

Governance for Improved Public And Judicial Management in India

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1. Purpose

1.1 The Asian Development Bank (ADB) established Good Governance as one of its key policies by approving a comprehensive policy in 1995. The governance policy identifies four basic elements of good governance a. accountability, b. participation, c. predictability, and d. transparency. The 1999 Poverty Reduction Strategy adopted good governance as one of its three pillars. Conceptually, the Strategy argued that in order to address poverty there must be a basic foundation of civil and social order, institutional rules and governance practices which lead to effective markets, culminating in economic growth leading to poverty reduction.

1.2 The main purpose of this paper is to assess the various dimensions of governance in India especially those that are relevant to the operations of ADB. Its aim is to examine India's governance structures and systems and its national context for reform. The paper attempts to focus on the strengths and weaknesses of the current practices and building on the efforts being made identify opportunities for intervention in the relevant areas. The section that follows provides a window to the way that government is placing emphasis on what has to be done in the next few years in pursuing the agenda of good governance. Then, the three sections, one on democratic upsurge, the other on institutions and the third on the division of powers between in the federal system that provide the necessary context of governance in India. The sections that follow after them attempt to identify some of the areas where intervention can lead to substantial payoffs.

2. Recognition of the Critical Role of Good Governance

2.1 Good governance is recognised as a necessity for development, poverty reduction and delivering services to the poor. The Eighth Five Year Plan (1992-97) that came after India had announced far reaching changes in its economic policies signalled a change in the role of state and government. It began by acknowledging that there is a considerable backlog in the provision of social consumption needs of the people, particularly the rural people and the poor and therefore called for 'an innovative approach to development which is based on re-examination and reorientation of the role of the government, the harnessing of the latent energies of the people through their involvement in the process of nation building, and the creation of an environment which encourages and people's initiative rather their dependence on the government, and which sets free the forces of growth and modernization.' This reorientation began to get reflected in the way government saw how effective implementation of programmes needed not only strengthening of its own capacity but also a new institutional arrangement that involved the people.

2.2 The Approach Paper to the Tenth Five Year Plan (2002-07) pointed out that in successful implementation of development programmes, funds may be necessary but they are not a sufficient condition. The determining factor seems to be the capability of the funding Ministries/State Governments to formulate viable schemes and at the delivery system to implement these schemes on the ground. The Approach Paper concluded that 'there are serious deficiencies in both respects and they can be regarded broadly as due to poor governance.'

2.3 A comprehensive discussion of the challenges to good governance was provided by the National Human Development Report (2002) published by the Planning Commission, Government of India. It emphasised that 'human deprivation and inequalities are not merely there for economic reasons; rather they go hand in hand with social and political factors rooted in poor governance.'(115) In laying down what it called 'India's

Governance – Recent Score Card’, it assessed the concerns and challenges in three broad categories. These consisted of Economic Governance, Political Governance and Civil Governance. (See Appendix 1) The Report pointed out that a useful approach to analyse the issue of governance, whether it is restricted to economic, political or civic governance or looks at the system in its entirety, is to view the process of intermediation as involving a continuous interplay of three elements, each representing a specific set of deliberate arrangements. They include:

- Institutions – adopted or created arrangements both formal and informal, to bring about predictability, stability and efficiency in managing the social, economic or political transactions in any society;
- The delivery mechanism – including the executive apparatus adopted or evolved by the institutions for implementing the agenda and the objectives for which the said institutions have been created; and
- The supportive and subordinate framework of rules, procedures and legislation – formulated for delivering and meeting the stated responsibilities of the concerned institutions.

2.4 Emphasizing that the issue of improving governance in the country has to be addressed at various levels, it came up with the following agenda of reforms that needs to be undertaken on a priority basis:

- Devolution of power to manage local affairs and decentralization of decision making;
- Civil service reforms aimed improving transparency, accountability efficiency and sensitivity in public administration at all levels;
- Enforcing incentive/disincentive structures that truly reflect social values and norms’
- Procedural reforms covering all aspects of government’s interface with public; and
- Empowerment, particularly of women, the marginal and the excluded.

3. The Democratic Upsurge and the Governance Agenda

3.1 The agenda of reform is reflected in and reinforced by the democratic upsurge that is particularly visible from 1989 onwards. In the ten year period 1989-99, several elections were held. Only one government elected in 1991 completed its full five year term. With fragmented political formations, all the governments were formed on the basis of coalitions. In the last fifty years democracy has been well established and is becoming a vehicle for articulating demands on the government. For a long time the Congress party served as an umbrella party, ironing conflicts and creating consensus on issues that threatened to be divisive otherwise. This was the party that was in the forefront of the national movement for independence and under the leadership of Nehru formed the government after independence. Among all the parties, this party has towered over all others and has remained in power except for brief periods from 1947 to 1995. It has been reduced to a minority in opposition in the last few years.

The decline of the Congress party can also be attributed to the spread of democratic ideas and intensification of competitive politics in India particularly after the defeat of Congress in 1977 elections that gave a verdict on the emergency imposed by Mrs. Indira Gandhi. Many social groups that routinely accepted the manipulations of political leadership now began to assert themselves and began to struggle for their equal rights under their own organizations and leaders. Leaders, in turn, also found new opportunities to mobilize the deprived and competition in Indian politics sharpened. An important factor that influenced the sharpening of competition was the acceptance of the Mandal Commission that resulted in the introduction of reservation in government jobs and educational institutions for the ‘other backward castes’. Together with the scheduled castes and tribes who had been constitutionally provided these privileges, was added another group that essentially consisted of castes working on land and some of whom had done well in the aftermath of land reforms and green revolution.

3.2 This had a major consequence for the election system. If earlier, the Congress party dominated the election scene the period from 1989 onwards saw a radical change. There were twenty-two political parties in the Lok Sabha in 1984. This number had grown to 40 in 1998. The voter's choice has expanded not only because of the multiplication of parties but also because of their changed nature.

3.3 There is also greater participation in the elections. This is not merely in terms of high turnout in Lok Sabha and state assembly elections. What is remarkable is that the underprivileged and the deprived are coming out to vote in greater numbers. The odds that a dalit (scheduled caste/tribe) will vote are much higher today than that of an upper caste. There has also been an increase in women turnout for voting and the ratio was 61.0 percent in 1998. (For data see Yadav, 1999) This rise in levels of participation is reflected in what has come to be known as 'dalit assertion' – assertion by the poor and underprivileged of their rights.

3.4 Democracy is maturing and with increasing awareness galvanizing the deprived people into joining political activity. Indeed, intense politicization has taken place over the last decade and those who are participating in the new democratic upsurge carry the ambition to use the democratic process to mould policies to their advantage. There is a realization among them that they can capture the instruments of state in the way the upper groups had done so far and use them for their own advantage. As the realization has spread that the state, which controls a great many resources in a very poor society, can be captured if the support of enough new groups is mobilized, such efforts have intensified. (Kohli, 1996:120) There have been several consequences of this upsurge. There has been multiplication of parties and the domination of a single party has broken down. The diverse and a plethora of politically assertive groups have made consensus hard to achieve. Another consequence is the emergence of an era of coalitional politics. The regional parties are interested in controlling the Centre to pursue state interests. Strong regional political leaders have emerged articulating local issues, joining a central coalition with limited national vision. The journey of economic reforms and the buffeting that each policy receives is an ample illustration of attempts by the states to control the Centre for their own benefit. The loss of a single party that commands a presence throughout the country like the Congress also has meant the erosion of what can be called a national vision and consensus.

3.5 Such fragmentation has come to stay and coalitions do not necessarily mean instability. What it means is that the content of political discourse is changing and demands a new basis of consensus and agreement. Ultimately this may lead to some changes in desirable directions of making democracy and state institutions more open and transparent. This democratic upsurge means that the political discourse that concerns the people is dominated by issues of equity and justice. The elite in some ways is expressing greater concern for efficiency albeit to find resources to meet the demands and aspirations of the people. The point is that issues of equity and justice are no more in the realm of political rhetoric but forceful demands on the agenda of good governance.

4. The Constitutional Institutions of Governance

4.1 If some see increasing participation as a reason of poor governance, others see the dissipation of political institutions and processes as a source of vicissitudes of Indian political system. The legislative role of the Parliament is under a decline. During the period 1985 to 1995 discussions on the financial approvals of only a few ministries-seven to be specific- was taken up. In the parliamentary session that begins on November 18, 2002, 43 government bills that have been pending are waiting to be approved. Many of these bills are concerned with economic reforms. Freedom of Information Bill, now seen as critical to good governance in the country was introduced on July 25, 2000. The Demands for Grants for as many as 11 ministries were not taken up for detailed discussion even once and most of the time more than 85% of the Budget was passed without any discussion. (Shastri, 1998:185-86)

4.2 Consequently, the role of parliament in providing inputs to policy through discussions on the financial proposals of the government has considerably eroded. In view of this trend, the Parliament decided to set up Standing Committees for most ministries in 1993. These committees consist of members from both Houses of Parliament and chairs are chosen by proportional party representation. Usually highly regarded parliamentarians are chosen to lead the committees even if they belong to the opposition. Every committee has a maximum of 45 members and each Member of Parliament serves a two-year term on at least one committee.

4.3 The objective was that this would provide for an opportunity for detailed discussions of the financial proposals and also give the members of parliament an occasion to give more considered opinion on the policy issues as suggested through the proposed budget. The committees were designed to be a mechanism that would provide meaningful dialogue between the government and members of Parliament. A system was established so that the legislators could consider matters of a technical nature that Parliament, as a whole could not take time to discuss. Continuous legislative oversight would ostensibly be produced in a setting where there was a constant turnover as the committees could avail themselves of the testimony of expert witnesses, initiate studies, issue reports, and examine draft legislation as a prelude to legislative action or postponement. (Rubinoff, 1996:727)

4.4 Despite the establishment of these committees, legislators are dissatisfied with the way that they can influence the government. Rubinoff (1996) interviewed a larger number of Parliamentarians who felt that the resources that they had at their disposal to perform their tasks were inadequate compared to those available to the executive branch. For the most part, the inadequate time the new committees have had to prepare in-depth studies has led to perfunctory reports not taken seriously by the government or the media.

4.5 Another significant issue pointed out by Rubinoff (1996) is that there is no incentive for the ministers to take the new committees seriously as long as they do not have to testify before them. With sessions closed to the public and only secretaries (civil servants heading the ministries) required to appear, there is no reason for busy cabinet ministers to participate in committee activities. Since they were not confirmed by the legislature and enjoy permanency of tenure through constitutional provisions, the secretaries who appear are not directly accountable to the parliamentary system. The legislators unable to fall back on alternative sources of ideas or policy are overwhelmed by the arguments put forward by the bureaucrats. For all these reasons, the committees have not been able to perform an effective role in policy making.

4.6 The responsibility of the legislature does not stop at approving the financial outlays at the start of the year. It is also important for the legislature to examine, after the financial year is over, with the help of the audit reports prepared by the Comptroller and Auditor General of India, if public money was spent according to its intentions and whether there was any waste, fraud or misuse. The work of the Public Accounts Committee and the Committee on Public Undertakings relies on the audit reports to examine this part of the government activity and these committees have always been considered as important pillars of democracy and its watchdogs. Unfortunately, this examination is also not taken seriously and is delayed by several years. 'As far as it has been possible to find out, the central Public Accounts Committee has not yet given its report about even the Bofors audit which is sometimes credited with bringing down the government of Rajiv Gandhi.' (Joseph, 2000:2999) The financial irregularities that the CAG points out neither catch the attention of the parliamentarians or of the media.

4.7 An important bottleneck for members of parliament in taking cognizance of policy ideas coming from diverse sources is the fact that there is no provision of research staff

to give them support to identify important issues. Only those issues that are politically volatile and visible tend to catch their attention. This lack of expertise available to the members of parliament has affected the working of the new committee system that has been adopted in 1993. Among political parties in India, tradition of strong research cells to support the legislative activities of its representatives is weak. Parliament has a rudimentary staff that can collect relevant data or refer to important sources. There is a well-equipped library but the actual research or drawing policy implications from data available has to be done by the members of the parliament themselves. Not many are inclined to do so and most do not have the capability even if they may have the inclination. The result is that these committees fall short of the role that Congressional committees play in US even if they are modelled after them. The tendency to pick up politically visible issues or those that will find prominent place in the media becomes strong. Discussions in the Parliament or in the committees are bereft of policy concerns. (See Mathur and Jayal, 1993 for discussion on drought policy in Parliament and Jain, 1995 for similar discussion on electronics policy)

4.8 The result is that the role of the Parliament as a body that seeks to influence government policy on the basis of it being the voice of the people has suffered considerably. It is important to point out that the political parties also do not prepare parliamentarians for this policy role. The parties do not have any research organization that can frame alternative points of view. It is left to the individuals to search for such opinions from professionals and academics that they may know or who are able to invite them to seminars and discussions. Most of such inputs are of ad hoc nature and are generated only through personal volition. The result is that the members of Parliament have rarely demanded research support; more committed among them use the well-equipped parliamentary library or avail of the services of its professional staff.

4.9 Another reason why parliamentarians do not demand research support is that they do not consider their role as a lawmaker as very important. The constituency demands are so strong that they can ignore them only at the peril of losing next elections. The constituency sees its MP as an intermediary sorting out all kinds of difficulties between the constituents and the authorities that provide those services. These may range from municipal problems, to getting employment, or even helping to jump the queue in getting air and rail tickets, or gas or telephone connection. As Surya Prakash (1995:50) says 'The MP may be an acknowledged authority on constitutional law, foreign relations or defence. But this will hardly please his constituents. The clogged drains and bad roads will, in all probability seal his fate.'

4.10 The Supreme Court has begun playing a significant role in protecting the rights of the poor and the deprived through public interest litigation. The increasing incidence of judicial activism reflects on the growing insensitivity of government to the problems of those who do not have strong political voice. It also reflects on the ability of the institutional processes to resolve conflicts in society. More and more groups that do not have organised strength to influence political decisions are taking recourse to judicial processes to get their grievances redressed. The perception that political decision making works on partisan interests and judicial process is neutral and transparent has grown over the years. Courts have begun filling policy gaps and stepping in where powerful groups in society cannot be contained through political methods. Many decisions taken on the public interest litigations have led to increased benefits to the poor and the deprived especially in the areas of environment and pollution. However, the legal system as a whole delays justice and cases do not get resolved for many, many years. Laws are outdated and the legal processes are such that the poor and the deprived have great difficulty in gaining access to the Courts. We will take up this issue in a later section.

4.11 The Executive led by the Prime Minister finds itself hedged in by continuous fire fighting activities coping up with social conflicts or resolving disputes among states or

between the states and the Centre. Institutional opportunities for thinking for long term policies have been shrinking with the erosion of the role of the Planning Commission. The PMO has not been able to replace it with expert advice and the Ministries have only in-house advice to fall back upon. Recently, a National Security Council has been set up with wide ranging responsibilities to look at different kinds of security. Alternative sources of advice need to be explored and strengthened as technical components of public policy become significant. Some 'think tanks' are now playing visible role in offering alternative policy advice.

5. Social Sector in the Division of Powers in the Federal System

5.1 The responsibility of the Centre in designing and implementing policies for poverty alleviation has been affected by the way the centre and the states share powers in this regard. Developmental subjects have been divided among three lists, those of the Union and States and one that is known as concurrent list. (See Appendix 1 for details) The major responsibility for managing and providing resources for development that directly affects the people is with the states or concurrently with the centre. Issues connected with land and water resources, public health and sanitation, local government fall in the state list. Forests, population control or education are included in the Concurrent list. If the states bear the main responsibility for delivering public services, they do not appear to be provided adequate sources of revenue. Powers to levy broad-based taxes such as income-tax, corporation tax, custom and excise are vested in the Centre. One major source of revenue with the states is sales tax. The States can also levy a few other taxes like excise on liquor, motor vehicle tax and taxes on agricultural land and income. However, all these together still cannot finance the state level expenditures. In recent years, the expenditures on salary and wages of state government employees has increased so much that the states have little left for development and are facing a fiscal crisis.

5.2 The financial requirements of the states are filled by large-scale transfers from the Centre through several ways. There is a statutory provision of the Constitution whereby a Finance Commission is appointed by the Central government which determines revenue sharing formula and recommends the principles which should govern the grants-in-aid to the States. The Planning Commission determines transfer of financial resources in the form of loan and grants to meet the gap in the Plan expenditures of the States. In addition, external assistance (loans or grants) for the projects/programmes to be implemented by the states is also channeled through the Centre.

5.3 Due to inability of states to implement many development programmes because of lack of expertise or paucity of funds, Government of India is involved in large number of programmes that strictly fall in the state list. There are now more than 200 centrally sponsored schemes. The Approach Paper to the Tenth Five Year Plan (2002-07) cites several Reports of the Comptroller and Auditor General to acknowledge that most of such schemes have not performed well. It further adds that the proliferation of the Centrally Sponsored Schemes is an example of the state over-stretching itself. It would be better to do fewer things well rather than getting involved with an unmanageably large number of activities. The states, on the other hand, have been feeling that such schemes are an encroachment on their freedom to establish their on priorities and limits availability of funds. The Centre is gradually phasing out centrally sponsored schemes and devolving the funds to the states. The states would now require greater professional inputs in planning out their own strategies for poverty alleviation.

5.4 The States have a critical role to play in the development process, in view of their responsibilities given to them in the federal structure. With limited funds available, they have to plan their social and economic investments with care and efficiency. In this regard, local level planning capability becomes very important. Under the 73rd and 74th amendments to the Constitution, Article 243-ZD directs the creation of a District Plan Committee at the district level 'to consolidate the plans prepared by the panchayats and

municipalities in the district and to prepare a draft Development Plan for the district as a whole.' The role of the District Plan Committees needs to be integrated with the state and central plan mechanisms and their capability strengthened

6. Improving Bureaucratic Capacity and Administrative Reform

6.1 The faith in the ability of the state to be able to take up enormous tasks of planned economic development stemmed from the perceived strength and efficiency of the bureaucracy that the British colonial rulers left behind. While this bureaucracy served the tasks of colonial rulers well, it could not stand up to the challenge of development. What happened during the Plan period was expansion in the public sector together with massive increase in public employment. In the process as the Approach Paper to the Tenth Plan points out, the state apparatus amassed functions and more powers often in the name of the poor. The Paper expressed the apprehension that, with such powers and labyrinthine and obscure processes through which the decisions are taken, sufficient condition for arbitrary exercise of these powers were created. Several efforts were made to transform this large state sector into an instrument of change but little success was achieved. The Eighth Five Year Plan (1992-1997) had earlier acknowledged the weaknesses in implementation and recommended that multiple institutions must be included to place policies on the ground and bureaucracy need not have monopoly over such functions. Government now is paying much more attention to reform the bureaucratic system for it is being recognized that inefficient bureaucracy hurts poor more than the rich.

6.2 The Fifth Central Pay Commission (1997), though primarily set up to determine the pay scales and other perks of government employees, devoted almost one-tenth of its report on administrative reforms. It recommended jettisoning of redundant activities, including privatization and contracting out. It pleaded for changes in the work methods and environment. It sought improvement in administrative productivity and enforcement of accountability. It wanted transparency in government and effective redressal of citizen grievances.

6.3 At the political level, a Conference of Chief Ministers held on 24 May 1997 accepted an Action Plan for Effective and Responsive Administration. This Plan had already been discussed at a Conference of Chief Secretaries in 1996 and accepted. The Chief Ministers and Central Ministers attending the Conference strongly endorsed the need for ensuring responsive, accountable, and transparent and people -friendly administration at all levels and agreed that necessary corrective steps must be taken to arrest the present drift in the management of public services. Steps were outlined in detail and the Prime Minister promised that more such meetings would be held to monitor the pace of implementation. Progress in implementation has varied. This Conference further resolved that the Central and State governments would work together to concretize the Action Plan dealing with the following themes:

- Accountable and citizen friendly government
- Transparency and Right to Information; and
- Improving the performance and the integrity of the public services.

Despite this seemingly extensive range of involvement in reform agendas, including an Action Plan derived from the politically and bureaucratically agreed agenda and priorities mentioned above, the performance as reported to the Administrative Reforms department, Government of India has not been encouraging. (Agnihotri and Dar, 2002)

6.4 While vigorous efforts are required to provide an accountable and transparent government, both the Action Plan as well as the Approach Paper to the Tenth Plan is emphatic about the significance of honesty and integrity in administration. The Approach Paper, as a matter fact, suggests that nothing would send a stronger and more positive signal to the people as well as investors than the announcement and implementation by government of a comprehensive anti-corruption strategy. Corruption is becoming a major problem that is not only affecting the general performance of the government but

leading to tremendous wastage of resources and source of harassment to the poor people. Indian Prime minister devoted considerable part of his 50th Anniversary Independence speech to the problem of corruption and measures to address it. Transparency International's 2001 Report ranked India on corruption index at 2.7 on 0-10 scale where 0 is most corrupt. (UNDP, 2002) Reducing corruption is not easy. Many approaches like the following are being adopted:

- Reducing corruption by deregulation and privatization
- Improving incentives for good performance and disincentives for corrupt practices
- Improving administrative practices by reducing opportunities for corruption by increasing accountability, transparency and the role of the citizen's voice. Citizen's Charters have been framed.
- Freedom of Information Bill is awaiting the approval of the Parliament.
- Bill to strengthen the Central Vigilance Commission is awaiting the approval of the Parliament.
- The Lokpal Bill aiming at fixing responsibility and rooting out corruption from high public offices is awaiting the approval of the Parliament.
- The Prevention of Money Laundering Bill is also awaiting approval of Parliament

6.5 Civil service reform is an integral part of improving public administration in India. Among the more important issues that appear to be affecting the performance of the civil service is the threat of frequent transfers, relating promotions to performance by a more effective appraisal system and developing a code of conduct which the civil servants are enjoined to adhere to. The Central Fifth Pay Commission, among its many recommendations, has suggested specifically regarding these issues:

- Arbitrary and frequent transfers of bureaucrats, particularly those in the All India Services at the state level, should be done away with. A Civil services Board should be constituted to lay down minimum tenures and clear all premature transfers.
- Performance appraisal system should be restructured to make it more effective and open.

All these measures need to be taken up in right earnest to improve the civil services.

6.6 Attention also needs to be focused on the subordinate services and those working at the district level and below. Very little effort has been made to upgrade the quality of the state and subordinate services who are the implementers of programmes in the social sector and who come in frequent contact with the public. There are training institutions established in most states but they need to be strengthened in order to become more effective. This need of professionalizing the bureaucracy at the district level assumes importance because the District Planning Committees, as pointed out above, are now statutorily required under the 73rd and 74th Constitutional amendments and these Committees have the responsibility of planning and project preparation. In addition, knowledge and understanding of rules and regulations with a behavioral orientation that enables the poor and the deprived to access delivery of goods and services is of critical importance as the decentralization process gets underway.

7. Legal Redressal System and Legal Framework for Development

7.1 Accountability and improvement in the public administration system is closely tied with improvements in the legal process resolving disputes and enforcing rights and obligations. Insofar as good governance means more accountable and transparent government, more effective and legitimate institutions are needed to protect citizen's rights, limit the actions of corruptor oppressive state officers and protect the livelihood of the poor and the excluded. (Crook, 2001) Reform of the India legal system is now seen as a critical factor in improving governance in the country. Typical life span of a civil litigation presents a sad picture. There are a large number of nodes through which the

litigation process passes through before reaching a judicial decision. Each node is enmeshed in structural and procedural constraints delaying the journey to a judicial order. Even when the judicial order is passed, another set of procedural delays in enforcement and execution have to be encountered. The inability to reach a final legal decision within a reasonable period of time allows contractual obligations and duties to be violated with impunity and devalues remedies eventually provided. Justice delayed is justice denied. For the poor, such a system is not accessible because of its high cost and if the dispute does enter the courts, the processes can be so time consuming, that justice is actually denied because of the delay. The outcome of slow judicial proceedings is not only inefficiency but denial of many goods and services meant for the poor.

7.2 The government has been concerned with the inadequacies of the legal system. A National Task Force on Judicial Reforms submitted its Report in 1996. Efforts must be made to see that its recommendations are implemented. Similar efforts are required on the results of review of the administrative laws. A Commission to review Administrative Laws submitted its Report in 1998. It recommended 'action' in respect of 1700 statutes. A follow up Standing Committee recommending implementation of these recommendations has also submitted its Report in 1999.

7.3 Initiatives for reform of the legal system have also come from members of the judicial system too. In 1994, former Chief Justice Ahmadi instituted reforms in the handling of all matters pending in the Supreme Court. A comprehensive computerization programme was instituted; a uniform classification system, according to the subject matter of cases filed, was created; and the filing, listing, classification, and allocation tasks were computerized. These initiatives dramatically reduced the Supreme Court caseload. This success led to the initiation of a large scale project involving legal experts of India and the United States which aimed at reforming the High Courts and the lower courts. (Chadosh et.al.1997/1998)

7.4 The magnitude of judicial delays has been highlighted in a number of reports and acknowledged in response to parliamentary questions. In response to a question on 13 May 2002 in the Rajya Sabha about the number of cases pending before the Supreme Court and High Courts, the Minister of Law, Justice and Company Affairs noted that there were over 23,000 cases pending before the Supreme Court and in excess of 3.5 million cases pending before the High Courts. The six High Courts with the highest number of cases pending include Allahabad; 867,000, Kolkata; 282,000, Mumbai - 294,000, Kerala; 405,000, Chennai; 350,000, Punjab & Haryana: 233,000. It would appear that the position in the district and subordinate courts is particularly acute. Secondary sources indicate that over 20 million cases were pending before those courts as of October 2001. The 31 May 2002 Conference of Law Secretaries/Registrar Generals of High Courts reported that the pending cases in the district and subordinate courts of seven states where there were the largest number of such cases exceeded 18 million.

7.5 There have been a number of efforts by the judiciary, the central government and state governments to address this issue. They include:

- (i) Judicial orders in cases like the All India Judges Association & Others v. Union of India & Others dated 21 March 2002 where the Supreme Court directed existing vacancies in the subordinate courts to be filled by 31 March 2003 by all states and an increase in judge strength from the ratio of 10.5 (13 judges per 1 million people) to one of 50 judges per 1 million people to be implemented within 5 years.
- (ii) A report of the National Task Force on Judicial Reforms and the enactment of the Arbitration and Conciliation Act in 1996.

- (iii) Starting in 2000, there were several initiatives including: a) to establish 1734 fast track courts¹ for quick disposal of long pending cases; b) computerization and networking of courts in four metropolises (Delhi, Mumbai, Chennai, Kolkata) on a pilot basis; and c) networking of Department of Justice with the Supreme Court, all High Courts and the Law Departments of State Governments.
- (iv) A project report dated March 2002 of the Ministry of Information Technology National Informatics Centre (NIC) on computerization of the Delhi High Court.
- (v) A study on court management initiated in 2001 by the Andhra Pradesh (AP) Government, AP Judicial Academy, AP Supreme Court, High Court and District Courts aided by the World Bank.

7.6 Although there have been pockets of progress, most notably in the Supreme Court, where efficiency improvements have led to the number of pending cases dropping from 104,000 on 31 December 1991 to 23,000 in 2002, past initiatives have generally been fragmented, often person dependent and with limited success in a systemic sense.

7.7 Apart of weaknesses in judicial enforcement, there have also been procedural law bottlenecks in the enforcement of rights which adversely affect the functioning of the judicial sector on behalf of all citizens. In procedural law terms, there have been recent government efforts to reform the Indian Civil Procedure Code and ongoing inquiries into the need to modernize criminal procedure as reflected in statutes like the Indian Evidence Act.

7.8 The legal rights regime affecting the poor continues to remain in need of reform. In substantive law terms, the enforcement of collateral property rights outside the court system was addressed through the enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act of 2002. However, the comprehensive creation and registration of rights in movable property such that movable property can act as a meaningful source of collateral for access to credit for the poor and for small and medium sized enterprises, is dependent on further reforms in the legal framework for security interests. In addition, the poor performance of water management evident during the current drought with deterioration and lack of maintenance of water harvesting structures, have highlighted the need for a participatory water rights regime. A legal framework needs to be developed which allows the benefits of government initiatives to be sustained through participatory processes, including the development of functional relationships between panchayats and water user groups (Upadhaya, 2002). It should be noted that Andhra Pradesh passed the Farmers Management of Irrigation Systems Act in 1997 to institutionalize the participation of irrigation users in the operation and maintenance of irrigation systems. This has led to some sustained benefits, although there is a need for greater involvement of NGOs and panchayats in creating a strong awareness for social regulation of water use (Jairath, 1999).

7.9 If the poor have to benefit, laws regulating economic activities in the informal sector have to be re-examined. The benefits of deregulation have also to reach the local levels. In the urban sector, issues have been raised about framing laws that support the informal sector in which the hawkers, rickshaw-wallahs, petty tradesmen and manufactures are involved. In the rural sector, value addition to the local produce and their marketing face various legal hurdles.

8. Making Decentralization Effective for Good Governance

8.1 Decentralization is now accepted as an important method of improving public service delivery especially to the poor. India is making renewed efforts in making

decentralization more effective following the 73rd and 74th amendments to the Constitution. The Constitutional and legal framework of decentralization in India now consists of three tier structure below the state level in the rural areas. A three tier structure of Panchayats, Panchayat Samitis and Zila Parishad has been designed at the village, block and the district levels. There are now around 500 District Zila parishads, about 6000 block Panchayat Samitis and around 250,000 village Panchayats. In the urban areas, where 27% of the population lives there are now 96 city corporations, 1700 town municipalities and 1900 nagar panchayats. What is significant is that women head about 175 district panchayats, 2000 block panchayats and 85000 village panchayats. (Mathew, 2000:10)

8.2 The extent to which functions and finances are transferred to local government have been left to the state governments to provide through their own statutes. What the CAs did was to enjoin the states to endow the local governments "with such power and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions of the division of powers and responsibilities." The 11th (panchayats) and 12th (municipalities) schedules list out powers that the local government could be provided within the state acts. (see Appendix 2 and 3) Thus, unlike the federal division of powers through a central, state and concurrent list, the amendment did not provide any local list. The 11th schedule contains only an indicative list of 29 subjects and the 12th schedule of 18 subjects that could be transferred to panchayats and municipalities as the state legislatures deem fit. The result is that the extent of distribution of functions and resources to the panchayats and municipalities is not uniform across states and each state needs to be seen separately. Most states have been reluctant to devolve sufficient functions and resources to the local bodies. Only Assam, Karnataka, Kerala, Rajasthan, Tamil Nadu and West Bengal have so far transferred all the 29 subjects to the panchayats. However, even where functions and some financial resources have been transferred, the issue of transfer of civil servants from the state cadres to local government has not been addressed effectively. It is reported With the CAs, panchayats and municipalities have been statutorily recognized to have functional and fiscal powers. A three-tier structure has been designed at the village, block and the district levels. There are now around 500 district panchayats, about 6,000 block panchayats and around 250,000 village panchayats. In the urban areas, where 27% of the population lives there are now 96 city corporations, 1,700 town municipalities and 1,900 nagar panchayats. What is significant is that women head about 175 district panchayats, 2000 block panchayats and 85,000 village panchayats.

8.3 The centre continues to administer its programs at the local level through their own departmental mechanisms with little involvement of the panchayats. Such agencies like District Rural Development Agencies, or Watershed Development Program, or Joint Forest Management bypass the panchayats and are not accountable to them. Three major instruments provided in the CAs that strengthen the autonomy of the panchayats and municipalities were the appointment of the state election commissions, the state finance commissions and the district planning committees. State election commissions are necessary to conduct free and fair elections and have been composed of largely serving bureaucrats who were give additional responsibility. The state finance commissions have a critical role to play in maintaining the health of the local bodies for they specify the amount of resources that the state needs to devolve to them but their recommendations take time before they are considered for implementation. The district planning committees have either not been established or do not have any staff support. Among the three states of Assam, Kerala and Madhya Pradesh, Assam has not yet constituted such committee.

8.4 The situation of decentralization with urban local government is very similar to rural local government. Even before the CAs in 1992, the obligatory functions of urban local bodies under the Municipal Acts included the provisions for providing civic services, such as water supply and sanitation, and formulating and implementing infrastructure

improvement schemes. However, the CA has increased the functions and responsibilities of the local bodies without any substantial improvement in their institutional and financial capacities.

8.5 Very few staff assigned at the local level has adequate skills in and knowledge of administrative or accounting rules and regulations. Thus, functioning of local governments is seriously affected by lack of administrative, accounting or planning support. In improving the public delivery system, strengthening capacity at this level will have a great impact. Municipal governments, especially in small and medium towns, lack professionally qualified technical staff in critical areas of municipal management. Also the financial resources available to the local governments are grossly inadequate to enable them to undertake the required development programs. For these reasons, the implementation of the CAs has been a very slow process. Unless local governments become creditworthy and professionally managed entities, the dominance of the state over local matters is likely to continue. On the other hand, institutional transformation will be much faster if the central and state governments make genuine efforts to devolve the necessary power and financial resources to match the newly assigned functions of local governments. Good local governance in the Indian context comprises the following key elements: (i) to be responsive and accountable to the community; (ii) to develop standards of service comparable to the best in that particular category; and (iii) to constantly improve their capabilities so as to equip themselves to undertake their tasks in resource mobilization, service provision, and poverty alleviation.

8.6 The task of effective decentralization is still incomplete because in many states administrative and financial powers continue to be heavily concentrated in the secretariats and the directorates. The Human Development Report published by the Planning Commission in 2002, in its chapter on Governance, provides a useful analysis on the status of the effectiveness of decentralization across the states. (See Appendix 4) It also asserts that the panchayats role is still heavily influenced by the role of the development bureaucracy and the existing mechanisms and processes provide space for considerable distortion and leakages. The present system is such that even the honest panchayat raj institution representatives find it difficult to carry out their functions.

8.7 The task of effective decentralization is also still incomplete because the states have not devolved adequate functions to them. In most cases the panchayats still work as appendages of local administration administering projects granted to them. In addition, all projects being implemented at the local level are not necessarily routed through the panchayats. This is true of government projects as well as those that have participatory arrangements. Civil society groups are also able to work independently of the panchayats. Some aspects of this situation can be retrieved by:

- A review of the work of the State Finance Commissions and the general revenue raising capacity at the local level
- Making technical assistance available to the District Planning Committees or District panchayats for improved project planning and implementation
- Strengthening cooperation and communication between panchayats and the NGOs and participatory institutions like user associations etc.
- Activating a more transparent process in local decision making – right to information is critical
- Providing training to local staff in maintaining accounts and conduct departmental audit. Accountability procedures need to be strengthened.

9. The Role of Other Development Partners

UNDP

9.1 The Country Programme Outline of UNDP (2003-07 <http://www.undp.org.in>) directs its focus on the Tenth Plan in building its agenda to support the government in improving governance in the country levels. A primary focus will be on strengthening gender-

responsive actions by local institutions and community organizations. Partnerships with local institutions initiated under this programme will also provide a basis for convergent programming in other thematic areas.' Strategies proposed include:

- Capacity-building of panchayati raj institutions in both rural and urban areas, including through support to the national initiative for tribal governance;
- Support to panchayati raj institutions for gendered planning and programming at the local level;
- Continued support to civil service reform at various levels, with a focus on enhancing the gender sensitivity, responsiveness, transparency and efficiency of administration;
- Capacity-building for district and village-level planning, including building up databases and enhancing technical expertise in the use of ICT, particularly for facilitating citizens' access to information.
- Facilitating an enabling environment for the integration of people living with HIV/AIDS through capacity building of communities, civil society groups, voluntary organizations and local institutions, research on legal/ethical issues and building new partnerships particularly with the India private sector.

The World Bank

9.2 The World Bank's strategy basically revolves around the poverty reduction strategy of the government. (India Country Assistance Strategy 2001 <http://www.worldbank.org.indiacas>) It sees its primary challenge in providing incentives for reform and assisting with implementation. The strategy follows three core principles: a. selectivity – Bank's assistance will continue to be focussed on poorer states that are implementing wide ranging reform programmes; b. at the national level, the focus will be on four areas, agriculture and rural development, fiscal and governance reform; financial sector development; and health sector reforms; c. Bank proposes strong partnerships with clients and other donors and stakeholders to use 'limited resources in a catalytic manner.' The Bank lays great emphasis on government effectiveness. It says that India's deteriorating fiscal position warrants an increased emphasis on fiscal reform. The Bank uses this thrust to argue that fiscal reforms need to be accompanied by improvements in governance to tackle endemic problems such as over-staffing, corruption and poor budgetary management. Together with this, the Bank is integrating cross-cutting governance reforms into the design of sectoral operations and into the Bank's sectoral dialogue to improve service delivery and strengthen government effectiveness on a sector by sector basis. It appears therefore that the Bank has a two pronged strategy. One is to support government's direct reforms in improving governance like in the areas of right sizing or corruption. The other is to make efforts to improve governance in the sectors that are chosen by it for support. Here improving governance is built into sectoral reform.

10. ADB's Approach

10.1 Since ADB's assistance to India started in 1986, the support to governance for improved public management has been driven by the requirements and priorities of the government and ADB's own policies concerned with governance and poverty reduction. Within this context ADB needs to place emphasis on strengthening governance in sectors where significant investments are being made. These include: social infrastructure, transport, power, financial sector, private sector operations and public resource management in state level operations.

10.2 An important strategic priority in the new CSP should be governance, which is a leveraging instrument cutting across all other components of the strategy. Good governance will considerably enhance the total developmental impact of ADB's assistance program. ADB's operational strategy to support the Government's efforts at effective governance should have the following elements: (i) fiscal consolidation at the central government level; (ii) sector-level policy reforms combined with capacity building for better service delivery in the sectors where ADB is active; (iii) state-level fiscal policy

reforms combined with interventions to strengthen state and local governments to ensure greater accountability, transparency, and efficiency in service delivery, especially for pro-poor services. A fourth element which will be an important innovation in the new strategy should be added. This should be concerned with core governance interventions such as reform in the administration of justice, which will play a key role in the next generation of reforms.

10.3 State governments have a significant responsibility for poverty reduction. Consequently, support for development activities at the state level became a priority for ADB in the last CSP. The interaction at the state level has provided a better understanding of the challenges and opportunities of poverty reduction at the grassroots. ADB has concentrated its state level operations in three focal states, i.e. Gujarat, Kerala and Madhya Pradesh to fully exploit complementarities and the synergy between the interventions, thereby maximizing the developmental impact in a given region. However, now as there is a concern in government for growing inter-regional disparities, the ADB needs to consider extending its operations to few more states. There are already significant operations in West Bengal. Assistance may be extended to Assam and Sikkim in the North-East and the new state of Chattisgarh.

10.4 A key lesson emerging from the state level operations is the importance of local government in development and the changing role of the state government to create the enabling environment for local government to function effectively and efficiently. Implementation at the state level has also highlighted the significance of effective inter-government relations.

10.5 ADB's programs in the urban, energy and transport sectors need to be concerned with improving the quality of governance, particularly in the provision of services and in creating the enabling environment for growth.

10.6 In response to the priority for judicial reform highlighted in the 10th Plan, ADB needs to include in its proposed technical assistance in 2003, support for a broad-based diagnostic assessment, including recommendations on judicial sector performance measurement tools, resource management, information technology systems, procedural reforms and access to justice legal services development. The recommendations should be pilot tested in an integrated fashion in a court system to be selected. Based on the results of such pilot testing, ADB could support the development of components, standards and implementation time frame for a National Policy on Administration of Justice in 2004. A TA Loan in 2005 could be designed to support an initial model project covering the Supreme Court, High Court and subordinate courts of a state/union territory to be selected. Based on this model project, there could be replication of such administration of justice reforms on a state-by-state basis in the long term.

10.7 There is a strong central drive to deliver more customer-focused services. Transforming public services means implementing large-scale programs of change. Themes critical for success are leadership, integrated strategies, and effective communication. Targeted capacity building should be a major element of ADB's governance support. ADB assistance should support efforts at strengthening capability and capacity in performance management and results-based management, changing management, managing information, and setting up monitoring and evaluation systems. Systems and processes should be strengthened to minimize opportunities for corruption and mismanagement of public resources.

10.8 ADB needs to prioritize governance in CSP implementation by mainstreaming activities that will strengthen governance in all ADB programs and projects and by directly supporting core governance initiatives. The objective of promoting accountability, transparency, predictability, and participation should underpin ADB's governance work in India.

11 Monitoring and evaluation: measuring impact

11.1. One of the issues emerging from ADB's support to national and state level service delivery is the dearth of performance related information at a sector level. With the significant investment already made by government in the provision of basic services and the fiscal crisis that many of the states are facing, there is a growing need for information on the quality of the spending on public services. Assessing the quality and effectiveness of services as experienced by the service users will become increasingly important. Furthermore, policy makers, service users and providers will be expected to make comparisons of sector performance by service providers across districts within a state and across states. Hitherto, much of the emphasis in terms of data collection and information dissemination has been focused on inputs such as financial and human resources. Nationally agreed criteria are required for measuring the services delivered by the public sector.

11.2 ADB should support government and civil societies develop benchmarks for tracking service delivery performance. Particular attention should be given to developing key indicators for service delivery in urban social infrastructure, transport and power sectors. The indicators may be developed by government and civil society and mainstreamed into the functions of relevant organizations. Effective benchmarking is important in the delivery of modern public services and reforming the civil service. Table 2 provides an indicative list of areas where benchmarking could be applied in ADB's programs in the states and urban, power and transport sectors.

Benchmarks for Pro-poor Service Delivery

Governance Outcome Areas	Service Delivery Performance Themes for State Governments, Power, Transport and Urban Sectors
Greater Accountability	<ul style="list-style-type: none"> • Clarity in the demarcation of responsibility for delivery of public services between state government and local governments. • Establishment of appropriate regulatory arrangements to ensure effective, efficient, equitable and value for money provision of services • Effective implementation of policies on user charges • Improved targeting of subsidies • Effective grievance redressal system for citizens • Performance management system operational and effective
Greater transparency	<ul style="list-style-type: none"> • Citizens' Charters published and effectively operationalized in the provision of water supply and sanitation, primary health and education services by local governments and in the power sector by state governments • Easy to read budgets published for access by citizens and other stakeholders. • Sound procurement procedures. • State and local governments make development related information available to citizens and other stakeholders. • Public expenditure tracking surveys implemented to identify how financial resources are actually utilized. Costs of services established. • Enactment of Fiscal Responsibility Bill legislation.
Better Predictability	<ul style="list-style-type: none"> • Reduced gap between financial resource allocations and agreed budgets. • Performance against service delivery targets as agreed with citizens and stakeholders published and gap between

Governance Outcome Areas	Service Delivery Performance Themes for State Governments, Power, Transport and Urban Sectors
	targets and actual performance reduced. <ul style="list-style-type: none"> • Strengthened regulatory frameworks. • Increased access to legal information.
Improved Participation	<ul style="list-style-type: none"> • Civil society including the private sector involved in the provision of services through public/private and public/public partnerships. • Citizens and other stakeholders involved in the planning and monitoring of services through effective use of local planning processes and Citizens' Charters. • Social Audit implemented to provide citizen feedback on public services. • Civil society involved in the collection and provision of cross state comparisons in the quality and effectiveness of basic public services. Report card system in operation.

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Appendix I

Illustrative List of Developmental Subjects (Other than Financial Subjects) Included in Central, State and Concurrent List as per the Seventh Schedule of the Constitution

SEVENTH SCHEDULE

(Article 246)

List I Union List

Entry number
in the Schedule

- 6. Atomic energy and mineral resources necessary for its production.
- 22. Railways.
- 23. Highways declared by or under law made by Parliament to be national highways.
- 24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways.
- 25. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.
- 26. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.
- 27. Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein.
- 28. Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.
- 29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.
- 30. Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.
- 31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.
- 41. Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.
- 42. Inter-State trade and commerce.
- 52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
- 53. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.

54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

57. Fishing and fisheries beyond territorial waters.

65. Union agencies and institutions for-

(a) professional, vocational or technical training, including the training of police officers; or

(b) the promotion of special studies or research; or

(c) scientific or technical assistance in the investigation or detection of crime.

66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

68. The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India; Meteorological organisations.

List II- State List

5. 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.

6. Public health and sanitation; hospitals and dispensaries.

9. Relief of the disabled and unemployable.

13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal trams ways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.

18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

21. Fisheries.

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
24. Industries subject to the provisions of (entries 7 and 52) of List I.
25. Gas and gas-works.
26. Trade and commerce within the State subject to provisions of entry 33 of List III.
27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.
32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.
35. Works, lands and buildings vested in or in the possession of the State.

List III- Concurrent List

- 17A. Forests.
20. Economic and social planning.
- 20A. Population control and family planning
23. Social security and social insurance; employment and unemployment.
25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour
27. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.
31. Ports other than those declared by or under law made by Parliament or existing law to be major ports.
32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.
33. Trade and commerce in, and the production, supply and distribution of,-
- (a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;
- (b) foodstuffs, including edible oilseeds and oils;
- (c) cattle fodder, including oilcakes and other concentrates;
- (d) raw cotton, whether ginned or unginned, and cotton seed; and
- (e) raw jute.
36. Factories.
37. Boilers.
38. Electricity.

Appendix 2

List of Subjects Which State Legislature Can Delegate to the Panchayats

**ELEVENTH SCHEDULE
(Article 243G)**

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

25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

Appendix 3

List of Subjects Which State Legislature Can Delegate to the Municipalities
TWELFTH SCHEDULE
(Article 243W)

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.

Appendix 4

STATUS OF PACHAYATI RAJ INSTITUTIONS – SELECTED INDICATORS

States/Union Territories	Holding of Panchayat elections	Constitution of DPC	Status of State Finance Commission Recommendations	Devolution of Funds, Functions, & Functionaries in respect of 29 Subjects (At. 243G)	Status of DRDA/ZP linkage
1. Andhra Pradesh	GP elections held in Aug 2001, while intermediate and District Panchayat elections held in July 2001	Not constituted	Accepted 54 recommendations fully, 11 with some modifications, and 19 not accepted at all. Second SFC constituted	Funds – 05 Functions – 17 Functionaries – 02	DRDA & ZP not merged, Collector is Chairperson of DRDA & President of ZP is Vice-Chairman
2. Arunachal Pradesh	Elections not held	Constituted	Not constituted	Not applicable yet	Not yet
3. Assam	Elections held	Not constituted	Recommendations accepted in part	No action taken yet	Not transferred
4. Bihar	Elections held in April 2001	No	Report awaited	Funds – Functions – 20 Functionaries –	Not merged
5. Goa	GP – in 1997 DP – in 2002	No information	Report under consideration	No information available	Merger under consideration
6. Gujarat	GP – Dec 2001 PS & DP – in Dec 2000	Not constituted	Received, but not yet placed before legislature for consideration	No information available	Not merged
7. Haryana	Elections held in March 2000	Only in 16 districts	Accepted. Second SFC constituted	Funds – 0 Functions – 16 Functionaries – 0	Not merged
8. Himachal Pradesh	Elections held in Dec 2000	Only in 5 districts out of 12	Accepted. Second SFC constituted	Funds – 2 Functions – 23 Functionaries – 7	Merged & headed by President of Zilla Parishad

States/Union Territories	Holding of Panchayat elections	Constitution of DPC	Status of State Finance Commission Recommendations	Devolution of Funds, Functions, & Functionaries in respect of 29 Subjects (At. 243G)	Status of DRDA/ZP linkage
9. Jammu & Kashmir			73 rd Constitutional Amendment Act has yet to be extended to State. However, the Ministry of Home Affairs has requested the Government of J&K to seek the views of the State Legislature extending the provisions of the 73 rd Constitutional Amendment Act 1992, to the State. Panchayat elections in some part was held in Jan-Feb 2001 according to State Panchayat Raj Act.		
10. Karnataka	GP - Feb 2000 PS & DP - Jul 2000	Only in 5 districts	Accepted major recommendations	Funds - 29 Functions - 29 Functionaries - 29	Merged
11. Kerala	Sep 2000	Yes	Accepted & implemented. Second SFC constituted	Funds - 15 Functions - 29 Functionaries - 15	Merged and headed by President of Zilla Parishad
12. Madhya Pradesh	Jan 2000	Yes	Accepted. Second SFC constituted	Funds - 10 Functions - 23 Functionaries - 9	Merged
13. Maharashtra	GP - Oct 1997 PS & DP - Mar 1997	No	Major recommendations accepted	Funds - 18 Functions - 18 Functionaries - 18	Against merger of DRDA with ZP
14. Manjur	GP & DP - Jan 1997	Yes in 2 out of 4 districts		Funds - 0 Functions - 22 Functionaries - 4	No information available
15. Meghalaya			73 rd Constitutional Amendment Act is not applicable as the traditional system of local self-government exists in these States		
16. Mizoram					
17. Nagaland					
18. Orissa	Jan 1997. Elections in Schedule V area invalid	Only in 6 districts	Accepted	Funds - 5 Functions - 25 Functionaries - 3	Merged and headed by Chairperson of ZP
19. Punjab	GP - Jun 1998 PS & DP -	Not yet	Accepted	Funds - 0 Functions - 7 Functionaries	Not merged

States/Union Territories	Holding of Panchayat elections	Constitution of DPC	Status of State Finance Commission Recommendations	Devolution of Funds, Functions, & Functionaries in respect of 29 Subjects (At. 243G)	Status of DRDA/ZP linkage
	election are due			- 0	
20. Rajasthan	Jan 2000	Yes	Accepted. Second SFC constituted	Funds - 0 Functions - 29 Functionaries - 0	Merged
21. Sikkim	Oct 1997	Yes	Accepted. Second SFC constituted	Funds - 24 Functions - 24 Functionaries - 24	Status not reported
22. Tamil Nadu	Oct 2001	Yes	Accepted. Second SCF constituted	Funds - 0 Functions - 29 Functionaries - 0	Status not cleared
23. Tripura	Jul 1999	Yes	Accepted. Second SFC constituted	Funds - 0 Functions - 12 Functionaries - 0	Status difficult to define
24. Uttar Pradesh	Jun 2000	Yes	Accepted. Second SFC constituted	Funds - 12 Functions - 13 Functionaries - 9	Merged and headed by President of ZP
25. West Bengal	Jun 1998	Yes	Accepted Functions - 29	Funds - 12 Functionaries - 12	Merged and headed by President of ZP
26. Chhattisgarh	Jan 2000	Yes	Not set up	Funds - 10 Functions - 23 Functionaries - 9	Merged
27. Jharkhand	Election due. Reported that election will be held in Sep 2002	Not constituted	Not set up	No information available	
28. Uttaranchal	Term of Panchayat expired in Dec 2001. State Panchayati Raj Act has	Not constituted	Report awaited	Funds - 12 Functions - 13 Functionaries - 9	

States/Union Territories	Holding of Panchayat elections	Constitution of DPC	Status of State Finance Commission Recommendations	Devolution of Funds, Functions, & Functionaries in respect of 29 Subjects (At. 243G)	Status of DRDA/ZP linkage
	yet to be notified				
<i>Union Territories</i>					
29. Andaman & Nicobar Islands	Sep 2000	Yes	Under consideration	Funds – 6 Functions – 6 Functionaries – 6	Merged and headed by Chairperson of ZP
30. Chandigarh	GP – Jan 1999 ZP – Jul 2000 PS – not held so far	No	SFC Report awaited	No information available	Not applicable
31. Daman & Diu	Sep 2000	Yes	Under consideration	Funds – 5 Functions – 9 Functionaries – 3	Merged & headed by ZP President
32. Dadra & Nagar Haveli	Oct 2000	Yes	Under consideration	Funds – 0 Functions – 3 Functionaries – 3	No DRDA exists
33. Delhi	NCT Delhi had repealed the Panchayati Raj Act and sought abolition of the Panchayati Raj Institutions (PRI) System. However, it is now considering adopting the 73 rd Amendment Act and reviving the Panchayats.				
34. Lakshadweep	Dec 1997 – Jan 1998	Yes	Under consideration	Funds – Functions – 6 Functionaries –	No DRDA exists
35.	Elections				

States/Union Territories	Holding of Panchayat elections	Constitution of DPC	Status of State Finance Commission Recommendations	Devolution of Funds, Functions, & Functionaries in respect of 29 Subjects (At. 243G)	Status of DRDA/ZP linkage
Pondicherry	<p>have not been held in the UT, as the matter relating to the validity of provisions pertaining to reservation for backward classes in the Pondicherry Panchayati Raj Act was subjudice. The Judgment of the Chennai High Court had become available and the UT Administration filed a clarificatory application in the Chennai High Court. On a similar issue pertaining to Tamil Nadu, The Honorable High Court at Chennai had passed Orders making it possible for the Tamil Nadu Government to hold elections. The Ministry of Rural Development has advised</p>				

States/Union Territories	Holding of Panchayat elections	Constitution of DPC	Status of State Finance Commission Recommendations	Devolution of Funds, Functions, & Functionaries in respect of 29 Subjects (At. 243G)	Status of DRDA/ZP linkage
	the UT Administration to take appropriate action to hold panchayat elections in the earliest on the same lines.				