes	Scheduled Tribes	Women
Gram Panchayat	346002	233765	838227
Intermediate Panchayat	22333	8210	47455
District Panchayat	2201	1322	4923
Total	370536	243297	890605

Source: website of Ministry of Panchayati Raj, Government of India

The feature of the Panchayati Raj Acts of the progressive Indian states are more or less same with little variation, however their functioning differs because of level devolution of powers to the PRIs in these states.

Village-level democracy became a real prospect for India in 1992 with the 73rd amendment to the Constitution, which mandated that resources, responsibility

and decision-making be devolved from central government to the lowest unit of the governance, the Gram Sabha or the Village Assembly. A three-tier structure of local self-government was envisaged under this amendment. The nationwide euphoria that greeted this about-turn in bureaucracy was seen again with the extension of the 73rd amendment to the Scheduled Areas, through Provisions of Panchayats Extension to Scheduled Areas Act, 1996 (hereinafter PESA or Central PESA or the Tribal Self Rule Law as it is variously called). Scheduled Areas are those, which are under the Fifth Schedule of the Constitution of India where the tribal populations are predominant. It is also imperative to understand here that the founding fathers of the Constitution of India had envisaged a special scheme of administration in the scheduled areas where general laws would not be applicable unless the Governor deemed it fit to enforce such laws. It was thought that these areas are inhabited with people who have resided on the basis of their own customary practices and traditional beliefs and culture and thus general laws of the land would be inappropriate with their customary laws and ethos. However, a decade later, there is growing feelings that while the burden of 'management' of natural resources, has been devolved; 'control' over resources and land is still in the hands of the state. This paper delves in some detail into the manner in which the States' have subverted the mandate of the Central Legislation through carefully using the wordings in law to make the implementation vague and ineffective especially in the context of 'community resources' in scheduled areas. The scheduled areas, which are notified by the President of India as the Tribal dominated areas, exist in nine states of India.

The Coming of PESA (Tribal Self Rule Law)

A brief introduction of how the central law on PESA came into being and the consequent state mandate would be instructive here. The 73rd amendment to the Constitution and the subsequent enactment of Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) aimed to operationalise decentralization in India, through the transfer of power to the Gram Sabha or the village assembly. The PESA attempted to vest legislative powers in Gram Sabha, specifically in matters relating to development planning, management of natural resources and adjudication of disputes in accordance with prevalent traditions and customs. This significant legislation was expected to have far reaching consequences in the social, economic and cultural life of tribal people in Scheduled Areas. All the scheduled states were given one year to amend their respective Panchayat Acts to conform to the letter and spirit of PESA. Accordingly, most states have introduced some form of conformity amendments, which reflect their intent to conform to the spirit of PESA. At a first glance the state conformity legislations and amendments seem to have generally reflected most of the provisions of the PESA, although a closer look establishes that almost all powers have been made subject to rules/ further orders "as may be prescribed by the State Governments". The control over prospecting of minor minerals, planning and management of water bodies, control and management of minor forest produce, prevention alienation of land are all subject to rules in force or as may be prescribed by the State. The fact that the enabling rules are not in place even more than eight years after the adoption of the central law on PESA suggests reluctance by the State Governments to operationalise the mandate of PESA.

There are four points that need particular emphasis here. First there are critical omissions of some of the fundamental principles without which the spirit of PESA can never be realized. Secondly, the state legislations, perhaps by design,

twist certain words from the Central PESA that has resulted in powers being taken away from the Gram Sabha – the collectivity of all village adults where the need for empowerment is most critical for making local self-governance a reality in the Country especially in relation to managing common pool resources. Thirdly, even where it affirmed some provisions of the law in principle, their applicability was made subject to framing of rules/ orders or “as may be prescribed.” As stated earlier, such enabling rules are not yet in place in most cases. Finally, few rules and prescriptions began to surface in early 2000 primarily through revocable official circulars but which again have been totally inoperative because of the ambiguity and lack of clarity of these provisions. Thus it is not surprising that even these are waiting to be taken to the ground. The operative provisions being not in place, a promising radical law has been reduced largely to a paper law.

The above is exemplified in numerous ways especially in the context of community resources. The Panchayats (Institutions of Local Self-Government) at the appropriate level and/or the Gram Sabha have been endowed specifically with powers for management of local resources. For instance the Gram Sabha or Panchayat at appropriate level shall be consulted before making acquisition of land in scheduled area for development projects as well as before resettlement or rehabilitation of persons affected by such projects in Scheduled Areas. The use of the word ‘consultation’ under PESA instead of ‘consent’ significantly waters down the power vested with the Panchayat. Besides Gram Sabha and Panchayats have powers to prevent alienation of land in the Scheduled Area and to take appropriate action to restore any alienated land of Scheduled Tribe⁵. In this regard there needs to be a clear understanding of the nature and extent of powers that needs to be vested with the Gram Sabha and the various tiers of the Panchayats. The law is vague and ambiguous as will be demonstrated later in state specific examples. Further the ownership of forest based resources have also been granted though is a tendency to limit the local area of the Gram Sabha for the purposes of owning minor forest produce. A central concern of the present paper is to highlight the conflicts arising out of the powers vested with the Gram Sabhas under PESA and the provisions contained in the various ‘subject matter’ State laws Under the PESA, the Gram Sabha or the Panchayats at the appropriate level has been vested with the mandatory powers to regulate on subjects such as minor forest produce, alienation of land, management of minor water bodies and control over local plans and their resources. On all these subjects there exists specific State legislation, which might impact the operation of the state variants of the PESA. Again when it comes to amending all the subject matter laws to give effect to PESA, the States response is varied.

2.5 CONSTITUTION AND FUNCTIONS OF PANCHAYATI RAJ INSTITUTIONS

Panchayati Raj Institutions comprise of three institutions namely gram panchayats, panchayat samitis and zilla parishads, the constitution and functions of these three organizations are given below:

Gram Panchayat

A gram panchayat consists of a sarpanch and five to 13 elected panches depending upon the population. The member of village panchayats are elected by the same

Electoral College, which elects members of the Legislative Assembly of the state and the Lok Sabha (the lower house of Parliament). The State Election Commission prepares the election roll for PRIs elections. Under the 1994 Punjab Panchayati Raj Act, it is envisaged that a village panchayat will discharge duties and responsibilities relating to the subject mentioned in the Eleventh Schedule of the Constitution. Important functions of the gram panchayat include preparation of annual development plans, its budget; construction, repair and maintenance of community assets; khadi and village industries; rural housing; rural electrification; non-conventional sources of energy; poverty alleviation; education; public health and family welfare; adult and non-formal education; cultural activities, fairs and festivals; promoting agriculture, including animal husbandry; dairying and poultry; fisheries; social and farm forestry; women and child development; social welfare and public distribution system.

Panchayat Samiti

There is a panchayat samiti in each development block, a compact development area. Its membership comprises:

15 to 25 directly elected members from territorial constituencies.

Members of the Punjab Legislative Assembly, major portion of whose constituency falls in the panchayat samitis area shall also be members of the panchayat samitis.

The Punjab Panchayat Raj Act, 1994 has assigned the panchayat Samitis 26 functions. The important functions are agricultural improvement land improvement, irrigation and water management and promotion of animal husbandry and dairying and poultry, fisheries, roads, social services, social welfare, technical training, poverty alleviation and rural electrification.

Zilla Parishad

Every district has a zilla parishad, having jurisdiction over the entire district excluding the areas included in a municipality or a cantonment board. The directly elected members of zilla parishads vary from 10 to 25. The Additional Deputy Commissioner (Development) of the district is the ex-officio Chief Executive Officer of the zilla parishad. The members of the zilla parishad are:

- Directly elected from demarcated constituencies;
- All chairpersons of panchayat samities; and
- Members of Parliament/Members of Legislative Assemblies whose constituencies fall in the jurisdiction and geographical area of the zilla parishad

The Punjab Panchayati Raj Act of 1994 assigns functions to the zilla parishads. The functions include agriculture development, irrigation; ground water resources and watershed development; horticulture; statistics; rural electrification; distribution of essential commodities; soil conservation; animal husbandry and dairying; fisheries; small-scale industries including food processing industries; rural roads; health and hygiene; rural housing; education; social welfare and welfare of the weaker sections; poverty alleviation; social reform activities; weights and measures and promotion of thrift and savings through small saving campaigns.

Constitution and Functions of PRIs in Progressive Indian States

In Gujarat the sarpanches (president) of the village panchayats are elected directly by adult franchise and up sarpanches (vice-president) are elected by the elected member of the village panchayats. The same procedure is followed in the intermediate panchayats and district panchayats. In Karnataka, both the adhakya (president) and upadhakya (vice-president) are elected indirectly by the elected members of the gram panchayats. The same procedure is followed in the Intermediate and district panchayats.

Table 5: Head of the PRIs and Procedure of Election

Panchayati Raj Institutions (PRIs)	Procedure of Election of Head of PRIs		
	Village Panchayat	Intermediate Panchayat	District Panchayat
Gujarat	Sarpanches are directly elected by the people and up-sarpanch are indirectly elected by the elected members of panchayats	Chairman of Intermediate Panchayat is directly elected by the people and the Vice-Chairman is elected members of the Intermediate panchayat	Chairman is directly elected by the people and Vice-Chairman of district Panchayat is indirectly
Karnataka	Adhakya and Updhakya are indirectly elected by the members of panchayat. The post of Adhakya is on rotation basis, 2.5 and 2.5 year each.	Adhakya and Updhakya are indirectly elected by the members of the Taluka panchayat.	Adhakya and Updhakya are indirectly elected by the members of Zilla Panchayat
Kerala	President and vice-President are indirectly elected by the member of the village panchayat	President and Vice-president are indirectly elected by the members of the block panchayat	President and Vice-President are indirectly elected by the member of the district panchayat
Madhya Pradesh	Sarpanch and Up-Sarpanch are indirectly elected	President and Vice-President are indirectly elected by the members of the block panchayat.	President and Vice-President are indirectly elected by the member of the district panchayat
Maharashtra	Sarpanch and Up-sarpanch are indirectly elected	President and Vice-President are indirectly elected by the member of the block panchayat	President and Vice-President are indirectly elected by the member of the zilla panchayat
Punjab	Sarpanch is directly elected by the people	Chairman of the panchayat Samiti is directly elected by the people of the block	Chairman of the Zilla Prishad is directly elected by the people of the district.

Election of head of the PRIs through indirect election resembles with the system adopted by the legislative assembly and parliament. The rotation of seats of the head and vice-head of the PRIs as practised in Karnataka would create opportunity for others. The power for impeachment of the sarpanch and members of the village panchayat in Punjab lie with the Directorate of Rural Development and Panchayats, a bureaucratic machinery, whereas the impeachment of the panchayat personnel in Kerala is done by the ombudsmen and in Gujarat zilla parishad is empowered to take decision regarding the impeachment of personnel of panchayat including its president. In all states panchayat secretaries look after the administrative and financial matters of panchayats. The panchayat secretary works in close coordination with panchayat. However the work of intermediate and district panchayat is being carried out at the block headquarters and district headquarters with the help of block and district staff.

2.6 ISSUES AND CHALLENGES OF THE PRI'S

After more than 25 years of the implementation of the 73rd constitutional amendments, in many states PRIs are not found to be adequately empowered to discharge their duties and responsibilities. There is poor devolution of functions, functionaries and funds in many states. Some of the issues and challenges which the PRIs are facing are narrated below:

- i) One of the important observations is that all the functions of the panchayats are found to be congregated in the hands of pradhans (heads) in gram panchayats and members are largely marginalized. Power and functions hardly delegated to the members of village panchayats. This is against the ethos of the decentralization. In other words, even if there is some devolution, there is no de-concentration and powers are congregated in the hands of the heads of the panchayat. Sighting the case of West Bengal, Ghatak and Ghatak (2002) remarked that power of village council was totally concentrated in the hands of pradhan. For all practical purposes the pradhan was an extremely powerful man- there used to be saying in the rural areas of West Bengal that 'above there is God and below there is the pradhan'. For the de-concentration of power, the Panchayati Raj Acts of different state governments have made provision of various standing committees supposed to be headed by the panchayat members. However, in most of the states, these standing committees are seen to be *ad hoc* arrangement on project to project basis rather than a permanent institutional structure and most of them are headed by the panchayat heads rather than by the members of the panchayats. The state governments having the provision of up-gram sabha *per se* Himachal Pradesh has empowered the member panchayat to head the up-gram sabha, the body equivalent to Gram Sabha which plans and implement the programme in their own village of the panchayats. Mani Shankar Aiyar, (2005) remarked that in the absence of such effective devolution of functionaries with functions, there is a kind of diarchy operating at the ground level, which is detrimental to good governance. In other words, the PRIs do not have executive set up, which the central and state democratic institutions have, it makes the working difficult and more difficult in case of PRIs manned by illiterate heads and members.
- ii) Another anomaly in the functioning of the PRIs is the lack of clear cut demarcation of functions among the three constituents of the PRIs such as

village panchayat, block or intermediate panchayat and the district panchayat. Even after the more than decade of the 73rd constitutional amendment, many state governments are yet to formulate an activity mapping for the PRIs in the state. Thus in some states more powers have been divested with the village panchayats, while in other states, district panchayats are more powerful. For example Maharastra, Gujarat and Uttar Pradesh governments have assigned more functions to district panchayats, while Madhya Pradesh and Kerala government have assigned more power to village panchayats. The intermediate panchayats in many states are largely function less and crying for functions, functionaries and funds.

- iii) Panchayats in many states are performing those functions which have direct relationship with money and grants from the government and hardly consider other promotive health, education and social development related activities as their duties and responsibilities. In other words, the post 73rd constitutional amendment village panchayats are more selfish, mechanical and money-minded and dependent. In other words, village panchayats in many states have become dependent bodies rather than local self governments. The use of money and muscle power in the village panchayat elections and panchayats' involvement in the corruption in government implemented schemes are frequently being in news and a buzz word in local democracy.
- iv) Considering the workload and duties and responsibilities thrust on the PRIs, it is pertinent that they should be given functionaries. Besides, the functionaries of other line departments devolved to PRIs need to be transferred to them. The state governments of Karnataka, Kerala, and Madhya Pradesh have transferred the functionaries and issued instructions to them to work under the control of panchayats. In Punjab, the grassroots level functionaries such as *ad hoc* teachers and health workers are selected through Zilla panchayats (the district level PRI). In Himachal Pradesh, panchayat head is a member of the selection committee for the recruitment of panchayat sahayak (panchayat assistant) and technique sahayak (technical assistant) functionaries working under the village panchayat. In Kerala, the village panchayat has a kind of arrangement of panchayat secretariat at the panchayat level where the village panchayat functionaries and seat and work for the village panchayat. In many other states, the panchayat ghars (village secretariats) are least utilized and most of the functionaries operate from the block headquarters. One estimate says that if the functionaries are transfer to PRIs, then 49,566 development functionaries will work under PRIs. The Panchayati Raj Act of Gujarat has made provision of State Panchayat Services Board and District Panchayat Service Selection Committee for the selection of functionaries of PRIs at the state and district level.
- v) In Kerala, functionaries of village panchayats, although, are state government employees, yet work under the panchayats and are paid by the panchayats. In Karnataka, panchayats have appointed some employees by their own are paid from the untied fund of the panchayats funds. In Punjab the panchayats are involved in the selection of the anganwadi workers and chawkidars (village guards) in their respective panchayats. However, Patnaik (2003) the state level functionaries feel that their role in implementation of developmental schemes might be reduced considerably due to transfer of powers and functions to PRIs. In 1999, the Government of Uttar Pradesh

transferred some functions like primary education to the Gram Panchayats. Primary school teachers were also placed under the administrative control of the Gram Panchayats. Faced with stiff opposition from the teacher unions the government soon withdrew the orders regarding the transfer of teachers to the supervision of Panchayats. Panchayat secretaries, the key functionaries of the village panchayat in Punjab, Haryana, Uttar Pradesh and some other states feel that empowerment of elected representatives of village panchayats means downsizing their power and functions. They always want to remain as boss of the village panchayat and not to work under them as an employee. Pai (2004) remarked that in most the key functionaries namely secretaries and executive officers at all levels of panchayats are state government employees.” On the contrary, in Kerala, although the panchayat secretaries are the government employees, they act under the village panchayats. In Himachal Pradesh, panchayat sahayaks (panchayat assistants) and technique sahayak (technical assistant) are appointed with the help of village panchayat, although paid by the government are working under the panchayats. On the whole most of the state government finding it difficult to transfer their grassroots functionaries under the village panchayats largely for the following reasons: (i) the bureaucratic apparatus are skeptic about the efficiency of panchayats to handle these educated manpower; (ii) the employees are reluctant to work under panchayats which would adversely affect their autonomy and they consider that the panchayats are more interested in fault findings rather than providing supportive supervision to them; (iii) without the transfer of finance, the transfer of functionaries is a difficult proposition; and(iv) it is comparatively easier to put newly recruited functionaries under the village panchayats than the old functionaries selected by the government. Still village panchayats in most of the states do not have any bureaucratic structure to support them in their day to day functioning. Mani Shankar Aiyar, (2002) remarked that in the absence of such effective devolution of functionaries with functions, there is a kind of diarchy operating at the ground level, which is detrimental to good governance. In other words, the PRIs do not have executive set up, which the central and state democratic institutions have, it makes the working difficult and more difficult in case of PRIs manned by illiterate heads and members.

- vi) A major impediment in the effective functioning of PRIs is the lack of adequate funds for the implementation of need-based programmes. The relation between the local functions and local finance are interrelated. They are concomitant to each other and in fact, one exists for other. Local functions cannot be performed without finance and without functions the need for finance does not arise (Bordoloi, 1972). If local bodies are to play any significant part in economic and social development, they must clearly have access to adequate finance (Hicks, 1961). While Maddick (1970) from decentralization from India remarked that the concentration of functions is perhaps greatest in the lowest tier of the system where finances and administrative personnel are invariably in shortest supply.
- vii) It is remarked that a large number of functions have been vested in decentralized bodies without sufficient finances and this has resulted in the near failure in fulfilling their responsibilities leading to discontinuation of the system in many states (Hedge, 1994). Besides, those funds, which are available are mostly tied in nature, leaving little flexibility to the panchayats

(Siva Subrahmanyam, 2003). Devolution of funds to PRIs would enable these bodies to function as effective self-government. Under Article 243-H of the constitution, state legislative has been empowered to enact laws: (i) To authorize a panchayat to levy, collect and appropriate certain types of taxes, duties, tolls and fees; (ii) To assign to a panchayat, certain types of 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 and also the withdrawal of such money there from.

- viii) The 10th Finance Commission constituted by government of India recommended that “the respective State Finance Commission would suggest mechanisms for sharing financial resources with the local government”. One of the recommendations of the 11th Finance Commission was that “the state government should augment the Consolidated Funds to supplement the resources of the local bodies” and “enhancing the revenues of the local bodies through property tax, house tax, octroi, entry tax and user charges”. But ironically internal revenue mobilization (IRM) of the PRIs constituted only 4.17 percent of their total revenue. The house tax the so-called panchayat tax is being collected on an informal basis and in many cases the pradhans (panchayat head) deposits it on his own, without bothering to ask the household to pay the tax (SFC, Report Uttaranchal). In Karnataka, the house taxes of households varies between a minimum of 200 rupees to a maximum of even 1000 rupees in a year depending on the rental value of the houses. Besides panchayats also do not collect other user charges like drinking water fees, sanitation fees, etc. from the people in many states. Other aspects are: (i) wherever the minimum and maximum rates have prescribed in the act, the general tendency is to impose the minimum rate only; (ii) states have developed a lukewarm attitude to effectively mobilize the resources; and (iii) solution lies in setting up of proper administrative machinery, particularly, at the grassroots level for effective tax collection. Neither panchayats are being empowered to collect taxes nor are they willing to impose taxes, fees and user charges on the public because of vote bank politics.
- ix) As far as the direct financial devolution to the local bodies from the state government is concerned, it is very poor and varies from state to state. The state government like Kerala, Madhya Pradesh and Karnataka kept directly devolved some finance to the PRIs in nature of untied money which they can spend basing on the needs of village micro-plan. Starting in 1996, about 40 percent of the state government controlled funds were devolved from the bureaucracy to panchayat village planning council in Kerala. But overall, the Panchayati Raj Institutions in many states depend on the financial help from the centre and state government and this financial dependency has made them not self government rather protégé performing certain desired functions with the tied money provided to by the centre and state governments and by the central and state finance commissions. There is no denying fact that panchayati raj institutions are financially crippled and unable to lack of political and bureaucratic will.

The *panchayat* in rural India and municipalities in urban India are defined in the constitution as institutions of local-self government. The popular saying of ‘*panch-pardhan*’ from the ancient times connotes that the *panchayat* had deep roots in the Indian culture. After the 73rd Amendment to the Indian Constitution, *Panchayate Raj* System has come to occupy a pivotal place in the Indian democratic system. With this land mark amendment, the local governments have become the third-tier in federal system after the union and the states. Village-level democracy became a real prospect for India in 1992 with the 73rd amendment to the Constitution, which mandated that resources, responsibility and decision-making be devolved from central government to the lowest unit of the governance, the Gram Sabha or the Village Assembly. A three-tier structure of local self-government was envisaged under this amendment. The nationwide euphoria that greeted this about-turn in bureaucracy was seen again with the enactment of 73rd constitutional amendment and formulation of Panchayati Raj Acts by different state governments the State Election Commissions have been established, helping the state governments in holding periodic elections to PRIs. Almost all states have constituted State Finance Commission; despite the fact that their recommendations are being poorly implemented by many state government. A large number of women, Scheduled Caste and Scheduled Tribe have been elected to these bodies and a tradition of justice and gender equality in political representation has been widely established.

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2.9 CHECK YOUR PROGRESS – POSSIBLE ANSWERS

Check Your Progress 1

1) Describe the existence of panchayat during ancient period.

Answer: Ancient Indian history has provided evidence of the existence of village *panchayats* comprising five informally elected elderly members to settle dispute in the village. A reference to an organized system of rural local self-government (*panchayat*) has been found in ancient Vedic literature. Rig Veda has mentioned about 'Gramini', the village head employed by the king for civil and military purposes; while Atharva Veda envisaged the institution of 'sabha', 'samiti', 'sabhapati' and 'sabhasad' primarily performing judicial functions. A mention of village institutions had been made in the great epics, the Ramyana and the Mahabharat, where the *gramini* was responsible for collecting statue dues, keeping village records, settling disputes and controlling crime. Kautaliya's *Artha Shastra* gives a comprehensive account of the system of village administration prevailing in ancient India.

2) Discuss the contribution of British rule to the panchayati system.

Answer: The history of local self-government in India under the British rule can be conveniently divided into four phases. "Local finance being a counterpart of local administration and its mainstay, has of course, been an expression of the purpose implicit in different phases of local government." The first phase may be assumed to have ended in 1882, when Lord Ripon issued his well-known resolution on local self government. The second phase covers developments from 1882 to 1919, when more powers were transferred from the centre to the provinces, and the recommendations of the Decentralisation

Commission of 1907, besides discussing other matters, suggested some changes in local self-government. The third phase extended up to 1935, during which the Indian Taxation Enquiry Committee (1925) considered the problems of local taxation, along with central and provincial finances. The fourth phase covers developments up to 1947. During this phase, the struggle for independence was intensified and with the introduction of provincial autonomy in 1937, and coming into power of congress ministries in many provinces, local bodies, particularly village panchayats, received a great stimulus and there was democratisation of local bodies.

Check Your Progress 2

1) Describe the first five commission constituted by Government of India for strengthening of Panchayati Raj Institutions?

Answer: The first five commission constituted by Government of India for strengthening of Panchayati Raj Institutions are i) Balwantray Mehta Committee constituted in 1957 ii) Ashok Mehta Committee (1977) iii) The Sarkaria Commission on Centre-State relations appointed in (1983) iv) GVK Rao committee (1985) v) P.K. Thungon (1986) and vi) L. M. Singhvi Committee (1987).

2) Discuss the history and growth of Panchayat in Kerala.

Answer: The history of panchayat in Kerala shows that before the formation of Kerala in 1956, there were panchayats urban local bodies in the three different regions of the state, namely Travancore, Cochin and Malabar. The Kerala Panchayat Act 1960 provided that government could authorize the panchayats to exercise functions such as collection of land revenue, maintenance of survey and village records, collection of village statistics, supervision and control over primary schools, health centres, public health, child welfare and maternity institutions and execution of community development works. The Act was amended in 1964, 1967 and 1978, before the conformity Act came into operation in 1994.

UNIT 3 LOCAL SELF GOVERNMENT AND URBAN LOCAL BODIES

Structure

- 3.1 Introduction
- 3.2 Urban Governance: Concept and Need
- 3.3 Urban Local Bodies and Municipal Governance in India
- 3.4 Urban Governance in India: Structural Changes and Innovations
- 3.5 Impediments in Improved Governance
- 3.6 Measures to Strengthen Urban Governance
- 3.7 Let Us Sum Up
- 3.8 Keywords
- 3.9 References and Suggested Readings
- 3.10 Check Your Progress - Possible Answers

3.1 INTRODUCTION

Governance, in the modern times, has been becoming an important means for achieving societal development objectives. Although governance improvements are perceived differently in the developed and developing worlds, it is also becoming an area of convergence where both developed and developing societies could learn from experiments and make use of it for transforming respective societies. Governance is a concept which is used in different meanings in different contexts; it varies from narrow structural definition of its management of public affairs by government constituents i.e., legislation, executive and judiciary, to the processes that ensure deliveries, participation, justice, respect of rights, innovation and networking. Urban Governance is derived from the concept of governance in relation to urban areas to be reflective of how the various constituents of public service delivery are organized to increase the welfare of citizens (both current and future).

After reading this unit, you will be able to:

- Define urban governance
- Explain Urban Local Bodies and Municipal Governance in India
- Describe structural changes and innovations in urban governance
- Discuss the impediments of improved urban governance
- Measures to strengthen Urban Governance

3.2 URBAN GOVERNANCE: CONCEPT AND NEED

Urban Governance is derived from the concept of governance in relation to urban areas to be reflective of how the various constituents of public service delivery are organized to increase the welfare of citizens (both current and future). It can

only be measured relatively, and somewhat subjectively, how effective the institutions are in terms of the principles of sustainability, decentralization, efficiency, equity, participation, transparency, accountability, civic engagement and citizenship, and security. It requires a periodic strengthening of these aspects of city management in order to ensure service delivery, which is considered achievable through strategies of enabling, participation and capacity building.

The urban or city governance definition and process are essentially those pertaining to governance in general i.e., central to the concept of city governance is the notion that a multitude of actors are involved in the city governance process. However, initiatives towards better governance can come not only due to the pressures of urbanization but also with increasing financial constraints and fragmented responsibilities, which is making many cities to realize now that only a collegiate effort can improve city and its competitiveness, thereby the cities can discover the virtuous circles.

In this context, city governance is more concerned with a network of system of governance rather than government, in which all sectors (public, private and other social organizations) and geographies (cities, regional and national) interact in the decision making process in order to produce an efficient and effectively managed city as well as promoting city at a global level. This perspective has important implications for city strategists, planners, businesses and real estate players, because, once adopted, it involves all of them in a complex and networked process of decision making that can shape and change the future of their city. In fact, the realization of this is leading to the emergence of new networks that create new platforms for discussion and debate on how to make the cities better governed and what resources are required to make it happen.

It is the partnerships which need to be forged, developed and in order to improve the overall city governance. However, city governance can be understood not only in the static framework of interactions but also as a dynamic interaction between these major stakeholders and external agencies operating outside the city. Sometimes, these agencies might provide a direction to the change, known as good urban governance. In many ways, urban governments in the developing countries are a classic case for the application of 'good governance prescription because of:

- multiple government agencies with poor interconnection
- government major provider of services, but often inefficient ,
- extensive but uneven regulation
- conflicting agency agendas producing regulatory stalemate
- frustration of development opportunities
- widespread evasion of regulation
- considerable scope for corruption

Check Your Progress 2

Note: a) Write your answer in about 50 words

b) Check your answer with possible answers given at the end of the unit

1) What are principles of good governance?

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2) How do you measure effective Urban Governance?

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3) Who are the key players in decision making and implementation process of governing the cities?

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3.3 URBAN LOCAL BODIES AND MUNICIPAL GOVERNANCE IN INDIA

Municipal governance in India was first introduced in 1687 when the Madras Municipal Corporation was formed, followed by the creation of the Calcutta Municipal Corporation and the Bombay Municipal Corporation in 1726. In 1850, the Improvements in Towns Act was passed by the Government of India that established a system of councillors and gave them administrative authority. Subsequently, Lord Mayo's Resolution of 1870 instituted the system of city municipalities and called for the introduction of an elected president to lead them.

In 1882, Lord Ripon's Resolution of Local Self-Government created the outline and structure of municipal governance in India. It introduced a two-tier system of governance to increase governance efficiency through decentralisation of functions. Based on the 1918 Montague-Chelmsford Report, the Government of India Act 1919 introduced the system of 'Dyarchy', where power-sharing arrangements between the state and the local bodies differed, but conformed to the same organisational pattern.

The District Municipalities Act of 1920 transformed the Municipal Councils into elected bodies and granted them powers to flesh out their own budgets. The Government of India Act 1935 brought local government within the purview of the state or provincial government and granted them enhanced powers.

The following types of urban local bodies are found in India:

- 1) **Municipal Corporation-** Municipal Corporation is established by the Act of state government for the big cities of states and by the Act of Parliament for the big cities of Union Territories. A corporation has three authorities. First is the corporation council headed by the Mayor, who is assisted by the Deputy Mayor. The councillors and Mayor are directly elected by the people. Council is a deliberative and legislative organ of the corporation. Second organ of the corporation are the standing committees to deal with various activities like health, education, public works and are empowered to take decisions in their respective fields. The third authority of the Corporation is the Municipal Commissioner, who is a government officer and is responsible for the implementation of the decisions taken by the council and standing committees.
- 2) **Municipalities-** They are setup by the Acts of state legislature for the administration of small cities or towns. It also has three authorities. First the municipal council is the legislative branch of the municipality, and is headed by the Chairman, who in turn is assisted by a Deputy Chairman. The standing committees facilitate the work of municipality in various fields such as health, taxation finance etc.

The third authority of the municipality is the Chief Municipal Officer, who is appointed by the state government and is responsible for the general administration of the municipality. The municipality may be known by other names also such as Municipal Board, Municipal Council or Municipal Committee etc.
- 3) **Notified Area Committee-** This may be created either in a town which is fast developing or which may not fulfill the conditions for the creation of a municipality. It is known as Notified Area Committee because it is created through a notification of the state government published in the official gazette. It is not a statutory body and all its members and chairman are nominated by the government. It performs similar functions as performed by a municipality.
- 4) **Town Area Committee-**It is created by a separate Act of state government for the administration of small towns. It performs a limited number of functions like street lighting, drainage etc. As provided in the Act, it may be wholly elected or totally nominated or partly elected or partly nominated body.
- 5) **Cantonment Boards-** They are established to perform municipal functions for civilian population living in cantonment or military areas. Its noticeable feature is that it is created and works under the central Act of 1924 under the administrative control of Ministry of Defence. There are three types of Cantonment Boards depending upon the number of civilian population in the Cantonment Area. It consists of partly elected and partly nominated

members. The members are elected for a three year term. The military officer commanding the cantonment station is the ex officio chairman of the Cantonment Board.

- 6) **Townships-** Townships are established by a public sector undertaking as its housing colony to provide civil amenities to its employees living in township. It has no elected members and its affairs are managed by a Town Administrator appointed by the public sector undertaking.
- 7) **Port Trusts-** Such urban bodies are established by an Act of the Parliament to manage and protect ports and to provide civic amenities to the port area. It is headed by an official appointed by the central government. It has both elected and nominated members.
- 8) **Special Purpose Agencies-** The state governments establish some special purpose agencies to perform some specific functions of municipalities. They function as separate bodies not under the control of municipalities. They may be created either by an act of State Legislature or by an order of the executive. Some of these agencies are Housing Board, Water Supply Undertaking, Electricity Supply Undertakings, Urban Development Authorities etc.

3.3.1 The 74th Constitution Amendment Act of 1992 and Urban Local Bodies

Prior to 1992, Indian local governments did not have a constitutional status but only a statutory status under state law. Therefore, the governance of urban areas was directly under the control of the state government. This changed with the enactment of the 74th Constitution Amendment Act, 1992. For the first time in the history of urban governance, Urban Local Bodies (ULBs) were granted a constitutional position as the third tier of government.

These bodies were given a constitutional outline for conducting regular elections, powers and financial devolution. The Amendment assigned local bodies with the responsibility of providing basic services.

Urban Local Bodies (ULBs) are classified depending on the population:

- Nagar Panchayats: for 'rurban' areas
- Municipal Councils: for smaller urban areas
- Municipal Corporations: for metropolitan areas

"In many States local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government."

Municipalities were designed to incorporate elected representatives, experts and the Municipal Chairperson. They were awarded a five-year term with re-election scheduled for within 6 months of dilution. Towards this, a state-level Election Commission was established.

The 74th Constitution Amendment Act also sought to institute the Directive Principle of decentralisation in the urban context. ULBs were granted powers

and responsibilities in terms of preparation of plans, implementation of development schemes, and administration of taxes. A state level Finance Commission was established to review the finances of ULBs falling within its purview.

Table1: Main Characteristics of Urban Local Governments

Type of Municipality	Rationale for Constitution and Brief Characteristics	
	Before 1992	After 1992
Municipal Corporation	- Established in metropolitan areas or big cities - Wider functions and larger powers than councils, enjoy more autonomy and have larger revenue resources - Separation of deliberative from executive functions and vesting of all executive powers in an appointed authority who is independent of the elected body	Constituted in “large urban areas”*
Municipal Committee/ Council	- Most popular form of local government in urban areas - Set up in cities and large towns - Extent of State control is relatively larger than corporations	Constituted in “small urban areas”*
<i>Nagar Panchayat</i>	Constituted after 1992	Constituted in “areas in transition from rural to urban”*
Notified Area Committee	- Set up by State government in medium and small towns - Created for areas which do not fulfill conditions for constitution of councils but are otherwise important - Also created for newly developing towns or areas where industries are being established - All members including chairman are nominated by State government and not elected	Abolished
Town Area Committee	- Semi-municipal authority constituted for small towns - Members are either wholly nominated or wholly elected, or partly nominated and partly elected	Abolished

Source: Report of the Committee of Ministers Constituted by the Central Council of Local Self Government (1963); Government of India (1966); Sachdeva, Pardeep (1993); Constitutional Provisions Relating to Village *Panchayats* and Municipalities in India (1999).

Note: *A “large urban area”, a “small urban area” and a “transitional area” are defined as such area “as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance of such other factors as the Governor may deem fit, specify by public notification” (Constitutional Provisions Relating to Village *Panchayats* and Municipalities in India, 1999).

In addition to these three tiers of local government, two other important organisational structures — the District Planning Committee and the Metropolitan Planning Committee— have been created under the Constitution. The 74th Constitution Amendment Act also added the ‘Twelfth Schedule’ to the Constitution. The Schedule (Article 243W) enumerates the functional responsibilities that the municipalities are meant to shoulder.

The number of municipalities (i.e., municipal corporations, municipal councils and *nagar panchayats*) differs from State to State. It is obvious that States with a large number of urban areas have a higher number of municipalities. There are some States where municipal corporations and/or *nagar panchayats* do not exist. This is due to the fact that the urban areas in such States do not fulfil the conditions for the constitution of a particular type of local government.

municipalities are constituted by the State government, which specifies the class to which a municipality shall belong in accordance with the provisions of the municipal Act. For this purpose, size of the urban population is the main criterion. However, in some States consideration is also given to other criteria, such as location of the urban area and the per capita income.

Table 2: Criteria for Constitution of Municipalities in some States

Name of State	Municipal Corporation	Municipal Council	Nagar Panchayat
Haryana	Population of 300,000 or more	Population of more than 50,000 and not exceeding 500,000	Population of not more than 50,000
Rajasthan	Population of 500,000 or more	Population of more than 100,000 and not exceeding 500,000	Class II: Located at District Headquarter; population of 50,000 or more and not exceeding 100,000; per capita income of Rs. 200 or more Class III: Population of 25,000 or more and not exceeding 50,000; population of less than 25,000 and per capita income of Rs. 150 Class IV: Population of less than 25,000

Source: Municipal Law in Rajasthan, Vol. II (2005: 549-50); The Haryana Municipal Act, 1973 (2005: 47); United Provinces Municipalities Act, 1916 (2004).

Note: In Rajasthan, *Nagar Panchayats* (also known as Municipal Boards) have been further classified as Class II, III, and IV municipalities; Municipal Corporations and Municipal Councils are referred to as Class I municipalities.

3.3.2 Municipal Legislation

Urban local governments are governed by the provisions of the State municipal Acts. Every State has its own municipal Act. The State legislature is empowered by the central government to decide on the structure, functions and powers to be entrusted to the local governments. Although the content and format of various State municipal Acts is more or less uniform, there are striking differences in the provisions for devolution of powers, functions and funds to local governments since this is determined by the condition of both the State and the local government. The system is regulated by enactments passed from time to time by State legislatures. Furthermore, municipalities possess powers to draft local byelaws on various provisions for the furtherance of municipal administration. This is due to the fact that each urban area has its own distinct character. The byelaws are sent to the State legislature for approval. The municipal Act is, therefore, a comprehensive guiding legal document for the local government officials and the elected representatives, and byelaws are framed to further clarify the administrative procedures.

In every State, two different types of Acts are generally in use – one for the Municipal Corporations and a common Act for the Municipal Councils and *Nagar Panchayats*. In a few States where several municipal corporations exist, the legislature has framed municipal Acts especially for some corporations. The remaining corporations in the State are governed by a common municipal corporations Act.

3.3.3 Composition of Municipalities

There have been significant changes in the composition of municipalities since their constitution. In the ancient period, municipal administration was in the hands of the ruling class or the ruling government and their subordinate offices and departments. Urban citizens were not happy with the prevailing ‘centralized approach’, which was characterized by excessive bureaucracy. It was gradually realized that because local governments were formed for the welfare of the urban citizens, it was necessary to involve them. This thinking paved the way for citizen’s participation in municipal affairs. A select number of urban citizens are now chosen by holding elections to municipalities. For this purpose the municipal area is divided into several wards delineated on the basis of population. There is a contest for the seat/post of councilors in municipalities among the eligible voters at the ward level. One person from each ward is elected to the post of councilor. Elections are also held for the post of a mayor in municipal corporations and a chairperson (also known as a president/chairman) in municipal councils and *nagar panchayats*.

The State government departments are responsible for the organisation of municipal elections. Besides the State government appointed staff and persons nominated by the State government, citizen’s representatives have become a part of the local government. Whereas the appointed staffs are trained to handle their duties, citizens’ representatives are more aware of the quality of life at the ward level. The effort of the government has been on maintaining a balance in the distribution of power between the officials and the non-officials and on establishing a democratic form of local government. To enable wider participation in municipal affairs, seats in local governments are reserved for some sections of the society. In addition to the appointed, nominated and the elected

functionaries, ex-officio persons are also affiliated to the local government. A typical composition of an urban local government is shown below:

Table 4: Composition of Urban Local Governments

Category	Type of Municipality	
	Municipal Corporation	Municipal Council/ Nagar Panchayat
Elected Members Ward Representatives	• Mayor; Deputy Mayor • Chairperson/President;	• Councillors/Elected Vice-President • Councillors/Elected Ward Representatives
Ward Representatives	• MPs • MLAs • MLCs	• MPs • MLAs • MLCs
Ex-officio Members	•	•
Appointed Staff	• Municipal Commissioner • Executive Officer	• Subordinate Staff • Subordinate Staff
Nominated Members	• Selected Citizens	• Selected Citizens

Source: State Municipal Acts.

- Notes:** i) Elected Members: There is one seat of Mayor/President, Deputy Mayor/Vice-President in a municipality; there are as many councillors as the number of wards in a municipality.
- ii) Ex-officio Members: MP – Member of Parliament; MLA – Member of Legislative Assembly; MLC – Member of Legislative Council.
- iii) Appointed Staff: There is one position of Municipal Commissioner/Executive Officer in a municipality; the various sub-committees of a municipality are run by the subordinate staff in association with the elected members and the Municipal Commissioner/Executive Officer. Such staffs do not have the right to vote in the meetings of the municipality.
- iv) Nominated Members: A certain number of persons having special knowledge or experience in municipal administration are nominated by the State government. Such members do not have the right to vote in the meetings of the municipality.

Box 2 : Reservation of Seats in Municipalities (Article 243 – T)

- 1) Seats shall be reserved for the **SCs and STs** in every Municipality 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 Municipality as the population of the SCs in the Municipal area or of the STs in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.
- 2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for **women belonging to the SCs or as the case may be, the STs**.
- 3) Not less than one-third (including the number of seats reserved for women belonging to the SCs and the STs) of the total number of seats to be filled by direct election in every Municipality shall be reserved for **women** and

such seats may be allotted by rotation to different constituencies in a Municipality.

- 4) The offices of **Chairpersons** in the Municipalities shall be reserved for the SCs, the STs and women in such manner as the Legislature of a State may, by law, provide.
- 5) The reservation of seats under clauses (1) and (2) and the reservation of offices 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 Municipality or offices of Chairpersons in the Municipalities in favour of **backward class** of citizens.

Today, there are around 5161 ULBs with municipal corporations, municipal councils and Nagar Panchayats, besides cantonment boards.

3.3.4 Duties of Municipalities

The basic objective of an urban local government has changed from the maintenance of law and order in the early years to the promotion of the welfare of the community in recent times. The State municipal Acts provide an exhaustive list of functions, which are classified into obligatory and optional or discretionary functions. The former have to be necessarily performed by the local government and for which sufficient provision in the budget has to be made. Failure to perform any of these functions may compel the State government to supersede a municipality. Discretionary functions may be taken up depending upon the availability of funds. Municipal functions listed in the State municipal Acts generally fall in the following broad categories: (a) public health and sanitation; (b) medical relief; (c) public works; (d) education; (e) development; and (f) administrative .

Table 3: Functions of Urban Local Governments

S. No.	Category	Description
1	Public Health and Sanitation	Water supply, public vaccination, control of diseases, prevention of pollution, collection & disposal of rubbish, maintenance of sewers, etc.
2	Medical Relief	Establishment & maintenance of health institutions, etc.
3	Public Works	Construction & maintenance of streets, bridges, etc., control & regulation of building activity, street lighting, tree plantations, etc.
4	Education	Establishment & maintenance of educational institutions, etc.
5	Development	Construction & maintenance of markets, shopping centres, drinking water standposts, wells, parks, gardens, etc.; preparation of comprehensive plans for development & growth of town, etc.

6	Administrative	Preparation of annual reports, maintenance & development of municipal property, regulation of traffic, registration of births & deaths, etc.
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Source: Government of India (1966: 20-23); Municipal Acts of various States.

Furthermore, the Seventy-Fourth Amendment Act, 1992 provides that State legislatures may endow municipalities with 18 functions. Whereas many of these functions (such as urban planning, water supply, sanitation, slum improvement, etc.) were already listed in the municipal Acts of most States, certain new functions have been included, namely planning for economic and social development; urban forestry, protection of the environment and promotion of ecological aspects; safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded; urban poverty alleviation; and promotion of cultural, educational and aesthetic aspects. It is understood that the listing of the 18 functions has been done to ensure that State governments give priority to at least those functions that are of importance to every urban area. In most State municipal Acts, the list of 18 functions has been inserted.

**Box1 : Powers, Authority and Responsibilities of Municipalities
(Article 243 – W)**

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow –

- a) the Municipalities 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 Municipalities, subject to such conditions as may be specified therein, with respect to:
 - i) the preparation of plans for economic development and social justice;
 - ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the **Twelfth Schedule**;
- b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

Twelfth Schedule

1. Urban planning, including town planning;
2. Regulation of land-use and construction of buildings;
3. Planning for economic and social development;
4. Roads and bridges;
5. Water supply for domestic, industrial and commercial purposes;
6. Public health, sanitation, conservancy and solid waste management;
7. Fire services;
8. Urban forestry, protection of the environment and promotion of ecological aspects;

9. Safeguarding the interests of weaker sections of society, including the handicapped & mentally retarded;
10. Slum improvement and upgradation;
11. Urban poverty alleviation;
12. Provision of urban amenities and facilities, such as parks, gardens, playgrounds;
13. Promotion of cultural, educational and aesthetic aspects;
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums;
15. Cattle pounds; prevention of cruelty to animals;
16. Vital statistics, including registration of births and deaths;
17. Public amenities, including street lighting, parking lots, bus stops and public conveniences; and
18. Regulation of slaughterhouses and tanneries.

Source: Constitutional Provisions Relating to Village *Panchayats* and Municipalities in India

3.3.5 Division of powers - elected, nominated and administrative

The 74th Constitution Amendment Act provides the outline for elected and nominated councillors. The number of elected councillors varies according to the population of an area. Nominated councillors are to be selected by the elected councillors for their expertise in municipal administration. However, they are not granted voting rights.

The municipal corporation – organisational Structures

The 74th Constitution Amendment Act does not specify any specific organisational structure for municipal administration in India. This is an issue for state legislation and the structure differs from state to state.

The Ministry of Urban Development drafted a Model Municipal Law, 2003 which was circulated to state governments. The rationale for the lack of a centrally administered Municipal Model is that local bodies need to be flexible to respond better to local requirements. As detailed below, two broad models are commonly in use.

Commissioner system

The mayor

The Mayor in the Municipal Corporation is typically chosen through indirect elections by the councillors among themselves, for a term of one year which is renewable. The Mayor does not have executive authority. Councillors and Committee Councillors act as a committee. The most powerful committee is the standing committee, which functions as the steering board exercising executive, supervisory, financial and personnel powers. It is composed of elected members varying in number between seven and sixteen through a system of proportional representation of councillors.

The Executive

The Municipal Commissioner acts as the Chief Executive Officer and head of the executive arm of the Municipal Corporation. All executive powers are vested in the Municipal Commissioner. The powers of the Commissioner are provided by the statute and delegated to the Standing Committee.

Mayor in council model

This form of city governance is similar to a cabinet government and follows the framework of state and national governments. This model consists of a Mayor and a cabinet, with individual portfolios, chosen from among the elected councillors. The Municipal Commissioner acts as the Principal under the supervision of the Mayor who is the Chief Executive Officer.

Although the above “model” structure may seem relatively simple, in reality urban governance is a confusing mix of multiple agencies. Some are new while others are legacies of older regimes; some are answerable to local government while others to state level or even national government.

Check Your Progress 2

Note: a) Write your answer in about 50 words

b) Check your answer with possible answers given at the end of the unit

1) What are main components of 74th Constitution Amendment Act, 1992?

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2) What are the duties of municipality?

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3.4 URBAN GOVERNANCE IN INDIA: STRUCTURAL CHANGES AND INNOVATIONS

India has been experiencing several changes in the political and economic space, which have some implications to governance and, so also, to urban governance.

India had followed mixed economic model with public sector leading the economy and public spending determining the welfare of the society. There was a significant deviation in this approach through economic policy reforms in 1991 that were brought as a necessity to make India emerge as a strong economy in line with competition from other countries. With this added pressure on services, in addition to the pressures from rapid urbanization gripping the country in 1980s, markets emerged as important institution in the wider allocation of resources, in their ability to mop-up and bring-in private resources in economic activities and in representing the needs (and aspirations) of growing consumer class in cities.

3.4.1 Legal Provision relating to Municipal Governance

74th Constitutional Amendment Act in 1992 sought to give a new lease of life to municipal bodies by identifying them as the third tier of urban governance. The Amendment Act focused on devolving additional functions to the municipal bodies and urging the state governments to assign them more taxation powers commensurate : to their additional responsibilities. These are as follows:

i) Municipal elections and functioning of ward committees

As per a study conducted by the NIUA {National Institute of Urban Affairs}, municipal elections have been held by most of the states. Nine states have constituted ward committees to ensure representation from each ward in the decision-making process. However, ward committees are functional only in Tamil Nadu and Kerala. In fact, Kerala is the only state where the ward committees are functioning successfully in each and every ward and in towns having population above 1 lakh .

ii) Transferring of functional responsibilities

Most of the states have incorporated provision in the Municipal Acts for the devolution of power to the municipal bodies. However, the extent of functions devolved differs from state to state. The states of Kerala, West Bengal, and Tamil Nadu have in fact assigned some additional responsibilities apart from those mentioned in the 12th Schedule.

iii) State finance commission and financial reforms

The finance commissions constituted in various states of India have attempted a detailed review of the financial position of the municipal bodies. Most states have constituted two SFCs (state finance commissions) so far:

iv) Constitution and functioning of DPCs and MPCs

The DPCs (district planning committees) were constituted with a view to achieving integrated regional planning. It was envisaged that the DPCs would prepare draft development plans, including spatial plan for the district, and would integrate the common interest of the rural and urban areas within the district. Their role would also be advisory to the local bodies in preparation of development plans and their effective implementation. Coordination and monitoring of implementation of district development plans and allocation of resources to local bodies for planning and implementation of local-level projects contained in the district development plans would be another area of intervention by the DPCs.

MPCs (metropolitan planning committees) were to be constituted in every metropolitan area. The purpose was to accord constitutional recognition to metro- regional planning with a view to augmenting investment in economic activities and infrastructure, by putting in spatial planning inputs. MPCs would be responsible for functions such as preparation of draft development plan for the metropolitan areas, spatial coordination of plans prepared by the municipalities and panchayats in the metro area, and recommending modifications in the local area plan. The MPCs would also advise local bodies in preparation of development plans and, thereafter, monitor effective implementation of approved development plan of the region.

It is widely held in the public finance literature that the Act, however, did not address the mobilization of resources to cover financial requirements of service provision but, rather, exacerbated it by the addition of new functions. Yet, as noted earlier, cities have not done enough in terms of improving governance modes and building governance structures that can anticipate changes and prepare themselves for the same. The capacity of many local governments to plan and manage their cities is limited and, as a result, they are not able to meet the challenges of increasing demands.

3.5 IMPEDIMENTS IN IMPROVED URBAN GOVERNANCE

Urban governance and management have predominantly been the constitutional domain of state government. The municipal bodies have been functioning under state governments, which have been delegating authority, powers, and functions to them through state legislative enactment. These local institutions of urban government have become weak over the years due to a host of factors, including encroachment on traditional and legitimate municipal functions by creating parastatals and urban development authorities, weak executive system, fragile fiscal health, and inadequate staffing and expertise in municipal management .

i) Issues in decentralization

As discussed in the earlier section on implementation of the 74th Constitutional Amendment, states have incorporated provisions in their Municipal Acts for transferring additional functions to the municipal body, but the extent of functions transferred differs from state to state. Further, the performance of Municipal Bodies in undertaking these functions varies from city to city even in the same state. Discussions with stakeholders brought out that capacity and resource constraints of municipal bodies are the major reasons for this difference in their performance. While the larger municipal corporations still have access to funds, the smaller municipal councils are financially very weak. Further, the devolution of functions to the municipal bodies is also affected by the fact that in some cities, the parastatals, which traditionally delivered certain basic functions, have not been dismantled. As a result, they continue to perform certain functions that may have legally been passed on to the municipal bodies. The continued existence of the parastatals has led to overlaps and often conflicts in the roles and responsibilities of each agency involved in municipal governance. In such a scenario it becomes difficult for the citizens to hold any particular agency responsible for inadequate service delivery.

ii) Financial impediments

The ULBs are financially weak, and while there is provision to levy and collect adequate user charges, such provisions are not fully utilized,

Many municipal bodies are running into deficits and are heavily dependant on government grants. The state budgetary allocations have, however, been drying up for most states, and it is being realized that the traditional system of funding based on plan and budgetary allocations will only reduce in the future.

iii) Operational capacity issues

Most ULBs face problems due to lack of capacity, improper staffing patterns, and lack of standardization. They do not have the institutional, operational, educational, and legal capability to develop commercially viable infrastructure projects, mobilize resources for the projects, and implement them.

Lack of adequate training is the main impediment in introducing new technologies and management styles in the working of the municipal corporations. E-governance initiatives, accounting reforms, and in fact, even private participation all require a certain level of training of the staff on IT systems, accounting norms, and so on.

iv) Insufficient public participation

The urban governance system lacks people's involvement in the decision-making process. While there is little effort on part of the municipal bodies to include people in the process, the problem gets compounded by the fact that there is very little awareness amongst citizens themselves on their role in the governance process.

v) Issues in transparency and accountability

The lack of transparency and accountability in the working of urban local bodies has already been brought out in the earlier discussions on the Municipal Disclosure Law. The main impediment towards achieving transparency and accountability is not the lack of understanding on the need for the same but the lack of means to achieve the same. Most ULBs are severely capacity constrained both in terms of funds and manpower. In such a scenario, it becomes difficult to put in places systems that would enhance accountability. In fact, the root cause of the problem of inefficient service delivery is the capacity constraints of ULBs.

3.6 MEASURES TO STRENGTHEN URBAN GOVERNANCE

The Planning Commission of India constituted a Working Group on Urban Governance for formulation of 12th Five Year Plan. Some of the recommendations of the committee for strengthening urban governance are as follows:

- 1) Standardizing the classification of ULBs:** The states should adopt standard norms for classification of ULBs. It would be advisable that all the municipalities should be reclassified into three categories: Municipal

Corporation for large urban areas of 5 lakh and more population; Municipal Council for urban areas of 1 lakh to 5 lakh population and Nagar Panchayat for towns below 1 lakh population.

- 2) **Strengthening Ward Committees:** There is wide variation in the functioning of ward committees across the state. Although the legal provisions for the constitution of a Wards Committees have been made in most of the states, the actual spirit of the Amendment is diffused. Hence, constitution of ward committees and their functioning needs to be incentivized. Further, there is a need to establish area sabhas and to create the linkage between area sabhas and ward committees so as to ensure that accountability and participatory processes became a reality.
- 3) **Strengthening Metropolitan Planning Committees:** The 74th Amendment specific establishment of a Metropolitan Planning Committee (MPC) for preparing development plans at the metropolitan level. However, MPCs are yet to evolve as per the spirit of the constitutional amendment. Only a few states have initiated creation of such entities. The central government needs to support the state government in this respect.
- 4) **Empowerment of political office bearers:** The Mayors or Chairpersons of the LBs should be accountable to people and need to have power and tenure commensurate with this objective. The local conditions should determine whether the cities should adopt a “Mayor in Council” system or an “Executive Mayor” system. In addition, there is a critical need for building the capacity of the political executive specifically in areas such as sensitization vis-à-vis the need for reforms, service level benchmarks etc.
- 5) **Convergence of functions of parastatals / state bodies with Local Bodies:** Historically, due to poor staffing and technical capabilities of the Local Bodies, a number of Para-Statal Bodies were created for providing services listed in the 12th Schedule. Consequently, a large number of parastatals, including Development Authorities, Water Supply & Sewerage Boards, Slum Housing & Development Boards, PWD etc. have been performing various functions which could have been vested with the Local Bodies in accordance with the mandate of the 74th Amendment. The multiplicity of agencies providing various services in the Urban Sector has led to overlapping, ambiguity and wastage of resources. Over and above that, the parastatal bodies are not elected Bodies and are not directly answerable to the citizens. There is a need for activity mapping for these bodies.
- 6) **Framework for Governance of Mega Cities:** The problems of megacities are admittedly complex. The large scales of interventions required for core services such as water supply, sanitation and roads, leads to formidable administrative challenges. This is made more complex as trunk services historically have not been mapped or digitized, unregulated use of vacant lands have lead to haphazard growth, proliferation of slums, unauthorized construction and encroachment. Therefore, the challenge before the mega cities is how to ensure good municipal administration keeping in view such large complexities. There is a need for creating a governance system for these cities.
- 7) **Strengthening the Organisational Capacities:** The poor quality of urban managers is one of the major reasons for sub optimal urban administration.

The manpower available in most of the urban local bodies is not equipped with the necessary technical and planning skills to meet the growing urban challenges. There is an urgent need for increased investment, financial management and audits in local bodies. Thus, creation of a municipal cadre is essential.

- 8) **Regulatory mechanisms for delivery of basic urban services:** An Independent Urban service Regulator is the need of the hour as the current paradigm of service provider deciding service levels and tariff is outdated. The regulator would monitor provision of service as well as tariff regime and ensure transparency and efficiency.
- 9) **Public Private Partnership:** PPPs which are structured around a robust revenue model (including user charges, targeted subsidies, and viability gap funding) and offer a good prospect of return on investment can contribute to systemic gains and better management of urban services. The State governments should bring out a legislative framework to address the entire gamut of issues in implementation of PPP Projects and develop clear policies with regard to identification of projects which can be developed and implemented on PPP basis, delivery processes, project development, approval and implementation process, guiding principles of contract management etc.
- 10) **Accountability and Citizen Participation:** A more interactive and participative framework should be followed by ULBs to ensure greater accountability to the citizens. Citizen Report cards, like the one prepared by the Public Affairs centre in Bengaluru, need to be replicated across all cities.
- 11) **Use of E-Governance and Technology for improvement of delivery of services and need for database:** The information Technology (IT) can play an important role in improving governance. With municipal administration becoming increasingly complex, the benefits of IT adoption are becoming more and more visible across several municipalities. The tools of IT and E-Governance should be strengthened and adopted in all the ULBs and for this, whatever skill upgradation is required, should be done.

Check Your Progress 3

Note: a) Write your answer in about 50 words

b) Check your answer with possible answers given at the end of the unit

- 1) **What are the impediments in improved urban governance?**

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2) What are the broad aims of implementing e-governance in municipalities?

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3.7 LET US SUM UP

The phenomenon of urbanization, globalization and liberalization are increasing pressure on service delivery in the cities of developing countries that are engulfed by vast number of problems. Unfortunately, most of the cities are ill equipped to tackle the problems and pressures because either they gave inadequate thought about the trajectories of city growth or because they did not plan and allocate resources to do it; even otherwise, there are inefficiencies built-in through traditional designs of institutions of service delivery made on political and bureaucratic forces. This is leading to government failures in service delivery, which can be addressed by institutional innovations under partnership mode (apart from governance reforms) to steer urban governance in right direction. However, policy reforms are also needed so that right kinds of incentives prevail for nurturing new institutions.

3.8 KEYWORDS

Governance, Partnership, Management, Network, Municipal, Organisational, Efficiency, Urban, Reform, Accountability, Participation

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3.10 CECK YOUR PROGRESS - POSSIBLE ANSWERS

Check Your Progress 1

1) What are principles of good governance?

- A) (a) Participation (b) Rule of Law (c) Transparency (d) Responsiveness (e) Consensus orientation (f) Equity, Efficiency and Effectiveness (g) Accountability (h) Strategic Vision

2) How do you measure effective Urban Governance?

- A) Urban Governance is derived from the concept of governance in relation to urban areas to be reflective of how the various constituents of public service delivery are organized to increase the welfare of citizens (both current and future). It can be measured relatively, and somewhat subjectively, how effective the institutions are in terms of the principles of sustainability, decentralization, efficiency, equity, participation, transparency, accountability, civic engagement and citizenship, and security.

3) Who are the key players in decision making and implementation process of governing the cities?

- A) There are two key players involved in the decision-making and implementing process, and also of the institutional structures that support them. The decision makers can be categorized into two broad categories:

Government: This includes in a federal state the Union, State and Local Governments .

Civil Society: This includes community groups, the urban poor, NGO's, business establishments, and the media. Effective governance at the last mile, in a healthy democracy is dependent on the participation of citizens and the capacity of local governments to govern efficiently.

Check Your Progress 2**1) What are main components of 74th Constitution Amendment Act ,1992?**

- A) The 74th Constitution Amendment Act also sought to institute the Directive Principle of decentralisation in the urban context. ULBs were granted powers and responsibilities in terms of preparation of plans, implementation of development schemes, and administration of taxes. A state level Finance Commission was established to review the finances of ULBs falling within its purview. In addition to these three tiers of local government, two other important organisational structures — the District Planning Committee and the Metropolitan Planning Committee— have been created under the Constitution. The 74th Constitution Amendment Act also added the 'Twelfth Schedule' to the Constitution. The Schedule (Article 243W) enumerates the functional responsibilities that the municipalities are meant to shoulder.

2) What are the duties of municipality?

- A) The State municipal Acts provide an exhaustive list of functions, which are classified into obligatory and optional or discretionary functions. The former have to be necessarily performed by the local government and for which sufficient provision in the budget has to be made. Discretionary functions may be taken up depending upon the availability of funds. Municipal functions listed in the State municipal Acts generally fall in the following broad categories: (a) public health and sanitation; (b) medical relief; (c) public works; (d) education; (e) development; and (f) administrative .

Check Your Progress 3**1) What are the impediments in improved urban governance?**

- A) *Issues in decentralization*

The devolution of functions to the municipal bodies is also affected by the fact that in some cities, the parastatals, which traditionally delivered certain basic functions, have not been dismantled. As a result, they continue to perform certain functions that may have legally been passed on to the municipal bodies.

Financial impediments

The ULBs are financially weak, and while there is provision to levy and collect adequate user charges, such provisions are not fully utilized.

Operational capacity issues

Lack of adequate training is the main impediment in introducing new technologies and management styles in the working of the municipal corporations.

Insufficient public participation

The urban governance system lacks people's involvement in the decision-making process.

Issues in transparency and accountability

The main impediment towards achieving transparency and accountability is not the lack of understanding on the need for the same but the lack of means to achieve the same.

2) What are the broad aims of implementing e-governance in municipalities?

- A) Focus on clearly identified citizen services that would be covered with clearly laid down service levels and outcomes to be achieved.
- Improve efficiency and effectiveness in interaction between local government and its citizens and other stakeholders.
 - Improve quality of internal local government operations and management information systems to support and stimulate good governance.
 - Bring about transparency and accountability in urban local body operations.
 - Help improve reach of the delivery of services to citizens.

UNIT 4 PESA AND ITS IMPLEMENTATION

Structure

- 4. 1 Introduction
- 4. 2 Characteristics and Features of Scheduled Areas
- 4. 3 Tribes and Fifth and Sixth Schedule Areas
- 4. 4 Bhuria Committee Recommendations and 73rd Constitutional Amendment
- 4.5 Provisions of the Panchayats (Extention to the Schedule Areas) Act, 1996 (PESA)
- 4. 6 Gram Sabha and its Role
- 4. 7 Ramifications of the Act 40 of 1996
- 4. 8 Operational Issues and Suggestions for Proper Implementation
- 4.9 Let Us Sum Up
- 4.10 References and Suggested Readings
- 4.11 Check Your Progress - Possible Answers

4. 1 INTRODUCTION

The Constitution of India provides special protection to the tribals, who constitute more than eight per cent of the total population of India and are spread unevenly over different regions of the country. The tribal communities have remained comparatively isolated and they maintain an uninterrupted long tradition of well knit, cohesive social structure and value system, which is governed by their own customs and traditions. They also have their own self-governing local institutions, which are gradually becoming weak and inactive. In fact it is a challenging task to assimilate these tribal groups in the mainstream developmental effort without disturbing and destroying their cultural identity and socio-economic milieu.

In order to strengthen the local bodies and to provide self-rule for tribals, the Part IX of the Constitution has been extended through a Parliament Act called the provisions of the Panchayats (Extention to the Scheduled Areas) Act, 1996 (Act No.40 of 1996), popularly known as PESA (herein after the term PESA will be used to denote the Extention Act). Prior to this Act, a committee was constituted to examine various dimensions of self - rule for tribals, the Constitutional requirements and to suggest how the provisions of Part IX of the Constitution could be extended to the Scheduled Areas.

This unit provides details about the Act known as PESA, its status and operational aspects including gaps and measures for strengthening the system.

After studying this unit, you should be able to

- Define self rule and fifth and Sixth Schedule Areas
- Describe the provision under PESA, 1996
- Discuss the status of Conformity Panchayat Acts passed by the states
- Analyse operational issues and suggestions for proper implementation

4.2 CHARACTERISTICS AND FEATURES OF SCHEDULED AREAS

Historically, the idea of administration of underdeveloped areas originated with the British administration in the latter half of the 18th century. With the declaration of Regulation 1 of 1796, the concept of having a distinct and special arrangement essentially for the isolated tribal regions gained general acceptance and, in turn, special laws came into practice for administering these areas. The Government of India Act, 1919, had separate administrative arrangements for these areas and they were kept out of the purview of the legislatures. Subsequently, on the basis of the recommendations of the Simon Commission, the Government of India Act, 1935, provided for the declaration by an Order in Council of 'Excluded Areas' and 'Partially Excluded Areas' (Sections 91 and 92). Under the provisions, no act of the Federal Legislature or the Provincial Legislature would apply to these areas except on the direction of the Governor, who was empowered to make such exceptions and modifications, as he considered necessary.

The Secretary of State indicated broad principles as to which areas could be taken up under the provisions of the Sections 91 and 92 of the Government of India Act, 1935. As per the principles announced, for 'Excluded Areas', the selection must be based upon strict necessity and the range should be as limited as possible in scope consistent with the needs of the tribal population. Regarding the areas to be classified as 'Partially Excluded Areas', any area containing a preponderance of tribals which was of sufficient size to make possible the application of special legislation and special administrative treatment should qualify for inclusion. Keeping these principles in view, the Government of India recommended that the frontier and border regions of Assam, the Laccadive and Minicoy Islands and the Lahaul and Spiti areas in the Punjab should be declared 'Excluded Areas'. Extensive tribal tracts in the provinces of Madras, Bombay, Bengal, United Provinces, Bihar, Central Provinces and Orissa should be declared as 'Partially Excluded Areas'.

A sub-committee of the Constituent Assembly with A V Thakkar as its chairperson was constituted to examine the erstwhile arrangement of 'Excluded and Partially Excluded' and review the central issues relating to tribals and make recommendations on the subject. In this report, the sub-committee on Excluded and Partially Excluded Areas (other than Assam) observed that in the new democratic set up the problems of the tribals should be an integral part of the development of the Indian people as a whole. By and large, the recommendations of the committee were accepted and adopted in the Constitution and provision was included for separate administration of these Areas.

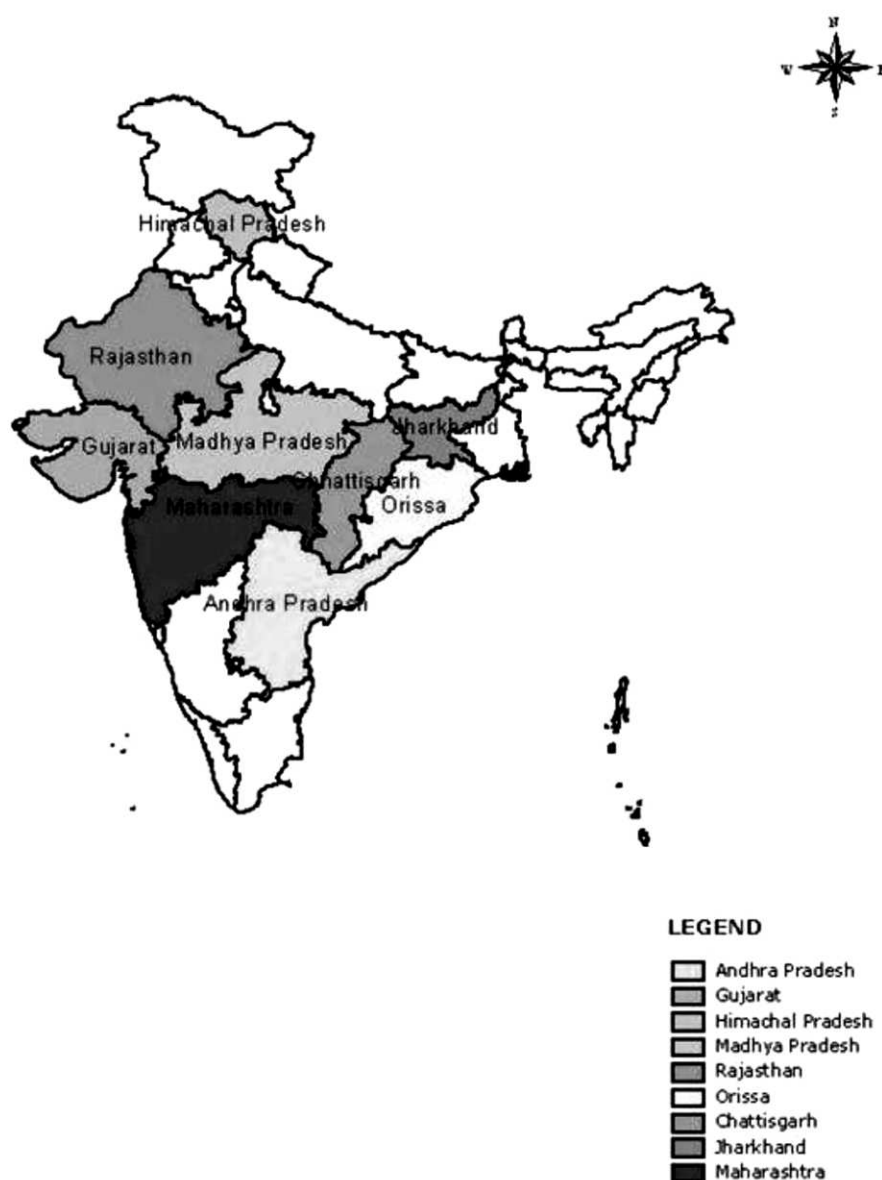
The President is empowered to declare any area, where there is a substantial population of tribal people, as a scheduled area under the Fifth Schedule or in Assam as a tribal area under the Sixth Schedule. The criteria for declaring any territory as 'scheduled' adopted by the sub-committee of the Constituent Assembly were: (a) preponderance of tribal population; (b) the stage of advancement and degree of assimilation; and (c) to a slightly lesser extent the susceptibility of these areas to special administrative treatment.

Subsequently, the Scheduled Areas and Scheduled Tribes Commission headed by U.N. Dhebar prescribed slightly different indicators. According to the

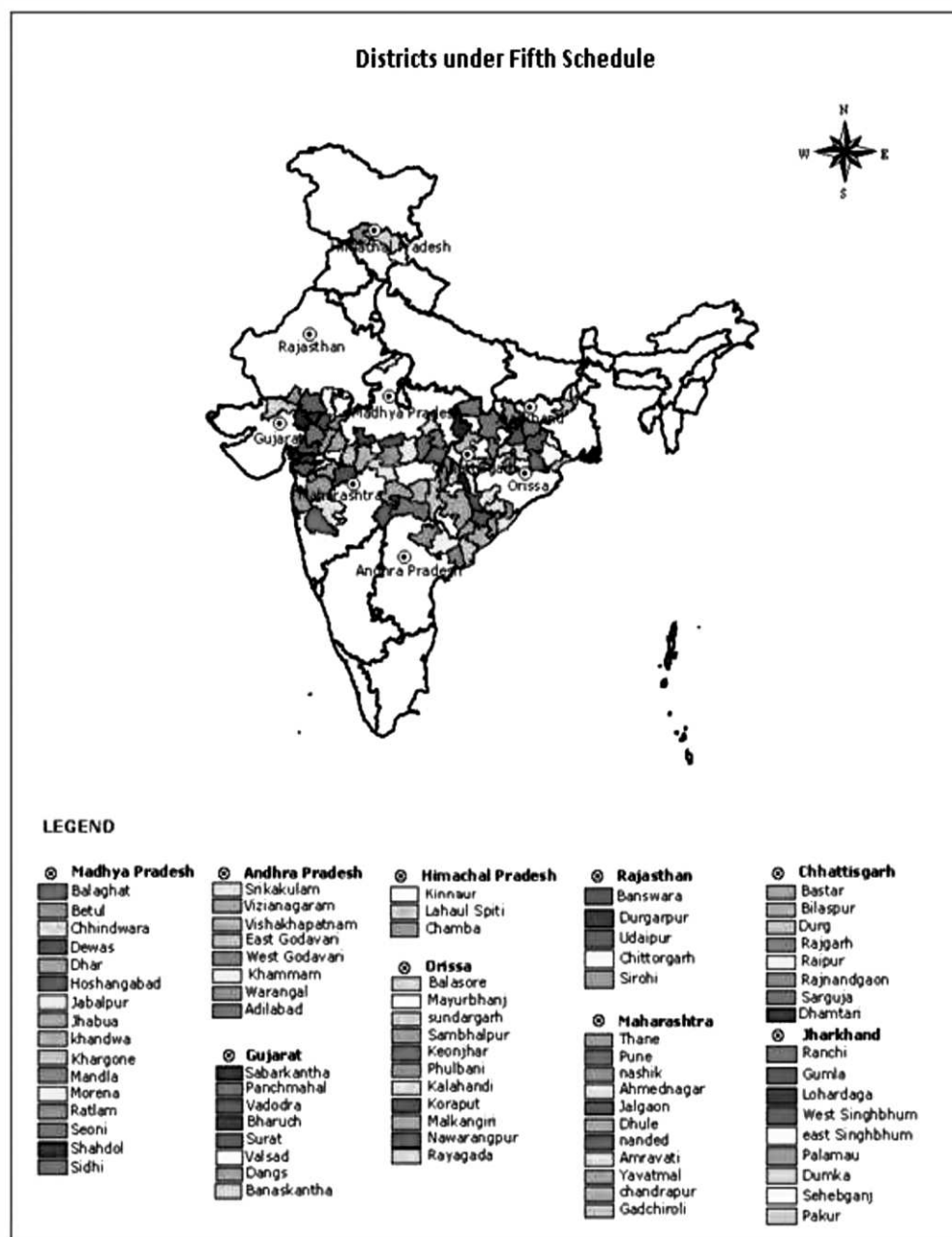
commission, the criteria for determining a scheduled area under the Fifth Schedule may be based on four factors: (a) preponderance of tribals in the population, (b) compactness and reasonable size, (c) underdeveloped nature of the area, and (d) marked disparity in economic standards of the people. Similarly, under the provisions of Article 342 of the Constitution, the President is empowered to notify in consultation with the Governor of the State any tribe as a Scheduled Tribe. The criteria generally followed for classifying a tribal community as Scheduled Tribe are:

- Geographical isolation,
- Shyness of contact with community at large'
- Distinct culture, and
- General backwardness
- Primitive traits

States having Fifth Schedule Area



Articles 244 (1) and (2) in Part X of the Constitution of India describes about 'Scheduled Areas' and 'Tribal Areas' under the Fifth and Sixth Schedules respectively. It envisages a special system of administration for these areas. The Fifth Schedule is tribal dominated areas covering nine states of the country, namely, Andhra Pradesh, Chattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan.



4.3 TRIBES AND FIFTH AND SIXTH SCHEDULE AREAS

The Constitution of India provides self-rule for the tribal communities. It ensures to safeguard their ethnic culture, common property resources and community control. Administratively, the scheduled areas are part of the states in which they are situated. The rationale for the Scheduled Areas has been to assist the tribal population in enjoying their existing rights unobstructed, and to develop the area as well as to promote the economic, educational and social progress of the

scheduled tribes. Besides, it will help in protecting their rights and interests and prevent their exploitation. The Governor has been given specific powers for the administration of Scheduled Areas. These powers are: (a) to modify central and state laws in their application to them, (b) to frame regulations for their peace and good governance and particularly for the protection of the rights of tribals in land, (c) allotment of land and, (d) their protection from moneylenders. However, in framing these regulations, the Governor is required to consult the Tribes Advisory Council (TAC) in the state established under the provisions of Part B, Para 4, of the Fifth Schedule of the Constitution. Further, the Governor is required to submit to the President a report annually or whenever so required regarding the administration of the Scheduled Areas in the State.

4.3.1 Fifth Schedule Areas

For the Fifth Schedule Areas, the scheme of administration visualizes a division of responsibility between the state governments and the union government. It is the duty of the state government to screen legislation unsuitable for extension to the Scheduled Areas. Moreover, the State Government is responsible for framing regulations relating to such items. The state government has also to implement special schemes pertaining to welfare and general development of Scheduled Tribes in the state. The union government extends guidance with regard to administration and provides additional funds for the betterment of the tribal community. Further, Article 339(2) of the Constitution provides:

“The executive power of the Union shall extend to the giving of directions to a state as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State”.

Part B, Para 4 of the Fifth Schedule envisages setting up of a Tribes Advisory Council (TAC) comprising not more than twenty members. Of these, three-fourth shall be the representatives of the scheduled tribes in the Legislative Assembly of the state. In case the number of representatives of the scheduled tribes in the Legislative Assembly is less than the number of seats in the TAC to be filled by such representatives, other members of these tribes shall fill the remaining seats. The Governor is empowered to make rules prescribing or regulating the number of members of the council, the mode of their appointment, the appointment of chairperson, the conduct of meeting and its procedure in general and other incidental matters. In fact, the TAC is an advisory body meant to act as an instrument for prevention of exploitation and discrimination. It facilitates governance of the scheduled areas in the larger interest of the tribes.

4.3.2 Sixth Schedule Areas

Paragraph 2 of the Sixth Schedule provides for the setting up of District Councils (DC) and Regional Councils (RC) in each autonomous district and region. The District Council is a body corporate having perpetual succession with a common seal, and the right to own and dispose off property, and with the right to sue and be sued. The DC will have not more than thirty members, of whom the Governor shall nominate not more than four persons. A simple majority elects members on the basis of adult *suffrage* from a single member constituency. The elected members of DC shall have a term of five years from the date of appointment for the first meeting of the Council. In order to give greater functional autonomy to the district councils, it has been well structured with three functional organs,

that is, the Legislature, the Executive and the Judiciary. The Regional Council for an autonomous region will be constituted separately in respect of all areas within such region notified by the Governor. The powers of regional councils and the district councils have been enumerated in the Schedule.

Now we have discussed about Scheduled areas and the fifth and sixth Schedule. Try to answer the following questions in the *Check your progress-1*

Check Your Progress 1

Note: a) Write your answer in about 50 words

b) Check your answer with possible answers given at the end of the unit

1) What are the criteria for declaring Scheduled Area?

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2) What is Fifth Schedule?

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4.4 BHURIA COMMITTEE RECOMMENDATIONS AND 73RD CONSTITUTIONAL AMENDMENT

A high level committee chaired by D S Bhuria, MP, was constituted in June 1994 to examine how provisions of the 73rd Constitution Amendment could be extended to the Schedule areas and make recommendations. The rationale for inclusion of provisions as contained in Article 243M with regard to applicability of Part IX of the Constitution to Scheduled and Tribal Areas under Fifth and sixth Schedule Areas would be recognized and appreciated once it is accepted that the people in these areas need to be given protection to safeguard their interests.

The Committee, after discussing the issues emanating from the terms of reference and considering various aspects of the subject, submitted its report in January 1995.

Some important recommendations of the committee are listed below:

- While passing the law under Article 243M (4) (b), important provisions of the 73rd constitutional amendment and certain unique characters of tribal societies and tribal areas should be kept in view since many tribal societies have their mode of living organizations, cultural mores, present-day predicament of exploitation, deprivation and marginalization. Many tribal communities have been living autonomously. They have exercised control over the natural resources moulding their institutions. The Gram sabhas and village councils have been vibrant institutions in the field of administration, religion, politics, economics, justice and so on. Therefore, it is necessary to have in the Panchayati Raj framework a mix of traditional and modern institutions.
- While drafting the law, advantage should be taken of both the Fifth and Sixth Schedules. The Fifth Schedule should be the fountainhead of essential and beneficial legislation. The design and contents of the Sixth Schedule could serve as a relevant reference frame for a district within the broader canvas of the Fifth Schedule. However, ethnic, regional and other related variations should be given due consideration. The Sixth Schedule should be viewed in this context with such reform as is necessary.
- The Tribes Advisory Council, envisaged in the Fifth Schedule as a consultative body at the state level, needs to be reformed into an effective organization. The Chief Minister of the State should be its chairperson and its meetings should be held once in every three months.
- The Central Advisory Council at the Centre should be revived. It should serve as a sounding board for tribal policies and programmes and render advice in disputes between a state government and the Tribes Advisory Council or between the District Council and the Tribes Advisory Council. Its advice should normally be binding. The Prime Minister should chair its meetings and its members may be the ministers for welfare, home and rural development and the deputy Chairperson of the Planning Commission.
- The present day administrative boundaries may be considered for reorganization based on geographic, ethnic and demographic considerations and finalized within a couple of years.
- The lower functionaries of departments like police, excise, forest and revenue should be assigned a minimal role and should work under the control of concerned panchayats.
- The Gram sabhas should be allowed to exercise their customary role unhindered. Further, a gram sabha may have a traditional village council, which performs varied functions – religious, political, economic, judicial and so on, on its behalf. The gram sabha may nominate its executive council or village council, which may be a traditional body and may delegate to it the execution of development works.
- Constituencies may be delimited for election of members to the intermediate and district tier panchayats. The district level panchayat may be called Autonomous District Council (ADC).
- In certain districts the Scheduled Tribe population may be less than 50 per cent of the total population, but it may be concentrated in a part of parts of

the district, say in some blocks or sub-divisions. Sub-District Council may be constituted for such areas, called the Autonomous Sub-District Councils (ASDCs). ASDCs should be at a par with ADCs. However, this may be regarded as an interim arrangement, pending reorganization of administrative boundaries as suggested earlier.

- The organizational structure of an ADC should be based on the broad outline of Autonomous District Councils in the Sixth Schedule Areas. Some scope should be opened up through setting apart seats (not exceeding 5 in number) for nomination in the District Council of minority tribal communities, who cannot find representation through the election process. The nomination may be made in consultation with the Governor.
- Lok Sabha Scheduled Tribe MPs should be associated with the intermediate (block) panchayat and the district council. But the representation should not be restricted to Scheduled Tribe MLAs and even non-ST MLAs should be associated with both tiers.
- Since the Scheduled Areas and Tribal Areas are expected to have a majority of tribal population, the different tier panchayats therein should have a majority of Scheduled Tribe members. Further, both the chairpersons and vice-chairpersons should belong to STs.
- The Sixth Schedule confers powers of legislation and administration of justice on the district councils apart from the executive developmental and financial responsibilities. The districts in Scheduled Areas should adopt the Sixth Schedule format, but expand it to include subjects that are indicated in the Eleventh Schedule of the Constitution.
- The legislative powers of the autonomous district councils in the Fifth Schedule Areas have been proposed more or less on the same lines as in the Sixth Schedule, with some amendments. In so far as justice is concerned, the committee has emphasized that a traditional jury-based legal system evolved by tribal societies should be recognized and continue to function. There should be no police interference in cases not involving heinous offences. Such cases should be confined to the gram sabha domain. As far as development functions are concerned, the functions enumerated in the Sixth Schedule as well as in the Eleventh Schedule should be discharged by the ADCs.
- The panchayats in these areas may receive funds under Articles 243H and 243I and funds as per the first provision to Article 275(I) should continue to be available normally.
- For the purposes mentioned in the first proviso to Article 275(I) funds received from sources other than the panchayats' own, should be placed in 'charged' category in the respective government's budgets as opposed to 'voted' category. This will enable funds to remain fully available for purposes related to tribal interest, without fear of misutilisation or diversion.
- To prevent wrong financial practices occurring in the tribal sub-plan field, the tribal sub-plan funds (whether relating to state plan or special central assistance or any other) pertaining to different sectors of development should be quantified and placed at the disposal of the ADCs for distribution among

the panchayats in the district. Moreover, to the extent possible, the central and state governments should device procedures for direct allotment of funds to the ADCs.

- All government functionaries of institutions concerned with panchayats in a scheduled area are located within its jurisdiction should be under its control.
- As per the provision in the Sixth Schedule, the governor may appoint a commission to examine and report on all matters relating to the administration of Autonomous District Councils. Representation should be given to Scheduled Tribes in the commission.
- The TACs and ADCs in the scheduled areas should review the relevance of the existing laws. Action to exclude irrelevant laws should be completed within a stipulated period of about two years.
- The law passed by Parliament will supersede such and any other related laws that have been enacted in pursuance of the 73rd and 74th Constitution Amendment Acts.
- The process of scheduling of tribal areas in the country commenced earlier has remained incomplete. It is necessary that the remaining tribal pockets should be included in the scheduled areas.
- The framework of the Sixth Schedule should be looked at afresh in the northeastern region in the light of suggestions made by the committee.

Evidently, the committee looked into various facets of the tribal situation which could be considered for drafting legislation. The suggestions made by the committee assimilate various provisions of the Fifth and the Sixth Schedules and the 73rd Constitution Amendment. A special treatment has been given to the social, political, cultural and economic aspects of tribal life. The committee has taken note of the tribal areas that do not find place either in the Fifth or the Sixth Schedules of the Constitution. The recommendations of the committee paved the way for drafting the Extension Act.

Now we have discussed about recommendations made by Bhuria Committee. Try to answer the following questions in the *Check your progress-2*

Check Your Progress 2

Note: a) Write your answer in about 50 words

b) Check your answer with possible answers given at the end of the unit

1) What are main recommendations of the Bhuria Committee?

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4.5 PROVISIONS OF THE PANCHAYATS (EXTENTION TO THE SCHEDULE AREAS) ACT, 1996 (PESA)

According to the provisions of the 73rd amendment, introducing Part IX for a panchayat structure in country is not applicable automatically to these areas rather it is envisaged to bring through special provisions and modifications by subsequent legislations. In order to do so, an Act was passed by Parliament titled “The Provisions of the Panchayats (Extention to the Scheduled Areas) Act, 1996; no. 40 of 1996, on 24th December, 1996. This Act is popularly known as PESA. This Act envisages providing Self-governance to tribes. It takes care to preserve customary laws, social and religious practices and traditions of tribes. It also provides self-management by tribes. This is a historical piece of legislation. It has some distinct features. The provisions can be classified into two categories, that is, mandatory and general provisions. The mandatory provisions are compulsory.

4.4.1 Mandated Provisions

- Any legislation on the Panchayats for the tribal areas shall be in consonance with the customary law, social and religious practices and traditional practices of management of community resources.
- A village shall ordinarily consist of a habitation, a group of habitations, a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with the traditional and customs.
- Establishment of Gram sabha for every village comprising persons whose names figure in the electoral rolls.
- Empowering the gram sabha to safeguard and preserve the traditions, customs and cultural identify of the people, community resources and to settle local disputes by customary methods.
- The gram sabha should identify and select beneficiaries for poverty alleviation and other programmes.
- Every village panchayat must obtain a certificate of utilization of funds from the gram sabha for the projects and programmes of social and economic development under the state poverty alleviation and other programmes.
- The acquisition of land for development projects and rehabilitation or resettlement of persons affected by such projects in the scheduled areas has to be done in consultation with either the gram sabha or the panchayat at the appropriate level. Planning and implementation of the projects will be coordinated at the state level.
- Panchayats at the appropriate level have to manage and plan for minor water bodies in these areas.
- Grant of prospecting license or lease of land for mining, minor minerals can be given only on the recommendations of the gram sabha or the panchayat at the appropriate level.

- Grant of concessions for the exploitation of minor minerals by auction has to be given on the recommendations of the gram sabha or the panchayat at the appropriate level.
- Besides these powers and functions, the gram sabha or the panchayats at the appropriate level shall have the following mandatory powers, (i) to enforce prohibition or to regulate and restrict the sale and consumption of any intoxicant; (ii) the ownership of minor forest produce and management of all types of village markets; (iii) to prevent alienation of land and to take appropriate action to restore any unlawfully alienated land of a scheduled tribes in scheduled areas; (iv) to exercise control over money lending to tribes; and control institutions and functionaries working in the social sectors in the area; (v) to exercise control over local plans and their resources, including tribal sub-plans.
- Reservation of seats at all tiers of panchayats for the scheduled tribes shall not be less than one-half of the total number of seats and reservation for other communities indicated in Part IX of the constitution shall be one the basis of the proportion of their population.
- The post of chairperson at all panchayat levels will be reserved for the scheduled tribes.
- At the intermediate or district level panchayats, in the case of scheduled tribes which have no representation the state government shall nominate a person to represent such tribes but the number of persons to be nominated cannot exceed one-tenth of the total elected members in the panchayat.
- While devolving powers and authority to panchayats, it should be ensured that panchayats at the higher level do not assume the powers and authority of any lower level panchayat or the gram sabha.
- The pattern of the sixth schedule to the constitution has to be maintained while designing the administrative arrangements for the district level panchayat.

STATES COVERED BY PESA

- ANDHRA PRADESH
- CHHATISGARH
- HIMACHAL PRADESH
- JHARKHAND
- MADHYA PRADESH
- MAHARASHTRA
- ORISSARAJASTHAN

4.6 GRAM SABHA AND ITS ROLE

According to the provisions of the Act, 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. Moreover, a village shall ordinarily consist of a

habitation or group of habitation or a hamlet or a group of hamlet comprising a community and managing its affairs in accordance with traditions and customs. In the Act, definition of village has been given which is not available in the 73rd amendment.

It is striking to note that Gram Sabha has been empowered to play a prominent role. Such specific role of Gram sabha has not been provided in the main 73rd Act. Therefore, it is highly significant that decision making rest with the people and it will function as forum for deliberative democracy.

The Gram Sabha has been assigned with the following functions:

- To approve plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the panchayat at the village level;
- Be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes.
- Establishment of Gram sabha for every village comprising persons whose names figure in the electoral rolls.
- Empowering the gram sabha to safeguard and preserve the traditions, customs and cultural identify of the people, community resources and to settle local disputes by customary methods.
- The acquisition of land for development projects and rehabilitation or resettlement of persons affected by such projects in the scheduled areas has to be done in consultation with either the gram sabha or the panchayat at the appropriate level. Planning and implementation of the projects will be coordinated at the state level.

Now we have discussed about mandatory provisions of PESA and about Gram Sabha. Try to answer the following questions in the *Check your progress-3*

Check Your Progress 2

Note: a) Write your answer in about 50 words

b) Check your answer with possible answers given at the end of the unit

1) What are the mandatory powers of Gram Sabha or Panchayats in the PESA Act of 1996?

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2) Define Gram Sabha? What are its specific powers?

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4.7 RAMIFICATIONS OF THE ACT 40 OF 1996

In the extension Act the gram sabha has been mandated to deal with plans and programmes and projects for social and economic development and selection of beneficiaries for all village panchayat programmes. But this is likely that power may be misused by the politicians or the bureaucracy in the implementation / management of the development programmes. It would be better if provision had been made that the identification of schemes and their location should be left to the Gram Sabha.

Another provision enjoins upon the state legislature to devolve powers and authority on the panchayats to enable them to be 'institutions of self-government', it is expected that the powers assigned to the panchayats, other than those already specified in the act, would be specific and unambiguous. Panchayats should not be treated as merely executing 'agencies'. Sufficient freedom and autonomy should be given to them to enable them to take their own decisions and manage their own affairs and to have identity as effective units of self-government.

Further, the provision tries to ensure that the process of devolution is based on the cardinal principle that what is appropriate for a given tier should be decided by that tier and not by a higher level. Thus, the legislation must prevent the higher level from assuming the responsibility of lower level or of the gram sabha. Therefore, for a smooth operation at each panchayat level a mechanism for coordination among them must be evolved and a package of required powers and functions should be granted. To ensure further that the panchayats are manned by the tribals, all positions of chairpersons of panchayats at all levels are to be reserved for tribals.

The Administrative arrangements at the district level panchayat in these areas may adopt the pattern of ADCs prevailing in the Sixth Schedule areas. The Sixth Schedule confers the autonomous councils apart from the executive, developmental and financial powers. This means that the district level panchayats will have enhanced power and authority similar to ADCs in addition to the powers devolved by the 73rd Constitution Amendment Act. Thus the powers of the district panchayat in the scheduled areas will be greater compared to their counterparts in the unscheduled areas of the States. The Extension Act has better features than the framework provided under Part IX of the Constitution. Moreover, the blending of these frameworks has certain advantages compared to the provisions of the 73rd Constitution Amendment Act, which have many limitations.

- The PESA has lot of ramifications and require recasting of certain policies, which has direct bearing upon. Among the laws that attracts immediate attention are: (i) Land Acquisition Act, 1894, (ii) Mines and Minerals (Development and Regulation) Act, 1957, (iii) Indian Forest Act, 1927, (iv) The Forest Conservation Act, 1980, (v) The Indian Registration Act. Intervention is also required in the area of Social audit U/s 4(f), Prohibition U/s 4 (m) (i), Ownership of Minor Forest Produce U/s 4(m) (ii), Land Alienation U/s 4 (m) (iii); Regulation of Money Lending U/s 4 (m) (iv); Control of Functionaries U/s 4 (m) (vi). In so far as the policies and central schemes are concerned, certain policies pertaining to waste lands, water resources and extraction of minerals from lands in Schedule V Areas do not seem to reflect the intent and purpose of PESA. There were occasions, it was observed, that these policies while implementing is given rise to confrontation between the tribal people and the administration. Therefore suitable device has to be address.
- The National Policies on Re-settlement and Rehabilitation of Project Affected Persons, 2003, National Water Policy, 2002, National Mineral Policy, 2003, Environment Policy 2004, also required detailed examination in view of the provisions of PESA.

4.8 OPERATIONAL ISSUES AND SUGGESTIONS FOR PROPER IMPLEMENTATION

4.8.1 Operational Issues

The operational issues and gaps relating to PESA are as follows:

- i) The Act is applicable to the Fifth Schedule Areas only and does not cover the Sixth Schedule Areas. Moreover, there are some tribal areas in the country not covered by any of the two schedules. What will be the organizational framework of local governance for tribals in these areas? The limitations of the applicability of the Extension Act will prevent these tribal people from taking advantage of the special constitutional provisions mentioned above.
- ii) The Sixth Schedule Areas, which are beyond the purview of the Extension Act, have the structure of autonomous district areas which are not necessarily co-terminus with the administrative district boundaries. They do not have any statutory body at the intermediate or at the village level. In some places, at the sub-district level, there is neither a democratic nor traditional structure. Consequently, a void is created at the grassroots level and in the absence of such grassroots structure, no organic link can be maintained between the lower and higher level bodies.
- iii) Under the provisions of the Fifth Schedule, a Tribal Advisory Council (TAC) is to be constituted to advice on matters pertaining to the welfare and advancement of the Scheduled tribes in the state. A question arises whether the TAC will obstruct the growth of the Panchayati Raj structure at the local level because if the functional domain of panchayats is curtailed they may perceive the TAC as a rival center. Secondly, the panchayats will be the creation of the state legislature and to some extent the administrative control over them will be in the hands of the state government. In such a situation

will the advice and guidance of the TAC be binding upon the Panchayats? The Panchayats might receive two types of instructions from these two bodies which occasionally may be contradictory. What will be the linkage between TAC and panchayats? A view is being expressed that when the new dispensation is established the TAC may become irrelevant. However, if the TAC must continue as only an advisory body what would be the modifications required in its structure and functioning.

- iv) While passing the State Panchayat Acts, it should be seen that they are in consonance with the custom, society and religion of the tribals concerned. These aspects vary among tribes within each state. Will it be possible to assimilate all types of practices in a single piece of legislation? It may not be possible to have different laws for each tribe within a district or state. Furthermore the customary laws are not properly codified and documented.
- v) Section 4 (b) defines a village as “ordinarily consisting 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”. It means every community will have a separate village. In a village, several communities may be found spread over different geographical areas. It may be difficult to demarcate a village in this way. In this situation the revenue village may not be co terminus with the social village. The term ‘community’ is not clearly defined in the Act and therefore, it would be difficult to delimit a village. This will certainly lead to complications. Usually in tribal areas hamlets are more common than big villages. Therefore, declaring each hamlet as a village panchayat area may not be economically viable.
- vi) Reservation of seats has been provided to all communities as per the provisions of Part IX of the Constitution to SCs and STs and one-third of all seats are reserved for women. Regarding reservation for backward class communities the state legislature must decide. Once again, the term community has been used in its wider sense which includes other than tribal community. When a village is defined on the basis of a community, the question of other communities living in it does not arise. If so, then reservation is only applicable to SCs and in some cases backward classes and also women. Another question is whether schedule castes and women can be considered as communities for reservation purposes.
- vii) It is mandated that chairpersons at all panchayat levels shall be reserved for Scheduled Tribes. Which means the office of chairperson will permanently be reserved for STs. They may go against the judicial verdict on the subject. Part IX of the Constitution contemplates that the reservation of offices will be allotted by rotation to different panchayats at each level. At a lower level it may be viable but at the district level it may cause some difficulty. There are certain districts, which are not tribal majority districts, and tribals do not constitute more than 50 per cent of the total population of the district. In these districts permanent reservation of poses for tribals will be generally resented.

viii) Under Section 4 (O) of the Act, the Panchayat at the district will be designed on the lines of the autonomous district council under the Sixth Schedule. The ADC has legislative and judicial functions in addition to executive powers. If only the tribal district panchayats are given legislative and judicial functions, anomalies in the district panchayats within a state will evidently grow. The ADC is empowered to appoint judges for the administration of justice in their areas and they can raise their own police force. These provisions must be examined carefully while extending such powers and authority under the Extension Act. The ADC has limited development functions compared with the Eleventh Schedule of the Constitution. Many states have not devolved powers and functions to panchayats as per the Eleventh Schedule. If the state governments are not willing to devolve powers, authority and responsibilities to local government then the spirit of the 73rd Amendment will be violated.

4. 8.2 SUGGESTIONS FOR PROPER IMPLEMENTATION OF PESA

- The provisions of PESA are enabling framework for preventing exploitation of tribal and for providing good governance and self-rule in Schedule V Areas. Implementation of PESA is a direct responsibility of state legislature and, therefore, inconsistencies in Conformity Act should be modified and a comprehensive Panchayat law removing inconsistencies has to be brought.
- The state may be impressed upon the examination comprehensively other relevant state laws for their inconsistencies and suitably amend the laws, rules, regulations and procedure in force which are at variance with the provisions of PESA. The states, where PESA is applicable should formulate rules and regulations which is pending for along time. This will give effect to better implementation of provisions of PESA.
- It has been found that the awareness about the provisions of PESA is very low among all stakeholders that include officials, elected representatives and tribals. Therefore, there is a need for capacity building of officials and elected representatives and awareness building of the common people. It requires identifying training institutes and developing training modules to cover all stakeholders in the PESA Areas. Advocacy should be prominently introduced in this area. The Some best practices in the implementation of PESA have also been observed. These best practices should be documented and further be disseminated for replication in other parts.
- The Ministry of Panchayati Raj has to play an important role in the implementation of the provisions of PESA in letter and spirit. The Government of India should issue a specific direction in accordance with the powers to issue directions under Proviso 3 Part III of the fifth Schedule. The Government of India should also prepare model guidelines for framing rules under PESA, which should be circulated among the states to frame their respective rules at the earliest.

Now we have discussed about gaps in PESA and suggestions for improving the gaps. Try to answer the following questions in the *Check your progress-4*

Check Your Progress 2

Note: a) Write your answer in about 50 words

b) Check your answer with possible answers given at the end of the unit

1) What are operational gaps in PESA?

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2) Suggest how to improve the situation? How PESA can become meaningful?

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4.9 LET US SUM UP

In the above unit, we read about the features and characteristics of Scheduled areas, about fifth and sixth scheduled areas, about Bhuria Committee and PESA, 1996. We discussed about the gaps in the PESA Act and also the suggestions made in regards to its improvement.

4.10 REFERENCES AND SUGGESTED READINGS

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4.11 CHECK YOUR PROGRESS-POSSIBLE ANSWERS

Check Your Progress 1

1) What are the criteria for declaring Scheduled Area?

Ans. According to the commission, the criteria for determining a scheduled area under the Fifth Schedule may be based on four factors: (a) preponderance of tribals in the population, (b) compactness and reasonable size, (c) underdeveloped nature of the area, and (d) marked disparity in economic standards of the people.

2) What is Fifth Schedule?

Ans. The Fifth Schedule is tribal dominated areas covering nine states of the country, namely, Andhra Pradesh, Chattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan.

Check Your Progress 2

1) What are main recommendations of the Bhuria Committee?

Ans. Some important recommendations of the Bhuria Committee are listed below:

- While passing the law under Article 243M (4) (b), important provisions of the 73rd constitutional amendment and certain unique characters of tribal societies and tribal areas should be kept in view since many tribal societies have their mode of living organizations, cultural mores, present-day predicament of exploitation, deprivation and marginalization.
- While drafting the law, advantage should be taken of both the Fifth and Sixth Schedules.
- The Tribes Advisory Council, envisaged in the Fifth Schedule as a consultative body at the state level, needs to be reformed into an effective organization.
- The Central Advisory Council at the Centre should be revived. It should serve as a sounding board for tribal policies and programmes and render advice in disputes between a state government and the Tribes Advisory

- The present day administrative boundaries may be considered for reorganization based on geographic, ethnic and demographic considerations and finalized within a couple of years.
- The lower functionaries of departments like police, excise, forest and revenue should be assigned a minimal role and should work under the control of concerned panchayats.
- The Gram sabhas should be allowed to exercise their customary role unhindered.
- Constituencies may be delimited for election of members to the intermediate and district tier panchayats.
- In certain districts the Scheduled Tribe population may be less than 50 per cent of the total population, but it may be concentrated in a part of parts of the district, say in some blocks or sub-divisions. Sub-District Council may be constituted for such areas, called the Autonomous Sub-District Councils (ASDCs).
- The organizational structure of an ADC should be based on the broad outline of Autonomous District Councils in the Sixth Schedule Areas.
- Lok Sabha Scheduled Tribe MPs should be associated with the intermediate (block) panchayat and the district council
- Since the Scheduled Areas and Tribal Areas are expected to have a majority of tribal population, the different tier panchayats therein should have a majority of Scheduled Tribe members.
- The Sixth Schedule confers powers of legislation and administration of justice on the district councils apart from the executive developmental and financial responsibilities.
- The legislative powers of the autonomous district councils in the Fifth Schedule Areas have been proposed more or less on the same lines as in the Sixth Schedule, with some amendments
- The panchayats in these areas may receive funds under Articles 243H and 243I and funds as per the first provision to Article 275(I) should continue to be available normally.
- For the purposes mentioned in the first proviso to Article 275(I) funds received from sources other than the panchayats' own, should be placed in 'charged' category in the respective government's budgets as opposed to 'voted' category.
- To prevent wrong financial practices occurring in the tribal sub-plan field, the tribal sub-plan funds (whether relating to state plan or special central assistance or any other) pertaining to different sectors of development should be quantified and placed at the disposal of the ADCs for distribution among the panchayats in the district.

- All government functionaries of institutions concerned with panchayats in a scheduled area are located within its jurisdiction should be under its control.
- As per the provision in the Sixth Schedule, the governor may appoint a commission to examine and report on all matters relating to the administration of Autonomous District Councils.
- The TACs and ADCs in the scheduled areas should review the relevance of the existing laws.
- The law passed by Parliament will supersede such and any other related laws that have been enacted in pursuance of the 73rd and 74th Constitution Amendment Acts.
- The process of scheduling of tribal areas in the country commenced earlier has remained incomplete.
- The framework of the Sixth Schedule should be looked at afresh in the northeastern region in the light of suggestions made by the committee.

Check Your Progress 3

1) What are the mandatory powers of Gram Sabha or Panchayats in the PESA Act of 1996?

Ans. The Gram sabha or the panchayats at the appropriate level shall have the following mandatory powers, (i) to enforce prohibition or to regulate and restrict the sale and consumption of any intoxicant; (ii) the ownership of minor forest produce and management of all types of village markets; (iii) to prevent alienation of land and to take appropriate action to restore any unlawfully alienated land of a scheduled tribes in scheduled areas; (iv) to exercise control over money lending to tribes; and control institutions and functionaries working in the social sectors in the area; (v) to exercise control over local plans and their resources, including tribal sub-plans.

2) Define Gram Sabha? What are its specific powers?

Ans. According to the provisions of the Act, 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. Moreover, a village shall ordinarily consist of a habitation or group of habitation or a hamlet or a group of hamlet comprising a community and managing its affairs in accordance with traditions and customs. In the Act, definition of village has been given which is not available in the 73rd amendment

The Gram Sabha has been assigned with the following functions:

- To approve plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the panchayat at the village level;
- Be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes.

- Establishment of Gram sabha for every village comprising persons whose names figure in the electoral rolls.
- Empowering the gram sabha to safeguard and preserve the traditions, customs and cultural identity of the people, community resources and to settle local disputes by customary methods.
- The acquisition of land for development projects and rehabilitation or resettlement of persons affected by such projects in the scheduled areas has to be done in consultation with either the gram sabha or the panchayat at the appropriate level. Planning and implementation of the projects will be coordinated at the state level.

Check Your Progress 4

1) What are operational gaps in PESA?

Ans. The operational issues and gaps relating to PESA are as follows:

- i) The Act is applicable to the Fifth Schedule Areas only and does not cover the Sixth Schedule Areas.
- ii) The Sixth Schedule Areas, which are beyond the purview of the Extension Act, have the structure of autonomous district areas which are not necessarily co-terminus with the administrative district boundaries.
- iii) Under the provisions of the Fifth Schedule, a Tribal Advisory Council (TAC) is to be constituted to advise on matters pertaining to the welfare and advancement of the Scheduled tribes in the state.
- iv) While passing the State Panchayat Acts, it should be seen that they are in consonance with the custom, society and religion of the tribals concerned. These aspects vary among tribes within each state.
- v) Section 4 (b) defines a village as “ordinarily consisting 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”. It means every community will have a separate village.
- vi) Reservation of seats has been provided to all communities as per the provisions of Part IX of the Constitution to SCs and STs and one-third of all seats are reserved for women.
- vii) It is mandated that chairpersons at all panchayat levels shall be reserved for Scheduled Tribes.
- viii) Under Section 4 (O) of the Act, the Panchayat at the district will be designed on the lines of the autonomous district council under the Sixth Schedule.

2) Suggest how to improve the situation? How PESA can become meaningful?

Ans. Few of the suggestions through which PESA can be become meaningful are as follows:

- Inconsistencies in Conformity Act should be modified and a comprehensive Panchayat law removing inconsistencies has to be brought.

- The states, where PESA is applicable should formulate rules and regulations which is pending for along time. This will give effect to better implementation of provisions of PESA.
- It has been found that the awareness about the provisions of PESA is very low among all stakeholders that include officials, elected representatives and tribals. Therefore, there is a need for capacity building of officials and elected representatives and awareness building of the common people.
- The Ministry of Panchayati Raj has to play an important role in the implementation of the provisions of PESA in letter and spirit.



MDV-111: LOCAL SELF GOVERNANCE AND DEVELOPMENT

BLOCK 1 DEMOCRATIC DECENTRALIZATION	
Unit 1	Decentralisation: An Overview
Unit 2	Local Self Government and Panchayati Raj Institutions
Unit 3	Local Self Government and Urban Local Bodies
Unit 4	PESA and its Implementation
BLOCK 2 LOCAL GOVERNANCE AND LOCAL ORGANIZATIONS	
Unit 1	Formal and Informal Organizations and Local Self Governance
Unit 2	Public Private Partnership and Local Self Governance
Unit 3	Parallel Bodies and Local Self Governance
BLOCK 3 DECENTRALIZED PLANNING AND DEVELOPMENT	
Unit 1	Decentralised Planning: An Overview
Unit 2	Decentralised Planning Process
Unit 3	Models in Decentralized Planning
Unit 4	Fiscal Decentralisation-A Global Overview
Unit 5	Fiscal Decentralisation in India: An Overview
BLOCK 4 PEOPLES PARTICIPATION	
Unit 1	Peoples Participation in Governance and Development
Unit 2	Participatory Tools and Methods
BLOCK 5 EMPOWERMENT OF LOCAL BODIES	
Unit 1	Empowerment of Marginalized
Unit 2	Capacity Building
Unit 3	Leadership
Unit 4	Resource Mobilization

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