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CHAPTER – 04

TRANSFER OF POWERS, FUNCTIONS & RESOURCES TO INSTITUTIONS OF SELF-GOVERNANCE

4.1: DEVOLUTION OF POWERS & FUNCTIONS

The Indian experiment in local village democracy galvanized by the passage of the 73rd constitutional Amendment in 1993 is among the most ambitious in history. A key motivation for the 73rd amendment was the belief that local government may be better placed (than, say, centrally appointed bureaucrats) to identify & respond to villagers’ needs. It was also held that villagers may find it easier to monitor local politicians. Democratisation of public service delivery system has, thus, been a central element of the Indian decentralization experiment.¹

Failure of the centralised system of governance & planning to resolve local problems & to promote local level development has led to an upsurge of interest in local governance. However, the local governance system will not provide answers to local problems & development imperatives unless such a system is responsive to these problems, effective & efficient in its reach. It is generally agreed that any local governance system should (a) have an appropriate institutional structure, & (b) that structure should have a required environment in which it functions. The

¹ Timothy Besley & others, political Economy of panchayats in south India. E& PW. Feb 2007, p 661.
institutional structures needed are: (1) Decentralised political institution to identify & articulate people's felt needs & aspirations. (2) Decentralised administrative structure to formulate & implement local level plans keeping in view the felt needs of the people. (3) Decentralised data collection machinery to collect & supply the required data to the plan formulating agency.²

The environment required should have the following attributes (1) Representation in the governance system to various interest groups such that decision-making power is equitably distributed. (2) People's participation in planning and implementation of development programmes so that local interest & initiative are encouraged (3) Political & financial autonomy to the local government system to ensure that these bodies function independently of higher level governments. (4) Presence of experts, planners & data collecting personnel to facilitate formulation of technically competent plans. (5) Integration of the local level political institutions into the system of state & union governments. (6) A close working relationship between local governments & people's organisation/NGOs³

Keeping these parameters in view the provisions of the constitution of India, 73rd constitutional Amendment 1992, & Karnataka panchayats Raj Act 1993 have to be reviewed to see how far these provisions have moved towards the normative goal- that is responsive & efficient local governance system. And also to verify how far transfer of powers, functions & resources to institutions of local self governance is effectuated.

The National council of Applied Economic Research & the Ministry of panchayat Raj has prepared an index to measure & assess how far the states have progressed in “empowering” Panchayat Raj institutions. The ‘devolution index’ measures the functions, finances & functionaries of the panchayat Raj institutions

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³ Ibid
as also accountability in the institutions, & accordingly rank states. As a prelude to proposal for reforms the discussion on devolution index will be taken later.

4.2: CONSTITUTIONAL PROVISIONS AS NORMATIVE MODEL

Article 40 under directive principles of state policy requires the state to take steps to organize village panchayats & endow them with such powers & authority as may be necessary to enable them to function as units of self- government. Article 12 which defines the term ‘State’ to include inter alia, not only executive, legislature & judicial wings of the government at the union & state levels, but also ‘all local or other authorities within the territory of India or under the control of the government of India’. The constitution does not however, define what are the ‘other authorities within the territory of India or ‘local authorities…… under the control of the state governments for purposes of its part III & IV’. Besides, Entry 5 in list II of seventh schedule defines ‘local government in such a way that it includes, inter alia, several other authorities’ also for village Administration.

The implications of all these constitutional provisions deserve to be properly understood. First, the term “state” includes municipalities, panchayats & ‘other’ authorities within the territory of India. Second, the term ‘local government’ encompasses, besides the municipal & panchayats Institutions, other local authorities for village administration though the constitution is silent on defining the attributes of such ‘other local authorities’. Third, state governments are empowered to constitute & empower not only the municipal & panchayats institutions but also other local authorities for purposes of local-self government or village administration. In other words, for purposes of local self-government other

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5 Constitution makers did not envisage panchayats at levels above the village, as they were keen on strengthening the basic unit of rural local government, namely the village panchayats, as units of self-government. However, this Article was later interpreted in a broader sense to include panchayats at higher levels also.
7 Dr Siva subramanyam, Kurukshetra.Nov 2000.p.7
local authorities are equated with municipal & panchayats institutions. Fourth, the scope of the term ‘local government’ extends to any local or other authority’ under the control of government of India as well. Fifth, ‘local self government is the exclusive prerogative of all “local authorities”, including municipal & panchayat Institutions. Sixth, municipal & panchayat institutions are local authorities’ which may act as, units/institutions of self- government’. Article 243-G incorporated in the constitution by the 73rd Amendment Act bear testimony to this. The 73rd Amendment also did not define the term ‘self- government’ as well, though conceptually it refers to swaraj or home -rule. Finally, the constitution, notwithstanding the said Acts, did not recognize the local authorities’ comprising, inter alia, the municipal & panchayat institutions as the third layer of governance in the Indian polity.

4.2.1: PROVISIONS OF 73rd AMENDMENT

The term ‘village’ is defined in Article 243-G as a village specified by the Governor to be a village for the purposes of part IX & includes a group of villages so specified. However, an enabling provision for constituting a village by consolidating parts of village in the event of reorganization of panchayats by a state Government is not explicitly provided for. Therefore, after the words” and includes a group of villages”, the words or parts thereof” may need to be included.

Article 243A provides that “Gram sabha” may exercise such powers & perform such functions at the village level as the legislature of a state may by law provide”. Three fold implications of this provision are;

1. This provision seems relevant only to those states which have statutorily provided for a Gram sabha as the constitutional provision does not make constituting of a Gram sabha at village level mandatory.

8 Dr shivsubramanyam, op cit p 8.It is necessary, to explore the feasibility & desirability of applying suitable correctives to the various terms found in the Indian constitution concerning local government in the country.
9 Ibid
2. It says that a Gram sabha may exercise the powers & perform the functions Assigned to it by the state legislature, by law. It thus, affords 'discretion' to Gram sabha in the exercise of its powers & performance of its functions statutorily provided for it.

3. In a state where, the territorial jurisdiction of a Gram panchayat is fairly large, it is impossible to constitute a single Gram sabha for a Gram panchayat. Here, there is a necessity of introducing multi-Gram sabha system\(^\text{10}\) as it was practiced in state of kerala, & west Bengal.

   In view of these considerations Article concerning Gram sabha\(^\text{11}\) needs to be suitably amended.

4.3: STRUCTURAL ISSUES

   Article 243B makes a three-tier structure of panchayat Raj binding on states which have a population exceeding twenty lakhs. Other states were endowed with the discretion to dispense with the intermediate-level panchayats. There is a difference in practical implementation of this mandatory provision among states. In reality the states demand freedom for them in determining the number of levels of their panchayats. There must have been an option for the states to constitute, in addition to village-level panchayats either the intermediate-level or the district-level panchayats or both. The moot issue relates to one of forcing a uniform structure of three-tier panchayats on the states or of giving discretion to the states in this regard. So long as the subject of 'local government' is retained in the state list, the state Governments can not divested of their power to determine the structure, functional domain & the resources base of their local governments. The basic structure of the Indian polity continues to be two-tier comprising union & state Governments, notwithstanding the addition made to the Indian constitution by the 73\(^{\text{rd}}\) constitutional Amendment Act.

\(^{10}\) A kind of ward sabha for each village/ Gram panchayat.

\(^{11}\) The Gram sabha should be construed as merely 'General Assembly' of the village/ward voters, & not to be conferred with powers & functions of panchayats which is legitimately belonged to local self-Government.
Composition of the panchayats & election of their chairpersons are provided for in Article 243C of the constitution. This Article stipulates that the ratio between the population of the territorial area of a panchayat at any level & the number of seats in such panchayat to be filled by direct election shall so far as practicable, be the same throughout the state.

Also it empowers the states to provide “representation” of chairpersons of lower-level panchayats in the next higher-level panchayats as well as of MLAs, MLCs & MPs in the intermediate & district level panchayats. In reality, while ‘representation’ for the chairpersons was not provided in a few states Karnataka, other states have provided for it in a variety of ways. It took the forms of “ex-officio membership” for all or a percentage of the chairpersons of lower-level panchayat, or of “invitees” & the like. Strictly speaking, in terms of clause (3) of Article 243C, their representation assumes the form of ex-officio membership in the panchayat which they represent.

As for the voting rights of the members of panchayats, the Article stipulates that the chairperson of a panchayat & other members of a panchayat whether or not chosen by direct election from territorial constituencies in the panchayat area shall have the right to vote in the meetings of the panchayats. The succeeding clause specifies the mode of election of the chairpersons of panchayats at different levels. It prescribes that the chairpersons of the intermediate & district-level panchayats shall be elected by, & from amongst, the elected members thereof. The chairperson of a village-level panchayat can however, be elected either directly by the people or indirectly by the directly elected members of the panchayat at the discretion of the state legislature concerned. These provisions

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12 Tamilnadu also
13 For eg., Andhra Pradesh
14 Article 243C(4)
15 Article 243C(5)
suggest that, while all categories of members possess the right to vote in the meetings of panchayats, right to elect the chairperson of an intermediate or district-level panchayat is restricted to the members directly-elected from its territorial constituencies from amongst themselves. In a way clause (4) & (5) of Article 243C appear to be conflicting with each other. Hypothetically, in terms of clause (4), in a meeting of the intermediate or district-level panchayat convened to elect its chairperson, there is a danger of members other than those elected from the territorial constituencies of the panchayat, claiming their right to vote.\textsuperscript{16} In fact, clause (4) should have been preceded by the words "subject to the provisions in clause (5)". Moreover, the constitution does not explicitly provide that "there shall be a chairperson for every panchayat constituted under this part". Also it does not provide for the manner of removal nor does it specify the term, of the chairpersons. Furthermore, in the event of vacancy in the office of the chairperson of an intermediate & district-level panchayat, arising out of death, removal or resignation, there is no provision to the effect that a new chairperson shall be elected within a prescribed period of time.\textsuperscript{17}

4.4: RESERVATIONS

Article 243D deals with reservation of seats & offices of chairpersons of panchayats to SCs, STs, women, & other backward classes. In regard to the seats for SCs & STs, Article 243D(1), provides that the number of seats reserved for them in each panchayat should be proportionate to their respective population in the panchayat area concerned, & that such reservation of seats may be allotted, by rotation, to different constituencies. Moreover, in terms of clause (2) of this Article, a minimum of one-third of such seats should again be reserved for women belonging to SCs/STs respectively. However, in the actual field situations, reservation of seats on the prescribed basis may pose a problem in panchayat areas.

\textsuperscript{16} Dr Siva subramanyam. op cit p.10.
\textsuperscript{17} Say a maximum of three months from the date on which the office has fallen vacant.
where the SC/ST population constitutes a negligible percentage of the total population of the panchayat area concerned. To meet such contingencies, proviso to clause (1) should have been provided for (a) reservation of a minimum number of seats to the SCs/STs or both; (b) reservation of such seats, preferably to women belonging to these categories; &/or (c) reservation of seats taking into account the combined population of SCs & STs.

Reservation of offices of chairpersons of panchayats for SCs, STs & women was provided by clause (4). It reads that the office of chairpersons of the panchayats at the village or any other level shall be reserved for SCs, STs & women. It may be noted that this mandatory provision holds good for the offices of chairpersons of the panchayats “at the village or any other levels”, but not “at the village & other levels”. The implication of this Article is that the state legislatures do enjoy an option in applying this provision of reservation to any or all the levels of panchayats. Also it may be observed that the proviso made to this Article use the words” at each level” but not “at the village or other levels”, which again seem to conflict with clause (4) of Article 243D.

Reservation of a minimum of one-third of the offices of chairpersons to women in the panchayats at each level was made mandatory by the constitution. However, it should be noted that unlike reservation of a minimum of one-third of the seats for women from the total number of seats reserved for SCs & STs, at each level of panchayats, the constitution envisages such a provision for the reservation of offices of chairpersons for women for the state as a whole. The implication of this provision is that state legislatures may by law, prescribe a minimum of one-third of the total number of offices of the chairpersons of panchayats to women in the state. Such reservation seats need not necessarily be district wise or region wise.

* Dr Subramanyam op cit p.11
^° Article 243D(4)
4.4.1: RESERVATION FOR BACKWARD CLASSES

The legislature of a state is empowered under clause (6) of Article 243-D to make provision for reservation of seats in any panchayat or office of chairpersons in the panchayats at any level in favour of backward classes of citizens. So far as reservation of seats & offices of chairpersons for the backward classes is concerned, the enabling clause (6) provides discretion to the legislature of each state to provide for it. However, it may be noted that while clause (2) of Article 243D stipulates the eligibility condition for a seat in a panchayat to “persons”, this Article restricts the provision of reservation to “backward class of citizens” without defining the term. Some of the implications of the provisions relating to reservations deserve to be mentioned.

1. The constitution does not provide for certain contingencies. For instance, if the office of the chairperson of a panchayat originally reserved for & held by a person belonging to SCs/STs/BCs/women falls vacant on account of death, removal, resignation or otherwise, the vice-chairperson may hold office of the chairperson for the remainder of the original term of the former even if the vice-chairperson does not belong to the said reserved categories. The constitution provides only for election for constituting a panchayat before expiry of its normal duration when dissolved, but not for the office of its political chief.

2. The existing provisions do not make it obligatory for the states which provide for reservation of seats or offices of chairpersons to backward class of citizens, to earmark a minimum of such seats or offices to women.

3. State legislatures are endowed with the discretionary power to make provision for reservation of seats in any panchayat at any level in favour of

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21 Dr Subramanyam, Op cit p11
22 Dr Subramanyam, op cit p.11
23 Ibid.
backward class of citizens. This implies that the state legislatures are empowered to make provision for reservation of seats not in all panchayats, but in any panchayat. Similarly, they are empowered to provide, at their discretion, for reservation of offices of chairpersons in favour of backward class of citizens in the panchayats at any level. In other words, legislatures of states possess the power to provide reservation of offices of chairpersons in favour of this category at any level, not necessarily at all levels of panchayats.24

4.5: DURATION OF PANCHAYATS

Article 243E concerns itself with duration of panchayats. It provides that “every panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting & no longer”. Where a panchayat is dissolved before the expiration of the said five years, “election to constitute panchayat shall be completed before the expiration of a period of six months from the date of its dissolution. These provisions enable the state Governments to dissolve an existing panchayat & constitute a new panchayat within a period of six months. A careful reading of this Article suggests that the ‘dissolution’ refers only to a panchayat at any level but not to all the panchayats at any level en-masse.25

4.6: DISQUALIFICATION

Article 243-F refers to the disqualification of persons for being chosen as, & for being a member of a panchayat. A person who attracts (a) disqualification for the purposes of election to the legislature of the state, except in terms of age;

25 ibid.
(b) If he stands so disqualified by or under any law made by the state legislature. It is not clear from these provisions whether a person incurs disqualification if he attracts either of these two, as the last sentence of sub clause (a) of clause (1) is not suffixed by “and” or “or”. Nevertheless, it must be pointed out that equating a member of a panchayat with a state legislator for purposes of disqualification does not seem to be justifiable. Moreover, the constitution did not provide for eligibility criteria for persons to be chosen as & for being a member/chairperson of a panchayat, the issue of prescribing disqualification should have similarly been left to the state legislatures. Furthermore, the provisions governing disqualification do not seem to apply to the chairpersons of village-level panchayats elected directly by the people. Such logic can be advanced on the ground that the constitution makes a clear distinction between ‘members’ & ‘chairpersons’ panchayats.

4.7: POWERS, AUTHORITY & RESPONSIBILITIES

Schedule XI of the constitution of India defines the functional items for which states may devolve responsibility to panchayats. While states vary in the extent to which they devolve policy powers to the gram panchayats, most gram panchayats have responsibilities of civic administration in the village together with limited independent taxation powers. On average, roughly 10 percent of GPs total revenue comes from own revenues, with the remainder consisting of transfer from higher levels of government.

Article 243-G refers to the major issue of powers, authority & responsibilities. It says that the state legislature may, by law, endow the panchayats with such powers & authority as may be necessary to enable them to

27 Dr Subramanyam op cit
28 Ibid
29 Ibid.
function as institutions of self-governance & such law may contain provisions for
the devolution of powers & responsibilities upon panchayats at the appropriate
level subject to such conditions as may be specified therein with respect to (a) The
preparation of plans for economic development & social justice; (b) The
implementation of schemes for economic development & social justice as may be
entrusted to them including those in relation to the matters listed in the Eleventh
schedule.\textsuperscript{30}

The following are the implications of this Article to be understood in their
proper perspective. (1) It is the state legislature, not the executive Government,
which is constitutionally empowered, at its discretion, to endow the panchayats
with appropriate powers & authority to enable them to function as institutions of
self-governance. (2) The law enacted by the state legislature may contain
provisions for the devolution of powers & responsibilities upon the panchayats at
different levels, subject however to conditions specified therein, with respect to
preparation of plans, & implementation of schemes as may be entrusted to them.
(3) Implementation of schemes may include schemes relating to the matters listed
in Eleventh schedule as may be entrusted to them. (4) The 29 items listed in the
Eleventh schedule are referred to as “matters”, & not as “subjects”. (5) State
legislatures have the unfettered freedom to endow the panchayats with necessary
powers & authority as well as with making provisions for the devolution of
powers & responsibilities on the panchayats at various levels. (6) As in the case of
Article 243-F, clause (a) of Article 243-G was not suffixed by the word ‘and’.
Finally, the word “for economic development & social justice” used in this Article
are very comprehensive in scope & lend themselves to a variety of connotations.
Instead, they should have been made more specific.\textsuperscript{31}

\textsuperscript{30} Matters listed in the schedule- XI – Constitution of India.
\textsuperscript{31} Dr Subramanyam op cit p.12
It is to be noted that Article 243-G is subject to the provisions of the constitution of India. This means that the normal distribution of powers under Articles 245 & 246 cannot be affected by the state legislature while vesting with powers & authorities upon the panchayats.

4.7.1: PANCHAYAT SERVICE CADRE

Panchayats as the third tier of the Government need their own cadre like other two tiers of the governments at the union & state levels. Presently the states’ executive officers & most of the staff of the panchayats are appointed, transferred & controlled by the state governments. Provision for deputation of officials from the state government to the panchayats has been made in the state panchayat Acts without consultation with the panchayats. The tenure, transfer, promotion of deputationists has also been decided by the state government again without consultation with the panchayats. One of the main reasons for the dismal performance of the panchayats in the past has been that they did not have their own personnel/staff. This has neither been considered by the parliamentarians at the time of enacting the 73rd Amendment nor in the state legislatures. Hence, it is to be recommended for making provision for a panchayat cadre in part XIV of the constitution of India.

4.8: POWERS TO IMPOSE TAXES BY, & FUNDS OF, THE PANCHAYATS

Article 243-H empowers a state legislature to statutorily authorize the panchayats to levy, collect & appropriate specified taxes, duties, tolls & fees; assign to them taxes, duties, tolls & fees levied & collected by the state Government, provide for making grants in aid to the panchayats by the state government from the consolidated fund of the state; & provide for constitution of specified funds by or on behalf of the panchayats. This discretionary provision
vests the power in the state legislature & hence the law governing the panchayats should specifically provide for all these items instead of authorizing the executive Government to exercise the powers on its behalf. Moreover, this provision enables constitution of specific funds by the state legislature for the panchayats at the state level.

4.9: FINANCIAL DEVOLUTION TO PANCHAYATS

The Eleventh finance commission [EFC] was constituted by the president of India on July 3, 1998 to make its recommendations, among others, on measures needed to augment the resources of the panchayats on the basis of recommendations of the state finance commissions (SFCs).\(^{32}\) Para six of the presidential order has also assigned additional responsibility to the Eleventh finance commission relating in that where the SFCs have not been constituted as yet, or have not submitted their reports, the Eleventh finance commission will make its own assessment about the manner & extent of augmentation of consolidated funds of the state to supplement the resources of the panchayats in the state keeping in view the provisions required to be made for the emoluments and terminal benefits of the employees of the local bodies including those of teachers, existing powers of the panchayats to raise financial resources including those by way of raising additional taxes by the panchayats; & power; authority & responsibility transferred to panchayats under Article 243-G of the constitution of India read with 11\(^{th}\) schedule.\(^{33}\)

The commission has given a number of recommendations ranging from devolution of financial resources to amending constitution in order to make panchayats viable & pulsating institutions of local governance. The commission recommended to give grant to the panchayats to the tune of Rs 8000 crore for 2,

\(^{32}\) Article 280bb which was added in to the constitution 73rd Amendment Act 1992.

40,588 Gram panchayats, 5,930 intermediate panchayats & 511 Zilla panchayats in 25\textsuperscript{34} state of the country during 2000-05. According to the action taken report issued by the ministry of finance on the recommendations of the Eleventh finance commission [EFC], the government of India has accepted most of them\textsuperscript{35}. The recommendation of granting Rs 1,600 crore annually to the panchayats for the maintenance of crore services at local levels is the cornerstone of the entire devolution scheme of the eleventh finance commission.\textsuperscript{36} According to Mahipal, EFC might have recommended the following three things;

1. Evolving separate subjects list for the panchayats;
2. Provision for a separate panchayat cadre in part XIV of the constitution;
3. Assigning the job of devolving of funds to the panchayats to the central commission itself.
4. In other words, India instead of being called a union of state may be called a union of states & panchayats.\textsuperscript{37}

In the light of experience gained so far, the EFC should have recommended to carve out separate list for the panchayats by scrapping the existing 11th schedule of the constitution & to evolve five lists of subjects from central, state, & concurrent lists-one entirely for the centre, second entirely for the state & a third for state & centre concurrent. Thus evolved the local list may further be categorized as district panchayat list, block-intermediate panchayat list & Gram

\textsuperscript{34} Now 28 states.
\textsuperscript{36} Ibid
\textsuperscript{37} This should have been kept in view by the commission for devolving financial resources to the local bodies.
panchayat list keeping in view the capacity of these tiers. Only after carrying out such an exercise, can the question of finance be addressed properly.\textsuperscript{38}

The question of finance should not have been left on the states alone. When panchayats have been elevated to the third tier of government, let there be provision in the constitution itself about the sharing of revenue from the centre to the panchayats in addition to what SFCs would devolve from state to the panchayats.\textsuperscript{39}

Article 243-I provided for a state finance commission at the state level analogous to its counterpart at the national level. Though the provisions of the state finance commission are largely a replica of the corresponding provisions relating to the national finance commission, the mandatory terms of reference [TOR] of the former are relatively wider. The Governor of a state shall constitute a finance commission to review the financial position of the panchayats & to make recommendations to the Governor as to-

The principles which should govern-

i. The distribution between the state & the panchayats of the net proceeds of the taxes, duties, tolls & fees leviable by the state, which may be divided between them under this part & the allocation between the panchayats at all levels of their respective shares of such proceeds.

ii. The determination of taxes, duties, tolls & fees which may be assigned to, or appropriated by, the panchayats;

iii. The grant-in-aid to the panchayats from the consolidated fund of the state;

This provision implies that the state finance commission has to suggest the principles for the (a) distribution only of the net proceeds of the taxes, duties, tolls & fees leviable by the state as may be divided between the state & the panchayats;

\textsuperscript{38} Mahipal, op cit. p 4381.

\textsuperscript{39} ibid
& (b) allocation of such divisible pool between the panchayats at all levels. Experience with the past state finance commissions however, suggests that in the absence of time-stipulation for causing the recommendations of the state finance commission together with the Action taken report (ATR) & thereon to be laid before the state legislature concerned, some state governments have taken unduly long-time in examining the recommendations & accepting some or all of them. In fact, by the time the ATR are prepared & laid before the state legislature, it will be time to constitute the next state finance commission. In order to avoid such abnormal delays, after the words “legislature of the state” in clause (4) of Article 243-I it is necessary to add the words “within a period of six months from the date of receipt of the recommendations of the commission.”

Another provision relating to the finances of the panchayats can be found in the addition made to clause (3) of Article 280* of the constitution of India. The 73rd Amendment Act enlarged the functional domain of the National finance commission by requiring it also to recommend “the measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats in the state on the basis of the recommendations made by the finance commission of the state.

However, experience shows that in view of the inadequate, nay imperfect, data base on panchayat finance in several states, the state finance commissions could not effectively; arrive at a reasonably realistic approximation of the quantum of revenue gap for being considered by the national finance commission. The present scenario indicates that the national finance commission may not be able to entirely rely on the recommendations of the state finance commissions for this purpose for a variety of reasons. Therefore, in order to enable the National finance commission to make their recommendations on the basis of not only the state

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40 Dr Subramanyam. Op cit p13
41 Article 280(3)-(bb) Inserted by the constitution73rd Amendment Act 1992, sec3.
42 Dr Subramanyam, op cit
finance commissions recommendations but also on the strength of the studies commissioned by them & other relevant material, it is absolutely necessary, to make the recommendations of the various state finance commissions as one of the important source material for the National finance commissions. The Eleventh finance commission has already taken resources to this alternative. In view of these consideration, the sub-clause (bb) to clause (3) of Article 280 needs to be modified in such a way that the words "on the basis of" are substituted by the words "with due regard to".

The legislature of a state may, by law make provision with respect to the maintenance of accounts by the panchayats & the auditing of such accounts.

4.9.1: THE POSITION UNDER KARNATAKA PANCHAYAT RAJ ACT 1993

The Karnataka panchayat Raj Act, 1993 provides for separate funds for Zilla panchayats, Taluk panchayats & Gram Panchayats.

The Zilla panchayat fund consists of;

1. The amounts transferred to Zilla panchayat fund by appropriation from out of the consolidated fund of the state;

2. All grants, assignments, loans & contributions made by the government;

3. All fees & penalties paid to or levied by or on behalf of the Zilla panchayat under this Act & all fines imposed under this Act;

4. All rents from lands or other properties of Zilla panchayat;

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43 Dr Subramanyam, op cit
44 Ibid.
45 Article 243-j
46 The Karnataka panchayat Raj Act 1993 Sec 225
47 Ibid sec 218
48 Ibid sec 212
5. All interests, profits & other moneys accruing by gifts, grants, assignments or transfers from private individuals or institutions;

6. All sums received by or on behalf of the Zilla panchayat by virtue of this Act; provided that sum received by way of endowments for any specific purpose shall not form part of or be paid into the Zilla panchayat fund.

The Taluk Panchayat fund shall form the following, namely;

1. The amount which may be granted or passed on to the taluk panchayat by the Government or the Zilla panchayat, under the provisions of this Act or any other Act, or any other account.

2. The proceeds of any fees imposed by the taluk panchayat.

3. All sums received by the Taluk panchayat by way of contributions from the Government or any other authority or person or by way of gift;

4. The rent or other income from, or sale proceeds of, any immovable property owned by or vesting in the Taluk panchayat; and

5. All other sums received from any source whatsoever,

Provided that sums received by way of endowments for any specific purpose shall not form part of or be paid into the Taluk panchayat fund.

The Gram panchayat fund shall consists of the following, namely;

1. The amount which may be granted or passed on to the Gram panchayat by the Government or the Zilla panchayat or Taluk panchayat under the provisions of this Act or any other Act, or on any other account;

2. The proceeds of any tax, rate & fee imposed by the Gram panchayat;

3. All sums received by the Gram panchayat by way of loans or contributions from the Government or any other authority or person or by way of gift;

4. The rent or other income from, or sale proceeds of any immovable or immovable property owned by or vesting in the Gram panchayat; And

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49 The Karnataka Panchayat Raj Act 1993, sec 218(2)
5. All other sums received from any source whatsoever.

6. The amount at the credit of the gram panchayat fund shall be kept in the treasury of the Taluk or with the approval of the Executive officer in any scheduled bank or a co-operative bank situated in the panchayat area or the neighboring panchayats area.\(^{50}\)

It is evident from the above, that the Gram panchayats have been exclusively depend upon the grants of the Government, various financial assistance by various international, National & state level organizations.

4.9.2: TAX COLLECTION IN GRAM PANCHAYATS

Since 1993 village governments in India, Gram panchayats (GPs) have been responsible for maintaining local amenities such as village roads & drinking water facilities, & for identifying beneficiaries for federal & state poverty alleviation programmes. A key motivation for the 73\(^{rd}\) amendment was the belief that local government may be better placed to identify & respond to villagers’ needs. It was also held that villagers may find it easier to monitor local politicians. Democratisation of the public service delivery system has thus, been a central element of the Indian decentralization experiment.\(^{51}\)

The active interest & cooperation of tax payers in the affairs of local body make the officers & elected members responsive to the needs & requirements of the people. Their co-operation & active participation in the working can go a long way in contributing to the economic & fiscal spheres. The local body generally provides great opportunities to the citizens to solve problems social & economic developments. The needs & problems of the community lead to the growth of interest in the public, which is the function of the local government. Its short

\(^{50}\) Ibid sec 199(1)(2)(3)(a) to (h) & schedule iv

\(^{51}\) Timothy Besley & others, political economy of panchayats in south India, ECONOMIC & POLITICAL WEEKLY FEB 24 2007, P,661.
comings & difficulties can be met with public co-operation. Hence, it is felt that the development works of local bodies/ panchayat Raj institutions especially the Gram panchayats is much dependent upon the financial resources earned by it, by collecting the taxes etc.

The Gram panchayats are empowered to levy taxes upon buildings & lands, which are not subjected to agricultural assessment within the limit of panchayat area. It can also levy water rate for supply of water for drinking & other purposes. The Act 1993 also provides for the Gram panchayat for levy of taxes on entertainment other than cinematograph shows, taxes on vehicles other than motor vehicles, taxes on advertisements & hoarding, pilgrim fee, market fee, fee on the registration of the cattle brought for sale in any market place, fee on buses & taxies & auto stands provided adequate facilities are provided for the travelers by the Gram panchayat, & fee on grazing cattle in the grazing lands. The Government may levy a local cess at the rate of equal to land revenue on all items of land revenue for distribution among the panchayat Raj institutions. The Government also may levy a duty on transferable immovable property in the form of additional stamp duty & this amount will be given to the Gram panchayats. There is also scope for discretionary grant to be given by the government to the

52 Dr Ramesh. Op cit p 215.
53 The members are not encouraging the people of their constituencies to pay the taxes & levies regularly. They are afraid that if they do so, they may not get reelected in the next election.
54 Karnataka panchayat Raj Act 1993 sec 199.
55 Ibid , sec 199(2)
56 Ibid, sec.199(3)(a)
57 Ibid, sec.199(3)(b)
58 Ibid, sec 199(3)(c)
59 Ibid, sec 199(3)(d)
60 Ibid, sec 199(3)(e)
61 Ibid, sec.199(3)(f)
62 Ibid, sec 199(3)(g)
63 Ibid, sec.199(3)(h)
64 Ibid, sec. 204(1)
65 Ibid, sec 205(1)
Gram panchayat, Taluk panchayat, & Zilla panchayat for such purposes & on such terms & conditions, as may be decided 66

The constitution & working of the panchayat Government affect considerably the routine living & activities of the people in several years. The local bodies provide the desired amenities for the public & also the day-to-day services, which are essential for the convenience, better standard of living & welfare of the people living in the area. The effective & efficient performance of local bodies (panchayat institutions) services create conditions for the growth of general well being of the people. In fact, it is the local body if it is well administered which directly concern rate payers' problems & the Governments whether state or central come later. It is therefore in the greater interest of the tax payers to realize their responsibilities in order to have interest in the affairs of the local government, & to build up sound & efficient local administration co-operation of the people is a necessity.

4.9.3: STATE FINANCE COMMISSION

In order to fulfill the constitutional obligation under 73rd constitutional Amendment Act 1992 67 the state government of Karnataka has so far constituted three state finance commissions. The first state finance commission constituted in 1996, has recommended that Zilla panchayat may be given 40% Taluk panchayat 35% & Gram panchayat 25% out of total money to devolve to these institutions. While doing so, the commission has focused on a consolidated share in the total non-loan gross own revenue receipts of the state government. These include gross yield from all taxes, duties & fees levied & collected by the state government & interest receipts. They also cover both plan & non-plan expenditure requirement of

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66 Karnataka Panchayat Raj Act 1993, sec 208
67 Article 243-I of the Indian constitution deals with constitution of finance commission to review financial position of panchayats.
panchayat Raj institutions. The second state finance commission constituted in 2001 also advocated for further devolution of finances to panchayat Raj institutions. This is apart from the practice of giving Rs 2 lakhs grant to Gram panchayats & not adjustable against funds recommended for the devolution by the state finance commission. The third state finance commission also submitted its recommendations to the Governor of Karnataka during April 2009.

4.10: STATE ELECTION COMMISSION

Under Article 243-K the superintendence, direction & control of the preparation of electoral rolls & conduct of all elections to the panchayats shall be vested in a state Election commission consisting of the state Election commissioner to be appointed by the Governor. Subject to the provisions of any law made by the state legislature, the condition of service & tenure of office of the State election commissioner shall be such as the Governor may by rule determine. The Election commissioner of the state shall not be removed from his office except in like manner & on like grounds as a judge of a High court. The conditions of service of the state Election commissioner shall not be varied to his disadvantage after his appointment.

The Governor of state shall, when so requested by the state Election commissioner, make Available to commission such staff as may be necessary for the discharge of its functions.

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68 An important feature of the financing as recommended by the first state finance commission is to increase the share of panchayat Raj institutions in the non-loan gross own receipts of the state Government from 34.27% to 36%. Of this 36%, 85% is to be transferred to panchayat Raj institutions. Of the 36% of the non-loan gross own revenue receipts, 30% is to be transferred to all the three layers of the panchayat Raj institutions.

69 243-K(2) proviso

70 243-K(2)
The state legislature may, subject to the provisions of the constitution, by law make provision with respect to all matters relating to or in connection with elections to the panchayats.

4.11: FEDERAL POLITY AFTER 73RD AMENDMENT: DEVOLUTION

INDEX

Traditionally 'local Government' is a subject earmarked to the state government. As the 73rd Amendment to India's constitution which accorded constitutional status to local governments, it should be emphasised that such status to local Government exists within the confines of the basic structure of the constitution. Thus, there be no illusion that on account of 73rd Amendment to the Indian constitution, it has become a three-tier polity with the National, State, & local Government as three separate entities independent of each other in terms of powers, authority & abilities.

The deplorable experience & pathetic existence of panchayats during the penultimate days of 73rd Amendment indubitably demanded intervention by the National legislature. The 73rd Amendment to the constitution should therefore be considered landmark in the history of Indian local Government. One of the merits of these interventions relates to the care taken to ensure that states are not deprived of their legitimate constitutional prerogatives in the area of functional & financial devolution on their local governments. Also these Amendments, by providing for reservations to the weaker sections of the Indian society, & ensuring, periodic elections to the democratic institutions at sub – state level sought to correct the existing deficiencies & practices in the system.

Since 2005-06, the ministry of panchayat Raj [MOPR] has been operating what it calls the panchayat Empowerment & Accountability Incentives Scheme

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71 243-k(4)
72 Dr Subramanyam, op cit
[PEAIS] under which states are assessed for their performance in empowering the panchayat Raj institutions & the accountability of the panchayat Raj institutions in the discharge of their functions. Any incentive mechanism to empower panchayat Raj institutions is to be seen as a step towards better local democracy & development in India. Two questions are crucial here: 1) what do you mean by empowerment of panchayat Raj institutions? And 2) how do you measure it? Empowerment in the context of decentralisation is to be seen as empowerment of the people through empowering panchayat Raj institutions.\textsuperscript{73}

The basic objective of the 73\textsuperscript{rd} constitutional Amendment is to create "institutions of self Governments" at the sub-state level by empowering the local governments through appropriate devolution of powers & responsibilities in regard to the mandated functions, with adequate finance & functionaries. Unlike their counterparts elsewhere in the world, the local governments in India, inter alia, have to plan for "economic development & Social justice" & implement them. The magnitude of the devolution package envisaged is indeed substantial as well as crucial.

As regards the scope of devolution in the context of panchayat Raj institutions, the report of a 2001 task force observes: "Devolution in the context of the panchayats means that when the statutory authority in respect of a specific activity is transferred from state to local governments, the later should have the prerogative of taking decisions in respect of planning & implementation of such activity. In fact, functions, funds & functionaries are complementary to one another in the process of devolution of responsibilities & powers upon the panchayats.\textsuperscript{74}

The task force stressed that functions, finance & functionaries are complementary & that they have to be transferred simultaneously so that the

\textsuperscript{73} M.A.Oommen. Limits of 'Devolution Index', EPW. July 18, 2009. p 17.
\textsuperscript{74} Govt. of India 2001:05
transfer of political power from the higher level to the local governments can be real. Moreover, there is a great emphasis on planning & implementation of plans for economic development & social justice.

**Table: DEVOLUTION INDEX USED IN 2008-09 TO RANK STATES**

**FUNCTIONS**

1. Defacto transfer of 29 functions listed in 11th schedule.
2. Detailed activity mapping conducted for these 29 functions.
3. Whether district planning committee is involved in the preparation of district plan?
4. Are Gram panchayats fully implementing the major flagship programmes?
5. Are Gram panchayats fully empowered to prepare plans for expenditure?

**FINANCES**

6. Authorisation of panchayat Raj institutions to collect Taxes, duties, tolls, etc.
7. Panchayat Raj institutions own revenue as percentage of Panchayat Raj institutions expenditure.
8. Timely actions on latest state finance commission’s major recommendations
9. Percentage of funds devolved to PRIs that are united (plan).
10. Percentage of funds devolved to PRIs that are united (non-plan).
11. Promptness with which 12th finance commission funds transferred to PRIs.
12. Allocation of funds to PRIs based on apportionment formula.
13. Are Gram panchayats fully empowered to sanction expenditure?

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14. Whether there is a separate budget line for PRIs in the state budget for 2007-08?

15. Devolution of finances corresponding to functions.

16. Percentage of PRIs whose accounts are audited (GP)

17. Percentage of PRIs whose accounts are audited (TP/BP)

18. Percentage of PRIs whose accounts are audited (/ZPDP)

19. Specify the registers in which the accounts of Gram panchayat are updated.

20. Do any funds directly go to the Gram panchayat with respect to the functions?

FUNCTIONARIES

21. Expert institutions & entities to support PRIs for the preparation of their annual plans specified.

22. Expert institutions & entities to support capacity building /training of elected officials of PRIs specified.

23. Amount of money provided for the capacity building /training of elected officials of PRIs.

24 Amount of money provided for the capacity building /training of appointed officials of PRIs.

25. Annual report for last fiscal year released.

26. Functionary –wise accountability to PRIs: Gram panchayat.

27. Functionary –wise accountability to PRIs: intermediate panchayats

28. Functionary –wise accountability to PRIs: Zilla panchayat/ D P

29 Average days of training of functionaries: elected officials: gram panchayat

30. Average days of training of functionaries: appointed officials: gram panchayat

31. Of functionaries: elected officials: Taluk panchayats

32. Average days of training of functionaries: appointed officials: Taluk panchayat
33. Of functionaries: elected officials: DP
34. Average days of training of functionaries: appointed officials: Zilla panchayat

It is significant that Ministry of panchayat Raj [MOPR] & National council of applied economic research [NCAER] have constructed a devolution index with reference to 3Fs viz., FUNCTIONS, FINANCES & FUNCTIONARIES, along with accountability. In all there are 34 indicators of which five relate to functions, 15 relate to finances & 14 to functionaries. Accountability is sub summed in items 16, 17, 18, 26, 27, & 28. Broadly speaking, accountability of a public institution means being answerable to the public for their actions or inactions. Traditionally, panchayats have been subjected to audit & inspections by special institutions such as the local fund audit & examiner of local accounts under the accountant General (AG) of each state. This type of upward accountability has to continue. However, it is important to underscore the role of the Gram sabha which demands a downward accountability to the citizens^76. A social audit, Ombudsman, citizen’s charter, right to information, & so on are also ways to ensure accountability of the PRIs in India^77.

Table spells out the measurement criteria used in the devolution index prepared by NCAER/ MOPR to rank states. Under functions, five criteria are taken into account, of which items 3, 4, & 5 are yes or no questions & have very little operational relevance as a meaningful measure of functional devolution. A positive answer to the question^78 whether District planning committee (DPC) is involved in the preparation of the district plan” has no meaning. Item no 4, Are Gram panchayats implementing the major flagship programmes? This is a question that does not in any way measure functional autonomy. Flagship programmes are at best agency functions. Again item no 5, “Are Gram panchayats

^77 The devolution index has failed to take account of issues of downward accountability.
^78 Item no 3.
fully empowered to prepare plans for expenditure?” assumes significance only if it is supplemented by probing questions such as, do you consult the Gram sabha? What mechanisms are used to concretize the “felt needs” of the Gram sabha? What consultative device is used to ensure technical support & projectisation? The questions are too many to mention here. These are not hypothetical questions.

Any meaningful measure of functional autonomy will have to take into account the institutional decentralisation or the transfer of institutions that legitimately belong to the appropriate level of the three tiers. It is important to note that, where there is a strong district development agency [DRDA], functional autonomy of PRIs is severely compromised.

There are 15 criteria which have been used to measure financial devolution. Item 6” authorisation of PRIs to collect taxes, duties, tolls, etc is too general to carry any meaning because even in before the 73rd amendment Act, states have been lavish in such authorizations. Who collects & appropriates property tax, etc, is probably a better way to ask the question. Item 7, “PRIs own revenue as percentage of PRIs expenditure” can result in wrong numbers. If PRIs expenditure is less, the own revenue remaining the same, the percentage will be high. A widely accepted & valid measure of financial devolution is the percentage of local governments (LGs) own source revenue (OSR) to total own revenue of the state plus LGs OSR. An equally important one with reference to revenue effort is per capita tax & per capita OSR. Item 9, percentage of funds devolved to PRIs that are united (plan). Item 10, percentage of funds devolved to PRIs that are united (non-plan) & item 13, are gram panchayats fully empowered to sanction? Are allied questions & must be ambiguously worded. The critical measure is the magnitude of funds a Gram panchayat at the cutting edge level obtains & manages. Item 12 “Allocation of funds, based on apportionment formula” is an

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80 Ibid.
unassailable parameter. The discretionary transfer is nothing but schemes under various heads. When schematic transfer of fund has been made it is negating the autonomy. Item 14 is a question: whether there is a separate budget line for PRIs in the state budget for 2007-08? A positive answer does not mean much if the line department appropriates lion’s share with a negligible share to Gram panchayats. Item 15 again is posed as a question: Devolution of finances corresponds to functions? This question is valuable provided the establishing a mechanism to link activity maps corresponding to each tier with the budgetary heads & allocation of funds with reference to those.

Items 16, 17, & 18 refer to the percentage of panchayats audited corresponding to each one of the three tiers. They do not measure financial devolution but are included presumably as a measure of accountability. But, what about social audit or other means of downward accountability? Item 19 & 20 are not so important but an elementary transparency guarantee.

There are 14 items under devolution of functionaries. None of them measure administrative autonomy. There is absolutely no reference to redeployment of functionaries or even how many departments have done this. Out of the 14 items, 10 are related to Training & capacity building. While they are important, by no stretch of imagination do they measure the progress in the devolution of functionaries to PRIs. Four items are included probably to gauge accountability: three (26, 27 & 28) of them refer to “functionary-wise accountability to PRIs of the three tiers. The last six items refer to average number of days trained. What is ostensibly to be measured is the administrative autonomy & not the number of days trained. How many administrative officials, technical staff, engineers, doctors are deployed to PRIs is the crucial question. Who write their confidential report? Can the PRIs take disciplinary actions?

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82 Ibid., p20.
83 Ibid.