

Ranga Reddy District Sarpanches' Association and Ors. Vs. Government of A.P. and Ors.

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Court : Andhra Pradesh

Decided On : Jan-29-2004

Reported in : 2004(2)ALD1; 2004(1)ALT659

Judge : Devinder Gupta, C.J., ;Motilal B. Naik, ;B. Sudershan Reddy, ;G. Raghuram and ;P.S. Narayana, JJ.

Acts : [Constitution of India](#) - Articles 1(1), 40, 226, 243E, 243G, 245, 246 and 246(3); Andhra Pradesh Panchayat Raj Act, 1994 - Sections 153, 181, 249 and 250

Appeal No. : WP Nos. 12348 and 13256 of 2002

Appellant : Ranga Reddy District Sarpanches' Association and Ors.

Respondent : Government of A.P. and Ors.

Advocate for Def. : Ramesh Ranganathan, Additional Adv.-General, for Respondent No. 1, ;Government Pleader for Panchayat Raj and Rural Development, ;Soli J. Sorabjee, Attorney General of India (amicus curiae) for Responde

Advocate for Pet/Ap. : S. Ramachandra Rao, Adv. assisted by ;K.R. Prabhakar, Adv.

Disposition : Petition dismissed

Judgement :

P.S. Narayana, J.

1. Ranga Reddy District Sarpanches Association, represented by its President and Convenor Sri Girish Sanghi and others had invoked the jurisdiction of this Court under Article 226 of the [Constitution of India](#) questioning certain provisions of A.P. Panchayat Raj Act, 1994 and certain Government Orders and Rules by filing W.P. No. 12348/2002. Federation for Empowerment of Local Government by its Presidium Member, Lok Satta by its General Secretary and Dr. Jayaprakash Narayana filed W.P.MP. No. 22300/2003 in W.P. No. 12348/2002 to implead them as Respondents 3 to 5 and in view of the averments made in the affidavit filed in support of the application the said W.P.M.P. No. 22300/2003 is allowed and proposed parties are impleaded as Respondents 3 to 5. The contesting parties had put in lengthy pleadings and also placed ample material before the Court in support of their respective contentions. Likewise, Prasanna, Chairperson, District Level Committee, Zilla Parishad, Nalgonda District filed P.No. 132567 2002 132567 2002 questioning Memo No. 32254/Mdl.II/ 2002-1, dated 18-7-2002.

2. Both the writ petitions were heard at length. The factual matrix as reflected in the respective pleadings of the parties, needs no repetition. Elaborate submissions were made by Sri S. Ramchandra Rao, Senior Counsel representing the petitioners, Sri S. Niranjan Reddy, representing implead petitioners, the learned Attorney General who had well assisted the Court in this regard, the learned Additional Solicitor General, representing the Union of India and the learned Additional Advocate General, representing the State of Andhra Pradesh.

3. The concept of democracy and the concept of Federalism in the context of Local Self Government and the Panchayat Raj Institutions had been argued at length. Federal concept in the context of Indian Constitution always has been a controversial question - the States demanding for more powers and less control by Union and the Union advocating for a strong Centre especially to maintain the sovereignty and integrity of the Nation. Article 1(1) of the Indian Constitution, hereinafter referred to as 'Constitution' in short, simply says : India, that is Bharat, shall be a Union of States. Federalism and nature of Indian Federalism was well discussed in *State of Rajasthan v. Union of India*, : [1978]1SCR1 , *S.R. Bommai v. Union of India*, : [1994]2SCR644 , Under Article 143 of the [Constitution of India](#); In the Matter of: Special Reference 1 of 1964, : AIR 1965 SC745 . In the decision referred in *State of Rajasthan case (supra)* at Para 51, the Apex Court held:

'A conspectus of the provisions of our Constitution will indicate that, whatever appearances of a federal structure our Constitution may have, its operations are certainly judged both by the contents of power which a number of its provisions carry with them and the use that has been made of them, more unitary than federal. I mention the use that has been made of the constitutional provisions because Constitutional practice and convention become so interlinked with or attached to Constitutional provisions and are often so important and vital for grasping the real purpose and function of Constitutional provisions that the two cannot often be viewed apart. And, where the content of powers appears so vague and loose, from the language of a provision as it seems to us to be in Article 356(1), for the reasons given above, practice and convention may so crystallize as to become more significant than the letter of the law. At any rate, they cannot be divorced from Constitutional law. They seem to us to be relevant even in understanding the purpose, the import, and the meaning of the words used in Article 356(1). This will be apparent also from a perusal of the judgment of this Court in *Shamsher Singh v. State of Punjab* : (1974)IILLJ465SC .'

In the decision referred in *S.R. Bommai's case (supra)* the Apex Court held at Para 107:

'The federal State is a political convenience intended to reconcile national unity and integrity and power with maintenance of the State's right. The end aim of the essential character of the Indian federalism is to place the nation as a whole under control of a national Government, while the States are allowed to exercise their sovereign power within the legislative and co-extensive executive and administrative sphere. The common interest is shared by the Centre and the local interests are controlled by the States. The distribution of the legislative and executive power within limits and co-ordinate authority of different organs are delineated in the organic law of the land, namely the Constitution itself. The essence of federalism, therefore, is distribution of the force of the State among its co-ordinate bodies. Each is organized and controlled by the Constitution. The division of power between the Union and the State is made in such a way that whatever has been the power distributed, legislative and executive, be exercised by the respective units making each a sovereign in its sphere and the rule of law requires that there should be a responsible Government. Thus the State is a federal status. The State qua the Centre has quasi-federal unit. In the language of Prof. K.C. Wheare in his *Federal Government*, 1963 Edn. at page 12 to ascertain the federal character, the important point is, 'whether the powers of the Government are divided between coordinate independent authorities or not', and at page 33 he stated that 'the systems of Government embody predominantly on division of powers between Centre and Regional authority each of which in its own sphere is co-ordinate, with the other independent as of them, and if so is that Government federal?'

In the decision referred in under Article 143 of the [Constitution of India](#), in the Matter of : Special Reference of 1964 (*supra*) at Para 39 the Apex Court held:

'In dealing with this question, it is necessary to bear in mind one fundamental feature of a Federal Constitution. In England, Parliament is sovereign; and in the words of Dicey, the three distinguishing features of the principle of Parliamentary Sovereignty are that Parliament has the right to make or unmake any law whatever; that no person or body is recognized by the law of England as having a right to override or set aside the legislation of Parliament, and that the right or power of Parliament extends to every part of the Queen's dominions (The Law of the Constitution by A.V. Dicey, p.XXXIV). On the other hand, the essential

characteristic of federalism is 'the distribution of limited executive, legislative and judicial authority among bodies which are co-ordinate with and independent of each other'. The supremacy of the Constitution is fundamental to the existence of a federal State in order to prevent either the Legislature of the federal unit or those of the member States from destroying or impairing that delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity. This supremacy of the Constitution is protected by the authority of an independent judicial body to act as the interpreter of a scheme of distribution of powers. Nor is any change possible in the Constitution by the ordinary process of federal or State legislation (The Law of Constitution by A.V. Dicey, p.LXXVII). Thus the dominant characteristic of the British Constitution cannot be claimed by a Federal Constitution like ours.'

In *State of M.P. v. Bharath Singh*, AIR 1967 SC 1170, it was held that the Indian Federal structure is founded on (1) Sovereignty of people with limited Government authority and (2) Distribution of power between three organs of the State -Legislature, Executive and Judicial, each organ having some check direct or indirect on the other. It is laid down by Prof. K.C. Wheare in 'Federal Government', 1963 Edition, that the most important point to ascertain whether a Constitution is Federal in character is whether the powers of the Government are divided between co-ordinate independent authority or not. In 'Constitutional Law of India' 4th Edition, Silver Jubilee Edition, H.M. Servai, the learned author expressed the opinion that the most important feature of Federal Constitution is the distribution of legislative power. Even A.V. Dicey in his Introduction to the Study of the Law of Constitution, had expressed an opinion that the distribution of limited executive, legislative and judicial authority among bodies each co-ordinate with and independent of the other is essential to the Federal form of Government.

4. Federal set up is always understood in contradistinction to unitary State. Federalism, whether understood as pragmatic or quasi in the Indian context in view of the division of powers between the Union and States, is accepted to be the basic structure of the Constitution. A comparative study of the Constitutions of Federal set up of the World do throw clear light on the division of powers between the Centre and the States. Local Government or local bodies have been never treated to have division of powers so as to be a tier in the Federal system. It is clear from the very functioning of the Federal Systems of the World. In *Kesavananda Bharathi v. State of Kerala*, : AIR 1973 SC1461 , the Apex Court no doubt held that Federalism is the basic structure of the Constitution. In *Smt.Indira Nehru Gandhi v. Shri Raj Narain*, : [1976]2SCR347 , at Para 688 it was held by the Apex Court:

'The reason of this restraint is not that the Indian Constitution recognizes any rigid separation of powers. Plainly, it does not. The reason is that the concentration of powers in any one organ may, by upsetting that fine balance between the three organs, destroy the fundamental premises of a democratic Government to which we are pledged. Sir Carleton K. Allen says in his *Law and Orders* (1965 Ed., p.8) that neither in Montesquieu's analysis nor in Locke's are the Governmental powers conceived as the familiar trinity of legislative, executive and judicial powers. Montesquieu's 'separation' took the form not of impassable barriers and unalterable frontiers, but of mutual restraints, or of what afterwards came to be known as 'checks and balances' (p. 10). The three organs must act in concert, not that their respective functions should not ever touch one another. If this limitation is respected and preserved, 'it is impossible for that situation to arise which Locke and Montesquieu regarded as the eclipse of liberty - the monopoly, or the disproportionate accumulation, of power in one sphere'. (p. 19; Alien). In a Federal System which distributes powers between three co-ordinate branches of Government, though not rigidly, disputes regarding the limits of Constitutional power have to be resolved by Courts and therefore, as observed by Paton, 'the distinction between judicial and other powers may be vital to the maintenance of the Constitution itself (A text book of Jurisprudence (1964) page 295). Power is of an encroaching nature, wrote Madison in 'The Federalist'. The encroaching power which the Federalists feared most was the legislative power and that, according to Madison, is the danger of all republics. Alien says that the history of both the United States and France has shown on many occasions that the fear was not unjustified (Alien, *Law and Orders*, p. 12).'

In *Bansal v. State of Rajasthan*, : [2003]2SCR933 , it was held by the Apex Court at Para 15 :

'It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statute and, therefore, it will be useful at this stage to reproduce what Lord Diplock said in *Duort Steels Ltd., v. Sirs* (All.ER.at p.542c-d):'It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if Judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the Court before whom the matter comes consider to be injurious to the public interest.'

In *Judicial Behaviour, a Reader in Theory and Research* by Schubert, at Page 45 it was observed:

'Constitutional law has the reputation of being akin to politics and by some eminent lawyers has been characterized as more politics than law. Certain it is that in many of the great issues of Constitutional law, political considerations are inevitably involved and, in the judgment of some jurists, there are few Constitutional decisions in which factors - personal and political - do not to some degree affect the result..... This reality cannot be totally ruled out and no doubt it is true that at certain times the political issues and legal issues are so interlaced that while making a decision, in fact, it becomes an impossibility to totally eliminate the political issues in toto while making decision relating to Constitutional issues.'

In *M.S.M. Sharma v. Sri Krishna Singh*, : AIR 1959 SC395 , it was held that the Court by applying cardinal rules of construction must ascertain the intention of the Constitution makers from the language used by them and the principle of harmonious construction must be adopted. The view expressed by the James M. Buchanan in 'Federalism and Individual Sovereignty' and by Zeliha Khashman in 'Journal of International Affairs' is: 'Is a Federal structure really an appropriate political solution in multi ethnic societies The case of Cyprus also had been relied upon for the essentials of Federalism.'

5. Report of the Lok Satta Committee of Empowerment of Local Governments also was submitted narrating several details relating to Local Government in India, Decentralisation in A.P., Devolution of functions, Recommendations on Functional devolution, Finances, Functionaries, Accountability, Territorial consolidation of Panchayats etc. Pages 13, 14, 15, 16, 17, 18, 19, 20, 25, 56, 57 and 100 in the said report of Lok Satta had been specifically pointed out. In *Ajit Singh v. State of Punjab*, : AIR 1999 SC3471 , it was held that in resolving the important Constitutional issues the Court must keep in mind that it is the Constitution the Court is expounding.

6. Chapter XI of the Constitution deals with Relations between the Union and the States. Part IX and Part IX-A of the Constitution introduced by 73rd and 74th Amendments respectively deal with the Panchayats and the Municipalities. A careful and close reading of different provisions of these Amendments would definitely go to show that though the intention is to make these Institutions more effective in their functioning, these Local bodies cannot be placed on par with Centre and States relationship vis-a-vis States and Local bodies relationship. Hence the stand that by introduction of 73rd and 74th Amendments, these Local bodies had attained such a Constitutional status so as to attract the concept of Federalism being the third tier apart from Union and States cannot be accepted.

7. The fundamentals of Federalism need not be further gone into, the same being irrelevant for the present purpose. It is no doubt true that there has been a cry relating to decentralization of powers and autonomy for these Institutions. While exercising powers of Judicial Review under Article 226 of the [Constitution of India](#), in view of the parameters and limitations, this Court as Constitutional Court, though can examine the Constitutionality, legality or otherwise of a Legislation - be it a statute, a delegated Legislation, a Rule or a G.O., an Executive order or a Circular, as the case may be, cannot touch the areas of political decisions which are to be taken elsewhere to keep up the spirit of democracy. In this background it has to be decided whether the petitioners are entitled to any relief at all at the hands of this Court. The present question, though couched in a slightly different form, had been already raised in *A.P. Sarpanches Association and Ors. v. Government of A.P., Panchayat Raj Department and Ors.*, : AIR 2001 AP474 (FB), and the three Judge Bench,

had negated the same.

8. Submissions at length had been made relating to the Constitutional provisions like Article 40, the provisions of Part IX in general and Article 243-G in particular, Articles 245, 246, Seventh Schedule, Eleventh Schedule, different provisions of A.P. Panchayat Raj Act, 1994, hereinafter referred to as 'Act', several G.Os., Rules, comparative study of the provisions of the Act in Andhra Pradesh with similar Legislations in Kerala, Karnataka, Bombay, West Bengal etc., Data Collected by Lok Satta, Local Self Government and autonomy thereof, suggestions by National Commission to Review the working of the Constitution, Texts dealing with Local bodies, European Charter of Local Self Government, views on Federalism and the like and allied questions concerned with the controversy, several decisions also were cited by the respective Counsel in support of their contentions. In *Karnataka Sugar Workers Federation, Bangalore v. State of Karnataka*, 2003 (4) KLJ 453, the Full Bench of Karnataka High Court at Para 13 held:

'It is settled that provision of one Act cannot be a ground to declare the other Act as ultra vires for not having that provision in that Act. It is also settled proposition of law that if two interpretations are possible, incongruity has to be avoided. If the language is clear, the same should be read. One cannot add or subtract to frustrate the purpose and object of amendment. It is settled that presumption is always in favour of the Constitutionality of an Enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the Constitutional principles and the burden of proving all the facts which are requisite for the Constitutional invalidity, is thus upon the person who challenges the Constitutionality. No doubt, the Constitutionality of a provision can be challenged on the ground that it is in contravention of any fundamental right specified in Part III of the Constitution or that it is not within the legislative competence of the Legislature which has passed the enactment or there is contravention of any mandatory provision of the Constitution which imposes limitation upon the powers of Legislature.'

It is a fundamental and well settled principle that where the Constitutionality of a Legislation or provisions thereof are challenged, it is for such a party to establish the same and always Courts normally do lean in favour of the Constitutionality of a statute unless it is otherwise shown to be unconstitutional. In *State of Jammu and Kashmir v. T.N. Khasa*, : (1974)ILLJ121SC , it was held that there is always a presumption in favour of the Constitutionality of an Enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the Constitutional principles.

9. The provisions of the Act, G.Os. and Rules are challenged to be unconstitutional on the following grounds:

1. The State Legislature is bound to act in conformity with Article 243G of the Constitution which is mandatory.

2. The power to Legislate regarding the entries in the Eleventh Schedule are well conditioned and controlled and hence State cannot make any Legislation relating those entries though they overlap with such corresponding entries in Seventh Schedule in view of Chapter IX, introduced by 73rd Constitutional Amendment or such Legislation should be in conformity with Eleventh Schedule only conferring powers on Gram Panchayats.

3. The provisions challenged in the Act, G.Os. and Rules are not in conformity with Article 243G and on the contrary they are violative of the Constitutional mandate envisaged by 73rd Amendment.

4. The spirit and object of the 73rd Amendment had not been carried out by the provisions of the Act and on the contrary the conferment of powers in excess on officials, bureaucrats and deprivation of powers to elected representatives of these Local bodies, Panchayat Raj Institutions, Rules and G.Os. where there is total non-participation of elected representatives, would go to show that the very purpose of the 73rd Amendment had not been carried out, but had been defeated.

5. Though a writ of mandamus to make a Law cannot be issued, definitely in the light of the facts and

circumstances well explained, necessary declaration at least can be made in this regard while exercising powers under Article 226 of the [Constitution of India](#).

In the decision referred (supra) (Bansal v. State of Rajasthan) it was further held that the Court cannot rewrite, recast or reframe the Legislation for the very good reason that it has no power to legislate.

10. The prayers in the respective Writ Petitions are as hereunder:

W.P. No. 12348/2002

'For the reasons stated in the accompanying affidavit it is prayed that this Hon'ble Court may be pleased to issue a writ, order or direction, more particularly one in the nature of a writ of mandamus, declaring that Section 31, Section 32(c), Section 43, Section 60, Sub-section (6), Section 61, Sub-sections (1) and (4), Section 62, Section 71, Section 77, Section 137, Section 158, Section 167 Sub-sections (1), (4) and (7), Section 174, Section 186, Section 187, Sub-section (5), Section 193 Sub-section (7), Section 199, Section 249 and Section 250 and the Rules in G.O. Ms. No. 64 PR&RD; dated 5.2.1996 (Item 64 Page 638), G.O. Ms. No. 488, PR&RD; dated 3.12.1996, G.O. Ms. No. 489 PR&RD; dated 3.12.1996, G.O. Ms. No. 162 PR&RD; dated 4.4.1997, G.O. Ms. No. 229 PR&RD; (Accts.I) dated 17.6.97, G.O. Ms. No. 252 PR&RD; dated 2.7.1997, G.O. Ms. No. 289 PR&RD; dated 1.8.1997, G.O. Ms.No. 27 PR&RD; dated 16.1.1998, G.O. Ms. No. No. 28 PR&RD;, dated 16.1.1998 and G.O. Ms. No. 29 PR&RD; dated 16.1.1998 of the A.P. Panchayat Raj Act, 1994 as illegal and unconstitutional for being in violation of the Seventy Third Constitutional Amendment with particular reference to Articles 243-G, H, I and N and further direct the respondents to take appropriate and immediate steps to discharge their Constitutional duties of giving effect to the same and for other consequential Constitutional measures to conform to the Constitutional requirements and pass such other order or orders as are deemed fit and proper in the circumstances of the case.' W.P. No. 13256/2002:'For the reasons stated in the accompanying affidavit it is just and necessary that this Hon'ble Court may be pleased to issue a Writ, Order, or direction more particularly in the nature of Writ of Mandamus declaring the action of the respondent calling for recordings in Proceeding in Memo No. 32254/Mdl.II/ 2002-1, dated 18-7-2002 and quash the same and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.'

11. The concept of democracy is founded on the will of the people. Sovereignty always lies with the people. The organs expressing the people's will - be it Parliament or State Legislatures, may have to function within the defined limitations by the different provisions of the Constitution. The repeated demands made by the States for more powers from a very long time is predominantly a political question though this aspect falls under distribution of powers. Part XI of the Constitution deals with Relations between the Union and the States and Chapter I deals with Legislative Relations; and distribution of Legislative powers are dealt with in Articles 245 and 255; Chapter n deals with Administrative Relations, Part XII deals with Finance property contracts and suits; Part XIV deals with services under the Union and the States. The Seventh Schedule of the Constitution specifies List I - Union List; List n - State List; and List in - Concurrent List. The Eleventh Schedule of the Constitution, added by the Constitution 73rd Amendment Act, 1992, contains 29 items. By 74th Constitutional Amendment, Twelfth Schedule was introduced.

12. The Legislative competency to make the Enactment in question is not in controversy. The grievance ventilated by the Writ Petitioners is that the Act, G.Os. and the Rules are not in conformity with the Constitutional mandate envisaged by Article 243G of the Constitution. Where the different provisions of the Constitution and the interpretation thereof are put in question before Courts, Courts are expected to harmoniously construe these provisions while interpreting such Constitutional provisions and the intent and object may have to be kept in mind. No word or expression can be ignored and strict and literal interpretation has to be adopted if need be in a given situation and conflict to be avoided while construing different provisions of the Constitution. Legislature will never waste words. Legislative will or wisdom may have to be given effect to unless the unconstitutionality, invalidity or illegality of a particular provision of the statute is well established by the petitioners. The comparative study of different other State Legislations may not be of

any consequence unless otherwise the petitioners are able to make out a case of their own so as to declare the challenged provisions, Rules and the G.Os., as unconstitutional. The Statement of Objects and Reasons of the Act refer to the 73rd Constitutional Amendment and the reasons which paved the way for introducing the Legislation. Section 276 of the Act dealing with Repeal and Savings had repealed The A.P. Gram Panchayats Act, 1964, The A.P. Mandala Praja Parishads, Zilla Parishads, Zilla Pranalika and Abhivrudhi Sameeksha Mandals Act, 1986, The A.P. Local Bodies Electoral Reforms Act, 1989.

13. Article 243(d) of the Constitution defines 'Panchayat' as 'In this Part unless the context otherwise requires 'Panchayat' means an institution (by whatever name called) of self-Government constituted under Article 243B, for rural areas. Article 243B(1) specifies that there shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part. Articles 243C to 243F deal with composition of Panchayats, Reservation of seats, Duration of Panchayats etc., Disqualification for membership. Likewise, Articles 243H to 243O deal with powers to impose taxes by, and funds of, the Panchayats, Constitution of Finance Commission to review financial position, Audit of accounts of Panchayats, Elections to the Panchayats, Application to Union Territories, Part not to apply to certain areas, Continuance of existing laws and Panchayats, Bar to interference by Courts in electoral matters. Article 243G of the Constitution deals with Powers, authority and responsibilities of Panchayats, and the said Article contemplates:

1. Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-Government.

2. Such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level subject to such conditions as may be specified therein with respect to

(a) the preparation of plans for economic development and social justice.

(b) the implementation of Schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule,

Elaborate submissions were made on the expression 'may' and the same to be interpreted as 'shall' in the present context and hence the provision is mandatory and statutory provisions, G.Os. and Rules in contravention thereof are to be declared unconstitutional. A careful analysis of the Article makes it clear that the directives envisaged by Article 243G are discretionary in nature. Hence the contention that Article 243G and Eleventh Schedule of the Constitution had conditioned the Legislative power of the State in Article 246 and Seventh Schedule, cannot be accepted.

14. The power of the State Legislature to legislate on a subject relating to an entry in State List or Concurrent List is well governed by specific provisions and hence it cannot be said that by introduction of Article 243G by 73rd Constitutional Amendment, the power to legislate relating to those entries is in any way curtailed since Article 243G cannot override Articles 245 and 246 and these provisions are to be harmoniously construed. It may be that there may be some overlapping in respect of entries in Eleventh Schedule and Seventh Schedule, but by that itself the power to legislate relating to an entry in Seventh Schedule cannot be said to be in any way altered if otherwise the State Legislature is competent to do so, especially in the light of the language employed in Article 243G. The same view was expressed by National Commission to Review the working of the Constitution. In *I.T.C. Limited v. Agricultural Produce Market Committee*, : [2002]1SCR441 , the Apex Court while dealing with the procedure of interpretation of Constitution held that Constitution is deserved to be interpreted in a manner that it does not whittle down powers of the State Legislatures and preserves Federalism and an interpretation having the effect of making a particular entry, subject to any other entry though not so stated in the entry, deserves to be avoided unless that be the possible interpretation and in deciding the question of legislative competence, Constitution is not required to be interpreted with a narrow or pedantic approach. In *Special Reference No. 1 of 2002*, : AIR 2003 SC87 , it was held that the concepts may

change more than words themselves and the significance of change of concepts is vital and Constitutional issues are not solved by a mere appeal to meaning of words without an acceptance of line of their growth. In *State of A.P. v. National Thermal Power Corporation Ltd.*, : [2002]3SCR278 , the Apex Court while dealing with the aspect of overlapping entries in Seventh Schedule observed that it is the duty of the Court to reconcile the entries and bring about harmony between them and if reconciliation is impossible, the overriding power of the Union operates. In *Assistant Director of Inspection Investigation v. A.B. Shanthi*, : [2002]254ITR258(SC) , it was held that it is settled law that the heads of Legislation in the List should not be construed in a narrow or pedantic way and if any Legislature makes any ancillary or subsidiary provision which incidentally transgresses over its jurisdiction for achieving the object of such Legislation, it would be a valid piece of Legislation. In *Shashikant Singh v. Tarkeshwar Singh*, : 2002 CriLJ2806 , it was held that where a statute is passed for the purpose of enabling something to be done and prescribes the way in which it is to be done it may be either an absolute Enactment or a directory Enactment, the difference being absolute Enactment to be obeyed exactly and the directory Enactment to be obeyed substantially. In *Kailash Chandra v. Mukundilal*, : [2002]1SCR605 , it was held that a provision in the Statute is not to be read in isolation and has to be read with all related provisions for the purpose of proper and harmonious construction and proper understanding of contents and meaning of the provisions. In the decision referred supra (*Ajit Singh v. State of Punjab*) at Paras 28 and 29, it was held:

'We next come to the question whether Article 16(4) and Article 16(4-A) guaranteed any fundamental right to reservation. It should be noted that both these articles open with a non-obstante clause - 'Nothing in this Article shall prevent the State from making any provision for reservation....'. There is a marked difference in the language employed in Article 16(1) on the one hand and Article 16(4) and Article 16(4-A) on the other. There is no directive or command in Article 16(4) and Article 16(4-A) as in Article 16(1). On the face of it, the above language in each of Articles 16(4) and 16(4-A) is in the nature of an enabling provision and it has been so held in judgments rendered by Constitution Benches and in other cases right from 1963.

We may in this connection point out to that the attention of the learned Judges who decided *Ashok Kumar Gupta*, : [1997]3SCR269 and *Jagdish Lal*, : AIR 1997 SC2366 , was not obviously drawn to a direct case decided by a Constitution Bench in *C.A. Rajendran v. Union of India*, : (1968)IILLJ407SC , which arose under Article 16(4). It was clearly laid down by the five-Judge Bench that Article 16(4) was only an enabling provision, that Article 16(4) was not a fundamental right and that it did not impose any Constitutional duty. It only conferred a discretion on the State. The passage in the above case reads as follows:'Our conclusion therefore is that Article 16(4) does not confer any right on the petitioner and there is no Constitutional duty imposed on the Government to make a reservation for Scheduled Castes and Scheduled Tribes, either at the initial stage of recruitment or at the stage of promotion. In other words Article 16(4) is an enabling provision and confers a discretionary power on the State to make a reservation of appointments in favour of backward class of citizens which, in its opinion, is not adequately represented in the services of the State.'

For interpretation of Constitutional provisions and statutory construction reliance was placed on *Navinchandra Mafatlal, Bombay v. Commissioner of Income Tax, Bombay City*, : [1954]26ITR758(SC) , *Bengal Immunity Co. Ltd. v. State of Bihar*, : [1955]2SCR603 , *Kavalappam Kottarathil Kochuni Moopil Nayar v. States of Madras and Kerala*, : [1960]3SCR887 , *Kedar Nath Singh v. State of Bihar*, : AIR 1962 SC955 , *R. Abdul Quader and Co. v. Sales Tax Officer*, : [1964]6SCR867 , *Ahmedabad St Xaviers College Society v. State of Gujarat and Anr.*, : [1975]1SCR173 , *B. Banerjee : Kamal Lal Ghosal v. Anita Pan*, : [1975]2SCR774 , *Union of India v. Sankalghand Himatlal Sheth and Anr.*, 0065/1977 : [1978]1SCR423 , *Bhim Sen v. State of U.P.*, : 1955 CriLJ1010 , *Gamini Krishnayya v. Guraza Seshachalam and Ors.*, : [1965]1SCR195 , *Raza Buland Sugar Co., Limited, Rampur v. Municipal Board, Rampur*, : [1965]1SCR970 , *Bhikraj Jaipura v. Union of India*, : [1962]2SCR880 , *Harakchand Ratanchand Banthia v. Union of India*, : [1970]1SCR479 , *South India Corporation Private Limited v. Secretary, Board of Revenue, Trivandrum and Anr.*, : [1964]4SCR280 , *U.P. State Electricity Board v. Hari Shankar Jain*, AIR 1979 SC 65, *Indian Aluminium Company Limited v. Karnataka Electricity Board*, : [1992]3SCR213 , *Good Year India Limited v. State of Haryana*, , *Synthetics and Chemicals Limited v. State of*

U.P., , Atam Prakash v. State of Haryana, : [1986]1SCR399 , Francis Coralie Mullin v. Administrator, Union Territory of Delhi, : 1981 CriLJ306 , L.I.C. of India v. DJ Bahadur and Ors., : (1981)ILLJ1SC , Organo Chemical Industries v. Union of India, AIR 1979 SC 1803, Madan Mohan Pathak v. Union of India, : (1978)ILLJ406SC , Pathumma v. State of Kerala, : [1978]2SCR537 , and Union of India v. Sankalghand Himatlal Sheth, 0065/1977 : [1978]1SCR423 .

15. In S.S. Bola v. B.R. Sardana, : AIR 1997 SC3127 , the aspect of colourable legislation, doctrine of fraud and duty of Court to exert moral force upon Legislature had been dealt with. In Ashok Kumar v. Union of India, : 1991 CriLJ2483 , it was held that if the Legislature has transgressed the limits of its powers and if such transgression is indirect covert or disguised, such a legislation is described as colourable in legal parlance. In K.C. Gajapathi Narayan Deo v. State of Orissa, : [1954]1SCR1 , it was held at Para 9:

'If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the Legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its Constitutional power. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a Legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise.In other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject-matter in substance is something which is beyond the powers of that Legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The Legislature cannot violate the Constitutional prohibitions by employing an indirect method'

In Jilubhai Nanbhai Khachar v. State of Gujarat, : AIR 1995 SC142 , it was held that it is settled law of interpretation that entries in the Seventh Schedule are not powers but fields of legislation and the Legislature derives its powers by Article 246 and other related Articles of the Constitution and when the vires of an Enactment is impugned there is initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the Legislative power, the difficulty must be resolved as far as possible in favour of the Legislature putting the most liberal construction upon the Legislative entry so that it may have the wildest amplitude. In Ajay Kumar Singh v. State of Bihar, : [1994]3SCR57 , it was held that every attempt should be made to harmonise the apparently conflicting entries not only of different Lists but also of the same Lists and to reject that construction which will rob one of the entries of its entire content and make it nugatory. In Premchand Jain v. R.K. Chhabra, : 1984 CriLJ668 , it was held that if an Enactment substantially falls within the powers expressly conferred by the Constitution upon the Legislature enacting it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another Legislature. In M.C. Mehta v. Union of India, : [1987]1SCR819 , it was held that the Court while dealing with the parameters of the expanded definition given to the definition 'law' under the Constitution and declared that when the law of the past does not fit the present context, Court should evolve new law. In Municipal Council, Ratlam v. Vardichan, : 1980 CriLJ1075 , while dealing with importance of local bodies it was observed that it may be a cynical obiter of pervasive veracity that municipal bodies minus the people and plus the bureaucrats are the pathetic vogue no better than when the British were here.

16. Submissions at length were made that Chapter IX of the Constitution should be construed to contain special provisions relating to Panchayats and hence they prevail over general provisions. This stand cannot be sustained in view of the different provisions of the Constitution which are to be harmoniously construed and hence it cannot be said that Chapter IX will have the overriding effect over the other general powers to legislate conferred on the Parliament and State Legislatures as well. Even if strict interpretation is adopted, absurdity may have to be avoided in construing the different provisions of the Constitution though pedantic

approach cannot be followed even if these provisions are interpreted in the background of Constitution being treated always as a living document. Specific provision prevails over general provision (See *Harakchand Ratanchand Bantia v. Union of India*, : [1970]1SCR479 , and the decision referred (supra) (*South India Corporation Private Limited v. Secretary, Board of Revenue, Trivandrum and Anr.*). Where the directive power itself flows from an enabling provision the resultant subordinate legislation cannot be found fault when the principal power itself is derived from the exercise of only a discretionary power and not from an imperative Constitutional mandate. In the decision referred (supra) (*J.P. Bansal v. State of Rajasthan*), it was held by the Apex Court at Paras 14 and 15 as follows:

'Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the Legislature is clearly conveyed, there is no scope for the Court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by 'an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so. (See: Frankfurter: *Some Reflections on the Reading of Statutes in Essays on Jurisprudence*', *Columbia Law Review*, p.51).

It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statute and, therefore, it will be useful at this stage to reproduce what Lord Diplock said in *Duport Steels Ltd. v. Sirs*, (1980) 1 All ER 529:'It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if Judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the Court before whom the matter comes consider to be injurious to the public interest.'

Article 243G and Article 246(3) of the Constitution are enabling provisions and definitely both are to be interpreted harmoniously. No doubt, the petitioners provided a chart at Page 95 showing the overlapping subjects of Eleventh Schedule vis-a-vis State List and Concurrent List. The distribution of powers between Centre and States in the light of our Constitutional scheme do definitely negate the stand of the petitioners that these Institutions should be given such a Constitutional status so as to touch the Federal set up and the basic structure concept. In *Union of India v. Deokinandan Aggarwal*, AIR 1992 SC 96, at Para 14, it was observed:

'.....It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the Legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the Legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be.....'.

In *India Cement Ltd. v. State of Tamilnadu*, it was held by the Apex Court:

'Certain rules have been evolved in this regard, and it is well settled now that the various entries in the three lists are not powers but fields of legislation. The power to legislate is given by Article 246 and other Articles of the Constitution. See the observations of this Court in *Calcutta Gas Co. v. State of West Bengal* : AIR 1962 SC1044 . The entries in the three lists of the Seventh Schedule to the Constitution are legislative heads or fields of legislation. These demarcate the area over which appropriate Legislature can operate. It is well settled that widest amplitude should be given to the language of these entries, but some of these entries in different lists or in the same list may overlap and sometimes may also appear to be in direct conflict with each other. Then, it is the duty of the Court to find out its true intent and purpose and to examine a particular

legislation in its pith and substance to determine whether it fits in one or the other of the lists. See the observations of this Court in *H.R. Banthia v Union of India*, : [1970]1SCR479 , *Union of India v. H.S. Dhillon*, : [1972]83ITR582(SC) . The lists are designed to define and delimit the respective areas of respective competence of the Union and the States. These neither impose any implied restriction on the legislative power conferred by Article 246 of the Constitution, nor prescribe any duty to exercise that legislative power in any particular manner. Hence, the language of the entries should be given widest scope. *D.C. Rataria v. Bhuwarka Brothers Ltd.*, : [1955]1SCR1071 to find out which of the meanings is fairly capable because these set up machinery of the Government (Sic). Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it In interpreting an entry it would not be reasonable to import any limitation by comparing or contrasting that entry with any other one in the same list. It is in this background that one has to examine the present controversy.'

17. In *State of Bihar v. Sir Kameshwar Singh*, : [1952]1SCR889 it was held:

'Lastly, it was urged that the legislative power conferred in Entry 42 of the Concurrent List is a power conferred for the benefit of the expropriated owner and that the Legislature is bound to exercise this power for his benefit whenever it takes property under its compulsory powers; In other words, it was said that the power conferred by the entry was coupled with a duty to exercise it. Reference was made in this connection to the observations of Lord Cairns in '*Julius v. Bishop of Oxford*', The principle of that decision is that where power is conferred in the nature of a trust there is an obligation to exercise it for the benefit of the 'cestui que trust'. These observations do not have any apposite application to the case of legislative powers conferred by a Constitution. The entries in the lists are merely legislative heads and are of an enabling character. Duty to exercise legislative power and in a particular manner cannot be read into a mere head of legislation. If the argument of the learned Counsel was sound, then it would be open to this Court to issue a mandamus to the Legislature to exercise its power of legislation under Entry 42, if it failed to do so. Mr. Das, when faced with this question, had to admit that he could not seriously contend that a Legislature could be directed to enact a statute if it did not wish to do so. Failure to make a law under Entry 42 cannot make a law under Entry 36 bad. In my opinion, the decision in the case of '*Julius v. Bishop of Oxford*' (1880) 5 AC 214) has no relevancy to the matter before us.

In *Municipal Council, Palai v. T.J. Joseph* : [1964]2SCR87 , the Apex Court observed:

'It is undoubtedly true that the Legislature can exercise the power of repeal by implication. But it is an equally well-settled principle of law that there is a presumption against an implied repeal. Upon the assumption that the Legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. Of course, this presumption will be rebutted if the provisions of the new Act are so inconsistent with the old ones that the two cannot stand together. As has been observed by Crawford on Statutory Construction, p.631, para 311:

'There must be what is often called 'such a positive repugnancy between the two provisions of the old and the new statutes that they cannot be reconciled and made to stand together'. In other words they must be absolutely repugnant or irreconcilable. Otherwise, there, can be no implied repeal.....for the intent of the Legislature to repeal the old enactment is utterly lacking.' The reason for the rule that an implied repeal will take place in the event of clear inconsistency or repugnancy, is pointed out in *Crosby v. Patch*, 18 Calif. 438 quoted by Crawford '*Statutory Construction*', p.633 and is as follows:

As laws are presumed to be passed with deliberation, and with full knowledge of all the existing ones on the same subject, it is but reasonable to conclude that the Legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable. *Bowen v. Lease*, 5 Hill 226. It is a rule, says Sedgwick, that a general statute without negative words will not repeal the particular provisions of a former one, unless the two Acts are irreconcilably inconsistent. The reason and philosophy of the rule, says the author, is, that when the mind of the legislator

has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms, or treating the subject in a general manner, and not expressly contradicting the original Act shall not be considered as intended to effect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter Act such a construction, in order that its words shall have any meaning at all.' For implying a repeal the next thing to be considered is whether the two statutes relate the same subject-matter and have the same purpose. Crawford has stated at p.634:

'And, as we have already suggested, it is essential that the new statute cover the entire subject-matter of the old; otherwise there is no indication of the intent of the Legislature to abrogate the old law. Consequently, the later enactment will be construed as a continuation of the old one.' The third question to be considered is whether the new statute purports to replace the old one in its entirety or only partially. Where replacement of an earlier statute is partial, a question like the one which the Court did not choose to answer in the Commissioners of Sewers case, (1862) 142 ER 1104 = 31 LJ CP 223 would arise for decision.'

18. Part XX deals with Amendment of the Constitution and Article 368 of the Constitution deals with power of Parliament to amend the Constitution and procedure thereof. The theory of implied repeal cannot be presumed (See *Municipal Corporation of Delhi v. Shiv Shankar*, : 1971 CriLJ680 , *Union of India v. Venkatesan*, : 2002 CriLJ2790 . In *Chief Justice, A.P. v. L.V.A. Dikshitulu*, : [1979]1SCR26 the Apex Court held:

'Where two alternative constructions are possible the Court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment. These canons of construction apply to the interpretation of our Constitution with greater force, because the Constitution is a living, integrated organism, having a soul and consciousness of its own. The pulse beats emanating from the spinal cord of the basic framework can be felt all over its body, even in the extremities of its limbs. Constitutional exposition is not mere literary garniture, nor a mere exercise in grammar. As one of us (Chandrachud, J, as he then was) put it in *Kesavananda Bharati's* case : AIR 1973 SC1461 'while interpreting words in a solemn document like the Constitution, one must look at them not in a school-masterly fashion, not with the cold eye of a lexicographer, but with the realisation that they occur in a single complex instrument in which one part may throw light on the other so that the construction must hold a balance between all its parts.'

The Constitutional guidance under Article 243G relating to implementation of schemes for economic development and social justice cannot be equated with an imperative Constitutional mandate. The National Commission to Review the Working of the Constitution, in Chapter 9, while dealing with Financial domain, recommended:

'As an institution of self-Government, the Panchayats should have adequate fiscal capability. To be an institution of self-Government, a Gram Panchayat should, as far as possible, be viable unit. It should be capable of generating internal resources by using its own fiscal powers that include taxing power commensurate with the functions assigned to it. The PRIs at present are principally grant-fed and their dependence upon the State Government even for carrying out their routine functions is heavy. Among the three-tiers of Panchayats, the Gram Panchayats (GPs) are comparatively in a better position. This is so because the GPs have some taxing power of their own, while the other two tiers are dependent only on tolls, fees and non-tax revenue for generating internal resources. The Commission feels that major fiscal restructuring and financial resources are necessary to enable the Panchayats to function as viable local self-Government institutions. Some of the measures necessary for such reforms may be taken even within the framework of existing Constitutional provisions.

Articles 243H and 243X are enabling provisions that give authority to the State Legislature to authorize the Panchayats and Municipalities in respect of levy, collection and appropriation of taxes, duties, fees and tolls as well as for the creation of a fund within the Panchayat and Municipal institutions to regularize and control

inflow and outflow of financial resources. The said articles do not serve their purpose since some State Governments appear to be reluctant to share their fiscal powers with the local self-Government institutions. The Commission, therefore, feels that the only way out is to introduce the concept of a separate tax domain for the local bodies. The Commission considered the suggestion to provide a Local List in the Seventh Schedule for giving fiscal autonomy to the local-self Government institutions. However, the Commission feels that it would be too early to consider such a proposal. The Commission, therefore, recommends that the Eleventh and Twelfth Schedules should be restructured in a manner that creates a separate fiscal domain for Panchayats and Municipalities. Accordingly Articles 243H and 243X should be amended making it mandatory for the Legislature of the States to make laws devolving powers to the Panchayats and Municipalities.'

It is pertinent to note that the provisions of the Act are challenged on the ground that they are in contravention of Part IX of the Constitution only and not Part III of the Constitution. A careful reading of different provisions of Part IX would go to show that except the constitution of Gram Panchayats and reservations and elections thereof, all other aspects appear to be not imperative or mandatory and they are only enabling provisions. The Commission, in Chapter 9, while dealing with the Problems in Decentralisation and Devolution, had stated:

'With a view to generating a debate and eliciting public opinion before examining the problems and suggesting remedial measures, the Commission released Consultation Papers on (i) Panchayats, (ii) Municipalities, (iii) Cantonments and (iv) Panchayat institutions/Autonomous District Councils/ traditional tribal institutions in the Northeastern India. The Commission heard the views of a delegation of representatives of Panchayat Raj Institutions (PRIs) and representatives of traditional tribal institutions in the North-East region. It also considered the responses to the Questionnaires and the general memoranda received by it.'

Again, while dealing with Functional Domain, the Commission had stated:

'Article 243G along with the Eleventh Schedule indicates the kind of functions to be discharged by the Panchayats. It does not guarantee assignment of a set of exclusive functions to the Panchayats. Hence the kind of role they would be expected to play in governance depends on the regime that controls the Government of a State. The Commission recommends that Panchayats should be categorically declared to be 'institutions of self-Government' and exclusive functions be assigned to them. Even in the States which have shown political will to decentralize, devolution has not gone beyond entrusting to them responsibility for implementation of the schemes/projects conceived by the State or Union Government. As a result, Panchayats have not blossomed into institutions of self-Government. Instead they have been reduced to an implementing arm of the State Government.

Article 243G along with the Eleventh Schedule indicates the kind of functions to be discharged by the Panchayats. It does not guarantee assignments of a set of exclusive functions to the Panchayats. Hence the kind of role they would be expected to play in governance depends on the regime that controls the Government of a State. The Commission, therefore, recommends that Panchayats should be categorically declared to be 'institutions of self-Government' and exclusive functions should be assigned to them. For this purpose, Article 243G should be amended to read as follows:

Substitution of Article 243G.--For Article 243G, the following Article shall be substituted namely:-

'243G. Powers, authority and responsibility of Panchayats: Subject to the provisions of this Constitution, the Legislature of a State shall, by law, vest the Panchayats with such powers and authority as are necessary to enable them to function as institutions of self-Government and such law shall contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as shall be specified therein, with respect to--

(a) preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as shall be entrusted the them including those in relation to the matters listed in the Eleventh Schedule. 'Similar amendments should be made in Article 243W relating to the powers, authority and responsibilities of Municipalities, etc.'

Reliance also was placed on certain portions of Lok Sabha and Rajya Sabha debates. In Lok Sabha debate, dated 1st December 1992, it was stated:

'At a broad level, we are seeking to provide a Constitutional guarantee to certain basic and essential features including regular elections to Panchayat Raj Institutions, representations in these bodies for Scheduled Castes, Scheduled Tribes and Women and devolution of financial and administrative powers with the co-operation of the States. I would now like to dwell briefly on some of the basic features of the Constitution Amendment Bill as reported by the Joint Committee and the rationale behind them.

The Gram Sabha, which is the foundation of our Panchayati Raj System, has been envisaged to discharge wider duties. It shall perform such functions and exercise such powers as may be entrusted to it by the State Legislatures. There should be participatory decision making and the structure at the village level should be the image of participatory democracy. It is in this light that we have given a central place to the Gram Sabha. It has been our endeavour that uniformity and rigidity is not imposed on the States. Therefore, whereas the Bill envisages a three tier system of Panchayat Raj at the village, intermediate and district level, small States having a population not exceeding twenty lakhs have been given the option not to constitute the Panchayat at the intermediate level While we have agreed with the three tier structure recommended by the Joint Committee, we have provided an option for smaller States, on the same lines as in the very first Constitution Amendment Bill of 1989 on this subject. I hope the House will agree with our views.'

.....

.....

Keeping the spirit of this amendment and retaining the core items contained in it, the State Governments are at liberty to enact their own laws to provide for a strong Panchayat Raj set up within their States. We will also evolve suitable guidelines in this regard to assist the State Governments in undertaking comprehensive legislation in this regard, if they so desire. We reiterate our commitment to genuine democratic decentralization. We reaffirm our commitment to the emergency of democratic bodies at the grass-root level elected on the basis of equality and justice, truly representative of people and genuinely concerned with their development.

Before concluding, I wish to emphasise that this Constitution Amendment Bill is only the beginning and represents our earnestness in this endeavour. Gandhiji had said:

'Independence must begin at the bottom. Thus every village will be a Republic or Panchayat having full powers.' This must be our goal and I seek the cooperation of all sections of the House in achieving it.

.....

.....

The Government has left the local bodies on the mercy of the State Governments. What is its outcome. The State Governments enacted laws, constituted Municipal Committees, enacted Panchayati Acts but even today the head of the Panchayat or Sarpanch is on the mercy of the Government. If any complaint is there against him, a Sub-divisional Magistrate dismisses an elected Pradhan of a Gram Panchayat. I don't understand what sort of democracy is this.'

In the Rajya Sabha, on 23rd December, 1992 it was stated:

'Sir, as we know, the idea of the Bills is that there should be participation of people at the grass-root level in

the development and in the administrative processes of the country. The idea of 'Panchayats' or 'Panch' is not a new idea. We know that the word 'Panch' means collective wisdom. It had been prevalent in the country even in the ancient period. We have evidence of it in the Dravidian Culture. We have all the evidence of the system of Panchayats and local bodies functioning in villages and in semi-urban areas and in 'zircas' in the Dravidian Culture during the Mohinjadaro and Harappa civilizations and in the Tribal India, pre-Aryan India. There is evidence to show that even when the Aryans came even at that time, the village functioned as the smallest administrative unit. Even during the British period we had the system throughout the country. The Panchayats, the Municipalities and the Zilla Parishads were the primary centers of administrative system in our country. The [Constitution of India](#) in the Directive Principles of State Policy has referred to organizations of Village Panchayats under Article 40 and has stipulated that the Panchayats' self-Government should be strong in this country. Yet in free India, the Panchayats and the Municipalities gradually have become weaker and weaker. 'Panchas' means the collective wisdom of common men for the good of all. Gandhiji, the Father of the Nation, used to talk about Gram Swaraj as the composite, self-sufficient and self-reliant village. He said; 'My idea of Village Swaraj is that it is a complete republic, independent of its neighbours. Every village will grow its crop and cotton for its clothes. It shall have a reserve of its cattle, a recreation place and a playground. The village will maintain a village theatre, a school, a public hall. It will have its own water supply. This can be done through control over wells and tanks. As far as possible, every activity will be conducted in a co-operative basis. There will be no caste system.' This was his dream of the Gram Swaraj. Had we followed it today India would have seen a different composite culture, emanating from the grass-root level.'

19. Lok Satta had questioned the Legislative will or wisdom in enacting the Act and commented that unless political will is there the words 'may' or 'shall' would make no difference at all. It is no doubt true that Constitution is a living document and pedantic interpretation of the provisions thereof may have to be avoided. The arms of this Court cannot be stretched too far while exercising the powers under Articles 226 of the Constitution so as to touch such political questions unless it is established that such questions involve clear Constitutional infraction and breach of the imperative provisions thereof. If not, in view of the limitations and parameters in exercising powers under Article 226 of the Constitution, this Court cannot stretch its hands too long so as to engulf such questions on the pretext of judicial activism. This view may be conservative, but this is in consonance with the division of Legislative, Executive and Judicial functions. In *Avinder Singh v. State of Punjab*, : [1979]1SCR845 , it was held that the Legislature is responsible and responsive to the people and its representatives, the delegate may not be and that is why excessive delegation and legislative hara kiri have been frowned upon by Constitutional Law. In *Jalan Trading Co. v. Mill Mazdoor Sabha*, : (1966)IILLJ546SC , excessive delegation was dealt with. In *Tinsukhia Electric Supply Co. Ltd. v. State of Assam*, : AIR 1990 SC123 , it was held that the Court may tear the veil if necessary to examine the allegation of colourable legislation or abuse of power.

20. Officialisation or bureaucratization of the Panchayat Raj Institutions is the main ground of attack. Much comment had been made on limited autonomy and optimum autonomy as well. Governance and administrative details as policy making and implementation thereof do fall within the purview of legislative power and executive power. It is no doubt true that in a given case, Court can definitely examine the impugned action and consider whether such action stands for legal scrutiny. The wholesale attack on different provisions of the Act cannot be sustained. In *Supreme Court Employees' Welfare Association v. Union of India*, , it was held at paras 50 and 51 :

'It is vehemently contended by the learned Attorney-General that as the President of India performs a legislative act in approving the Rules framed by the Chief Justice of India, no writ can lie to compel him to give the approval or to withhold the approval. In support of his contention, reliance has been placed on a decision of this Court in *Narinder Chand Hem Raj v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh*, : [1972]1SCR940 . In that case, Hegde, J., speaking for the Court observed as follows: (SCC p.751, para 7):

'What the appellant really wants is a mandate from the Court to the competent authority to delete the concerned entry from Schedule A and include the same in Schedule B. We shall not go into the question

whether the Government of Himachal Pradesh on its own authority was competent to make the alteration in question or not. We shall assume for our present purpose that it had such a power. The power to impose a tax is undoubtedly a legislative power. That power can be exercised by the Legislature directly or subject to certain conditions the Legislature may delegate that power to some other authority. But the exercise of that power, whether by the Legislature or by its delegate is an exercise of a legislative power. The fact that the power was delegated to the executive does not convert that power into an executive or administrative power. No Court can issue a mandate to a Legislature to enact a particular law. Similarly no Court can direct a subordinate legislative body to enact or not to enact a law which it may be competent to enact.

There can be no doubt that no Court can direct a Legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a Legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority.'

In the decision referred (supra) (Ajit Singh v. State of Punjab) it was observed by the Apex Court at para 32:

'Learned Senior Counsel for the reserved candidates, Shri K. Parasaran however contended that Article 16(4) and Article 16(4-A) confer a power coupled with a duty and that it would be permissible to enforce such a duty by issuing a writ of mandamus. Reliance for the purpose was placed upon Comptroller and Auditor General of India, Gian Prakash v. K.S. Jagannathan : [1986]2SCR17) and also on Julius v. Lord Bishop (1880) 5 AC 214 (HL) which case was followed by this Court in Commr. of Police v. Gordhandas Bhanji : [1952]1SCR135 . We are unable to agree with the above contention. As pointed out earlier, the Constitution Bench of this Court in C.A. Rajendran v. Union of India : (1968)IILLJ407SC held that Article 16(4) conferred a discretion and did not create any Constitutional duty or obligation. In fact, in that case, a mandamus was sought to direct the Government of India to provide for reservation under Article 16(4) in certain Class I and Class II services. The Government stated that in the context of Article 335 and in the interests of efficiency of administration at those levels, it was of the view that there should be no reservation. The said opinion of the Government was accepted by this Court as reasonable and mandamus was refused. Even in M.R. Balaji v. State of Mysore, : AIR 1963 SC649 , the Constitution Bench declared that Article 16(4) conferred only a discretion. It is true that in Jagannathan case, : [1986]2SCR17 , the three-Judge Bench issued a mandamus, after referring to Article 142, that the Government must add 25 marks to SC/ST candidates who had taken the SAS Examination for promotion as Section Officers and also that, in future, a reduced minimum marks must be provided and announced before the examination. The Court also observed that the department had not passed orders as per a general OM of the Government dated 21-9-1977. But the attention of the Court was not drawn to the judgment of the Constitution Bench in C.A. Rajendran case, : (1968)IILLJ407SC and other cases to which we have referred earlier. Further, if the State is of the opinion that in the interests of efficiency of administration, reservation or relaxation in marks is not appropriate, then it will not be permissible for the Court to issue a mandamus to provide for reservation or relaxation. We also note that in Superintending Engineer, Public Health v. Kuldeep Singh, : [1997]1SCR454 , Jagannathan case, : [1986]2SCR17 was followed and reference was made to Article 16(4) and Article 16(4-A) and to the principle that where a power is coupled with a duty as in Julius v. Lord Bishop, (1880) 5 AC 214 (HL) and Commr. of Police v. Gordhandas Bhanji, : [1952]1SCR135 , the same could be enforced by the Court. But we may point out that even in Kuldeep Singh case, : [1997]1SCR454 no reference was made to C.A. Rajendran, : (1968)IILLJ407SC and other cases. We, accordingly, hold that the view in Jagannathan, : [1986]2SCR17 and Kuldeep Singh, : [1997]1SCR454 cases that a mandamus can be issued either to provide for reservation or for relaxation is not correct and runs counter to judgments of earlier Constitution Benches and, therefore, these two judgments cannot be said to be laying down the correct law.'

In A.K. Roy v. Union of India, : 1982 CriLJ340 it was held:

'We may now take up for consideration the question which was put in the forefront by Dr. Ghatate, namely, that since the Central Government has failed to exercise its power within a reasonable tune, we should issue a mandamus calling upon it to discharge its duty without any further delay. Our decision on this question

should not be construed as putting a seal of approval on the delay caused by the Central Government in bringing the provisions of Section 3 of the 44th Amendment Act into force. That Amendment received the assent of the President on 30-4-1979 and more than two and a half years have already gone by without the Central Government issuing a notification for bringing Section 3 of the Act into force. But we find ourselves unable to intervene in a matter of this nature by issuing a mandamus to the Central Government obligating it to bring the provisions of Section 3 into force. The Parliament having left to the unfettered judgment of the Central Government the question as regards the time for bringing the provisions of the 44th Amendment into force, it is not for the Court to compel the Government to do that which, according to the mandate of the Parliament, lies in its discretion to do when it considers it opportune to do it. The executive is responsible to the Parliament and if the Parliament considers that the executive has betrayed its trust by not bringing any provision of the Amendment into force, it can censure the executive. It would be quite anomalous that the inaction of the executive should have the approval of the Parliament and yet we should show our disapproval of it by issuing a mandamus. The Court's power of judicial review in such cases has to be capable of being exercised both positively and negatively, if indeed it has that power: positively, by issuing a mandamus calling upon the Government to act and negatively by inhibiting it from acting. If it were permissible to the Court to compel the Government by a mandamus to bring a constitutional amendment into force on the ground that the Government has failed to do what it ought to have done, it would be equally permissible to the Court to prevent the Government from acting, on some such ground as that, the time was not yet ripe for issuing the notification for bringing the Amendment into force. We quite see that it is difficult to appreciate what practical difficulty can possibly prevent the Government from bringing into force the provisions of Section 3 of the 44th Amendment, after the passage of two and a half years. But the remedy, according to us, is not the writ of mandamus. If the Parliament had laid down an objective standard or test governing the decision of the Central Government in the matter of enforcement of the Amendment, it may have been possible to assess the situation judicially by examining the causes of the inaction of the Government in order to see how far they bear upon the standard or test prescribed by the Parliament. But, the Parliament has left the matter to the judgment of the Central Government without prescribing any objective norms. That makes it difficult for us to substitute our own judgment for that of the Government on the question whether Section 3 of the Amendment Act should be brought into force. This is particularly so when, the failure of the Central Government to bring that Section into force so far, can be no impediment in the way of the Parliament in enacting a provision in the National Security Act on the lines of that Section. In fact, the Ordinance rightly adopted that Section as a model and it is the Act which has wrongly discarded it. It is for these reasons that we are unable to accept the submission that by issuing a mandamus, the Central Government must be compelled to bring the provisions of Section 3 of the 44th Amendment into force. The question as to the impact of that Section which, though a part of the 44th Amendment Act, is not yet a part of the Constitution, will be considered later when we will take up for examination the argument as regards the reasonableness of the procedure prescribed by the Act.'

21. Be that as it may, the excessive official control and minimum participation of elected representatives is made a serious ground of attack. The total non-participation of any of the elected representatives in certain Rules had been specifically pointed out. Panchayat as Institution may have elected representatives and officials as well. It is true that in the policy making, to keep up the democratic spirit, the elected representatives must have the major sway and in the working of the system, the implementation may be left to the officials. It is also true that in the administration of Panchayat Raj Institutions, necessary control also may be essential and it is for the Legislature to decide by expressing its will through Legislation or subordinate Legislation to what extent such control should be. What had been pointed out are several inadequacies in this regard. When the object and spirit of a Constitutional Amendment are not contravened, a statutory provision or a G.O. cannot be held to be unconstitutional on the ground of inadequacy. In the working of the system, the State Government may have to take necessary steps to improve the system and in doing so if it is felt that the excessive control due to official powers or participation vis-a-vis elected representatives are to be rectified, it is within the domain and discretion of the Legislature and this Court cannot enter upon that sphere while exercising powers under Article 226 of the Constitution. Writ of

mandamus cannot be issued either to make Rules in pursuance of a statutory provision nor the Court can usurp the legislative function therein if any. It is settled law that writ of mandamus cannot be issued to direct the Legislature to enact law on a particular subject (See *State of Karnataka v. State of Andhra Pradesh*, : AIR 2001 SC1560 , *Indra Sawhney v. Union of India*, : AIR 2000 SC498 , *State of Jammu And Kashmir v. A.R. Zakki*, : AIR 1992 SC1546 , *Narinder Chand Hem Raj v. Lt Governor, Administrator, Union Territory, Himachal Pradesh*, : [1972]1SCR940 , *Rajender Singh v. Santa Singh*, : [1974]1SCR381 , and *Andhra Bank Scheduled Tribe Employees' Welfare Association v. Andhra Bank*, : 2001(4)ALD153 , the decisions (*Ajit Singh v. State of Punjab* and *A.K. Roy v. Union of India*) referred (supra). Certain texts and passages therefrom were relied upon to explain control and nature of control in the case of local bodies. Passages from 'For Whom The Law is Made' by Justice Hari Swaroop -Mind and Faith of Justice V,R. Krishna Iyer were cited, wherein Justice Hari Swaroop observed:

'The Constitution envisages not only a horizontal but also a vertical democracy. It conceives of democracy even at the city level. Law gives power to the states to create local bodies with legislative as well as administrative power in regard to matters which can more appropriately and efficiently be dealt with at the local level. People can elect their representatives to work their limited democracies in their limited spheres.

'An overview of local self-Government may set the perspective. The statutory pattern of municipal Government is substantially the same all over the country. The relevant legislation fabricates these local bodies, invests them with corporate personality, breathes life into them, charges them with welfare functions, some obligatory, some optional, and regulates their composition through elected representatives. It provides for their finances by fees and taxes and heavily controls their self-Government status through a department of the State Government in various ways, including direction and correction, sanction and supersession. Consequentially the law clothes the State Government with considerable powers over almost every aspect of municipal working.

'Local self-Government, realistically speaking, is a simulacrum of Article 40 and democratically speaking a half-hearted euphemism; for in substance, these elected species are talking phantoms with a hierarchy of state officials hobbling their locomotion. Their exercises are strictly overseen by the State Government, their resources are precariously dependent on the grace of the latter, and their functions are fulfilled through a Chief Executive appointed by the State Government. Floor-level democracy in India is a devalued rupee, Article 40 and the evocative opening words of the Constitution notwithstanding. Grassroots never sprout until decentralization becomes a fighting creed, not a pious chant. What happens to Panchayats applies to municipalities.....

'This conspectus of provisions bring into bold relief the anaemic nature of municipal autonomy. Full-blooded units of self-Government, reflecting full faith in decentralized democracy uninhabited by a hierarchy of bureaucrats, is the vision of Article 40. While the Gandhian goal is of a shining crescent in a starry sky, the sorry reality is that our municipalities vis-a-vis Government are wan like a full moon at midday.

To explain what is Local Self Government, European Charter of Local Self Government was relied upon. Article 3 of European Charter of Local Self-Government-Strasbourg 15 X 1985 says:

1. Local Self Government denotes the right and the ability of local authorities, within the limits of law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

2. This right shall be exercised by Councils or assemblies composed of members freely elected by secret ballot on the basis of direct equal universal suffrage, and which may possess executive organs responsible to them This provision shall in no way affect recourse to assemblies of citizens referendums or any other form of direct citizen participation where it is permitted by statute.

Lok Satta also had furnished several particulars.

22. Certain functional details in the working of the system also had been made a ground of attack stating that it will amount to deprivation of power of the elected representatives of the local bodies. It is true that at certain times, it is difficult to draw a clear boundary line between ministerial functions and decision making. In certain areas, they may overlap but the test is whether under the guise of exercise of ministerial powers there is total deprivation of decision making power to the elected bodies. A careful scrutiny of the statutory provisions and rules under challenge go to show that only a balance had been maintained to have proper checks and limited control to have better governance and better functioning of these bodies. As observed supra, the adequacies or inadequacies in the working up of a system cannot be the province or domain of this Court while exercising powers under Article 226 of the Constitution. Hence on that ground these provisions cannot be held to be either unconstitutional or ultra vires.

23. The concept of Basic structure and Federalism cannot be stretched too far so as to include these Panchayat Raj Institutions also as part of Federal concept in distribution of powers or allocation of powers. A directive in the form envisaged by Article 243G cannot be equated with an enforceable legal right flowing from a Constitutional mandate. Autonomy to these Institutions is only limited autonomy, be it fiscal or otherwise, and the Constitutional directive envisaged under Article 243G has to be interpreted as only a discretionary directive and nothing more.

24. Article 40 of the Constitution no doubt contemplates the State taking 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. An argument was advanced that in the light of Article 40, if Article 243G is not mandatory, there is no necessity of introducing this Article in Part IX inasmuch as if it is to be interpreted as directory or discretionary, the position would have been the same even prior to the introduction of Part IX. This contention cannot be accepted for the reason that a provision of the Constitution normally may have to be read as it stands and cannot be interpreted as it ought to have been worded. This is neither the province of the Court nor the power of judicial review can be stretched that far so as to engulf a situation of this kind. In *State of Bihar v. Bihar Distillery Ltd.*, : AIR 1997 SC1511 , it was held that an Act of the Legislature represents the Will of the people and hence cannot be declared as unconstitutional lightly. The limitations of powers of Parliament and State Legislatures in relation to legislative powers were well discussed by the Apex Court in *State of Bihar v. Charusila Dasi*, : AIR 1959 SC1002 , *Tata Iron and Steel Co. v. State of Bihar*, , *Tirath Ram v. State of U.P.*, : AIR 1973 SC405 , *Government of A.P. v. H.M.T.*, : AIR 1975 SC2037 *Misrilal v. State of Orissa*, : AIR 1977 SC1686 , *Wadhwa v. State of Bihar*, : [1987]1SCR798 . A careful scrutiny and analysis of the Constitutional scheme would go to show that the power to legislate relating to entries in XI Schedule cannot be put on par with power of the State Legislature to legislate in relation to the entries in the VII Schedule since the former would not fall under basic structure concept whereas the latter would fall under the said concept in the light of distribution of powers. The Panchayat Raj Institutions cannot be elevated to such a status in view of our Constitutional scheme. At any rate, out of 29 subjects in Schedule XI of the Constitution, Government had issued orders in respect of 17 subjects specified in para 19 of the counter- affidavit of the 1st respondent and monitoring and review functions in relation to these programmes have been devolved on Panchayat Raj Institutions.

25. Sections 4(3), 148(4) and 177(2) of the Act go to show that these local bodies are body corporate having perpetual succession and common seal. Section 30(4) of the Act specifies that the executive authority shall be subordinate to the Gram Panchayat. Section 31 of the Act deals with Functions of the Executive Authority and Sub-section (2) specifies:

'The Executive Officer shall ordinarily attend to the meetings of the Gram Panchayat or of any committee thereof and shall be entitled to take part in the discussions thereat, but he shall not be entitled to vote or to move any resolution.'

By Act 22 of 2002, the proviso to Sub-section (1) of Section 31 was substituted, which reads:

'Provided that where the Sarpanch fails to give his approval for convening the meeting so as to hold a meeting within the period of ninety days aforesaid, the Executive Officer or as the case may be the Village Development Officer shall himself convene the meeting in the manner prescribed.'

Section 32 of the Act deals with Functions of the executive authority and Section 32(c) of the Act says:

'The executive authority shall exercise all the powers and perform all the functions specifically conferred or imposed on the executive authority by or under this Act and subject to all restrictions and conditions imposed by or under this Act, exercise the executive power for the purpose of carrying out the provisions of this Act and be directly responsible for the due fulfillment of the purpose thereof.'

Section 43 deals with Administration Report. Article 243H(a) of the Constitution reads:

'The Legislature of a State may, by law, authorize a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits.'

Section 60(1) and its proviso read:

'A Gram Panchayat shall levy in the village,--

(a) a house-tax;

(b) kolagaram, or katarusum that is to say, tax on the village produce sold in the village by weight measurement or number subject to such rules as may be prescribed;

(c) such other tax as the Government may, by notification, direct any Gram Panchayat or class of Gram Panchayats to levy subject to such rules as may be prescribed: Provided that no such notification shall be issued and no such rule shall be made except with the previous approval of the Legislative Assembly of the State.

Section 60(6) of the Act reads:

'Any resolution of a Gram Panchayat abolishing an existing tax or reducing the rate at which a tax is levied shall not be carried into effect without the previous approval of the Commissioner.'

Section 61(4) of the Act reads:

'The Government may make rules providing for-

(i) the exemption of special classes of houses from the tax;

(ii) the manner of ascertaining the annual or capital value of houses of the categories into which they fall for the purposes of taxation;

(iii) the persons who shall be liable to pay the tax and the giving of notice of transfer of houses;

(iv) the grant of exemption from the tax on the ground of poverty;

(v) the grant of vacancy and other remissions; and

(vi) the circumstances in which, and conditions subject to which houses constructed, reconstructed or demolished, or situated in areas included in, or excluded from the village, during any year, shall be liable or cease to be liable to the whole or any portion of the tax.'

Section 62 of the Act reads:

'Levy of house-tax on a direction by Government :--(1) The Government may, by order published in the Andhra

Pradesh Gazette, for special reasons to be specified in such order direct any Gram Panchayat to levy the house-tax referred to in Clause (a) of Sub-section (1) by Section 60 at such rates and with effect from such date not being earlier than the first day of the year immediately following that in which the order is published, as may be specified in the order.

Such direction may be issued in respect of all buildings in a Gram Panchayat or in respect of only buildings belonging to the undertakings owned or controlled by the State Government or Central Government and the buildings belonging to the State Government as may be specified therein.

(2) When an order under Sub-section (1) has been published, the provisions of this Act relating to house-tax shall apply as if the Gram Panchayat had, on the date of publication of such order, by resolution determined to levy the tax at the rate and with effect from the date specified in the order, and as if no other resolution of the Gram Panchayat under Section 60 determining the rate at which and the date from which the house-tax shall be levied, had taken effect.

(3) A Gram Panchayat shall not alter the rate at which the house tax is levied in pursuance of an order under Sub-section (1) or abolish such tax except with the previous sanction of the Government.'

Section 71 of the Act reads:

Special tax leviable by a Gram Panchayat :--Subject to such rules as may be prescribed, a Gram Panchayat shall levy a special tax on houses at such rates as may be prescribed, to provide for expenses connected with the construction, maintenance; repair, extension and improvement of water or drainage works or the lighting of the public streets and public places, and other similar works.'

Section 137 of the Act reads:

'Power to compound offences :--(1) The Executive Authority may, subject to such restrictions and control, as may be prescribed compound for a sum not exceeding rupees five hundred, any offence against the provisions of this Act or any rule or bye-law made thereunder, which may by rules, be declared compoundable.

(2) On payment of the amount by way of composition no further proceedings shall be taken or continued against the defaulter in regard to the offence or alleged offence so compounded.

(4) Nothing in this section shall apply to election offences,'

Section 271 of the Act deals with General provisions regarding penalties specified in Schedules m and IV. G.O. Ms. No. 32, PR&RD; (Pts.) Department, dated 30-1-1997 deals with rules relating to composition of offences under the Act. Article 243C(3) of the Constitution reads:

'The Legislature of a State may, by law, provide for the representation--

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within--

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

Section 167(1), (4) and (7) of the Act read:

Section 167(1): The Mandal Parishad Development Officer shall be the Chief Executive Officer of the Mandal Parishad. He shall be responsible for implementing the resolutions of the Mandal Parishad and shall also exercise such powers and perform such functions as may be entrusted to him by the Government. He shall also exercise such powers of supervision over the Gram Panchayats in the Mandal as may be prescribed.

Section 167(4): Subject to the provisions of Section 168 the staff borne on the establishment of the Mandal Parishad and the staff working in institutions and schemes transferred by the Government or the Head of the Department of Government to the Mandal Parishad shall be under the administrative control and supervision of the Mandal Parishad Development Officer.

Section 167(7): The Government shall have power to make rules to regulate the classification and methods of recruitment conditions of services, pay and allowances and disciplinary conduct of the Mandal Parishad Development Officer.

Sub-section (1) of Section 167 of the Act specifies that he shall also exercise such powers of supervision over the Gram Panchayats in the Mandal as may be prescribed.

26. The powers and functions of the Mandal Parishad Development Officers are dealt with in G.O. Ms. No. 489, PR&RD; (Estt.VII) Department, dated 3-12-1996, Section 174 of the Act deals with Budget of Mandal Parishad. G.O. Ms. No. 15 deals with relevant rules. Section 186 of the Act deals with appointment of Chief Executive Authority and his powers and functions. Section 186(4)(d) and (j) read:

Section 186(4)(d): Subject to the provisions of this Act, and the rules made thereunder, the Chief Executive Officer shall be responsible for implementing the resolutions of the Zilla Parishad and of the Standing Committees thereof.

Section 186(4)(j): Subject to the provisions of this Act, and the rules made thereunder, the Chief Executive Officer shall implement such specific directions issued by the Zilla Parishad as it may think fit regarding the performance by him of any of the functions assigned to him under the Act:

Provided that such directions are in conformity with the terms and conditions governing planning, community development and other developmental activities entrusted by the Government or any other authority;

Section 193(1)(a) of the Act says:

'The Chairman of Zilla Parishad shall exercise administrative control over the Chief Executive Officer for the purposes of implementation of the resolutions of the Zilla Parishad or any Standing Committee thereof.'

G.O. Ms. No. 488, PR&RD; (Estt.VII), dated 31-12-1996 deals with the Zilla Parishad (Allocation of Works) Rules 1995. Section 187(5) of the Act reads:

'The District Collector shall have right to participate in the meetings of all Standing Committees without voting rights.'

Section 187(6) of the Act reads:

'The decisions of the Standing Committees shall be subject to ratification by the general body of the Zilla Parishad which shall have the power to approve, modify, rescind or reverse them.'

Section 193(6) of the Act reads:

'It shall be the duty of the Chairman or the person for the time being exercising the powers and performing the functions of the Chairman to convene the meetings of the Zilla Parishad so that atleast one meeting of the Zilla Parishad is held in every ninety days. If the Chairman or such person fails to discharge that duty with the result that no meeting is held within the said period of ninety days or within thirty days following such period he shall with effect from the date of expiration of thirty days aforesaid cease to be the Chairman or as the case may be cease to exercise the powers and perform the functions of the Chairman, unless such cessations has otherwise occurred before that date, and for a period of one year from that date he shall not be eligible to be elected as Chairman or to exercise the powers and perform the functions of the Chairman:Provided that in reckoning any such period of ninety days or the period of thirty days following such period as the case may be referred to above, any public holiday shall be excluded.'

Sub-section (7) of Section 193 of the Act specifies:

'Where the District Collector is satisfied that the Chairman or the person for the time being exercising the powers and performing the functions of the Chairman has ex facie ceased to be the Chairman or as the case may be, ceased to exercise the powers and functions of the Chairman under Sub-section (6) he shall forthwith intimate that fact by registered post to the Chairman or such person.'

Article 243F(1)(b) of the Constitution reads:

'A person shall be disqualified for being chosen as, and for being, a member of a Panchayat if he is so disqualified by or under any law made by the Legislature of the State.'

Section 199 of the Act deals with the Budget of the Zilla Parishad. G.O. Ms. No. 15 deals with rules prescribing the preparation of Budget of Mandal Parishads and Zilla Parishads in the Districts of Andhra Pradesh. Sub-sections (1) and (2) of Section 199 of the Act read:

Sub-section (1): The Chief Executive Officer shall in each year, frame and place before the prescribed date, a budget showing the probable receipts and expenditure during the following year, and the Zilla Parishad shall sanction the budget, with such modifications, if any, as it thinks fit.

Sub-section (2): The budget so sanctioned shall be submitted to the Government by the Chief Executive Officer through the Chairman on or before such date as may be fixed by the Government and if the Government are satisfied that adequate provision has not been made therein or that it is otherwise unsatisfactory for giving effect to the provisions of this Act, they shall have the power to approve the budget with such modifications as they may consider necessary to secure such provision.'

Section 249 of the Act deals with powers of Government to remove Sarpanch, President or Chairperson etc. Section 250 of the Act deals with Power of Government to dissolve Gram Panchayat, Mandal Parishad or Zilla Parishad. Article 243E of the Constitution deals with duration of Panchayats etc. Section 246 of the Act deals with Power to cancel or suspend resolution of a Gram Panchayat, Mandal Parishad or a Zilla Parishad. Article 243K of the Constitution deals with Elections to the Panchayats. Section 60(3) of the Act was not challenged, but however G.O. Ms. No. 64, dated 5-2-1996 had been challenged. G.O. Ms. No. 162, PR&RD; (Pts.1) Department, dated 4-1-1997 deals with Rules relating to the Holding of the meetings of the Gram Sabha. Section 6 of the Act deals with Gram Sabha. Though the provision was not challenged, but however Rules alone had been challenged. G.O. Ms. No. 229, PR&RD; (Accts.I), dated 17-6-1997 deals with Zilla Parishad Fund Rules 1997. No doubt, earmarking of Funds for weaker sections and on women and children have been dealt with by these Rules. G.O. Ms. No. 289, PR&RD; (PTS.1), dated 1-8-1997 deals with A.P. Gram Panchayats (Constitution of Beneficiary Committees and Functional Committees) Rules 1997. These Rules are referable to Section 40 of the Act and Section 40 of the Act had not been challenged. G.O. Ms. No. 174, dated 4-6-2003 deals with Functional Committees and these are not Rules, but G.O. Ms. No. 174 refers to G.O. Ms. No. 304,

25, 107, 248, 249, dated 5-10-2001, 21-1-2002, 26-3-2002, 29-6-2002 and 29-6-2002. G.O. Ms. No. 472, dated 28-12-2002, published in R.S. to Part VII (Ext) A.P. Gazette, dated 6-1-2003 had made amendments to G.O. Ms. No. 289. In view of this position, this aspect is only an academic question.

27. Section 43 of the Act deals with Administration report. Likewise, Section 253 of the Act also deals with the same. G.O. Ms. No. 27, PR&RD; (Mandal-1) Department, dated 16-1-1998 deals with A.P. Gram Panchayat (Administration Report) Rules, 1994. Likewise, G.O.Ms.No. 28 and G.O. Ms. No. 29 are the Rules - A.P. Mandal Parishads (Administration Report) Rules 1994 and the A.P. Zilla Parishad (Administration Report) Rules 1994 respectively. Administration report per se does not confer any power. In *Forum for a Better Hyderabad v. Government of Andhra Pradesh*, 2002 (4) ALD 84 (DB), a Division Bench of this Court held:

'According to the petitioner, the G.O. is violative of Article 243ZE of the [Constitution of India](#) and also against the protection and enhancement of the environment and by virtue of the Article 243-ZE and ZF of the Constitution, it is only a Metropolitan Planning Committee which shall be entitled to prepare a draft development plan for the metropolitan area as a whole or modify, revise or alter any existing master plan. The argument that by virtue of Article 243-ZE and 243-ZF of the Constitution, the making or amending of development plans for the metropolitan area is confined to the Metropolitan Planning Committee and the provisions of the Urban Areas Development Act, 1975 are not available, is misconceived. The provisions of the Constitution relied on by the petitioner form part of Part IX-A of the Constitution are in the nature of guidelines to be followed by the State Legislatures as and when the Legislatures frame laws relating to Municipalities. No law has been yet made providing for the constitution of Metropolitan Planning Committee and such a body does not exist. It is not the petitioner's case that the A.P. Urban Areas (Development) Act has ceased to exist after the 74th Amendment to the Constitution. The Articles relied on are not self-contained or self operative and they became effective only when the State Legislature makes a law dealing with the subject-matter of the said provisions. The contentions raised in this regard by the petitioner in the writ petition would therefore not valid. The safeguards to be introduced for purposes of subordinate legislation are within the discretion of the State Legislature. Neither Rule 13 nor Rule 13-A offend Article 14. The characterization of these rules as arbitrary is misconceived. The pattern of these provisions is not different from the innumerable provisions contained in a variety of statutes, which confer the power of subordinate legislation. The dangers in the rule to which the petitioners, refers, are mere figments of imagination.'

28. G.O. Ms. No. 252, PR&RD; (PTS.III) Department, dated 2-7-1997 dealing with the A.P. Gram Panchayats (Levy of Special Tax on Houses) Rules 1997 also was challenged. These Rules are framed in exercise of powers conferred by Section 268 read with Section 71 of the Act. Conferring power on District Collector was pointed out to be the ground of attack. This relates to the working of the system and cannot be said to be beyond the scope of the present Act or the Rule making power thereunder. In *Balakotaiah v. Union of India*, : [1958]1SCR1052, the principle relating to validity of Rules where they were challenged as ultra vires had been discussed by the Apex Court. Likewise, G.O. Ms. No. 64, PR&RD;&R; (PTS:III) Department, dated 5-2-1996, Rules relating to Levy of Tax on Agricultural Land for specific purpose, framed in exercise of powers under Section 268 read with Section 60(3)(ii) of the Act also had been challenged. The role of District Collector was pointed out. This cannot be a ground of attack at all, the object being to maintain uniformity of tax structure.

29. Certain submissions also were made on the ground of repugnancy. The impugned provisions cannot be held to be invalid on the ground of repugnancy since the question of repugnancy may not be attracted to the present situation in the light of the views expressed supra about Part IX of the Constitution. To cite a few judicial pronouncements on the question of repugnancy : *Karunanidhi v. Union of India*, : 1979 CriLJ773, *Raghubir v. State of Haryana*, : 1981 CriLJ1497, *T.K.V.T.S.S. Medical and Educational Charitable Trust v. State of Tamilnadu*, AIR 1996 SC 2384, *Deepchand v. State of U.P.*, : AIR 1959 SC648, *Premanath v. State of Jammu and Kashmir*, : AIR 1959 SC749, *Lingappa v. State of Maharashtra*, : [1985]2SCR224, *Kannan v. District Collector*, : AIR 1991 AP43, *State of U.P. v. Synthetics*, : 1993(41)ECC326, *Srinivas Raghavender v. State of Karnataka*, (1987) 2 SCC 692, *Bar Council of U.P. v. State of U.P.*, : [1973]2SCR1073.

30. The excessive interference by bureaucrats and the non-participation or minimum participation by elected representatives of the local bodies is made the main ground of attack by the petitioners. The State Government cannot be said to be either an intruder or encroacher in this regard. The minimal checks of Government control is aimed at streamlining the local body administration. This cannot be styled as excessive bureaucrisms in the context of limited autonomy which these local bodies enjoy in the light of the Constitutional scheme. An analysis of the provisions would go to show that a balance had been maintained between the powers of elected representatives in making resolutions and taking policy decisions and checks by bureaucrats and officials in carrying out or implementing the same and several of these are either safeguards in streamlining local administration or ministerial functions which cannot be found fault on the ground of excessive officialization. The State Government at any rate cannot be said to be a mere intruder in this regard. In the decision referred supra (*Supreme Court Employees' Welfare Association v. Union of India*) it was held that a delegated legislation or a subordinate legislation must conform exactly to the power granted.

31. Good governance also is one of the essential facets of democracy. Public administration is an art and a science as well. Local self-Government is a part of this system. Policy making and implementation mechanism, though are two different concepts, in certain areas the demarcating line between these two will be very thin and even overlapping at times. Panchayat as an institution should be viewed for conferment of powers in administering them and the elected representatives cannot be viewed in total isolation of the other part of this Institution. It is true that democratically elected representatives should have a say in the policy making subject to the checks and balances within the limits and parameters of limited autonomy. The statement of objects and reasons of the Act do reveal that the legislation had been thought of only to further the intent of 73rd Constitutional Amendment. Submissions relating to comparative legislation, provisions of the State Legislations on this subject in other States like Karnataka, Kerala, West Bengal etc., may not be of much help unless it is shown that the challenged provisions are otherwise unconstitutional by virtue of Constitutional prohibition or imperative directives. An attempt was made to show that on a comparative study of the present Act and corresponding provisions of the repealed Act, no further powers had been conferred on these local bodies and this is definitely not in conformity with 73rd Constitutional Amendment. Inasmuch as conferment of powers being left to the domain of State Legislature by virtue of Article 243G of the Constitution, this ground of attack may not be available to the petitioners since it does not alter the situation in any way. Even in *Visaka v. State of Rajasthan*, : AIR 1997 SC3011 , the Apex Court laid down the guidelines in relation to sexual harassment of working women which would be binding and enforceable in law until suitable Legislation is enacted to occupy the field. The decision in *State of A.P. v. National Thermal Power Corporation Limited*, : [2002]3SCR278 , had been relied upon for the proposition that the power to legislate is subject to the other provisions of the Constitution, inclusive of Articles 286, 301 and other entries of other Lists. In *Arka Vasanth Rao v. Government of A.P.*, : AIR 1995 AP274 (DB), a Division Bench of this Court while deciding the aspect of applicability of the Act to scheduled areas in the State had observed at paras 24 and 25:

'The learned Advocate-General has endeavoured to impress upon us that the tribals living in the scheduled areas should not be deprived of the benefits of the Panchayat Raj System -functioning of democracy at the grass roots - and so this Court should not make the 1994 Act inapplicable to the scheduled areas. How a public purpose should be promoted and by what means and methods are all matters for legislative determination. As obtained by Cooley:

'The judiciary can only arrest the execution of a statute when it conflicts with the Constitution. It cannot run a race of opinions upon points of right, reason and expediency with the law-making power, nor can it consider the motive which inspired the passage of a statute in determining the question of its validity.' What is not expressed in the Constitution cannot be brought in by judicial interpretation in the name of public good or the spirit of the Constitution. 'The organic law is not a mirror in which one sees what one wants to see.....Reading things out of the Constitution in order to bring the document into line with a theory seems no more defensible than reading things into the Constitution for the same reason.

Judicial legislation for supporting any particular theory or philosophy in order to perpetuate a state of affairs,

which, according to the perceptions of the Judges would be in public interest, but without foundation in the Constitution, is plainly forbidden. When we say this, we are conscious of the fact that Judges do and must legislate but they could do so only interstitially; they are confined from molar to molecular motions.'

The decision in *George v. Devon County Council*, (1988) 3 All E.R. 1002, was relied upon to explain the words 'think necessary' or 'consider necessary' and the concept of discretion.

32. W.P. No. 13256/2002 was directed to be heard along with W.P. No. 12348/2002 by one of us (Goda Raghuram, J). Memo No. 32254/Mdl.II/2002-1, dated 18-7-2002 is questioned in the said writ petition.

Section 195(5) of the Act reads:

'The Government may from time to time, by order give such directions to any Parishad or any officer, authority or person thereof, as may appear to them to be necessary for the purpose of giving effect to the provisions of this section; and the Zilla Parishad, Officer, authority or person shall comply with all such directions.'

Rules 6 and 9 of G.O.Ms.No,45, Panchayat Raj and Rural Development (Estt. VI) Department, dated 5-2-2000 read:

Rule 6: There shall be the District Level Committee headed by the Chairperson, Zilla Parishad with the Chief Executive Officer/ Deputy Chief Executive Officer as Member in Open Session, shall be the authority competent to consider the transfer all categories of Panchayat Raj Employees in respect of Zilla Parishads and Mandal Parishads except those mentioned in paras 2 and 3 above. The Chief Executive Officer/ Deputy Chief Executive Officer, shall be convenor.

Rule 9: The following guidelines shall be adopted for transfers by the Committees:

(i) No officer shall be retained at any one place beyond a period of (5) years.

(ii) No officer shall be transferred from a place against his will when he is having only one year of service to retire, as far as possible.

(iii) Mutual transfers shall be considered to the places other than their previous stations or respective native places.

(iv) If the spouse of the officer is also a Government Employee, their transfers shall be considered to same places or neighbouring places as far as possible.

(v) No employee shall be considered for transfer on mere allegations either oral or written unless the allegations are proved prima facie (or) believed to be true through discrete enquiries.

(vi) Since the posts of Extension Officers (Panchayats), Divisional Panchayat Officers, Mandal Parishad Development Officers are Gazetted and executive in nature, their posting shall be governed according to General Rules.

(vii) The transfers shall be considered only during May or June or during the period when the ban, if any, is lifted by Government.

(viii) Transfer however shall be effected at any time during the year on disciplinary grounds or otherwise purely in public interest.

(ix) No officer can have the benefit or mutual transfer for more than two times in his/ her entire service or for five years, whichever is less.

(x) No officer from a particular place shall be transferred or distributed normally within a period of three years

except on ground of disciplinary action, promotion and other circumstances, if any, covered by these rules.

(xi) Each officer who worked in the interior Tribal areas/remote villages shall be given preference, while considering the transfer.

(xii) Data bank shall be erected in respect of each officer showing the dates of appointment and stations where he worked from time to time, together with disciplinary proceedings instituted, if any, for consideration at the time of transfer.

(xiii) Vacancy position of the posts shall be maintained at Commissioner of Panchayat Raj and Rural Employment Office/District Offices/Mandal Offices by obtaining reports from time to time.

(xiv) Suitable Annual Evaluation Reports shall be devised to evaluate the work and performance of each officer in his Mandal/Division by taking into account the targets and achievements in key performance areas as per the performance evaluation sheet in Annexure enclosed to this order.

(xv) To effect transfers through Counseling, a standard request application shall be devised separately. The officers who seek request transfer shall submit the same.

(xvi) The officer who attend the Counselling shall be called in as per their service seniority and their place of request shall be given preference to their transfer, keeping in view his performance evaluation report and other available material.

(xvii) When an employee reports back to duty after availing leave, they shall, be posted back to same place, as far as possible.

The impugned order is questioned on the ground of arbitrariness and being violative of Article 14 of the Constitution. One of us (Goda Raghuram., J) made the aforesaid direction in view of the fact that similar questions regarding the parameters and extent of the powers of Zilla Parishads qua the provisions of the Act and in the context of the Constitutional developments have been referred to a larger Bench. The impugned order was suspended by this Court in W.P. M.P. No. 16483/2002 dated 23-7-2002.

33. The stand taken by the Chairperson, District Level Committee, Zilla Parishad, Nalgonda, Nalgonda District is that transfers were effected in conformity with the Rules and Regulations and the petitioner refers to Sections 186, 193 of the Act and G.O. Ms. No. 603 Finance (W&M;) Department, dated 23-5-2002 and G.O. Ms. No. 45 Panchayat Raj and Rural Development, dated 5-2-2000. It is stated that while process of effecting transfers was in progress, some candidates approached Hon'ble Ministers and got issued impugned proceedings dated 18-7-2002. The impugned proceeding reads:

GOVERNMENT OF ANDHRA PRADESH

PANCHAYAT RAJ AND RURAL DEVELOPMENT

DEPARTMENT

Memo.No. 32254/Mdl.II/2002-I

Dated 18-7-2002

Sub:-Establishment - Transfers made by the Chief Executive Officer, Zilla Parishad, Nalgonda against the Government instructions - Kept in abeyance until further orders - Regarding.

It has been represented to the Government that lot of irregularities have crept in the transfers made by the Chief Executive Officer, Zilla Parishad, Nalgonda after the relaxation of the 'Ban order' by Government as the transfers were alleged to have been made against the instructions issued by Government from time to time

on the procedure of Councillings.

The Government hereby keep all the transfers made by the Chief Executive Officer, Zilla Parishad, Nalgonda in abeyance until further orders. The Chief Executive Officer, Zilla Parishad, Nalgonda is requested to restore status quo ante. None of the transfer orders will be given effect to till the issue is enquired into and report submitted by Commissioner of Panchayat Raj and Rural Employment, Hyderabad. If the transfers are already effected status quo ante to be maintained.

I.Y.R. Krishna Rao

Secretary to Government

In the counter-affidavit specific stand was taken that the transfers effected were by and large irregular and hence Government issuing proceeding dated 18-7-2002 is legal and valid. G.O. Ms. No. 603, dated 23-5-2002, G.O. Ms. No. 179 dated 28-11-2000, G.O. Ms. No. 267 dated 12-7-2002, G.O. Ms. No. 667, dated 29-6-2002, G.O. Ms. No. 274, dated 16-7-2002 had been referred to, and in para 12 of the counter-affidavit it was stated:

'In view of the facts submitted by the Commissioner, the Government issued the following orders vide G.O. Ms. No. 267, PR&RD; (Mdl.II) Department, dated 12-7-2002:

(a) In respect of the Ministerial staff working under the control of Zilla Parishads and District Panchayat Officers, upto Superintendent level, the concerned competent authority is permitted to effect the transfers.

(b) In respect of other posts like Mandal Parishad Development Officer, Extension Officer (PR&RD;), Executive Officer, (Gram Panchayats) now designated as Panchayat Secretary and Divisional Panchayat Officer a committee consisting of Chairperson, Zilla Parishad, the District Collector and the Chief Executive Officer of concerned Zilla Parishad will effect the transfers within the District.

(c) In respect of Chief Executive Officer and Deputy Chief Executive Officer, District Panchayat Officer, the proposals shall come to the Government. In respect of inter-district transfers, the competent authority will effect the transfers.

(d) All the transfers shall be strictly as per the guidelines issued in G.O. Ms. No. 603, Finance (W&M;) Department, dated 23-5-2002 and the total transfers in each category shall not exceed 15% of the total number of posts in that category.

(e) All the transfers shall be completed by 15-7-2002, since the G.O., is issued late, action is separately being initiated to extend the time. On this instructions would be issued separately.

(f) The four year period with reference to G.O. Ms. No. 603, Finance (W&M;) Department, dated 23-5-2002, would be with reference to stay at the station continuously irrespective of the cadre.

(g) Expenditure incurred on transfers will be met within the budget allocated.

Government had examined the representatives of Nalgonda District unit allocation and found grave irregularities in transfer process and decided to maintain status quo ante and directed the Commissioner to conduct inquiry and Commissioner after inquiry submitted report dated 24-7-2002 holding that no objectivity was followed in the conduct of counselling of N.G.Os. In view of the findings of the Commissioner of Panchayat Raj and the stand taken by the Government in the counter-affidavit, the impugned proceeding cannot be held to be bad in law and the petitioner is not entitled to the relief prayed for in the writ petition.

34. It is undoubtedly for the Parliament to further amend the provision if the Parliament intends to do so to make the provision mandatory. The Rules are not beyond the Rule making power conferred by the Statute and hence they cannot be held to be unconstitutional or ultra vires. Equally so relating to the challenged provisions of the statute and definitely this Court cannot give any form of declaration nor a writ of mandamus

can be granted in view of the clear language of Article 243G of the Constitution. Definitely the remedy is elsewhere and not before this Court by invoking Article 226 of the Constitution. Hence, the writ petitions are bound to fail and accordingly they shall stand dismissed. No costs.

G. Raghuram, J.

1. The issues involved require us to consider vital questions that go into the heart of our system of constitutional Government. The case on hand combines legal and constitutional questions of subtlety and complexity and of great moment too. It is not possible to answer the questions arising and posed to us without consideration of a few underlying principles. An exploration of the nature and meaning of the underlying principles and of the theories of interpretation applicable to issues of constitutional construction is not merely, in such cases, of academic interest. It is only after the underlying principles have been examined and delineated may a considered response to the questions we are required to answer, emerge.

2. I have had the benefit of perusing the draft judgment prepared by my learned brother P.S. Narayana, J. He has analysed the complex legal issues, the numerous provisions of the statute, the statutory rules and administrative instructions and the voluminous material that has been placed for our consideration by the parties to the lis, with his usual incisive clarity, indefatigable industry and singular commitment to the judicial role. He has concluded that 'the directives envisaged by Article 243G are discretionary in nature'; Article 243G and the Eleventh Schedule of the Constitution do not condition the legislative power of the State under Article 246; the wholesale attack of different provisions of the Act cannot be sustained; '... in the policy making, to keep up the democratic spirit, the elected representative must have a major sway and in the working of the system, the implementation may be left to the officials'; in the administration of the Panchayat Raj Institutions necessary control is essential and it is for the Legislature to decide by expressing its will to legislation or subordinate legislation to what extent such control should be and that in the working of the system the State Government may have to take necessary steps to improve the system and in doing so if it is felt that the excessive control due to official powers or participation vis-a-vis elected representatives are to be rectified, it is within the domain and discretion of the Legislature and this Court cannot enter upon that sphere while exercising powers under Article 226. My learned Brother has further held that a careful scrutiny of the statutory provisions and rules under challenge go to show that only a balance had been maintained to have proper checks and limited control to have better governance and better functioning of these bodies, that the inadequacies in the working of a system cannot be the province or domain of this Court while exercising powers under Article 226 and that the provisions cannot therefore be held to be either unconstitutional or ultra vires. My learned Brother has also held that 'The minimal checks of Government control is aimed at streamlining the local body administration. This cannot be styled as excessive bureaucrisim in the context of limited autonomy that these local bodies enjoy in the light of the constitutional scheme. An analysis of the provision would go to show that a balance had been maintained between the powers of elected representatives in making resolutions and taking policy decisions and checks by bureaucrats and officials in carrying out or implementing the same and several of these are either safeguards in streamlining the local administration or ministerial functions which cannot be found fault on the ground of excessive officialization.' As the conferment of powers (to the Panchayats) is left to the domain of the State Legislature under Article 243G of the Constitution, the provisions of the Act or of the statutory rules transgress no constitutional mandate, it is left for the Parliament to further amend the provision if it intends to make the provision mandatory and this Court cannot issue a declaration nor a writ of mandamus in view of the clear language of the Article 243G, is the conclusion of my learned Brother.

3. With utmost respect I am unable to persuade myself to concur with the analysis and conclusions. I therefore set out my views on the issues posed.

4. One opinion, in particular on constitutional issues, is often advised, is a virtue. There are dangers in curial singularity. 'Then the statements in it have tended to be treated as definitions and it is not the function of a Court to frame definitions. Some latitude should be left for future developments. The true ratio of a decision

generally appears more clearly from a comparison of two or more statements in different words which are intended to supplement each other.' Lord Reid in *Gallie v. Lee*, (1970) 3 WLR 1087. Our Constitution makes the judiciary the ultimate testing authority, the guardian of the Constitution, insofar as ordinary law making is concerned and post *Kesavananda* even insofar as constitutional amendments are concerned. As interpretation of the provisions of Part-IX of the Constitution is presented for our consideration, I consider it a duty to record my distinct position, on the matter.

5. I acknowledge with gratitude the immense contribution and assistance rendered by the learned Counsel who appeared in the case - the learned Attorney General for India, the learned Additional Solicitor General for India, the learned Additional Advocate General for the State, Sri S. Ramchandra Rao, learned Senior Counsel for the petitioners and Sri S. Niranjan Reddy, learned Counsel for the intervenors, illumined the debate with their brilliance, scholarship, industry and precision.

6. The Ranga Reddy District Sarpanches' Association represented by its President and Convener, the Convener and President of A.P. State Zilla Parishad Chairmen's Forum, the Convener, State Mandal Parishad Presidents' Association, Prakasam Sarpanches' Association, Ongole, 7 Chair-persons of Zilla Parishads in the State, 23 Presidents of Mandal Parishads and 22 Sarpanches of Gram Panchayats -56 petitioners in all have filed W.P. No. 12348 of 2002 for a--

'writ order or direction in the nature of a writ of mandamus declaring that Sections 31,32(c), 43, 60(6), 61(1) and (4), 62, 71, 77, 137, 158, 167(1), (4) & (7), 174, 186, 187(5), 193(7), 199,249 and 250 and the Rules in G.O.Ms.No. 64 PR&RD; dated 5.2.1996, G.O.Ms.No. 488, PR&RD;, dated 3.12.1996, G.O.Ms.No. 489, PR&RD; dated 3.12.1996, G.O. Ms. No. 162 PR&RD; dated 4.4.1997, G.O. Ms. No. 229 PR&RD; (Accts.I) dated 17.6.1997, G.O. Ms. No. 252 PR&RD; dated 2.7.1997, G.O. Ms. No. 289 PR&RD; dated 1.8.1997, G.O. Ms. No. 27 PR&RD; dated 16.1.1998, G.O. Ms. No. 28 PR&RD; dated 16.1.1998 and G.O. Ms. No. 29 PR&RD; dated 16.1.1998 of the A.P. Panchayat Raj Act, 1994 as illegal and unconstitutional for being in violation of the Seventy-Third Constitutional Amendment with particular reference to Articles 243G, H, I and N and further direct the respondents to take appropriate and immediate steps to discharge their Constitutional duties of giving effect to the same and for other consequential constitutional measures to conform to the Constitutional requirements.'

7. The grievance of the petitioners is that in disregard of the provisions of Part IX of the [Constitution of India](#) incorporated by the Constitution (Seventy-Third Amendment) Act 1992 effectuated with effect from 1.6.1993, the provisions of the A.P. Panchayat Raj Act 1994 (for short 'the 1994 Act') have failed to effectuate the constitutional command. The provisions of the Act fall short of the constitutional mandate in the area of devolution of authority, powers and responsibilities to the Panchayat Bodies; there is no meaningful and effective devolution of administrative and financial powers to the Panchayat bodies under the State Legislation; areas where devolution has been facially provided, has been in substance and reality, to the functionaries and agents appointed by the State over whom the elected representatives have no control; the elected representatives are vouchsafed no discretion or control either in evolving local policy choices, prioritizing developmental areas, executing the policy, initiating the budget or even in implementing the local works. In substantial and critical areas of predominantly local interests and concerns, it is the agents of the State, be they Nodal Officers, Executive Authorities of Gram Panchayats, Mandal Parishad Development Officers, Chief Executive Authorities of Zilla Parishads, the District Collector or the Commissioner of the Panchayat Raj, and like agents of the State who have been invested determinative decision making authority and responsibility to the exclusion of the elected representatives. It is further the petitioners' case that post Seventy-Third Constitution amendment; the Panchayat Bodies constitute the 3rd tier of the federal system of governance in India. The State action (by statutory and other instruments) denying powers, authority and responsibility to the Panchayat Bodies, constitutes a subversion of the letter and spirit of the Constitution. The inadequate and constitutionally unsustainable legislative mechanism is supported, in the area of usurpation of powers of the elected representatives, by statutory rules framed by the State Government and by its executive instructions. The confluence of the State action in this regard (by the legislative provisions, the rules

and administrative instructions), negates the Constitution's mandate that Panchayats be units of local self-Government, is the substratum of the petitioners' grievance.

The stand of the Government of Andhra Pradesh - the 1st Respondent:

8. The Secretary, Panchayat Raj and Rural Development Department, Government of Andhra Pradesh has filed a counter-affidavit on behalf of the State of Andhra Pradesh, the 1st respondent, in W.P. No. 12348 of 2002. The principal and relevant contentions of the State are:

(i) The writ, as filed, is not maintainable. The substantial relief sought is a direction to the Legislature to enact a law, though couched in the form of seeking a direction to the respondents to take immediate and appropriate steps to give effect to Articles 243 G, H, I and N of the Constitution. Issuance of such a direction is beyond the Charter of this Court.

(ii) Since the elected representatives of Panchayat Raj Institutions are not entitled to more powers than what have been conferred on them under the 1994 Act and the Rules made thereunder, they are not entitled to seek their involvement either in the Central or State sponsored schemes beyond what has been granted.

(iii) The composition of the three levels of Panchayats, representative governance by elected officials, reservations, the duration of the Panchayats, disqualifications for membership, constitution of a Finance Commission and State Election Commission, have been provided in the 1994 Act in conformity with the mandate of Article 243B to F, I and K of the Constitution.

(iv) Article 243G is an enabling provision subject to the provisions of the Constitution. The extent to which power and authority is to be endowed on the Panchayats to enable them to function as institutions of self-Government is for the Legislature of the State to decide and not for the Courts.

(v) The XI Schedule of the Constitution does not per se confer powers of legislation though it enumerates the fields of legislation. In view of the provisions of VII Schedule read with Article 246 of the Constitution, the State Legislature is empowered to make laws without conferring the powers enumerated in the XI Schedule of the Constitution, exclusively on the Panchayats. The 73rd Amendment to the Constitution does not eviscerate the legislative field of the State in respect of the matters specified in the XI Schedule of the Constitution. The discretion of the State Legislature to enact a law in relation to any of the Entries in List II or III of the VII Schedule of the Constitution, including in respect of matters enumerated in the XI Schedule of the Constitution, is not affected by the enabling provisions of Article 243G. The discretion of the Legislature whether to devolve powers, authority and responsibility to the Panchayats, to what extent and at what level is plenary and un-instructed by any provision in Part IX, including Article 243G of the Constitution.

(vi) Article 243H of the Constitution is also an enabling provision empowering the State Legislature to, by law, authorize the Panchayats to levy, collect and appropriate taxes. The State Legislature is free to determine the limits, while authorizing the Panchayats to levy, collect and appropriate taxes.

(vii) The provisions of Article 243I of the Constitution do not mandate the Government to accept the recommendations of the Finance Commission.

(viii) Of the twenty nine (29) subjects listed in Schedule XI of the Constitution, the Government has issued orders in respect of seventeen (17) subjects including agriculture, social forestry, fuel and fodder, Roads, Bridges and Ferries, non-conventional energy, adult and non-formal education, public distribution system, social welfare, education including primary and secondary schools, health, sanitation and family welfare. In respect of these subjects, monitoring and review of the functioning of these programmes have been devolved on Panchayat Raj Institutions.

(ix) Substantial devolution of funds to Panchayat Raj Institutions is made by the State, including transfer of the entire amount of surcharge on stamp duty after deducting establishment charges, entire amount of

entertainment tax and of sand leases and tax on minor minerals. Local bodies are also empowered to collect cable tax. 95% of the professional tax collected by the Government is passed on to the local bodies. Further, primary and secondary schools in rural areas are under the control of Panchayat Raj Institutions. The Government is also meeting the expenditure on salaries and pension of the employees in Panchayat Raj Institutions whose services have been provincialised. The expenditure on the salary of the Teachers is also met by the Government. The Engineer-in-Chief, Panchayat Raj, assisted by six (6) Chief Engineers, Superintending Engineers and Executive Engineers, are in place to attend to the works of Panchayat Raj Institutions.

(x) Various provisions of the 1994 Act confer powers on Panchayat Raj Institutions, its elected representatives and officers. Powers conferred on the elected representatives include enabling the Sarpanch of the Gram Panchayat to preside over the meeting of the Gram Panchayat, other enumerated powers and functions of the Sarpanch and individual members, emergency powers of the Sarpanch and of the Mandal President and Vice-President and individual members, of the Standing Committee of the Zilla Parishads and the Chairman and Vice-Chairman of the Zilla Parishads. The appointed officials - the Executive Officer of the Gram Panchayat, the Mandal Parishad Development Officer and the Chief Executive Officer of the Zilla Parishad are subordinate to the Gram Panchayat, Mandal Parishad, Zilla Parishad respectively. These officers also have been conferred special powers and functions. No legitimate claim can be made that more powers and functions be conferred on elected representatives as the discretion of the State Legislature in this regard is absolute.

(xi) The officials of the Panchayat Raj Institutions work under the control of the institutions and form part of the institutional set-up. Conferral of power on such officials is equally devolution of powers on the Panchayat Raj Institutions.

(xii) The Panchayat Raj Institutions are distinct from their elected representatives. Powers have been devolved on the Panchayat Raj Institutions. Powers need not be conferred only on elected bodies and representatives. There is no constitutional requirement that powers be not delegated to the officials of the Panchayat Raj Institutions.

(xiii) The extent to which functions have to be assigned to the Panchayat Raj Institutions and/or its elected representatives is for the Government to decide and in respect of the exercise of rule making power of the Government conferred by the Act, no mandamus can issue.

(xiv) The statutory provisions enabling removal of elected representatives or dissolution of the Panchayats are in accordance with the constitutional provisions of Part IX of the Constitution.

9. In a detailed counter-affidavit running into eighty two (82) paragraphs Spread over 142 pages, the State Government has set out details of the various Central and State schemes in which Panchayat Raj Institutions have been afforded a role. Details have been furnished about various rules and administrative instructions made and issued to effectuate the purposes of the 1994 Act. The principal grievance in the writ petition that substantial powers, authority and responsibility for the governance of the Panchayat Raj Institutions has been conferred by and under the Act to appointed officials of the Panchayats controlled by the Government and its agencies and not to the elected representatives, is met by asserting that the officials are subordinate to various levels of Panchayat Raj Institutions and that the discretion of the State Legislature in conferring such powers, authorities and responsibilities, as it deems fit, on either the Panchayat Raj Institutions, the elected representatives or officials, is plenary and not subject to constitutional control or susceptible to mandamus by this Court.

10. Reiterating the position adopted by the State, Sri Ramesh Ranganathan, learned Additional Advocate General made submissions. In brief, it is contended:

(a) The premise that the Panchayat Raj Institutions constitute the third tier of the federal structure, is

misconceived. The Statement of Objects and Reasons for introduction of Part IX of the Constitution or the various provisions therein support this premise. The Indian federal structure has been described as 'quasi federal' with a unitary bias. The characteristics of federalism is distribution of limited executive, legislative and judicial powers and authority among coordinate bodies having some measure of independence with others. [In Re. Article 143 of the [Constitution of India](#), : AIR 1965 SC745 , State of M.P. v. Bharath Singh, AIR 1967 SC 1170, S.R. Bommai v. Union of India, : [1994]2SCR644 , 'Federal Government' by Professor K.C. Wheare; 'An Introduction to the Study of the Law of the Constitution' by A.V. Dicey and the 'Constitutional Law of India' by H.M. Servai,] As no legislative or judicial powers are conferred on the Panchayat Raj Institutions and the extent of executive power to be conferred on them is left to the discretion of the State Legislature, Part IX of the Constitution cannot be said to have elevated Panchayats to the status of a third tier in the federal structure under the Indian Constitution.

(b) The institution of the Panchayat is distinct from its elected representatives. Under the provisions of the Act, every Gram Panchayat, Mandal Parishad and Zilla Parishad are bodies corporate and, therefore, distinct entities. Endowment of powers and authority and devolution of powers and responsibilities upon the institution constitutes compliance with the requirements postulated by the provisions of Article 243G of the Constitution.

(c) Article 243G of the Constitution merely reiterates the discretion of the State Legislature in respect of the endowment of powers and authority to the Panchayats. The expression 'as may be necessary' in Article 243G of the Constitution is an expression denoting the discretion available to the State Legislature to determine what powers and authority should be devolved; to what level of the Panchayat Institutions; to what component of the Panchayat Institutions whether officials or elected representatives; to what degree and in what measure the devolved powers should be apportioned amongst them [George v. Devon County Council (1988 (3) ALL ER 1002) (House of Lords)].

(d) Part IX of the Constitution has not elaborated the concept of 'self-Government'. As generally understood, however, 'self-Government' must have two attributes viz.,(a) Government democratically elected by the people and (b) autonomy. Autonomy is an elusive concept in a State where the Governments at multiple levels and Governments at particular levels enjoy only partial autonomy. Even the Consultation Paper on the Review of the Working of the Constitution on 'decentralisation' circulated by the National Commission to Review the Working of the Constitution has concluded that what measure of autonomy a Panchayat should enjoy is a matter of judgment as well as policy. The constitution, therefore, must be deemed to have left the aspect of the degree of devolution to Panchayat Institutions to the wisdom and judgment of the State Legislature. The Courts cannot substitute their judgment for those of the State Legislature vide A.K. Roy v. Union of India, : 1982 CriLJ340 .

(e) Article 243G of the Constitution neither circumscribes the powers of State Legislature under Article 246(3) of the Constitution to make laws in relation to the Entries in List II and III of the VII Schedule of the Constitution nor constrains the discretion of the State Legislature to devolve powers on the Panchayats.

(f) There are no 'express' or 'implied' limitations on the plenitude of the discretion of the State Legislature discernable from the provisions of the Part IX of the Constitution.

(g) Article 243G of the Constitution should be harmoniously construed with Articles 245 and 246 of the Constitution so as to effectuate these provisions and a construction which renders any of these provisions inoperative should be avoided [Anantha Krishnan v. State of Madras, : AIR1952 Mad395 (DB), M.S. Sharma v. Sri Krishna Sinha, : AIR 1959 SC395 , Harakchand v. Union of India, : [1970]1SCR479 , Calcutta Gas Company (Proprietary) Ltd., v. State of West Bengal, : AIR 1962 SC1044 , and Venkataramana Devaru v. State of Mysore, : [1958]1SCR895]. The provisions of Part IX read with the XI Schedule of the Constitution must be interpreted as an instrument of 'constitutional guidance' for making laws devolving powers and responsibilities regarding implementation of schemes for economic development and social justice, which may be entrusted to the

Panchayats. For alike reasons, the provisions of Article 243H of the Constitution are also enabling provisions. Even the National Commission to Review the Working of the Constitution has concluded that fiscal powers have not been specifically earmarked for the Panchayat Raj Institutions and has recommended that the XI Schedule of the Constitution be re-structured in a manner that creates a separate fiscal domain for Panchayats and that Article 243H of the Constitution should be amended making it mandatory for the Legislature of the State to make laws devolving fiscal powers on the Panchayats.

(h) No direction could be issued to the State Legislature to make laws endowing Panchayats with powers and authorities [State of J&K; v. A.R. Zakki, : AIR 1992 SC1546 , Narendra Chand Hem Raj v. Lt. Governor, : [1972]1SCR940 , State of Karnataka v. State of A.P., : AIR 2001 SC1560 , A.P. Sarpanchas Association v. Government of Andhra Pradesh, 2001 (4) ALD 704, and Ajit Singh v. State of Punjab, : AIR 1999 SC3471].

(i) The Courts cannot define the term 'local self-Government' when the Constitution has not chosen to enunciate objective standards to determine this elusive concept. It is the duty of the Court to interpret the Constitution as it is and as what it should be. The Court should adopt a construction that effectuates the obvious intention of the Constitution, but could not legislate itself [Union of India v. Deoki Nandan Aggarwal, AIR 1992 SC 96, and J.P. Bangal v. State of Rajasthan, : [2003]2SCR933 .

(j) Part IX of the Constitution as it exists does not mandate conferment of all powers and authority only on elected representatives and to the exclusion of the officials. The Court cannot dictate what has not been mandated by the Constitution on the Legislature. Such an exercise is beyond the powers of the judicial branch.

The stand of the Government of India -the 2nd respondent:

11. The Under Secretary in the Ministry of Rural Development, Government of India - the 2nd respondent in W.P. No. 12348/2002, has filed a response. To the extent of the issues involved, the stand of this respondent is :

(a) The State Legislature has the discretionary power to decide the quantum of powers to be devolved to Panchayats with reference to the 29 subjects enumerated in Schedule-XL According to the information available with the Central Government (Ministry of Rural Development), the State Government has devolved functions to Panchayats in respect of 17 out of 29 subjects and funds have been devolved in respect of 5 subjects.

(b) The State Government has been requested from time to time to devolve more powers to Panchayat Raj Institutions. The Government of India has been taking up the matter regarding devolution of funds, functions and functionaries from time to time with all the State Governments and UTs, including the State of A.P. to enable them to function as institutions of self-governance. The Government of India in the Ministry of Rural Development has the mandate to implement the various provisions of the Constitution (73rd Amendment) Act, 1992. This Ministry have been requesting the Ministries/Departments of the Central Government as well as State Governments to involve Panchayat Raj Institutions in the implementation of the schemes of the Central and the State Governments, from time to time.

(c) Amongst the main features of the Constitution (73rd Amendment) Act, 1992 is included the devolution of powers and responsibilities upon Panchayats in respect of the 29 subjects listed in Schedule-XI to enable them to function as institutions of self-governance.

(d) The provisions of Article 243G of the Constitution require the State Government to devolve funds, functions and functionaries to Panchayat Raj Institutions in respect of the 29 subjects enumerated in Schedule-XI.

(e) State Governments including the Government of A.P. have been advised to minimize the control of the Government over the Panchayats.

(f) All the centrally sponsored schemes are not being implemented through the Panchayat Raj Institutions.

(g) The State Legislature has the discretion to enact laws authorizing Panchayats to levy, collect and appropriate such taxes, duties, tolls and fees, subject to such procedure and limitations as the Legislature may deem fit.

(h) The 29 subjects enumerated in Schedule-XI need to be desegregated into activities/tasks which are to be devolved to the appropriate tier of Panchayats with adequate financial powers, funds and staff. The Central Government (Ministry of Rural Development) will continue to pursue the matter with the State Governments including State of A.P. for further devolution of funds, functions and functionaries.

(i) Devolution of powers to Panchayats is not mandated under Article 243G, consequently devolution of powers to Panchayats varies from State to State.

Sri L. Nageswara Rao, the learned Additional Solicitor General for India supplemented the view of the Government of India in its counter-affidavit. The submissions of the learned Additional Solicitor General are:

(a) Complete autonomy for the Panchayats to the exclusion of the State is not signalled by the provisions of Part IX.

(b) The parameters of power and authority necessary to enable the Panchayats to function as institutions of self-governance are left to identification at the discretion of State Legislature qua the provisions of Article 243G.

(c) The enacting history and the debates during consideration of the (73rd Amendment) Bill including the statement of the then Minister for Urban Development provide an insight into the constitutional purposes enshrined in Part IX. The Hon'ble Minister had then stated that utmost sensitivity has been displayed to the basic frame work of the Constitution and the Center - State relationship enshrined in the Constitution. Entry-5 of the State List remains untouched. The authority of the State Legislatures is, no way, sought to be diminished. 'We are only amending the Constitutions and we are not interfering, in any way, with the State's right to drafting of municipal laws. Important matters have been left to be decided by the State Legislatures or by the State Governments. The Constitution (Amendment) Bill merely seeks to lay down a basic frame-work which will ensure that the local bodies are in a position to function effectively as democratic units of self-governance.'

(d) State control of local bodies is required, inter alia, to achieve a given level of performance by local Government units; to assure the best administrative arrangement in the operation of local Government units, both internally and in relation to other institutions; to attain maximum complimentarily in the management of local and national development programmes; to protect citizens from abuses of administrative authority at local level; and to achieve the goals of national integration.

(e) In the absence of any instruction in the Constitution it is impermissible for the Court to define the contours of the powers and authority that may be necessary for the Panchayats to function as institutions of self-governance. Sufficiency, adequacy or otherwise of such power and authority is advisedly left to the State Legislature.

(f) There are no judicially discernable and manageable standards to control and guide discretion of the State. The Courts should not therefore set parameters of the powers and authority necessary to enable Panchayats to function as institutions of self-governance.

(g) The Union has been insisting on devolution of more powers on Panchayats in tune with the spirit of Part IX of the Constitution. There has been transfer of power in respect of 17 out of 29 matters vested in the 11th Schedule, in the State of Andhra Pradesh.

The stand of the intervenes :

The Federation for Empowerment of Local Government, the Lok Satta and Dr. Jayaprakash Narayana, National Coordinator, Lok Satta, have intervened in the discourse in these writ petitions. The stand of the interveners is :

(a) Federalism and Democracy are at the center of the Constitutional theme and are basic and inviolable. In a democracy paradigm people do not get their rights of self-Government from the Government but the Government derives power from the people through the transfer of their sovereignty to a limited extent.

(b) The provisions of Part-IX of the Constitution are mandatory.

(c) The very purpose of the Constitutional amendment is to provide local self-Government. The 1994 Act however effectuates no devolution or transfer of powers in respect of various items and subjects mentioned in Schedule-XI, to the Panchayat Institutions in a manner that effectuates the expressed Constitutional purpose viz., that these bodies function as institutions of local self-Government.

(d) Power over funds, over functions, over functionaries and over policy processes is an essential attribute of local self-Government. Such devolution and responsibility has been denied by the provisions of the 1994 Act.

(e) The basic principle of the Government is that authority and responsibility must vest at the same level. This fundamental principle has been eschewed in the impugned enactment.

(f) The essence of an autonomous, self-contained Government is contingent on having substantial financial independence. It is imperative that there be a clear delineation of resources allocated to the local Government in the State budget and the provisions of the Act. This has not happened.

(g) Control over the functionaries of the Panchayat Raj Institutions is an essential attribute of local self-Government and is as critical as control over finances to effectuate functioning. Control over the functionaries of the Panchayat Raj Institutions is entrenched in the State Government under the provisions of the impugned Act, contrary to the text and spirit of Part IX of the Constitution.

(h) The provisions of the 1994 Act do not effectuate but subvert the Constitutional purposes underlying Part IX of the Constitution.

12. Sri S. Niranjan Reddy, learned Counsel appearing for the interveners has supplemented the arguments urged on behalf of the writ petitioners. He has placed before this Court for its perusal, a report of the Lok Satta Committee on empowerment of Local Government. This report points out serious flaws and shortcomings in the process of decentralization and devolution of powers to Panchayat Raj Institutions in the State in the area of endowment of functions, finances and functionaries. The report also emphasizes that the impugned enactment instead of enabling accountability of the elected representatives of the local bodies to those who elected them, entrenches accountability eventually to the State Government and its enforcement agencies. This process has negated the fundamental postulate of good governance which requires that those who exercise power are accountable to those from whom they derive such power. Such accountability is a condition of democracy.

13. On behalf of the interveners it is urged that the legislative power of the State Government insofar as the area of Panchayat Raj Institutions is concerned, is circumscribed and conditioned by the provisions of Part IX, in particular Article 243G of the Constitution. In view of the instructions and mandate of the Constitution in Part IX, the power and discretion of the Legislature is not uncanalized but is conditioned by an obligation to effectuate the purposes of the Constitution.

14. At the request and invitation of this Court, the learned Attorney General for India has appeared to assist this Court on the interpretation of the relevant constitutional provisions. The submissions of the learned

Attorney General may be summarized:

(1) Part-IX enacts a limited and not a full blow autonomy to Panchayat Raj Institutions. The Constitution does not posit obliteration of the State's role in the functioning of the Panchayats. The State is not an intruder. Its presence is not alien to Part IX. The State is an important player.

(2) In interpreting the provisions of the Constitution including those in Part IX, a liberal interpretation that effectuates the purposes of Part IX is permissible, not so however to rewrite the provisions by ignoring the limitations placed on Panchayat Raj Institutions. The expressions 'subject to such conditions', 'subject to such limits' and 'subject to such conditions and limits' occurring in Articles 243G to H cannot be ignored.

(3) The plenitude of the State's legislative competence in respect of the matters enumerated in Schedule-XI is not denuded nor is the State's legislative power under Articles 245, 246 and List-11 of the 7th Schedule, overridden by Part-IX.

(4) Not only is there absent a non obstante clause but Article 243G expressly states that 'subject to the provisions of the Constitution', the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-Government.

(5) Powers and authority to enable Panchayat Raj Institutions to function as institutions of self-governance would include provision of finance and some degree of financial autonomy; involvement in planning, decision making in matter concerning Panchayats and implementation of decisions; voice and say in elections; and tenure based period for Panchayat Raj Institutions.

(6) The Indian Constitution is quasi federal incorporating federal features with a strong centrist bias.

(7) As no legislative and judicial powers are conferred on Panchayat Raj Institutions under the provisions of Part IX, the institutions cannot be construed as constituting a 3rd tier in the federal structure.

(8) While the provisions of the State Act if found in direct and patent contravention of any provision of Part IX may be struck down as ultra vires, no mandamus can issue to direct the Legislature to enact a law. The Court may draw the attention of the Legislature to certain deficiencies and omissions or draw backs in the legislation but cannot command a coequal branch of the State to legislate.

The general constitutional architecture of devolution of Legislative powers :

15. Article 246 of the Constitution sets out the subject-matter of laws that could be made by the Parliament or the Legislatures of the State. articles 1 - 3 of Article 246 deal with the subjects and fields of legislation enumerated in the Union List, the Concurrent List and the State List, respectively. Article 246(3) enacts that the Legislature of any State shall have (subject to the Clauses 1 and 2), exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List n (the State List) in the Seventh Schedule in the Constitution. Entry 5 of the State List reads as under:

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

16. The legislative field enumerated in Entry-5 of the State List consecrated to the Legislature of every State, signals grant of plenary discretion in the Legislature in the matter of legislating upon the fields of legislation enumerated in the entry. A discretion controlled by no justiciable limits explicated by any constitutional provision that mandates a structure, a republican form, devolution of powers, a guaranteed tenure, periodicity of elections, reservations or any measure of existential certainty to the institutions of local governance.

The Directive Principle :

Article 40 occurring in Part IV of the Constitution (Directive Principles of State Policy) reads as under:

Article 40: Organization of Village Panchayats:The State shall take steps to organise Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-Government.

In view of the provisions of Article 37 the provisions of Article 40 are not enforceable by any Court, though the principles therein set out are fundamental in the governance of the country and the State is enjoined a duty to apply these principles in making laws. In view of the provisions of Article 37 in Part IV of the Constitution the provisions of Article 40 are but in the nature of an exhortation, unenforceable.

The 'Heydon's Rule' background :

17. A study of the functioning of the local bodies including Gram Panchayats, over four decades, had given rise to a perception that the Panchayat Raj Institutions had not been enabled to acquire the status and dignity of viable and responsible representative bodies, the exhortation in Article 40, notwithstanding. It was therefore perceived that a more explicit structural mechanism be incorporated in the Constitution for effectuation of the purposes exhorted in Article 40. The statement of objects and reasons accompanying the Seventy-Third Constitution (Amendment) Bill set out the purposes underlying the presentation of the bill for consideration of the Parliament as the constituent body. The 'statement of objects and reasons' reads as under:-

'Statement of Objects and Reasons

Though the Panchayat Raj Institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections prolonged supersessions, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.

2. 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. In the light of the experience in the last 40 years and in view of the shortcoming which have been observed, it is concerned that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayat Raj Institutions to impart certainly, continuity and strength to them.

3. Accordingly, it is proposed to add a new Part relating to Panchayats in the Constitution to provide for among other things. Gram Sabha in a village or group of villages; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village and intermediate level, if any, and to the offices of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of Panchayats and office of Chairperson in Panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of five years for Panchayats and holding elections within a period of six months in the event of supersession of any Panchayat; disqualification for membership of Panchayats; devolution by the State Legislature of powers and responsibilities upon the Panchayats with respect to the preparation of plans for economic development and social justice and for the implementation of development schemes; sound finance of the Panchayats by securing authorization from State Legislatures for grants-in-aid to the Panchayats from the Consolidated Fund of the State, as also assignment to, or appropriation by, Panchayats of the revenues of designated taxes, duties, tolls and fees; setting up of a Finance Commission within one year of the proposed and thereafter every 5 years to review the financial position of Panchayats; auditing of the accounts of the Panchayats; powers of State Legislatures to make provisions with respect to elections to Panchayats under the superintendence, direction and control of the Chief Electoral Officer of the State; application of the provisions

of the said Part to Union Territory; excluding certain States and areas from the application of the provisions of the said Part; continuance of existing laws and Panchayats until one year from the commencement of the proposed and barring interference by Courts in electoral matters relating to Panchayats.

4. The Bill seeks to achieve the aforesaid objectives.'

18. Before proceeding to identify the true and permissible meaning of the provisions of Articles 243G and 243-H in Part-IX of the Constitution, a complex collage of historical and legislative facts may have to be considered by the Court, however briefly, including the genesis and evolution of the Gram Panchayat Institutions as part of the Social and cultural traditions in territories that now comprise our Nation, developments that have occurred over time including in the post Independence era and the constitutional and legislative dynamics that have since occurred, to ascertain the purposes and compulsions underlying the enactment of the 73rd Constitutional Amendment and the purposes which the amendment seeks to achieve and by the language employed therein.

A brief outline of the Panchayat system in India :

19. Many historians and political scientists have authored works setting out historical accounts as to local Governments in ancient, medieval and modern India, including renowned authors such as R.K. Mookerji (Local Government in Ancient India); M. Venkatarangaiya and M. Pattabhiram (Local Government in India); AC Majumdar (Corporate life in Ancient India); Romila Thapar (The History of India); M.A. Muttalib (The Theory of Local Government) and Dr. Shriram Maheskwari (Local Government in India). According to R.K. Mookerji 'The subject of Local Self-Government in ancient India has both historical and practical interest. We owe largely to her elaborate system of local-Government the preservation of the integrity, independence, and individuality of Hindu culture, despite the world shaking and catastrophic political movements to which that culture was frequently exposed in the course of her history.' R.K. Mookerji also quotes the report of the Select Committee of the House of Commons, 1832 in the words of Sir Charles Metcalfe: 'The village Communities are little republics, having nearly everything they can want within themselves, and almost independent of any foreign relations. They seem to last where nothing else lasts. Dynasty after dynasty tumbles down; revolution succeeds to revolution; but the village community remains the same... This union of the village communities, each one forming a separate little state in itself, has, I conceive, contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes which they have suffered, and is in a high degree conducive to their happiness, and to the enjoyment of a great portion of freedom and independence.' R.K. Mookerji also points out the reasons for evolution of local administration, as the physical impossibility of administering properly the manifold interests of civilized life in the comparatively larger and complex states of the modern world from one Central Government. Analyzing the distinctions between the nature and organization of local bodies in the more progressive countries of West (in medieval and modern times) with the developments in India, Mookerji points out that in countries such as the United Kingdom, Germany, France or even the United States, '...the organizations of local-Governments are mostly the creation of the Central Government; that these local bodies owe their present form and constitution to a process of decentralization, delegation, or devolution of powers determined by the national Legislature; that they are thus in the ultimate analysis but wheels of a common machine, parts of a single plant, and are not by any means 'extra-legal' associations, devoid of any statutory warrant, and, therefore, in the eye of the law, possessed of no authority what-so-ever.

20. In respect of local self-Government, as it developed in India, however, we shall find that the Indian institutions are practically sui generis representing a type, which may be sharply distinguished from the type represented by the corresponding institutions in modern polity. The fundamental difference is that, while, in the latter case, the state as a fully developed and completely constituted body, consciously creates autonomous centers within itself by devolution and delimitation of its own functions, in the former the communal institutions, guilds, and local bodies have an independent origin and growth out of fluid and inchoate conditions of tribal life and organization. When the state comes to supervene or be superimposed

upon these, it has to treat with them more or less on terms of equality and recognize their pre-existing rights by conventions and agreements, which operate as charters regulating their mutual relations. Thus, the varied interests of the communal life, such as administrative, judicial, civic, commercial, or industrial, are assured by the voluntary co-operation of independent and integral units of a common body politic.'

21. Drawing on epic, archeological, literal and epigraphic sources, various learned historians found evidence of well-defined local community Governments even in the very early epochs in India. Such sources considered include the works of Narada, Smṛti Chandrika, Yajñavalkya, Panini, Bana, Sayana and others and even epics such as the Ramayana and the Mahabharata.

22. R.C. Majumdar found evidence of fairly developed form of corporate activities in the economic life of village communities as early as the later Vedic period. The learned author traced the outlines of such corporate life and economic activity to references in Brihad-Aranyak-Upanishad, the Jataka stories, Dharmasutras of Gautama, Arthashastra of Kautilya and other sources of great antiquity.

23. The social, economic, functional and financial structures, the degree of autonomy and the organizational design of the local bodies had, however, as pointed out by erudite historians, not been either uniform or consistent in the various territories that comprised the ancient, medieval or the pre-independent territories that now comprise India. What appears clear, however, is that there were well developed and clearly discernable patterns of local Governments, representative in character which enjoyed a substantial measure of autonomy, so much so that they gained recognition even by the then Viceroy Lord Ripon, who moved a resolution on 'the local self-Governments' in 1882.

24. In the 20th century, in Southern India, the earliest enactment of comprehensive character streamlining the local administration was the Madras Local Boards Act, 1920, under which the Panchayats and District Boards were established, with the Village Panchayats functioning more or less under the control of the District Boards. With a view to entrusting greater responsibility to the Government, in the functioning of Village Panchayats, the Madras Village Panchayats Act was enacted in 1950 and the name of the Local Boards Act was also altered to read the 'Madras District Boards Act'. In the Telangana area, Gram Panchayats were constituted under the Hyderabad Gram Panchayat Act, 1956. Subsequent to the formation of the State of Andhra Pradesh in 1956, the Andhra Pradesh Gram Panchayats Act, 1964 (the 1964 Act) was enacted repealing the Madras Village Panchayats Act, 1950 and the Hyderabad Gram Panchayat Act, 1956. The Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959 was then enacted whereunder a Panchayat Samithi was constituted for each Block and a Zilla Parishad for each district. Thereafter, the pre-existing District Boards were abolished resulting in a three-tier system of Panchayat Raj. In 1983, with a view to bring the administration closer to the people, the Government constituted Revenue Mandals in place of Revenue Taluks. The Andhra Pradesh Mandal Praja Parishads, Zilla Praja Parishads, Zilla Pranalika Abhivrudhi Mandals Act, 1986 (the 1986 Act) ushered in a four tier system. These statutory developments, however, did not result in devolution of any independent powers and the Panchayats continued to be relegated to the position of being local self-Governments only in name.

The enacting history of the 73rd Constitution Amendment:

25. It is in the above scenario and in recognition of the stultification of the local bodies - post-independence, by successive State Governments that the Constitution 73rd Amendment was enacted, incorporating Part-IX in the Constitution.

26. Prior to the Constitution (73rd Amendment) Act, 1992, which came into force with effect from 1-6-1993, in the year 1989, the Constitution (64th Amendment) Bill, 1989 was introduced to provide a constitutional status to Panchayat Raj Institutions with a view to ensure regular conduct of elections, to ensure a term of five years for elected bodies of Panchayats, for specific representation of women and members of the Scheduled Castes and Scheduled Tribes, to provide for devolution of powers and functions to the local self-Governments and for the constitution of a State Finance Commission for every five years to ensure regular devolution of resources

to the local bodies. This Bill was passed by the Lok Sabha on 10th August, 1989, but fell through in the Rajya Sabha. Thereafter, in the year 1991, the Bill was again introduced in the Parliament and referred to a Joint Parliamentary Committee consisting of representatives of both the Lok Sabha and the Rajya Sabha. After the approval accorded to it by the Parliament as a Constituent body, the Constitution (73rd Amendment) Act, 1992 came into being. Under the Amendment Act, Part-IX of the Constitution, including Articles 243-A to 243-O and the 11th Schedule were incorporated into the Constitution. The 11th Schedule (which came into effect with effect from 24-4-1993) enumerated the matters in respect of which the Legislature of a State, may by law, devolve powers and responsibilities upon the Panchayats at the appropriate level, subject to such conditions as may be specified in such law for the implementation of schemes of economic development and social justice. (See Article 243G)

27. Before proceeding on an analysis of the relevant provisions of the Act and in the context of the petitioners' grievance, the provisions of Part IX of the Constitution may be noticed:

'Article 243 Definitions

In this Part unless the context otherwise requires,-

(a) 'district' means a district in a State:

(b) '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:

(c) '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:

(d) 'Panchayat' means an institution (by whatever name called) of self-Government constituted under Article 243-B, for the rural areas:

(e) 'Panchayat area' means the territorial area of a Panchayat;

(f) 'Population' means the population as ascertained at the last preceding census of which the relevant figures have been published;

(g) '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 243A Gram Sabha

A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide. ARTICLE 243B Constitution of Panchayats

(1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in Clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

ARTICLE 243C Composition of Panchayats

(1) Subject to the provisions of this Part, the Legislature of a State may by law, make provisions with respect to the composition of Panchayats :

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratios between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may by law, provide for the representation--

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat:

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within--

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(if) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of--

(a) a Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide, and

(b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

ARTICLE 243D Reservation of seats

(1) Seats shall be reserved for--

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under Clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairperson in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, bylaw, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State;

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under Clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

ARTICLE 243E Duration of Panchayats etc.

(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have (he effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in Clause (1).

(3) An election to constitute a Panchayat shall be completed--

(a) before the expiry of its duration specified in Clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under Clause (1) had it not been so dissolved.

ARTICLE 243F Disqualifications for membership

(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat--

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in Clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

ARTICLE 243G Powers, authority and responsibilities of Panchayats

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-Government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to--

(a) the preparation of plans for economic development and social justice,

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

ARTICLE 243H Powers to impose taxes by, and Fund's of, the Panchayats

The Legislature of a State may, by law:--

(a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

(c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State: and

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

ARTICLE 243I Constitution of Finance Commission to review financial position

(1) The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992 and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to--

(a) the principles which should govern--

(i) the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds:

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayats;

(iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the Panchayats;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.

(2) The Legislature of a State may, by law, provide for the composition of the Commission, the qualifications

which shall be requisite for appointment as members thereof and the manner in which they shall be selected.

(3) The Commission shall determine their procedure and shall have such powers in the performance of their functions as the Legislature of the State may, by law, confer on them.

(4) The Governor shall cause every recommendation made by the Commission under this Article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

ARTICLE 243J Audit of accounts of Panchayats

The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts. ARTICLE 243K Elections of the Panchayats

The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may, by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by Clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

ARTICLE 243L Application to Union territories

The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under Article 239 and references to the Legislature or the Legislative Assembly of a State were reference, in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:

Provided that the President may by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

ARTICLE 243M Part not to apply to certain areas

(1) Nothing in this Part shall apply to the Scheduled Areas referred to in Clause (1), and the Tribal Areas referred to in Clause (2) of Article 244.

(2) Nothing in this Part shall apply to--

(a) the States of Nagaland, Meghalaya and Mizoram;

(b) the Hill area in the State of Manipur for which District Councils exist under any law for the time being in force.

(3) Nothing in this Part--

(a) relating to Panchayats at the district level shall apply to the Hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force;

(b) shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.

(3A) Nothing in Article 243D, relating to reservation of seats for the Scheduled Castes, shall apply to the State of Arunachal Pradesh.

(4) Notwithstanding anything in this Constitution--

(a) the Legislature of a State referred to in Sub-clause (a) of Clause (2) may, by law, extend this Part to that State, except the areas, if any, referred to in Clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the Tribal Areas referred to in Clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

ARTICLE 243N Continuance of existing laws and Panchayats

Notwithstanding anything in this Part, 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 other competent authority or until the expiration of one year from such commencement, whichever is earlier: Provided that all the Panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State. ARTICLE 243O Bar to interference by Courts in electoral matters

Notwithstanding anything in this Constitution--

(a) the 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 243K shall not be called in question in any Court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.'

Part IX of the Constitution incorporates, in certain areas, clear and indisputable limits to the hitherto plenary discretion of a State Legislature under Entry-5 of the State List. These limits are--

1. A Gram Sabha defined in a clearly republican form (A. 243(a))

2. Constitution of a three-tier (level) local self-governance structure (Panchayats) (with the intermediate level being optional in respect of States having limited populations), mandated (A. 243 c, d & g read with 243B).

3. Inter-se representational equality of Panchayats (one person one vote principle) mandated (A. 243C).

4. Intra-panchayat representational equality and control of the inhabitants over the Panchayats' elected representatives ensured qua the prescription of direct elections to all seats in a Panchayat (A. 243C(2)).

5. Reservation of seats for the Scheduled Castes, the Scheduled Tribes and for women belonging to these categories and for women not belonging to the scheduled categories, including the principles by which the

extent of reservations is to be arrived at, spelt out (A. 243D).

6. The tenure of the Panchayats substantially guaranteed against legislative and executive pleasure (A. 243E).

7. Constitution of a Finance Commission to review the financial position of Panchayats within a defined time frame mandated (A. 243I)

8. Integrity of the electoral process for elections to the local self-Governments ensured by the creation of a State Election Commission with protected status to ensure independence and effective functioning (Art. 243K).

9. Bar to judicial interference in electoral matters (within well defined limits) incorporated, to ensure non-stultification or diminution of the representative governance mechanism of Panchayats (A. 243O).

28. The petitioners contend that the provisions of the Constitution (73rd Amendment) Act exemplify a Constitutional signal that the Panchayats function as vibrant institutions of local self-Government and not mere administrative arrangements of the State Executive. The constituent exercise resulting in the 73rd Amendment is the product of the recognition that grassroot democracy should be strengthened, the local aspirations and needs at the village community level should find utterance and execution by locally elected representatives of the people and the community policies should be orchestrated by the people's representatives, who should be empowered to identify and prioritize the spectrum of local needs and aspirations within the available financial resources. These local Governments should have the requisite administrative and financial autonomy to effectuate these Constitutional goals. Emphasizing this contention, the petitioners point out, empowering Nodal Officers, Village Executive Authorities, Mandal Parishad Development Officer, Chief Executive Authorities of the Zilla Parishad, District Collectors or other Executive Officials, appointed or nominated by the State Governments and functioning within the exclusive control of the State, was not the underlying purpose of the Constituent exercise, which found utterance as the Constitution 73rd Amendment.

29. The challenge by the petitioners and the defence of the State Government, to the State action qua the provisions of the Act, rules and administrative instructions are primarily predicated upon adversarial interpretations of the provisions of Articles 243G and 243H of the Constitution. Petitioners contend that these provisions constitute a limitation on the State's legislative and executive power and mandate a duty upon the State to devolve powers on the Panchayats in functional, administrative and financial areas so as to effectuate the constitutional purposes and enable them to function as institutions of self-Government.

30. The State Government on the other hand, contends that Article 243G of the Constitution is an enabling provision that sustains and reiterates the discretion available to State Legislature (qua Entry 5 of the State List) to endow Panchayats, inter alia, with such powers and authority as are necessary to enable them to function as institutions of self-Government. The extent, to which powers and authority are to be endowed on Panchayats to enable them to function as institutions of self-Government, is for the Legislature of the State to decide and this discretion of the State Legislature is not amenable to judicial review. Similarly, contends the State, the provisions of Article 243H are in the nature of enabling provisions empowering the State Legislature to, by law, authorize the Panchayats to levy, collect and appropriate taxes including the power to prescribe the procedure and limits within which the Panchayats could be empowered to levy, collect and appropriate taxes. Since the language of Articles 243G and 243H of the Constitution is couched in enabling phraseology, no mandamus could issue treating these constitutional provisions as incorporating a linear command obligating specific conduct by the State Legislature, is the meat of the State's stand.

31. Before assaying on the exercise of identifying and elucidating the meaning of the provisions of Part-IX of the Constitution, an exercise which needs be avoided, if a merely an academic exercise, it is appropriate to analyze the structure and the provisions of the 1994 Act to ascertain whether the articulated grievance of the petitioners, that the provisions of the 1994 Act have not only failed to effectuate the purposes of the

provisions of the Constitution, but have, subverted the constitutional intent, structure and text, is a grievance real and not fancied. For the sake of brevity and convenience the analysis of the structure and provisions of the 1994 Act and the complimentary rules and administrative instructions, to the extent relevant to the issues involved in this lis is set out as an appendix to this judgment.

32. On a consideration of the provisions of the 1994 Act, the rules made thereunder and the administrative instructions issued by the State, insofar as they are relevant and material to the issues arising in the case on hand (considered in the analyses vide the appendix to this judgment), our conclusion as to the extent of devolution of powers, functions and responsibility to the Panchayat (in its generic sense as constitutionally defined), is as under :

33. Section 4(2) of the 1994 Act enacts that the administration of the village vests in the Gram Panchayat, which is however, not entitled to exercise functions expressly assigned by or under the Act, inter alia to its Sarpanch or Executive Authority or to any other local authority or other authority.

34. Sections 8 and 14 provide for direct election of the Members and Sarpanch of a Gram Panchayat.

35. Section 6 provides for a Gram Sabha, which comprises the registered voters of the Gram Panchayat. The Gram Sabha is empowered to consider the matters specified in Sub-section (3) and requires the Gram Panchayat to give due consideration to any suggestions of the Gram Sabha.

36. Section 28 enables any Member of a Gram Panchayat to call the attention of the Executive Authority to any neglect in the execution of the works, waste of property or wants of a locality in the Gram Panchayat and to suggest improvements that appear desirable, whereupon the Executive Authority is required to explain the action taken or proposed on such complaint of a Member, at the next meeting of the Gram Panchayat. A Member is also empowered to move resolutions and to question the Sarpanch with regard to the administration of the Gram Panchayat. Members of the Gram Panchayat are also enabled access to the records of the Gram Panchayat.

37. The Sarpanch is empowered under Section 25 to exercise administrative control over the Executive Authority for implementation of the resolution of the Gram Panchayat or a committee thereof and to require the Executive Authority to furnish any information. The emergency powers conferred on the Sarpanch under Section 33 are to be exercised in consultation with the Executive Authority.

38. Sub-section (4) of Section 30 enacts that an Executive Authority shall be subordinate to the Gram Panchayat. He is, however, under the Section appointed by the Commissioner. He is empowered (Section 31) to convene the meeting of the Gram Panchayat with the approval of or on the direction of the Sarpanch and on the Sarpanch failing to give approval, to himself convene the meeting. Under Section 32 he is responsible for implementing the resolutions of the Gram Panchayat and of its committees and where he is satisfied that a resolution has not been legally passed or is in excess of the powers conferred by the Act or if carried out is likely endanger human life, health or public safety, is required through the Sarpanch to refer the matter to the Commissioner. The Executive Authority also has control over all the officers and servants of the Gram Panchayat and is empowered to exercise all powers and perform all functions conferred or imposed under the Act and for the purpose of carrying out the provisions of the Act.

39. The Executive Authority (Section 35) may delegate any of its functions to the Sarpanch or the Upa-Sarpanch or to any other Member. However, the functions so delegated are subject to restrictions and conditions that could be imposed by the Executive Authority and in exercising such delegated functions, the delegatee is subject to the control and revision of the Executive Authority.

40. Under Section 36, the conditions of service, salary, emoluments and pensions of the officers and other employees of the Gram Panchayat are to be conditioned by the Rules made under the proviso to Article 309 of the Constitution and their emoluments and terminal benefits, if any, are to be paid out of the consolidated

fund of the State. Even the classification of the service and disciplinary control is to be regulated in accordance with such rules.

41. The regulation and the execution of the works of the Gram Panchayat inheres in the beneficiary committee and areas of agriculture, public health, water supply, sanitation, education and communication and any other areas are to be executed as per the deliberations and decisions of the functional committee. The composition of the beneficiary and functional committees initially included the Sarpanch and other concerned Ward Members in G.O. Ms. No. 289, dated 1.8.1997; G.O. Ms. No. 472 dated 28.12.2002, repealed the earlier orders in G.O. Ms. No. 289 whereby, the composition of the beneficiary and functional committees is left to the discretion of the Government.

42. It has been noticed while surveying the provisions of Sections 60 to 71 (appendix) that even in areas of taxation and finance while there is a facile grant and devolution of taxation and finance powers to the Gram Panchayat, such powers are so circumscribed by requirements of prior sanctions and approvals by the State and its officials, that in pith and substance there is hardly any effective and independent power or discretion consecrated to the elected representatives.

43. The specification that the Executive Authority is subordinate to the Gram Panchayat [Section 30 (4)] and that all officers' and employees of the Gram Panchayat shall be subordinate to the Gram Panchayat [Section 36(5)] is a symbolic legislative statement. All the officers and servants of the Gram Panchayat including the Executive Authority and all areas relating to their service are beyond the jurisdiction, power and authority of the Gram Panchayat. There is no effective control provided except the vacuous declaration that these officers and servants shall be subordinate to the Gram Panchayat. The provisions of the 1994 Act have ensured that the declaration of control is ineffective in reality and operation.

44. Under Section 77 the budget is to be framed by the Executive Authority and placed before the Gram Panchayat. The Gram Panchayat is required to sanction the budget with such modification as it thinks fit. When sanctioned by the Gram Panchayat the Executive Authority forwards the budget to the Divisional Panchayat Officer, who is empowered to make suggestions and modifications and return it to the Gram Panchayat. The Gram Panchayat may thereupon consider the same and approve it with or without modifications at a special meeting. The budget so approved is final. The framing of the budget is an important constituent of governance exercisable by an elected body and constitutes a key ingredient of accountable and representative Government. The budget is an instrument in which the fiscal policies, economic choices and social and developmental priorities of the Panchayat, are reflected. Even in this area neither the Gram Panchayat nor its elected Members or the Sarpanch are provided the initiative in the framing of the budget except the power to react to a budget framed by the Executive Authority and not even under the direction of the elected representatives.

45. On an analysis of the provisions of the 1994 Act, the conclusion is irresistible that the supervision and control, by the Government and its agents, over the Gram Panchayat institutions is excessively intrusive, chillingly restrictive, destructive of local initiative, overwhelmingly negates the exercise of discretion or assumption of responsibilities and in substance constitutes an antinomy of the constitutional purposes underlying Part IX. It could safely be concluded that under the facade of delegating powers and responsibilities to the Gram Panchayat, powers, responsibilities and functions are devolved, in effect and substance, upon the Executive Authority of the Gram Panchayat (who is appointed by the Commissioner and whose salaries, emoluments, discipline and control, vest in the Government and its agents by virtue of the rules made under the proviso to Article 309 of the Constitution). No meaningful endowments of powers, authority and responsibility to the elected representatives is evident, in the provisions of the 1994 Act,

46. In respect of Mandal Parishads the situation is no different. An analysis of the provisions of Sections 148, 149, 151, 161 to 169, 171 and 174 of the 1994 Act, permits the conclusion that it is not the elected representatives of the Mandal Parishad, but the Mandal Parishad Development Officer, District Collector,

Commissioner of Panchayat Raj and the State Government, who ordain and direct the policies, functions and responsibilities of the Mandal Parishad, in reality and it is these agents of the State who exercise a stifling control over the affairs of the Mandal Parishad.

47. The Zilla Parishad, as the apex level of local self-Government, functions in a similar ambience and environment of negation of powers and responsibility on the elected representatives as in the case of the Gram Panchayat and the Mandal Parishad. The provisions of Sections 177, 179, 181, 186, 191 to 195, 197 to 199 illustrate the similarities in the functioning of the Zilla Parishad, with the Gram Panchayat and the Mandal Parishad. In truth and in substance, the elected representatives function as administrative subordinates of the State and its appointed and controlled agents, in whom is vested substantial and effective financial, administrative and organizational control, control over the functionaries of the Panchayat Raj institutions, power to identify and effectuate even essentially local and neighbourhood needs and developmental requirements, power to prioritise, initiate and execute policy to cater to such requirements.

48. The elected representatives of the three levels of Panchayats are elected and expected (and mandated too) to deliberate at least at ordained intervals. They deliberate and resolve, resolutions whose effectuation is vested in the discretion of the Executive Authority of the Gram Panchayat, the MPDO, or the Chief Executive Officer of the Zilla Parishad, who in turn are bound by the instructions of the District Panchayat Officer, the District Collector, the Commissioner of Panchayat Raj and/or the State Government.

49. Local self-Government as ordained by the amended constitutional calculus, despite the inconclusiveness of the language in Article 243G at least signal a discernable autonomy in the area of governance, in identifying local needs, aspirations, prioritizing local development choices, husbanding financial resources to meet the prioritized local and neighbourhood objectives, a freedom of choice devolved upon democratically elected representatives of the local populace, to experiment in the art of governance and to learn the craft of governance at the local level, by trial and by error.

50. It is significant to notice that the provisions of the 1994 Act are substantial replications of the provisions of the 1964 Act and the 1986 Act. While the provisions of Sections 36, 44, 60, 62, 70, 71, 74, 75 and 77 of the 1994 Act substantially correspond to relevant provisions in the repealed 1964 Act, the provisions of Sections 161, 165, 167, 169, 174, 186, 192, 193 and 199 of the 1994 Act are substantially similar to relevant provisions in the 1986 Act. Sections 249 and 250 of 1994 Act have substantially borrowed phraseology from the provisions of both the 1964 and the 1986 Act. In critical areas of endowment and devolution of powers, authority and responsibility, there is no substantial change in the Legislative content, pre and post 73rd Amendment.

51. The National Commission to review the working of the Constitution as part of its study took up an analysis of decentralization and devolution of powers to Panchayats and Municipalities. The recommendations of the Commission in this behalf are set out in Chapter-9 of its report. The report records that the Union and the State Governments continue to exercise powers in planning and the Panchayats do not enjoy autonomy - financial or administrative-as institutions of local self-Government. The Commission examined whether there has been devolution of powers and responsibility to Panchayats, inter alia in functional and financial spheres. The report records that Panchayats having blossomed into institutions of self-Government, have been reduced to an implementing arm of the State Government. On the financial domain aspect, the report observes, that to be an institution of self-Government a Panchayat should, as far as possible be, a viable unit. It should be capable of generating internal resources by using its own fiscal powers that include taxing power commensurate with the functions assigned to it. The Commission felt that major fiscal restructuring and financial resources are necessary to enable the Panchayats to function as viable local self-Government institutions. With regard to the personnel of the Panchayat Raj Institutions, the report records that an institution of self-Government must have the power to recruit and control the officers and other employees required for managing its functions. The Constitution is totally silent about this viability aspect of institutional autonomy. The failure to address the human resource issue has definitely affected the growth of Panchayats as self-governing institutions. The report also points out that while the task of assigning functions to the

Panchayats was given to the State Legislature, this has been usurped by the State Government. Though the Constitution did not intend that the Panchayat would be like any other authority created by a Statute of the State with the only difference as regards the Constitutional guarantee of its certainty, continuity, reservations etc., but with no difference as regards the State Government's unfettered power to restrict or limit its autonomy. The conclusion of the Commission in this area is that the gap between the constitutional hope and the reality in the area of empowerment of Panchayat Raj Institutions was on account of the inconclusiveness of the text. It recommended amendments to the provisions of Part-IX and Schedule-VII of the Constitution, among other provisions.

52. Learned Additional Solicitor General for India and the learned Additional Advocate-General for the State urge that as the provisions of Part-IX have not delineated or annotated the features, outlines or the structure of the expression 'self-Government', the provisions of the 1994 Act cannot be scrutinized by this Court to ascertain whether powers and authority are endowed on the Panchayats or whether what has been endowed is adequate to enable the Panchayats to function as institutions of 'self-Government'. The contention in substance is that the silence of the text, permits the singular inference that the Constitution intended to reinforce absolute discretion in the State Legislature to endow the Panchayats with whatever powers and authority it deems fit. The Legislature is the ultimate Judge of what 'self-Government' means; what powers and responsibility could be endowed on the Panchayats to effectuate their functioning as such 'self-government' is also within the exclusive domain of the Legislature. In the context of the submissions of these learned Counsel, the role of the Court, invested with the jurisdiction to address constitutional questions and to interpret its provisions - requires to be considered.

53. Before proceeding on the analysis of these core issues, cognate issues urged on behalf of the petitioners may be considered:

Whether the Panchayats Comprise the Federal structure under the Constitution:

54. The petitioners urge that the Panchayat Institutions constitute the 3 tier of the federal structure exemplifying a further unit in the vertical division of the governance powers, under the Constitution. The Union of India and the State of Andhra Pradesh emphatically contend that the Panchayats are not a 3rd tier in the federal structure of the Indian Constitution.

55. Federalism could be said to be a form of political association and organization that unites separate polities within a more comprehensive political system, allowing each polity to maintain its own fundamental political integrity. It could be defined as constitutionalised power sharing through systems that combine self-rule and shared rule. In federal systems, basic decisions are made and implemented through negotiations so that all the members share in the making and executing of decisions, The political principles underlying and animating federal systems emphasize the importance of bargaining and negotiating co-ordination among several power centers and underline the virtues of dispersed power centers as a means of safeguarding individual and local liberties.

56. Federal systems are principally based on six fundamental premises. They are - non-centralisation; pre-disposition towards democracy; established system of checks and balances; operation through a process of open bargaining; usually under a written constitution; and presence of constitutionally determined fixed units of power within the polity.

57. Federalism is more than a mere structural arrangement; it is a special mode of political and social behaviour as well, involving a commitment to partnership and active co-operation on the part of individuals and institutions that at the same time take pride in preserving their own integrity. Maintenance of the federal principle requires the general Government and the constituent polities to each have their substantially complete governing institutions of their own, with the right to modify these institutions unilaterally within the limits set by the federal compact. Separate legislative and administrative institutions are common through different federal models have different weightages in respect of these institutions. It is not necessary that

separate institutions of each of the constituting units must carry out all governing activities. The agencies of one unit may serve as agents of the other by mutual agreement or institutional arrangement. However, each unit must have enough of its own institutions to function in the areas of its authority and to co-operate freely with the counter-part agencies.

58. The political diversity inherent in a federal system potentially fosters all the social and economic benefits that may flow from the use of different governmental units to address social problems. Each system brings different perspectives to such concerns. On account of its size, resources and national perspective, the federal Government is able to deal with certain problems that extend across the borders of individual States. The State Governments can focus on the unique impact that a problem may have in a particular geographical or economic area, are closer to popular will, and can engage in social experimentation without the costs and risks incurred in conducting untested social programmes at the national level, they provide a perspective that the federal Government is unable to maintain.

59. The essential characteristic of a federal structure in a constitutional scheme is however the distribution of limited executive, legislative and judicial - authority and functions, among bodies, which are coordinate and independent of each other. Division of governmental powers between co-ordinating and at least semi-independent authorities, is an essential attribute of a federal structure - vide *In Re Article 143 of the Constitution of India* (UP Assembly case) (supra); *State of M.P. v Bharat Singh* (supra); *S.R. Bommai v. Union of India* (supra).

60. The provisions of Part IX of the Constitution neither expressly nor by any compelling implication, devolve legislative power or judicial authority on the Panchayat Raj Institutions. No legislative power is conferred on Panchayat Institutions in derogation of or complimentary with, the Parliament or the State Legislatures. The Legislative power vests with the Parliament and the State Legislatures under Part-XI read with the VII Schedule of the Constitution. It is impermissible to characterize the Panchayats as the 3rd tier of the federal structure, under the Indian constitutional scheme even after the 73rd amendment.

61. The debate as to whether the Panchayats constitute part of the federal structure under the Constitution, is pointless and sterile. If the provisions of Part IX of the Constitution obligate, endowment of powers and authority and devolution of powers, authority and responsibility on the Panchayats, it matters not that the Panchayats are not a part of the Federal structure. Constitutional interpretation is an exercise beyond identification of labels.

Whether a mandamus can issue to the Legislature to enact a law:

62. While seeking invalidation of certain provisions of the 1994 Act and the Statutory Rules made thereunder, the petitioners seek a direction to the respondents 'to take appropriate and immediate steps to discharge their constitutional duties of giving effect to the same and for other consequential constitutional measures to conform to the constitutional requirements.' The endowment of powers and authority to the Panchayats as well as authorisation to Panchayats, to levy, collect and appropriate taxes, duties, tolls and fees; under Article 243G and H, is ordained by the Constitution, to be by law made by the Legislature. Though under Article 162 the ambit of the executive power of the State is co-extensive with its legislative power, as the grant of executive power under Article 162, is subject to the provisions of the Constitution and since Article 243 G and H mandate that the exercise of power under these presents be by legislation, the 'appropriate and immediate steps' that the petitioners seek needs be by Legislation. The verbal camouflage notwithstanding, the petitioners in substance, seek a mandamus to the Legislature to enact a law. It is too well established that the judicial branch could issue no mandamus or direction to a coequal branch of the State-the legislature, to make laws- *Narendra Chand Hem Raj v. Lt. Governor* (supra); *State of Karnataka v. State of Andhra Pradesh*. (supra); *Ajit Singh v. State of Punjab* (supra) and *State of J&K; v. A.R. Zakki* (supra).

The interpretive Dilemma :

63. Does the Constitution licence evisceration of the autonomy of the Panchayat Raj Institutions, are the provisions of Article 243G merely enabling provisions or do they signal a constitutional directive, is the concept of 'local self-Government' so 'elusive' and 'inconclusive' that it means what ever the State legislature wants the expression to signify, what are the duties and functions of a Court while interpreting constitutional provisions and what is the prohibited territory for judicial oversight of a legislative exercise challenged as inconsistent with the constitutional structure, text and purposes - are issues that require an ascertainment of the applicable theories and conventions of the judicial role in the area of constitutional interpretation.

64. The spectrum of the Indian Constitutional landscape is a collage, whose apparent simultaneity is an illusion. The apparent unity of even its original text and the values therein might project an image of its origin at a singular point of time. In fact, however, its various provisions are not the product of a single socio-political period nor reflect a uniform vision, value or philosophy. The Constitution instead is the product over many historical, social, economic and political epochs, of a series of not altogether coherent or dovetailing compromises. The value pregnant provisions of the Constitution are often couched in phraseology intended more to outline principles rather than to engrave the details. In the interpretation of a Constitutional document, a rigid literal approach is not conducive to elucidate the true import of the Constitutional intent. It must be remembered, as pointed out and reiterated by M.N. Venkatachaliah, J (as his Lordship then was) in *R.C. Poudyal v. Union of India*, : [1993]1SCR891 , that in an interpretation of a constitutional document, '...the words are, but the frame work of concepts and concepts may change more than words themselves. The significance of the change of the concepts themselves is vital and the constitutional issues are not solved by a mere appeal to the meaning of the words without an acceptance of the lines of their growth.'

65. One interpretive principle in elucidating the meaning of constitutional provisions is that reiterated by S.R. Das, J., in *Keshavan v. State of Bombay.*, : 1951 CriLJ680 , that '...a Court of law has to gather the spirit of the Constitution from the language of the Constitution. What one may believe or think to be the spirit of the Constitution cannot prevail if the language of the Constitution does not support that view.' In *A.G. for N.S.W. v. Brewery Employees Union*, (1908) 6 CLR 469, Higgins, J., observed '...although we are to interpret the words of the Constitution on the same principles of interpretation as we apply to any ordinary law, these very principles of interpretation compel us to take into account the nature and scope of the Act we are interpreting, to remember that it is a Constitution, a mechanism under which laws are made, and not a mere Act which declares what the law is to be.' After quoting with approval, the observations of Lord Wright in *James v. Commonwealth*, (1936) AC 578, and *British Coal Corporation v. R*, (1935) AC 500, to the effect that the Constitution must not be construed in a narrow or pedantic manner and 'that construction most beneficial to the widest possible amplitude' of its powers, must be adopted, Gwyer Chief Justice In *re The C.P. and Berar Act, 1938*, (1939) FCR 18, observed : '...a broad and liberal spirit should inspire those whose duty it is to interpret it (the Constitution); but I do not imply by this that they are free to stretch or pervert the language of the enactment in the interest of any legal or constitutional theory, or even for the purposes of supplying omissions or of correcting supposed errors. A Federal Court will not strengthen, but only derogate from, its position; if it seeks to do anything but declare the law, but if may rightly reflect that a Constitution of Government is a living and organic thing, which of all instruments has the greatest claim to be construed *ut res magis valeat quam pereat*' (emphasis).

66. Constitutional adjudication is essentially problematic. It is not judging in the ordinary sense. Critics of the role of the Courts in interpreting the Constitution have expressed the worry that Judges routinely exceed their office. Rebecca I. Brown in 'Accountability; Liberty, and the Constitution', an article published in 98 Colum L. Rev. 531 (1998) observed that by the Constitution, the people did not establish a utility-maximizing constitution, but rather a tyranny-minimizing one. This reflection of the American Constitution is valid for our constitutional scheme as well Our Constitution is not an exclusive expression of majoritarian purposes. The vast landscape of the Indian Constitution embodies clearly counter-majoritarian provisions, intended to safeguard perceived enduring values, liberties and minority interests against transient majority pressures, that might find utterance either in executive action or legislative fiat.

67. In the sprawling debate over the legitimacy of judicial review, the counter majoritarian objection to judicial review pointed out by Alexander Bickel (*The Least Dangerous Branch*) is whether a non elective judiciary placed in office neither by the majority nor directly accountable to the people could be justified with the power to overturn democratic decisions reflected in the legislative will? The underlying assumption of the Bickelien problematic is that the policy decisions of the legislatures are democratic and need no further justification by simple virtue of the fact that they are the product of an elected assembly. In this view, democracy is represented as essentially a procedural ideal: political decisions are validated through the ballot box and acquire political legitimacy in the light of that process. The other facet of this premise is that just as legislative decisions are presumptively democratic (since they are the product of an elected assembly), judicial opinions overruling legislative decisions are presumptively undemocratic (because they are made by unelected officials).

68. A fuller account of democracy involves much more than the two fundamental premises above. Procedure is important, but it has no inherent or enduring superiority in achieving results that are democratic. Therefore the notion and practice of a constitutional democracy must mean more than simple majority rule or self-Government. It must have a substantive element that justifies the powers of duly elected Government and at the same time limits what can be done in the name of collective self-Government. Constitutional democracy means more than majoritarianism because this can result in many people being denied self-Government. Thus democracy has both a procedural as well as a substantive dimension. A constitutional arrangement can hardly warrant the description 'democracy' unless it possesses both a certain minimum content (e.g. equality, protection of life and liberty and a broad level of enfranchisement) and a minimum process (e.g. popular elections). Regardless of how ideal the content or process might be perceived, a civil society cannot claim to be democratic without some admixture of the two elements. Democracy is thus both about social relations and political procedures with one dependant on and reinforcing, the other.

69. The Canadian Supreme Court put the issue in perspective. The question that fell for consideration in a reference by the Governor in Council, was: 'under the Constitution of Canada can the National Assembly, legislature or the Government of Quebec effect the secession of Quebec from Canada unilaterally?' [Re Quebec reference (1998), 161 D.L.R. (4th) 385]. Analysing the content of democracy in the context of the argument that democracy represents the supremacy of the sovereign will of a people (expressed by Quebec in support of unilateral secession), the Supreme Court of Canada observed:

'Democracy is a fundamental value in our constitutional law and political culture. While it has both an institutional and individual aspect.....it is useful to explore in a summary way these different aspects of the democratic principle.....The consent of the governed is a value that is basic to our understanding of a free and democratic society. Yet, democracy in any real sense of the word cannot exist without the rule of law. It is the law that creates the framework within which 'sovereign will' is to be ascertained and implemented. To be accorded legitimacy, democratic institutions must rest, ultimately on a legal foundation. That is, they must allow for the participation of, and accountability to, the people, through public institutions created under the Constitution. Equally, however, a system of Government cannot survive through adherence to the law alone. A political system must also possess legitimacy, and in our political culture, that requires an interaction between the rule of law and the democratic principle. The system must be capable of reflecting the aspirations of the people. But there is more. Our law's claim to legitimacy also, rests on an appeal to moral values, many of which embedded in our constitutional structure. It would be a grave mistake to equate legitimacy with the 'sovereign will' or majority rule alone, to the exclusion of other constitutional values.' (emphasis)

70. The republican character of the Government guaranteed by our Constitution assures accountability. Such accountability enforced at election times is episodic and not necessarily an effective mechanism for ensuring that the executive and political branches would conform to the majority's bidding as might happen in a plebicitery democracy. It is this reality which is the justification for judicial review and the reason why the judicial branch is consecrated the duty to explicate the constitutional structure, meaning and purpose. As is

observed, the Constitution is meta-law, a mechanism by which laws are made.

71. The Constitution expresses itself in words, but words that direct the life of a nation across generations. In critical areas involving constitutional interrelation, the judicial role is, (in the words of Paul A Freund 'Umpiring the Federal System' -54 Col. Law Review 561): 'the introduction of mediating principles between the large constitutional or philosophical concepts to which some or all of a community pay tribute and the common problems of reconciliation which beset the modern state.' In the performance of such mediating role however, the Judge is not free. He is bound by the constitutional text, the obvious and authentic embodiment of constitutional truth.

72. As an instrument expressing an enduring structure for the governance of a complex and plural society such as ours, the Paramount Instrument contains few provisions that require no elaboration of the constitutional purpose. When Article 58 enacts that no person shall be eligible for election as President unless he has completed the age of 35 years, the constitutional rule is self-dispositive. The constitutional prescription invites no interpretation.

73. Vast areas of the constitutional text, however, abound with expressions that are intended to express principles which the Constitution intends should govern the national charter and the lives of its people for unforeseen circumstances, unfolding events and across generations to come. Expressions like 'social', 'secular', 'democratic', 'republic', 'equality' and 'equal opportunity', 'freedom of speech and expression', 'religions instruction', 'complete justice', 'federalism', 'life or personal liberty', 'procedure established by law', freedom of trade, commerce and intercourse throughout the territory of India, are expressions the meaning of which, cannot be ascertained by a mere appeal to the dictionary. These expressions are also not static in space and time. They are dynamic and value pregnant. The constitutional meaning of such expressions involves a proliferation of the constitution's purposes by reference to, the enacting history, the signals drawn from other parts of the Constitutional text, some times political and social theories, the nature of the evolution of the civil society and like sources.

74. Ronald Dworkin has shown (Taking rights seriously) that the assumption that law is a system of rules some superior and some inferior, is inaccurate. The depiction of constitutional provisions as superior rules is critical to the characterization of the judicial powers as simply the application of rules to facts in deciding cases. However, not all constitutional provisions can be described as rules. While some provisions are rules, such as those specifying that the duration of the House of People, unless sooner dissolved, shall continue for five years - Article 83, a person shall not be qualified to be chosen to fill a seat in the House of the People unless he is not less than 25 years of age Article 84(b), an ordinance promulgated by the President shall cease to operate at the expiration of six weeks from the reassembly of the Parliament Article 123(2)(a); other provisions of the Constitution are not, and they are the ones that invite interpretation and criticism too about the role of the Courts and the contours and limits of the interpretive endeavour.

75. The constitutional guarantees of equality [Articles 14, 15 & 16], the content of the freedom of speech and expression, assembly, association and movement [Article 19], right to life or personal liberty [Article 21], specified freedom as to attendance at religious instruction or religious worship [Article 28], 'consultation' by the President in the matter of appointment of Judges to the Supreme Court and the High Courts [Article 124], and 'self-Government' [Articles 243(d) and 243G] - are 'principles' not 'rules'.

76. The difference between principles and rules, as Dworkin (supra) has pointed out, is significant and has important consequences for theories about judicial review. A rule has one or two conceivable relationships to a set of facts; either the facts fall within the rule, in which case the consequence specified by the rule must be accepted, or the facts have no relationship to the rule, in which case the rule is irrelevant. Rules have an absolute either-or quality. Principles, on the other hand, are distinguished both by their generality and by the fact that they apply on an approximate basis. Principles embody concepts. Principles are distinguished by the degree of their relevance in a case, and it is the particular conceptions of these principles that Judges adopt

that are used to measure the facts in a given case. The doctrines constructed by Judges embody the specific conceptions that are necessary to give meaning to the principles in constitutional provisions.

77. Constitutional text outlining 'principles' as distinct from 'rules' involves language whose meaning has a normative or evaluative component. Constitutional words and phrases, in such areas, constitutionalise particular concepts or values, and are essentially contestable. To determine when an essentially contestable concept properly applies, requires the conscious or unconscious undertaking of moral and political commitments. In the construction of the constitutional text delineating principles, value arguments will inevitably enter the judicial calculus. Analysis of our constitutional text leads to the conclusion that its provisions exist on a spectrum ranging from the relatively specific to the fairly open-textured. The judicial branch is not provided an algorithm of constitutional meaning or an authoritative dictionary that explicates the meaning of the entire text. The framer (and the amenders too) were aware that it was a Constitution that they were drafting, which led to a choice of language capable of and susceptible to value-identification, explication of purposes and of growth.

78. Upon the value pregnant areas of the Constitution, our Supreme Court is seen to have often addressed itself to the resolution of competing claims of value arguments. The equality injunctions of the Constitution (Articles 14, 15 and 16) do not define the expression. That the doctrine of classification and the concept of non-arbitrariness are integral to the concept of equality, are conclusions drawn by the judicial branch from origins, enacting history, social and economic philosophy, comparable organic texts and jurisdictions and other sources - see [Chiranjit Lal v. Union of India, : [1950]1SCR869 , State of West Bengal v. Anwar Ali Sarkar, : 1952 CriLJ510 , Syed Quasim Razvi v. State of Hyderabad, : 1953 CriLJ862 , Budhan Choudhary v. State of Bihar, : 1955 CriLJ374 , In re Special Courts Bill, 1978, : [1979]2SCR476 , E.P. Royappa v. State of Tamil Nadu, : (1974)ILLJ172SC , Maneka Gandhi v. Union of India, : [1978]2SCR621 .]

79. The majority judgment in Kesavananda demonstrates the constructivist exercise of proliferation of the Constitution's purposes, identified from sources apart from the text and reliance on theories of constitutional interpretation as distinct from a mere linguistic analysis of the expression 'amendment'. Thus:

(a) The theory of basic and un-amendable features of the Constitution (though not affirmatively expressed by the Constitutional text), has been deduced by the Supreme Court majority, on the basis of arguments about the constitutional text and purposes (per Sikri, C.J, Shelat and Grover JJ; Hegde and Mukherjea JJ, Jaganmohan Reddy, J and Khanna, J).

(b) Powers and limitations can be implied from the necessity or the scheme of the Constitution. There are necessary implications for a federal Constitution. Implied limitations on the powers conferred under a statute, constitutes a general feature of all statutes. The position cannot be different in the case of powers conferred under a constitution. A grant of power in general terms or even in absolute terms may be qualified by other express provisions in the same enactment or may be qualified by the implications of the context or even by considerations arising out. of what appears to be general scheme of the statute, (emphasis) In this respect, there is no distinction between other powers and the amending power under the Constitution. The amending power under Article 368 is subjected to implied limitations. (Sikri CJ, Shelat and Grover JJ; Hegde and Mukherjee, JJ and Jaganmohan Reddy, J) - vide Kesavananda Bharati v. State of Kerala, : AIR 1973 SC1461 .

80. The power of judicial review vested in the High Courts and in the Supreme Court under Articles 226 and 32 respectively, enabling the legislative action to be subjected to the scrutiny of the superior Courts, has been held to be integral to our constitutional scheme. Such power of judicial review was held to be an integral and essential feature of the Constitution, constituting part of its basic structure, in L. Chandra Kumar v. Union of India, (1997) 3 SCC 261. Accordingly, the Supreme Court declared that Clause- 2(d) of Article 323-A and Clause-3(d) of Article 323-B of the Constitution, are unconstitutional. The identification (of judicial review as an essential feature, as comprising the basic structure of the Constitution and thus beyond the amendatory power of the Parliament) was not based on any singular signal emerging from the constitutional text. At first

blush the concept of judicial review too might appear 'nebulous', 'elusive' or 'inconclusive'. This is the specific contention urged on behalf of the Union and the State in respect of the expression 'self-Government' occurring in Part-IX of the Constitution. If the theory propounded by the State, in this case, is to commend acceptance, then judicial review ought to mean what the Legislature intends the expression to mean and nothing further and the judicial branch would be constitutionally forbidden to consider what judicial review embodies. Investiture of adjudicatory power including in the area of vires of legislative provisions, invested in an exclusively executive authority and under the broad control of the State, would have to be upheld, if the contention of the State in this case is to commend acceptance by this Court.

81. In *S.R. Bommai v. Union of India* (supra), the Supreme Court identified the contours of the concepts of federalism and secularism in our Constitution, 'elusive', 'nebulous' and 'inconclusive' as those expressions are: While holding that secularism is part of the basic structure of the Constitution Savant and Kuldeep Singh., JJ with Pandyan, J concurring, held that the relevant provisions of the Constitution, by implication, prohibit the establishment of a theocratic State and prevent the State either identifying itself with or favoring any particular religion or religious sect or denomination. The implications fertilizing these conclusions of the Supreme Court (in Bommai) are implications drawn from the generality of the constitutional text and from writings and theories on religion and secularism, not expressly incorporated into the constitutional text. Jeevan Reddy, J on behalf of himself and Agrawal, J while concurring in the holding that secularism is a constitutional goal and a basic feature of the Constitution; and that the expressions 'Socialist' and 'Secular' by themselves are not capable of precise definition, nevertheless ascertained the meaning of the expression 'secular' in the context of our Constitution. The constitutional signification of the expression 'secular' was constructed by Jeevan Reddy, J from various provisions of the Constitution, including Articles 14 - 16, 25 - 30, the speech of Sri KM. Munshi during the Constituent Assembly Debates, a lecture of Sri M.C. Setalvad on 'secularism' (Patel memorial Lectures, 1965), the Inaugural Address of Gajendragadkar, J in a seminar 'Secularism; its implications for law and life in India', an article by Prof. Upendra Baxi 'Struggle for the Redefinition of secularism in India.', the evolutionary history of the Indian freedom movement and such sources. The opinion of Ramaswamy, J (in Bommai) also discloses that the concept of secularism was culled out from sources in addition to the text of the Constitution.

82. The hermeneutics of the expression 'life or personal liberty' (in Article 21) validate the verity that the judicial role in constitutional interpretation is constructivist. The evolution from the minority view of Subba Rao, J in *Kharak Singh v. State of U.P.*, : 1963 CriLJ329 , that the right to privacy is an essential ingredient of personal liberty under Article 21, to the present scope of the expression 'life or personal liberty', demonstrates that a cosmos of meaning has been attributed to this expression. While the expression textually remains unaltered, the penumbra has grown infinitely and by judicial exegesis. The right to life and its corollary to privacy now includes; the right to telephone conversation in the privacy of the home or the office -*PUCL v. Union of India*, 1997 (2) ALD (SCSN) 39 = AIR 1997 SC 207, the right to shelter - *Prabhakaran Nair v. State of T.N.*, : [1988]1SCR1 , a right to speedy trial - *Kadra Pahadia v. State of Bihar*, : AIR 1981 SC939 , *State of Mahrastra v. M.P. Vashi*, : AIR 1996 SC1 , the right to legal assistance - *Sheela Barse v. Maharastra*, : 1983 CriLJ642 , the right against illegal detention -*Hussaianara Khatoon (I to VI) v. Home Secretary, Bihar*, : 1979 CriLJ1036 , the right to health -*C.E.R.C. v. Union of India*, : (1995)IILLJ768SC , the right to pollution-free environment - *M.C. Mehta v. Union of India*, : [1986]1SCR312 . These are but illustrative, of the vast expansion to the meaning of the expression 'life or personal liberty' that has been brought about by interpretive gloss and curial construct. This dynamics is the product of departure from mere textualism, in the interpretation of constitutional provisions.

83. In *Chief Justice of Andhra Pradesh v. L.V.A. Dixitulu and Ors.*, : [1979]1SCR26 , the Supreme Court while considering whether members of the staff of the High Court and of the subordinate judiciary are comprehended within the expression 'Civil Services of the State' in

the context of Article 311 and Article 371D(3), held that while they are included within the expression in Article 311 are not, within the expression of a similar provision in Article 371D(3). In coming to this conclusion, the

Supreme Court considered whether the enacting history of Article 371D justified such a conclusion (i.e., whether there was an intention on the part of the Legislature to impair or derogate from the constitutional scheme of securing the independence of the judiciary as enshrined in Articles 229 and 235 - while enacting Article 371D, the Apex Court reasoned that the consequences of giving the general, undefined and flexible phrase 'Civil Services of the State' in Article 371D(3), a wider construction so as to include in it the High Court staff and the members of the subordinate judiciary would result in the control vested in the Chief Justice over the staff of the High Court and in the High Court over the subordinate judiciary being denuded of its substance, efficacy and exclusiveness. Concluding that the independence of the judiciary including the control of the Chief Justice and of the High Court over this class of Civil Services of the State was a vital constitutional value, the Supreme Court held that this class of employees was advisedly excluded from the purview of Article 371D(3), the non-obstante provision in Clause (10) of Article 371D notwithstanding. Quoting with approval the opinion of Lord Blackburn in *Edinburgh Street Tramways Company v. Torbain*, 1877 3 AC 58, '-words used with reference to one set of circumstances may convey an intention quite different from what the self same set of words used in reference to another set of circumstances would or might have produced.' the Supreme Court identified a restrictive meaning of the expression 'Civil Services of the State' in Article 371D(3). This decision too exemplifies a constructivist approach by the Supreme Court to constitutional interpretation.

84. In *S.C. Advocates-on-Record Association and Anr. v. Union of India*, : AIR 1994 SC268 , [2nd Judges' case] the majority opinion evolved the concept of primacy of the opinion of the Chief Justice of India. In the text of the constitution consultation by the President with the Chief Justice of India and other consultees is specified (Articles 124 and 217). The construction that the consultation subsumes primacy to the views of the Chief Justice of India was ratiocinated by the Supreme Court majority, inter alia, on presumptions drawn as to the purposes of the constitution and the independence of the judiciary as a core value. The Supreme Court majority structured the reasons for constructing a primacy for the views of the Chief Justice of India in the consultation process, by importing values into the constitutional text. To the 'inconclusive', 'nebulous' or 'elusive' expression consultation (characterisation of the expression 'self-Government' by the Learned Solicitor General for India and the Learned Additional Advocate General for the State), the Supreme Court majority implied values beyond the lexicographic explication of the expression. The need to preserve and energise the vital institutions engendered under our Constitution, as the 2nd Judges' case demonstrates, necessitates and legitimises the constructivist role of the judicial branch.

85. In the first Democratic Reforms Case - *PUCL and Anr. v. Union of India and Anr.*, : [2002]3SCR696 , the Supreme Court held that since a republican and democratic form of Government is a basic and essential feature of the Constitution and the voters constitute the substrate of this essential feature, the 'voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided - its result, if pending - - whether charge is framed or cognisance is taken by the Court. There is no necessity of suppressing the relevant facts from the voters.' Implicating the right of the members of the democratic society to be sufficiently informed so as to influence intelligently the decisions, which may affect themselves including their decision of casting a vote in favour of a particular candidate at election into guaranteed freedom of speech and expression under Article 19(1)(a), the Supreme Court upheld the mandamus issued by the Delhi High Court to the Election Commission to secure to the voters the information specified by the High Court, pertaining to each of the candidates contesting elections to the Parliament and to the State Legislature. The Supreme Court held that subject to a valid law enacted by the appropriate legislature the Election Commission has residuary powers under Article 324: to fill the vacuum in order to meet unforeseen contingencies. 'It is the duty of the Executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field.' In conclusion the Supreme Court modified the directions issued by the Delhi High Court to the Election Commissioner and

issued a substituted set of directions.

86. Subsequent to the judgment of the Supreme Court in the First Democratic Reforms Case, the Representation of the People Act, 1951 (for short 'the 1951 Act') was amended initially by an ordinance, later replaced by the Representation of the People (3rd Amendment) Act, 2002. Sections 33A and 33B were incorporated providing a right to information to the voter and obligating a candidate at election to furnish information in an extent restrictive than the extent directed by the Supreme Court in the First Democratic Reforms case. The validity of this legislative exercise was challenged before the Supreme Court in *PUCL and Anr. v. Union of India and Anr.*, : [2003]2SCR1136 , - the second Democratic Reforms case. The Supreme Court held the concept of freedom of speech and expression is not static. The felt necessities of the times coupled with experience drawn from the past may give rise to the need to insist on additional information on the aspects not provided for by the law. While striking down Section 33B of the 1951 Act as introduced by the amending Act, the Supreme Court reasoned that in the First Democratic Reforms case it had determined the ambit of the fundamental 'right of information' of a voter. As the challenged amendment abridges the judicially evolved fundamental right under Article 19(1)(a) beyond the limits permitted under Article 19(2), the amendment is found ultra vires Article 19(1)(a). The expansive implication of the freedom 'of speech and expression' under Article 19(1)(a) of the Constitution was constructed by the Supreme Court on an integrated view that democracy is an essential feature of the Constitution, in a democratic republic the will of the people is paramount and becomes the basis of the authority of the Government, voting at the election is the formal expression of will or opinion by persons entitled to exercise the right on the subject or issue and 'to scuttle the flow of information - relevant and essential to the voter/citizen, would effect the voters' ability to evaluate the candidate.

87. The first and second Democratic Reforms Cases - validate, reiterate and illustrate the constructivist role of the judicial branch in the interpretive exercise of understanding the meaning and context of constitutional principles expressed in 'inconclusive' phraseology.

88. From the numerous precedential sign-posts that dot the landscape of constitutional interpretation, particularly interpretation involving identification of the meaning of apparently 'inconclusive', 'elusive' or 'nebulous' expressions, it could safely be inferred that the principal purposes of enacting the Constitution is also the enunciation of principles that are transcendent, value-pregnant, apparently inconclusive, but nevertheless expressive of the great values and purposes, which the Constitution ordains the polity and the civil society to abide by, in the modus vivendi of a Nation. None of these, or at any rate, a great many of these 'principles' are not intended by the Constitution to signify whatever the Legislature or Executive chooses them to signify.

89. The Constitution is a purposive document. The task of interpreting its words, phrases and clauses is distinct from the task of composing a dictionary. The issue is rarely of what a given sequence of verbal marks or signs mean to a hypothetical linguist or an archeologist excavating the remains of an earlier civilization. The issue is what the text should convey to a reader who looks to it across generations, for guidance and instruction on required, permitted or prohibited course of action. Felix Frankfurter in 'Some reflection on the readings of the Statutes' observed, '--the difficulty is that legislative ideas which laws embody are both explicit and immanent. Words in statutes are not unlike words in a foreign language in that they too have 'associations, echoes and overtones'. Judges, cautioned Frankfurter must retain the associations, hear the echoes and capture the overtones. He also pointed out that just as Governments some times solve problems by shelving them temporarily, the legislature also does so, 'statutes as well as constitutional provisions at times embody purposeful ambiguity or are expressed with a generality for future unfolding.'

90. Ambiguity, generality or inconclusiveness in a statutory or constitutional context, legitimizes the role of the judiciary as an interpreter whose task in such circumstances is beyond the explication of the meaning by an appeal to the dictionary. This legitimacy must, however, comport with the need to avoid constitutional nihilism. As Robert H. Bork pointed out in 'Tradition and Morality in Constitutional Law'. 'In a constitutional

democracy the moral content of law must be given by the morality of the framer or the legislator, never by the morality of the Judge. The sole task of the latter- and it is a task quite large enough for anyone's wisdom, skill, and virtue - is to translate the framer's or the legislator's morality into a rule to govern unforeseen circumstances. That abstinence from giving his own desires free play, that continuing and self-conscious renunciation of power, that is the morality of the jurist.'

91. In the area of constitutional and statutory construction, the shift in the judicial role, from the protean stage of 'discovery of the grammatical meaning' to 'proliferation of the legislative purposes', has been brought about, not the least, on account of the accelerating complexity of the State and civil society, demographic plurality, proliferation of organizations and structures and metamorphoses of our society into an administrative law state with skeletal legislation delegating vast powers including policy choices upon regulators and administrative agencies. The bureaucratization of democracy has prompted Howard T. Markey to remark in an article 'On the cause and Treatment of Judicial Activism' that administrators and regulators should be characterized as 'Administrative Law Congressmen.'

92. Role of the Federal Courts in deciding constitutional questions is and always has been an activist one. It is not a role that has been usurped by the judiciary, but is one which is inextricably intertwined with its duty to interpret the Constitution. In an ideal society, all judgments of value and significant decisions should, in the first instance be, by those to whom we have entrusted these responsibilities. When, however, governmental institutions fail to make the judgments and decisions in a manner which comport with the Constitution (either the process or the content), the Federal Courts have a duty to remedy the transgression. The remedy may take the form of invalidation, prohibition or occasionally a mere declaration sensitizing and pointing out where, how and to what degree there has occurred a departure from the constitutionally ordained path, a transgression of the expressed limits or a subversion of the organic document's instruct.

93. There abound theories and arguments as to constitutional and statutory interpretation. Among those commonly invoked are arguments based on the plain or necessary meaning of the constitutional text; arguments concerning the framer's intent; arguments of constitutional theory; arguments based on judicial precedents and arguments asserting moral or political values. The question of how the different theories fit together or weigh against each other in a single, presumptively coherent constitutional calculus, is a question that has no simple answer. Each of the identified theories themselves invite interpretation. Richard H. Fallon Jr., of the Harvard University, after explaining the bases of each of the theories, argues that the supervening value of democracy does not undermine the competence of Judges, or require insofar as is humanly possible that they should abjure reliance on value arguments. The Constitution assumes, he points out, that legislation by contemporary majorities is subject to the higher constitutional law and is subject to scrutiny by a constitutional practice in which Judges legitimately identify the meaning of the constitutional text relying on arguments about the constitutional values. In an article 'A Constructivist Coherence Theory of Constitutional Interpretation' Fallon points out what underlies constitutional practices and provides a frame work for those puzzled about how different kinds of constitutional arguments fit together. 'A constitutional theory must seek to explain constitutional guarantees and prohibitions, elucidate the structures and details of the organizational plan of the institutions through which the organic document sets out to achieve its expressed values and goals and to do so in a normatively deducible manner. When more than a theory plausibly accounts for the constitutional text having been written, as it was, an assessment along a normative dimension, whether undertaken consciously or unconsciously, becomes inevitable and desirable. The "identification" or "derivation" of constitutional values is seldom, if ever, a value-neutral exercise.' (Fallon-cited supra).

94. A Constitution addresses itself to explicating the overall organizational plan of the subject society, its enduring values and the governance structures to effectuate those values through such plan. In our Constitution, the nation's goals are required to be achieved by a democratic processes operating through a federal structural mechanism. A democratic governance process, a core constitutional value, is, however not the goal of the constitutional scheme. It is the authorized means to achieve the goals,, those enduring values

that find utterance in the spectrum of the Document's text and structure. The oath of true faith and allegiance to the Constitution as by law established does not liberate us from the obligation to ascertain whether the mandated constitutional values are effectuated, the adherence to the democratic means notwithstanding. Constitutional adjudication is thus both about upholding the process as well as the content.

95. Under Part-IX in General and Article 243 G and H in particular, the constitutional instruct is endowment of authority and devolution of powers and responsibility, by legislation and to the Panchayats. All seats in the Panchayats are to be filled up by direct election (Article 243C(2)) with mandated reservations (Article 243D). The Constitution thus clearly signals the State that Panchayat governance be 'of' the people. 'For' the people is implicit as is 'by' the people. Elections to symbolically satiate the constitutional command while vesting all effective governance in non-elected officials, answerable not to such elected representatives but to hierarchies of the State executive apparatus constitutes, in our considered view, a subversion of local democracy, however, narrowly defined. Such a measure would constitute Panchayat governance 'of' the local populace and 'by the executive authority' and his superiors, not 'by' the elected representatives. Part-IX has not mandated elections with reservations (intended to effectuate, empowerment of the under-empowered) as a mere dogmatic ritual shorn of substance.

96. Routledge has published 'The Encyclopedia of Democracy' in 1995. This study conducted under the chief editorship of Seymour Martin Lipset and an impressive editorial board consisting of eminent political and social scientists made a fairly comprehensive study of the concept of democracy, what it means, where it occurs and under what conditions. It is a compendious reference work on 'democracy'. 'Local Government' is one of the aspects considered in the above study. A summary of the Article on 'Local Government' opens a window to the why and what of 'Local Government'.

Local Government:

97. Local Governments are institutions and procedures by which small districts or territories, such as countries, townships, cities or villages - are ruled. In a democracy, local Government is conducted by representatives, assisted by paid administrators (emphasis) Local Government is where democracy develops, often sooner and more powerfully than a national Government. The direct participation of citizens in electing local leaders has been widely identified as a classical source of democratic patterns.

98. Throughout history, despotic political leadership have often built large bureaucracies to control their population and to discourage democracy, especially local democracy. From the Roman Empire to Louis-XIV, Napoleon Bonaparte and Joseph Stalin, a strong central bureaucracy was imperative for physical domination and economic management. History has recorded that the French monarchs lured local patricians to the palace at Versailles and replaced them with administrative officials called 'intendants' (later *prefets*).

99. Local Government influences national democracy in three broad ways:-(a) It generates local authorities that are internally democratic; (b) It contributes competing perspectives to the national democratic process; and (c) It fosters local innovations that can spread nationally.

100. Each of these influencing factors could be briefly noticed:

(a) Democracy is quintessentially local. Many political scientists from the Greek to the modern period have argued that large cities and, even more national' Governments are less democratic. To preserve a democratic culture, these scientists assert, one should break up the largest units into smaller units that can be responsive to their constituents. However, while this decentralizing, 'small is beautiful' outlook may heighten democratic practice, at the same time it generates problems of co-ordination of such issues as clean air, public transit and social services and the like, which cover larger areas.

(b) Local Governments enhance national democracy by encouraging distinct local interest to counter central control. Autonomous local Governments help to ensure that political decisions are not the sole product of the

national Government. Communities are not uniform aggregation of citizens, they vary in size, economic status, cultural background, needs and a host of other attributes that constitute the diversity of a plural society. A structure imposing uniform standards for services and regulation, of all localities, loses local richness. The dispersion of power among different levels of Government facilitates a national system of Government that checks and balances among its separate branches.

(c) Local autonomy in a national system could foster an innovative spirit among the local units that will help them adapt to changing conditions. Local democracy is a major source of innovative ideas and specific practices from which all levels of Government can learn in years of turbulence, tumult and turmoil. A well-functioning polity having an effective vertical division of powers emerges from such baptism by fire, a richer, and more mature and enduring instrument for the governance of its plural society.

Analysis and Conclusions:

101. We are satisfied that textual ambiguity in the constitutional context does not per-se subsume exclusive consecration of undefined authority, for exclusive legislative unfolding of the meaning of the organic text. Where the textual symbol is apparently intended to convey a value or principle in contradistinction to a rule, ambiguity is purposeful and inherent and legitimizes the constructivist role of the judicial branch.

102. The learned Additional Solicitor General for India and the learned Advocate General for the State have pointed out that as the expression 'local self-Government' is unaccompanied by constitutional instruction as to its form, structure, content, details and architecture, the expression as may be necessary to enable them to function as institutions of self-Government (emphasis) in Article 243G, signals the constitutional intent to reiterate an absolute and un-canalized discretion in the State Legislature to invest the expression 'self-Government' with whatever meaning it chooses. In short, the argument is that 'self-Government' means what the Legislature intends the expression to mean and nothing else.

103. The above contention urged on behalf of the Union and the State, presupposes that the constituent exercise in enacting Articles 243G and H by the 73rd Amendment is an exercise in enacting a surplusage. The logic of this contention is also that Article 243G shares with Article 40, the character of an instrument intended merely to guide the conscience of the Legislature to a constituent hope, and is not an enforceable constraint on State legislative power.

104. It is impermissible to treat any constitutional provision as a surplusage. Article 40 is an existing exhortation (unenforceable though), directing the State to 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 Parliament, as a constituent body, while enacting the 73rd Amendment, must be presumed to have been aware of the existence of Article 40 and its un-enforceability in view of Article 37. The consecration to the State Legislatures the field of legislation enumerated in Entry-5 of List-II of the VII Schedule of the Constitution must also be presumed to have been within the knowledge of the constituent body. These are compelling presumptions. Despite such knowledge, if by the 73rd Amendment, Article 243 G and H were enacted, is it legitimate or logical to assume that the purpose of the amendment is merely to reiterate, emphasize and reinforce the availability of legislative power in the State Legislature (to make a law to endow such power, authority and responsibility on the Panchayats) as the Legislature thinks fit? Rarely, if at all, would an enabling grant of power, require such repetitive verbal emphasis and by an amendatory exercise requiring special procedure.

105. The Union and the State Governments, in effect, argue that the expression 'as may be necessary' means 'as the State Legislature may consider necessary'. Learned Advocate General for the State, placing reliance on the decision of House of Lords in *George v. Devon County Council*, (1988) 3 All.ER 1002, urges that the expression 'as may be necessary' in Article 243G merely signals the conferment of a discretion in the legislature. It requires to be noticed that in the above decision, the House of Lords was considering the provision of Section 55(1) of the Education Act, 1944. The statutory expression that fell for consideration

reads: a local education authority shall make such necessary arrangements for the provision of transport and otherwise, as they consider necessary (emphasis). In interpreting this expression. Lord Keith of Kinkel, with whom the other Law Lords concurred, held: 'The authorities function in this respect is capable of being described as a 'discretion', though it is not, of course, an unfettered discretion, but rather in the nature of an exercise of judgment.' Article 243G does not employ an expression *ipsisima verba*.

106. On behalf of the Union of India and State of Andhra Pradesh it is contended that the provisions of Article 243G are enabling in character. They contend that this Article neither circumscribes the powers of the State Legislature under Article 246(3) to make laws in relation to the entries in Lists II and III of the Seventh Schedule, devolving power other than on Panchayats, nor does it restrict the powers of the State Legislature under Article 243G, to devolve powers on Panchayats for implementation of schemes in matters other than those illustrated in the Eleventh Schedule. As Article 243G commences with 'subject to the provisions of the Constitution', the enabling power of the State Legislature, under Article 246(3) is intact and the expression 'may' in Article 243G reinforces this constitutional intent, contend the Union and the State.

107. Ordinarily the expression 'may' in a statutory context is not an expression of 'compulsion' but is an enabling word intending 'capacity' or 'discretion' - [see *Madanlal Fakirchand Dudheya v. S. Changdeo Sugar Mills*, : AIR 1962 SC1543 , *Chinnamar Kathiam v. Ayyavoo*, : [1982]2SCR146]. Contextually however, the expression 'may' may constitute an expression of a power coupled with a duty - *Frederic Guilden Julius v. The Right Rev. The Lord Bishop of Oxford; rev. Thomas Telluson Carter*, (1879-80) 5 AC 214, *Ambica Quarry Works v. State of Gujarat*, : AIR 1987 SC1073a . In *Julius v. Lord Bishop of Oxford*, Lord Blackburn said; '... the enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right'!

108. Even if the words used in the statute are *prima facie* enabling, the Courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right - public or private - on a citizen -L. *Hriday Narayan v. ITO Barriely*, : [1970]78ITR26(SC) . The expression 'may' has often been construed as constituting a command and as being indicative of a deferential linguistic usage to signify a command - *Mac Dougall v. Patterson*, 138 ER 672, *Re Neath and Brecon Ry.Co.*, (1874) LR 9th Ch. 263, *Shelly v. London County Council*, 1948 (2) All. ER 898, *Ramji Missar v. State of Bihar*, 1963 Supp. (2) SCR 745, *Bashira v. State of U.P.*, : [1969]1SCR32 , *State of U.P. v. Jogindra Singh*, : (1963)IILLJ444SC .

109. The expression 'may' in Article 124(5) of the Constitution fell for the consideration of the Constitution Bench of the Supreme Court in *Sub-Committee of Judicial Accountability v. Union of India*, : AIR 1992 SC320 . The majority per B.C. Ray, J relying on the principle in *Jogindra Singh's* case (*supra*) pointed out that 'Sometimes, the legislature uses the word 'may' out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed.' Indeed, pointed out the Supreme Court, when a provision is intended to effectuate a right - here it is to effectuate a constitutional protection to the Judges under Article 124(4) - even the provision in Article 124(5) which may otherwise seem merely enabling, becomes mandatory. The exercise of the power is rendered obligatory. The Supreme Court also ruled that if the word 'may' in Article 124(5) is given any other meaning, that sub-Article would render itself to be treated by the Parliament as superfluous, redundant and otiose. The power to prescribe a procedure for the exercise of power under Article 124(4) would otherwise also be available to the House. The law envisaged in Article 124(5) is not such a law; but one which would effectuate the constitutional policy and philosophy of the machinery for removal of Judges. The use of the word 'may' does not therefore necessarily indicate that the whole Clause (5) is an enabling provision leaving it to the Parliament to decide whether to enact a law even for the investigation and proof of the misbehavior or incapacity.

110. From the precedential guidance available from the aforementioned illustrations of the construction of the expression 'may' taken together with the text, philosophy and object of the 73rd Amendment, we are of the considered view that the expression 'may' occurring in Article 243G approximates more to a constitutional command couched in a deferential verbal choice, in recognition of the fact that the command is addressed to

a high authority -the legislature.

111. In the over all constitutional context, the enacting history of the 73rd Amendment and the mischief sought to be addressed by the amendment, the conclusion is irresistible that the constitutional command to the legislature of the State is to endow Panchayats with power and authority that are necessary to enable them to function as institutions of self-Government. It is however not possible to conclude that the provisions of Article 243G divest the State Legislature of all discretion in the area. Endowment to the Panchayats of powers and authority continues within the discretionary calculus of the State Legislature. Thus the subjects and governance areas in respect of which powers and authority should be endowed on the Panchayats are within the constitutional discretion of the State Legislature. The discretion is however not immunized from the scrutiny of the judicial branch. The Clause (Article 243G) 'as may be necessary to enable them to function as institutions of self-Government, is the constitutional instruct to the State Legislature, to ensure that the powers and authority endowed on the Panchayats empower the Panchayats to function as institutions of self-Government.

112. The other clause of Article 243G enables the State Legislation to apportion the devolution of powers and responsibilities upon Panchayats among the levels of the Panchayats in the State (village, intermediate and District levels). Such devolution and apportionment of powers and responsibilities among the Panchayats is in respect of the matters enumerated in Clauses (a) and (b) of Clause 243G, including the matters listed in Eleventh Schedule.

113. On a true and fair construction of Article 243G in the context of the constitutional purposes analyzed hereinbefore, it would be impermissible to conclude that the State Legislature has the discretion whether or not to endow the Panchayats with any powers and authority or to devolve upon them any powers and responsibilities. The overall peace, order and good Government in the State is the responsibility of the State and, therefore, the discretion of the State Legislature to incorporate in the legislation dealing with the Panchayat Raj Institutions, such measures as are necessary to effectuate these purposes of the State is on-exceptionable and a given. A balanced theory of interpretation of the Constitution's de-centralisation of power values, warrants the conclusion that while incorporating provisions for control of the Panchayat Raj Institutions to achieve the over all and legitimate purposes of the State, such controls ought not to entail total stultification, emasculation or negation of the democratic choice of the local population expressed in the elections to local bodies. Governance power and autonomy in some discernable manner should of necessity inhere in the elected representatives of the Panchayats to enable characterization of these institutions as 'self-Government' institutions. A State Legislation that divests or withholds effective power of local governance from the elected representatives of the Panchayats would tantamount to a Legislation that subverts the constitutional purposes of Part-IX

114. In Para-19 of its affidavit the State pleaded that of the 29 subjects enumerated in Eleventh Schedule of the Constitution, the Government has issued orders in respect of 17 subjects. The particulars of the administrative orders issued in respect of 17 subjects are also set out. No doubt in the latter clause of Article 243G expressions 'may' and 'subject to such conditions as may be specified therein' are employed. These expressions connote discretion in the State Legislature to devolve powers and authority, with respect to the areas enumerated in Clauses (a) and (b) of Article 243G, The discretion is not absolute but is conditioned by the constitutional instruct that the Panchayats should be enabled to function as institutions of self-Government. While it is within the discretion of the State Legislature to determine whether powers and responsibilities should be devolved at one level or the other of the Panchayats (village, intermediate or District) and the conditions subject to which the different levels of Panchayats should exercise the conferred powers and authority, neither the discretion to devolve nor the conditions to be specified could be such as would destroy the character of the Panchayats as 'self-Government'. The 'self-Government' characteristic of the Panchayats is a core constitutional value that cannot be subverted by the State legislative exercise.

115. Article 243H in Part-IX empowers the State Legislature, by law, to authorize Panchayats to levy, collect

and appropriate taxes, duties, tolls and fees, in accordance with such procedure and subject to such limits as may be prescribed in the law. Such law may also assign to the Panchayats such taxes, duties, tolls and fees levied and collected by the State for such purposes and subject to such conditions and limits, as may be prescribed. Clause (d) of Article 243H enables such law to provide for Constitution of Funds for crediting of the monies received, respectively by or on behalf of the Panchayats and for withdrawal of such monies there from, as may be specified in the law.

116. In the light of the analysis of the purposes of Part-IX of the Constitution, considered in this judgment, denial by the State Legislation of any financial resources to the Panchayats whether by way of empowering them to levy, collect and appropriate taxes, duties etc., and/or assigning to them such taxes, duties etc., collected by the State Government, as would invalidate the functionality of these institutions, would negate the constitutional purposes.

117. The empowerment of the Panchayats in the financial domain or allocation to them of the general resources of the State is, however, a complex policy choice, integral to the executive and legislative departments and normatively outside the domain of the judiciary. With the most competent and comprehensive presentation of factual data, scrutiny of this area by the judicial branch is beset with the danger of over-stepping the limits and entering into areas integral to the economic choices that are constitutionally consecrated to the legislative and executive branches of the State. No concrete data has also been placed before this Court to posit a conclusion that the endowment of fiscal powers to the Panchayats or the devolution of finances out of the State's resources is illusory and the state's conduct in this regard renders the Panchayats dysfunctional.

118. It is however clear that the controls, imposed on the Panchayats by the provisions of the Act and the complementary statutory rules (even to the extent of the financial powers facially endowed), are intrusive and destructive of even a modicum of autonomy. The provisions of Sections 153 and 181 disclose that elections to the office of President and Vice-President of the Mandal Parishad, Chairperson and Vice-Chairperson of the Zilla Parishad, are to be on political basis. This legislative context impregnates potential situations of elected persona (President, Vice-President, Chairperson or Vice-Chairperson) not belonging to the same political party that might be in power at the State level. The wide powers of removal of a Sarpanch, President or Chairperson (Section 249) or of dissolution of a Gram Panchayat, Mandal Parishad or Zilla Parishad (Section 250) must be conditioned by safeguards to ensure that it is the maladministration of the Panchayats or the delinquent conduct of these elected representatives and not political partisanship that could trigger the exercise of the powers under Sections 249 and 250. Richness of political plurality and dissent on the political, social, economic values and choices integral to such plurality is the strength of our democracy and eventually of our constitutional way of life which espouses democracy as our fundamental constitutional creed. The existential certainty of the Panchayats is also an expressed constitutional value (Article 243E). The choice to have elections to the offices of President and Vice-President of a Mandal Parishad, Chairperson and Vice-Chairperson of a Zilla Parishad on political basis is a State legislative choice. In making such choice and granting wide powers of removal and dissolution (in Sections 249 and 250), the State must recognise that the legislative choice must accommodate the constitutional value including that the elected representatives of the Panchayats are the product of a sub-state democratic choice.

119. The 'Separation of Powers' doctrine is the heart and soul of our Constitution. It is also the seminal structure of our rule of law values. The horizontal division of State powers between the three great departments of the State, together with the checks and balances, such as they are, is a guarantee against aggrandizement of power by any one branch. The vertical division of powers between the Union and the State constitutes our federal system (classical or centrist) and effectuates the federal values espoused by the Constitution, a value that the founding fathers considered essential to the effective maintenance of our plural civil society and a value our apex Court has characterized as basic (Kesavananda and Bommai supra).

120. At the dawn of our republic, the Constitution entrenched the structure of our federal polity by its explicit

incorporation of a two-tier federal structure. In recognition of the ancient and historical tradition of effectively functioning Gram Panchayats with due faith that the elected representatives of the federal and State Legislatures would ensure the nurturing of these institutions of self-Government, our organic document did not incorporate an inviolable, entrenched structure for the local 'self-Governments'. The non-justiciable exhortation in Article 40 was observed, more in the breach. Therefore, the 73rd Amendment: to address and remedy the mischief in the working of our structural mechanisms.

121. Recognition in the local bodies, of a constitutional right to survive, as more than vacuous or symbolic institutions necessarily implies substantive and structural limits on the powers of the State as well as a concomitant obligation on the State legislature, to effectively devolve meaningful power to the local bodies to enable effectuation of the constitutional intent underlying the 73rd Amendment's purposes. If these limits and obligations on the States' powers are to have any harmony with the Constitution's purposes, the States must necessarily be prevented not only from formally destroying the local bodies but also from acting in ways that would leave a local body formally intact, but functionally incompetent.

122. Post-73rd Amendment, State-subordinating excesses by federal legislative or executive powers are not the sole constitutional concern. Prevention of local body-subordinating excesses by State Legislative and Executive powers is equally the constitutional concern. A legislative measure that emasculates or disables the indisputable attributes of Panchayats' functioning as local self-governments would, despite being technically within the State's legislative spheres qua the field of legislation, nevertheless fall foul of the express limitations in the constitutional prescriptions of Part-IX. Such a legislative measure cannot be glossed over as somehow being in harmony with the Constitution's purposes of establishing functionally relevant Panchayats, purposes clearly discernable from the text and structure of the 73rd Amendment.

123. What are the tests to identify whether State Legislative or Executive power impairs the character of local self-Government? Some that could illumine this area may be noticed:

(a) Will the local bodies' compliance with the State law directly impair their ability to structure integral operations in the areas of clearly local self-Government functions ?

(b) Since the ability of a local body to make decisions or policy, economic and the like, within its territory - to consider and promulgate regulations of its choice, is central to its character as a self-governing institution, a legislation which subverts this attribute of a 'local body' would be inconsistent with Part-IX.

(c) A State law, the statutory rules and the administrative instructions there under that directly address intrinsic areas that ought to inhere in the local bodies, by commandeering the agenda of the local body and instructing it through the State's executive agents would be a negation of the constitutional purposes.

(d) The rights, privileges and immunities, of local bodies, from encroachment by the State are mirror images of individual rights. The Union, State and Panchayats as 'self-Governments' are in reality and fact, different agents and trustees of the people, inter-dependant and not insular. They constitute a homogeneous collage of the constitutional canvas.

(e) The constitutional intent (in Part-IX) in enacting a structural mechanism encompassing a vertically divided grant of governance powers with a guaranteed position for local self-Governments is for the benefit and protection of the citizens. The structure of divided powers under our Constitution is not a mechanism evolved in the constitutional architecture for the benefit of the recipients of such powers. The vertical division of governance powers including to the Panchayats (though sans - legislative or judicial powers) is a structural device explicated by the Constitution: (i) to ensure effective representation of the people; (ii) to engender greater accuracy with which a local decision-maker could operate as a calculator of neighborhood costs and benefits; (iii) to nurture a greater degree of community fostered by the opportunity of meaningful and relatable political opportunity that decentralization make possible and (iv) to sustain the greater diversity that such decentralization ensures.

124. Rights - whether of individuals, of communities or of States - reflect values; they are not values by themselves. The rights recognized by the Constitution structure the process and substance of Government, so that Governments operate as though they share these values. To identify and recognize whether a particular right is explicated by the Constitution, it is necessary to identify both whether and how particular Governments would be unhindered by the rights and how Governments would be affected in the functioning as effective instruments of delivering the Constitution's purposes. In any analysis, the claims of Governments that their hitherto entrenched domain is diluted or is likely to be, are of no relevance, since dismantling of concentrated power is the value served by the vertical division of State power. Even if Panchayats are not a part of the federal structure, they nevertheless constitute an integral component of some measure of vertical division of the governance power from the hitherto two level model to the post 73rd Amendment -three level model.

125. Integral to the interpretative task of discovering the structural design and overlapping boundaries of the institutions under our constitutional scheme is the process of identifying the often-tacit premises of the constitutional text and its complex architecture in the light of its historic purposes. In issues such as those arising in this case, the task includes identifying the reasons that impelled the constituent authority to undertake the amendatory exercise. Translated into traditional statutory interpretation principle, the task includes identifying the evils that the 73rd Amendment was brought forth to remedy.

126. The obligation of the State Legislature, to endow Panchayats with powers, authority and responsibility is conditioned by the constitutional instruction that the endowment of powers and functions must enable the Panchayats to function as institutions of 'self-Government'. Endowment of powers and authority on the Panchayats comprised of elected representatives while effectively denuding the elected representatives of effective, if even minimal, control, over functions, finances, planning processes or personnel and the vestiture of effective control over these aspects of Panchayat Raj functions on State actors of various descriptions, constitutes, in our considered opinion, disabling (and not enabling), the Panchayat Raj Institutions, from functioning as institutions of 'self-Government'. Conduct of elections to the Panchayat Raj Institutions, in any State is too complex, expensive and rigorous an exercise to have been constitutionally intended as a symbolic exercise or as a legitimizing device to confer local democratic legitimacy to de-facto governance by State-employed and controlled actors. Local area democracy is, post 73rd amendment, our constitutional creed not a pyrrhic or symbolic ritual, arduous in execution, expensive in implementation and pointless in practice and effect.

127. The learned Attorney General for India has pointed out that on a true and fair construction of the provisions of Part-IX, the State's role in the functioning of Panchayats is not obliterated. The Panchayats do not have full-blown autonomy under the constitutional dispensation; the State is neither an intruder nor its presence alien to the integrity of the Panchayats. Theoretically this submission is unexceptionable.

128. We have noticed earlier in this judgment that the State is a component of the federal structure under our Constitution and the Panchayats are not. However, consequent on the 73rd Amendment, the Panchayats are guaranteed a role in governance, at the sub-State level. Their governance structure is democratic and republican. This characteristic of the Panchayats is a constitutional grant and must be accorded a meaning, which needs be effectuated. The Panchayats are legal inhabitants of the constitutional space and have a legitimate share in the governance process though at the sub-State level. They are more than mere dependencies of the State, They are also self-Government(s).

129. In identifying the appropriate balance between the discretion of the State Legislature and the constitutional commands in Part IX, the State should be conscious that the constitutional space which its various instrumentalities occupy and operate in, is not a static space in an Euclidean or Newtonian paradigm. It is an Einsteinian space - dynamic and curved. The Panchayats with the constitutionally defined character of being 'self-Government'(s) are now legitimate inhabitants of arid entitled in their own right to share in some measure, the constitutional space. The Union and States are required to recognise, respect and enable this

spatial freedom and autonomy accorded to these entities under the constitutional dispensation - post-73rd Amendment. The scrutiny as to whether such spatial liberty is enabled to the Panchayats by federal and State action, more particularly the latter, is the proper province of this Court as the interpreter of the constitutional architecture. The questions and issues involved in the disputes presented to us have a sufficient legal component to warrant the intervention of the judicial branch.

130. The position of the Union of India - the 2nd respondent, on the status of the Panchayats, and the concomitant constitutional obligations of the State, is demonstrably equivocal and ambivalent. On the one hand the 2nd respondent argues, 'The State Legislature has the discretionary powers to decide the quantum of powers to be devolved on the Panchayats.' and on the other it asserts, 'The State Government has been requested from time to time to devolve more and more powers to PRIs.' If according to the first logic - the devolution of powers to the Panchayats is within the exclusive and constitutionally uninstructed discretion of the State and the State Legislature; the Union Executive has no legitimate status to advise the State as to how it should exercise its plenary and exclusive discretion. This ambiguity has not been explained.

131. This post 73rd Amendment constitutional construct requires balance between the State's presence in the functioning of the Panchayats to ensure the preservation of the overall State interests in its myriad State policies, administrative and governance concerns on one hand and the sustenance of the constitutionally defined 'self-Government' personality of the Panchayats, on the other. This balance is itself a critical constitutional value. Such a balance is achieved only when the State's presence does not overawe the Panchayats, by choking State and State agent control. State control over the Panchayats that clearly oversteps the legitimate State interest, to co-ordinate Panchayats' functions as a part of the State-wide governance concerns, would amount to State control directed at destruction and emasculation of the Panchayats essential character of being institutions of 'self-Government' without redeeming Constitutional justification and legitimacy. The control exercised by the State over the functional and fiscal domains of the Panchayats and over the personnel working thereat, disturbs, in our considered view, this delicate but clear balance - the constitutional equilibrium. The replication in the 1994 Act, of the provisions of the repealed 1964 Act and the 1986 Act, discloses that the State was not sufficiently sensitive to the constitutional dynamics resulting from the 73rd Amendment.

132. Jurists and political scientists, who have studied the working of modern democratic Governments, are seen to observe that much of modern legislation is executive sponsored and crafted though legislatively processed. Perhaps, if this is a reality, executive resistance to decentralization is the cause of the emasculation of local-body democracy, in the presents of the 1994 Act - perhaps!

133. Some provisions of the 1994 Act, including in Sections 32, 60 to 62, 77, 137, 167, 174, 186 and 199 negatively impact the 'self-Government' characteristic of the Panchayats without discernible and redeeming State interest and legitimate governmental purposes.

134. The offending statutory provisions, (some of which have been indicated in the preceding paragraph) are closely interwoven with the other provisions of the Act and cannot be considered or treated as standalone provisions. The invalid rigor of a few clauses of these provisions could be softened and harmonized by reading down the strictly textual trajectory. Severance between the clearly invalid and valid parts of the provisions is however not possible and excision of the invalid provisions destroys the integrity of the Act in its entirety. Such invalidation would result in a vacuum in critical operational areas.

135. We have identified the constitutional mandate and the instructions contained in the provisions of Part-IX, in particular Articles 243G and H and have pointed out the balancing requirements obligated on the State, in the post 73rd Amendment constitutional context. The overlapping and mani folding constitutional principles require sensitive legislative approach to effectuate the purposes and the mandate of Part-IX of the Constitution while preserving the larger State concerns. 136. The provisions of the 1994 Act and the complementary statutory rules and the administrative instructions (analyzed supra and in the Appendix),

transgress the constitutional limitations on the States' role, the permissible limits of participation and control with respect to the Panchayats; the States' legislative and statutory instructions enable impermissible intrusions into the functional and financial domains of the Panchayats and usurp total control over the personnel from the Panchayats and vest such control in the State and State agents; such intrusions and controls by the State stultify the 'self-Government' characteristics of the Panchayats as constitutionally defined. The transgressions, intrusions and controls, substantially overstep the participatory and oversight functions that the State may legitimately perform in regulating the affairs of the Panchayats in the interests of the vitality of their functioning and in effectuation of the State's obligation to harmonize the functioning of the Panchayats with the larger State interests and concerns,

137. The 1994 Act is a legislation intended to effectuate the purposes and provisions of Part IX of the Constitution, and is enacted soon thereafter for the purpose. The aberrations (noticed herein) in the State legislation qua the constitutional position as declared in this judgment, are presumptively the result of a misconception of the meaning and content of the amended constitutional provisions. We have declared what the Constitution implies, intends, means, commands and expects. As the excision of the unconstitutional statutory provisions would destroy the ratio of the 1994 Act and render inoperable the entirety of the 1994 Act, we declare The Andhra Pradesh Panchayat Raj Act, 1994 unconstitutional.

138. Writ Petition No. 12348 of 2002 is disposed of as above.

Writ Petition No. 13526 of 2002:

Writ Petition No. 13256 of 2002 involves a specific and narrow issue - challenge to the memo dated 18.7.2002 issued by the State Government. This Bench need not consider the its presented in this writ petition. This writ petition is accordingly remitted for consideration to the appropriate Bench for disposal on its merits and in the light of the analyses, conclusions and declaration, in this judgment.

APPENDIX

The Structure of the 1994 Act:

(a) The provisions of the Act came into force with effect from 30th May, 1994.

(b) The Act is divided into 8 parts:

Part-I consists of Sections 1 and 2, which set out the short title, extent and provisions relating to commencement of the Act and the definitions.

Part-II Chapter-I sets out provisions relating to constitution, administration and control of Gram Panchayats including provisions relating to election of members, reservation of seats, term of office, qualifications and disqualifications of candidates, resignation of members, Upa-Sarpanch and Sarpanch, appointment and functions of the Executive Authority and provisions relating to officers and other employees of the Gram Panchayat as well as the composition and powers of beneficiary committees and functional committees.

Chapter-II of this Part sets out provisions in respect of powers, functions and property of the Gram Panchayat including provisions relating to vesting of public roads, communal properties and management of ferries, in the Gram Panchayat.

Chapter-III sets out provisions relating to taxation and finance, powers and the limitations thereon and provisions in respect of taxes leviable by the Gram Panchayat, Gram Panchayat Fund, mode of expenditure from Gram Panchayat Fund and the like.

Chapter-IV sets out provisions in respect of public safety, convenience and health and the powers and functions of a Gram Panchayat in this regard.

Chapter-V sets out the general and miscellaneous provisions in relation to Gram Panchayat.

Part-III sets out provisions relating to the constitution and incorporation, composition, powers and functions of Mandal Parishads including mode of election of members, reservation of seats, qualifications and disqualifications of candidates for election, method of appointment, powers and functions of a Mandal Parishad Development Officer and other officers and employees of Mandal Parishads, Mandal Parishad Fund and the like.

Part-IV incorporates provisions relating to constitution, incorporation, composition, powers and functions of Zilla Parishads including provisions relating to elections, qualifications and disqualifications of candidates for election, reservation of seats, appointment and control of Chief Executive Authority and his powers and functions, provisions relating to special invitees and respecting the funds of the Zilla Parishad.

Part-V sets out provisions relating to constitution, powers and functions of the State Election Commission, conduct of elections and enumeration of election offences.

Part-VI incorporates provisions for the constitution of the Finance Commission, qualifications for appointment and manner of selection of the members of the commission including disqualifications, terms of office and conditions of service and salaries and allowances of members, as also the functions of the Commission.

Part-VIA sets out special provisions relating to Panchayats, Mandal Parishads and Zilla Parishads located in scheduled areas.

Part-VII sets out miscellaneous provisions in relation to the local bodies at various levels, including powers of the Government to issue directions, to remove a Sarpanch, President or a Chairperson, to dissolve a Gram Parishad, Mandal Parishad or Zilla Parishad, provisions for delegation of powers, provisions relating to emergency power of the Government, Commissioner and District Collector and powers of review and revision by the Government, and the like.

Part-VIII sets out provisions relating to the power of the Government to make rules for carrying out the purposes of the Act, provisions relating to adjudication of disputes between local authorities and repeal and savings provisions. This part also contains six schedules.

Analysis of the relevant provisions of the 1994 Act and the complimentary rules and administrative instructions in the context of the lis presented :

Section 2 of the Act sets out definition of some of the expressions used in the legislation. Inter alia 'Chief Executive Authority', 'Executive Authority', 'Gram Panchayat', 'Gram Sabha', 'Mandal Parishad', 'Mandal Parishad Development Officer', 'Panchayat Secretary', 'Prescribed', 'Sarpanch' and 'Zilla Parishad' are among the expressions defined. It requires to be noticed that 'Gram Panchayat' is defined [Section 2(17)] as meaning 'the body constituted for the local administration of the village under the Act.'

In re Gram Panchayats:

Section 4 deals with constitution of Gram Panchayats for villages and their incorporation. Section 4(2) enacts that subject to the provisions of the Act the administration of the village shall vest in the Gram Panchayat, which shall, however, not exercise functions expressly assigned by or under the Act or any other law to its Sarpanch, Executive Authority or any other local authority or other authority.

Section 6 enacts the constitution of a Gram Sabha comprises all persons whose names occur in the electoral roll for the Gram Panchayat and requires that the Gram Sabha shall meet at least twice every year to consider the specified matters which shall be placed before it by the Gram Panchayat including annual statement of accounts and audit report, program of the work for the year or any new program not covered by the budget or annual program, proposals for fresh taxation or any enhancement of existing taxes, selection of schemes,

of beneficiaries and location etc. The Gram Panchayat is also required to give due consideration to any suggestions of the Gram Sabha. Rules relating to the holding of the meetings of the Gram Sabha are issued in G.O. Ms. No. 162 PR&RD; Department, dated 4.4.1997, fixing dates for conduct of the Gram Sabha meetings. These rules provide for issuing of a notice for the holding of the meeting, the business to be transacted at such meeting, the obligation of the Sarpanch to convene a meeting of the Gram Sabha on requisition as specified, maintenance of an attendance register for the meeting, procedures for drawing up the proceedings of the meetings and specification of the matters that need be placed before the Gram Sabha in addition to those specified in Section 6.

Section 14 sets out the substance and procedures in respect of elections, the term of office of the Sarpanch of a Gram Panchayat and provides for direct election to the office of the Sarpanch. The Section also contains other provisions with regard to term of office, the filling up of a casual vacancy and for disqualifications for the holding of the office. Election for the office of Upa-Sarpanch from among the members of the Gram Panchayat is also provided for.

Section 25 enumerates the powers and functions of the Sarpanch which include administrative control over the executive authority for the purpose of implementation of the resolutions of the Gram Panchayat or any committee thereof. The Sarpanch is also granted the power to require any executive authority or any village within the jurisdiction of the Gram Panchayat to furnish any information on any matter falling within such categories as may be prescribed in respect of such village or any person or property therein, required for the purpose of the Act. Section 25(1)(d) enacts that the Sarpanch may exercise all powers and perform all functions specifically conferred or imposed on the Sarpanch by the Act or the Rules made thereunder. Section 28(1) enables any member to sensitize the executive authority regarding neglect in the execution of any Gram Panchayat work, waste of Gram Panchayat property or the wants of a locality and suggestions for any improvement that may appear desirable, whereupon the executive authority is required to explain at the next meeting of the Gram Panchayat the action, if any, that has been taken or is proposed to be taken with reference to such matter. Section 28(2) enables any member to move a resolution and to interpellate the Sarpanch on matters relating to the administration of the Gram Panchayat, subject to prescribed rules.

Section 30 empowers the Commissioner to appoint a whole time or part-time executive authority for a Gram Panchayat or group of contiguous Gram Panchayats, as may be notified. Section 30(4) enacts that the executive authority shall be subordinate to the Gram Panchayat.

Among the functions of the executive authority enumerated in Section 31 is the convening of the meeting of a Gram Panchayat with the approval or on the directions of the Sarpanch, ensuring that at least one meeting of the Panchayat is held every month. The proviso to Section 31(1) enables the Panchayat Secretary to convene such a meeting where the Sarpanch fails to give approval for the convening of the meeting. Section 31(2) requires the Executive Officer to attend the meeting of the Gram Panchayat or any committee thereof and to participate in the discussion thereat but without the right to vote or move resolutions.

Further functions of the executive authority are enumerated in Section 32, which include inter alia control over all the officers and servants of Gram Panchayat. The executive authority under this Section is empowered to exercise all powers and perform all functions specifically conferred or imposed on the executive authority by or under the Act, subject to restrictions and conditions as legislatively provided and to exercise executive power for carrying out the provisions of the Act and is made directly responsible for the due fulfillment of the purposes of the Act. In addition to the functions enumerated in Section 32 other functions of the Panchayat Secretary are explicated in the A.P. Panchayat Raj (Functions of Panchayat Secretary) Rules, 2002 published in G.O. Ms. No. 4 PR&RD; Department, dated 7.1.2002. Under these Rules the functions of the Panchayat Secretary are very wide, categorized into different heads such as those relating to Panchayat administration, general administrative functions, help to concerned departments, police functions, community welfare and development, maintenance of various records and co-ordinating functions.

Section 33 provides emergency powers to the Sarpanch, in consultation with the executive authority to direct the execution of any work or doing of any act that requires the sanction of the Gram Panchayat or any of its committees the execution whereof is in his opinion necessary for the service or safety of the general public.

Section 35 enables delegation of the functions of the executive authority, enacting that the exercise and discharge of any functions so delegated shall be subject to such restrictions and conditions as may be laid down by the executive authority and shall also be subject to his control and revision.

Section 36 enacts that subject to rules as may be made under the proviso to Article 309 of the Constitution, the Government shall fix and may alter the number, designations and grades of and salaries, fees and allowances payable to such officers and other employees of a Gram Panchayat as may be prescribed; the Government shall pay out of the consolidated fund of the State salaries, allowances etc., of such officers and other employees and shall regulate by Rules made under proviso to Article 309, the classification and methods of recruitment, conditions of service, pay and allowances. Sub-section (5) specifies that all officers and other officers of the Gram Panchayat shall be subordinate to the Gram Panchayat. However, Sub-section (6) enables the Government from time to time, by order, to give such directions to any Gram Panchayat or any officer, authority or person thereof, as may appear to it necessary for the purposes of giving effect to the provisions of the Section and Section 30 and ordains that all such permissions shall be complied with by the Gram Panchayat, officer, authority or person.

Section 40 requires that there shall be a beneficiary committee for every Gram Panchayat for execution of the works of the Gram Panchayat and that the composition including co-option of persons who were not members of the Gram Panchayat and the powers, functions and other related matters of the beneficiary committee shall be such as may be prescribed. Section 40(2) mandates the constitution of functional committees for agriculture, public health, water supply, sanitation, family planning, education, communication and for other purposes of the Act; the constitution including co-option of members who are not members of the Gram Panchayat and that the powers of the functional committees shall be in accordance with the prescribed Rules.

The rules relating to the beneficiary and functional committees are set out in G.O. Ms. No. 289, PR&RD; Department, dated 1.8.1997. The rules issued in G.O. Ms. No. 289 were amended in G.O. Ms. No. 472 PR&RD; Department dated 28.12.2002. As amended, the composition of each of the functional or beneficiary committees shall be as decided by the Government from time to time keeping in view the priorities of the subjects and policies. Rules 2 to 16 of the earlier rules are omitted by the amendment. In G.O. 289 the beneficiary committee was to comprise the Sarpanch of the Gram Panchayat to be the President of the committee, the other members being the concerned ward members or members (of wards) where the work is to be taken up, the concerned executive authority, the member of the concerned territorial constituency elected for the Mandal Parishad and a person from the voluntary organization, if any, operating in that area. This composition was eschewed by the amendment and the composition of the beneficiary committee and functional committee was left to the periodically exercisable discretion of the Government.

Section 43 requires the executive authority of every Gram Panchayat to prepare a report on its administration for each year and to place it before the Gram Panchayat for its consideration. Rules in this regard - The A.P. Gram Panchayat (Administration Report) Rules, 1994 are issued in G.O. Ms. No. 27, PR&RD; Department, dated 16.1.1998. Rule 3 of these rules requires the executive authority to furnish a copy of the administrative report to the District Panchayat Officer with the resolution of the Gram Panchayat, not later than 15th of May of every year. Thereupon the District Panchayat Officer is required to submit to the Commissioner of Panchayat Raj a consolidated administration report on the working of the Gram Panchayats of the district with his remarks by the 15th of June of every year, whereupon the Commissioner of Panchayat Raj should submit to the Government a consolidated administration report on the working of Gram Panchayats in the State by 15th of September. This provision is more in the nature of enabling various levels of State administration to be kept informed of the structural and functional vitality of the Gram Panchayats in respect

of several matters such as the conduct of meetings, communication and other services, lighting, education, public health, epidemics, fairs and festivals, general revenues including taxes, financial position and other areas of village administration.

Section 60 authorises and enable the taxes leviable by Gram Panchayats. Apart from house tax and tax on village produce sold in the village, Gram Panchayats are empowered to levy such other taxes as the Government may by notification direct any Gram Panchayat or class of Gram Panchayats to levy subject to prescribed Rules in this behalf. A Gram Panchayat shall also levy taxes on transfers of property situate within its jurisdiction in accordance with the provisions of Section 69; a Gram Panchayat may also levy vehicle taxes, tax on agricultural land, land cess, fee for use of poramboke or communal land, for occupation of buildings under it's control and a duty in the form of a surcharge on seigniorage fees collected by the Government on materials other than minerals and minor minerals quarried in the village. Sub-section (6) of Section 60 enacts that any resolution of a Gram Panchayat abolishing an existing tax or reducing the rate at which the tax is levied, shall not come into effect without the previous approval of the Commissioner.

Section 61 enacts that house tax, which shall be levied qua the legislative grant of power under Section 60(1) (a) shall, subject to such rules as may be prescribed, be levied on all the houses in the village on any of the prescribed bases. This provision prohibits levy of house tax on poultry sheds and their annexes. Sub-section (4) of Section 61 empowers the Government to make rules providing for exemption of special classes of houses from taxes, the manner of ascertaining the annual capital value of the houses or the categories into which they fall for the purpose of taxation, persons who shall be liable to pay taxes, grant of exemption from the taxes on grounds of poverty, grant of vacancy and other remission and the circumstances in which and the conditions subject to which houses constructed, reconstructed or demolished situated in enumerated areas shall be liable or otherwise to the whole or any portion of the tax. Rules to effectuate some of the provisions of Section 61 called as the Agricultural Land Tax Levy Rules have been issued in G.O. Ms. No. 64 dated 5.2.1996.

Rules issued in G.O. Ms. No. 64 dated 5.2.1996 condition the power of a Gram Panchayat to levy the categories of taxes enumerated in Clause (ii) of Sub-section (3) of Section 60, viz., 'tax on agricultural land for a specific purpose.' The rules specify the purposes for which taxes on agricultural lands may be levied such as repairs to irrigation channels and tanks, construction, maintenance, repair, extension or improvement of water works or drainage works, lighting by gas or electricity, construction of a road bridge or culvert, construction of building intended to be used for cultural, educational, medical and allied purposes or protection of crops against depredation by cattle and petty theft. The power of the Gram Panchayat to levy this category of tax is conditional and prospective on sanction by the District Collector. Rule-2 of these Rules requires every proposal for the levy of tax to be submitted to the Collector through the Mandal Parishad and to be accompanied by a resolution of the Gram Panchayat passed at a meeting specially convened for the purpose and supported by not less than half of the sanctioned strength of the Gram Panchayat. Rule-2 also requires the proposal to be accompanied by a statement showing the receipts and charges under various heads of accounts for 3 years preceding the year in which the proposal is made, budget estimate for the year and particulars of the approximate or estimated cost of the work in respect of which the tax is supposed to be levied and the amount of tax likely to be realized in the year. Rule 3 enables the Mandal Parishad to offer remarks as to the suitability or otherwise of the rate of tax proposed. Rule 4 enables the District Collector while according sanction for the levy of the tax to specify the rate at which and the period for which it shall be levied and also enables the said authority to extend such power from time to time, if necessary, in order that the purposes for which the tax is levied may be fulfilled.

Section 62 empowers the Government by an order published in the gazette and for special and specified reasons therein to direct any Gram Panchayat to levy the house tax referred to in Section 60(1)(a) at such rates and with effect from such date not being earlier than the first day of the year immediately following that in which the order is published. The direction of the Government in this behalf may be issued in respect of all the buildings in the Panchayat or of only such building belonging to the undertakings owned or controlled by

the State Government or Central Government and the buildings belonging to the State Government, as may be specified in the order. As per Section 62(2), on its publication, the order of the Government would apply as if the Gram Panchayat had by a resolution determined to levy the tax at the rate and with effect from the date specified in the order and as if no other resolution of the Gram Panchayat under Section 60 determining the rate at which and the date from which the house tax shall be levied, had taken effect. Thus, an order of the State Government would supersede any earlier resolution of the Gram Panchayat with regard to levy of house tax. Under Section 62(3) the Gram Panchayat is disabled from altering the rate at which house tax is levied or from abolishing such tax as is leviable pursuant to an order of the Government, except with the previous sanction of the Government.

Section 71 ordains the Gram Panchayat to levy a special tax on houses at such rates and subject to such rules as may be prescribed, to provide for expenses connected with the construction, maintenance, repairs, extension and improvement of water or drainage works, lighting of public streets and public places and other similar works. Rules in this behalf have been issued in G.O. Ms. No. 252 PR&RD; Department, dated 2.7.1997. These rules enable a Gram Panchayat to levy a surcharge over the house tax at the minimum and maximum rates specified, in relation to lighting tax and drainage tax. However, every proposal for the levy of the tax including special tax for providing and maintaining electric lighting and pucca drainage have to be submitted to the District Collector through the Divisional Panchayat Officer accompanied by the specified resolutions. Rule 4(2) of these Rules empowers the District Collector before sanctioning the proposal (of the Gram Panchayat), to consider the suitability or otherwise of the tax proposed.

Section 77 enacts that the executive authority of the Gram Panchayat shall every year frame and place before the Gram Panchayat the budget showing the probable receipts and expenditure during the following year and the Gram Panchayat is required within a month from the date the budget is placed before it to sanction the budget with such modifications as it may think fit. Where the Gram Panchayat fails to sanction the budget within the stipulated period, the executive authority is required to submit the budget to the Divisional Panchayat Officer, who is empowered to sanction it with such modifications as he thinks fit. Section 77(2) ordains that a budget sanctioned by the Gram Panchayat be forwarded by the executive authority to the Divisional Panchayat Officer. The D.P.O. may make such suggestions or modifications as he deems fit, to the budget and return it to the Gram Panchayat, which is again empowered to consider the same and approve it with or without modifications at a special meeting convened for the purpose. The budget so approved at such meeting is to be final. Any alterations of the figures shown in the budget as may be necessitated during the course of the year enable a supplemental or revised budget to be framed, sanctioned, submitted or modified in the manner provided in Sub-sections (1) and, (2) of Section 77. Section 137 of the Act empowers the executive authority, subject to prescribed restrictions and control, to compound offences against the provisions of the Act, rule or a byelaw made thereunder, for a sum not exceeding Rs. 500/- in respect of offences which by rules are declared compoundable.

In re Mandal Parishads :

Section 150 enables the Commissioner (of Panchayat Raj), subject to specified rules to divide each Mandal Parishad area into such number of territorial constituencies as may be specified in the notification made for this purpose. Section 149 sets out the composition of the Mandal Parishad which includes persons elected under Section 151, the Member of the Legislative Assembly of the State representing a constituency which comprises wholly or partly the Mandal concerned, the Member of the House of People representing a constituency likewise and a person belong to minorities to be co-opted in the prescribed manner by the elected members, from among the voters in the Mandal.

Section 151 provides for a direct election of members to the Mandal Parishad from each territorial constituency specified in Section 150, from among the persons who are registered voters in the Mandal Parishad.

Section 158 specifies the permanent invitees to the meetings of the Mandal Parishad; such invitees include the Collector, Sarpanches of all Gram Panchayats within the Mandal Parishad, the Member of the Z.P., elected from the Mandal concerned, the Chairperson of the Z.P., and the President of the Agricultural Marketing Committee. These permanent invitees are entitled to participate in the deliberations and proceedings of the meetings of the Mandal Parishads but without the right to vote at any such meeting.

Section 161 enumerates the powers and functions of the Mandal Parishad and enacts that the administration of the Mandal shall vest in the Parishad. It is however, provided that the Mandal Parishad shall not exercise powers or perform functions expressly assigned by or under the Act or any other law, to its President, the Mandal Parishad Development Officer, the Zilla Parishad or any other authority. Section 161(3), fortified by a non-obstante clause enables the Mandal Parishad with the prior approval of the Z.P. to levy contributions from the funds of the Gram Panchayats in the Mandal. Sub-section (4) empowers the Mandal Parishad, with the prior sanction of the Government, to levy duty in the form of a surcharge on any tax imposed by Gram Panchayat or on land or local cess levied within its jurisdiction, in a manner and subject to such ceiling as may be prescribed.

Section 165 enumerates the powers and functions of the President and Vice-President of a Mandal Parishad. Administrative controls over Mandal Parishad Development Officer, for the purpose of implementation of the resolutions of the Mandal Parishads, are conferred on the President.

Section 167 enumerates the powers and functions of the Mandal Parishad Development Officer. The Mandal Parishad Development Officer is the Chief Executive Authority of the Mandal Parishad. He is empowered to exercise and perform such powers and functions as are entrusted to him by the Government and to exercise powers of supervision over the Gram Panchayats in the Mandal as may be prescribed. He is required to attend the meetings of the Mandal Parishad to take part in the discussions thereat but without a right to vote or move any resolution. Section 167(4) provides that subject to provisions of Section 168 the staff borne on the establishment of the Mandal Parishad and those working in the institutions and schemes transferred by the Government or the Head of the Department of Government to the Mandal Parishad shall be under the administrative control and supervision of the Mandal Parishad Development Officer. Sub-section (5) of Section 167 fortified by a non obstante clause in relation to Section 161 (1) but subject to the other provisions of the Act and the Rules made thereunder, provides that the Mandal Parishad is empowered to issue specific directions regarding the performance by the Mandal Parishad Development Officer of any of the functions assigned to him under the Act. The salaries, allowances, pension and contributions towards Provident Fund in relation to the Mandal Parishad Development Officers appointed by the Government for the Mandal Parishads are required to be paid from the consolidated fund of the State under Section 167(6). Sub-section (7) enacts that the Government shall have the power to make rules to regulate the classification and methods of recruitment, conditions of service, pay and allowances and disciplinary conduct of the Mandal Parishad Development Officer. The powers and functions of a Mandal Parishad Development Officer have been set out in G.O. Ms. No. 489 PR&RD; Department, dated 3.12.1996. Under these rules the Mandal Parishad Development Officer is empowered to enter and inspect any immovable property or work in progress under the control of any Gram Panchayat or its executive authority; any institution maintained by or under the control of any Gram Panchayat and any records, registers and other documents of such institution and the office of any Gram Panchayat and any records, registers or other documents therein, in respect of any schemes or other work of a Mandal Parishad entrusted to the Gram Panchayat within its jurisdiction and in respect of programs of Gram Panchayats having a direct bearing on the developmental activities of the Mandal Parishad. The Gram Panchayats, their Sarpanches, executive authorities, officers and servants are also required to afford access to the Mandal Parishad Development Officer for effectuating the exercise of the power of such entry and inspection. The Mandal Parishad Development Officer is also empowered under Para 5 of these Rules to sell immovable property of the Mandal Parishad up to the value of Rs. 500 in each instance in consultation with the President of Mandal Parishad and even without such consultation to sanction or write off cess on requisition made by the Revenue Department, up to Rs. 250/-.

As per Section 168 the Mandal Parishad Development Officer and other officers and staff of a Mandal Parishad and the staff employed in the institutions and schools under the Mandal Parishad are made subordinate to the Mandal Parishad. The power to create posts of officers and other employees of Mandal Parishad is vested in the Government under Section 169 and Sub-section (3) thereof also enacts that the salaries, allowances, pensions and contributions etc., of the officers and other employees of the Mandal Parishad, who hold any of the posts, the creation of which is vested in the Government under Section 169 shall be paid out of the consolidated fund of the State by the Government. Sub-section (4) inter alia enacts that the classification and methods of recruitment, conditions of service, pay, allowances, discipline and conduct of the officers and other employees of the Mandal Parishad shall be regulated by rules under proviso to Article 309 of the Constitution. Under Sub-section (5) the Government is empowered to periodically issue directions to any Mandal Parishad, officer, authority or person thereof as appears necessary for giving effect to the provisions of Section 169 and the Mandal Parishad Development Officer, authority or person is ordained to comply with such directions.

Provisions in respect of the budget of a Mandal Parishad are set out in Section 174, under which the Mandal Parishad Development Officer is required to frame the budget and place it before Mandal Parishad by the prescribed date and the Mandal Parishad is required to sanction the budget with such modification as it thinks fit. The budget so sanctioned has to be submitted by the Mandal Parishad Development Officer to the Zilla Parishad and in the absence of a Zilla Parishad to the District Collector. The Zilla Parishad or the District Collector, as the case may be, if satisfied that adequate provision has not been made in the budget for giving effect to the provisions of the Act, are empowered to approve the budget with modifications as are necessary to effectuate the provisions of the Act. Sub-section (3) of Section 174 enacts that where a budget is not sanctioned by the Mandal Parishad the Mandal Parishad Development Officer shall submit it to the District Collector, who shall sanction it with such modifications as he thinks fit and forward it to the Zilla Parishad. The Zilla Parishad, on receipt of the budget so sanctioned, is required to approve it as if the Mandal Parishad Development Officer submitted it after sanction by the Mandal Parishad. In such an event where there is no Zilla Parishad the sanction accorded by the District Collector shall be final.

In re Zilla Parishads :

Section 177 occurring in Part IV of the Act deals with the constitution, incorporation and composition of a Zilla Parishad. The composition of the Zilla Parishad comprises persons elected under Section 179 and a member of the Legislative Assembly of the State representing the constituency that wholly or partly comprises the district concerned, in respect of which the Zilla Parishad is constituted.

Section 178 enacts that every Mandal in the District shall be a territorial constituency that is required to contribute one member by election to the Zilla Parishad.

Section 179 deals with the election of members from territorial constituency and provides that one member shall be elected to the Zilla Parishad from each of the territorial constituencies specified in Section 178, such election to be by the registered voters of the relevant territorial constituency.

Section 181 deals with election of Chairperson and Vice-Chairperson whereunder the Chairperson and Vice-Chairperson shall be elected by and from the elected members of the Zilla Parishad. The election is required to be by show of hands and in compliance with the party whip. A member voting in disobedience of the party whip is declared to have ceased to hold the office qua the second proviso to Section 181(1).

Section 182 ensures a five years term of office to the elected members of the Zilla Parishad.

Section 186 sets out provisions relating to the appointment, powers and functions of the Chief Executive Authority of the Zilla Parishad. Under this provision the Chief Executive Authority is to be appointed and is liable to be transferred by the Government. The executive power to carry out the provisions of the Act vests in the Chief Executive Authority who is also empowered to lay down the duties of all officers and services of, or

holding officer under the Zilla Parishad in accordance with the rules made by the Government. The Chief Executive Authority is entitled to attend the meetings of the Zilla Parishad or any of its Standing Committees and to participate in the discussion therein, however, without the power to vote or to move any resolution. The Chief Executive Authority may also call for information, returns, and statement of accounts or report from any officer or servant of the Zilla Parishad or a Mandal Parishad. He is also empowered to exercise supervisory control over the acts of officers and servants holding office under the Zilla Parishad or the institutions thereunder in matters of executive administration, accounts and records of Zilla Parishad or its institutions. He also has powers of supervision and control in respect of execution of all the activities of the Zilla Parishad including the powers of entry and inspection of any works under the management of the Zilla Parishad. He is empowered to enter into agreement and sign and execute them in the name and on behalf of the Zilla Parishad. He is required to implement specific directions issued by the Zilla Parishad regarding the performance by him of any of the functions assigned to him under the Act provided such directions of the Zilla Parishad are in conformity with the terms and conditions governing planning, community, development or other developmental activity entrusted by the Government or other authority. The Chief Executive Authority is required to execute the orders of the Government in exercise of the powers conferred by the Act and Rules or any other law for the time being in force and he is also required to forthwith send a compliance report to the Government and to place a copy thereof before the Chairperson and the Vice-Chairperson. Under Sub-section (6) of Section 186 and subject to provisions of Section 185 the staff on the establishment of the Zilla Parishad and those working in the institutions and schemes transferred by the Government or the Head of the Department of the Government to the Zilla Parishad shall be under the administrative control and supervision of the Chief Executive Authority. The salary, allowances, pensions and contributions etc., of the Chief Executive Authority are to be paid by the Government out of the consolidated fund of the State and the Government is also empowered under Sub-section (8) to make rules to regulate the classification, methods of recruitment, conditions of service, pay, allowances and disciplinary conduct of the Chief Executive Authority.

Section 187 ordains that for every Zilla Parishad there shall be constituted a Standing Committee, such Standing Committees to be constituted are in respect of - (a) planning and finance, (b) rural development, (c) agriculture, (d) education and medical services, (e) woman welfare, (f) social welfare and (g) for works. The powers and functions of the Standing Committee, the permanent invitees to it and incidental matters therefor are to be as prescribed and the District Collector is empowered to participate in the meetings of all Standing Committees without voting rights.

Section 188 enumerates the permanent invitees to the meetings of the Zilla Parishad and Section 189 empowers the Chairperson or Vice-Chairperson of a Zilla Parishad or a Chairperson of a Standing Committee thereof to invite any person other than an office bearer of any political party having experience and otherwise knowledge of any subject under consideration, for the purpose of consultation, to attend its meeting.

The powers and functions of Zilla Parishad are enumerated in Section 192 including the powers and functions as may be entrusted to it by rules made in this behalf with regard to the subjects enumerated in the First Schedule, The Zilla Parishad is also empowered to examine and approve the budgets of the Mandal Parishads in the district, distribute the funds allotted to the district by the Central or State Government among the Mandal Parishads and Mandals in the district, to co-ordinate and consolidate the plans prepared in respect of Mandals in the district, to prepare plans in respect of the entire district, to secure the execution of plans, projects, schemes or other works in respect of individual Mandals or common to two or more Mandals in the district and to generally supervise the activity of Mandal Parishads in the district. Sub-section (2) of Section 192 empowers the Zilla Parishad, with the approval of the Government, to levy contribution from the funds of the Mandal Parishads in the district.

Section 193 empowers the Chairperson of a Zilla Parishad to exercise administrative control over the Chief Executive Authority for the purpose of implementation of the resolutions of the Zilla Parishad or any Standing Committee thereof. Sub-section (6) of Section 193 obligates the Chairperson to convene meetings of the Zilla Parishad so as to ensure that atleast one meeting of the Panchayat is held every 90 days. On failure to

perform such duty resulting in no meeting being held within the period of 90 days or within 30 days following such period, the Chairperson is declared to have ceased to be so and is rendered ineligible for a period of one year from the date of such cessation, to be elected as Chairperson. Sub-section (7) of Section 193 empowers the District Collector to intimate the fact of cessation of office as brought about by the provisions of Sub-section (6), to the Chairperson concerned.

Section 195 empowers the Government to create posts of officers and other employees of a Zilla Parishad. All appointments to the posts so created and transfer of the holders of such posts are to be governed by rules made under the proviso to Article 309 of the Constitution. Sub-section (3) of Section 195 enacts that the salaries, allowances, pensions etc., of the officers and other employees of a Zilla Parishad as are appointed by the Government under this Section shall be paid by the Government out of the consolidated fund of the State. The classification, methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the officers and employees of a Zilla Parishad are also to be regulated inter alia by rules made under the proviso to Article 309 of the Constitution qua Sub-section (4). Sub-section (5) empowers the Government to periodically issue directions to any Zilla Parishad or any officer, authority or person thereof as are necessary for giving effect to the provisions of Section 195 and that the Zilla Parishad, officer, authority or person is required to comply with such directions. The A.P. Zilla Parishad Deputy Chief Executive Authorities (Powers and Functions) Rules, 1995, have been issued in G.O. Ms. No. 490, PR&RD; Department, dated 3.12.1996, whereunder extensive administrative and financial powers are conferred on the Deputy Chief Executive Authority.

Section 199 deals with the budget of the Zilla Parishad and empowers the Chief Executive Authority to frame the budget and place it before the Zilla Parishad which is required to sanction the budget with modifications, if any. The budget so sanctioned should be submitted to the Government by the Chief Executive Authority through the Chairperson. If the Government is satisfied that adequate provision has not been made therein or that it is otherwise unsatisfactory for giving effect to the provisions of the Act, the Government is empowered to approve the budget with such modifications, as it considers necessary to secure such provisions. Where a budget is not sanctioned by the Zilla Parishad as required under Sub-section (1) and by the date prescribed under Sub-section (2), the Chief Executive Authority is required to submit the budget to the Government who may thereupon, approve the budget as if it were submitted after sanction by the Zilla Parishad.

General Powers:

Section 249 enacts the powers of the Government to remove a Sarpanch, President or a Chairperson for wilful omission or refusal to carry out the orders of the Government for the proper working of the concerned local body, for abuse of position or of the powers vested, for misconduct in the discharge of duties or for persistent default in the performance of functions and duties entrusted under the Act, to the detriment of the functioning of the concerned local body or where a Sarpanch, President or Chairperson, as the case may be, has become incapable of such performance. While the powers of removal of an elected member of the Gram Panchayat are conferred on the District Collector, the power of removal of elected member of Mandal Parishad or Zilla Parishad are conferred on the Government including the powers of suspension, respectively.

Section 250 inheres in the Government powers to dissolve a Gram Panchayat, Mandal Parishad or Zilla Parishad where it appears to it that a Gram Panchayat, Mandal Parishad or Zilla Parishad is not competent to perform its functions or has failed to exercise its powers or perform its functions or has failed to exercise or has abused any of the powers conferred upon it by or under the Act or by any other law for the time being in force. Before exercising such powers of dissolution, the Government may however direct any such concerned body to remedy such incompetency, failure to exercise or abuse or to give a satisfactory explanation therefor and on failure of such body to comply with the direction an order of dissolution may be made. Powers of reconstitution immediately on dissolution or within six months from the date of dissolution are also conferred along with a power to appoint such other person or authority to perform the powers and functions of the

dissolved body.

After the aforesaid brief survey of the provisions of the 1994 Act, some of which are challenged in the writ petition, a broad structural analysis of the three levels of 'Panchayats', as provided in the 1994 Act in the context of the constitutional prescriptions in Part IX is apposite.

Constitution of the Panchayat Bodies:

The Gram Panchayat, Mandal Parishad and Zilla Parishad are to public bodies corporate. [Section 4(3), 148(4), 177(2)].

Governance Structure of Panchayats to be representative:

(A) The Sarpanch of a Gram Panchayat to be directly elected by the registered voters of the Gram Panchayat [Section 14(1)].

(B) The Members of the Gram Panchayat are also to be elected directly, by the registered voters of the respective Wards of the Gram Panchayat [Section 8].

(C) The Members of a Mandal Parishad are to be directly elected by the registered voters of the relevant territorial constituencies specified in Section 150 [Section 152(1)].

(D) The President and Vice-President of a Mandal Parishad to be elected from among the elected members of the Mandal Parishad [Section 153 (1)].

(E) Each Mandal within a District is a territorial constituency for the Zilla Parishad [Section 178] and one member from each such territorial constituency shall be elected to the Zilla Parishad directly by the registered voters of the territorial constituency [Section 179].

(F) The Chairperson and Vice-Chairperson of a Zilla Parishad are to be elected from among the electes members of the Zilla Parishad [Section 181].

Reservations:

Reservation of seats to elected offices for Scheduled Castes and Tribes and Backward Classes, Women belong to these categories and for women belonging to the general category is provided; for Gram Panchayat [Section 99]; for Mandal Parishad [Section 152] and for Zilla Parishad [Section 180], Similar reservation structure is provided for the post of a Sarpanch of Gram Panchayat [Section 15]; for the Office of President and Vice-President of the Mandal Parishad [Section 153 (2)] and for the Office of the Chairperson of the Zilla Parishad [Section 181 (2)].

Tenure of Office:

For the Members of the Gram Panchayat [Section 13]; Sarpanch [Section 14]; Members of the Mandal Parishad [Section 154]; President and Vice-President the Mandal Parishad [Section 153]; Members of the Zilla Parishad [Section 182] and Chairperson and Vice-Chairperson of the Zilla Parishad [Section 181] a tenure of office of 5 years is prescribed.

Funds of the Panchayat Bodies:

Provision is made for constitution of separate funds comprising the monies received by the three levels of Panchayat Institutions i.e., Gram Panchayat Fund [Section 74]; Mandal Parishad Fund [Section 171] and Zilla Parishad Fund [Section 197].

Financial Powers and Obligations:

Gram Panchayat:

(A) A Gram Panchayat is ordained to levy house tax and tax on the village produce sold in the village and such other taxes as the Government may, by notification, direct the Gram Panchayat to levy, subject to prescribed Rules. Duty on transfers of property situate within the territorial jurisdiction of the Gram Panchayat is also to be levied, in accordance with the provisions of Section 69. A Gram Panchayat may also levy, subject to prescribed Rules, vehicle tax; tax on agricultural land for a specified purpose; land cess; fees for use of poramboke and communal land; for occupation of building and duty in the form surcharge or seigniorage fees, collected by the Government on material other than minerals and minor mineral quarried in the village, subject to the rate of the duty to be fixed with the previous approval of the Government. In addition a Gram Panchayat is enabled, with the previous approval of the prescribed authority, to levy a duty in the form of a surcharge as may be fixed by it, subject to the statutory ceiling [Section 60].

(B) The house tax that may be levied by a Gram Panchayat under Section 60 (1)(a) is subject to various restrictions that may be imposed by Rules made by the Government qua Sub-section (4) of Section 61. Further restrictions on the taxes leviable by a Gram Panchayat are enacted in Section 62 whereby the rate and the date with effect from which the house tax shall be levied may be determined by a published order of the State Government. Such direction is deemed to be a resolution by the Gram Panchayat. A Gram Panchayat is disabled from altering the rate or abolishing the house tax, except with the previous sanction of the Government [Section 62].

(C) A Gram Panchayat may, with the approval of the Zilla Parishad, by resolution, levy tax on advertisements, the rate of tax to be within the spectrum determined by the State Government and subject to other restrictions on the types of advertisements and notices in respect of which a tax may be levied [Section 63].

(D) The Government at a rate to be fixed by it shall levy a duty on transfers of property and the duty so levied is to be apportioned among the three levels of Panchayat Institutions in such manner as may be prescribed by rules made by the Government. The Government is also empowered to exempt any instrument or class of instruments from the levy of this duty [Section 69].

(E) The power of a Gram Panchayat to levy vehicle tax under Section 60(3)(i) is also subject to any exemptions or restrictions as may be ordained by rules made by the Government.

(F) A Gram Panchayat is also ordained to levy a special tax on houses, subject to prescribed rules and at rates to be prescribed, to provide for expenses connected with public utilities as specified [Section 71].

(G) Section 75 stipulates the purposes for which Gram Panchayat Fund should be applied, inter alia, under Section (2) of Section 75, the salaries, allowances, pensions, pensionary contributions and Provident Fund contributions of its officers and servants should be paid out of the Gram Panchayat Fund.

(H) Even contributions by Gram Panchayats to any fund for defence of India or to expenses in public exhibitions, ceremony or entertainment in the village, to a charitable fund or for any institution for the relief of the poor, treatment of disease or infirmity or the reception of deceased or infirm persons or the investigation of the cause of disease or contributions to the funds of any institutions established for promoting the community development or the aims of the Panchayat Raj, are to be with the sanction of the Government or the Commissioner of Panchayat Raj, as the case may be [Section 75(3) and (4)].

Mandal Parishad :

Section 172 enumerates the sources of income of a Mandal Parishad as comprising of (i) funds relating to institutions and schemes transferred by the Governments or Heads of Departments to the Parishad; (ii) funds relating to community development programmes; (iii) Central and State aid and aid received from All India bodies and institutions for the development of cottage and village industries, Khadi, Silk, Coir, Handicrafts and the like; (iv) donations and contributions received by the Parishad from Gram Panchayats or public; (v) such

income of the Zilla Parishad as the Government may allocate to a Mandal Parishad; (vi) such share of the land revenue, State taxes or fees, as may be prescribed; (vii) proceeds or tax surcharge or fees which the Parishad is empowered to levy under the Act or any other law; (viii) such contributions as a Mandal Parishad may levy from Gram Panchayat and (ix) any other income from a remunerative enterprise.

Sub-section (2) requires the Government to make an annual grant at the rate of Rs. 5/- per person residing in the Mandal and Sub-section (3) ordains that Mandal Parishad's expenses include the salaries and allowances of its officers and other employees and the allowances to be paid to persons invited to attend meetings of the Mandal Parishads as well as the allowances for attending the meetings of the Mandal Parishads as well as any other item of expenditure as directed by the Government for carrying out the purposes of the Act and other expenses as may be necessary for such purpose.

Zilla Parishad :

Section 198 stipulates that the sources of income of a Zilla Parishad shall consists of Central or State Government funds allotted to it; grants from AH India Bodies and Institutions for the development of cottage, village and small scale industries and the like, such share of State taxes or fees as may be prescribed, proceeds from taxes or fees which the Zilla Parishad may, under law, levy, income from endowments or trusts administered by it, donations and contributions from the Mandal Parishad or the public, such contributions as it may levy from Mandal Parishads, with the previous approval of the Government and any other income from remunerative enterprises. Sub-section (2) requires the Government to make an annual grant at the rate of Rs. 2/- per person residing in the district and Sub-section (3) ordains that the expenses of the Zilla Parishad shall include the salaries and allowances of its officers and other employees, allowances to be paid for special invitees to any meetings of the Zilla Parishad, the allowances for attending the meetings of a Zilla Parishad or Standing Committees and any item of expenditure directed by the Government for carrying out the purposes of the Act and such other expenses as may be necessary for such purposes.

Election Commission:

In conformity with Article 243K in Part IX of the [Constitution of India](#), Part-V of the 1994 Act sets out provisions with respect to the constitution of the State Election Commission, powers and functions as well as other provisions relating to incidental matters connected with elections.

Finance Commission:

The constitution, qualifications for appointment, term of office of members, the conditions of service, salaries and allowances of members and the functions of a Finance Commission are set out in Part VI of the 1994 Act, in accordance with the mandate of Article 243K of the [Constitution of India](#).

Devinder Gupta, CJ., for self and for Dr. Motilal B. Naik and B. Sudershan Reddy, JJ

1. The impact of Part IX of the Constitution on the existing constitutional scheme and distribution of legislative powers under the Panchayat Raj System; and whether Part IX gives limited autonomy or confers full autonomy without State's role in the functioning of the Panchayats are the core questions involved in these petitions. Whether Part IX of the Constitution overrides Articles 245, 256 and List-n of the Seventh Schedule of the Constitution is one of the consequential questions, which also fall for consideration. But the basic question is about the extent of the power of judicial review available in such like matters where the question is about the sufficiency or inadequacy of power or authority conferred upon the Panchayat Raj Institutions.

2. We had the benefit of perusing the separate judgments prepared by our learned brothers G. Raghuram, J and P.S. Narayana, J. Both the learned Judges have analysed the issues in detail with reference to the various provisions of the Constitution, the A.P. Panchayat Raj Act, 1994 (Act. No. 13 of 1994), the constitutional validity of which has been challenged in the petitions, the Rules framed thereunder and various administrative

instructions issued by the State Government. Brother G. Raghuram, J in his separate opinion has held that organising the Panchayat Raj Institutions do not constitute the third tier of the federal structure exemplifying a further unit in the vertical division of the governance power under the Constitution, with which we fully agree.

3. Brother G. Raghuram, J., has further opined that the discretion with the Legislature of a State in the matter of the extent of power, authority and responsibilities to be conferred on the Panchayats is not absolute rather it is obligatory on the part of the State Legislature to apportion and devolve powers and responsibilities upon the Panchayat Raj Institutions in the State (Village, Intermediate and District levels) in respect of the matters enumerated in Clauses (a) and (b) of Article 243G of the Constitution including the matters listed in Eleventh Schedule. The discretion is conditioned by the constitutional instructions that the Panchayats should be enabled to function as institutions of self-Government. Any effort on the part of the State Legislature that divests or withholds conferment of effective power of self-governance on the elected representatives of the Panchayats would tantamount to a legislation that subverts the constitutional powers delineated in Part IX of the Constitution. He has also taken a view that denial by the State Legislature of any financial resources to the Panchayats would negate the Constitutional purpose. In that view of the matter, he has observed that some of the provisions of A.P. Panchayat Raj Act, 1994 including Sections 32, 60 to 62, 77, 137, 167, 174, 186 and 199 negatively impact the 'self-Government' characteristics of the Panchayats without discernible and redeeming State interest and legitimate Governmental purposes and the complementary statutory rules and the administrative instructions also transgress the constitutional limitations on the States' role and are far beyond the permissible limits of participation and control with respect to the Panchayats. The offending provisions of the Act in his view are so interwoven with the other provisions of the Act, they cannot be considered or treated as stand alone provisions and has thus proposed to declare the said Act as unconstitutional, He has opined that what the Constitution implies, intends, means, commands and expects is not fulfilled by the A.P. Panchayat Raj Act, 1994.

4. With due respect, we are unable to agree with the above views expressed by our esteemed brother G. Raghuram, J., in his separate judgment.

5. Brother P.S. Narayana, J., in his separate judgment after observing that provisions of 1994 Act have been challenged only on the ground that they contravene Part IX of the Constitution and there is no challenge that the provisions of the Act contravene Part III of the Constitution, opined that Article 243G of the Constitution is only an enabling provision. Article 243G and Article 246(3) have to be interpreted harmoniously and the constitutional scheme as regards distribution of powers between the Centre and the State negates the stand of the petitioners that the Panchayat Raj Institutions should be endowed such constitutional status so as to touch upon the federal set up and the basic structure concept. In his opinion, the words 'the Legislature of a State may, by law, endow the Panchayats with such power and authority' used in Article 243G makes all the difference.

6. It is for the State Legislature to decide by expressing its will through legislation or subordinate legislation that to what extent the Panchayat Raj Institutions should be conferred with power and authority. The power of the Court in such like matters cannot be stretched too far while exercising the jurisdiction under Article 226 of the Constitution so as to question the political wisdom unless it is established that there is clear infraction and breach of the imperative constitutional provisions. Adequacy or inadequacy of the powers cannot be gone into unless it is shown that the same offends any provisions contained in any part of the Constitutional scheme. We are of the view that in pronouncing on the constitutional validity of a statute, the Court is not concerned with the wisdom or unwisdom, the justness or otherwise of the law. If that which is passed into law is within the scope of the power conferred on a Legislature and violates no restrictions on that power, the law, must be upheld whatever a Court may think of it. We are also of the view that the words 'endow them with such powers and authority as may be necessary to enable them' used in Article 40 of the Constitution and the similar words used in Article 243G also cannot be so interpreted to mean that the extent of the powers and authority endowed by the State Legislature should be limitless or be to the fullest extent.

Both the provisions have left it to the wisdom of the State Legislature even as regards the extent of the powers and authority to be endowed on the Panchayat Raj Institutions.

7. On the reasons aforementioned of ours, we are in complete agreement with the conclusions arrived at by P.S. Narayana, J., and hold that writ of mandamus as has been sought by the petitioners cannot be granted in view of the clear language employed in Article 243G of the Constitution and the writ petitions deserves to be dismissed.

Devinder Gupta, CJ.

1. In view of the majority opinion, the writ petitions are dismissed. There shall be no order as to costs.

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