

# CHAPTER I

## ORGANISATION, DEVOLUTION AND ACCOUNTABILITY FRAMEWORK OF LOCAL SELF GOVERNMENT INSTITUTIONS

### 1.1 Introduction

The Seventy third and Seventy fourth amendments of the Constitution of India giving constitutional status to Local Self Government Institutions (LSGIs), established a system of uniform structure, regular election, regular flow of funds, etc. Consequent to these constitutional amendments, the State Legislature passed the Kerala Panchayat Raj Act, 1994 (KPR Act) and the Kerala Municipality Act, 1994 (KM Act) to enable LSGIs to work as third tier of the Government. The Government has also identified and amended other related laws to empower LSGIs. As a follow-up, the Government entrusted LSGIs with such powers, functions and responsibilities as to enable them to function as Institutions of Local Self Government. In particular, LSGIs are required to prepare plans and implement schemes for economic development and social justice including those included in the Eleventh and Twelfth Schedules of the Constitution.

#### 1.1.1 Status of transfer of functions and functionaries

Under KPR Act and KM Act, it shall be the duty of LSGIs to meet the requirements of the area of their jurisdiction in respect of the matters enumerated in the respective Schedules of the Acts and LSGIs shall have the exclusive power to administer the matters enumerated in Schedules and to prepare and implement schemes relating thereto for economic development and social justice.

The Acts envisaged transfer of functions of various Departments of the Government to LSGIs together with the staff to carry out the functions transferred. The transfer of functions to different tiers of LSGIs was to be done in such a way that none of the functions transferred to a particular tier overlapped with that of the other.

The Eleventh Schedule of the Constitution contains 29 functions pertaining to the Panchayat Raj Institutions (PRIs). As mandated by KPR Act, the Government has transferred (September 1995) 26 of these functions to PRIs. The functions relating to minor forest produce, distribution of electricity and implementation of land reforms were yet to be transferred to PRIs. Like wise, the Twelfth Schedule of the Constitution contains 18 functions pertaining to Urban Local Bodies (ULBs). The Government has transferred 17 functions mandated under KM Act to ULBs and function relating to fire service is yet to be transferred. The services of related officers were also transferred to LSGIs. LSGIs also undertake agency functions on behalf of both Central and State Governments to implement development programmes.

## 1.2 State profile

The comparative demographic and developmental picture of the State is given in **Table 1.1**. Kerala's rate of population growth is India's lowest and Kerala's decadal growth (9.4 per cent in 2001) is less than half the all-India average of 21.3 per cent. Women constitute 51.42 per cent of the population. Kerala has the highest literacy rate (90.86 per cent) among Indian states and life expectancy (74 years) is among the highest in India. The service sector along with the agricultural and fishing industries dominate Kerala's economy.

**Table 1.1: Important statistics of the State**

SI No.	Indicator	Unit	State value	National value
1	Population	Crore	3.18	102.87
2	Population density	Sq Km	819	313
3	Urban population	Per cent	26	Not available
4	GSDP from primary sector	Per cent	14.47	20.01
5	Gender ratio	Females per 1000 males	1058	933
6	Population below poverty line	Per cent	15	27.5
7	Literacy	Per cent	90.86	64.84
8	Birth rate	1000 population	14.7	23.1
9	Infant mortality rate	1000 population	12	55
10	Unemployment rate	Per cent	13.7	Not available
11	Gross State Domestic Product	₹ in crore	265322	--

Source: Economic Survey 2010-11, Planning Commission

## 1.3 Size of LSGIs

As on 31 March 2011, there were 1209 LSGIs in the State. The details of the area, population etc., are presented in **Table 1.2**.

**Table 1.2: Comparative position of LSGIs**

Level of LSGIs	No.	No. of Wards	Average area per LSGI (Sq Km)	Average population per LSGI
District Panchayats (DPs)	14	332	26.51	1903357
Block Panchayats (BPs)	152	2095	244.24	175309
Grama Panchayats (GPs)	978 <sup>1</sup>	16680	37.16	26674
Municipal Corporations	5	359	95.60	491240
Municipalities	60	2216	23.65	51664

## 1.4 Organisational set up in State Government and LSGIs

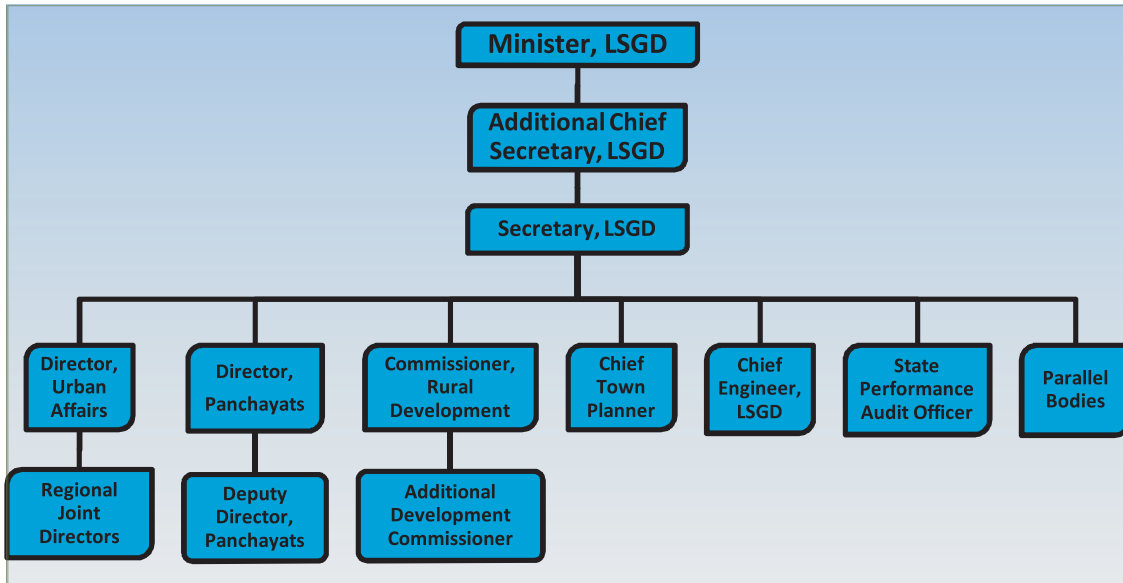
LSGIs constituted in rural and non-rural areas are referred to as Panchayat Raj Institutions (PRIs) and Urban Local Bodies (ULBs) respectively. In the three-tier Panchayat Raj system in the State, each tier functions independently of each other. The Government in Local Self Government Department (LSGD) is empowered to issue general guidelines to LSGIs in accordance with the National and State policies in matters such as finance, maintenance of accounts, office management, formulation of schemes, selection of sites and beneficiaries, proper functioning of Grama Sabha, welfare programmes and environmental regulations and LSGIs have to comply with such directions.

<sup>1</sup> During 2010-11, some GPs were merged with Corporations /upgraded to Municipalities

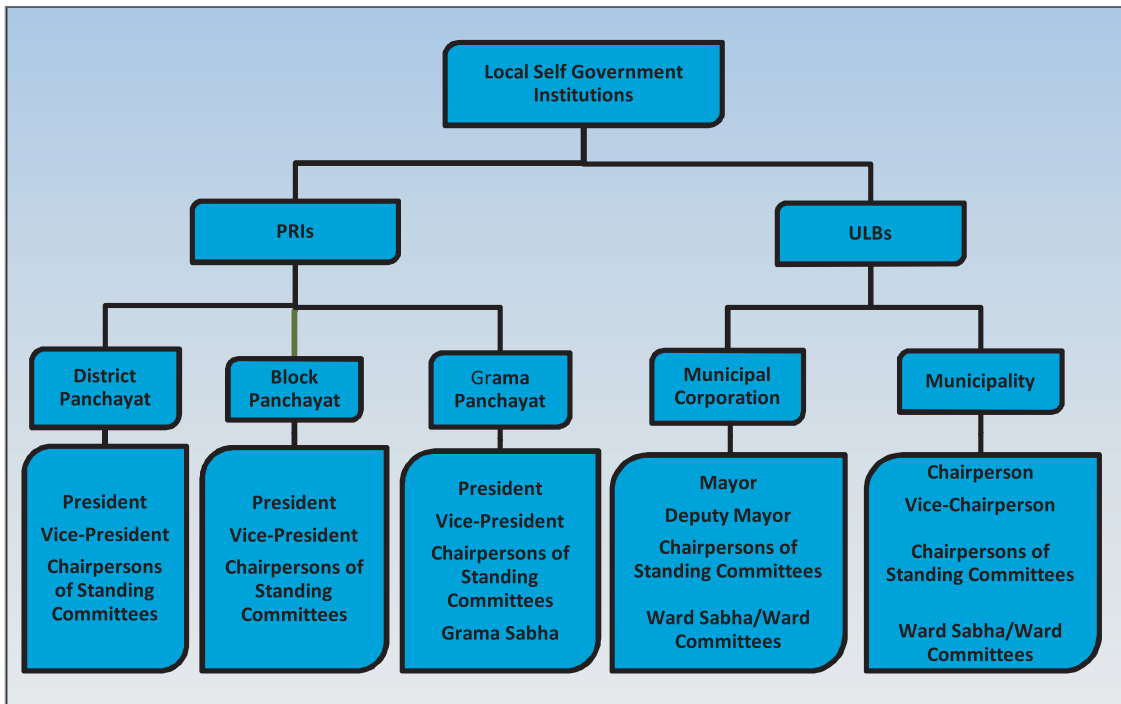
The Government also conducts periodical performance audit in respect of the administration of LSGIs. **Chart 1.1** depicts the organisational set up (as at the end of 31 March 2011) in LSGD and LSGIs to execute the functions of the Government and that of LSGIs.

**Chart 1.1: Organisation chart of LSGD and LSGIs**

**State Level**



**LSGIs Level**



The members of each tier of PRIs elect the President, Vice President and Chairpersons of the Standing Committees. Similarly, Councillors of the

Municipality/Municipal Corporation elect the Chairperson/Mayor, Vice Chairperson/Deputy Mayor and Chairpersons of the Standing Committees. The President/Chairperson/Mayor is the Chief Executive Head of LSGIs. Each LSGI has a Secretary who is the Chief Executive Officer. While the Secretaries of LSGIs and employees of PRIs are Government servants, the employees of ULBs belong to Municipal Common Service.

#### **1.4.1 Standing Committees**

To execute the various functions of LSGIs, Standing Committees have been constituted (four each for GPs & BPs, five for DPs, six for Municipalities and eight for Corporations) with elected representative as the Chairperson and the Secretary as the Chief Executive Officer. The type, roles and responsibilities of Standing Committees are given in **Appendix I**.

### **1.5 Decentralised Planning**

#### **1.5.1 District Planning Committees**

In pursuance of Article 243ZD of the Constitution of India and Section 53 of KM Act, the Government constituted District Planning Committees (DPC) in each district. The procedure to be followed in the meeting of the Committee is governed by Kerala District Planning Committee (Election of Members and Proceedings of Meeting) Rules, 1995. The tenure of DPC is five years. The Committee consists of 15 members of whom:

- 12 members are from among the elected members of Panchayats at district level and of Municipalities in the district in proportion to the ratio between the population of rural areas and of urban areas in the district;
- President of District Panchayat in that district;
- District Collector;
- one person having considerable experience in the administration of planning nominated by the Government.

The members of the House of the People and members of the Legislative Assembly of the State, representing any area comprised in a district are permanent invitees to DPC. A member of the Council of States (Rajya Sabha) representing the State is a permanent invitee to the DPC of the district in which he is registered as elector in the electoral roll of any Municipality or Panchayat. A member nominated to the Legislative Assembly of the State is a permanent invitee to the DPC of the district in which he ordinarily resides. The President of District Panchayat is the Chairman and District Collector is the Secretary of the DPC.

The functions of the DPC include scrutiny and approval of annual plans of LSGIs, consolidation of plans prepared by LSGIs and preparation of draft development plan for the district. The DPC is to monitor the quantitative and qualitative progress, especially its physical and financial achievements in the implementation of the approved district plan schemes and State plan relating to the district and is to evaluate the action programmes already completed. The

Government, while preparing the State plan, considers the proposals and priority included in the draft development plans prepared for each district by DPC.

As per orders issued by the Government, each LSGI is required to prepare its annual plan in a twelve step process beginning from situation analysis by working groups to DPC approval. DPCs are constitutionally responsible to consolidate the plans prepared by LSGIs in the district and to prepare a draft development plan for the district as a whole for onward transmission to the Government.

DPCs are expected to play a crucial role in the planning process. From the data made available to audit by the 14 DPCs, we noticed deficiencies in their activities during 2010-11 as mentioned below:

- None of the 14 DPCs prepared the draft development plan for the year 2010-11 and forwarded to the Government.
- Annual plans of LSGIs were approved without the help of expert member, who was required to give valuable advice in planning.
- District Collector has a key role as Member Secretary to ensure that the tasks assigned to the DPC are carried out promptly. District Collectors failed to attend many of the DPC meetings in all the 14 Districts except in Idukki and Kasaragod. In Ernakulam (19 meetings) and Thiruvananthapuram (13 meetings), the District Collectors did not attend any meeting.

In order to examine the effectiveness of the functioning of DPCs, audit examined the district planning process by DPC, Alappuzha and noticed the following:

- Even though statutory DPC was constituted in February 2011, Government nominated expert members only in November 2011. Even after his appointment the expert member did not attend any meeting.
- The District Collector who is the Member Secretary of DPC did not attend 17 out of the 27 meetings during 2009-11.
- Development report and vision document for the district were not prepared as instructed (May 2007) by the Government.
- 21 projects with an outlay of ₹ 1.21 crore relating to two LSGIs approved by DPC during 2009-11 related to functions not entrusted to that particular tier of LSGI. This was tantamount to grant of approval for diversion of funds for unauthorised functions, which is fraught with the risk of duplication.
- As per Government orders (May 2007) DPC shall not give conditional or temporary approval to projects. But Alappuzha DPC has accorded conditional approvals to 385 projects of five LSGIs with an outlay of ₹ 31.62 crore during 2009-10 and 2010-11 with conditions such as accounts be examined and reported to Planning Officer, verification of the

project by Technical Advisory Group, project to be implemented as per Government order etc. Allowing LSGIs which formulated the projects to comply with conditions was dilution of statutory authority of DPC.

- As per instructions issued (July 2008) by the Government, ceiling limits were prescribed for projects formulated by LSGIs, based on which DPs and BPs shall not formulate projects below ₹ 10 lakh and ₹ five lakh respectively. In violation to this direction, DPC approved 189 projects of Alappuzha DP, each below ₹ 10 lakh with a total outlay of ₹ 7.99 crore and 106 projects of two BPs each below ₹ 5 lakh with a total outlay of ₹ 2.59 crore. Taking up of small projects covering smaller areas by DP/BP will be detrimental to the interest of the remaining population under their jurisdiction.

## **1.6 Accountability Framework**

### **1.6.1 Internal control system at the level of LSGIs**

The internal control system at the level of each LSGI has been designed by the Government through KPR Act, KM Act, Kerala Panchayat Raj (Manner of Inspection and Audit System) Rules, 1997 and Kerala Municipality (Manner of Inspection and Audit System) Rules, 1997, application of State Government's own rules and policies relating to finance, budget, personnel matters. The significant provisions are given in **Appendix II**.

### **1.6.2 Authority and Responsibility of the Government with regard to LSGIs**

In accordance with KPR Act and KM Act, the Government exercises its powers in relation to LSGIs as detailed in **Appendix III**.

The KPR Act and KM Act entrust the Government with the following powers so that it can monitor the proper functioning of LSGIs.

- Call for any record, register, plan, estimate, information from LSGIs;
- Inspect any office or any record or any document of LSGIs;
- Arrange periodical performance audit of the administration of LSGIs;
- Inspect the works and development schemes implemented by LSGIs;
- Take action for default by an LSGI President or Secretary.

In addition, the KPR Act and KM Act, *inter alia*, empower the Secretary, LSGD who is the State Performance Audit Authority (SPAA) at the State level with the following powers:

- Rectification of defects and pointing out mistakes after inspecting the accounts, money transactions, office functioning and public works of LSGIs;
- To give necessary instructions to LSGIs to take follow up actions on the performance audit report;
- To ensure that the performance audit teams are conducting tri-monthly performance audit in all LSGIs.



Further, the Secretary of an LSGI may adopt the following procedure to assist the Government in preventing passing of resolutions which are not in conformity with the Act:

- The Secretary shall request in writing to LSGI to review any resolution passed by them, if he is of the opinion that the resolution passed by LSGI has not been legally passed or is in excess of the powers conferred by the Act;
- After discussion of the subject, if LSGI resolves to uphold its earlier decision, the Secretary shall forward LSGI resolution and his opinion thereon to the Government for its decision;
- The Secretary shall inform the President/Chairperson any direction received from the Government and shall take further action in accordance with the said direction.

Despite the above mentioned duties and powers vested in the Government for the enhancement of quality of public service and governance, Audit noticed numerous deficiencies in the implementation of schemes, matters relating to finance, selection of beneficiaries etc., as mentioned in Chapters II, III and IV of this Report.

### **1.6.3 Liability of elected representatives for loss, waste etc**

As per Section 547 of KM Act, elected representatives of ULBs shall be liable for the loss, waste or misapplication of any money or other property owned by or vested in a ULB if such loss, waste or misapplication is a direct consequence of their neglect or misconduct and a suit for compensation may be instituted against them by ULB or by any tax-payer of ULB area.

Section 253 of KPR Act which contained similar provision for fixing the liability of elected representatives was deleted from the Act through an amendment with effect from 01 October 2000. This has resulted in lack of safeguards against loss, waste etc.

### **1.6.4 Role of the Government of India as sanctioning authority**

The Government of India (GOI) transfers funds to LSGIs under devolved grants on the recommendation of Finance Commission and development grants directly or through the State budget. Both the grants enjoin upon sanctioning authorities in the GOI the responsibility to ensure proper utilisation of grant money. This is achieved through receipt of progress reports, Utilisation Certificates and internal audit of scheme accounts in LSGIs by the Internal Auditors of line ministries. Each sanction of grant is to contain certain conditions of grant-in-aid mentioned in General Financial Rules, 2005.

## **1.7 Vigilance mechanism**

### **1.7.1 Ombudsman for LSGIs**

As envisaged in the KPR Act and KM Act, an Ombudsman for LSGIs was set up in the State in May 2000. The Ombudsman is a high powered quasi-judicial body functioning at the State level. A former judge of High Court is

appointed as Ombudsman. The Ombudsman can conduct investigations and enquiries into instances of maladministration, corruption, favouritism, nepotism, lack of integrity, excessive action, inaction, abuse of position, etc., on the part of officials and elected representatives of LSGIs. He can even register cases *suo moto* if instances of the above kind come to his notice. During the period 2010-11, out of 3793 cases (including 1769 old cases), 1619 cases were disposed of by the Ombudsman.

### **1.7.2 Tribunal for LSGIs**

As envisaged in KPR Act and KM Act, a judicial tribunal for LSGIs was set up in the State in February 2004, with a District Judge as the Tribunal to consider appeals/revisions by citizens against decisions of LSGIs taken in exercise of their regulatory functions like issue of licenses, grant of permits etc. All the appeals/revisions filed in the Tribunal are required to be considered and disposed of within two months of filing. As on 31 March 2011, 198 appeals and 20 revisions were pending before the Tribunal.

## **1.8 Role of State Performance Audit Authority**

The Principal Secretary to Government in LSGD is the Performance Audit Authority at the State Level for conducting the performance audit. The State Performance Audit Officer assists the Performance Audit Authority. The performance audit teams constituted under Regional Performance Audit Officers conduct performance audit in Municipalities and PRIs. The Performance Audit Authority shall submit annual reports to the Government which contain common defects in the assessment of tax and the fluctuation in the collection of tax of LSGIs, details regarding mobilisation of more resources, approximate figure of liability of LSGIs and progress regarding refund thereof, problems connected with Panchayat/Municipal administration to which Government may draw attention and remedies thereof.

## **1.9 Quality control systems in financial attest audit by DLFA**

Director of Local Fund Audit (DLFA) is the Statutory Auditor of LSGIs as per Kerala Local Fund Audit Act, 1994, KPR Act and KM Act. Apart from LSGIs, other local funds such as Universities, Devaswom Boards, Religious and charitable institutions are also audited by DLFA. The Local Fund Audit Department under State Finance Department is headed by a Director and has District offices in all the districts headed by Deputy Directors. DLFA is to carry out a continuous audit of the accounts of LSGIs and shall send a report to LSGIs concerned and a copy thereof to the Government. DLFA is to specify in the report all cases of irregular, illegal or improper expenditure or of failure to recover money or other property due to the LSGIs. The Acts empower the DLFA to disallow any illegal payment and surcharge the person making or authorising such payment. DLFA can also charge any person responsible for the loss or deficiency of any sum which ought to have been received. DLFA has adopted the Auditing Standards for LSGIs prescribed by Comptroller and Auditor General of India (CAG). The guidelines issued by CAG for financial attest audit have been accepted by DLFA.



## **1.10 Role of Comptroller and Auditor General of India**

CAG conducts audit of substantially financed local bodies under Section 14 (1) of CAG's (DPC) Act, 1971 and audit of specific grants to local bodies under Section 15 of the Act *ibid* in the office of sanctioning authority. The nature of audit by CAG is compliance, performance audit and assessment of internal control system. The attestation of accounts is entrusted to DLFA. The State Government has entrusted technical guidance and support role of DLFA (Primary External Auditor) to CAG in October 2002 under Section 20(1) of CAG's (DPC) Act, 1971 for a period of five years. Government extended (December 2007) the scheme of Technical Guidance and Support for a further period of five years up to March 2013.