Contents

Introduction to Part VI of Constitution of India

Part VI of our Constitution deals with the Government Machinery in the States. Articles 152 to 237 of the Constitution make the Part VI. India has 28 States and 7 Union Territories. We all know that before the States Reorganization Act 1956, India's states were grouped into 4 parts. These 4 parts and the states in them were as follows:

- **Part A:** Part A comprised 9 states viz. Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Punjab, United provinces, West Bengal.
- **Part B:** Part B comprised 5 states viz. Hyderabad, Jammu & Kashmir, Madhya Bharat, Mysore, Patiala, Eastern Punjab.
- **Part C:** Part C comprised 5 states viz. Ajmer, Bhopal, Bilaspur, Cooch-Bihar and Coorg.
- **Part D:** Part D comprised of territories of The Andaman & Nicobar Islands.

This cumbersome classification was done away with the States Reorganization Act 1956. At the time of States Reorganization Act 1956 there were 14 states and 6 Union Territories in India. The states were:

1. Andhra Pradesh
2. Assam
3. Bihar
4. Bombay
5. Jammu & Kashmir
6. Kerala
7. Madhya Pradesh
8. Madras
9. Mysore
10. Orissa
11. Punjab
12. Rajasthan
13. Uttar Pradesh
14. West Bengal.

And the 6 Union Territories were:

1. Andaman & Nicobar Islands
2. Delhi
3. Himachal Pradesh
4. Laccadive, Minicoy & Aminidivi Islands
5. Manipur
6. Tripura.

Andhra Pradesh was the first state in India which was created on linguistic basis and this triggered agitations in various parts of the countries for creation of more states on Language basis.

- In 1960, The State of Bombay was bifurcated and this gave birth to Maharashtra and Gujarat. So now the total number of states was 15.
- The Nagas were satisfied by creating the State of Nagaland which was initially kept under the president rule. Nagaland was created on 1 December 1963 and creation of Nagaland made raised the number of states to 16.
- In 1966, The Punjab Reorganization Act was passed and the Indian Punjab was bifurcated in two states viz. Punjab and Haryana and some parts (Hilly regions) were merged with the Union Territory of Himachal Pradesh. The number of states in India was now 17.
- Meghalaya which was comprised of 2 districts of Assam was enjoying limited autonomy within the state of Assam since independence. In 1970, Assam Reorganisation (Meghalaya) Act, 1969 accorded an autonomous status to the state of Meghalaya. This was followed by North-Eastern Areas (Reorganization) Act, 1971 which provided full statehood to Meghalaya and thus the number of Indian states rose to 18.
- Himachal Pradesh which was a Union Territory since 1956. Through the State of Himachal Pradesh Act, which was passed on 18 December 1970, Himachal Pradesh became India's new state on 25 January 1971. The number of states was now 19.
- On 21 January 1972, the Union Territories of Tripura and Manipur were converted into a full-fledged states and thus the number of states in India rose to 21.

- In 1975, Sikkim was admitted as one of the states of Indian Union and thus Sikkim Became 22nd state of India.
- On 20 February 1987. Mizoram was given the full statehood and Mizoram became India's 23rd state.
- On the same date (20 February 1987), Arunachal Pradesh was also given full statehood and thus the number of states was now 24.
- In May 1987, Goa was carved out as a separate state from the Union Territory of Goa, Daman and Diu. Daman and Diu continued to remain Indian Union Territories. Thus, Goa was 25th state of India.
- Three more states Chhattisgarh, Jharkhand and Uttaranchal came up in 2000.

State Executive: Governor

The Government model of States is also on the pattern of Union and is parliamentary in nature. The head of the state is Governor and is constitutional head of the state in the same way as President is the Constitutional head of the Union.

Constitutional Provisions for Office of Governor

Articles 153 to 162 deal with the Governor of States. Here is a brief discussion of these articles:

- Article 153 says there shall be a Governor of each states and a same person can be made Governor of more than one states.
- Article 154 says that Executive Power of the State shall be vested in the Governor and shall be exercised by him/ her either directly or through officers subordinate to him / her.

However, Parliament and State legislature can confer any function to officers subordinate to Governor by law.

- As per article 155, a Governor is **appointed by the President**. This means Governor is NOT elected.
- As per article 156, Governor can hold the office for maximum tenure of 5 years and he / she holds the office during the **pleasure of the President**. Once the tenure ends, the Governor continues to hold office till new governor takes up the job.
- As per the article 157, a person who is citizen of India and has completed the age of 35 years shall be eligible to be Governor of state.
- As per article 158, a Governor can NOT be member of either house of the parliament or member of legislature of any of the Indian States. If a MP or MLA is appointed as Governor he / she shall vacate the seat when enters into Governor's Office.
- The Governor will not hold any office of the profit and will be entitled for salary and allowances as per second schedule of the constitution and as the parliament by law can decide.
- The Oath of affirmation for Governor as per article 159 is as follows:

  I, A. B., do swear in the name of God/solemnly affirm that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of .....(name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of .....(name of the State)."
- During any contingency, who will discharge the functions of the Governor, is decided by the President. (article 160).

- As per article 161: Governor of a State has the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

Please note that President can grant pardon to a person awarded death sentence. But Governor of State does not enjoy this power.

- As per article 162, Governor As per article 162, the executive power of a State extends to the matters on which the Legislature of the State has power to make laws.

Why the Governor is appointed and NOT elected?

In India, the Governor is appointed by the President and NOT elected. The reasons of this arrangement are as follows:

1. If the Governor of the state is elected directly by the people of the state, his position would not be a "***Constitutional Head***" and will be that of a "Real Head". This can result in a friction between the council of ministers in the state and the governor.
2. If the Governor of the state is elected by the elected representatives of the state assembly, there are possibilities that the Governor rather than being impartial may become the pawn of the political parties that suggest his/ her victory in the Governor's elections.
3. Governor in a state in India is actually an **agent of the President** and a **servant of the Union of India**. In case there is any conflict between the state and the centre, a directly or indirectly elected Governor may Not prove to be an obedient servant of the Union. This would be inconsistent with the Idea of a strong centre in the country.
4. Governor is expected to be an impartial and independent mediator for the rival factions in the state and this can be done only when Governor is a nominee of the President.

   So we can say that the method of selection of the President has removed the evils which would have resulted from any of the alternative methods.

Governor in Indian States: American Model or Canadian Model?

Governor in India is accepted on the lines of a provincial Governors of Canada who are appointed by the Governor General of Canada and hold the office during his pleasure. The framers of the constitution initially wanted an arrangement for an elected Governor of each state, very much like the governors of the US states. But the idea was done away with in due course of time because, of the above mentioned reasons. In US, there is a Presidential system of Government and there is seldom a rivalry between the Governor and his Cabinet.

Salary of the Governor in India

Apart from the free residence, medical facilities and other allowances, a Governor of the state in India draws a salary of ₹ 1,10,000 per month.

- Salary and Allowances of the Governor of State are charged from "**Consolidated Fund of the State**" **and are non-votable in the state Budget Process**.

Executive Powers of the Governor

As per article 162, the executive power of a State extends to the matters on which the Legislature of the State has power to make laws. Since, Governor is the Executive Head of the state, all the Executive actions of the state are taken in the name of the Governor. Appointment of some of the following important functionaries of the State Government is made by the Governor:

- Chief Minister
- Other ministers
- Advocate General
- Chairmen and members of the State Public Service Commissions

The imposition of President Rule in a state is recommended by the Governor of the State when there the Governor finds that the Government of state is not being carried on in accordance with the provisions of the Constitution.

Legislative Powers of the Governor

- Governor has powers to summon and prorogue either house of the state legislature and dissolve the state assembly.
- Governor addresses the first session of the state legislature after the general elections in the state.
- Governor Appoints **1/6th members of the State legislative Council.**
- **Nominates one member in the state legislative assembly** from the Anglo-Indian Community if the community is not well represented.
- The Bills passed by the State legislatures are sent to Governor for assent.
- Governor has right to reserve certain kinds of the bills passed by the state legislature to for the assent of the President.
- Governor of the state has power to **make laws through Ordinances** in the state.

Financial Powers of the Governor

- Money bills in the State legislature cannot be introduced without prior recommendation of the Governor.
- The Governor ensures that the Budget of the state is laid before the assembly every year.
- The "Contingency Fund of the state" is maintained and administered by the Governor of the state. Governor can advance money out of it for meeting unforeseen expenditures, but the money has to be recuperated with the authority of the state legislature.
- The Governor of the state receives the report of the States auditor general pertaining to the accounts of the legislature and puts it before the state legislature.

Judicial Powers of the Governor

- President of India consults the Governor while appointing the Chief Justice and other judges of the High Courts of the states.
- He can grant pardon, reprieve, respite or remission of punishment to persons convicted of an offense against the state laws.

Other Administrative Powers of the Governor

- The governor places the state public service commission reports and observations of the council of ministers before the state legislature.
- The Governor of State functions as a chancellor of various state Government universities. The Vice Chancellors are appointed by the Governor.

Ordinance making powers of the Governor

As per provisions of article 213, the Governor has Special legislative power of promulgating the ordinances during the recess of the State legislature.

- To issue an ordinance, the governor must be satisfied with the circumstances that make it necessary for him / her to take immediate action.

Please note that Governor cannot promulgate an ordinance in any of the three situations give below:

1. If the ordinance has the provisions which of embodied in a bill would require president's sanction.
2. If the ordinance has the provisions which the governor would reserve as a bill containing them for the president's sanction.
3. If an act of the state legislature has the same provisions that would be invalid without the assent of the president.

All ordinances promulgated by the Governor in the state have the same effect and force. The ordinance must be laid before the state legislature when it reassembles and it must be upheld by the State legislature, failure to which the ordinance would be invalid.

Discretionary Powers of the Governor

In exercising all the functions except when the governor is expressly required to act in his/ her discretion, The governor of an state is advised and aided by the Council of Ministers of the state, which is headed by the Chief Minister.

But, when there is a conflict between the Council of the Ministers and Governor, the Decision of the Governor in his/ her discretion is deemed to be final. (Article 163)

- Validity of anything done by the Governor can not be called in question on the ground that he / she ought to not to have acted on his / her discretion.
- Whether , and if so what, advice was tendered by the Governor to the Ministry can not be inquired into a court.

So, though the Governor is made the constitutional head of a state like president of India, yet there is a thin line as the Constitution empowers the Governor to act without the advice of the Chief Minister and his council and can use discretion on certain matters. Some discretionary powers are as follows:

- Governor can dissolve the legislative assembly if the chief minister advices him to do following a vote of no confidence. Now, it is up to the Governor what he/ she would like to do.
- Governor, on his/ her discretion can recommend the president about the failure of the constitutional machinery in the state.

- On his/ her discretion, the Governor can reserve a bill passed by the state legislature for president's assent.
- If there is NO political party with a clear cut majority in the assembly, Governor on his/ her discretion can appoint anybody as chief minister.
- Governor has discretion to refuse to sign to an ordinary bill passed by the state legislature.

Comparison of India's President and Governor of an Indian State

Similarities	Dissimilarities
1. Both the President and Governor have the status of Constitutional Heads. 2. All executive decisions are taken in their name but actual power is exercised by Council of Ministers 3. All ordinary / money bills passed must get their assent before they become an act. 4. Both of them promulgate ordinances 5. All Money bills can be introduced with prior recommendation of President in the Lok Sabha and Governor in the state legislature.	1. Governor can keep a bill passed by state legislature for assent by the president. 2. The discretionary powers of Governor are with wider scope in the state than the President in the Union. 3. Governor cannot grant pardon to somebody convicted and sentenced to death. Such power lies with president only. 4. President can nominate two members of Anglo-Indian Community in Lok Sabha, Governor can nominate one member of Anglo-Indian Community in State Legislature. 5. Only President can declare war or peace. 6. Only President can pardon a person punished under Martial law.

Constitutional Provisions regarding Council of Ministers in States

Article 163 of the Constitution of India says that "there shall be a Council of Ministers in the states with the Chief Minister at the head to aid and advise the Governor in exercise his functions, except those which are required to be done by the Governor on his/ her discretion".

So the council of Ministers has been provided by the Constitution to aid and assist the Governor in the discharge of his / her duties.

- **Chief Minister is appointed by the Governor.** (Article 164) Usually Chief Minister is appointed from the largest political party / coalition after the elections, but if no party has clear majority, then Governor can appoint anybody as Chief Minister.
- Other Ministers are appointed by the Governor on advice of the Chief Minister. (Article 164)
- The council of the Ministers theoretically holds the office during the pleasure of the Governor, but actually holds the office as long as it enjoys majority.
- The council of Ministers works on the principle of collective responsibility to the legislature of the state. This means that vote of no-confidence against any minister automatically leads to the resignation of entire council.
- A Minister who for any period of six consecutive months is not a member of the Legislature of the State, at the expiration of that period ceases to be a Minister. (Article 164)

The council of Ministers formulates the policy of the Government and implements it practically. The all important appointments in the states are made by the Governor and Council of Minister advices / aids Governor in this work. The Council of Ministers forms and presents the Budget of the state every year.

Advocate General in State

We have studied in Part V article 76 that Attorney General is the Highest Law officer of the nation. Akin to the Attorney General, who is the legal adviser to the State Government, the constitution via article 165 provides for an Advocate General of the State.

- Advocate General is the Highest Law Officer of a state in India.
- Advocate General is appointed by the Governor and enjoys the office during the pleasure of the Governor.
- The remuneration of the Advocate General is decided by the Governor.
- The qualification to become an advocate general is the same as that of a Judge of a High Court.

The advocate general has been assigned the duty to give advice to the state Government on legal matters which are referred to him/ her. Advocate General is

1. entitled to appear before any court of law within the state or
2. Address the state Legislature as and when required.

Introduction to State Executive

We have studied in the Union that the parliament consists of **President, Lok Sabha and Rajya Sabha**. Similarly in a state the Legislature is composed of

1. Governor
2. Legislative assembly (and legislative council if there is in the state)

In India, a state can have either a state legislative assembly or state legislative assembly and legislative council both.

- Thus Indian states are either unicameral or bicameral.

Please note that article 168 of the constitution of India provides for a Legislature in every state of the country. The same article 168 mentions that there are some states where there is a legislative council as well. So:

- Indian Constitution does not adhere to the principle of bicameralism in case of every legislature.

The states where, there are two houses, The **Governor is part of the legislature which consists of Legislative assembly and legislative council**.

Features of the Legislative assembly resemble to those of the Lok Sabha in the center and features of legislative council resemble to those of Rajya Sabha.

> The framers of the constitution as well as members of the Constituent assembly had in mind that it may not be possible for all the states to support two houses, financially as well as for other reasons. For example, some of the members of the Constituent assembly criticized the idea of bicameral legislature in the states as a superfluous idea and a body which is unrepresentative of the population, a burden on the state budget and causing delays in passing legislation.

- That is why, whether there should be a legislative council in the state or not, is decided by legislative assembly of the state itself.

But it does not mean that legislative assembly can itself create a legislative council. The constitution of India has full provisions about the creation of legislative council and its abolishment

The power of abolition and creation of the State legislative council is vested in Parliament of India as per article 169. But again, to create or to abolish a state legislative council, the state legislative assembly must pass a resolution, which must be supported by **majority of the strength** of the house and **2/3rd majority of the present and voting**. (Special Majority)

- When a legislative council is created or abolished, the Constitution of India is also amended. This amendment is reflected in article 169.
- But this kind of amendment is not considered the regular amendment of the constitution. This means that this amendment is without the procedure adopted as per article 368.
- The resolution to create and abolish a state legislative council is to be assented by the President also.

Legislative Councils in States

At present in the country, there are 6 **states viz. Andhra Pradesh, Bihar, Jammu & Kashmir, Karnataka, Maharashtra, Uttar Pradesh** with **bicameral legislatures**.

- There was a bicameral legislature in Tamil Nadu in past but it was abolished in 1986 and then revived recently **in May 2010**. However, the state is still unicameral as the new government has different ideas.

There are interesting stories behind the Tamil Nadu and Andhra Pradesh Legislative Councils.

Backgrounder: Tamil Nadu Legislative Council:

The Tamil Nadu legislative council had been established by the **Indian Councils Act 1861** as **Madras Legislative Council**.

Till 1937, it was unicameral and in 1937 it became the upper house of the bicameral legislature of the state. After India became independent it was the upper house of the Madras state. When Madras was renamed as Tamil Nadu in 1969, it was also renamed as Tamil Nadu State legislative Council.

The council was abolished in 1986 by ADMK Government under M G Ramchandran. In that year, an actress A B Shanti or Nirmla[1] was nominated by the MGR (This means she was actually nominated by Governor, a Chief Minister cannot nominate in Legislative Council and 1/6th members are nominated by Governor) for Legislative Council seat. But she could not take oath because, she had been declared insolvent by a court earlier. This violated the Article 191 of the constitution which says that a person shall be disqualified for being chosen as and being member of Legislative Assembly or Legislative Council if he / she is an undischarged insolvent.

So, a public interest writ petition was filed in the Madras High Court. The MGR government tried to save face by giving Nirmala Rs. 4.65 Lakhs in April 1986. Her lawyers tried to persuade the Judge that all debts once paid in full, the insolvency should be annulled. But this episode brought another twist in the story.

By receiving Rs. 4.65 Lakh from the party funds, Ms. Nirmala violated the provisions of the Income tax Act that a loan/deposit exceeding ₹ 10, 000 should be received only by a crossed cheque or demand draft. (This provision was at that time).

Nirmala could not take oath and MGR miffed by this passed the resolution to abolish the council. Tamil Nadu Legislative Council (Abolition) Bill, 1986 was passed by both houses of the Parliament and received the

[1] Nirmla , after her commercially much successful 1965 film Vennira Aadai which means white dress got famous with the name of "*Vennira Aadai* ". This film was also the first film of J Jaylalitha.

assent of the president on 30 August 1986. The Act came into force on 1 November 1986 and the council was abolished.

The revival of the Council was in the agenda list of the DMK in past also, but for two times, the DMK could not revive the council mainly due to lack of 2/3rd majority. In April 2010, the DMK Government passed a resolution and it was followed by a Tamil Nadu Legislative Council Bill, 2010 that was approved by both the houses of the Indian Parliament on May 6, 2010. The current AIADMK regime has expressed its intention not to revive the council and has passed a resolution in the Tamil Nadu Legislative Assembly in this regard.

Backgrounder: Andhra Pradesh Legislative Council:

When Andhra Pradesh was created, it was a unicameral state. But the legislative assembly passed the resolution in 1956 and thus in 1958 the Andhra Pradesh Legislative Council came in existence. This chamber was abolished in 1985 by the Andhra Pradesh Legislative Council (Abolition) Act 1985.

The M Chenna Reddy Government tried to revive the council in 1990. So the resolution was passed on 22 January 1990. But the 9th Lok Sabha dissolved due to fall of VP Singh Government, so the idea could not materialize. The State assembly again passed a resolution 2004. This was followed by the Andhra Pradesh Council Bill which was passed in both the houses in 2005 and got president's assent in 2006. The revived Council was constituted on 30th March, 2007.

Strength of the Legislative Council

Please note that Total Number of the Legislative Council should not exceed the 1/3rd of the total number of members of the Legislative assembly, but it **should not be less than 40. This is as per provisions of article 171.**

- **But please note that Jammu & Kashmir is an exception to this where the upper house has strength of 36 only. This is because; J & K assembly is created as per the J & K constitution which is separate from Constitution of India.**

The Strength of the 7 Legislative Councils of India is as follows:

- Andhra Pradesh : 90
- Bihar : 75
- Jammu & Kashmir: 36
- Karnataka : 75
- Maharashtra : 78
- Uttar Pradesh : 100
- Tamil Nadu : NA at the moment

Representation in the Legislative Council

In legislative Council, there are 5 different categories of representation.

1. 1/3rd of the total membership is elected by the electorates consisting of the members of the self Governing bodies in the state such as Municipalities, District Boards etc.
2. 1/3rd members are elected by the members of the Legislative assembly of the State
3. 1/12th members are elected by an electorate of University Graduates.

4. 1/12th members are elected by the electorate consisting of the secondary school teachers (3 year experience)
5. 1/6th members nominated by the Governor on the basis of their special knowledge / practical experience in literature, art, science, cooperative movement or social service.

For the first 4 categories mentioned above, the election is held in accordance with the system of proportional representation by means of a single transferable vote and secret ballot method.

✍ The above representation can be changed by parliament of India by law.

Eligibility to become a Member of Legislative Council (MLC)

To be eligible for membership of the Legislative council, a person

1. Must be citizen of India
2. Must have completed the age of 30 years
3. Must possess such other qualifications as prescribed by the parliament by law.

The member should not hold the office of the profit. Should not be of unsound mind and should not be an undischarged insolvent.

Duration:

The legislative council is permanent and 1/3rd of its member retire every 2 years. The members of the council elect a chairman which is called "presiding officer". The council also elects the Deputy chairman.

Legislative Assembly in a State

Legislative assembly is the popular house of the State legislature resembling in features with India's Lok Sabha. It is made up the members directly elected by the people of the state.

As per article 128, the Legislative assembly of each state cannot have number of members more than 500 and less than 60.

☞ However, there are exceptions to this and the states Sikkim (32), Goa (40) and Mizoram (40).

For election purpose, the state is divided into the number of constituencies as per the seats for the assembly.

The term of the assembly is 5 years but it can be dissolved prior to 5 years by Governor.

☞ During a National Emergency, the parliament by law can extend the term of a state assembly by 1 year.

Eligibility to become a MLA

✓ The person should be Citizen of India
✓ Should be more than 25 years of age
✓ Other qualifications as prescribed by the parliament by law.

Disqualification of MLA

A person is disqualified on the following grounds:

✓ If he/ she holds any office of the profit under the central or state Government
✓ If he/ she is of unsound mind
✓ If he / she is an undischarged insolvent
✓ If he / she has voluntarily acquired the citizenship of a Foreign country
✓ If he/ she is disqualified under any other law of the parliament such as anti-defection law.

Who decides that a person is disqualified?

The question, whether a person has been subject to any of the above disqualification will be referred to the Governor who decides in consultation with the election commissioner of the state. The decision of the Governor is final.

✓ The Governor of the state nominates One member to the state assembly as per provisions of article 333, if he / she is of the opinion that the community is not well represented in the state assembly.

Presiding Officer:

Presiding officer of the state legislative assembly is also known as Speaker who is elected by the members of the assembly. The members of the assembly also elect deputy speaker.

Legislative Process in states

There is hardly anything special with respect to the conduct of the business in state legislatures and it is almost same as that of process in Lok Sabha. Most of the articles are same even in verbatim. Some important points are as follows:

- ✍ The state legislature must meet at least twice a year and the interval between the any two sessions of the legislature should not exceed 6 months.
- ✍ The new session begins with the opening address by the Governor , in which the Governor outlines the policy of the state Government.
- ✍ This address is then debated and then a resolution is passed for thanks to Governor. During this debate, the opposition parties get opportunity to criticize the policy of the Government.
- ✍ Every bill except Money Bill can be introduced in either house of the legislature.
- ✍ The same process as we discussed in Union legislative process is followed and the bill is passed after third reading.
- ✍ After passing, the bill goes to Governor for assent. Here 4 courses of action arise for the Bill:
    1. The Governor gives assent to bill and it becomes an act
    2. Governor withholds the assent
    3. Governor returns the bill (provided it is NOT a money Bill)

2. Reserve the bill for consideration of the President

The Governor may send a bill back. If the legislature again sends the bill after passing it again, Governor cannot withhold the assent.

- ✍ However, a Governor may reserve assent for consideration of the President.
- ✍ Please note that President is NOT bound to give assent even if a bill is passed for second time in the State legislature.

Bill, State Legislature and President

Please not that Governor may not withhold assent to a Money bill because it is introduced with the prior recommendation of the Governor. However, in case of other bills, when the bill reserved by the Governor and sent to the President, President may give assent or withhold it. The president can also direct the Governor of the state to send back the bill to the state legislature for reconsideration. The state legislature,

in this case will have 6 months for re-passing the bill. **And after re-passing, it is NOT sent to the Governor again but sent to the President directly.** Still the President is NOT obliged to give assent. However, if President thinks is alright, then may go for advisory jurisdiction of the Supreme Court.

Law making Powers of the State Legislatures

- State Legislature can make laws on the subjects which are in the state list as well as concurrent list.
- However, if its own law on subjects from the concurrent list should not conflict with the Union Laws. If there is a conflict, the law passed by the Union shall prevail.
- State Legislature exercises the complete control of the finances and no taxes can be levied or expenditure incurred without the approval of the state legislatures.

Seats in State Legislative Assemblies

The following table shows the number of seats in 28 states , NCT of Delhi and Puducherry assemblies in decreasing order.

State	Seats	State	Seats
Uttar Pradesh	404	Haryana	90
Andhra Pradesh	295	Jammu & Kashmir	89
West Bengal	295	Jharkhand	81
Maharashtra	289	Delhi	70
Bihar	243	Uttarakhand	70
Tamil Nadu	235	Himachal Pradesh	68
Madhya Pradesh 230 (+1 nominated)	231	Arunachal Pradesh	60
Karnataka	225	Manipur	60
Rajasthan	200	Meghalaya	60
Gujarat	182	Nagaland	60
Orissa	147	Tripura	60
Kerala	141	Goa	40
Assam	126	Mizoram	40
Punjab	117	Sikkim	32
Chhattisgarh	90	Pondicherry	30

- Uttar Pradesh with 404 seats has the largest number of assembly seats in India.
- Sikkim with 32 seats has the lowest number of assembly seats in India among states.
- 14 states have more than 100 seats
- 5 states have 60 seats each.
- Only NCT of Delhi and Pondicherry are the UTs which have the assemblies.
- Decreasing order of 5 states is UP>AP>WB>Maharastra>Bihar
- Increasing order of 5 states with minimum seats is Sikkim<Mizoram=Goa<Tripura=Nagaland= Meghalaya

State Judiciary: High Courts

Article 214 to 231 deal with the High Courts in the states and Article 233 to 237 deal with the Subordinate Courts.

- Every state has a High Court which operates within its territorial jurisdiction.
- Every High Court is a court of record which has all the powers of such as court including the power to punish for contempt of itself.
- Neither the Supreme Court nor the High Court can deprive the High Court of its power of punishing for contempt of itself.

Brief History of High Courts in India

By **Indian High Courts Act 1861**, the Supreme & Sadar Courts were amalgamated. The 'Indian High Court Act' of 1861, vested in Queen of England to issue letters patent to erect and establish High Courts of Calcutta, Madras and Bombay.

- The High Courts of Calcutta, Madras and Bombay were established by Indian High Courts Act 1861.

Indian High Courts Act, 1861 did not by itself create and establish the High Courts in India. The objective of this act was to effect a fusion of the Supreme Courts and the Sadar Adalats in the three Presidencies and this was to be consummated by issuing Letter Patent. The jurisdiction and powers exercised by these courts was to be assumed by the High Courts.

The Indian High Courts Act 1861 had also spelled the composition of the High Court.

- Each High Court was to consist of a Chief Justice and NOT more than 15 regular judges.
- The chief Justice and minimum of one third regular judges had to be barristers and minimum one third regular judges were to be from the "covenanted Civil Service".
- All Judges were the be in the office on the pleasure of the Crown.

The High Courts had an Original as well as an Appellate Jurisdiction the former derived from the Supreme Court, and the latter from the Sudder Diwani and Sudder Foujdari Adalats, which were merged in the High Court.

- The Charter of High Court of Calcutta was issued on 14th May, 1862 and Madras and Bombay was issued on June 26, 1862.
- So, the Calcutta High Court has the **distinction of being the first High Court** and one of the three Chartered High Courts to be set up in India, along with the High Courts of Bombay, Madras.
- High Court at Calcutta which was formerly known as High Court of Judicature at Fort William was established on July 1, 1862. Sir Barnes Peacock was its first Chief Justice.
- On 2nd February, 1863, Justice Sumboo Nath Pandit was the first Indian to assume office as a Judge of the Calcutta High Court.
- The Bombay High Court was inaugurated on 14th August ,1862.
- Indian High Court Act 1861 also gave power to set up other High Courts like the High Courts of the Presidency Towns with similar powers.
- Under this power, a High Court was established in 1866 at High Court of Judicature for the North-Western Provinces at Agra on 17 March 1866 by the Indian High Courts Act of 1861 replacing the Sadar Diwani Adalat.
- Sir Walter Morgan, Barrister-at-Law was appointed the first Chief Justice of the High Court of North-Western Provinces. However it was shifted to Allahabad in 1869 and the name was correspondingly changed to the **High Court of Judicature at Allahabad from 11 March 1919**.

In 1950, when the Supreme Court of India was inaugurated, the High Court's came directly under the Supreme Court, and this a single all India judicial system was created.

- Please note that Supreme Court is not vested any administrative powers over the High Courts and High Courts act as independent Judicial Institutions.

High Courts in India v/s High Courts in United States

In United States, the State High Courts are constituted under the state constitutions. They are in anyways, not linked to the Federal Judiciary. The appointment method as well as conditions of the service in America varies from state to state. But in India, there is a single Judiciary and there is uniformity in appointment, terms of service, functionality and procedures.

- **Article 214** says that there shall be a High Court in every state.
- **Article 215** says that each High Court shall be a court of record
- **Article 216** says that every High Court shall have a Chief Justice and other judges who shall be appointed by the President.

Appointment of the Judges of High Courts

- Article 217 deals with the appointment of the Judges of High Courts.
- **Article 219** describes the oath of affirmation for the high court judge.

The procedure of appointing the Judges of the High Courts in India is slightly different from the appointment of the Judges of the Supreme Court.

As per article 217, the chief Justice of the high court is appointed by the President in consultation with the Chief justice of India as well as the Governor of the state in question. In the appointment of the other judges, the Chief Justice of High Court is also consulted.

So, in the appointment of the regular Judge of the High Court, the President seeks consultation with three authorities.

1. **Chief Justice of India**
2. **Chief Justice of the High Court**
3. **Governor of the state**

Practically, till 1981, the situation was that the Chief Justice of the High Court used to make recommendation to the Governor. After that the mater used to go to the Centre level and Chief justice of India was consulted. Based upon that either the appointment was made or not made. In 1999, the situation changed after Supreme Court rendered an unanimous opinion on a presidential reference.

The decision said that Consultation with CJI means Consultation with plurality of the Judges in the formation of opinion of the CJI.

So, normally the CJI consults with 4 regular judges of the Supreme Court.

As per article 217-220,

- if a Judge of High Court is appointed on a permanent basis, he holds the office until he completes the age of 62 years. (In supreme court it is 65 years).
- The Minimum Qualification prescribed is Indian Citizenship and minimum 10 years of experience either as an advocate of the High Court of India or as a Judicial officer with minimum 10 years experience.
- If, an advocate later becomes a Judicial Officer, then, in computing 10 years, the experience as an advocate can be combined with that of a Judicial Officer.

- The salaries and allowances of the Chief Justice of High Court and Judges of the High Court are decided by the parliament by law , time to time.
  - Current salary of Chief Justice is ₹ 90,000
  - Current salary of Regular Judge is ₹ 80, 000

The salaries and other expenses of the judges and maintenance of the state high courts are charged from consolidated fund of the state. The article 202 deals with the state budget. Article 202(3) says: The following expenditure shall be expenditure charged on the Consolidated Fund of each State—

1. the emoluments and allowances of the Governor and other expenditure relating to his office;
2. the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and, in the case of a State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council;
3. debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
4. expenditure in respect of the salaries and allowances of Judges of any High Court;
5. any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
6. any other expenditure declared by this Constitution, or by the Legislature of the State by law, to be so charged.

However please note that the retired Judges are entitled to a pension which is drawn from consolidated fund of India.

Removal of the Judge of a High Court

- **Article 218** says that certain provisions of clauses (4) and (5) of article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court.

  A Judge of the High Court can be removed from office only for proved misbehavior or incapacity and only in the same manner in which a Judge of the Supreme Court is removed.
- The President of India can remove a Judge of the High Court, from his office only if the parliament passes a resolution by a two third majority of its members present and voting in each house requesting him to remove the Judge.
- Transfer of the Judges is done by the President in consultation with the following
  - Chief justice of India' whose opinion is formed by senior most judges of the Supreme Court.
  - Chief Justice of the High court from where transfer is to take place.
  - Chief Justice of the High Court to where the transfer is to take place

Jurisdiction of the High Court

There are no detailed definitions and classification in the Constitution of India as far as Jurisdiction of the High Courts in concerned. The High Courts have been given full power to make rules and regulate their Jurisdiction.

- Apart from the normal original and appellate jurisdiction, the constitution vests 4 additional powers to the High Courts. These are:
  - The power to issue writs or orders for the enforcement of Fundamental rights and some other purposes.

- Power of superintendence over all other state courts. The High Court exercises the supervision of all the other courts and tribunals in the state.
- The power to transfer the cases from other subordinate courts in the state to itself. (227)
- Power to appoint the officers and servants of the High Courts. (228)

Article 226 makes the High Courts protectors of the Fundamental rights, within their own jurisdictions, in the same way Article 32 makes the Supreme Court ultimate protector of the Supreme Court.

- Most of the high court's in India , at the time of Framing the Constitution were functioning in the well defined jurisdictions. The High Court kept enjoying almost all the same powers which they enjoyed immediately before the commencement of Constitution of India.
- The Constitution of India makes High Court the Court of Record.

Factsheet on Indian High Courts

Name	Establishment	Established by	Seat	Bench(S)	Jurisdiction
Allahabad	11-6-1866	High Courts Act, 1861	Allahabad	Lucknow	Uttar Pradesh
Andhra Pradesh	5-7-1954	Andhra State Act, 1953	Hyderabad		Andhra Pradesh
Bombay	14-8-1862	High Courts Act, 1861	Mumbai	Nagpur, Panaji and Aurangabad	Maharashtra, Goa, Dadra & Nagar Haveli , Daman and Diu
Calcutta	2-7-1862	High Courts Act, 1861	Calcutta	Circuit Bench at Port Blair	West Bengal, Andaman and Nicobar Islands
Chhattisgarh	11-1-2000	Madhya Pradesh Reorganization Act, 2000	Bilaspur		Chhattisgarh
Delhi	31-10-1966	Delhi High Court Order, 1966	Delhi		NCT Delhi
Guwahati	1-3-1948	Government of India Act, 1935 as adopted by the Indian Provisional Constitution (Amendment) Order, 1948	Guwahati	Kohima , Imphal , Aagartala , Shillong , Aizwal and Itanagar	Assam, Manipur, Meghalaya, Nagaland, Tripura, Mizoram, Arunachal Pradesh
Gujarat	1-5-1960	Bombay Reorganization Act, 1960	Ahmadabad		Gujarat
Himachal Pradesh	1971	State of H.P. Act, 1970	Shimla		Himachal Pradesh
Jammu & Kashmir	28-8-1943	Letters Patent issued by the Maharaja of Kashmir	Srinagar & Jammu		Jammu & Kashmir
Jharkhand	2000	Bihar Reorganization Act, 2000	Ranchi		Jharkhand
Karnataka	1884	Mysore High Court Act, 1884	Bangalore		Karnataka
Kerala	1958	The Kerala High Court Act, 1958	Ernakulum		Kerala & Lakshadweep
Madhya Pradesh	2-1-1936	Government of India Act, 1935	Jabalpur	Gwalior and Indore	Madhya Pradesh
Madras	15-8-1862	High Courts Act, 1861	Madras	Madurai	Tamil Nadu ,Pondicherry
Orissa	3-4-1948	Orissa High Court Order,1948	Cuttack		Orissa
Patna	9-2-1916	Government of India Act, 1915	Patna		Bihar
Punjab & Haryana	11-8-1947	High Court (Punjab) Order, 1947	Chandigarh		Punjab , Haryana and U.T. of Chandigarh
Rajasthan	21-6-1949	Rajasthan High Court Ordinance, 1949	Jodhpur	Jaipur	Rajasthan
Sikkim	1975	Article 371-F(i) vide Constitutional (Thirty-Sixth Amendment) Act, 1975	Gangtok		Sikkim
Uttarakhand	2000	U.P. Reorganization Act, 2000	Nainital		Uttarkhand

The Making of the Union Territories

We have studied that when India became independent; British left our country virtually divided in two parts viz. British India and Indian India. The British India was the provinces which were at that under the direct control of the British Empire. The Indian India was comprised of 562 princely states, which looked very much like the Balkanized Europe. Some of them were big, some of the medium and some of them were very small in size and poor in resources. But on 15 August 1947, all of them became independent. They were technically sovereign,

because paramountcy[2] of the British Crown had lapsed on that date under Article 7(1) of the Indian Independence Act 1947. These states were completely independent and **free to join either India or Pakistan or remain Free**.

Apart from the princely states, there were some territories in the control of France such as Pondicherry and Portugal such as Goa.

Then started a process of merger. The merger resulted in four types of states as follows:

1. **Part A:** 216 states were merged with the neighboring British Indian provinces and they were called Part A states.
2. **Part B:** 275 states were integrated and made new viable units and they were called Part B states
3. **Part C:** 61 princely states which were not covered by any of the above categories due to circumstances were constituted as part C states

✍ **Part D :** The islands of Andaman and Nicobar were placed in a separate category part D.

However, the modification in the number of the states kept changing for few years in the above parts B and C. In Part B, there were 5 princely states viz. Hyderabad, Jammu & Kashmir, Madhya Bharat, Mysore, Patiala, Eastern Punjab. But before States Reorganization Act 1956, the number of Part B increased to 8 and they were as follows:

1. Hyderabad
2. Jammu & Kashmir
3. Madhya Bharat
4. Mysore
5. PEPSU (Patiala & East Punjab States Union)
6. Rajasthan
7. Saurastra
8. Travancore-Cochin

Similarly, there were some areas which were not merged with other states and were kept under the administration of the central Government. In part C the five princely states initially were Ajmer, Bhopal, Bilaspur, Cooch-Bihar and Coorg. When the centrally administered areas were also kept in this part C, the number of the states in part C became 10. They were as follows:

1. Ajmer
2. Bilaspur
3. Bhopal
4. Coorg
5. Delhi
6. Himachal Pradesh
7. Kutch
8. Manipur
9. Tripura
10. Vindhya Pradesh

Finally in part D the Andaman & Nicobar Islands were kept.

We can see that this organization momentarily solved the problem of political integration of the country, soon after the independence. But, there was an increasing feeling for states on linguistic basis.

When the discussion about the States Reorganization was going on there was a problem, that how to assign a status the 10 states which have been kept under Part C. There were a few alternatives for the states Reorganization Commission such as:

[2] Paramountcy means rule or dominion

1. Make them fully fledged states and assign them a status equal to the states of part A
2. Keep the classification in Part A, B, C & D as it is.
3. Abolish them as separate entities and merge them with the neighboring part A and part B states.

The States Reorganization Commission summed up this as follows:

1. It was of the opinion that existing set up of the part C was unnecessary.
2. These small units were in various phases of development, some of the backward comparing to the neighboring states and some of them culturally different.
3. The units are so small that if they are given status equal to part A, then the increased cost of the administrative efficiency may not be justified.
4. They are excessive dependent upon the centre.

So, the States Reorganization Commission concluded that due to the financial, administrative and constitutional difficulties, they cannot be assigned a status of Part A.

The States Reorganization commission offered the plan to get merged some of them to their nearby states and finally the create only two types of the units viz. States and Union Territories.

This new category i.e. Union Territory comprised of the territories which were either culturally or socially distinct or of vital strategic importance to the country as a whole. The plan was accepted. So the States Reorganization Act 1956 created the following 6 Union Territories:

1. Andaman & Nicobar Islands
2. Delhi
3. Himachal Pradesh
4. Laccadive, Minicoy & Aminidivi Islands
5. Manipur
6. Tripura.

However now, there are 7 Union Territories as follows:

- Andaman and Nicobar Islands
- Chandigarh
- Dadra and Nagar Haveli
- Daman and Diu
- Lakshadweep
- Puducherry
- National Capital Territory of Delhi

Out of them Delhi and Puducherry have been given "Statehood". Technically Delhi is a federally administered union territory, the political administration of the NCT of Delhi today more closely resembles that of a state of India with its own legislature, high court and an executive council of ministers headed by a Chief Minister.

Constitutional Provisions in context with Union Territories

Following are the articles that deal with the administration machinery of the Union Territories .

- Article 239: Administration of Union territories.
- Article 239A: Creation of local Legislatures or Council of Ministers or both for certain Union territories.
- Article 239AA: Special provisions with respect to Delhi.

- Article 239AB: Provisions in case of failure of constitutional machinery.
- Article 239B : Power of administrator to promulgate Ordinances during recess of Legislature.
- Article 240 : Power of President to make regulation for certain Union territories.
- Article 241 : High Courts for Union territories.
- Article 242. This article is repealed.

Essence of these articles is as follows:

Article 239: Administration of the Union Territories

The administrators of the Union territories in India are known as Lieutenant Governors, Chief Commissioners or Administrators. In Andaman & Nicobar Islands and Puducherry administrator is called Lt. Governor, while in Chandigarh, Dadra & Nagar Haveli, Daman & Diu and Lakshadweep he/ she is known as Administrator. In Delhi also Lt. Governor is the administrator who is appointed by the President.

- The Union Territories will be administered by the President through an administrator, who will be appointed by him with a suitable designation.
- The President may appoint a Governor of an adjoining state as administrator of a Union territory. In such case the Governor works independently with regard to the administration of the Union Territory.

Article 239 A: Power of Parliament to create local legislatures

- Parliament of India was empowered to create a legislature or Council of Ministers or both of them for a Union Territory via Constitution (Fourteenth Amendment) Act, 1962. So power to decide the structure of administration in the UT is vested in Parliament.
- Article 239A was inserted in the constitution by 14th amendment act 1962.
- **Note:** On 16 August 1962, the Treaty of Cession was ratified by the Governments of India and France. Based upon this treaty, the French establishments of **Pondicherry, Karikal, Mahe and Yanam** became territories of the Indian Union with effect from that date. The Constitution 14th amendment Act provided these territories being specified in the constitution itself as a Union territory called 'Pondicherry'.
- **The name Pondicherry was replaced by Puducherry by Pondicherry (Alteration of name) Act 2006 in October 2006.**
- As per article 239A, the Parliament by law creates for the UT of Puducherry a Legislature and a Council of Ministers.

Article 239AA: Special Provisions with respect to Delhi

- **Article 239AA** was inserted in the Constitution by **69th amendment act 1991** of the Constitution of India.
- This article provides special provisions for the Union Territory of Delhi. After the 69th Amendment Act 1991, w.e.f from February 1, 1992, the UT of Delhi is called National Capital Territory of Delhi. The administrator of the NCT as appointed by the President of India as per article 239 is known as Lieutenant Governor.
- Via Article 239AA, a legislative assembly for NCT of Delhi was provided. The power to decide the number of the seats and reservation of the seats was vested in the parliament.
- With this, Delhi became a state and the Constitutional provisions with regard to Elections (Article 324-327 and 329) became applicable in NCT.

On which subjects the Delhi State legislature make laws?

As per the provisions of the Article 239AA inserted by Constitution 69th Amendment Act 1991, the State Government of Delhi can make laws for whole or part of the NCT on all subjects in the State List or Concurrent List except the following subjects of the **State List:**

- Entry 1: Public Order
- Entry 2: Police
- Entry 18: Land

And

- Entry 64: Offences against the laws
- Jurisdiction power of all courts
- Fees

} If the subject matter of these 3 is related to any of the entry 1, 2, & 18

This means that Delhi has been endowed with a legislative Assembly with a chief minister and a council of ministers with limited powers, distinct from the powers available for them in other states. The Article 239 AA has kept the Matters covered by Entries 1, 2 and 18 of the state list of Seventh Schedule i.e. Public order, police and land outside their purview.

What is implication of this provision?

Currently (as appeared in news on November 25th, 2010), the Delhi Government is getting ready for bringing a resolution for the full statehood to Delhi. This is because, as per article 239AA, the Municipal Corporation of Delhi comes under the Union Government. Apart from that there are issues with the Delhi Police also, which again comes under the Union Government.

The **State of Delhi Bill, 2003** was moved in the Parliament by L K Advani during the NDA Government. This bill endowed the entire National Capital Territory of Delhi with full statehood. The Bill went to the parliamentary standing committee, which was headed by Pranab Mukherjee. The committee did not make any major recommendations except a provision that confers special powers to the President, to give direction for good governance and proper development of the State of Delhi. The bill got lapsed, when the session of the Lok Sabha ended.

This issue is pending to be resolved. The Current Sheila Dixit Government is of the view that a Full Statehood should be given to Delhi and New Delhi should get the Union Territory Status. There is another model too. This model has the idea that DDA, MCD, Land and Revenue should go to the Delhi State while the NDMC, Delhi Police to stay with centre along with the security of the VIP lands, Parliament, Rashtrapati Bhavan and Lutyen's Bungalow Zone.

Article 239AB: Provisions in case of failure of Constitutional Machinery

Article 239AB deals with President's rule in NCT of Delhi. Article 239AB provides that if the Lieutenant Governor of Delhi gives a report to the President that a situation has arisen in National Capital Territory of Delhi in which the administration cannot be carried out in accordance with the provisions of the article 239AA, then President can suspend any provisions of Article 239AA.

Article 239 B : Ordinance making Power of Administrator

Article 239B gives the administrator of the Union Territory of Puducherry the power of ordinance making. The administrator of Puducherry can promulgate an ordinance when the legislative assembly of Puducherry is NOT in session and the ordinance can be promulgated with the prior permission of President only. Rest of the features of the ordinance is same as Governor of a state.

Article 240: Power of President to regulate peace, progress and good government

President may make regulations for the peace, progress and good government of the Union Territories of the Andaman & Nicobar Islands, Lakshadweep, Dadra & Nagar Haveli, Daman & Diu and Puducherry. However as far as Puducherry is concerned, President does not make any law on regulation for the peace, progress and good government after the Legislature of the Puducherry was created and had its first meeting.

- But during the dissolution or suspension of the Puducherry Legislative assembly, the president can regulate the peace, progress and good government .

Article 241: High Courts for UTs

As per article 241, Parliament of India can constitute a High Court for a Union Territory, or declare any court in any such territory to be a High Court. The parliament can exclude or extend the jurisdiction of a High Court of a state to any Union Territory or part thereof.

Please note that all Union Territories except Delhi are at present under the jurisdiction of the High Courts of various states.

In Goa, the Judicial Commissioner's Court was given certain powers of a High Court under the provisions of the Goa, Daman and Diu (judicial Commissioner's Court) Regulation, 1963. But it was not a full-fledged High Court. The Judicial Commissioner also did not enjoy those constitutional safeguards which protect the independence of a High Court Judge. Later the jurisdiction of High Court of Judicature at Bombay was extended to the State of Goa and Union territories of Daman and Diu and Court of the Judicial Commissioner was abolished and a permanent bench of High Court of Judicature at Bombay is established at Panaji (Goa) on 30th October, 1982 as per the provisions of The High Court at Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act, 1981.

When Goa became a state of India via the Goa, Daman & Diu Re-organization Act, 1987, High Court of Bombay became the common High Court for the states of Maharashtra and Goa and the Union Territories of Dadra & Nagar Haveli and Daman & Diu from March 1987.

- The Jurisdiction of Kolkata High Court extends over Andaman & Nicobar Islands.
- The jurisdiction of Punjab and Haryana High Court extends to Chandigarh.
- The Jurisdiction of Kerala High Court extends at Lakshadweep and
- Jurisdiction of Chennai High Court extends at Pondicherry.

Introduction to Part IX of Constitution of India

During the Vedic Era, the village administration was looked after by a village head which was called a "Gramini". Gramini was the head of the village and was representative of the village at the coronation of the king. The terms such as Gramika, Gopa, Sabha, Samiti which appear in the Vedas, Epics, Upanishads etc. are

the proof of the existence of the collective authority at the village level in ancient India. Women were part of these village level institutions. Villages enjoyed the self Government and each village of ancient India was a vital , self sustaining and dynamic unit of the society.

- During the medieval times, the villages lost their autonomy and revenue started being collected by the central government through its own collectors. The village level judicial institutions also lost their relevance. During the British Era, powerful central government made the villages lose their autonomy almost completely. The village Panchayats got eclipsed by the corrupt village headmen and village accounts and apathy of the Central Government.
- It was the **Mayo's Resolution of 1870** that initiated a dialogue on local institutions by attempting to enlarge their powers and responsibilities.
- **Then in 1882**, Lord Ripon passed historic Resolution on Local self Government.

  However, this Resolution on Local self Government had no reference to the village level Panchayats.

  But the result of this resolution was that a general feeling of reviving the village level Panchayats was developed over next quarter century when **in 1907, the Royal Commission on Decentralization was appointed.**
- This commission for the first time recommended the revival of the Village Level Panchayats in India.

  Post World War I, Indian national Congress undertook the task of campaigning for organizing Panchayats in Villages. During the Non-cooperation movement 1920-24, the Government established courts were boycotted and people's private courts were established. This was the beginning of un-official Panchayats in the country, which became popular in the wake of the militant nationalism in India.

  After India's independence, the development programme i.e. Community Development programme was launched in 1952. But this could not result in much success in rural development.

Part IX, IXA and Original Constitution: Important

Part VIII of the original Constitution of India dealt with the Part C states. **Part IX of the original Constitution of India dealt with Part D states**. Since, the classification of the states in parts A, B, C & D was removed via the **States Reorganization Act 1956**, so via **Constitution 7th Amendment Act 1956**, the Part IX of the Constitution was repealed. Later, a New Part IX was inserted in the Constitution of India via Constitution 73rd Amendment Act 1992, which is effective from 24 April 1993. Since, there was only one article 243 in the original constitution, the articles 243 A to O were inserted below article 243 so that there is a consistency in the numbers of the articles. Further, via 74th amendment act 1992, Part IXA was inserted. Since, this was not a replacement to any previous part, article 243 P to 243 ZG were inserted in this part.

- So, the Current part IX and IXA of the constitution of India are of Post-commencement of the Constitution entities.

But this does not mean that Constitution omitted the importance of the Panchayati Raj completely. The **Article 40 of the Constitution** which enshrines one of the Directive Principles of State Policy lays down that the **State shall take steps to organize village Panchayats** and endow them with such powers

and authority as may be necessary to enable them to function as units of self-government. The next half century saw a continuous development in the Panchayati Raj Institutions of the country.

Balwant Rai Mehta Committee 1959

The **Community Development Programme** was launched in 1952. This programme was formulated to provide an administrative framework through which the government might reach to the district, tehsil / taluka and village level. All the districts of the country were divided into "Development Blocks" and a "Block Development Officer (BDO)" was made in charge of each block. Below the BDO were appointed the workers called Village Level Workers (VLW) who were responsible to keep in touch with 10-12 villages. So, a nationwide structure was started to be created. Thousands of BDOs and VLW's were trained for the job of carrying out array of government programmes and make it possible to reach the government to villages. Top authority was "Community Development Organization" and a Community Development Research Center was created with best academic brains of the country at that time.

- But this programme could not deliver the results. The programme became an overburden on the Government.

Further, in 1953, the National Extension Services were started under which the entire country was divided into Blocks. These Blocks were envisaged as smallest division for development work.

In 1957, the **Balvant Rai Mehta Committee** was appointed to study the **Community Development Programmes** and **National Extension Services Programme** especially from the point of view of assessing the extent of people's participation and to recommend the **creation of the institutions** through which such participation can be achieved.

Who was Balwant Rai Mehta?

Balwant Rai Mehta was one of the legendry freedom fighters of the country who participated in the Bardoli Satyagraha. He is best known **as second Chief Minister of Gujarat**. Balwant Rai Mehta was a parliamentarian when the committee was established.

He is credited for pioneering the concept the Panchayati Raj in India and also known as Father of Panchayati Raj in India.

Following were the landmark recommendations of the Balwant Rai Mehta Committee:

1. Panchayati Raj Institutions should be composed of elected representatives and should enjoy enough autonomy and freedom.
2. The **Balwant Rai Mehta committee recommended** a **3-tier Panchayati Raj System** which includes
1. **Zila Parishad** at the District Level
2. **Panchayat Samiti** at the Block/ Tehsil/ Taluka Level
3. **Gram Panchayat** at the Village Level

- But the committee did not insisted on a rigid pattern. It recommended that the states should be given freedom to choose and develop their own patterns as per the local conditions.

3. The committee recommended that **the above 3 tiers should be organically linked together** through an **instrument of indirect election**.

4. The committee recommended that the Gram Panchayats should be constituted with directly elected representatives, whereas the Panchayat Samiti and Zila Parishad should be the constituted with indirectly elected members.
5. The status of the Panchayat samiti should be of that of an executive body, while the status of the Zila Parishad should be that of an advisory body.
6. The Zila Parishad should be chaired by the District Collector.
7. These democratic bodies must be given genuine powers.
8. These bodies should be given adequate resources to carry out the functions and fulfill the responsibilities.

Thus we see, that most of the recommendations of the Balwant Rai Mehta committee reflect in the Panchayati Raj institutions, we see them today. The recommendations of the Balwant Rai Mehta committee were accepted by the National Development Council in 1958 and subsequently Rajasthan in 1959 became the first state in India to launch the Panchayati Raj.

- The institution of Panchayati Raj was inaugurated by Jawahar lal Nehru on October 2, 1959 in **Nagaur District of Rajasthan**.
- 9 days later, Andhra Pradesh became the second state to launch Panchayati Raj at **Shadnagar** near Hyderabad

The launch of the Panchayati Raj institutions was a thumping success and soon the states started adopting the institutions. This continued for 5-6 years and after that the institutions started crippling due to lack of resources, political will, and bureaucratic apathy and change the government priorities.

- The rural elites dominated the system and the benefit of the development schemes was not able to reach to the last corner of the country.

The legitimacy of the Panchayati Raj institutions came under questions. There was not much development in this site until the Congress was thrown out of center and Janta Government came in 1977.

Santhanam Committee: 1963

The Balwant Rai Mehta Committee was followed by the Santhanam Committee. This committee was formed by the Government of India with terms of reference as follows:

1. Handing over resource of revenue in full / part to the PRIs
2. The criteria of Sanction of grants to them by State Government
3. Status of the Financial Relations between the different levels of PRIs.

So, in a nutshell, the Santhanam Committee's scope of study was the financial matters of the PRIs. The important recommendations this committee made are as follows:

1. The Panchayati Raj Finance Corporations should be established.
2. All the grants at the state level should be sent in a consolidated form to various PRIs
3. Panchayats should have power to levy special tax which should be based upon the land revenue and house tax etc.

Ashok Mehta Committee: 1977

The main problem of the PRI was that it got dominated by the privileged section of the village society. In December 1977, the new Janta Government appointed a 13 member committee which was headed by Mr. Ashok Mehta. The committee was appointed for following:

1. Study the causes responsible for poor performance of the PRIs
2. Suggest measures to improve performance of the PRIs

This committee submitted its report in 1978 and made more than 130 recommendations.

The essence of Ashok Mehta Committee recommendations is as follows:

Structure:

1. The committee recommended to scrap the 3-tier system of Panchayati Raj and said that the **3-tier should be replaced by the 2-tier system**. The two tiers were:

a. Zila Parishad at the district level

b. Mandal Panchayat, which should be a Panchayat of group of villages covering a population of 15000 to 20000.

c. Mandal Panchayats should be at the base and they should contain 15 members directly elected by the people. The head of the Mandal Panchayat should be elected among the members themselves.

d. The Zila Parishad members should be elected as well as nominated.

e. The MLA and MPs of the area should have the status of Ex-officio chairmen of the Zila Parishads.

2. The Ashok Mehta Committee **recommended abolishing the Blocks** as unit of administration. It recommended that the **district should be the first point** for decentralization under **popular supervision** below the state level.

a. Zila Parishad should be the executive body and made responsible for planning at the district level.

Elections:

1. The committee recommended regular elections. For imperative supersession, election should be held within 6 months from the date of supersession.
2. The political parties should participate at the Panchayat elections.
3. The Chief Electoral Officer of the state in consultation with the Chief Election Commissioner should organize and conduct the Panchayati Raj elections.
4. Seats for SCs and Sts should be reserved on the basis of their population.

Finance and Revenue:

1. The problem of the Finance can be solved by putting compulsory items of taxation under their jurisdictions, so that they are able to mobilize their own financial resources.
2. The committee recommended that there should be regular audit at the district level and a committee of legislatures should check whether the funds allotted for the vulnerable social and economic groups are actually spent on them.

Judiciary at Panchayat level:

3. The Ashok Mehta Committee recommended that the **Nyaya Panchayats** should be kept as separate bodies from that of **development Panchayats**. The Nyaya Panchayats should be presided over by a qualified judge.
4. The voluntary agencies should play an important role in mobilizing the support of the people for Panchayati Raj.
5. Development functions should be transferred to the Zila Parishad and all development staff should work under its control and supervision.

State Level Intervention:

- The committee recommended that there should be a **minister for Panchayati Raj** in the state council of ministers to look after the affairs of the Panchayati Raj institutions.

We see that the democratic decentralization initiated by the Balwant Rai Mehta Committee were taken forward by the Ashok Mehta Committee. But before any action could be taken on the recommendations of this committee, the Janta Government collapsed. So, the zeal to implement the recommendations got wiped out.

- However, **West Bengal and Karnataka** were two states that took initiatives on the basis of recommendations of the Ashok Mehta Committee.
- As per the recommendations the Karnataka Government passed the Karnataka Zilla Parishads, Taluk Panchayat Samitis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (Karnataka Act 20 of 1985)

Please note that Ashok Mehta Committee divided the PRI in Post-Independence Era as follows:

1. Phase of Ascendency : 1959-64
2. Phase of Stagnation: 1965-69
3. Phase of Decline 1669 -77

The committee noted that except the states of Maharastra and Gujarat, the PRIs were not given an opportunity to take up implementation at a satisfactory level. The Zila Parishads were not relevant in the implantation of several Government programmes which ought to implement at the grass root level. Committee noted that the bureaucracy was also responsible for the decline for particularly two reasons:

1. The officers felt that they are primarily accountable to the State Governments.
2. They were not able to adjust to the working under the supervision of the elected representatives.

G V K Rao Committee: 1985

The Ashok Mehta Committee was followed by GVK Rao Committee in 1985. This committee was appointed prior to the 7th Five Year Plan, to recommend on an integrated concept for growth and poverty alleviation. The committee had the following tasks:

1. Examine the existing administration structure for rural development and detail out the functions and revenue resources of the PRIs
2. Recommend the administrative arrangements for rural development and poverty alleviation programmes.
3. Recommend on revitalizing the PRI.

The essence of the recommendations of the GVK Rao Committee is as follows:

1. The **district level Zila Parishad should be the basic unit** for policy planning and programme implementation. The Zila Parishad should be the pivotal body for the scheme of the democratic decentralization.
2. The **State level planning functions should be transferred to the Zila Parishad** for effective decentralized planning.

So, in a nutshell, the GVK Rao committee was of the view of **making the district as the pole of democratic centralization**. The committee also recommended that **a post of District Development Commissioner should be created,** who would work as the CEO of the Zila Parishad.

The District Development Commissioner should be the in charge of all the developmental departments at the district level.

✍ This was a big deviation from the previous committees which recommended the lower bodies as bases and assigned the major role to the Panchayats and Mandal Panchayats in the development.

L M Singhvi Committee: 1986

A year after the GVK Rao committee, the Government of India set up Dr. L M Singhvi Committee. The prime minister was Rajiv Gandhi. The LM Singhvi Committee was of the view that the Panchayati Raj Institutions declined in the country because of

1. Absence of a clear concept
2. Absence of political will
3. Lack of Research, evaluation and monitoring.

The committee was in favor of making ways for the PRIs to ensure the availability of the enough financial resources.

✍ The LM Singhvi Committee is best known for recommending the constitutional status for Panchayats.

✍ This was virtually the first committee after decades of India's experiments with the decentralization which found **the "Gram Sabhas" as the "incarnation of the direct democracy".**

Here are the notes from its recommendations:

1. The PRIs should be recognized, protected and preserved constitutionally. A new chapter should be added in the Constitution of India which should enshrine the provisions to ensure free, regular and fair elections in the PRIs.
2. For revenue procedures, the Singhvi Committee was of the view that there should be optional and compulsory levies which should be entrusted to the PRIs. For initial years, the state government may levy on behalf of the PRIs and disburse money to them. This disbursement should be based upon the recommendations of the State Finance Commissions.
3. For Jurisdiction of the PRI's the Singhvi Committee recommended that Nyaya Panchayats should be established for a cluster of villages.
4. Gram Sabha is the embodiment of the direct democracy and the village Panchayats should be more organized. Gram Sabha should be given importance.

5. The Singhvi Committee also recommended establishment of the Judicial Tribunals in the states which would tackle the controversies regarding the elections to the Panchayati Raj institutions.

Sarkaria Commission

The above recommendations of the Singhvi Committee, though revolutionary, were opposed by the **Sarkaria Commission on Centre-State Relations**, which submitted its report in 1988. This commission was of the view that enacting any law on the Panchayats is exclusive power vested in the states and rather than adding a new chapter in the Constitution, there should be a uniform law , applicable throughout India. A model bill can be drafted on the basis of consensus among all the state at the level of Interstate Council.

64th Amendment Bill

But, now the government had zeroed in on giving constitutional protection to the PRIs. In this regard, the 64th amendment bill was introduced in the parliament by Rajiv Gandhi Government on 15 May 1989. The bill got lapsed because it could not pass in **Rajya Sabha**. This was on 15 October 1989. On 27 November 1989, the tenure of the Rajiv Gandhi government ended and elections were held. Rajiv Gandhi lost the elections, and the result was a minority government under V.P. Singh and the National Front. This was the **first minority government, since 1947**, with the help of the Left Parties and Bharatiya Janta Party, who supported the government from outside.

74th amendment Bill

The VP Singh Government introduced the 74th Constitutional Amendment Bill on September 7, 1990. This bill also got lapsed because the minority Government of VP Singh collapsed leading to dissolution of the Lok Sabha.

72nd Amendment Bill and 73rd Amendment Act

The 72nd amendment Bill was enshrining a comprehensive amendment of the Constitution and was introduced on 10th September, 1991 by G. Venkat Swamy. The bill was passed in the Lok Sabha on December 22, 1992 and the Rajya Sabha on December 23, 1992. After having been ratified by 17 state assemblies this bill came into effect as **Constitution 73rd Amendment Act 1993** w.e.f April 24, 1993.

✓ So, April 24, 1993 is the landmark day in the history of Panchayati Raj in India.

By this amendment act, a new Part IX was inserted in the Constitution of India enshrining the provisions for the Panchayats.

73rd Amendment Bill and 74th Amendment Act

Please note that Constitution (73rd Amendment) Bill was introduced in the Parliament in 1991,which was referred to the Joint Parliamentary Committee with Members from both Lok Sabha and Rajya Sabha for consideration. Bill as reported by the Joint Parliamentary Committee was taken up for consideration and passed by the Lok Sabha on 22nd December, 1992 and by the Rajya Sabha on 23rd December, 1992 and it received the assent of President on **20th April, 1993**.

✓ It was published in the Government Gazette on 20th April, 1993 as the "Constitution (Seventy Forth Amendment) Act, 1992".

Constitution (Seventy Forth Amendment) Act, 1992 has introduced a new part Part IXA in the Constitution, which deals with Municipalities.

Salient features of the 73rd Amendment Act 1992

1. There shall be a gram Sabha in each village which would exercise the powers and performs functions at the village level as the "State legislature may provide by law"
2. This act provided for a 3 tier Panchayats, which would be constituted in every state at the village level, intermediate level and district level.

a. This provision brought the uniformity in the Panchayati Raj structure in India.

b. The states which were having population below 20 Lakh were given an option to not to have the intermediate level.

3. The elections for Panchayats would be held regularly at every 5 years. While the elections in respect with all the members to Panchayats at all levels would be direct, the elections with respect to the post of chairman at the intermediate level and district level would be indirect. How the chairman of the village level Panchayat has to be elected, that is the question left open to the State Governments to decide.
4. In case there is any supersession, elections should be completed before the expiry of the 6 months from the date of dissolution.
5. The power to authorize the Panchayats to levy appropriate suitable local taxes and to provide grant in aid to the Panchayats from the Consolidated Fund of State, has been vested in the State Government.
6. The Finance Commissions of the State are to be appointed to review the financial position of the Panchayats and make suitable recommendations to the states on the distribution of funds between the state and the local bodies.
7. The Panchayats that were constituted before commencement of this amendment would continue to exist unless dissolved otherwise.
8. This amendment act mandated the state Governments to make suitable amendments to their own Panchayat acts as to conform the provisions of the Constitution of India.

Study of Constitutional Provisions : Article 243A to Article 243 O

Article 243 defines the various entities pertaining to the Panchayati Raj. As per this article:

- ✓ **"Gram Sabha"** means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;
- ✓ "intermediate level" means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;
- ✓ "Panchayat" means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas;
- ✓ "Panchayat area" means the territorial area of a Panchayat;
- ✓ "population" means the population as ascertained at the last preceding census of which the relevant figures have been published;

- ✓ "Village" means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

Article 243 A

This article says that there shall be a gram Sabha in each village which would exercise the powers and performs functions at the village level as the "State legislature may provide by law"

Article 243 B

This article provided for a 3 tier Panchayats, which would be constituted in every state at the village level, intermediate level and district level. The states which were having population below 20 Lakh were given an option to not to have the intermediate level.

Article 243 C

Article 243 C deals with the composition of the Panchayats. The members of the Panchayat (This means Panch) at all levels are to be chosen from by the instrument of direct election from the territorial constituency in the Panchayat area.

The electorate for this purpose is the Gram Sabha. This means that the persons who are registered in the electoral rolls pertaining to a village within the area of Panchayat are the eligible to vote.

- ✓ The mode of election of the chairperson at the village level (This means Sarpanch) has been left to the State Governments to decide.
- ✓ Election of the chairpersons at the district levels is indirect and as per the law passed by the state assembly/ state government.

Article 243 D

Article 243D makes provisions for the Reservation in the Panchayats. As per this article:

1. The seats are to be reserved for SCs and STs in proportion to their population at each level.
2. Out of the Reserved Seats, 1/3rd have to be reserved for the women of the SC and ST.
3. Out of the total number of seats to be filled by the direct elections, 1/3rd have to be reserved for women. The reserved seats may be allotted by rotation to different constituencies in the Panchayat.
4. The State by law may also provide for reservations for the offices of the Chairpersons.

Article 243 E:

Article 243E makes provisions about the duration of the Panchayats. As per this article, a clear term for 5 years has been provided for the Panchayats and elections must take place before the expiry of the terms.

- ✓ However, the Panchayat may be dissolved earlier on specific grounds in accordance with the state legislations. In that case the elections must take place before expiry of 6 months of the dissolution.

Article 243F

Article 243F makes provisions for disqualifications from the membership. As per this article, any person who is qualified to become an MLA is qualified to become a member of the Panchayat , but for Panchayat the minimum age prescribed is 21 years. Further, the disqualification criteria are to be decided by the state legislature by law.

Article 243G

Article 243G makes the provisions with respect to the Powers, authority and responsibilities of Panchayats. This article says that the State legislatures may by law, can confer the powers and authorities on the Panchayats, so that they can perform the functions of the self Governance.

✓ The responsibilities of the Panchayats cover preparing the plans for economic development and social justice, implementations of these plans.

Please note that Constitution 73rd amendment act, inserted 11th schedule in the Constitution. This 11th schedule enshrines the distribution of powers between the State legislature and the Panchayats.

These 29 matters are as follows:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centers and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

Article 243H

As per article 243H, the state legislature can authorize the Panchayats to collect and appropriate suitable local taxes and provide grant in aids to the Panchayats from the Consolidated Funds of the states.

Article 243I

As per article 243I, within One Year from the commencement of Constitution 73rd amendment act, (This means April 24, 1993) and afterwards every 5 years , the state Government would appoint a finance commission, which shall review the financial position of the Panchayats and to make recommendation on the following:

✓ The Distribution of the taxes, duties, tolls, fees etc. levied by the state which is to be divided between the Panchayats.

✓ Allocation of proceeds between various tiers.

✓ Taxes, tolls, fees assigned to Panchayats

✓ Grant in aids.

This report of the Finance Commission would be laid on the table in the State legislature.

Article 243J

Article 243J vests the power of the audit of accounts of the Panchayats to the state Government which can make provision in this regard by suitable enactment.

Article 243K

Article 243K enshrines the provisions with respect to elections of the Panchayats. This article provides for constitution of a State Election Commission in respect of the Panchayats. This State Election Commission would have the power to supervise, direct and control the elections to the Panchayats and also prepare the electoral rolls.

- ✓ The article maintains the independence of the election commission by making provisions that the election commissioner of this commissioner would be removed only by manner and on same grounds as a Judge of the High Court.
- If there is a dispute in the Panchayat elections, the Courts have NO jurisdiction over them. This means that the Panchayat election can be questioned only in the form of an election petition presented to an authority which the State legislature by law can prescribe. (Important)
- The election commissioner for this reason is to be appointed by the Governor. The terms and conditions of the office of the Election commissioners have also to be decided by the Governor.

Article 243 L

Article 243L makes provisions for applications of these provisions to the Union Territories. This article says that the provisions of Panchayats shall be applicable to the UTs in same way as in case of the states but the President by a public notification may make any modifications in the applications of any part.

Article 243 M

- The provisions of these articles are **NOT** applicable to the following:

1. Entire states of Nagaland, Meghalaya and Mizoram
2. Hill areas in the State of Manipur for which District Councils
3. Further, the district level provisions shall not apply to the hill areas of the District of Darjeeling in the State of West Bengal which affect the Darjeeling Gorkha Hill Council.
4. The reservation provisions are not applicable to Arunachal Pradesh.

Article 243 N

This article provides that any provision of any law relating to Panchayats in force in a State immediately before the commencement of the Constitution (Seventy-third Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or competent authority.

Article 243 O

This article bars the courts to interfere in the Panchayat Matters.

1. The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies can not be questioned in a court.
2. The validity or any other question pertaining to elections in panchayats can not be asked in court and only via a election petition.

We can see that at least on paper, the Constitution of India has established a grass root democracy in India. But merely by enacting legislation the problems are NOT solved. The 73rd amendment act ensures the participation of the poorest of the poor in the process of development, but still it is doubtful.

Some Important questions on Panchayats

What was the Constitution 64th amendment bill and why it could not get passed?

The Constitution 64th amendment bill 1989 was passed by the Lok Sabha but was rejected in Rajya Sabha. This bill had provided for constitution of Panchayats in every state at the village level, intermediate and district level, except for those states which have a population of less than 20 Lakhs. But this bill gave the centre much more powers than the present 73rd amendment act. The 72nd amendment bill (73rd amendment act) got passed by almost unanimously, because of its novel features.

What is the deficiency in the 73rd amendment act?

The positive impact of the 73rd Amendment in rural India is clearly visible as it has changed power equations significantly. Elections to the Panchayats in most states are being held regularly. Through over 600 District Panchayats, around 6000 Intermediate Panchayats and 2.3 lakh Gram Panchayats, more than 28 lakh persons now have a formal position in our representative democracy. (April 2010, as per a speech of PM Manmohan Singh)

Still, this bill lacks the proper definition of the role of the bureaucracy. Neither it clearly defines the role of the political parties. As per the provisions of article 243N, states except Madhya Pradesh did not show any urgency in organizing the elections at state level.

On practical level, people are illiterate in India and they are actually not aware of these novel features. Still the Panchayats are dominated by effluents in some parts of the country. The 3 tiers of the Panchayati Raj have still very limited financial powers and their viability is entirely dependent upon the political will of the states.

What are the recommendations of the 13th Finance Commission on Panchayats?

13th Finance Commission has pushed for greater autonomy for local governments by vesting spending power in their hands instead of the state, while increasing their non-plan expenditure from Rs 20,000 crore to Rs 63,000 crore. The money is to be distributed among local bodies in the next five years, which amounts to Rs 12,000 crore per year or Rs 4 lakh per Panchayat.

The non-plan expenditure is the money which is not tied to any scheme. As per the report of the 13th Finance Commission the Panchayats and urban bodies have not been able to use draw the amounts allocated to them. As per the report the funds are not released until the all Panchayats in a district submit progress reports. If some of them don't submit reports, all other Panchayats cannot continue to work.

The 13th Finance Commission has also recommended that the finance accounts should include a separate statement indicating head-wise details of actual expenditures under the same heads as used in the budget for both Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs). (These changes be brought into effect from 31 March 2012)

What is Current position of Reservation for Women in PRIs?

In august 2009, the government had approved a proposal to increase reservation for women in Panchayats to 50 per cent. The cabinet decided to bring a bill to amend Article 243(D) of the Constitution to enhance reservation for women in Panchayats at all tiers from the current one-third to at least 50 per cent. This was in line with the address of the President to the joint sitting of Parliament on June 4,2009 in which she had said a Constitutional amendment would be brought to provide 50 per cent quota for women in Panchayats.

✍ Karnataka had 25 % reservation for its two-tier Panchayati Raj system in 1987 that was replaced by the constitutionally mandated 33% in 1993.

The current position (April 2010) of the states is as follows:

- ✓ In Andhra Pradesh, the Andhra Pradesh Panchayati Raj Act 1994 had a provision of 1/3rd of the seats are reserved for women.
- ✓ In Arunachal Pradesh, 1/3rd of total seats are reserved for Women.
- ✓ In Chhattisgarh, via Chhattisgarh Panchayati Raj (Amended) Act. 2008 reservation has been enhanced from 33% to 50 %
- ✓ In Bihar, there is 50% as per the Bihar Panchayati Raj Act 2006
- ✓ In Gujarat, there is provision of one third reservation against total number of seats in Gujarat Panchayat Act. 1993 vide Section 9,10 & 11
- ✓ In Haryana, 1/3rd seats of the total seats are reserved for women.
- ✓ In Himachal Pradesh, 1/3rd seats of the total seats are reserved for women.
- ✓ In Kerala, 33% as per the Kerala Panchayati Raj Act.
- ✓ In Madhya Pradesh, as per amendment in Madhya Pradesh Panchayat & Gram Swaraj Act. 1993, 50% reservation for women has been made in all three tiers of PRIs.
- ✓ In Maharashtra, as per the reservation policy in Maharashtra State, 1/3rd of the total number of offices in the Panchayati Raj Institutions are reserved for Women candidates.
- ✓ In Rajasthan, the reservation for women in the State of Rajasthan was 33% which has been increased to 50%.
- ✓ In Sikkim, 40% seats are reserved for women. The State Govt. enhanced seat reservation from 33% to 40 % in 2007 only. No proposal to enhance further.
- ✓ In Tripura, 1/3rd seats are reserved for women.
- ✓ In Uttarakhand, 50% seats are reserved as per Uttar Pradesh Panchayat Raj Adhiniyam 1947.
- ✓ In West Bengal, not less than 1/3rd of the total number of seats reserved for women.
- ✓ In Chandigarh, reservation for women is 1/3rd as per Punjab Panchayati Raj Act, 1994 (As applicable in Chandigarh).
- ✓ In Lakshadweep, the Lakshadweep Panchayat Regulation, 1994 provides reservation of not less than 1/3rd of seats in Panchayat for women.
- ✓ In Puducherry, Section 11 (4) of the Pondicherry Village and Commune Panchayats Act 1973. Provided further that one-third of the total number of seats in Panchayats at each level shall be reserved for women.

- ✓ In Andaman & Nicobar Islands, 1/3rd reservation for all women is provisioned.

Article 243 ZF: Continuance of existing laws

This article says that any provision of any law relating to Municipalities in force in a State immediately before the commencement of 74th amendment Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other authority.

Article 243 ZG: Bar to interference by courts in electoral matters

This article says that validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA cannot be questioned in any court. Further, the elections of the municipalities can be questioned only via an election petition presented to such authority made by the state legislature by law.

Introduction to Municipalities

We all know that, India is world's second largest country in terms of Population only next to China. The towns and cities not only contribute substantially to the development of the country but also play a very important role in the development of Rural India.

In our country, a large sized district is bigger than many countries of the world if we take population in account. For example, the Population of Mumbai Sub-urban district is 8,587,561 as per the census 2001. This population is more than the population of Austria (8,396,760). Mumbai Sub-urban district, if taken as a country, would have a population more than 130 countries of the world. If our states like UP, Bihar, Maharastra, West Bengal were independent, they would have been largest populated countries of the world.

Municipalities in the Original Constitution

There was no clear cut Constitutional Obligation in the Original Constitution of India, as far as Local Self Government in urban areas is concerned. The article 40 of the Directive Principles of State Policy refers to **Village Panchayats.** In the Constitution there was a reference to municipalities implicitly in **Entry-5 of the State List** (7th schedule) which places the subject of Local Self Government as a responsibility of the States.

Entry-5 of the State List is as follows:

"Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-Government or village administration"

Further **entry 20 of the concurrent** list reads that "economic and social planning, Urban Planning would fall within the ambit of both entry 5 of the State List and Entry 20 of the concurrent list".

So, there was an inadequate Constitutional Provision for the Urban Local self government. The local governments have been at the mercy of the State legislatures till 1993, and in most states the local governments did not exist at all. After the 74th amendment acts, the situation changed (marginally). Before the 74th amendment act there was a clear discrimination between the rural and urban local bodies.

Problems of the Municipalities

Though, there were municipal acts of some of the State Governments and these acts had provisions for regular elections to municipal bodies, but they were frequently suspended and superseded for indefinite periods of time. This eroded the basis of the local self government and there was a negative impact in the democracy in the country on the grassroots level.

The main problems of the urban bodies were as follows:

1. The general position with regard to financial resources of the municipal bodies was unsatisfactory.
2. Consistent encroachment on the assigned functions and revenues of Urban Local Bodies by specialized agencies of the State Governments.

The need was to ensure that there are:

1. Regular and fair conduct of elections to municipalities.
2. Time limit to elections in case of supersession.
3. Adequate representation of the backward classes.
4. Clear demarcation of the relationships with the state governments with respect to functions and taxation powers of the urban local bodies, Arrangement for revenue sharing between the State Government and the urban local bodies and involvement of elected representatives at grass root level in planning at the district and metropolitan levels.

Evolution of Urban Local Governance: Some important points

- **In 1687, a** Municipal Corporation was set up Madras, with the major objective to levy certain direct taxes and to provide certain amenities like education, cleaning of roads etc.
- This corporation was substituted by a Mayor's court in 1726 to collect taxes for provision of the local amenities. The mayor's courts were also established in Bombay and Calcutta, (however they lasted till 1842).
- In 1850, a new act viz. **Improvements in Towns Act** was passed by the Government of India which extended the local self Government to the whole of the British india
- In 1850, an act was passed for British India permitting the formation of the local committees to make better provisions for public health.
- In 1863, as per a report of the Royal Army Sanitary Commission, which pinpointed the insanity of the India Towns, a series of acts were passed. This report led to establishement of the city municipalities through Mayo's resolution in 1870.
- In 1870 Lord Mayo's resolution made provisions for arrangements for strengthening the municipal institutions and increasing the involvement of Indians in these bodies.
- Lord Ripon's resolution of May 18, 1882 got him the title of Father of Local Self Government in India.
- By the Lord Ripon's resolution of 1882, British Government made attempts to divide the functions between the provincial Government and Local bodies themselves.
- Subsequently, the Royal Commission on decentralization was set up in 1907.

- The Montague Chelmsford Report of 1918, and the subsequent Government of India Act 1919 introduced the system of Dyarchy in India.
- For the smaller cities, Municipalities were formed and for bigger cities Municipal Corporations were formed. The Municipalities were headed by a Chairman while the Municipal Corporations were headed by the Mayor.
- The Local Finance Enquiry Committee of 1949 recommedned the widening of the domain of the taxation of the urban bodies.
- In 1954, the taxation Enquiry Commission recommended the segregation of certain taxes for exclusive utilization by local governments.
- In 1966, the rural urban relationship committee submitted a report which was one of the most comprehensive reports on this subject matter.
- In 1966, the Urban development department was shifted to the Ministry of Works and Housing and it was renamed as Ministry of Planning, Works, Housing and Urban Development.
- In 1985, Ministry of urban Development was set up at the Union level.
- In 1988, the Government set up a **National Commission on Urbanization** under **C.M. Correa**, which recommended that the Ministry of Urban Development should be restructured and made the nodal ministry for urban development. The **Correa committee also recommended formulation of the urbanization policies** and monitoring their implementation.

Constitution 65th Amendment Bill

The 65th amendment bill (**also known as Nagar Palika Bill**) was brought by the Rajiv Gandhi Government, with an objective to ensure the municipal bodies being vested with necessary powers and removing the financial constraints to enable them to function effectively as units of local Government. In this bill, 3 types of Nagar Palika were enshrined as follows:

1. For population between 10,000 to 20,000 : a Nagar Panchayat
2. For urban areas with population between 20,000 to 3,00,000 : Municipal Council
3. For urban areas exceeding the population of 3, 00,000: Municipal Corporations.

This bill was passed in Lok Sabha and was defeated in the Rajya Sabha.

Constitution 73rd amendment Bill and 74th amendment Act

Constitution (73rd Amendment) Bill was introduced in the Parliament in 1991, which was referred to the Joint Parliamentary Committee with Members from both Lok Sabha and Rajya Sabha for consideration. Bill as reported by the Joint Parliamentary Committee was taken up for consideration and passed by the Lok Sabha on 22nd December, 1992 and by the Rajya Sabha on 23rd December, 1992 and it received the assent of President on **20th April, 1993**.

- ✓ It was published in the Government Gazette on 20th April, 1993 as the "Constitution (Seventy Forth Amendment) Act, 1992".

Constitution (Seventy Forth Amendment) Act, 1992 has introduced a new **Part IXA** in the Constitution, which deals with Municipalities.

✍ The 74th amendment act 1992 is also known as **Nagarpalika Act**.

Study of the Constitutional Provisions: Article 243P to Article 243 ZE

The 74th Constitution Amendment Act 1992 **came into force on 1st June 1993**.

This amendment introduced a new **Part IXA** in the constitution, which deals with the issues related to the municipalities. This part contains article 243 P to 243 ZG.

Article 243 P : Definitions

Article 243P defines some terms such as committee, districts, Metropolitan Area etc.

✍ We all know that Metropolitan area in the country is an area where population is above 10 Lakh. This is defined by Article 243P of the Constitution of India.

Article 243Q: Types of the Municipalities

Article 243Q provides for establishment of 3 kinds of Municipalities of every state.

1. Nagar Panchayat: A nagar Panchayat is for those areas which are transitional areas i.e. transiting from Rural Area to Urban areas.
2. Municipal Council: A Municipal council is for smaller urban area
3. Municipal Corporation: A municipal Corporation for Larger urban Areas

The question is that **who will decide about the "a transitional area", "a smaller urban area" or "a larger urban area**"?

Constitution of India (Article 243Q) has the provision that "Governor" will by public notice, will define these three areas based upon the population, density of population, revenue generated for local administration, % of employment in Non-agricultural activities and other factors.

Further, a Governor may also if, he fits it necessary, based upon the industrial establishments, can specify the Industrial Townships by public notice.

Article 243R: Composition of Municipalities

As per Article 243R, all the members of a Municipality are to be directly elected by the people of the Municipal area and for the purpose of making the electorate; the municipal area will be divided into territorial constituencies known as **Wards**.

✓ Besides the seats filled by direct elections, some seats may be filled by nomination of persons having special knowledge and experience in municipal administration.

✓ Persons so nominated shall not have the right to vote in the meetings of the municipality.

✓ The Legislature of a State may, by law, also provide for the representation in a municipality of members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area and also the Members of the Council of States and the members of the Legislative Council of the State registered as electors within the municipal area.

✍ The manner of election of Chairpersons of municipalities has been left to be specified by the **State Legislature.**

Article 243S: Ward Committees

Article 243S makes the provision that there shall be constituted the ward committees consisting of one or more wards within the territorial area of all the municipalities with a population of 3 Lakhs or more.

Article 243T: Reservation of Seats:

In order to provide for adequate representation of SC/ST and of women in the municipal bodies, Article 243S makes provisions for reservation of seats.

The article provides that reservation of the seats for the Scheduled castes and scheduled tribes in every municipality corporation has to be provided in proportion to their population to the total population in the municipal area.

- ✓ The proportion of seats to be reserved for SC/ST to the total number of seats has to be same as the proportion of the population of SC/ST in the municipal area.
- ✓ The reservation has to be made for only those seats that are to be filled by the direct elections. (This means no reservation for nominated seats)
- ✓ This article also provides that not less than one-third of the total number of seats reserved for SC/ST shall be reserved for women belonging to SC/ST. (**Mandatory provision**)
- ✓ In respect of women, the seats shall be reserved to the extent of not less than one-third of the total number of seats. This includes seats reserved for women belonging to SC/ST. These reservations will apply for direct elections only. (**Mandatory provision**)
- ✓ There are no bar on State Legislatures from making provisions for reservation of seats in any municipality or office of Chairperson in the municipalities in favour of backward class of citizens. (**Optional Provision**)

Article 243U: Duration of Municipalities

Article 243U fixes the duration of the municipality of 5 years from the date appointed for its first meeting.

- ✓ Elections to constitute a municipality are required to be completed before the expiration of the duration of the municipality.
- ✓ If the municipality is dissolved before the expiry of 5 years, the elections for constituting a new municipality are required to be completed within a period of 6 months from the date of its dissolution.

Article 243V: Disqualifications of the members

Article 243V is disqualified for being chosen as or for being member of the Municipality if he / she is disqualified

1. Under any law for the time being in force for the purpose of elections to the legisalture to the state concerned.
2. Under any law made by the legislature.

The minimum age to be qualified as a **member is 21 years.**

Article 243W: Powers, authorities and responsibilities.

As per Article 243 W, all municipalities would be empowered with such powers and responsibilities as may be necessary to enable them to function as effective institutions of self-government.

- ✓ The State Legislature may, by law, specify what powers and responsibilities would be given to the municipalities in respect of preparation of plans for economic development and social justice and for implementation of schemes as may be entrusted to them.
- ✓ An illustrative list of functions that may be entrusted to the municipalities has been incorporated as the Twelfth Schedule of the Constitution.

Article 243X: Financial Powers

Via Article 243X, the constitution has left it open to the Legislature of a State to specify by law matters relating to imposition of taxes. Such law may specify:

- ✓ Taxes, duties, fees, etc. which could be levied and collected by the Municipalities, as per the procedure to be laid down in the State law
- ✓ Taxes, duties, fees, etc. which would be levied and collected by the State Government and a share passed on to the Municipalities
- ✓ Grant-in-aid that would be given to the Municipalities from the State
- ✓ Constitution of funds for crediting and withdrawal of moneys by the Municipality.

Article 243Y: Finance Commission

Article 243Y makes provision that the Finance Commission constituted under Article 243-I to review the financial positions of Panchayati Raj Institutions shall also review the financial position of the municipalities and will make recommendations to the Governor.

The recommendations of the Finance Commission will cover the following:

- ✓ Distribution between the State Government and Municipalities of the net proceeds of the taxes, duties, tolls and fees to be levied by the State
- ✓ Allocation of share of such proceeds between the Municipalities at all levels in the State
- ✓ Determination of taxes, duties, tolls and fees to be assigned or appropriated by the Municipalities
- ✓ Grants-in-aid to Municipalities from the Consolidated Fund of the State
- ✓ Measures needed to improve the financial position of the Municipalities.

Article 243Z: Audit and Accounts

As per article 243Z, the maintenance of the accounts of the municipalities and other audit shall be done in accordance with the **provisions in the State law**. The State Legislatures will be free to make appropriate provisions in this regard depending upon the local needs and institutional framework available for this purpose.

Article 243ZA: Elections

Article 243ZA makes the provisions that the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to the Panchayats and municipalities shall be vested in the **State Election Commissions**.

Article 243ZB : Application to Union Territories:

Article 243ZB makes provisions for applications of these provisions to the Union Territories. This article says that the provisions of Municipalities shall be applicable to the UTs in same way as in case of the states but the President by a public notification may make any modifications in the applications of any part.

Article 243ZC: Not applicability in some areas

Article 243 ZC says that provisions of part IXA are not applicable to

- Scheduled Areas referred in article 244. These include Assam, Meghalaya, Tripura and Mizoram.
- This part is also not applicable to the area covered under Darjeeling Gorkha Hill Council.

If the parliament makes any modifications in the scheduled areas , then the same restrictions would apply to those areas also.

Article ZD: Committee for District Planning

We have studied in the part IX that Planning and allocation of resources at the district level for the Panchayati Raj institutions are normally to be done by the Zila Parishad. As per the provisions of the Part IXA, for urban areas, municipal bodies discharge these functions within their respective jurisdictions.

However, this gives rise to an important question that at the how the allocation of the funds has to be made. The Constitution has made provisions of creating **two Planning Committees in the state**.

- ✓ One is District Planning Committee at the district level with a view to consolidating the plans prepared by the Panchayats and the Municipalities and preparing a development plan for the district as a whole and the other is a Metropolitan Planning Committee.

As per Article 243 ZD, there shall be constituted in every State at the district level a District Planning Committee to **consolidate the plans prepared by the Panchayats and the Municipalities** in the district and to prepare a draft development plan for the district as a whole.

- The option of composition and filling the seats has been left open to the states.

District Planning Committee in preparing the Draft Development Plan shall have regard to:

- ✓ Matter of common interest between the Panchayats and the Municipalities including spatial planning
- ✓ Sharing of water and other physical and natural resources
- ✓ Integrated development of infrastructure and environment conservation
- ✓ Extent and type of available resources, whether financial or otherwise.

The Draft District Development Plan so prepared and recommended by the District Planning Committee shall be forwarded by the Chairperson of the Committee to the State Government.

Article 243 ZE: Metropolitan Planning Committee:

Article 243 ZE says that there shall be constituted in every Metropolitan area a **Metropolitan Planning Committee** to prepare a draft development plan for the Metropolitan area as a whole. So for the areas with a population of 10 lakhs or more, a Metropolitan Planning Committee shall be constituted for preparing a draft development plan for the metropolitan area as a whole.

- The composition and filling of seats is open to the State legislatures.

The Metropolitan Planning Committee shall take into account the following for preparation of the Draft Development Plan:

- ✓ Plan prepared by the Municipalities and the Panchayats in the metropolitan area
- ✓ Matter of common interest between the Municipalities and Panchayats including coordinated spatial plans of the area
- ✓ Sharing of water and other physical and natural resources
- ✓ Integrated development of infrastructure and environmental conservation
- ✓ Overall objectives and priorities set by the Government of India and the State Government
- ✓ Extent and nature of investments likely to be made in the metropolitan area by agencies of the Government
- ✓ Other available resources, financial and otherwise.

Implications of 74th Amendment Act:

When we look at the provisions of the Part IXA of our constitution, we can say with confidence that 74th amendment act 1992 is one of the most important and vital amendments carried out so far in with regard to the urban development. The act has attempted to make the local bodies stronger, transparent. Here are some notable implications with regard to this Constitution amendment act:

1. The Local Government, which was part of the state list has been added to the concurrent list, thus both State and Union Governments can make laws on them.
2. Due to this amendment, a uniform pattern has emerged all over the country.
3. The discretion of the state Governments has been drastically curtailed. The State is now obliged to set up the Municipalities as per article 243Q.
4. The criteria to set up the municipalities have been fixed and now it is more rational and scientific.
5. With this act, the district planning has been given the Constitutional Status. Due to this the planning process itself has changed.

12th Schedule

The Constitution 74th amendment Act 1992 added 12th Schedule in the Constitution. This schedule defines 18 new tasks in the functional domain of the Urban Local Bodies, as follows:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

Conclusion

In our country, the urban population was about 286 million representing 28 per cent of the country's total population of 1,029 million. The net addition to urban population during 1991-2001 was of the order of 69 million as against 113 million for rural areas. In percentage terms, the decadal growth of population in rural areas has been much smaller during the decade 1991-2001 at 18.1 per cent compared to 31.5 percent for urban areas. The problems that Urban India faces are similar to those in other developing countries, with about one-fourth of the urbanites living in slums faced with acute socio-economic deprivation.

The Constitution 74th Amendment Act 1992 has accorded a Constitutional status to the Municipalities as the third tier of government. The 74th Amendment envisages a legal-institutional framework for democratic decentralization. It reserves one-third of the seats in municipal councils for women and provides for reservation for weaker sections of society. It provides for a list of 18 functions as belonging to the legitimate domain of the municipalities. The Act also suggests a framework for fiscal empowerment and devolution of resources to the urban local bodies. As regards urban and regional planning, the 74th Amendment envisages a critical role for elected local bodies in the preparation and implementation of spatial and socio-economic plans for the integrated development of both urban and rural areas.

Following the 74th Amendment, most cities and towns in the country now have democratically elected and representative local self-governments. However, the progress in the devolution of functions, finances and functionaries to municipalities by State Governments is tardy. In particular, how to enable the municipalities to undertake functions such as slum development and urban poverty alleviation is a key issue that remains to be settled.