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PANCHAYATS :
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LEGISLATURES

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Overview

In rural India, the institution of local government is known as Panchayat. The term 'Panchayat' is derived from *Panchas* or the council of five village elders, vested with the authority to arbitrate disputes in traditional village systems. It is believed that panchayats have been in existence in the agrarian communities of the country since ancient times. The system of village panchayats was continued during British colonial rule¹, which tried to link it with the village-level police administration. It was further articulated by Mahatma Gandhi who blended it with his idea of '*gram swarajya*' (village self-government) during the long freedom movement. There were differences of opinion between the Congress party and Mahatma Gandhi with regard to the concepts of self-government and panchayats. Subsequently, Gandhi's views on decentralised power structure for independent India and by extension, his views on panchayats were seen as utopian², and were rejected after India gained independence in 1947. In fact, the panchayat was conveniently forgotten when the Constitution was drafted. Later, following a prolonged debate on this issue in the Constituent Assembly in 1948, Village Panchayats found a place in Article 40 of the Constitution which reads: "The state should take steps to organise village panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self-government." But this article was placed under the Directive Principles of State Policy, which was not enforceable.³ Since it was not mandatory, the state governments did not feel obliged to organise and strengthen village panchayats.

It needs to be mentioned that within the federal framework of the Constitution, although the 'union/centre' has the upper hand, the federating units, that is, the

¹ For a brief historical account of panchayats both during the pre-colonial and British periods as well as in post-Independence India see Malviya (1956), Maddick (1970) and Mathew (2000).

² For an excellent review of Mahatma Gandhi's views on Panchayats, see, Bose (1957) and Ghosh (2000). The latter paper also traces the contours of the ideological debates on Panchayats in the country starting with Gandhi and going up to the 73rd Constitutional Amendment.

³ By the time the idea of village panchayats was accepted as an after thought, the design of the State's authority structure had already been given final shape, there was no place for them in the enforceable part of the Constitution. See, Mathew, Ghosh, *op cit*.

'states' enjoy autonomy in many respects. The powers and functions of both the 'state governments' and the 'union government' are clearly demarcated in the Constitution. Local government was included in the state list⁴ therefore, except for issuing the general guidelines, the centre was not empowered to intervene in the sphere of local government. And the federating units, forever complaining about the centre's gradual encroachment on their area of authority, were not inclined to give up their powers and functions. Thus, only the village panchayats formed during the pre-Independence period continued to function for almost a decade after Independence.

The present three-tier Panchayati Raj Institutions (PRIs) owe their genesis to the recommendations of the Balwantray Mehta led official Committee for an appraisal study on 'Community Development and National Extension Service Programmes' in 1957. The study team had envisaged that elected PRIs would help enlist people's participation for the effective implementation of on-going community development⁵ and national extension service programmes. This was the first major step in promoting democratic decentralisation in the country. Thus the recommendations of the study team gave birth to the first generation of modern panchayati raj institutions with the state of Rajasthan taking the lead. While inaugurating the newly created three-tier PRIs at Nagaur (Rajasthan) and Shadnagar (Andhra Pradesh) on October 2, 1959, Prime Minister Nehru praised

⁴ To demarcate the functions of the federating units and the Centre, the Constitution provides separate lists specifying their areas of jurisdiction, known as the 'state list' and the 'central list'. It is implied that only states can legislate on subjects given in the state list and the Centre on subjects given in the central list. Besides, there is a 'concurrent list' of subjects on which both the centre and the states have jurisdiction. Also, if there is a difference in the ruling of the state and the Centre on any subject given in the concurrent list, it is the Centre that will get precedence. In other words, the Centre has overriding powers on matters pertaining to the concurrent list. Although it is seen as an encroachment on the authority of the federating units by the Centre, the latter considers it its prerogative to make the final decision in case of differences between the states, between any state and the Centre and also considers it necessary to maintain the integrity of the country. The Centre can declare any subject given in the state list of national importance and bring them under the concurrent list. Over the years the Centre has gone on adding subjects to the concurrent list.

⁵ The 'Community Development' projects, which had started in 1952, had failed to evoke people's participation. A study team headed by Balwantray Mehta, a member of Parliament, was set up to examine the reasons for the relative absence of public enthusiasm and lack of people's participation in the community development programmes. The study team had felt that in the absence of an agency at the village level, which could mobilise the "entire community, assume responsibility and provide the necessary leadership for implementing development programmes, real progress in rural development could not come about at all." Thus, in order to ensure people's participation, it had recommended setting up representative bodies at three different levels below the state level. See, Mathew, *op. cit.*: 6.

the pioneering efforts of these two states in taking "the most revolutionary and historic steps "and hoped others would follow suit. In response to his call, by the late 1950s or early 1960s, most of the states had passed their respective panchayat acts and several of them had also conducted elections for the panchayat bodies. This enthusiasm however did not last long. In fact, barring two states in the western part of the country, Gujarat and Maharashtra⁶, the PRIs practically collapsed in the rest of the country once the initial euphoria was over and resultant contradictions could not be resolved.

That was in the mid-1960s. More than a decade later⁷ attempts to revive panchayats began with the recommendations of the Asoka Mehta Committee.⁸ The process was started in West Bengal in 1978 with Karnataka, Andhra Pradesh and Kerala following suit in the mid eighties. The decentralised institutions thus revived were termed as second-generation panchayats.⁹ Again, barring West Bengal, these second generation panchayats did not last long once the political parties (all non-Congress), which had given them a new lease of life, lost in the ensuing Assembly elections in these states. Perhaps, the continuation of the Left-Front government in power ensured the survival of panchayats in West Bengal.

⁶ To understand how panchayats in Maharashtra and Gujarat escaped the combined onslaught of the bureaucracy and high-ranking politicians such as MLAs and MPs, who were said to be largely instrumental in derailing the panchayats in other states, see Ghosh & Kumar (forthcoming).

⁷ For more than a decade after Nehru's death in 1964, who had thrown his weight behind the panchayats, there was no attempt to revive them in the states. Shastri, his immediate successor, also died after a brief period in power. Indira Gandhi took over in 1966. A year later the Congress party, which so far had ruled both in the centre and practically in all the states, with very few exceptions, lost power in as many as nine states and in the centre it had to seek outside support to remain in power. It was followed by a major split in the Congress. In fact, 1967 onwards many states experienced political instability. Owing to these factors, centralising political trends were on rise. Gradually, this took the form of authoritarianism, culminating in the imposition of the 'Emergency' in 1975, abrogating democratic rights in the country.

⁸ The Morarji Desai government (formed by the Janata Party, essentially a coalition of non-Congress parties), which took over after the Congress' first defeat at the Centre in 1977, had set up a Committee headed by Asoka Mehta, a member of the Planning Commission, to examine the reasons that had led to the decline of panchayats and also suggest measures to revive them.

⁹ A vital difference between the first and second generation of panchayats is "the shift in emphasis from development *per se* to local government in its full meaning. The Balwantray Mehta Committee looked upon development as being central to the panchayat system, while the attempts in West Bengal, Karnataka, Andhra Pradesh and later in Jammu and Kashmir, were to make panchayats into genuine political institutions and thus the focal point of self government with all its ramifications, a microcosm of the state itself." See, Mathew, 2000: 17 (Section 3, chapter I). Besides advocating the creation of panchayats as political institutions, the Asoka Mehta Committee had recommended the setting up of two tier, instead of three-tier, panchayats. West Bengal heralded the coming of second generation panchayats but settled for the three tier panchayats.

Until then, it should be noted, elections to panchayati institutions were not mandatory. In fact, barring Maharashtra and Gujarat (since early 1960s) and later West Bengal (since 1978), panchayat elections were never held regularly in any other state in the country. Even a couple of states such as Bihar¹⁰ and Tamil Nadu¹¹ found ingenious ways of postponing panchayat elections for nearly two decades.

Nevertheless, three decades of experience with panchayats have confirmed that unless these institutions are backed by a constitutional mandate, their survival cannot be ensured.

Demands for Constitutional Support

The Asoka Mehta Committee was the first to ask for the constitutional recognition¹² to panchayats way back in 1978. In fact, the Committee drafted a model Bill, which they appended with the report, seeking an amendment of the Constitution along these lines. E.M.S. Namboodiripad, a member of the Committee had gone one step further and asked for the overall restructuring of democratic polity in the country.¹³ Eleven years later in 1989, when Rajiv Gandhi

¹⁰ For details of the manipulative techniques used by successive Bihar governments to postpone panchayat elections for nearly two decades, including eight years after the 73rd Amendment see, Kumar (2001).

¹¹ See, Kumar (1995).

¹² The arguments both for and against the constitutional recognition to panchayats are presented in Mathew (2002: 31-36).

¹³ The question of the unwillingness of states to devolve their power and authority on panchayats has been dealt at length by E. M. S. Namboodiripad, a member of the Asoka Mehta Committee, in his dissenting note, appended with the Committee report. He wrote: "The Constitution itself according to me, failed to envisage an integrated administration in which, apart from the centre and the states, there will be elected bodies which will control the permanent services at the district and lower levels. Democracy at the central and state levels, but bureaucracy at all lower levels – this is the essence of Indian polity as spelt out in the Constitution." Added to this is the fact that in the actual working of the Constitution, the Centre increasingly encroached upon the prerogatives of the states. He further remarked: "It was with such a centralised administration as its core that Panchayats were envisaged in the Constitution and the Balwantray Mehta Report. It is, therefore, not surprising that neither the bureaucrat nor the politician at the state level is prepared to decentralise whatever power has been conferred on the state under the Constitution. The point is to make a radical change in the very concept of democracy and adopt what is called a "four pillar democracy". In plain words it meant that the Centre, the states, the districts and the lower levels of administration be decentralised. Again in the same note Namboodiripad wrote: "I can not think of Panchayati Raj Institutions as anything other than integral parts of the country's administration with no difference between what are called the 'developmental' and 'regulatory' functions. What is required is that, while certain definite fields of administration like defence, foreign affairs, currency, communication etc. should rest with the Centre, all the others should be transferred to the

was Prime Minister, the 64th Constitutional Amendment Bill was introduced in Parliament. It generated a lot of debate in both the Houses but was eventually defeated in the Rajya Sabha¹⁴ (the Upper House of the Parliament known as the Council of States). The fate of the second Bill on the subject, the 74th Amendment Bill, was all the more bleak as it was not even taken up for discussion. For, before that stage could be reached the then National Front government fell foul with one of its principal partners¹⁵ and reduced to a minority, had to resign within the year. That was in 1990. A caretaker government, headed by Chandrashekhar remained at the helm of affairs till general elections were held in the summer of 1991. A new government, headed by Narasimha Rao, took over. The (72nd Amendment) Bill¹⁶ was submitted to the Parliament on September 16, 1991, almost towards the end of the monsoon session. Naturally, it could not be taken up for debate immediately. Parliament reconvened for its winter session in December 1991 and

states and from there to the district and lower levels of elected administrative bodies." GOI: 1978, 156-170.

The idea of dividing the State's function between 'developmental' and 'regulatory' and entrusting only developmental functions to panchayats was conceived in the Balwantray Mehta Committee Report. What was implicit in this idea was that the Collector (the head of the district administration) remained in charge of the regulatory functions, including welfare of the weaker sections, law and order, revenue etc. The development motif of panchayats was advocated by the Asoka Mehta Committee. Namboodiripad, as we have seen above, was opposed to such a 'narrow conceptualisation of panchayats'. Prior to him, Jai Prakash Narain (popularly known as JP), a prominent personality of the socialist movement of yester years, had also offered radically different views on decentralisation, emphasising "the need for decentralised governance in order to introduce participatory democracy", which in many respects, was close to the views held by Namboodiripad, although politically they were poles apart. Much later Nirmal Mukarji (a former Cabinet Secretary), in the latter half of the 1980s, also propounded the idea of a "third stratum of democratic government" which would gradually replace the Collector-led bureaucratic district administration. See, Ghosh, 2000.

¹⁴ The 64th Amendment Bill could not be properly discussed in the Lok Sabha (Lower House of Parliament) as the entire opposition had resigned en masse because of the scandal over the purchase of vital defence equipment. The opposition leaders led by VP Singh, who had joined the opposite camp after his resignation from Rajiv Gandhi's government, were of the opinion that the government was trying to cover up the corruption issue. Therefore when the Bill was presented for discussion in the Lok Sabha, not only did they boycott its proceedings but they also resigned en bloc. The Bill was opposed on three counts. First, it was felt that the Bill was a serious attempt to undermine the states as it was the centre's instrument to deal directly with the panchayats. Second, it imposed a uniform pattern of panchayats throughout the country. Finally, the proposed Bill was introduced when general elections were round the corner.

¹⁵ During his short-lived tenure, Prime Minister V. P. Singh's government took a highly controversial decision on the reservations in the administration for the other backward classes, based on the recommendations of the Mandal Commission. It was fiercely opposed by certain sections of the society. The atmosphere was tense. At this juncture, the Bharatiya Janata Party (BJP - an orthodox Hindu majority party, which was a major partner of the then National Front government) decided to launch a movement for the construction of a temple on a controversial site where a mosque was in existence. In the process, one of the top leaders of the BJP was arrested. The BJP thereafter withdrew its support to the National Front government.

¹⁶ The discrepancy in the serial number of the Bills simply indicates that all Bills are not passed by Parliament or not in the same order they are put to the House.

sent the Bills (along with a similar Bill for urban bodies) to a Joint Parliamentary Committee (JPC)¹⁷ for examination.

Six months later, in July 1992, the JPC sent its recommendations. Logically, it should have been debated in Parliament but again this did not happen. Why ? An authoritative account by the then Urban Development secretary (K.C. Sivaramakrishnan, who was involved in the drafting of a similar Amendment for urban local bodies) inter alia reads: "soon after the government and Parliament became occupied with various other matters including Ayodhya (the proposed site for the construction of a controversial Ram temple) issue. However, the recommendations of the JPC were discussed in detail by the cabinet for two successive days. The range and duration of the discussions were greater than those that took place during the drafting stage. Eventually the recommendations of the JPC were accepted barring a few".¹⁸ On December 1, 1992 the then Union Minister for Rural Development presented the (73rd Amendment) Bill in Parliament for examination. It was put to debate immediately, which went on for two successive days, although the debate was mild as compared to 1989 when Parliament had debated the 64th Amendment Bill. To quote Sivaramakrishnan: "Shahabuddin (an opposition member), who had opposed the Bills earlier on grounds of both jurisdiction and substance and who had resigned from the Lok Sabha in 1989, now generally supported the Bill(s) with all the lacunae, all the faults and all the omissions because the Bills as they have come out of the Joint Committee(s) represent the national consensus". Similarly, Mani Shankar Aiyar (a Congress party member), who had participated in the drafting of the earlier Bill, maintained a low profile because he found the debate uninspiring and also because of the thin attendance on the part of members in Parliament. In fact, he lamented that "when we are on the brink of the single most important systematic change in

¹⁷ The JPC was headed by Nathuram Mirdha, a former Chief Minister of Rajasthan. Among its members were Mani Shankar Aiyar, Deve Gowda, P. M. Sayeed, Sudhir Roy *et al.* It may also be mentioned that Rajasthan was the first state in the country where the three-tier PRI system was inaugurated by the first Prime Minister on October 2, 1959. Aiyar, a Congress member, had worked closely with Rajiv Gandhi to prepare the 64th Amendment. Deve Gowda was from the Karnataka branch of the Janata party, which had earned kudos for resurrecting panchayats in the state in the latter half of the 1980s. Generally speaking, the Committee was broad-based with members well exposed to the concepts as well as praxis of panchayati raj in the country.

¹⁸ For the relevant details see, Sivaramakrishnan (2000: 71).

our constitution, we should have such a thin attendance"(Sivaramakrishnan, 2000: 73).

The Amendment, however, was hailed as 'historic'. After all, the demand for the constitutional recognition of panchayats was at least a quarter century old. It may also be mentioned that the process of this historic Amendment had begun with the 64th Amendment in 1989. Prior to December 1992, three earlier attempts by successive union governments had failed. Perhaps it was in recognition of the years of effort and the setbacks to the earlier Amendments that both Houses of Parliament chose to unanimously pass this Amendment. However, there was a sense of *déjà vu*, at least among the ardent supporters of democratic decentralisation, if not in the country at large.

The next step was the ratification of the Amendment by half the existing state Assemblies.¹⁹ This was quickly accomplished by all the states except West Bengal, which chose not to ratify it.²⁰ The Indian President gave his consent and finally the Amendment became an Act following its notification in the state gazette on April 24, 1993. Again, as per the requirements of the Constitution, the states had to review their existing panchayat act in conformity with the mandatory provisions of the Constitution (73rd Amendment) Act, 1992.

In view of the intense feelings aroused by the issue, serious debates were expected to take place in the state Assemblies on the merits of the Amendment. In conformity with the Amendment, the state legislatures were supposed to examine their respective panchayat Bills in detail before their passage through the

¹⁹ This simply means that while observing the formalities of ratification those states whose Assemblies had been dissolved were not to be taken into consideration. Fifty percent of the total serving Assemblies had to ratify the Amendment which, as per Articles 73 and 162 of the Constitution, has bearing on the executive power of the union and the states.

²⁰ The Left-Front government in West Bengal had introduced a very vibrant three-tier panchayat raj system in 1978, which held elections periodically. It was of the opinion that political will was required to make panchayats operational and not the Constitutional Amendment. They felt that the Amendment had a hidden agenda, namely to encroach upon the jurisdiction of the states. It should be noted, however, that panchayat elections were already due. Therefore, the mandatory provisions of the 73rd Amendment were incorporated in their state panchayat act before the panchayat elections were held in May 1993. For details see Kumar & Ghosh (1996). To understand the functioning of the panchayat system in West Bengal also see Keistergard (1986), Webster (1992) and Lieten (1996).

respective Assemblies. They had a year's time to accomplish this task. What was the response of the states to such a great expectation?

As many as 11 state governments choose to present their respective panchayat Acts at the last moment. Otherwise they would have been held responsible for violating constitutional norms. Only a few states such as West Bengal and Tamil Nadu had some reservations about certain clauses of the new Act, therefore the delay on their part was understandable. But the others preferred to keep silent on such a vital issue, which indicated a calculated indifference. However, at the approach of the deadline they rushed to do the needful. The Assemblies of at least half a dozen states were in session on the crucial night of April 23-24, 1994 to observe this formality. On their part, it was indeed a formality. These states produced their new panchayat acts at the last moment, so much so that there was hardly any time left for discussion in their respective Assemblies. Thus all the constitutional niceties were ignored. Unfortunately, there were hardly any protests over this uncalled for haste.

Context and the Framework of the Study

The process of 'Panchayat-centric Democratic Decentralisation' was started in the late 1950s. We have noted that earlier attempts had failed to yield the desired results since panchayats did not have constitutional backing. The states were not obliged to act as per the central directives. Although the 73rd Amendment removed this hurdle, the ball was again thrown into the states' court. After all, it was their responsibility to restructure panchayats and ensure their continuation as per the provisions of the Amendment. A general objective of this paper, therefore, was to see how the state legislatures reacted to it and also to document the proceedings of the Assemblies on the subject. So much has happened on the panchayat front yet documents on the legislative aspect of panchayats are hardly available, except perhaps the proceedings of the Constituent Assembly on panchayats.²¹ That too is half a century old. Besides, unlike the earlier records of the debates, which were

²¹ Sivaramakrishnan's book (2000) also deals with the legislative process of the Constitutional Amendments, but the major part of this book is on the 74th Amendment. Moreover, it does not cover the Assembly debates on the state panchayat acts presented in conformity with the 73rd Constitutional Amendment.

taken *ad verbatim*, this is a modest attempt to look at debates in the light of their tryst with panchayats. At the same time, it should be noted that it is not an evaluation of what transpired in the state Assemblies.

In view of the time constraint, however, the Assembly proceedings of only four states have been covered under this paper. They are: Maharashtra, West Bengal, Karnataka and Madhya Pradesh. These states were selected on account of their varied experience with panchayats as, taken together, they represent the three generations of panchayats in the country. The second consideration was that these states are also being covered under a larger on-going comparative study on the subject. Again, of these four states, three had Congress party led governments, the same party, which had brought in the Amendment at the Centre. While the last one, West Bengal was under a Left Front government. However, if all four Houses are considered, all the political parties were represented in one or the other state Assemblies. Equally important is the fact that at some point when these parties had been in the opposition, they had made demands in favour of decentralisation or had accused the party in power for excessive centralisation. Yet given the spectrum of the federal system, the major political parties did have the opportunity to give official shape to panchayats in the states. Therefore, no political party was in a position to argue that it did not have the required experiences to deal with panchayats.

Methodology

The paper is largely based on the relevant Assembly proceedings obtained from the legislative libraries of the states concerned. A major problem was that the photocopies thus obtained were blurred in parts. And, given the constraints²², it was almost impossible to verify them. Although utmost care was taken to recheck the facts with knowledgeable persons and also with the translators, as the proceedings were available in the regional languages of the selected states:

²² There were several. To begin with, convincing the concerned officials to allow the use of the Assembly proceedings for the purpose of writing a paper was a laborious task. And I must confess that I failed in two states. This is notwithstanding the right to information *per se*. Obviously, I had to use my personal contacts and, given the trick they had applied, I would have been heartless if in addition to this I had asked them to get certain facts verified. Then of course, the time factor was another constraint.

Marathi, Bangla, Kannada and Hindi. This fact, in a way, is also indicative of the limitations of this endeavour. Again, the objective of the paper was not to reproduce the debates *ad verbatim* nor to present an abridged version, neatly arranged issue-wise. It was some where between the two. In view of the repetitions in the course of the debates, both by the same or different members, the proceedings (already translated) have undoubtedly been edited. At the same time, we have tried our utmost to retain the flavour of the debate as it sounded in the House. The purpose, in any case, was not to put words in the mouths of the legislators, therefore, if any error has been left, typographical or otherwise, it should be treated as something inadvertent.

The proceedings of the Assembly debates of individual states are placed in the same order as mentioned above. The comments are interspersed in the running text but the highlights of the debates of the four State Assemblies and a brief comparative account are given in the concluding section.

The Issues

The Constitution (Seventy-third Amendment) Act, 1992, which necessitated the drafting of panchayat acts in the states, contains two sets of provisions. One is 'mandatory' and the other is 'optional'. While the states had no choice except to follow the provisions given in the former category, they were free to accept, reject or modify the provisions of the latter. Some of the provisions under the mandatory category were: the formation of a Gram Sabha (village assembly comprising persons registered in the electoral rolls of the panchayat); uniform three-tier structure (except in states with a population of less than two million) with a fixed tenure of five years in the three levels of panchayats and the obligation to hold elections before the expiry of the term and within six months in case of dissolution; direct election of members at all levels and indirect election of chairpersons at the intermediate level and in the district panchayats; reservation of seats including the offices of chairpersons for Scheduled Castes (SCs), Scheduled Tribes (STs) as per their percentage in the total population and not less than one-third of the total for women; constitution of a State Finance Commission every fifth year to review the financial position and a State Election Commission etc.

On the other hand, the provisions in the optional category were: mode of election (direct or indirect) of the chairperson of village level panchayats; reservation of seats for backward classes and also reservation of seats for SCs, STs and women on a rotational basis or otherwise; representation of chairpersons of panchayats to the immediately superior body as well as that of Members of Parliament (MPs), Members of the Legislative Assemblies (MLAs) and the Legislative Councils (MLCs) in intermediate and district level panchayats; constitution of Nyaya (judicial) Panchayats etc.

Interestingly, some of the important aspects such as power, authority and responsibilities of panchayats, taxation are to be found in both the mandatory and optional provisions. For instance, it is compulsory for state legislatures to "endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self government" and "preparation of plans" as well as "implementation of schemes for economic development and social justice". The rest is optional and reads "as entrusted to them (by the state Legislatures) including those in relation to the matters listed in the Eleventh Schedule".²³

All the terms used in this article are vague and can be interpreted in different ways. It was left to the discretion of the state legislatures to be specific on such issues. This was probably a compulsion on the part of the union government as there is a limit beyond which the Centre cannot intervene on matters of local government.

It is in this context that the role of state legislatures assumes significance. After all, the 73rd Amendment had defined the boundaries of future panchayats, ensured their continuity and also the representation of the weaker sections, but the nitty-gritty of some of the crucial aspects in the functioning of panchayats was to be decided by the states. What transpired in the State Assemblies when the respective state panchayat acts were presented for consideration? Did the Houses witness some informed debates on the subject? Did the state panchayat acts receive only

²³ See Article 243 G of the Constitution (Seventy-third Amendment) Act, 1992

flak in the Houses? Or were the members serious about the legislative business of the House, vetting the acts as per the merits/demerits of their contents? Did they try to ponder over the theme of 'self-government' - what are its pre-requisites and how can panchayats be transformed as both de jure and de facto institutions of self-government?

Maharashtra

There are only two states in the country where three-tier PRIs have continued to function since the early 1960s, namely Gujarat and Maharashtra. These are the only surviving examples of the first generation of panchayats, which had been constituted in response to the recommendations of the Balwantray Mehta Committee in 1957. At the time both these states were part of a larger Bombay state. Y.B. Chavan, the incumbent Chief Minister of Bombay had preferred to wait for the bifurcation of the state of Bombay into Maharashtra and Gujarat, in 1960. Soon afterwards a committee was set up to examine the recommendations of Balwantray Mehta Committee. This state committee on decentralisation was headed by V.P Naik, the then revenue Minister, who later took over as Chief Minister of the newly created state and remained in office for thirteen uninterrupted years. The Naik Committee had also opted for a three-tier structure at the panchayat level but had deviated from the original recommendations of the Balwantray Mehta Committee by making the Zilla Parishad all powerful²⁴ in the hierarchical structure of panchayats.

The three-tier PRIs were set up in the state following the panchayat elections held in 1962. Maharashtra became the eleventh state in the country to introduce these institutions of democratic decentralisation. Since then regular panchayat elections have always been held in the state, at least at the level of village panchayats. At the Zilla Parishad level, elections were deferred twice in the last forty years. Yet Maharashtra's track record was far better than the majority of states in the country, where after one or two elections panchayats were consigned to oblivion or, at best, they were superseded and placed under the control of the bureaucracy. Again, when cases of nepotism and corruption etc. in PRIs came to light in the mid-

²⁴ The Naik Committee report inter alia reads: "Democracy in its true sense, can not be expected to have a stable and permanent existence if it is based only on democratic institutions at levels so remote from each other. (The) History of other democratic countries has shown that like stable and unstable equilibrium there can be also stable and unstable democracies. The latter easily succumb to undemocratic forces as is seen by events around us. In order, therefore, to ensure an integrated and stable democratic structure capable of survival under stress and strains which are implicit in this form of government, it is imperative that there should be democratic institutions at intermediate levels between the state government and village panchayat."(Report of the Committee on Democratic Decentralization, Cooperation and Rural Development Department, Government of Maharashtra, 1960).

1970s, the state took remedial measures. So much so that certain prerogatives and functions of panchayats were transferred back to the bureaucracy. The point to be noted here is that successive state governments were sensitive to the cause of decentralisation and accordingly had continued supporting panchayats. This is apparent from the fact that earlier the functioning of panchayats had been reviewed periodically by committees set up by the state governments. The reports of the Bongiwar Committee, CORI (Committee on Regional Imbalances), Patil Committee, to name a few testify to this fact. Indeed, many of the provisions (33 percent reservation for women, for instance) of the 73rd Constitutional Amendment were very similar to the recommendations made by the Patil Committee earlier in 1986. This is not to deny however that the Maharashtra government had accepted the report long back but choose to act on it only on the eve of 1992 panchayat elections.

Viewed against this backdrop, one would assume that the legislators in Maharashtra, cutting across party affiliations, would thoroughly discuss the provisions of the 73rd Amendment, which had necessitated the framing of a new panchayat act. Did they really do so?

A cursory look at the State Assembly debates on the state panchayat act reveals that various provisions were indeed discussed at length but the participants were only a few state legislators.²⁵ Again, of those who participated, only one third addressed the issues, pointing out the shortcomings of the Bill, which they substantiated by examples, registered their objections to certain provisions of the Bill, and proffered constructive suggestions. The rest either could not express their views properly or said irrelevant things or, at the best, repeated the comments of the previous speaker.

The Rural Development Minister, Ranjit Deshmukh, piloted the Bill to amend the Mumbai Village Panchayat (VP) Act²⁶, 1958 Maharashtra Zilla Parishad (ZP) and

²⁵ Of its total strength of 280 legislators, only about ten percent participated in the debate. That is, approximately, nine out of every ten legislatures either did not take part in the debate or had nothing to say on this issue.

²⁶ What has Mumbai to do with the village panchayats ? In fact, one of the members raised this point but was ignored. The fact is that when the Village Panchayat Act was framed in 1958, the

Panchayat Samiti Act, 1961 on April 18, 1994. Mr Deshmukh read out the salient features of the Bill, as given below, and also explained the changes proposed in the Bill in conformity with the provisions of the 73rd Amendment Act.

First, the revised definition of the population will come into effect after the next elections. Second, the size of the population will be uniform at all the three levels of PRIs throughout the state. It is proposed that the earlier provision of a Zilla Parishad (ZP) ward/member for every 35000 population and a Panchayat Samiti (PS) member for every 1750 population should be changed. Third, reservation of seats for women (33%), other backward classes (OBC, 27%) and for SCs and STs as per their ratio to the total population in the state. Fourth, the age limit to contest the election is increased from 18 to 21. Fifth, provisions for co-operative members as co-opted members of panchayats as also of social welfare department officers, if any SC/ ST member is not elected at the ZP level, are deleted. The same is true of the provisions for superseding Village Panchayats and PS. Sixth, as per the tradition of the state, MPs and MLAs are denied the membership of panchayats. At this juncture the concerned Minister proudly announced that Maharashtra was the only state in the country to have taken such decision. He also reminded the House that Y B Chavan, who had ushered the panchayati raj system in the state in 1962, was of the same opinion.²⁷ Seventh, the provision to include a ZP member as a PS member is contrary to the provisions of the 73rd Amendment therefore, it would be taken up with the central government. Similarly, earlier provisions pertaining to the inclusion of representatives of the Land Development Bank, Co-operatives and Sales and Purchase Unions as associate members²⁸ of the ZP stands deleted. The Minister assured the House that other issues like establishing election and finance

name of the state was Bombay. Maharashtra as an independent state came into being in 1960. For more than three decades no one thought of replacing Bombay with Maharashtra. After all, what is in a name, as the saying goes. It could be any thing. But under the growing influence of a regional party, that took pride in the use of the regional language, the change was effected. At that time also, it did not occur to anybody that the replaced word essentially stood for a megalopolis, not for the whole of Maharashtra.

²⁷Chavan had said: "local bodies should be led by small time workers who should not work under the pressure of MPs and MLAs. They should be allowed to work independently and they should be free to take decisions on their own." See the proceedings of the Maharashtra Legislative Assembly debates (henceforth MH Assembly Debates) of April 18, 1994.

²⁸ Associate member means 'a member who is entitled to attend and to take part in the deliberations of the panchayat or the committee, but shall have no right to vote, and shall not be eligible to hold the office of Sarpanch (chairperson of village level panchayats) or Up Sarpanch or of chairperson and their deputies at the PS and ZP levels. See the Annexure to L. C. Bill no. V 1994.

commissions etc. would be taken up soon after the passage of the Bill. He also insisted that the Bill had to be passed before the deadline, i.e. April 24. How did the legislators in the Maharashtra Assembly respond to changes in their panchayat act as proposed in the Bill?

Before we take up the contribution of individual members in pursuance of this goal, it should be mentioned that a large number of legislators, particularly from the opposition benches, took the government to task for failing in its duty. Why was enough time not given to the discussion of the Bill? Why was it not introduced earlier? They demanded explanations. One member even expressed his angst by saying that the 73rd Amendment had been ratified without any discussion in the House. Did the state government intend the same thing with this Bill? Presenting the Bill in a hurry is against the spirit of democracy, said a member. Another member commented that the rural development department is always ready to initiate a no-confidence motion against the ZP, but it did not consider it necessary to prepare the draft Bill on time. They vented their frustrations in so many words, but it is gratifying that when their turn came they really spoke their mind.

Opening the debate on the Amendment Bill, an opposition (Peasants and Workers Party-PWP) member, G A Deshmukh, said that there was chaos in the House on April 1, 1993, the day the 73rd amendment was ratified by the House. He lamented that the government took advantage of the prevailing disorder to ratify an important legislation without any debate as such. In order to prevent this situation, the Bill should have come up in July. But the monsoon session went by without any mention of the Bill. It should have come to the floor of the House in December or even in the first week of this session. More importantly, this Bill, which was going to affect the entire spectrum of civic bodies in the state, should have been examined by a joint committee. On the contrary, it had been presented at the eleventh hour. Why, wondered Deshmukh? His contention was that the government's action was influenced solely by political considerations. He argued that if the Bill had been submitted earlier, the government would have been compelled to set up election commissions. What is more, election to about 15000 GPs was due before August-September and it seemed that the government wanted

to defer this, hence the delay in presenting the Bill in the House. "We have not held elections in the Zilla Parishads for 14-15 years.²⁹ The term for Panchayat Samiti and Zilla Parishad is five years but for political reasons it was increased to 9-10 years. In many Zilla Parishads administrators were appointed for 8-9 years. The term of pro- government ZPs was extended but those who were not in the good books of the government were put under the control of administrators and that too for long periods," Deshmukh added.

Again, regarding the population size, generally the primary statistics of the last census or the statistics declared by the census commissioner in its final form is considered. But as per the latest amendment the provisional population figure will not be considered. Every body knows that the final census report is usually made available to the public four-five years after the census. Why then this sudden change? There is no official explanation, the speaker from the opposition bench stated. He also alleged that the PRIs were being run only in name.³⁰ There was discrepancy regarding reservations too.³¹ Notwithstanding such glaring discrepancies, Deshmukh however, extended his party's support to the Bill, since it was intended to strengthen the local bodies.

Raibhan Jadhav (Congress) said that the proposed Bill was to be welcomed since it would facilitate a quasi-federal pattern of governance at the lower level and also bestow more dignity and responsibility to local bodies. This step might check, if not reverse, the flow of migration to urban areas since educated people would be required in the villages to assume the responsibility vested in the VPs through this Bill. On the matter of reservations in PRIs, Jadhav said that in view of our caste-based social structure we have to accept reservation for castes despite our

²⁹ Later, an independent member W S Chatap also repeated the same fact that elections were never held after five years. It took 15-16 years. In one Zilla Parishad, (he did not reveal the name), he said the election had been held after 18 years. 'A child born at the time of the first election must have become a voter at the time of next (panchayat) election', he quipped.

³⁰ For instance, water distribution schemes have been handed over to village panchayats but they do not have funds to repair the electric water pumps. In fact, the financial condition of some of the VPs is so bad that they do not have funds to buy even an electric bulb. Besides, minimum wage norms are being violated by many VPs where workers have been hired on the paltry salary of Rs. 50-60. (MH Assembly Debates: 48).

³¹ According to a government regulation (GR) dated March 23, 1994, Deshmukh said, the reserved quota is of 30 percent for OBCs, nomadic classes and tribes (nomads only) taken together, 19 percent for OBCs and 11 percent for nomads. Then why is it 27 percent in PRIs, he wondered.

reluctance, but this should have a time frame. "We have devised a formula of *jiski jitni jatwari , uski utni bhagidari* (reservation proportionate to the population of a particular caste). This philosophy has given an impression that we want to divide India, but this is not true", he added and welcomed the rotational system of reservation. But he felt that the Bill should have been placed before the House earlier. There should have been a discussion on this issue at all the levels of society. The members of PRIs at all the three levels should have been informed about the changes in the constitution. They would then have been compelled to think of the consequences of these changes and prepare themselves accordingly. Having learnt their opinion on the subject, we too would have benefited, he added. Since very little time is left, the House has no choice for but to pass the Bill. Now it is not possible to form a joint committee of the House either. If we had been able to do this, it would have helped to disseminate the information at the lowest levels of society. This in turn would have helped in educating society about the efforts being made through constitutional amendments to bring about basic changes in Indian society and also about its long term effects. The government has missed out on an opportunity, Jadhav concluded (MH Assembly Debates: 51).

These words coming from a member of the ruling party should be appreciated and highlighted. For it is almost obvious that if a ruling party member chooses to speak against his government, he is speaking to the gallery, not because of his concern for a policy matter but to settle scores with the state leadership. Here we see a strange spectacle. The concerned member has gone one step further than the previous speaker by pointing out the harm the government has done by not giving panchayat members the opportunity to participate in a debate of such historic significance.

K S Dhondge (PWP): Highlighting the stranglehold of caste on institutions, particularly PRIs, Dhondge said that at the ZP level power is distributed on the basis of caste and family connections. "The '*Vatandars*'³², such as *Patils* and *Deshmukhs*, for instance, have total control over the Zilla Parishads. Power was decentralised but where did it go? Who took control of the institutions? Power has

³² The term is applicable to those individuals, generally from the Maratha caste, such as *Patils* and *Deshmukhs*, who had hereditary right over the land allotted to them by the kings and *jagirdars*.

not reached the common man. Rather, it was not allowed to reach that level. Even at the VP level, power is always with the influential and dominant castes. If it is given to Dalits, it is simply to prevent the rivals of the *Patils*, the traditional power-wielders in the villages, from getting it. Once power is in the hands of the *Vatandars*, it is rarely decentralised. I see this in my area, in my village. We find this situation every where."(*Ibid*: 54) All the talk about decentralisation, power vested with the people, the empowerment of women, SCs and STs have no meaning unless social, economic, religious and cultural differences are done away with in the rural areas. He asked the rural development Minister as to how revolutionary changes could be introduced in the villages under these circumstances? At the same time, he confessed that he did not want to pretend to have studied the Bill. For, "we get very little time to make a speech here and I feel we should not waste our time in studying (the Bill). I have arrived at this conclusion after a 30-year tenure as a legislator."

Dhondge also suggested that cattle grazers, *Gurakhis*, should also be included in the OBC category. Similarly, *Kunbis* from Konkan, Vidharba and Marathwada should also get justice. He demanded that the Sarpanch and his deputy be given a salary. Once they start getting a salary, they will be more accountable. And the clause pertaining to 'group panchayats'³³ should be done away with because the principal village cornered all the benefits. He concluded by saying that if the government intends to make revolutionary changes it must include persons from the oppressed classes in the election and finance commissions.

Jaichand Kasliwal (BJP): He supported the Bill but lamented that it was a pitiable way to rebuild the rural areas. The main objective of the Bill, for him, was to give representation to all the castes, women and people of different religions. But, he added, this policy would further encourage casteism in the villages. He also took up the matter of the discrepancies in the population at the ward level (in *Takli* and *Jhadi* in *Malegaon* district, for instance) with the block officer and *Tehsildar* (sub collector) but nothing was done. Therefore, he asked the Minister what action did

³³ With regard to 'group panchayats', a member of the BJP also observed that the *wadi* (particular area) or the village to which the Sarpanch belonged was developed while the rest of the area

they plan to take if the provisions of the Bill were not implemented. He considered raising the age limit from 18 to 21 a retrogressive step because at that young age all the important leaders had already achieved remarkable things. Therefore, he urged that the voting age and the age for contesting elections be made the same, i.e. 18 years. He also suggested that the time frame for rotation (involving the reservation of seats for the weaker sections) and the categories primarily concerned must be specifically mentioned. Kasliwal praised the importance given to the timely election to Panchayat bodies.

Narayan Rane (Shiv Sena) He thought that the Bill is good but it had been presented with an eye to the coming Assembly elections. Reservation on the basis of caste amounted to promoting casteism. There were also related problems. In Sindhudurg district, for instance, the relevant committee tried its best to find even one nomad, but was unsuccessful. This aspect has to be taken into consideration.³⁴ He also alleged that there was a lot of corruption³⁵ which, despite bringing it to the attention of the Rural Development Minister and the CEO of the Zilla Parishad, is not investigated. Rane felt that while decentralising, these institutions must be monitored. He also complained that the women members serving in the ZPs were not even aware of the agenda of the meetings, although they were present at the meetings. He also pointed out that throughout the previous year the ZP chairmen insisted that MLAs and MPs should not be allowed to become members. Since most ZPs are controlled by Congressmen, it was to save their skins that this demand – to keep MLAs and MPs – has been accepted. Most importantly, the spending pattern was very erratic.³⁶

remained in a state of neglect. This problem could only be resolved if the Sarpanch of every village forming the panchayat group was appointed by rotation (MH Assembly Debates: 59).

³⁴ Sripatrao Shinde, an independent member gave the example of his own constituency (*Gadhinglaj*) where seats reserved for SCs and STs had been lying vacant for many years because of the unavailability of people of these categories. In such places, the seats reserved for this specific category should be cancelled forthwith, he said.

³⁵ While speaking about rampant corruption in panchayats, Rane referred to the *Kankawali* village panchayat situated in the Sindhudurg district of his constituency, which was financially very strong. (See MH Assembly Debates: 60-62)

³⁶ "In the Sindhudurg ZP, for instance, only 52 percent of the total funds had been spent until February, but by the end of March all the funds had been exhausted. This however was only on paper. In fact no money had been spent but it was shown that a water pump had been bought in March 30. That is how corruption takes place and this also proves that the state government has no control over the administration." (*Ibid.*, 62).

Sripatrao Shinde (Independent): He lauded the 73rd amendment for putting an end to the practice of appointing co-opted members. Moreover, he wondered when the provisions of the Bill would be implemented. He also welcomed the reservation of seats for SCs and STs but cautioned that it was difficult to find people from these categories for this purpose. Shinde also lamented that the Bill did not say anything about improving the financial health of panchayats, in such a situation how could panchayats raise money and become self-reliant. Due to their poor finances, panchayats were not paying a proper salary to their employees³⁷, he said. Also how should rotational reservation be decided? This point should be clarified, he said.

W S Chatap (Independent): He also welcomed the 73rd amendment for ensuring regular panchayat elections. Talking about the finance commission, he remarked: "It is necessary to examine resources, development plans and the requirements of the ZP, PS, and GPs in order to make funds available as per their requirements. And for this merely setting up a finance commission is not enough. We have to find ways to make funds available..... The state government has the authority to ask for funds from the central government under various heads, e.g. water supply, rural development and family planning. Similarly the government can share the financial burden (of panchayats too) in this matter. While constituting the finance commission these factors have to be taken into account." Chatap also criticised the government for pushing the Bill. "It seems that the government does not want the Bill to be discussed in the House. For the last one year the government has been aware of the Cabinet's decision of 6th March. The Constitutional Amendment was ratified on 24th April, 1993. After which three sessions were held. The government did not present the Bill even in the fourth session and it has not explained its action.... If such an important Bill is put to the floor in such a hurried manner and is passed without discussion, it is not in the interests of democracy.' (MH Assembly Debates: 67). He also demanded that there should be 50 percent

³⁷ He cited an instance of a sweeper in a GP falling within his constituency who was drawing 30 rupees per month. When the sweeper was asked how he managed to cater to his family's need on such a paltry salary, he said that GP members advised him to 'beg ' for some rice (MH Assembly Debates: 64). Shinde also informed the House that following a petition filed in the High court by GP workers pertaining to the restructuring of their salary, the latter had ruled in their favour. The GP workers had organised rallies in many districts, but the government had not said any thing to this end (*Ibid.*, 65).

reservation for women. He expressed his satisfaction over exclusion of undeserving persons as co-opted members.

K L Malabade (CPI-M): disagreed with the statement made by the Minister for Panchayats that panchayat elections were held regularly in Maharashtra. Elections to ZPs had not been held for the last 10-12 years. There were many states where panchayat elections had not been held for years altogether. Before 1978, West Bengal had not held elections for 16 years. When the Minister was discoursing on the proposed election commission he should have mentioned these facts. But he was not straight about it.

Following this, there were arguments between the deputy speaker and several members who wondered why the election and finance commissions Bills should be taken up on April 18th and 19th when it had not been mentioned in the meeting of the advisory working committee. Besides which members had not received a copy of these Bills. The deputy speaker observed that irrespective of what had happened, he had to fulfil the constitutional requirements. Although the deputy speaker produced the letter written on 15th April and forwarded by the Maharashtra state legislature, showing that copies of the relevant Bills had been sent to the honourable members, the members denied receiving the same. Datta Patil said: "We have not received the copies. Please do not try to apply the modus operandi of the government into the state legislative House. This is a grave injustice. This is not the way to work. Please stop this practice." (MH Assembly Debates: 72)

Nandakumar Zavre (Congress): Generally speaking, he was fully in favour of the amendment Bill but sought clarification on the status of MLAs vis-à-vis the panchayats, particularly at the ZP level. His main contention was that in the Assembly the MLAs were told that they would be allowed to have a say in the decisions on development programmes but this assurance was not matched by action. Their requests were turned down by the officials.³⁸

³⁸ This is a strange phenomenon that one encounters in the districts which are the nerve centres of all development activities carried out under the aegis of the PRIs. The district level departments are present in any case. They maintain their offices, have their own budget and staff, and also prepare

Zarve also raised the issue of levying heavy taxes and cess on land tax (Rs. 9 on each rupee of land tax) and the huge amount thus collected, he added, was spent on seminars and conferences. He had serious reservations about spending farmers' money solely on publicity.

H S Kappate (BJP): His point was that elections were not held on time. Within the GPs there were no roads, and no drinking water and dispensaries. The panchayat workers who performed all these tasks received a paltry salary. The Sakoli GP, like many others, did not have its own building. The office bearers of this panchayat therefore encroached on government land and had a building built, but the Tehsildar and the SDM refused to give them ownership document. He informed the House that resolutions passed by the Mahila Mandals and by the GPs (e.g. for the closure of liquor shops) were not acted upon.

Haribhau Bagade (BJP): Thanks to the reservation law Dalits could now become Sarpanches in their own right. Earlier Dalits were offered this position only as a compromise between the two groups, and they were never treated with respect. Now a Dalit, holding this position, will have to travel to attend meetings. He will therefore lose daily wages since Dalits are usually poor, in which case they should be reimbursed, or they should be paid an honorarium to cover their expenses. How can they work with dignity? In fact, in the absence of a nominal payment, the whole purpose of empowering the weaker sections will be defeated, he argued. There is a problem of accommodation for gram sevaks in the villages, so they choose to stay at the block or district headquarters. They visit GPs once a month, write the minutes of the meetings and get signatures of the GP members. They are involved in corruption cases but no action is taken against them.³⁹ They have a

their plan of action, quasi independently of the ZPs. The departmental heads happen to be the member secretary of the concerned subject committees of the Zilla Parishads. In this capacity they work in tandem with the ZP but this cooperation is usually restricted to a limited quantum of work, transferred from the state sector to the district level panchayats. They have not been completely integrated with the ZPs. Apart from this, there is a district planning committee, in Maharashtra it is called district planning and development committee (DPDC). This DPDC is headed by a Minister. The ZP chairperson happens to be a member of this committee, therefore his words do not carry much weight.

³⁹ Bagade gave the example of the *Halda* GP in *Sillod* Taluka in Shambhaji Nagar District, where a gram sevak forged the Sarpanch's signature to withdraw money from the bank. See MH Assembly Debates, p 117.

powerful union, he said and also demanded that the Villages with a population of 400 and those located in remote areas should be given the status of GP.

At this stage, the Deputy Speaker intervened to say that when increasing land revenue all GPs should be taken into confidence; the decision should be taken only after discussion. Since it was not done earlier, he asked the House to see that the decision of the concerned ZP was reviewed. The age limit should be lowered from 21 to 18 so that all the enrolled voters would have the right to contest elections. As far as the financial position of GPs is concerned, he said that many possess grasslands, mines, and sands in their region. But the royalty is collected by the Collector's office. From there it goes to the ZP office. But the latter does not give it to the GPs. He would also put in a demand for the payment of royalties to be given to GPs, he assured the House. The deputy speaker also referred to difficulties in running the GPs when half the sitting members had already put in their resignation.⁴⁰

P D Tougher (Janata Dal): Can the government implement this act? Remember the fate of the *Dwibharya Pratibandhak* (anti-bigamy) act? It was never implemented in the real sense. It is a huge Bill, and it would be difficult to read the entire text. The Bill's objectives and justification alone run into three pages. He also gave instances of highhandedness⁴¹ by the officials in the PRIs and the violation of rules and regulations. Again, citing the example of a GP in his district, Bhiwandi, where

⁴⁰ In the *Pimpri* GP, which falls under the Aurangabad ZP, almost half the members had resigned in the course of the past 7-9 months. This was brought to the notice of the CEO (of the ZP) who, in turn, not only informed the ministry but also recommended the dissolution of the concerned GP. The ministry, however, choose to issue a stay order. As per the previous Panchayat Act only the CEO of the ZP and the Commissioner have the authority to issue stay orders. *Ibid.*: 116-118.

⁴¹ The member in question gave examples of malpractices in the GPs, complaints not attended and providing opportunities to a corrupt sarpanch to continue his dishonest practices. He also complained about the high-handedness shown by a PS chairperson (a woman) in dealing with an opposition-controlled GP, with the help of the BDO. He gave the example of two GPs who had allegedly violated the guidelines of the JRY (a central government sponsored employment generation programme). Action was taken against one GP only, headed by a Sarpanch from the opposition. Another case was of the Kopar GP where without holding elections people had chosen their representatives by mutual consent. In the election however, the Shiv Sena and the Congress won an equal number of seats, hence a member of the JD was made the Sarpanch as a compromise candidate. He was assured of two and half year of tenure but was forced to resign after six months. After consulting the MLA, he wrote to the CEO and the BDO, but instead of a fair hearing he was harassed by the police. Interestingly, the deputy speaker chided this MLA for giving so many examples. This was fine, but he should also have informed the members what they should have done if their complaints were not heard by the appropriate authorities. *Ibid.*

the election had been held six year ago in which one-third of the members did not participate. Yet it is functioning. What would the Election Commission do under the circumstances, he wondered? "This Commission will hand over the responsibility of the elections to the collector, then he will pass it on to a deputy collector (*Tehsildar*), who in turn will assign the task to a clerk in his office. And the concerned clerk will happily put himself in Sarpanch's pocket."(MH Assembly Debates: 120)

Chandrakant Nimbalkar(PWP): He took up the matter of the cess imposed (from one rupee to Rs. 8.50) by the Sholapur Zilla Panchayat.⁴² If it cannot utilise the funds at its disposal, then what right does it have to impose exorbitant cess on farmers? To put air-conditioners in their bungalows or to furnish their homes, he exclaimed in irritation? It is supposed to have the number one position among the ZPs in the state.⁴³

Saroj Kashikar (Independent): By undermining the rights of MLAs, normally elected by 1.50 lakh people, you (the Minister) will create problems. Give 50 percent reservation to women, she demanded. Radio and TV sets have been given to village panchayats but nobody thought of providing drinking water, since no one was thinking from a woman's perspective. "Had you provided drinking water and health centres in every GP, we would not have asked for hundred per cent reservation for women", she said.

Prakash Yalgulwar (Congress): He regretted that the opposition members did not have the vision to see the positive things. But also admitted that imposing cess was

⁴² This ZP gets around 88 crore rupees to implement various central and state government programmes.. Besides, it gets funds from the local area development fund of 13 MLAs and 2 MPs. The fund utilisation pattern of this ZP is very poor. *Ibid.*

⁴³ A member wondered that if a particular ZP or in general all ZPs were involved in corruption, then giving them additional financial power or funds, would it not amount to encouraging them further. In the Jalgaon ZP, a scam to the tune of 24 crore was detected a decade ago. The investigating officer named the culprits, including the vice-chairman, yet no action was taken. The Minister for Panchayats immediately objected saying it had no relevance to the Bill, which was under discussion. He did not even bother to comment when he was asked what steps he would take to check corruption. *Ibid.* 131-132.

In course of the debate, corruption cases cropped up several times. The members complained that there are standing corruption cases against Nagpur and Nashik Zilla Parishad but the government had preferred not to take action against them. Action should be taken against non performing ZPs also which return the development funds back to the government. *Ibid.*

unjust to farmers; it should be brought down to 4-5 percent. He also said that holding elections on the basis of the previous census did not behove a progressive and developed state.

Babanrao Pachpute (Congress): Giving panchayats more financial power is a welcome step but there should be some check on the money spent. It is very important to see if large-scale corruption has been going on, we should not neglect it. There has been a lot of corruption in employment guarantee schemes and JRY. Speaking on reservation of seats, he said that if a vice-chairman is a man, he is likely to create problems for the woman chairperson, defeating the very purpose of reservation in favour of women. It is necessary to pay attention to this issue. Besides, constructive suggestions given by opposition members should not be ignored just because they are from the opposition party, said Pachpute.

For two days the amendment Bill was thrashed out in the House, though only about ten percent of the honourable members of the House participated in the debate. From the Assembly records of the debate, it does not appear that the chair prevented any member who wanted to intervene from speaking. There could be, however, another possibility that in view of the time constraint, the speaker of the House might have suggested that it would not be possible for a large number of members to speak. Apparently, the Bill was rushed through the House when the deadline was approaching, for which the state government, particularly the rural development Minister was taken to task. Yet it is difficult to comprehend why only two days were allotted for the discussion of such an important Bill.

In the preceding paragraphs we have recorded the comments of a few members whose presentations were well articulated, and who took up the points issue by issue. There were also others who contributed to the debate. In order to avoid repetition, and keeping in mind the space constraints, the relevant points raised by other members have been clubbed together. In any case, our intention is not to overlook the contributions of other members whose names do not figure here. Moreover, it needs to be emphasised that the honourable members who participated in the debate made the best use of the time allotted to them. To put it simply, it was not the state legislatures, but the state government that was

responsible for the shortcomings of the Bill and also for failing to observe the legislative procedures.

"If MLAs do not have the right to perform rural development functions or water conservation then what can we do? Are you going to tell us just to be present here. It is not right to neglect MLAs. The ZP president travels in a car with a red blinking light but the CEO does not listen to him. Authorise him to write the 'confidential records' of the CEO then he will listen to him", E A Devkate (Congress) exclaimed. Corroborating this point of view, Saroj Kashikar (Independent) added that it is not right to ignore their (MLAs) proposals on policies involving ZPs or PSs, because in order to maintain power, the system has to work cohesively from the gram panchayats level to Delhi. Therefore, the state legislatures should also get an opportunity to exchange their views with the panchayat representatives. "If you will give complete authority to the chairman and members of the ZP and curtail the power of MLAs, who are elected by one and half lakh people, it will create problems", she remarked. Shivraj Tondchirkar (Swatantra Bharat Party) even quipped "give more power to ZP members and its chairman but not treat us as their inferiors". Prabhakar More (Shiv Sena) said that all attempts to provide opportunities to the representatives of the downtrodden are diluted by the Gram Sevaks (Village Development Officers) who operate as secretary to gram panchayats. Instead of assisting the panchayat leaders in discharging their responsibilities efficiently, they take advantage of their lack of knowledge, ignorance and illiteracy. Women members⁴⁴, particularly women Sarpanches and chairpersons of PS are dislodged from power by the misuse of the no-confidence motion. Shobhatai Phadnis (BJP) said that panchayat secretaries do not follow the instructions of the women Sarpanches, on the contrary they take advantage of their ignorance and lack of experience. Some male members in fact take charge and rule the gram panchayat. The panchayat secretary does not say any thing against such unlawful practices. She also said that the reservation policies are not properly implemented.

⁴⁴ In Maharashtra, the rule of 30 percent reservation of seats for women came into force from the 1992 elections. In fact, it was one of the recommendations of the Patil Committee, 1986, which the state government had accepted shortly before the 1992 elections but before the passage of the 73rd amendment by parliament. In other words, seats were reserved through the lottery system without

The state government has the authority to dissolve the ZPs, but despite some well documented and publicised corruption cases in a couple of ZPs, they are not dissolved. In fact, no action has been taken so far. Taking another dig at the government she said that without completing the delimitation of wards, the process of GP elections has begun. Also a lot ZP and PS chairmen are simultaneously holding the charge of GP Sarpanches. D V Bhadane (CPI-M) wondered why financial powers were given to officers only. Again, the issue of corruption in panchayats was raised by several members. And why is there always a rush in spending funds towards the end of the financial year? They also wondered as to why the provision for the Gram Sabha was deleted. Members were equally condemning of the imposition of enhanced cess. Finally, it was suggested that BDOs and District Education Officers should be asked to visit the GPs and sign the register when they were touring the villages. Such practices, the members felt, would help to check corruption and also keep the GP functionaries on their toes.

At the end of the debate the Minister for Rural Development took the floor to reply to the issues raised by the members. The first and foremost issue the Minister addressed was the issue of the transfer of subjects under schedule 11 of the 73rd Amendment. The Minister felt that several members had shown interest for this particular issue. A careful second reading of the debates does not confirm this statement. On the contrary, a large number of members had demanded an explanation from the government (read the Minister concerned) as to why the Bill was not put to the floor of the House earlier. Obviously, it would have been embarrassing for the Minister to admit that his department had been negligent in not giving the Bill the importance it merited. To them, it seemed a routine matter, not to be taken too seriously. In any case this speaks volumes about the decline of parliamentary norms and practices. The members, how so ever small in number, certainly deserve appreciation for raising important issues, expressing their concerns and highlighting the problems which, they said were adversely affecting the functioning of panchayats in the state.

ascertaining whether the SCs/ STs were there in the stipulated numbers. Consequently, in many gram panchayats reserved seats for SCs/ STs remained vacant.

Responding to the transfer of subjects to PRIs, the Minister said it was done to the maximum possible extent. Rather he boasted that the state of Maharashtra, as compared to all other states, had done far better. He also informed the House that the Union Cabinet Minister for rural development had complemented the efforts of his department and had exhorted the other states to follow Maharashtra's example. The next issue, i.e. determining the size of the population and holding election on the basis of the 1981 census, was incorrect. The Minister said the basis was the latest (1993-1994) population estimates. He did not explain how it had been done in the entire state. Nor did any one raise this particular question. Perhaps, when the Minister speaks, supplementary questions are ordinarily not allowed. Again, allaying the fears of the legislators on the deletion of the provision for holding the Gram_Sabha, the Minister assured the House that this provision had not been removed. Rather by effecting the necessary changes it had been brought on par with the Central legislation. He further elaborated that earlier there had been provision for the Gram Sabha at the village level. But, as per the provisions of the 73rd amendment, it had been brought to the gram panchayat level. Keeping this fact in sight, there is a provision in the Bill under discussion here to delete the definition of the Gram Sabha as given in the earlier act. Besides, taking the cue from the recommendations of the Mandal Commission several members had proposed an amendment regarding reservations for SCs, STs and backward castes. The Minister explained that the reservation provisions in the 73rd amendment had nothing to do with the Mandal Commission's reservations. Moreover, the latter was applicable in the case of job quotas. Here it is about giving representation to the weaker sections, including women, in the local self-government institutions. Accordingly, the central legislation has also fixed the limits for SCs, STs representation in proportion to their numbers in the total population; in the case of women their representation was to be not less than one third. Why are there differences in the Mandal Commission's recommendation and what is proposed here, the Minister pleaded helplessness. "This is an issue on which we can think but for that we will have to go to the legislative Council. And since the Council will not meet before the 26th (April), this issue has to be sorted out here", the Minister added. He also assured the House that once the entire process of passing all the three Bills was completed, he would definitely look into the matter and take

the appropriate decisions. Following this assurance, all the proposals regarding fresh amendments were withdrawn and the Bill was passed.

With regard to the proposed election commission, he also said that it was undoubtedly referred to in general terms under section 243 K dealing with the 'election of the panchayat', but in the fourth line it was categorically mentioned that the concerned commission meant the state election commission consisting of a state election commissioner. In other words, he explained, it would be a single member commission. Moreover, the election commissioner cannot be removed from office except through the process of 'impeachment'. Or unless he himself resigns. Otherwise, he will not be removed before the expiry of his term. Similarly, there will be a separate Bill for a five-member finance commission. Apart from the chairman, all the members will be subject matter experts. Like the election commission, this finance commission will be set up before April 24. The Minister assured the House that the government would fulfil its task.

That was April 19. Only four days were left for the two Bills to be passed by the House. It was more or less clear that until then the government had not reflected on the names of the prospective members and chairpersons of these two commissions. Perhaps the strategy followed was to wait until the Bills had been passed by the House before considering the names. If the latter was the case, then why was the government reticent? There could be two possible reasons. One, was the innate habit of the government to wrap everything in a veil of secrecy. Two, the in-built arrogance of the ruling party to keep not only the Opposition at arm's length, but also to ignore parliamentary niceties. The former could be inadvertent but the latter was deliberate. In either case, the manner of handling the passage of the relevant Bills by the Maharashtra State government was not praiseworthy. Rather, the government put itself in the dock. It was all the more shocking since, compared to many other states, Maharashtra had a better track record of running its PRIs for the past three decades.

West Bengal

West Bengal is the state that brought in the second generation of panchayats in the country. Interestingly, initially this state had refused to join in the nation-wide euphoria in the wake of the recommendations of the Balwantray Mehta Committee. In fact, when panchayats were on the retreat in most states, the West Bengal government came out with its panchayat act, although elections could not be held. Subsequently, for a decade, starting from 1967, the state went through a long phase of political instability⁴⁵ and turmoil. The Left Front government came to power in 1977. In 1978, the Asoka Mehta Committee submitted its report, putting up a strong case for the setting up of political panchayats. That is to allow political parties to put up their candidates, use their election symbols etc., in short, to participate openly in the panchayat elections as they do in the elections for the state assemblies and Parliament.

The state of West Bengal took the lead in forming the first political panchayats in 1978 itself. But it must be noted that by the time the Asoka Mehta Committee submitted its report, the state government had already conducted elections in all the three tiers of panchayats and elected leaders had taken their place. Since then periodic elections to all the three tiers of panchayat have always been held strictly on time – a rare feat not even achieved by states such as Gujarat and Maharashtra, where panchayats had had a long lease of life since the early 1960s. Shortly before its fourth election, scheduled for May 1993, the 73rd Constitutional Amendment came up. The state government not only remained indifferent to it but also declined to ratify it. Why did it act so?

The state government reportedly wrote a letter to the Centre about it, but its content was never made public. In any case, the left front government never explained openly why it did not endorse the amendment. Therefore whatever is said about it is pure conjecture. In fact, no other reason seems to be more plausible than the concealed dismay of the left government over losing its pride and uniqueness. That is, since others were envious of it for holding regular elections to

⁴⁵ For a detailed analysis of political instability in the state till the early 1970s as well as the coming of the Left Front to power, see Kohli (1991)

panchayats, in the comity of states it had always taken pride in its unbreakable record.⁴⁶ That uniqueness, it felt, was under threat because the Amendment made the panchayat elections mandatory. The Left Front government could not swallow the fact that once the Amendment was passed West Bengal would be like any other state. That apart, it also did not hold with the Centre's interference in the local institutions, which were essentially state subjects. The West Bengal government strongly felt that it was wrong on the part of the Centre to introduce mandatory provisions and thereby usurp the authority of the state governments in the name of decentralisation. The centre had no business, it felt, to tell states as to what and how much they should devolve to the panchayats.

On 13th April, 1994, the Panchayat and Land Reforms Minister Surjya Kant Mishra moved the West Bengal Panchayat (Amendment) Bill, 1994, as reported by the Select Committee (of Legislators) to the State Assembly for its consideration. Unlike his counterpart in Maharashtra, he did not read the Bill as its copies had been distributed among the members of the House in advance. At least, no one from among the legislators could protest about not having received a copy of the Bill on time

Atish Chandra Sinha (Congress): The changes in the state act concern only those points which are mandatory as per the provisions of the 73rd Amendment. Beyond that every thing is the same, they have not touched any other provisions which create problems in the running of the affairs, particularly of the gram panchayats. The unequal size of the gram(village) panchayats (GPs), for instance, has led to the formations of asymmetrical wards. That is, in one constituency there are two seats/wards where a single voter can vote for two GP members. And it is not the same everywhere. This inconsistency, he said, is undemocratic. And it is largely

⁴⁶ In a seminar on Legislatures and Panchayats held in Delhi on April 23-24, 1994, the day the 73rd Amendment became an Act, the West Bengal Minister for Panchayats had made similar remarks. He had said that even without the Amendment, the Left Front government had continued to hold panchayat elections periodically. Although no one disputed what Dr Mishra was saying, he seemed to have overlooked the fact that the reverse was equally true. That there were several states which perhaps would not have thought of holding panchayat elections unless they were forced to do so. However, the state of Tamil Nadu and Bihar, for instance, went on postponing panchayat elections despite the Constitutional Amendment. For details see, Kumar, Girish (1995 and 2001).

because of over-sized the gram panchayats.⁴⁷ Leaving aside the extraordinary large panchayats, Sinha remarked, even the 30 member sized GP is too big to be run smoothly. Then add three members of the panchayat samiti. These three PS members will not vote for electing the *Pradhan* (chairperson of village level panchayat) and the *Up Pradhan* of the concerned GP but they will participate in other deliberations and can also vote on other issues. Thus, with 33 elected representatives around, a village panchayat would be somewhat like a small vidhan sabha (legislative assembly). Paradoxically, most of the GPs in the state did not have their own Panchayat Ghar (House). Even in case of small GPs with the strength ranging between 10-12 or 15, there is no space to accommodate them properly. They do not have adequate number of chairs, tables to sit around and conduct the meetings.

With the proposed increase in their size, the government is going to add to their woes. If the size of the panchayats is reduced, the expenses will go up since it will require more Panchayat Secretaries/Job Assistants, etc.. And the government does not have money, they say. The resource crunch is everywhere. But, Sinha argued, can we afford to let the village panchayats be wound up?

Then there is another related problem. Whenever a GP is divided, the newly created GP is not given a new name, just I and II is added as a suffix to the old name.⁴⁸ Many times we have suggested that local people as well as their MLAs and MPs should be consulted in this context, but our suggestions are ignored, he informed the House.

The last point Sinha raised was about the vote counting procedure. In a village setting people vote for three candidates contesting the seats at three different

⁴⁷ On an average, a GP member represents 500 voters and earlier the maximum number of members of a GP was fixed at 25. Now this is being increased to 30. Therefore, the maximum voters in a gram panchayat should not be more than fifteen thousand. Yet there are GPs where the number of voters greatly exceed this limit. Sinha gave instances of two large GPs from his own constituency, namely *Kumarsanda* and *Hizal* with a population of more than 15000 voters. He further added that on the eve of the last (1993) election, "I had suggested to segregate the big size panchayats and divide them by 1250 voters. Accordingly, 400 big panchayats were identified. I do not know whether you remember it or not, but the fact is that 100 big GPs were bifurcated into small GPs but the rest 300 were left intact". (WB Assembly Debates: 892).

⁴⁸ The honourable member gave examples of two GPs, *Gokarna* and *Mahalind* (belonging to his own constituency), which were divided. They were renamed *Gokarna-I* and *II*, *Mahalind-I* and *II*.

levels. On an average polling is conducted peacefully. But by the time the voting is over, the sheer collective excitement of the people makes the environment tense. Meanwhile, exhausted after the day-long polling exercise, the polling party takes a break, eats their supper before they reassemble again to start counting votes for the gram panchayat member. During the entire period, people wait impatiently. Although the crowd is generally dispersed, the more active supporters of the candidates remain there. Therefore, when the results are announced and if the margin between the victor and the loser is big, then it is accepted peacefully. In the reverse case, when the margin is very small, sometimes just a few votes, then there is ruckus. Quite often, the (ruling) party members take charge of the booths cum counting centres. They force the presiding officer to recount the votes and that invariably means tilting the balance in favour of the candidate of their choice. Any form of opposition by the presiding officials is dealt with firmly, and sometimes brutally. In order to avoid such hassles, it would be more appropriate if the booth-wise counting procedure is modified. Let all the sealed ballot boxes be transported to the office of the BDO or any other government office at the block or sub-divisional level and votes counted in one place. The same policy should be applied at the GP level and that too in the presence of a higher government authority, he suggested.

Earlier the provision was that the voters list prepared for the wards of the Assembly elections should also be valid for the panchayat elections. Now you (pointing to the Minister) have changed it by adding a clause that the list shall be "prepared in accordance with such rules as may be made by the state government in this behalf and in force on such dates as the State Election Commission may declare for the purpose of any election.' (WB Assembly Debates: 895). What is the role of the state government here? When it is the election commission that is supposed to deal with the matter, then why do you bring the state government here? Similarly, with regard to the election of the chairpersons of the village level panchayats, the new amendment reads "shall be elected in such a manner as the legislatures of a state may by law provide"(*Ibid.*). In the recent amendment it was stated that the PS members elected within the jurisdiction of a given gram

With the division new anchals/villages were added yet new names were not given (WB Assembly Debates, *ibid.*).

panchayat may be present during the election of its Pradhan and Up-Pradhan, but they cannot vote for the same. They will participate in its deliberations, vote on other issues. One fails to comprehend why such changes have been introduced, he wondered?

Jayshree Mitra (CPI-M): While extending her whole-hearted support to the new Bill, she said that of the total 57 articles/clauses in the Bill, 43 clauses have been amended. The most important among them is the provision for creating the District Council under article 214(A). This will go a long way in fostering the ideals of democracy. For, the chairperson of this Council would be an opposition party member of the Zilla Parishad. This way of showing respect for the status of the Opposition deserves appreciation. The eleven member Council will play a very important role as it is empowered to examine the accounts of the ZP and also of panchayats operating below it, to pass its budget etc. In short, the Council would act as a watch-dog, at the ZP level in particular and at the PRI level in general. Another important amendment has been made in article 12 of the principal act, which prohibits the tabling of the no-confidence motion against the Pradhan and Up-Pradhan during their first year in office. She also felt that a person should be given at least one year before an evaluation is made. Therefore, this amendment should also be praised, she added. Similarly, she also appreciated the proposed increase in the number of members at the gram panchayat level. Given the ever-increasing activities of GPs, the proposed expansion is befitting, she felt. She was equally appreciative of the provisions regarding the 'quorum' required for both the gram sabha and gram sansad meetings.

On the other hand, she opposed the proposal of the previous speaker regarding the counting of votes in the BDO's office. She felt that people fought for decentralisation in all spheres including the counting of votes. Then why should this procedure be reversed, she wondered. On the whole she praised the Left Front government for facilitating the smooth running of the PRIs, particularly at the GP level and putting its faith in it by giving more and more responsibility to it. She went to the extent of saying that the 73rd amendment is based on the very concepts and praxis of the West Bengal panchayats.

Saugat Roy (Congress): "Normally, the members of the Select Committee do not participate in general debates on the same subject in the House. This is the convention, tradition of the House. Usually, I believe in the conventions of the House and I prefer to uphold them. But I wish to bring to the notice of the House that the amendments proposed by the Opposition were turned down. Although we had made it clear that we were not opposed to the report of the Committee, we had reservations on a particular item and if our proposed amendment was accepted we would wholeheartedly support the Bill. But they did not listen to us. Therefore, I had to strike a note of dissent", thus began Roy. To put it briefly, he said that before the last panchayat elections, the 73rd constitutional amendment had already been passed. Accordingly, the State Election Commission (an independent body that conducts elections) and the State Finance Commission should have been set up. Similarly, the post of chairperson for women should have been reserved. They just ignored these significant provisions of the 73rd amendment. Leaving these omissions aside, "we requested the Minister to accept just one amendment of ours (the opposition), we will extend full support to the Bill. Our amendment was regarding centralised counting of votes"(WB Assembly Debates: 902).

Roy continued, "Everybody knows that in the villages polling takes place till late in the evening. Afterwards, policemen are withdrawn and in their place home guards are requisitioned. Counting starts late, by then CPI-M armed guards literally take over the polling booths. They force an entry inside the booths and quite often prevail upon the presiding officers to declare the results in favour of their candidates. There are hundreds of such instances in the state and several cases of a similar nature are already lined up for hearing in the high court. In fact after the GP results have been declared, which is usually followed by much noise, often ruckus too, most of the people return home, leaving the booths to the hooligans of the ruling party. No one really knows whether the results of the candidates to the PS and the ZP actually tally with the numbers of the votes cast in their favour. Not surprisingly, 50 percent of the complaints received regarding the irregularities in the panchayat elections are related to the counting alone. Therefore, my point is simple, Roy said, instead of allowing such practices to continue, why not change the procedure? Make it centralised. This issue has also been raised in the recent evaluation report on panchayats by Nirmal Mukarji and

D. Bandyopadhyay.⁴⁹ Since this issue has not been addressed in the amendment a major lacuna has remained in the act.

Here we face peculiar problems, he added, because of the system of political panchayats. In the case of an election for the post of chairperson, suppose the party that wins the majority at the ZP/PS level does not have a SC or ST or a woman candidate among its elected members, whereas the seat is reserved for a candidate from the reserved category, the Bill does not say what will happen in that case? Similarly, quoting from the report mentioned above, Roy remarked that real devolution was not taking place.⁵⁰

It is a strange spectacle we are witnessing during the Left Front rule. They claim that they are devolving power to panchayats. They are focussing attention on capacity building. Simultaneously, the government machinery is also expanding, although it is becoming top-heavy. For, while at the lower level the number of employees is being reduced, at the upper level it is increasing quite rapidly. Could the Minister tell us how they are going about decentralising? How they are devolving power to panchayats?

There is a provision for an anti-defection law also. Whether to introduce this provision at the level of panchayats or not was discussed during the 1992 amendments. But then it was not taken up. Now they are suggesting that independent members be allowed to change their status within six months but not beyond this limit. This provision will simply dilute the anti-defection law. Finally,

⁴⁹ "The counting of votes in the polling stations creates problems, especially if the contest is a close one. Under pressure, irregularities tend to be committed while counting the votes and in the declaration of the results. Sometimes wrong persons are declared elected or incorrect results are reported to returning officers. Whether matters will improve by shifting the counting to the block headquarters may be discussed with all the political parties." For details on self-government and elections, see Mukarji and Bandyopadhyay (1993), pp. 20-21. The report prepared by them, 'New Horizons for West Bengal Panchayats' is an excellent report, although the focus is on the functioning of West Bengal panchayats, it also offers rare insights into what makes and mars the process of democratic decentralisation.

⁵⁰The relevant para of the above report reads: "If self-government means measured autonomy for the panchayats, to that extent the functions of the State must diminish and its machinery of government contract." Hitherto far from contracting, "the governmental machinery has expanded during the very time the panchayats have been in existence... If Calcutta carries on as an expanding version of the machinery inherited from British times, all talk of panchayat self governance may as well cease. A major reorganisation of the machinery of government at the state level is therefore called for." See, Mukarji and Bandyopadhyay (1993: 21-22)

commenting on the new taxation powers given to panchayats, he said, "Just see, on what new items they have proposed taxes/fees – it is on unlicensed dogs, birds and other pet animals, on grazing cattle on gram panchayat lands, on cremation ghats." Having criticised all these points, the honourable member concluded by saying that if they pay heed to the point on modifying the counting procedure, they would whole-heartedly support the Bill.

Birendra Kumar Maitra: Supported the Bill on the whole but at the same time reminded the Minister about certain anomalies regarding identification of seats for SCs, STs and women. During the last panchayat elections, Maitra said, alternate seats were reserved i.e. out of seat numbers 1 to 5, 1st, 3rd and 5th seats were marked for the reserved categories. Later, it was found there was no candidate for seat number one. At the same time a person from one family was nominated by three parties. Such situations arise because reservation is enforced without ascertaining the ground realities. This aspect needs to be considered otherwise the provision for reservation would become meaningless. The second point was related to taxation. Tractors were frequently used for commercial purposes, and transportation of goods; their use is no longer confined to agricultural purposes alone. It is these tractors that are responsible for damaging rural roads. Yet in the proposed taxable items tractors are not included. This should also be reviewed. Third, there are subject committees at the GP level too. But irrespective of the subject taken up, it has to be referred to the Pradhan or in his absence to the Up Pradhan. This practice has to be stopped, there must be some workable distribution of responsibilities among ordinary members. Fourth, once the counting is over and the results are announced, the relevant certificate to the GP member is issued then and there. The agents of the PS and ZP candidates are given the polling figures of the candidates but when the counting is done at the block office, the results do not tally with the earlier figures given in the polling booth. Such inconsistencies have even been challenged in the law courts. Therefore, presiding officers should be instructed to certify (in writing) the number of votes polled and the candidate/party-wise division of votes polled in favour of contestants for the PS and ZP seats respectively. Finally, should the provision of 'right to recall' be introduced at the village level? Maitra sought the opinion of the House on this issue.

Subhash Goswami: Approved the mandatory provision for holding half yearly meetings of the gram sansad. This, he felt, would facilitate participation of the common people in the panchayats. Similarly, the rotation of reserved seats will prevent one person from holding a seat continuously, but this will also reduce the scope for the performance evaluation of the reserved category of members.

Sanjiv Das (Congress): In the Bill the maximum number of seats at the GP level has been extended to 30 but there is no mention of the minimum number, which was fixed at five in the principal Act. His second point was that the panchayat's tenure would be counted from the day of the first meeting. Although this is in consonance with the provisions of the 73rd amendment, it will create a problem since the first meeting is not held simultaneously in all the panchayats. This aspect should be reviewed again. When the opposition party members are not allowed to contest freely, how can one think of making annual plans for the village by inviting all the members of the Gram Sabha. Is this feasible? The Minister's intended action could well create a war-like situation in the villages. Similarly, after a dozen meetings of the gram sansad, it is doubtful that any body would come to attend the gram sabha meeting. Finally, it does not say who would preside over the gram sabha meetings in the absence of both Pradhan and Up Pradhan. He concluded by requesting the Minister to consider the amendment proposed by his party.

Abu Aayesh Mondal (CPI-M): His response was directed more at the presentations made by the members of the Opposition, i.e. from the Congress party. Accordingly, referring to a point made by them that the proposed Bill was a sequel to the 73rd Amendment, thus implying that the state government was not prepared to effect any change what so ever in the matter of panchayats. Mondal confessed it could be true to some extent. Yet, he reminded opposition members that panchayats do not operate in isolation, therefore, they go on learning while working with the people and several other institutions. Such on-the-job experiences helps them to learn from others and accordingly, improve the quality of their work. For instance, there is a Subject Committee of Legislators on panchayats and the Committee does have opposition party members too. They all

work together. He strongly defended the Bill. For instance, giving wastelands to the panchayat. If the panchayat wanted to retain control over it instead of distributing it among the people it had the right to do so. What is wrong with this provision? he wondered. Similarly, provisions concerning the no-confidence motion have not been properly interpreted by the previous speakers. By subscribing to the idea of non-party elections, do they think that the villages are free trade areas where anybody can grab the chair of the pradhan? As a matter of fact, the amendment Bill is designed to make PRIs more democratic and people-oriented, he asserted, and announced his support to the Bill.

Surjya Kant Mishra: Replying to the points raised by the members of the House, particularly, the from the Opposition, the Minister-in-charge of Panchayats and Land Reforms said that the state government too had registered its protest when the 73rd Amendment was presented by the Centre. Along with the Chief Minister, he too wrote a letter to the centre asking for an explanation of the inherent contradictions in the Amendment and how these could be sorted out. Yet, despite our reservations on, even opposition to certain issues, "we had to incorporate changes introduced through the 73rd amendment since we did not have any choice. That was the constitutional obligation, we had to accept that". Saugat *Babu*⁵¹, in his dissenting note raised three points. First, acting in conformity with the Constitution, how can we sort out the practical problems arising from the reservation of seats in panchayats. This included panchayat elections on a non-party basis. We did not accept it. Perhaps, they (Congress party) do not accept it either. The Centre had convened a conference of the State Ministers of Panchayats where a resolution was moved to make the panchayat system non-political. "We had said that it was not possible for us to accept this. Later, I was glad to see that the Congress party had also agreed with us. I repeat, non-party or party-less panchayats are not acceptable to us," Mishra declared. Second, the chairpersons of village panchayats should be directly elected, they insisted. "If he (village pradhan) is directly elected then he cannot be removed by any other means. Therefore, we can not accept it." Subsequently, somebody suggested adopting the American system. "My answer was", the Minister said, "borrow money from

⁵¹ *Babu* is used as a suffix in Bangla, Hindi and Oriya as a sign of respect for the person being addressed. It is like adding the prefix 'Mr.' in English.

America, their technology, their culture, but do not seek their advice on how to run panchayats. We have panchayats in our country, we will run them the way we have been doing."

"Then they asked", the Minister recalled, "to accept the provision of direct election at the Panchayat Samiti level." What will then happen at Zilla Parishad level? At that level, the Constitutional amendment provides for indirect election. What is the answer to such inconsistencies. Ask the central government, they too cannot provide an answer and it is they who have introduced the Constitutional amendment, how could we be held responsible for it, he wondered. The third proposal was about the 'counting of votes', which, if accepted, will amount to setting up a bad precedent. Therefore, it can not be accepted either. The relevant act was framed in 1973 and was implemented in 1977, and it is still valid. Last time (1993 elections) many people complained about it as it is creating problems. True, Nirmal Mukarji also said so in his report. We have suggested some changes. The relevant law was rigid. We made it slightly flexible by adding that in consultation with the state government, the Election Commission could make alternative arrangements, either counting could be done (as usual) there itself or at some other place. At the same time, 'consulting the state government' is not binding on the Election Commission, Mishra clarified, the Commission can decide on its own.

That apart, the honourable members of the House have raised many other issues. They spoke about the voting right of ex-officio members. In this context, there is again some confusion in the Constitutional amendment. It says that MLAs and MPs, being ex-officio members will have no voting rights. We too had agreed to this proposition while putting a rider to it: suppose, if this is not applicable in case of voting on other issues and they oppose any resolution, then there will be a dead lock. What will happen then?

No one could answer this question at the Delhi conference. Ultimately, what was applicable at the panchayat samiti and zilla parishad level, was also accepted at the gram panchayat level. Similarly, we opposed raising the age limit, from 18 to 21, for contesting elections. Our stand was that if the minimum age for voting was 18,

then it should remain the same for contesting the election. We have not introduced these changes, they were obligatory. In the same way, we have accepted many other provisions like elections every five years, no-confidence motion not allowed for one year. All these were part of the recommendations made in the (panchayat) Ministers conference held in Delhi. And these were unanimously recommended by our own Subject Committee of legislatures on panchayats, comprising representatives from all the political parties.

Besides all these items, "you have talked of giving a name to the gram panchayats. I have repeatedly said that the way an individual's name is selected by his/ her parents, similarly, a gram panchayat should be able to decide by what name it wants to be known". In this context all they have to do is to pass a resolution to this effect. If sent here, it will be recommended. As for levying tax on birds, dogs, panchayat people know whose pet animal is to be taxed. There are rich people in the villages too who keep such pets. Similarly, wherever GPs are custodians of grazing lands, burning ghats (crematorium) and responsible for their upkeep, they levy a tax on their use.

Mishra concluded with a dig at the Centre, that over the years had eroded the autonomy of the states. His point was that had it been left to the states, decentralisation would have been more successful. "How can we decentralise those subjects/items on which we, the states, have no control", he asked? As a matter of fact the Centre is 'steam rolling' the states in the name of uniformity. "We disagree with the Centre on many issues, nevertheless we adhere to the constitutional provisions, we approve them and work as per its guidelines", he added.

Karnataka

Like many other states in the country, a three-tier panchayat system was introduced in the state in 1959. It differed from Maharashtra in the sense that the district level panchayat was composed of indirectly elected members and it was essentially an advisory body. The intermediate level, Taluka Development Board was the most powerful among all the three tiers as more power and functions had been transferred to it. The setting up of directly elected Zilla Parishads was recommended by the Kondaji Basappa Committee in 1963. A Bill based on the recommendations of this Committee was not passed by the legislators. Therefore, 1968 panchayat elections were held as per the provisions of the previous Act. In 1975, the axe fell on the panchayats as they were put under administrators. Eight years later when the Janata Party came to power in the state in 1983, it revived the panchayats once again. In fact, the state of Karnataka subsequently was lauded for its bold experiments in democratic decentralisation in the mid-1980s.⁵² It was based on the Karnataka Panchayat Act, 1983, heralding the birth of the Mandal Panchayats as recommended by the Asoka Mehta Committee in 1978. The elections to the two-tiered panchayati bodies were held in 1987. The functions and powers given to these institutions amply demonstrated the extent to which a state government could divest its own powers and functions at the sub state level. But it did not last long. With the return of the Congress to power in 1990 every attempt was made to weaken the Zilla Parishads. Their powers were withdrawn and ultimately, when elections were due in 1992, the panchayat bodies were superseded and they were placed under the control of administrators.⁵³ A few months later, the 73rd Amendment came into force.

While moving the Karnataka Zilla Parishads, Taluka Panchayats, Mandal Panchayats (Amendment) Bill, 1993 for the consideration of the House on April 5, the Minister for Rural Development and Panchayats, M Y Ghorpade said that he would first present the salient features of the Bill, later it would be thoroughly debated. He assured the House that if there were constructive criticisms, they

⁵² A comprehensive report on the functioning of panchayats in Karnataka, see Inbanathan (1992)

⁵³ For a brief account of panchayats under administrators, see Inbanathan (1994)

would be incorporated in the Bill. "We will not make it a prestige issue", he declared.

"We have merely made changes in the nomenclatures", the Minister began. For instance, what was earlier called Mandal Panchayat, is now changed to Gram Panchayat (GP). At the taluka (sub division/block) and district levels, the representative bodies are called Taluka Panchayat (TP) and Zilla Parishad (ZP) respectively. The delimitation of wards and the population size are based on the 1991 Census. The next election will be held on the 1991-population count. As per the Census figures, the average population size of a GP is reduced from seven to five thousand. In Maland⁵⁴ areas, it has been fixed at 2500. In the proposed Bill, however, there is a provision for adjustment and alteration of the population size. Accordingly, the population figures may vary between four to eight thousand. The Minister then added: "At present, there are 2534 Mandal Panchayats, but as per the proposed arrangements this figure may go up to 5000. On an average, there will be a GP member for every 400 voters, which was the same under the Mandal panchayats. At the Taluka level, 4000 voters will elect a member."

ii) Indirect elections: The Bill proposes an indirect election for the post of chairperson of the GP. But if there is consensus in the House in favour of direct election, it will be considered.

iii) Party-less or non-party gram panchayat: This feature is proposed as an experiment. If it succeeds, the panchayati raj system will impact on the very basis of our democratic set up. Elaborating upon the point, he said that everybody knows that party frictions at the village level have vitiated the atmosphere. Besides, there is a provision to give a grant of one lakh rupees to each GP. The existing provision of Rs. 7.50 per capita grant is thus changed. This will involve an estimated amount of Rs 50 crores, which will be borne by the public exchequer. This grant will enable GPs to clear electricity dues, ensure drinking water supply and undertake sanitary measures. By simply putting a signboard displaying its name, a gram panchayat is not worth its name unless is able to discharge the basic (municipal) functions, he observed.

⁵⁴ This 'underdeveloped area' is hilly with a thinly spread out habitat.

iv) Ex-officio members: The chairmen of Taluka Panchayats (TPs) could become ex-officio members of ZPs. But the elected chairmen of GPs can not become ex-officio members of TP. The reason for this, explained the Minister, is the norm that the number of ex-officio members should not be more than that of elected members. Precisely because of this reason, only 20 percent of the TP chairpersons, by rotation, would become ex-officio ZP members at a time. However, there is no problem if GP Pradhans are invited to attend TP level meetings when subjects pertaining to their GPs are discussed. Similarly, MPs, MLAs and MLCs would be ex officio members at both taluka and district level panchayats. They can vote in all other matters except for the election of chairpersons.

iv) Removal of chairpersons: If the honourable members opt for the direct election of the GP Pradhan, they will also have to suggest by what majority – simple or two-thirds – he will be removed.

v) Reservation of seats: At present, 18 percent (15% for SCs and 3% for STs) seats are reserved for SCs and STs taken together. The population of these reserved categories has increased to 23 percent as per the 1991 Census. Accordingly, 23 percent seats have to be reserved for them. In the 73rd Amendment a clause had been inserted 'in that area', that means "proportional reservation has to be made in those areas where their population varies from the average." But, the Minister argued, "in view of the areas where their proportion is less than 23 percent, we have retained the earlier provision of 18 percent for them. Let the present arrangement continue. We will give more seats to them where their proportion is on the higher side", he said.

At this stage a member asked whether the Supreme Court ruling that overall reservation should not exceed 50 percent had been taken into consideration? The Minister's response was, "people are used to 18 percent reservation, if it is changed people would not understand. Therefore, it is wise to keep 18 percent reservation." Again, with regard to reservation for the backward classes, the Bill says one third. He reminded the House that earlier there was 50 percent reservation for them and, so far it has not been declared unconstitutional by any court in the country. Accordingly, the total reservation will be around 55 percent. No additional reservation has been made in favour of women. One-third seats are reserved for them, cutting across the general and reserved categories.

Powers and Functions: As given in the eleventh schedule of the 73rd Amendment, the Bill provides for maximum decentralisation. In the previous Act all the taluka level functions were entrusted to ZPs. Interestingly, an example that the Minister gave to substantiate his point was that earlier (during the Janata Party rule) it used to be a difficult task to get an irrigation pump repaired at the district level. In the new Bill such anomalies have been removed and powers have been given to elected bodies and not to individuals. Officers will be assisting the elected bodies and will be responsible for implementing its decisions. It is very important. Earlier, in the case of a mistake or a lapse, officers used to put the blame on elected members.

Elaborating upon it further the Minister said that there had been devolution of the functions and powers, but the "framing of rules and fixing of responsibilities and the level to which the functions and programmes will be carried out will be under our control. The government cannot abdicate its responsibility of framing rules in relation to the activities and responsibilities of the elected bodies (panchayats) at each level.... Today we are transferring the powers of the state. We are not obliged to do so, but because of our own implicit faith in decentralisation our powers and offices are being decentralised and put at the disposal of the elected body. Therefore, the government has every right to specify how these programmes shall be implemented", the Minister announced.

There are proposals to constitute an Election Commission (elections to PRIs will be held once in five years, the Minister reminded the House), a Finance Commission and also to set up a District Planning Committee (DPC). Two-thirds of the members of this planning and co-ordinating body will come from the rural areas and will be elected by the ZP. The municipal bodies will elect the remaining one-third. But ex-officio members should not exceed 20 percent of the total members of the DPC. The ZP chairman has been made an ex-officio member, although the Minister felt that the ZP chairman should be made the chairman of this planning body. The Minister emphasised that it would be best to incorporate this provision in the Act and added that a suitable Amendment to this effect would be introduced by the government. MPs and the municipal president at the district headquarters will be ex-officio members. Presidents of the more important

municipalities of the district, MLAs and MLCs will be permanent invitees. "We are keen that the legislators should participate in the deliberations of the district planning body", the Minister added and to conclude expressed the hope that the proposed Bill would become a model for the entire country.

From the Minister's presentation it was clear that what he had said in the House while introducing the Bill was contrary to what he had said when presenting the salient features of the Bill in the beginning. If a comparison is made between states on this count alone, the presentation of the Bill in the Karnataka was haphazard. The important issues raised in the Bill were not properly articulated. Even the wording of the Bill was vague. The proposal on the reservation issue, for instance was simply confusing. Instead of saying what was stipulated in the Bill, he went on talking about what the previous Janata party government had done in the mid-1980s or for that matter what the Supreme Court had said on the issue. It was the same with regard to the size of the population, the composition of the DPC and also the leadership of this planning body. Besides, he could not spell out the functions transferred to the PRIs.

To cap it all, the Minister categorically announced that his government was in no way obliged to transfer the state's functions to elected bodies (presumably he meant PRIs) but they had done so because of their intrinsic faith in decentralisation. Finally, he expressed the hope that the Karnataka panchayat Bill he was presenting would serve as a model for the rest of the states in the country. Therefore, he urged the members, to pass the Bill unanimously and enhance Karnataka's prestige.

Initiating discussions over the Bill, D B Chandre Gowda (Janata Dal), a former speaker of the House, endorsed the sentiments of the Minister, though in the same breath he added that the Bill was a distorted version of decentralisation. It did not compare with the 1983 Bill on panchayats, which had been parented by illustrious politicians such as Rama Krishna Hegde and Abdul Nazir Sab, the Chief Minister of the State and Minister for Panchayati Raj and Rural Development respectively. He himself had played the role of midwife and ensured its passage in his capacity as the Speaker of the House. He further added that this Bill had been brought into

the world after tremendous labour pains – it was akin to giving birth to a child whom the Congress government, which came to power in 1990, tried to smother. The reason was very simple, they wanted to centralise power in their own hands, said Chandre Gowda. In 1983, it was not only the government but also the entire (Janata) party, that wanted to implement the directive principles of the Constitution. In the present case, on the other hand, the government was compelled to take action as a sequel to the 73rd Amendment. He however complimented the Minister for introducing the Bill in the House when the Centre's Amendment had yet to receive the President's approval. That is all. The Bill was otherwise distorted.

To begin with, Chandre Gowda added, unlike the Centre's Amendment, the Karnataka Bill did not stress the self-government aspect, but just touches upon it. Secondly, the 73rd Amendment has stipulated that regular and fair elections (panchayat) be ensured, the Bill under discussion has only specified a five year limit but has not directed that regular elections be ensured. This means that the elections could be held as per the convenience of the state government. The present government has postponed elections for more than a year. "Holding regular PRI elections every five years and in the case of supersession, within six months, had been provided by the 1983 Act too, the constitutional amendment thus says nothing new in this context", the former speaker of Karnataka Assembly asserted. Similarly, "reservations of seats in favour of SCs, STs and women had also been included in our previous Bill. The only difference we find here in the Constitutional Amendment is that it calls for the reservation of backward castes too, although it is not mandatory but left to the discretion of the state legislatures". Finally, the earlier Act had also provided for the constitution of the State Finance Commission, but it could not be implemented. "The purpose of all these arguments is simple", the former speaker concluded by saying, "where was the necessity to introduce the Bill as every point, every issue was present in the (previous) Act itself." Chandre Gowda also traced the evolution of decentralisation in Karnataka, going back to 1884.

What followed resembled a verbal duel between the former speaker of the House and the present Minister for Panchayats and Rural Development. The latter

thanked the former for tracing the history of decentralisation but also pointed out that the honourable member had conveniently overlooked the existence of the Taluka Board. These boards had been doing excellent work but they were completely ignored in the 1983 Act that accorded prominence to district panchayats. In the present Bill, "we have settled for a three-tier decentralised system as per the constitutional requirements. We have retained whatever was useful and mandatory in the Amendment", the Minister said. To which, Chandre Gowda added that what was basically required was total commitment. For, the natural tendency of any political power is to centralise, therefore, it is the political will of the party in power that matters when introducing decentralisation in the given context. "If you had the will to do something, you could have brought in taluka panchayats between the existing village panchayats at the lower level and the zilla parishads at the higher level. To that extent, you should have amended the (previous) Act. There was no need to bring in a new Bill", he elaborated. "And what have you gained by that, nothing but a colossal loss to the exchequer", he commented. For, as per the new Act⁵⁵ everything has to be changed. New forms will be printed, all the existing books/records will have to be destroyed, even the signboards on vehicles and panchayat offices will have to be changed. A member has estimated that this would cost about five crore rupees. It might go up to 10-15 crores (100-150 millions) rupees. This signifies a waste of time, energy and money. What is more, where is the guarantee that successor government will retain the proposed changes in the nomenclature, he argued.

The debate between the two continued, though it shifted to the Gram Sabha (GS). Chandre Gowda's point was that the provision for the GS meeting was already there in the 1983 Act but what the present government had done was to transfer its power to the executive officer. Refuting this charge, Ghorpade claimed that the executive would only intervene if its mandatory meeting (once in six months) was not held. The second point of criticism, according to the former speaker, was that earlier there used to be a provision for the administrative report to be tabled in the

⁵⁵ The words 'Bill' and 'Act' are used interchangeably, assuming that the former would ultimately become the latter. From the stand point of constitutional propriety it is not correct to interchange these words since both have different connotations. Besides, all the Bills introduced in the Legislative Assemblies and Parliament do not necessarily become Acts. Several Bills are dropped or rejected.

GS meeting. Now as per the new proposal, the audit report and the reply to its comments will have to be tabled in the GS meet. Who is to audit the accounts? It would be good if the GS undertook this exercise and presented the report in its meeting, held preferably once a year. But will this be possible? "I have been asking you time and again to present the budget (of your department). When you are not able to present the budget in the House, even though you have a vast administrative set up at your command, how do you expect the panchayats to do so," he asked.

Continuing the debate, Chandre Gowda said that following the dissolution of the Mandal panchayats, about 2500 in total, administrative officers were appointed to run the panchayats. But there was a dearth of suitable officials. Now when the number has almost doubled (i.e. the number of the proposed Gram Panchayats), how would the work be handled. Besides, this will mean massive expenditure for running the additional number of gram panchayats. And what is the guarantee that the work will be done efficiently under the new set up, he wondered.

M. Y. Ghorpade: The GS would be more effective if its size and scope was reduced. In a limited area it would concentrate more on development activities, pay more attention to neglected areas especially Maland. D B Chandre Gowda also raised the issue of the appointment of executive officers to the Mandal panchayats. Section 47 of the new Bill empowers the DC to appoint officials to any department, barring police and forest, as executive officers. Since it has not been specified, he can even appoint a school teacher or a peon to act as Pradhan, Chandre Gowda said in exasperation. Moreover, how long an executive officer could continue and when the next elections would be held? All these points have not been clarified. Similarly, regarding the salary of the Pradhan and his deputy, the new Bill just says that it will be a fixed salary but does not specify the amount.⁵⁶

The honourable member also criticised the little power given to elected members in the Bill. For example, they had no power to appoint peons, or give them salaries. He asked: Will the peon listen to my words, if his salary is paid by some

⁵⁶ Chandre Gowda reminded the Minister that the old Act had specifically provided for a fixed salary of three hundred and one hundred and fifty rupees respectively.

one else? Earlier, the head of mandal panchayats used to decide whom to appoint as secretary. Now they are asked to pass resolutions and send it to the government for approval and action. This is a mockery of decentralisation. Again, in contrast to the earlier practice of holding monthly meetings, there is a proposal for bimonthly meetings. We should revert to the old practice. The government is also not sure whether the president of the GP should be elected directly or indirectly.

Meanwhile, Nanjappa (Janata Dal) reminded the House of the role of money and muscle power in panchayat elections. The former speaker drew the attention of the House to the amount of money thrown about by candidates in the neighbouring state. Speaking about the last ZP presidential election in Karnataka, K. Shiva Murthy (Congress) informed the House: "At that time no intelligent person was elected to the post. Only those who had political backing or blessing or who had the backing of a solid group were elected. The moment they were elected, the party spirit vanished. Janata members crossed over to the Congress, Congressmen sat with the Opposition. There were no ethics, no party spirit." He concluded, "instead of allowing a few to exploit the system, it is better to have direct elections."

Joining issues with Shiva Murthy, J C Madhu Swamy (Janata Dal) said the same situation prevailed everywhere. In that case, can a Chief Minister be elected directly? K S Kalamari Gowda (Congress) said people ready to spend one lakh rupees for Mandal panchayat elections. Recalling the past, K Shiva Murthy said that earlier during the district level (Congress/Janata party) elections, there was no toddy, liquor havoc. But on the eve of the MP and ZP elections, politics was injected into the elections (perhaps he meant the use of intoxicants and money to win votes). Therefore, let us leave the matter to the people's discretion, let the people choose whom so ever they want.

Clearly, the matter remained inconclusive. They could not decide whether the president of the GP should be elected directly or indirectly, despite discussion on the pros and cons of indirect and direct elections to the post of the chairpersons of panchayats. They could have arrived at a conclusion, but they failed to do so. They

should have realised that by merely saying let the people decide it was not going to help. People do not make laws, it is the responsibility of legislators.

From here they moved to the issue of reservation. Chandre Gowda again took the lead by saying that the Amendment Bill had provided the minimum reservation for SCs and STs but it had not specified the maximum. Responding to this point, the Minister said that the minimum has already been fixed at 18 percent in the Bill, which of course was in addition to their proportional representation in certain areas. Whether additional reservation has to be made or not is the question before us, the Minister said. Again, raising the question of reservation for the Other Backward Castes (OBCs), he wondered why no figures had been given for this.⁵⁷ The Minister said that the existing provision for OBC reservation was 50 percent. If the quota fixed for SCs and STs is added then the full quota of reservation would go up to 68 percent. The Chinnappa Committee recommendations are yet to be accepted by the government but no one knows what will happen in the future. He thought that, "there would be at least 33 percent reservation for OBCs. We have suggested a certain percentage of reservation for this category. Today we do not want to go in for identification. Moreover, we cannot undertake this task. We will any way be blamed for inaction. This 33 percent reservation will still be less than any estimation. On this basis we have fixed this 33 percent quota of seats for OBCs."

This was followed by discussions on reservation for SCs and STs. The point at issue was: is it appropriate to allow ST candidates to contest seats reserved for SCs and vice-versa? This happened during the last panchayat elections, the House was told. The reference is not SC and ST separately rather it is either of the two, or, that is, they are referred to obliquely – SC / ST - for the sake of reservation for these two reserved categories of people, Ghorpade tried to clarify this point. In fact, there is a court ruling to this effect, J C Madhuswamy (Congress) pointed out and added if the members did not care to read the court's verdict, what could the government do. Agreeing on this point, the PWD Minister K. H. Ranganath added

⁵⁷ He quoted the Chinnappa Commission report according to which the population of backward castes was 28 percent, but added that this figure was subject to correction and, in any case, the report had yet to be accepted by the government.

that this point had already been taken care of in the new Bill. But the matter was not laid to rest, and once again the question of minimum and maximum quotas for SCs/STs resurfaced.⁵⁸

One could appreciate the anxiety of the House to ensure the representation of the weaker, disadvantaged sections in the panchayats. Thus, there was nothing wrong if members sought clarification. What was amazing was the repetitiveness. A point raised by one member was taken up again and again by others, as if they could do nothing else but go around in circles. To be fair to them, it is true that every time some new facts on the same issue emerged.⁵⁹

Taking the debate on reservation for all categories, including OBCs, to its logical conclusion the Minister said: "The reservation in Karnataka has stood the test of time ... Now what we are doing is not under 16 (4) and 15 (4) (Articles of the Constitution). It is reservation in an election taking against the background of the constitutional Amendment 73 which an enabling provision. It says that every state may reserve seats for OBCs. So whatever may have been the pronouncements regarding (Articles) 16 (4) and 15 (4) either with regard to Karnataka or the Government of India, it does not suo moto apply here. If you take the reservation of OBCs plus 18% for the SCs/STs, it comes to 68%. It has not been struck down by any court of law..... Therefore, we need not assume that any reservation wherever we made, i.e., the total reservation OBC plus SC/ST exceeding 50 % is automatically illegal..... Therefore, let us not say anything about reservation, when it exceeds 50%, it is automatically illegal."(*Ibid.*, 82-83).

Adding to this, D B Chandre Gowda said that the proposed Bill should come into force as early as possible. He said the Minister is free to seek the legal advice

⁵⁸ Although this issue was raised earlier, the Minister explained that what was being put into practice was a judicious mix of both criteria. That is, where ever their numbers are scarce, in those areas they are given the benefit of minimum reservation. In the reverse case, i.e. where they are numerically strong, they will have the benefit of proportionate reservation.

⁵⁹ For instance, the House was informed by the PWD Minister that the Delimitation Commission (1962) had decided that there should be reserved constituencies in every district. Subsequently, it was also added that as per the previous Act this provision was extended to Mandal panchayats, "provided that such reservation shall not be less than 18 % of the total number of seats in the Mandal Panchayat. Even according to the existing Act there is a minimum of 18%."(Karnataka Assembly Debates: 81).

before implementing the Bill but there should not be any delay in its implementation. "Still we have to take some decisions", the Minister responded, "we can not run away from taking a decision, right or wrong we have to take some decision. That is why I am seeking specific guidance from you. The point is, what would you have done if you were in my place." Gowda quickly said, "I would like to know what is the thinking of the man who pilots the Bill." The Minister replied, "that is in the Bill." Thereupon Gowda said, "it is not clear."(*Ibid*, 83)

What is not clear? Again it is difficult to guess whether they were referring to a particular provision or the entire Bill. The minutes of the debate show that they had moved to another issue. The next point was the size of the population of gram, taluka and zilla panchayats, the proposed number of representatives at a particular panchayat level as well as the composition of taluka and zilla panchayats. Here again, the most important question was that if the provisions pertaining to all ex-officio members have been retained from the previous Act then why have representatives of co-operatives been kept out?

M Y Ghorpade: On an average the population of a taluka in Karnataka is around two lakhs. That means 20 members, one member for a population of ten thousand. It could be 7-8 in parts of Maland since the taluka population is far less in those areas. Keeping these discrepancies in mind, there is a provision for a minimum of 11 members. Besides, one fifth of the total number of GP chairpersons in a given taluka would be ex-officio members of that taluka panchayat. Moreover MLAs are also ex-officio members. If there are more ex-officio members representing other institutions, then their number will exceed the numbers of directly elected taluka panchayat members. In order to avoid this eventuality, the MLAs and MLCs have been made permanent invitees of District Planning Committees. The explanation is not convincing, retorted Chandre Gowda. And added that ZP members played a major role in existing Mandal panchayats. In the new Bill, elected ZP members have not been awarded the status of ex-officio members of the TP under which their constituency falls. It is not proper, he said.

Subsequently, they switched over to the salary of the executive officer – who will bear the cost, the concerned panchayat or the government. In fact what they were

really asking was how could an institution exercise control over its officials if their salaries were paid by some one else. It is a valid question no doubt. But this was the very state, which a few years ago had earned kudos for the bold measures it had taken on decentralisation. They were behaving like new comers, amateurs who had never been exposed to decentralised governance as such. The onus again fell on the former Assembly Speaker to enlighten members as to how salaries were paid to government employees working under panchayats. Given the prevailing arrangements, he said, it does appear that the government pays all the salaries. But the fact is that ZP accounts earmark a certain amount for salaries every month.

The Minister for Horticulture, M Krishna, objected that they were not able to understand what Chandre Gowda was saying. He should give constructive examples. Chandre Gowda then took the floor: "Wherever administrative decentralisation has not taken place, there the control passes into the hands of the government." The point he was making was that PRIs had no effective control over officials. Again while quoting a section of the act in support of his argument, he quickly switched over to the population criteria for the election of a ZP member since the figures shown for the purpose were different in the Kannada and the English versions of the Act. Ghorpade had to intervene saying that enough discussions had already taken place on the issue, probably the discrepancy in figures was due to a typographical error. And also explained that what was given in the Kannada version (40,000 to elect a ZP member) was correct. Gowda refused to admit the mistake, making the Minister wonder why Gowda was insisting on such a trivial matter when he had already accepted the mistake.

It should be also noted that when the Minister said he was open minded about the Bill, indicating that the modifications in the Bill were welcome, he was taken to task by the members. H Ekantaiah observed that whenever a Bill is placed before the House, to whichever party the government may belong, it must reflect the policy on which it is based and must announce where it stood on certain vital matters. Instead of following this dictum, "you (i.e. the Minister concerned) are saying that the government is open minded. It is not correct."

Countering the allegations, Ghorpade said that he was under the impression that they (the Opposition) would welcome the Bill. While discussing whether the gram panchayat presidential elections would be direct or indirect, there was nothing wrong in saying that "we have an open mind. That does not mean that we are not firm. After all it is a democratic debate. We cannot come with closed mind."(*Ibid*, 102).

Given the diagonally opposite viewpoints of the treasury and the Opposition, it would be difficult to bring them to a middle ground to reconcile their differences. Looking at it from this perspective, both sides seemed to hold extreme views, were unable to read each other's mind and hence both were at fault. But a close scrutiny of the debate would reveal that the real culprit was the state government. The opposition members had repeatedly said that before reacting to any proposal, they must know what the government's stand on a given issue was. The Opposition's fault lay in the fact that instead of sticking to this point, they kept dragging the matter. Unlike Maharashtra and many other states, they had enough time to get the government to do its home work properly, i.e. in order to remove the lacunae, to re-draft the entire Bill before placing it before the House for discussion.

Since this was not done, we find Chandre Gowda criticising the Bill in the middle of the discussion for being silent on the status of the ZP President and Vice-President. In the previous Act their status was equivalent to that of Minister of State and Deputy Minister respectively. Similarly, the perks and facilities that came with the posts were not mentioned. Responding to these instances of apparent lapses, the PWD Minister K. H. Raghunath added: "should all these points be mentioned in the Act? Is it not enough to issue a notification?" In the previous Act, Gowda pointed out, every thing was clearly mentioned. "If the powers to be given are to be issued in the form of a notification, then the whole thing become meaningless. And yet you say, you have decentralised", he remarked. And further added that the ZP President and his deputy "should not be begging for facilities. They should not be at the mercy of the government". Shiva Murthy said that the whole discussion boiled down to the finances. Therefore, he requested Gowda to press for the provision of the finances. "Power and money

should go together, then only development is possible. A Zilla Parishad for name's sake is no use. Please argue on this issue", he said.

Chandre Gowda, however, took up another very important issue, namely the power to dissolve panchayats. According to the new Act this power is vested in the Divisional Commissioner. Whereas, under section 270 of the previous Act this power was vested in the Zilla Parishad. Now the ZP has no such powers. It does not have supervisory power over the subordinate panchayats or the officials. All these points are not clear in the Bill.

The Minister's clarification once again brought back the issue discussed earlier: the open minded approach of the government and its desire to consider the opinion of the House. Several opposition party members said they were unable to comprehend this point. According to newspaper reports, V. Nagaraj (Janata Dal) said that the final decision regarding the mode of election of the presidents of both the ZP and the GP, whether direct or indirect, has been left to the Minister and Chief Minister. There is a lot of confusion in the Bill itself, he observed. The Minister shot back: "We have enough powers to take decisions on our own. There is absolutely no confusion."

It was followed by an announcement by the Law and Parliamentary Affairs Minister that the debate on this Bill had to be concluded within the next two days; let opposition members speak for a half day. This evoked a sharp response. B. H. Bannikod countered, "why tomorrow, it is better if it is over today itself". Nagaraj demanded that every member be given an opportunity to speak on the subject. It should be discussed in detail and certainly not be winded up in two days, remarked R. V. D. Deshpande and mocked: "The Government says this is a revolutionary Bill and it should be a model for the entire country.... People should know what sort of model Bill you have introduced here."

Again taking the lead, a ruling party member said that there was no reservation for OBCs in the previous Act. In fact, the deprived classes⁶⁰, including SCs, STs and

⁶⁰ Notwithstanding the overwhelming presence of dominant castes in the PRIs, the post of *Adhyakshas* had gone to backward castes during the Janata party rule. A former Minister informed

OBCs have never had adequate representation in panchayat bodies. But in view of the existing quota system in the state, further reservation of seats would create legal complications. .

Moving away from repetitious issues, M D Nanjundaswamy (Karnataka Raitha Sangha) raised a fundamental question: "the 11th Schedule of the 73rd Amendment contains subjects which are included in the State List (7th Schedule) and the Concurrent List. But the 7th Schedule has remained intact, it has not been amended. This shows there is no devolution of powers", he argued. The response of the Minister for Panchayats and Rural Development was equally eloquent: "The 11th Schedule is the expression of an intention, which is in the nature of a guideline", suggesting "what sort of devolution should be done at the state level.....what we are doing at the state level is on the basis of the State list....we are being guided by the Central Government legislation. But the power of what we are doing is certainly not derived from the Centre...whatever the nature of the State list and the Concurrent list, we will have to take into account the overlap in the 73rd Constitutional Amendment. It is only if a State goes to a court of law and makes that point that we do not want to obey the 11th Schedule because it infringes the 7th Schedule, then some sort of legal verdict or opinion will emerge at the Supreme Court level."⁶¹ (Karnataka Assembly Debates: 295)

In its absence, the Minister continued, one can judge the intentions of the Karnataka government by taking into account its response to the 11th Schedule. It has not only welcomed the guideline but gone a step further by adding three-four

the House and also gave the example of a Mandal panchayat under his constituency, where out of 21 elected members, 19 were *Vokkaligas* alone. There was one Muslim who was made Pradhan by those who had influence in the area. In another Mandal panchayat, of the total 19 elected members, 18 were *Vokkaligas* and one *Kuruba* (shepherd); the latter was made the Pradhan. The honourable member who reeled out these facts boasted 'we who assume leadership should have the will power to devolve powers.' (Assembly Debates: 292-294). What the honourable member did not say was that these two examples illustrated the compromise worked out by two rival factions of the dominant *Vokkaligas*. For there are studies showing the monopolisation of power in the PRIs by the two dominant castes of Karnataka. For instance, see Social Background of ZP and MP Members, ISS, 1989 and 1990.

⁶¹The point was well taken by Prof. Nanjundaswamy who termed the 11th schedule as the fourth list, after the three Centre, State, and Concurrent lists. "This is a peculiar additional concurrent list" on which both the Centre and the State have jurisdiction, and added that he was certain that "mischievous elements have drafted this Bill. Therefore, unless we delimit the areas of legislation and the subjects of legislations clearly, we can not claim that there is decentralisation."(Karnataka Assembly Debates: 296).

more heads in addition to the 29 heads given in the 11th Schedule. "Of course, as you must have noticed, we have also retained the power to omit, amend and add under each of these Schedules (in our Act)... (it) is borrowed from the existing Act because it is reasonable for any government to maintain its power because it is this power which is delegated; and we cannot assume that all activities and programmes will remain the same for all times and there is every need to define and modify these activities from time to time and specify what is the responsibility of each of the Panchayati Raj tier regarding each economic programme and activity, which we have put under our three schedules..... Under the circumstances, this is the maximum we could do to decentralise powers and functions consistent with the latest Constitutional Amendment", the Minister explained. (Karnataka Assembly Debate: 295-296)

In reaction to this M V Venkatapa (Janata Dal) argued: "In the 11th Schedule, rural electrification, including electricity distribution is mentioned. Tell me can we entrust electrification and distribution to a Mandal Panchayat Committee?" Y K Ramaiah, who had earlier challenged the right of the state government to delete any item from the 11th Schedule, sheepishly confessed that he was not the right person to argue this. (*Ibid.*, 299-300).

Once again we have something of fundamental importance emerging from the heated exchange over the Bill. They did not, in so many words, say that there were flaws in the 73rd Amendment Act, but there were definite indications to this effect. A careful reading of the amended Act however, reveals that the heads in the 11th Schedule were essentially illustrative in nature. The state legislatures were expected to expand the items listed therein, that is, to prepare a detailed inventory of the functions to be devolved to panchayats and at another level, allocate them judiciously among the three tiers. This particular aspect was overlooked by many state governments, which simply copied out the 29 items, some even going to the ridiculous extent of following the same serial number order as in the Central Government legislation.⁶²

⁶² This has been highlighted in a brief analysis of the Panchayat Acts of a few states. See for instance, Kumar (1994).

The Opposition, however, felt that the Congress government was sabotaging the entire decentralisation programme initiated by the Janata government in the mid-1980s. R L Jalappa (Janata Dal), for instance, said that for the two preceding years the government had not only been over-interfering in the panchayat department but also taking their powers back one by one. Before him Y K Ramaiah had said that every time a party came to power and made changes in the panchayats' powers as per its convenience, it created a lot of problems. In fact, it was precisely because of this that the necessary precautions in the form of constitutional safeguards had been taken. No party had the right to tinker with the Constitution. Taking his cue from him, D R Patil (Janata Dal), suggested that if the government refused to adhere to constitutional norms, then one could definitely approach the courts and get a stay order. Jalappa was shocked by this suggestion and exclaimed, "Approach the courts! Do we not have any better recourse than that?"

The ideal way of sorting out differences is to discuss the matter thoroughly and work out a compromise. This is especially valid for legislative matters. After all, Legislative Assemblies and Parliament are meant for this purpose. Therefore, the very idea of legal intervention to resolve a legislative dispute or differences in interpretation is contrary to the democratic norms and practices. But it happens. Thus a legislator's attempt to get his colleague to adhere to the conventional legislative means in order to iron out differences deserves appreciation and needs to be highlighted. On the other hand, the way legislators have gone on dragging certain issues, sometimes out of context, gives a very bad impression of their method of argument.

N B Nanjappa (Janata Dal) sounded a note of warning that they were moving away from the real issues that needed urgent attention. "We are wasting our precious time on unnecessary things. If we just go through the records of the proceedings of the Assembly for the last 50 days we can see that we are wasting precious minutes on non-issues.... If we were really concerned about the better functioning of Mandal and Taluka panchayats then we must think of resource mobilisation at these levels. For the government grants given to them are inadequate. They do not have funds even to pay for electricity charges (i.e. electricity bills). They are not in a position to manage water supply."

R V Deshpande (Janata Dal) challenged the power of officials to suspend or withdraw any resolution passed by an elected body.⁶³ RL Jalappa felt that the powers of presidents had been deliberately reduced in view of the fact that many presidents belonged to the SC, ST and OBC categories, “whom you consider inefficient”(Karnataka Assembly debates: 210). K S Iswarappa (BJP), M V Venkatappa, and B S Yediyurappa (BJP) were of the opinion that by reserving the post of chief executive officer of the Zilla Parishad exclusively for IAS officers, the Karnataka Administrative Services (KAS) officers are being sidelined. There are many among them who are administratively far more experienced than IAS officers but they will not get an opportunity since the government has reserved this post for officers of the rank of Deputy Commissioner. They demanded that half the CEO posts be reserved for KAS officers.

Finally the debate came to an end but without the controversial issues being really resolved. As the Minister for Panchayati Raj and Rural Development rose to conclude, he said that as it was customary to reply to some important issues that had figured in course of the debate, he would do so notwithstanding repetitions here and there.

First, the question of deliberate postponement of panchayat elections. This can be refuted on a couple of counts. Firstly, the last delimitation of wards was done on the basis of the 1971 Census figures. Time was needed to revise the same on the 1991 Census base. Secondly, the Constitutional Amendment was underway and the government knew this would necessitate substantial changes in the existing state panchayat acts. Thirdly, although Karnataka was one of the first to introduce reservation for women in panchayats, a similar provision in the Central Government amendment had increased the number of seats under reserved category. In view of all these facts, he continued, the government had decided to

⁶³ Ghorpade replied that in Belgaum, the corporators passed a resolution to merge Belgaum with Maharashtra. To prevent the recurrence of such eventualities, this power has to be given to officials. (*Ibid.*, 199). Then several members fought over the proposal for constituting Purchase Committees with nominees of Ministers on it. The government explanation was that there had been several scandals earlier regarding purchase of materials by the district panchayats. A member even questioned this decision of the government by saying whether there was no scandal involved in the

bring out a comprehensive Bill incorporating the provisions of the 73rd Amendment.

Reservation for SCs, STs and OBCs, supervision and control of governmental authority to amend or change the heads listed under eleventh schedule was the next point, though he did not come up with anything new on these issues. The fourth point dealt with the duties of those responsible for implementing various programmes. In this context, he said that out of the total state budget of 3000 crores (1 crore = 10 million), approximately two thousand crores would be spent through the panchayati raj institutions. That is, PRIs will handle two-thirds of the entire development expenditure (Assembly Debates: 240). All the three levels of panchayats will be allocated funds; however, the bulk of it will go to the taluka panchayats. That is how we are decentralising the functions of the government. "It is necessary for us to give proper guidance to the institutions that will be implementing the programmes. Also the totality of the grant cannot be given in one lump sum. Therefore, it is necessary to spell out the responsibilities of the persons who will be in charge of programme implementation", the Minister said.

The fifth point that he took up was the mode of election of chairpersons. "We had intended to hold a debate on this issue – whether the election should be direct or indirect", the Minister said and added, "At our party meeting also members were in favour of direct elections, though in the Bill under consideration, indirect election has been proposed,"⁶⁴ the Minister concluded.

same when it is done by government departments? It is the question of trust which you are not reposing in these decentralised institutions, he observed.

⁶⁴ For the very simple reason that it gives good people an opportunity to get elected. On the other hand, in the case of direct election, majority members may not support the directly elected member and the result would be a stalemate. Removing an indirectly elected person would be just as problematic. Besides, it was also felt that direct elections would be more expensive and only those who could afford to spend would have a better chance of winning. Finally, in conformity with our parliamentary system, where both the head of the state and the government are elected indirectly, we have provided for indirect elections at the panchayat level, Ghorpade explained. There were many interruptions. Several members, notably V Nagaraj, Minister K Raghunath, B Chandra Gowda, B S Yediyurappa and others insisted that the time limit for discussions be extended by a further two-three days. The government on the other hand was keen to wind up the debate. Thus heated exchanges took place in the House. In the end when the government refused to budge, Nagaraj walked out of the House in protest.

B S Yediyurappa sought permission to introduce an amendment, which would authorize officers from the KAS cadre to fill the post of CEO for "they should be given 50 percent of such posts", he reiterated. This was denied. Even Ghorpade said that although such amendments cannot be proposed, they could somehow be accommodated after making suitable changes.

R V Deshpande (Janata Dal) accused the government and the Minister of trying to enforce centralisation in the name of decentralisation. What the government is trying to do is to kill two birds with one stone. The point he was making was that the Supreme Court had directed the government to hold panchayat elections very soon. At the same time, the government did not want to hold elections. Hence this Bill was full of flaws and ambiguities. This, according to Deshpande, was done intentionally so that someone may challenge it and the matter would then be argued in the court. If this happened the government would have a bona fide excuse for not complying with the Court's directive.

In opposition to the Bill, the Janata Dal members walked out of the House en masse. Ignoring the walk out, Ghorpade announced that they would be calling the chief secretary soon to get the delimitation work commenced. Finally, at his request, the Speaker presented the Karnataka Panchayati Raj Bill, 1993 to the House, for its approval.

In the end, after the Bill had been passed in the House, the Act proved to be a half-hearted effort. This is apparent from the fact that in February 1995 the Karnataka government constituted an 'Expert Committee' to review the Panchayati Raj Act 1993 and to propose the necessary amendments to enable the panchayati raj institutions to function effectively as units of local self government. According to the report⁶⁵ brought out, "the critical question is whether the present Panchayat Raj legislation should be viewed as transitional and evolutionary, or the culminating point." There are different viewpoints. One section is in favour of maximum

⁶⁵ The report running to 81 pages including annexures, is illuminating on all counts. Not only does it highlight the perspectives on the subject, it also underlines the factors inherent in society, which prevent all sincere efforts to translate the ideals of decentralisation, as well as the constraints under which panchayats have to operate. See Report of the Expert Committee on Karnataka Panchayati Raj Act, 1993, Government of Karnataka, March, 1996

autonomy to PRIs without subjecting them to any bureaucratic or government control. Another group advises a gradual approach, emphasising that the 73rd Amendment in no way absolve the state government from its answerability to the Legislature for the performance of the panchayati raj institutions. Therefore, the government is obliged to "advise, monitor and evaluate" the PRIs. The latter, the Committee noted, "constitute a system in evolution and that in the search for the best, the good should not be lost. Otherwise, there is an ever-present danger of violent oscillations in policy such as occurred between the 1983 and 1993 enactment." The Committee felt that "a more evolutionary sequence, and a conscious application of the learning from experience, is less likely to produce such upheavals."

To reproduce excerpts of the report on the various issues is not the aim of this paper. Yet it should be mentioned that it managed to resolve the controversies that surfaced in the course of the Assembly debates on the Panchayati Raj Bill, 1993. For instance, the *Adhyakshas* (Presidents) of all three tiers of panchayats should be treated as executive heads with the powers and obligations that go with such elective offices... Government officials, such as the CEO of the ZP "are duty-bound to exercise their powers under the guidance of the *Adhyakshas* and, in return, to advise and counsel them, but cannot single-handedly overrule them. However, officials will continue to be responsible for informing the state government of such actions taken by the PRIs, which contravene any legal or financial norms."(Expert Committee Report, 1996: 7)

The Committee also felt that concepts such as 'inspection' and 'supervision' are inappropriate in the given context. But since the government is answerable to the Public Accounts Committee and the Legislature for the implementation of schemes by the PRIs, it should have the right to 'monitor and evaluate' the schemes implemented under government grants, in the same way that international donor agencies do. Therefore, "the existing power of the government officer of suspending any order of a PRI for the reason that it is unlawful or will be injurious to the public or will lead to a breach of peace should be withdrawn and vested in the next higher PRI (or Government in the case of Zilla Panchayat) to be exercised by the *Adhyakshas* in emergent cases subject to the Panchayat's ratification." The

Committee also cautioned that "governmental powers to dissolve a panchayat" should be exercised "only as a last resort and with utmost care, giving enough time to the defaulter PRI for explanations".

Similarly, the Committee expressed concern over the provisions of the 1993 Act pertaining to decentralised planning. Ironically, not a single member either from the treasury benches or the Opposition said that in the absence of 'untied' funds and 'a perspective plan' for say 5 to 15 years (to be dovetailed with the state plan) all attempts towards facilitating decentralised planning would turn out to be exercises in futility.

Last but not the least, the Committee also highlighted the subtle ways in which governments intervened in panchayats and encroached upon their area of operations. There are several boards and corporations – for instance, Area Developments Boards – whose functions are very similar to those of PRIs. Such organisations, the Committee felt, "should have no place after the 73rd Constitutional Amendment comes into force. They should be wound up and their activities merged with that of the PRIs"(*Ibid.*, 22).

No legislature could point out the existence of such institutions which not only run parallel to panchayats but also, by their sheer presence, impedes the smooth progress towards greater decentralisation. In fact, looking at the issues raised during the debate and also at the provisions of the Bill, it appears that both the Government and the Opposition were more concerned about scoring points over each other than finding ways to usher their state into the era of decentralised governance.

Madhya Pradesh

Madhya Pradesh is the only state among the four covered in this paper which represents the third generation of panchayats. This gives the impression that prior to the 73rd Constitutional Amendment there was nothing in the state even remotely connected with the modern three-tiered panchayati system. This impression is undoubtedly erroneous but it gained currency over the years for two reasons. One, like Bihar, this state also took about two decades to cover the entire state under the three-tier panchayati system. Two, periodic panchayat elections were never held on time in the state. In fact, prior to 1994 it was only in 1983-1984 that for the first time elections to all the three tiers of panchayats were held in the entire state, not counting the 1988 panchayat elections which were held in approximately a third of the villages.⁶⁶ The earlier panchayat elections were held in 1965, 1970 and 1978, but obviously not in all the three tiers.

Therefore, to say that the state was totally devoid of experience will not be correct. Of course, officials and elected representatives did not have much experience of the practical difficulties which could arise in the functioning of the panchayats at the janpad⁶⁷ and district levels; or how powers and functions should be distributed among the three tiers. Of course, a legislative framework existed in the form of three earlier Panchayat Acts enacted in 1962, 1981 and 1990. The state leadership was enthusiastic, as Madhya Pradesh became the first state in the post-73rd amendment phase to hold panchayat elections. To put it simply, when the Madhya Pradesh Panchayat Raj Bill 1993, was submitted to the State Assembly, the legislators had some references to consult and make interventions accordingly. The Bill was discussed in the House on December 30, 1993.

To begin with, when Panchayat and Rural Development Minister, Pratap Singh Baghel, sought the permission of the chair to propose amendments to the Bill, the members opposed this on the basis of conduct of rules and legislative procedures. In this context, Babulal Gaur (BJP) said that there should have been a copy of the

⁶⁶ See the chapter on Madhya Pradesh in 'Status of Panchayati Raj in the States and Union Territories of India', ISS, 2000.

financial memorandum giving details of recurring and non-recurring expenditures with this legislation. Without this, the chair should not allow the debate on the Bill to take place. The Speaker intervened to say that the amendment had already been received. But along with Gaur another member, Ram Lakhan Sharma (CPI-M), complained that they had not received a copy of the financial amendment. Sunderlal Patwa (a former BJP Chief Minister), however, insisted that unless the constitutional provisions were implemented, the Bill should not be considered. He said that article 83 of the Bill says that the state government would give financial assistance to the panchayats as per the recommendations of the Finance Commission, but this commission is nowhere to be seen in the article mentioned above. Similarly, it was also brought to the notice of the House that the Bill does not say anything about the functions and tenure of the State Election Commissioner, responsible for defining the rules and conduct of panchayat elections. The Bill is silent about setting up an Election Commission, how would elections be conducted in this case, he asked [Madhya Pradesh (MP) Assembly Debate, 1994: 50]

The Law and Parliamentary Affairs Minister, Rajendra Prasad Shukla, confessed that although the government also wanted to present the Finance Commission Bill, it did not have enough time to prepare it. At the same time, he reminded the House that the relevant article provides for the setting up of the Finance Commission within one year of the passage of the Central Government amendment. It does not say that it has to be constituted before the panchayat amendment Bill. He assured the House there was still time to frame the finance commission Bill, meanwhile, he begged that the proceedings be allowed to commence. There were constant interruptions and noise in the House, with some members even passing personal comments. Ram Lakhan Sharma accused the Government of not intending to hold panchayat elections.

This went on and on, and ended with the general exodus of the Bharatiya Janata Party members. Prior to that Vikram Verma (BJP) told the chair that correct legislative procedure has not been observed in this particular instance; the Bill was

⁶⁷ In Madhya Pradesh, the intermediate level panchayat, having area coterminous with the Block is known as Janpad Panchayat.

being introduced in haste in violation of all legislative norms." As a mark of protest we shall walk out."(MP Assembly Debates: 58). The walk out was merely symbolic however, as not only did they return within five minutes but also sought the Speaker's permission to participate in the debate when the Bill was once again formally submitted to the House for deliberations. When permission was granted and it was unanimously agreed to extend working hours for the day, the Speaker then called upon Vikram Verma to initiate the debate. The latter drew the attention of the chair to a government circular, which for him was concrete proof of the politicisation of panchayats. The circular, telexed by the Principal Secretary of Panchayats and Rural Development, was addressed to all Collectors and Commissioners instructing them "to consult the president of the Block Congress Committee and the elected MLA before nominating the presidents and deputies of the proposed *vikas* (development) and *nirman* (construction) committee". (*Ibid.*, 60).

The Chief Minister immediately intervened apologising for the mistake committed inadvertently and assured members that the circular had been withdrawn and replaced by another stating that members, sarpanches and deputies of GP constituted after the 1988 and 1982 panchayat elections (1988 panchayat elections were held only in some parts of the state) would be members of these committees. The matter was thus settled but the former Chief Minister asked the present incumbent to assure the House that action would be taken against the concerned officer.

Bheru Lal Patidar (BJP): Felt that the PRIs could not be strengthened by merely inserting clauses on the basis of the 73rd Amendment. What is needed is the will to implement these provisions. Who has prevented us from doing so during the last forty years? In Madhya Pradesh when a comprehensive panchayat legislation was passed in 1962, tall claims were made but for the next three years panchayat elections were not held. Although Janapad Panchayats were set up ten years later, Zilla Parishads were not constituted. "When we were in power", he said, "we got the Panchayati Raj Act passed which provided for the direct election of presidents of the PRIs. On the other hand, the amended Bill under discussion has provided for the indirect election of chairpersons. These provisions will greatly favour the

use of money and muscle power". Besides which the state government has ignored a very important provision given in article 243C. (3) of the 73rd Amendment, which reads: "the legislatures of a state may, by law, provide for the representation of the chairpersons of the panchayats at the village level in the panchayats at the intermediate level." There is a similar provision for chairpersons of the intermediate level panchayats in the district level; that is representation of JP presidents in the ZPs, so that a proper co-ordination could be maintained. This has not been done, they do not want to do it. The new Bill seems to be a mere copy of the previous Act. In fact, out of a hundred articles of the proposed Bill, i.e. from article 33 to article 133, 95 articles have been directly taken from the previous Act. Yet they claim they have ushered in a new Act as per the 73rd Constitutional Amendment.

It would have been much better, if they had maintained the old Act and made the necessary amendments to it. That would have made the task easier. Instead of that they have hurriedly drafted a Bill in total disregard of procedures and norms.⁶⁸ Yet we could not make provisions on par with the Constitutional Amendment. What could be more disgraceful than this, Patidar lamented. The previous Act had provided for the setting up of an arbitration board to mediate disputes. "We had attempted the same thing at the gram panchayat level. Every body knows that lack of sensitivity leads to disputes in villages resulting in legal battles in the courts. In the earlier Act the Board was supposed to work along these lines," Patidar said. What was wrong with the provision, which prompted the government to drop it? Again, as per the 1990 Act, the Janapad Panchayats were supposed to control and manage primary schools. The Zilla Parishads were made responsible for the management and control of middle/secondary schools. The new Bill does not have any such provision. On the one hand, the powers of the panchayats to supervise and control primary schools have been withdrawn, on the other the Chief Minister is planning to empower GPs to appoint primary school teachers. "I fail to comprehend this. This will perhaps remain on paper, never to be implemented", Patidar commented. He drew the attention of the Speaker to article 9 of the Bill

⁶⁸As per the norm, the member explained, the form of a proposed Bill is considered by the cabinet committee. In the next stage, it is vetted by the committee of secretaries. Then a final decision is taken.

that reads "from the date of their first meeting all the GPs will have a five year tenure". They could have used the word panchayat instead of GP as had been done in article 17 of the previous Act, then it would have covered not only GPs but JPs and ZPs as well.

Ram Niwas Rawat, the Minister of State (MoS) for Panchayats and Rural Development informed the House that in the subsequent Amendment the word 'Gram' stands deleted. Patidar again said that they had not received a copy of the said amendment. Referring once more to the article 13, sub-title 4 (2), which states "in any GP where reservation for SCs and STs is 50 percent and less, there shall be 25 percent reservation for the backward classes". In this way the quantum of reservation will go up to 75 percent, he said. But in areas where reservation is 51 percent, it will remain as it is. Is this not a contradiction, he asked? This could have been solved by fixing an upper limit of 60 or 50 percent and making it clear that wherever the proportion of SC and ST reservation was less than this, the backward classes would automatically be favoured. He pointed out other inconsistencies in the Bill with regard to the proposed method of rotation to fill up the reserved seats. For instance, there could be GPs without any SC or ST representation, yet as per the clause on rotational reservation, the office of Sarpanch would be reserved for persons from the reserved categories. At another level there is no provision for reserving one-third of the Sarpanch's seats for women. In fact, in the place of district, the word block/janapad is used. After article 45, there should have been article 46, 47,48. Why has this not been done? This is entirely because the Bill has been drafted in haste. In the end, he expressed hope that these mistakes would be corrected and the government would conduct panchayat elections at the very earliest. (MP Assembly Debates: 62-63)

Lal Vijay Pratap Singh: He expressed the hope that power would be devolved to panchayats. And not only the Sarpanches but the entire state would benefit. For the first time, because of reservation, women were being allowed to sit in panchayats. Earlier elections were never held on time. Perhaps because of court cases. Now all these obstacles had been removed, thanks to the 73rd Amendment. He also hoped that the State Election and Finance Commissions would be set up soon and adequate powers would be given to them. He then evoked the problem of the

ownership of minor forest produce (MFP) saying that MFPs were found in abundance in the state and the entire proceeds from their sale was deposited in the state treasury. A provision existed by which a share of the proceeds from the sale of Tendu patta⁶⁹ would be given to concerned villagers. Could not a similar provision be made for sharing MFP proceeds with panchayats... The proposed Bill also aimed at limiting the intervention of BDOs in the execution of JRY schemes, since Panchayats will themselves evaluate the implementation of these schemes (*Ibid.*, 64).

Thawarchand Gehlot (BJP): Remarked that the provision for indirect elections of chairpersons of panchayats will create acrimony in society. The voting, unlike before, will not finish in a day. On the contrary, it will take much longer, creating tension in the villages at the janapad as well as at the district level till the chairperson is elected. The aspirants will use all the tricks they have in order to win. All this is unnecessary. He accused the Chief Minister of appeasing the STs and backward classes at the cost of the SCs. Although this point was refuted by the Speaker and the Minister for Panchayats, Gehlot insisted on this point saying that a provision in the Bill reads that if the posts of panchayat presidents in all three tiers are filled by representatives of STs and backward classes (OBCs) then the position of their deputies would not be filled up by SC candidates. It had never happened earlier. What he meant was that if, along with STs and backward classes, SCs had been mentioned, this anomaly would not have occurred. He also pointed out that contrary to what the CM had said about strengthening GPs, the Collector of Khandwa district was violating the guidelines of the JRY schemes by reallocating the tasks of panchayats to the forest department.

Punnulal Mohle (BJP): Panchayati Raj legislation is vague since it does not say (a) what will happen to those villages with a population of 999 (one less than the stipulated one thousand for a GP) or less; (b) where rivers/streams separate small villages but are clubbed under one panchayat, how will their GPs operate; (c) when Sarpanches do not bother to listen to MLAs or MPs and also when they

⁶⁹ The leaves of a particular tree found in abundance in the state, which are used to manufacture an indigenous cigarette called *Bidi*. This minor forest produce was nationalised long ago. It generates vast revenues for the government.

embezzle funds? (d) if by virtue of the size of his constituency a MLA is entitled to membership of three JPs, then it should be clarified whether he will be a member of all three JPs or of one JP only? As a result he is unable to attend block development committee meetings in all the three blocks.

Budhsen Patel (BJP): In the case of the demise of a Sarpanch or a member how will the vacancies be filled. Patel categorically opposed the Bill because it provided for the indirect election of chairpersons.

I. M. P. Verma (BJP): By allowing indirect elections the government has given an open invitation to feudal lords and dons to capture panchayats. The Bill is also not clear on the territorial delimitation of panchayats. This will create confusion. As far as the reservation for backward classes is concerned, 25 percent is not justifiable, it should be proportionate to their population. Earlier there was 30 percent reservation for women, now it has been increased to 33 percent. Why is proportionate reservation not applied to them, Verma asked. The net result was that he opposed the Bill on account of these lapses.

Ashok Savle (Congress): Under the earlier BJP government GPs had been made coterminous with *Patwari halqas* (i.e. the area covered by the lowest revenue official, usually comprising several villages), thus creating large sized GPs. A large area is a serious impediment to development. For this reason the present Congress government has taken steps to create smaller panchayats. He also said that the earlier provision of direct election of Sarpanches was not without its problems. He supported the Bill.

Sita Sharan Sharma (BJP): He felt that there was a great deal of difference in what the present government claimed and what it did. In support of his statement, he reiterated what Gehlot, a MLA from Khandawa, had already said. He alleged that he had observed similar cases in his own constituency in Itarsi district. He also objected to the deletion of the clause under which Sarpanches used to be ex-officio members of JPs. On the whole, he felt that the government was not clear about the mode of elections. That is why, it had proposed direct elections for members and indirect election for chairpersons. Perhaps, it had been done deliberately. For it did

not really want decentralisation to percolate down. He therefore urged the House to reject the Bill.

Sone Ram Kushwaha (Bahujan Samaj Party–BSP): He praised the honourable Chief Minister for ensuring reservation of women and backward classes but on behalf of his party, he demanded direct elections for ZPs and JPs.

From the above debate, it is obvious that the Opposition, mostly BJP members, were opposed to the indirect election of the chairpersons of panchayats. But unfortunately, many of them could not express themselves. In fact, they were confusing the election of members with that of chairpersons, although a few of them spoke of the demerits of indirect elections of the presidents of the JPs and ZPs. Interestingly, Ram Lakhan Sharma (CPI-M) gave the example of the West Bengal panchayats, while alleging that the Congress government in Madhya Pradesh was afraid of conducting direct elections. Perhaps he did not realise that right from 1978, when the first panchayat elections were held under the Left Front government, the state had continued with indirect election of chairpersons in all the three tiers.

Chatrapati Singh raised the issue of the neglect of some villages notified under the Special Area Development Authority (SADA) (Assembly Debates: 70), ostensibly for making special development plans for them, as they were not covered by the panchayati raj system. He demanded that these villages be covered by the panchayat system when the next election took place. Also that Sarpanches be given an honorarium. After all, they entertained all visitors, including higher officials, who came to the village.

Munni Ram Sahu's intervention deserves special mention since he raised a fundamental point regarding the powers and functions of panchayats. He was of the opinion that by merely providing funds panchayats would not earn the respect of others. What they need is effective power to accomplish particular tasks. For instance, the GPs should get powers equivalent to that of the *Patwari*⁷⁰ (the lowest

⁷⁰ The *Patwari* is the lowest official in the revenue department and is also the custodian of the land records. By virtue of this fact he is considered very powerful in the villages since 'land' is the

revenue official) and also the authority to supervise primary schools. In the same way, Janapad Panchayats should be given powers somewhat like those of *Tehsildars*. He also felt the rotational system should not be applied in the case of women's reservation, in fact it should be restricted only to those wards where they are numerically strong. Surendra Singh Sisodia (Congress) praised the Bill particularly for ensuring representation of SCs, STs and backward classes. He however added that if a provision for the representation of Sarpanches in JP and likewise *Adhyakshas* (of JPs) in ZP was made, it would be quite useful as it would have an impact on functioning of panchayats. He was one of the few Congress members who ventured to offer suggestions outside the framework of the Bill. For instance, the Bill made JPs responsible for the distribution of electricity, but its financial position would not enable it to ensure this task properly, therefore, Sisodia suggested that the responsibility of supplying electricity be left with the state electricity board but under panchayat supervision. This close co-operation between the PRIs and the electricity board would ensure regular supply of electricity to villages. There should be a counter clause to the provision in the Bill debarring people from contesting panchayat elections, which would review the cases of those who had been found unsuitable (i.e. those who had been proclaimed defaulters by the bank or any other credit giving agency) by the previous government, before arriving at a decision. He felt that this was important because these people had been denied what is referred to as natural justice (MP Assembly Debates: 71-72). Therefore, he requested the Minister for Panchayats to give an assurance to this effect to those applicants who had been declared 'unfit' by the previous government.

Ghanshyam Patidar appreciated the steps taken by the Congress government, but also added that the Bill had a weakness, namely the responsibilities and functions of the secretary of the GP had not been specified. The secretary works with the sarpanch and quite often is more knowledgeable and better educated than the latter, who might even be illiterate, explained Patidar. In fact, there were instances of the secretary taking advantage of the sarpanch's ignorance. Yet whenever there

principal asset around which rural life revolves. A *Tehsildar* is a much more important revenue officer who is vested with the magisterial powers to adjudicate land-related disputes. It is thus not

is some illegality, it is the sarpanch who is taken to task and not the secretary, he said. Nanhelal Dhurve gave an account of the previous panchayat elections. Starting from 1981, elections to 23,437 GPs were conducted under Arjun Singh, the incumbent Chief Minister; in February 1989, elections to 12,406 GPs were held, but before the remaining 11,031 GPs could go to polls, the BJP government came to power and on 31st July panchayats were dissolved. The Patwa government went for the delimitation of GPs and reduced their number substantially by making them coterminous with *Patwari halqa*. They did not even take geographical diversity into consideration. Consequently in the district of Bastar (now part of Chattisgarh, a newly created state), GPs were spread out over 27 kilometres. In view of such eventualities, he thought that it would be advisable to delete article 121 of the Bill that prevented any matter pertaining to delimitation or distribution of wards in a panchayat from being challenged in a court of law. With the intervention of Vanshmani Prasad Verma (Congress), who wanted, first, the JP president to be made an ex-officio member of the ZP and, second, panchayats to cover the areas under the special area development authority. The debate thereafter came to an end. It should be noted that many members had expressed dissatisfaction over the time allotted for debate.

As per convention, the Minister for Panchayat and Rural Development rose to answer the questions raised in course of the debate. He requested members to read the provisions given in the Bill carefully to help them clear their doubts. Several members, for instance, spoke about reservation for SCs, STs and women. His answer to all those members was that it was in conformity with the Constitutional Amendment. It should be also noted that these issues were included in the amendments proposed by the members for the consideration of the House. In fact, as per the "Rules of Procedure and Conduct of Business in the State Assemblies", clause-wise amendments are considered before the Bill is finally passed. It was part of the Assembly proceedings in all the four states. In order to illustrate this

surprising that both people and MLAs feel that panchayats could become very powerful entities if they acquired the same authority as the revenue officials.

point, three amendments out of several proposed in the Madhya Pradesh Assembly are discussed below.⁷¹

The first amendment considered here pertains to the demand for convening a special meeting of the Gram Sabha (GS) apart from its mandatory annual meeting. In order to consider the call for a special meeting, one-third of the GS members would have to give a memorandum in writing, and signed by them. The quorum for a GS meeting should be one-tenth its total strength. If the GS meeting could not take place because quorum was not reached and another meeting had to be convened, this time the quorum should be waived. Laxmi Narayan Sharma also suggested that if GS meet was postponed for lack of a quorum, the second meeting could take place after half an hour. What he meant was that if the next GS meeting could be held without a quorum then, instead of fixing another date, it could take place the same day. This amendment was accepted except for the last suggestion, that is, calling a second meeting after half an hour. It may be mentioned here that several other amendments placed before the house were rejected.⁷²

The second amendment was related to the disqualification of candidates seeking election for the post of Sarpanch. Laxmi Narayan Sharma had proposed that those who had taken money from the GP and had not returned it and against whom a RRC (Revenue Recovery certificate) had been issued, should be disqualified. The Minister for State for panchayats explained that the dues could be recovered as had been done in case of over-due land taxes. Besides, there was no such provision for candidates seeking Parliamentary and Assembly elections. The Minister's explanation provoked the former Chief Minister who protested that unlike MLAs and MPs, a sarpanch not only has executive power but also controls funds. The arguments both for and against continued for some time. As both sides remained entrenched in their positions, it was decided to seek a division of votes on this issue. With 121 votes against as compared to 30 in its favour (MP Assembly Debate: 91), the amendment was rejected.

⁷¹ Only due to space constraints, amendments forwarded and discussed in all the four state Assemblies are not considered here. Besides, it was intended to be placed towards the end.

⁷² At this point several members requested the chair to instruct the Minister that while rejecting any amendment he should give reasons for the same. However, the Speaker of the Assembly said that there was no compulsion and he left it to the Minister to do as he saw fit.

This was the first amendment that was voted and the treasury benches won but more important than the question of winning or losing was the fact that the process of democratic decision-making within the Assembly had been observed. In a way the legislators had passed the test. Although, it remained unanswered, earlier when the Minister was turning down amendments one after another, why was a vote not taken. One possible explanation is that unless the Opposition presses for a vote, the procedure is not adopted. Another explanation is that since the opposition parties are invariably in a minority, they do not insist on a vote on any issue, as they know that defeat would be certain.

The third amendment, concerning the 'conservation of forests', proposed that panchayats be authorised to grant permission to fell trees growing on private agricultural lands. Taking up this issue, Gauri Shankar Bisen (BJP) argued that farmers have to wait for months together to get this permission from the revenue department. Whether they need the wood for building a house or for any other purpose they do not get the required permission. This works as a deterrent; it dissuades farmers from growing trees. Consequently, despite tall claims made about environmental conservation, or providing supplementary sources of earning to farmers, tree plantation is done in name only. The reason is, Bisen argued, that we have failed to address the fundamental rights of farmers. Since the panchayat (he meant village level) is in the village, the elected panchayat representatives and the people know each other, appreciate each other's requirements, therefore this amendment should be accepted. He reminded the House that in its last election manifesto, the Congress (the party in power) had raised this issue.

From the government benches, Ram Nivas Rawat (Minister of State, Panchayats) appreciated the point but assured the concerned member that once the rules and regulations had been framed for implementing the provisions of the Act (read the Bill under consideration), panchayats would be empowered to address such issues. Obviously, the answer was vague and hence unsatisfactory. At this stage, the Chief Minister himself intervened to explain that such an amendment would be effective only when the corresponding changes had been introduced in the Land Revenue Code and Revenue Book Circular. He assured the House that the government was

considering the matter and would do what was necessary. With this assurance the member withdrew his proposal.⁷³

Towards the end, Laxmi Narayan Sharma (BJP) said that the provision, which prohibited MLAs from holding any presidential position in panchayats was a good one. A similar provision was to be found in the co-operatives act. But unfortunately, many MLAs (from the ruling party and the Opposition) still hold chairs in co-operatives despite a law forbidding this. Several members said the laws exist but exemptions are given for political reasons and thus the provisions are misused. The matter was closed when the House agreed that panchayats and not co-operatives were being discussed in this instance. The matter however remained unresolved.

Finally, addressing the Speaker, the Chief Minister assured the House that his government would consider the suggestions of the honourable members and requested the former to pass the Bill. After this, the Bill was passed.

⁷³Interestingly, some amendment proposals were dropped because it was the typographical errors in the Bill that had prompted the members to propose changes. But the House witnessed a lot of verbal duels over the printing errors and the order of the serial numbers in the Bill.

Conclusion

In the preceding sections we have seen how the legislators of four states responded to their respective panchayat Bills prepared in conformity with the 73rd Constitutional Amendment. Although, the comments on debates, procedures etc., have already been made when dealing with the Assembly proceedings of individual states, some concluding remarks would be in order. It might be equally appropriate to stress the highlights of the debates as recorded in the four state Assemblies.

To begin with, several members in **Maharashtra** welcomed the Central Government amendment for ensuring regular elections to panchayat bodies. This was surprising, indeed, for Maharashtra is known for holding panchayat elections regularly. Contrary to its reputation, it appears that the ground realities do not match the image cultivated over the years. And the reason seems to be simple: panchayat elections were not held throughout the state even at the village level. In fact, substantial facts and figures were provided by the state legislatures on election-related irregularities and on corrupt practices in the running of the panchayats in the state. Similarly, they expressed satisfaction over the removal of the provision for co-opted members. Incidentally, it is the interlocking between institutions (panchayats, co-operatives, sales and purchase unions, etc.) at the district level and below that is considered to be responsible for the continuity of panchayats in the state. Accommodating members from one institution to another through 'co-option' was an important instrument of this arrangement. But the critical remarks of legislators in this context reveals that this provision had led to undesirable elements entering panchayats. In the same way, the preponderance of a single caste cluster (*Marathas* and *Kunbis* combined) is also said to have contributed to the consolidation of panchayats in Maharashtra. But over the years panchayats became the exclusive preserve of this privileged, dominant political caste in the state. They resorted to either obstructing the entry of the less privileged castes or not allowing them to function properly if they were elected as sarpanch, through arrangements between factions of the dominant caste or through reservation of seats. In any case, the debates revealed that members of the marginalised sections of society, including women and Dalits elected

representatives, are yet to gain respect as panchayat leaders. Is the Congress party's long stint in power in the state the reason for these shortcomings?

It should be noted that compared to the other three states, Maharashtra has witnessed the longest rule of the Congress party. Barring a brief interregnum during late 1970s, this party remained in power until the mid-1990s. In fact, the Congress' continued stint in power is also seen as one of the reasons behind the continuation of panchayats in the state. Initially, the party was well managed and panchayats showed promise. Over the years, however, the party machinery became rusty and degeneration set in. Subsequently, when Indira Gandhi emerged as the most powerful leader of the country, the party lost its elan as its supreme leader trod the path of over-centralisation. Even state leaders with a strong political base were obliged to compromise with the power in Delhi for their survival. Consequently, remaining in power at the cost of everything else became the sole aim of the state leaders. The result was negligence on all fronts, including panchayats. If the nepotism openly practised by the clannish Marathas was preventing the expansion of the party's social base and of course, of the panchayats too, it was ignored. It led to irregularities in panchayat elections, to corruption and even high-handedness, but all this was overlooked.

Not surprisingly, during the debate, members of the opposition reeled off facts that spoke volumes of the state of panchayat-related affairs. The irregularities observed during elections, the continued dominance of the traditional power holders such as the *Patils* and the *Deshmukhs* in the panchayats, corruption etc., all these issues were discussed. But no one asked why these problems were still persisting despite the length of time decentralised institutions had been functioning. As a matter of fact, leaving aside a few members in all four states, most members seemed to be really concerned with the day to day problems of panchayats. Acrimonious exchanges took place. Mercifully, some members of the ruling party both in Maharashtra and Madhya Pradesh cautioned their governments not to disregard the opinions advanced by members of the opposition just because they were from the Opposition. In Maharashtra, the remarks made by two legislators, including a member of the ruling Congress party deserve to be mentioned. Both these legislators felt that the opinions of incumbent panchayat members on the Bill

should have been sought, which should have also been widely debated among the people at large before putting it to the House. By not doing so the government had lost the opportunity to educate people about the efforts undertaken to introduce fundamental changes in the governance of the country. This sentiment, coming as it does from a member of the ruling party, leaves us with some hope for the future.

In **West Bengal** the debate was short and participants much fewer than in the other three states covered in the study. It also needs to be mentioned that in contrast to other states, the debate in Bengal was much more focussed and, to a large extent, consistent with the issues raised. Apart from the reservation of seats, age etc., which in any case were in conformity with the 73rd Amendment, the other issues raised by the Opposition were the anomalies they perceived in the state panchayat act. These included the size of the GP, beginning of its tenure, counting of votes and their apprehensions about the near impossibility of holding a meeting of the Gram Sabha after there had already been a series of *gram sansad* meetings held at ward level.

Interestingly, the counting of votes – the apparent lapses witnessed in course of counting at polling stations⁷⁴ (cum counting centres) – was the single issue, which dominated the debate. Several opposition members expressed their opinions. One prominent member of the Opposition highlighted several inconsistencies in the Bill but, in the end, he agreed to put all contentious issues aside if their one point amendment – regarding the counting of votes – was accepted. In this he was unsuccessful. The Opposition, mainly the Congress legislators, was so obsessed with this theme that it failed to see the positive aspects of the Bill. For instance, they were silent about the proposal for a district council to be headed by the opposition leader in the Zilla Parishad, which was designed to function like a watchdog, ensuring the smooth functioning of panchayats in their state. This is not to deny, however, their contribution in highlighting the problems related to oversized panchayats, as well as scrutinising the provisions on items to be taxed by the village panchayats. On the other hand, they did not discuss the role of panchayats

⁷⁴ Subsequently, the relevant rules were amended. Accordingly, the venue for counting of votes has been shifted to the block headquarters.

in rural development or for that matter creating awareness among people about their rights etc.

Here again, some comments on the role of the Congress would be in order. It should not be forgotten that as long as the Congress was in power in the state, it did not set up elected three-tier panchayats. There is no doubt that the party was instrumental in introducing legislation on this subject, but direct election to all the three tiers of panchayats was the work of the Left Front government after it came to power. Ever since then the Left Front has gone on extending unflinching support to the panchayats. Over the years, these two have not only reinforced each other but also played a crucial role in ensuring their continuation in power. But, for the Congress, electoral malpractices seem to be the only reason behind the Left Front's hold over panchayats. At least, this was the indication given by the tenor of their debate. There may have been some element of truth in this, but because of their obsession with this issue, they overlooked the fact that the Left Front's control over village panchayats was not absolute. The 1993 panchayat elections (Kumar and Ghosh, 1996), held before this debate confirmed this point.

In **Karnataka**, on the other hand, nearly every issue was debated, probably overly so: from the size of village panchayats and their resources, to giving too much power to the bureaucracy etc. A running commentary on merits and demerits of the previous (1983) panchayat act was also heard all along the debate. But what really dominated the Assembly proceedings was the mode of election of chairperson of village panchayats and the issues pertaining to reservation of seats of all the reserved categories, including the backward castes. The debate was animated but lacked focus. So much so that some of the key issues were overlooked. In fact, had they stuck to these issues, there would have been much more informed discussion, with a meaningful intervention by both the treasury and opposition benches. Take the status of the 11th schedule, for instance. Describing it as the fourth list (of State functions in the Constitution) after the three existing Centre, State, and Concurrent lists, Nanjundaswamy commented that it is a "peculiar additional concurrent list" on which both the Centre and state have jurisdiction, and wondered without specifying the areas of legislation, how decentralisation would really work? Similarly, when another member challenged

the state government for copying every thing given in the 73rd Amendment, the point was just ignored. For them the issue of the placement of officers of the state civil service at the Zilla Parishad level was a very important one, but could not be addressed seriously.

It should be recalled that the Congress' track record in providing support to panchayats in Karnataka was not good. And if this state was later lauded for introducing a dynamic two-tier panchayat system, the credit goes to the Janata party, which assumed power after the 1983 Assembly elections. Unfortunately, when the Congress came to power they handed the panchayats over to the administrators. Their guilt over this action, however, was apparent from their constant references to the earlier panchayat act (1983) throughout the debate. In the process they also forgot that it was the successful decentralisation experiments carried out in non-Congress ruled states that had prompted Rajiv Gandhi to take steps to revive panchayats in the country. These experiments, particularly in Karnataka, formed the basis of the aborted 64th Amendment, the precursor of the 73rd Amendment.

In **Madhya Pradesh**, on the other hand, the Congress party was in power for a considerable period of time. It kept on delaying the constitution of a three-tiered panchayat structure for quite some time. The Bharatiya Janata Party (BJP) did initiate panchayat elections, but the entire state could not be covered. The present leadership again took the initiative after the 73rd Amendment. But due to unfavourable political and social circumstances, it could not go beyond a point. Unlike Maharashtra, it did not have experienced co-operative leaders who had played a notable role in running panchayats in the early 1960s. The state lacked a network of committed party cadres to help establish panchayats, as they had done in West Bengal. Madhya Pradesh was essentially a feudal state. It had probably never known any organised reform or protest movement. Even the backward caste movement, unlike Bihar and Uttar Pradesh (along with Rajasthan these four states, i.e. including Madhya Pradesh, are clubbed together on account of their socio-economic backwardness), has yet to gain a momentum in the state. On the other hand, Madhya Pradesh's biggest asset is its visionary leadership. In any case, Congress experience in the state under the present dispensation has proved that the

same party can act differently in different situations. The Opposition also deserves some praise for engaging in systematic debate.

The delimitation of village panchayat, the size of its population as well as the mode of election of its chairperson evoked sharp response from the Opposition. They were equally concerned about the power and functions devolved to panchayat institutions. A fair amount of debate also focussed on reservation related issues. Lastly, they were of the opinion that a piece of legislation alone cannot ensure genuine decentralisation. What is more important, they argued, is the 'political will' to implement the provisions of the Bill. Implicit in this comment was their belief that the government lacked will. Again, like the Karnataka legislators they kept on comparing the Bill with the earlier Act. In the process, they also accused the ruling party of deleting some important provisions of the previous act. From the treasury benches, the legislators generally praised their own party government for bringing a comprehensive Bill, though some of them did not hesitate in pointing out the shortcomings in the Bill. For instance, not providing legislation to ensure the representation of the chairperson of the lower tier of panchayat in the immediately higher level. Similarly, while discussing the 'Eleventh Schedule', which gave a list of functions to be devolved to panchayats, it was suggested that it should not be accepted in toto. For instance, given the state of their finances, panchayats cannot handle the distribution of electricity in the villages. But if panchayats worked in co-operation with the state electricity board, they would be able to ensure regular electric supply to rural areas. To strengthen the financial position of the panchayats, it was suggested that a 'special panchayat fund' be created out of the 'stamp duty' collected by the government. Similarly, they also argued that if the state government wanted the gram panchayat to become a powerful entity, it should be given the same authority as bestowed upon the institution of *Patwari*.

Finally, in all four Assemblies questions on procedural matters were raised, indicating that procedures were either undermined or overlooked. Bills were either drafted in haste or not read carefully to remove typographical errors that caused a great deal of confusion during debates. Then, neither copies of the Bill(s) nor subsequent amendments in the Bill(s) were distributed among members in

advance, except in West Bengal. Although, a few members (especially in Maharashtra) went on record admitting that they did not care to read the Bills and by extension did not waste their time preparing for the debate before coming to the House since they did not get enough time to speak on the relevant issues. If that is how the legislative matters are handled, it does not augur well for the future of democracy in the country.

Interestingly, excepting Karnataka, in Maharashtra, West Bengal and Madhya Pradesh the relevant Bills were put to debate at the eleventh hour. Hence, the Bills were literally pushed through the respective Assemblies. We have already noted that the West Bengal government had reservations about the Central Government amendment *per se*. But the Maharashtra government did not have even this excuse. It deferred acting till the eleventh hour, not taking their role of legislators seriously. In the case of Madhya Pradesh, it still had more than three months before the deadline, but it, too, did not give enough time to its MLAs to reflect on the issues. There seems to be no plausible explanation for this except its child-like enthusiasm to be the first state to hold panchayat elections following the 73rd Amendment. Even today, everyone in the state takes pride in this matter. In this context, the performance of the Karnataka government was worst. In the first place, it presented the Bill to the House for consideration even before the 73rd Amendment was signed by the President. Thus, it had time enough to do its homework, that is, drafting the Bill, removing its ambiguities by revising it twice-thrice, consulting various experts in order to give its provisions an edge, before giving it a final shape. Instead of doing all this it rushed ahead and fell flat. Why did it act like this? Was there an emergency? Perhaps, there was. In its wisdom, the Karnataka government had thought that what it had produced was a perfect, ideal Bill, which might even serve as a model for the other states. That is why it wanted the Bill to be adopted by the House quickly, and preferably unanimously.

It was not only the draft of the Bill or the time choose to put it to debate, but the presentation of the Bill itself in the Karnataka Assembly was less than desirable. From the very start, it was messed up when instead of reading the salient features of the Bill, the concerned Minister went on explaining some of its provisions and simultaneously comparing them with the previous (1983) Act. There was thorough

confusion in the House most of the time. There was hardly any discussion on the *Nyaya* (Judicial) Panchayat. And the end result was that the issues were discussed *ad infinitum* and some times even *mano a mano*. At one stage, in course of the debates, the Minister for Panchayats (perhaps he had been uncontrollably provoked), said: "this is the maximum we can do to decentralise powers and functions in conformity with the Constitutional Amendment." This clearly shows the extent to which devolution of powers and functions can go below on account of the pressure from above. It also indicates the limits of results when the decentralisation package is enforced solely through legislation.

Towards the end of the debate, all the Janata Dal members had walked out of the House in protest. Thus the Bill was accepted in their absence. To be fair to the Janata Dal legislators, it should be noted that earlier when one of them had threatened to go to court in case the government continued to violate legislative norms, he was cautioned by another member from his own party that resorting to legal action to sort out differences was against democratic norms and practices.

In Madhya Pradesh it was almost in contrast on both these counts. Notwithstanding certain ambiguities in the Bill and of course, typographical errors, its presentation in the House was in order and, to a great extent, so was the debate. The Chief Minister remained present throughout the debate, and procedural norms were observed. His presence in the Assembly on this occasion signified the importance his government attached to the Bill. This is not to say that the debate on the subject was an informed one, without any indulging in accusations and counter accusations. It did become acrimonious at times. Yet, unlike Karnataka, it was consistent with the points raised. Occasionally, Chief Minister personally intervened when he felt that the explanations offered by his cabinet colleagues were not convincing enough.

That was the sum and substance of the debates that took place in the four state Assemblies. The legislators, while arguing to the best of their ability given the time constraints, blamed the government for the shortcomings in the Bill(s). As a matter of fact, the legislators as a whole failed to grasp the essence of the Constitutional Amendment. Shortly after the 73rd Amendment had been approved

by the president, Nirmal Mukarji (1993) had argued: "the plain meaning of these provisions (of the 73rd Amendment), read by themselves, is that self-government for panchayats is the central objective. The only point on which controversy could arise, and very likely will when it comes to the State Legislatures endowing power and authority to the panchayats, is about the meaning to be given to the 'self-government', especially when applied to each level." In none of the states covered in the state (indeed, no state in the country), legislators ever tried to define 'self-government'. In the course of the debate, they did address the issue occasionally but only partially. To be fair to them, however, it must be said that it was too much to expect from the state legislatures to provide a legal framework for the definition of 'self-government'. To put it simply, 'self-government' is a 'government without outside interference' but its implications are far reaching. It entails the complete re-structuring of the Indian politico-administrative system. This would necessitate the division of powers and functions between the 'Union' and the 'States' as also between the latter and 'Panchayats'. These matters can not be decided unilaterally by the state legislatures. Yet, within the given federal framework of a 'working democracy', a debate on partial autonomy for panchayats could have been initiated.

In any case, irrespective of the fact that the 'Union' expected too much from the federating units, the 'States', or that the latter failed to elucidate the implied meaning of 'self-government', the central objective of the 73rd Amendment has been lost sight of. The 'functions', 'powers' and 'authority' of panchayats remained as vague as they had been prior to the Constitutional Amendment. No wonder there have been demands for further amendments to the Constitution to meet the stated objectives (ISS, 2001). This was admitted by no less a person than the Prime Minister himself, in a recent conference of the heads of panchayats. Paradoxically, however, he has limited this to the transfer of adequate funds⁷⁵

⁷⁵ In a recently held conference of heads of panchayats (The All-India Panchayat Adhyakshas Sammelan), the Prime Minister indicated that there was need for another amendment to the Constitution to strengthen panchayats. He said, "Panchayats have too many responsibilities but no funds to carry out programmes under the Constitution". The leader of the main opposition party (Congress) demanded the merger of the 'District Rural Development Agency' with the district level panchayat and the disbanding of parallel bodies which 'undermine the functions of panchayats'. The conference, however, unanimously demanded further amendments to the Constitution "to ensure mandatory devolution of functions, funds and functionaries to the duly elected Panchayati

from the Centre to the panchayats. However, the participants called for a comprehensive amendment to the Constitution to ensure the devolution of "functions, funds and functionaries" to panchayats.

Raj Institutions". See, The Hindu, (New Delhi), April, 6 and 7, 2002. Also, 'Uprooted Democracy ' an editorial on the subject published in The Times of India, (New Delhi), April 10, 2002.

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