

## Chapter II: Compliance to provisions of 73<sup>rd</sup> Constitutional Amendment Act

*In compliance to the provisions of 73<sup>rd</sup> Constitutional Amendment Act, the State Government enacted a new legislation for Panchayati Raj Institutions (PRIs) in the State. However, the Act also provided for several overriding powers of the State Government over the PRIs, curtailing their autonomy.*

### 2.1 Compliance of State laws with 73<sup>rd</sup> Constitutional Amendment Act

Provisions relating to PRIs were incorporated in the Constitution by the 73<sup>rd</sup> Constitutional Amendment Act *vide* Article 243A to 243O. Accordingly, the State Government repealed the Goa, Daman & Diu Village Panchayat Regulation, 1962 and replaced (April 1994) it with an ordinance, the Goa Panchayat Raj Ordinance, 1994, which subsequently became (August 1994) the Goa Panchayat Raj Act, 1994 (GPRA). Comparison of provisions in the 73<sup>rd</sup> Constitutional Amendment Act with GPRA is shown in **Table 2.1** below.

**Table 2.1: Comparison of provisions of 73<sup>rd</sup> Constitutional Amendment Act with State PRI Acts**

Provision of constitution	Requirement as per the provision of Constitution of India	GPRA	
		VP*	ZP*
<b>Article 243A</b>	Constitution of Gram Sabha in VPs with powers and functions assigned under State laws.	Section 4	Not applicable
<b>Article 243B</b>	Constitution of panchayats at the village, intermediate and district levels <sup>#</sup> .	Section 3	Section 116
<b>Article 243C</b>	Composition of panchayats is to be from elected members with their constituencies delimited in accordance with State laws.	Section 7	Section 11
<b>Article 243D</b>	Reservation in elections to Scheduled Castes, Scheduled Tribes and women.	Section 7	Section 118
<b>Article 243E</b>	Duration of the panchayats shall be five years from its first meeting.	Section 42	Section 129
<b>Article 243F</b>	Disqualifications for membership of panchayats.	Section 10	Section 123 read with Section 10
<b>Article 243G read with Eleventh Schedule</b>	State legislation to provide powers and authority to panchayats to function as institutions of self-government and prepare plans and implement schemes in respect of 29 functions in Eleventh Schedule.	Section 60 and 61 read with Schedule I	Section 140 and 141 read with Schedule II

Provision of constitution	Requirement as per the provision of Constitution of India	GPRA	
		VP*	ZP*
<b>Article 243H</b>	State legislation to empower the panchayats to impose taxes, duties, tolls and fees and assignment from Consolidated Fund of State.	Section 153 read with Schedule III	No specific provision for taxes
	State legislation to provide for constitution of funds to credit all moneys received and the withdrawal therefrom.	Section 161	Section 166
<b>Articles 243-I and 243Y</b>	Constitution of State Finance Commission to review the financial position of the PRIs, recommend the distribution of revenues between the State and the PRIs and allotting the funds from the Consolidated Fund of the State.	Section 199	
<b>Article 243J</b>	Maintenance of accounts by the panchayats.	Section 184 and 185	Section 191
	Audit of accounts maintained by panchayats.	Section 187	Section 194
<b>Article 243K</b>	Elections to panchayats – Provision for constitution of State Election Commission, conduct of elections and providing staff during elections.	Section 237	
<b>Article 243ZD</b>	Constitution of District Planning Committee, its composition and role for preparation of draft development plan.	Section 239	

*(Source: The Constitution of India and GPRA)*

*#A two-tier panchayat system was constituted with two Zilla Panchayats at the district level (in 2000) and 191 Village Panchayats (from 1962 onwards) at the village level.*

*\*Village Panchayats and Zilla Panchayats*

Hence, as tabulated above the State legislation is in compliance with the provisions of 73<sup>rd</sup> Constitutional Amendment Act. However, Audit observed that State legislations also provides for overriding powers to the State Government over the PRIs.

## **2.2 Powers of the State Government over PRIs**

The GPRA provided for the control of State Government over the functioning of PRIs through the following provisions as indicated in **Table 2.2**.

**Table 2.2: Powers of State Government over PRIs**

Sl.No.	Subject	Provision
1	Power to frame rules.	The State Government may by notification in the Official Gazette, make rules to carry out the purpose of this Act (Section 240 of GPRA).
2	Power to amend, omit and add any activity in respect of devolved functions and taxes and their minimum rate.	The State Government may omit, amend or add any activity, programme or scheme in respect of devolved function to PRIs and taxes and their minimum rates (Section 241 of GPRA).
3	Power to exercise any function.	State Government may exercise any of the functions devolved to PRIs for the purpose of carrying out any developmental works in the jurisdiction of Panchayat without consultation with PRIs (Section 244A of GPRA).
4	Power of Government to allow to carry out any developmental works in any panchayat area.	Government may issue directions to the panchayats to carry out any developmental works or such other functions as the Government deems fit (Section 244 of GPRA).
5	Restrictions, conditions and limitations on expenditure from the Panchayat Fund or the Zilla Panchayat Fund.	Financial powers are restricted by providing for requirement of previous sanction of the Zilla Panchayat (for VPs) or the Government (Para 3 of notification issued by Department).
6	Power to write off.	Power to write off irrecoverable dues of VPs and ZPs beyond specified limit rests with the Government (Section 186 and 193 of GPRA read with 'The Goa Panchayat Raj (Write Off Irrecoverable Amounts) Rules, 1999').
7	Power to assignments of functions.	The Government may assign additional functions specified in the provision and withdraw them (Section 60).
8	Sanction to deposit and invest surplus funds.	Deposit and invest surplus funds of ZPs in banks with sanction of Government (Section 167 of GPRA).
9	Suspension/cancellation of resolution of PRIs.	Power to cancel and suspend a resolution or decision taken by PRIs rests with Government (Section 178 of GPRA).

(Source: Extracts of GPRA and rules below them)

As detailed above, the State Government had far-reaching powers over the functioning of PRIs in the State. Specifically, the powers to amend, omit and add any activity in respect of devolved functions and taxes, to withdraw any function, exercise any devolved function without consultation with the PRIs, restrictions placed on expenditure out of Panchayat Fund, cancellation and suspension of the resolutions of the PRIs as mentioned above, significantly curtailed the autonomy of the PRIs to function as institutions of self-government.

Given the legislative framework as detailed above, the actual powers devolved to the PRIs and their functioning *vis-à-vis* the provisions of 73<sup>rd</sup> Constitutional Amendment Act are detailed in the subsequent chapters.