

## **Article 149 - Duties and Powers of the Comptroller and Auditor-General**

The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the provinces respectively. The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the provinces respectively.

## **Article 150 - Form of Accounts of The Union and of The States**

The accounts of the Union and of the States shall be kept in such form as the President may, on the advice of the Comptroller and Auditor-General of India, prescribe.

## **Article 151 - Audit Reports**

- The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the president, who shall cause them to be laid before each House of Parliament.
- The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

## **Article 279 - Calculation of "net proceeds", etc.**

(1) In the foregoing provisions of this Chapter, "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Comptroller and Auditor-General of India, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision of this Chapter, a law made by Parliament or an order of the President may, in any case where under this Part the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

## **Third Schedule**

- Section IV of the Third Schedule of the Constitution of India prescribes the following form of oath or affirmation to be made by the Judges of the Supreme Court and the Comptroller and Auditor-General of India at the time of assumption of office:—
- "I, A.B., having been appointed Chief Justice (or a Judge) of the Supreme Court of India (or Comptroller and Auditor-General of India) do swear in the name of God (or solemnly affirm) that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and

faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.”

## **Sixth Schedule**

[Articles 244(2) and 275(1)] Provisions as to the Administration of Tribal Areas in [1][the States of Assam, Meghalaya, Tripura and Mizoram]

- 7. District and Regional Funds.—(1) There shall be constituted for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution.
- [2][(2) The Governor may make rules for the management of the District Fund, or, as the case may be, the Regional Fund and for the procedure to be followed in respect of payment of money into the said Fund, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.
- (3) The accounts of the District Council or, as the case may be, the Regional Council shall be kept in such form as the Comptroller and Auditor General of India may, with the approval of the President, prescribe.
- (4) The Comptroller and Auditor-General shall cause the accounts of the District and Regional Councils to be audited in such manner as he may think fit, and the reports of the Comptroller and Auditor-General relating to such accounts shall be submitted to the Governor who shall cause them to be laid before the Council.]
- [1] Subs. by the State of Mizoram Act, 1986 (34 of 1986), s. 39, for certain words (w.e.f. 20-2-1987).
- [2] Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch., for sub-paragraph (2) (w.e.f. 2-4-1970).

## **Guidance Note on Direct Access to Private Sector Records for Audit by CAG– Protocol**

### *About the Journal*

Guidance Note on Direct Access to Private Sector Records for Audit by CAG– Protocol (Reference No. 119/3-PPG/2014 dated 04th July, 2014)

The duties and powers of the Comptroller and Auditor General of India (CAG) to directly access and audit the records of the private sector have been under discussion for some time. This issue was examined by the Hon'ble Delhi High court and the Supreme Court of India in the case of access of records of private telecom companies by the CAG. The Hon'ble Courts recognized that the records of private players entrusted with the responsibility of delivering public goods and services by utilizing the state-owned resources should be accessible to the CAG for audit.

Important arguments accepted, the rationale behind the judgments and the highlights of the abovementioned judgments that have wider implications for audit by the CAG of private sector organizations are brought out below:

*Judgement dated 6th January 2014 of the Delhi High Court*

- Applicability of Principle of 'Res Communes' - The doctrine of 'res Communes' claims that some things are common to mankind - the air, the water etc. Thus, the titles of these resources are vested with the State as the sovereign, in trust for the people. (Para No. 21)
- Licensees are the accountants of the Central Government and are expected to maintain complete, accurate and honest books of accounts as to any transaction(s) involving revenue as a fiduciary duty. (Para No. 31)
- Revenue would include any income of the nation derived from any source, to be credited into the Consolidated Fund of India. Therefore, the revenue shared by the licensees with the Central Government, flowing into the CFI is the income of the nation and is revenue under Article 266 (1) of the Constitution. (Para No. 48)  
Judgement dated 17th April 2014 of the Supreme Court of India
- Article 149 of the Constitution and the Comptroller and Auditor General (DPC) Act, 1971 is to provide for Parliamentary control of executive on public funds, consequently, ambit of audit by CAG has to cover all issues that are required to be examined by the Parliament. (Para No. 18)
- Article 266 of the Constitution of India take in "all revenue receipts received by the Government of India" and submitted that a combined reading of Sections 13, 16 and 18 of the C&AG (DPC) Act would indicate that it is obligatory on the part of the CAG to audit all transactions entered into by the Union and the States pertaining to the Consolidated Fund. (Para No. 19)
- When nation's wealth/natural resources, like spectrum, is being dealt with either by the Union, State or its instrumentalities or even the private parties, like service providers, they are accountable to the people and to the Parliament. (Para No. 37)
- CAG's examination of the accounts of the Service Providers in a Revenue Sharing Contract is extremely important to ascertain whether there is an unlawful gain to the Service Provider and an unlawful loss to the Union of India, because the revenue generated out of that has to be credited to the Consolidated Fund of India. (Para No. 41)
- The expression "to audit all receipts" does not distinguish the revenue receipts and non-revenue receipts. (Para No. 45)
- Section 13 read along with Section 16 makes it clear that the expression "to audit all transactions" so also "audit of all receipts", payable into Consolidated Fund of India would take in not only the accounts of the Union and of the State and of any other authority or body as may be prescribed or under any law made by the Parliament but also to audit all transactions which Union and State have entered into which has a nexus with Consolidated Fund, especially when the receipts have direct connection with Revenue Sharing. (Para No. 45)
- Unless the underlying records which are in the exclusive custody of the Service Providers are examined, it would not be possible to ascertain whether the Union of India, as per the agreement, has received its full and complete share of revenue, by way of licence fee and spectrum charges. (Para No. 48)
- CAG is not actually auditing the accounts of the UAS Service providers as such, but examining all the receipts to ascertain whether the Union is getting its due share by way of licence fee and spectrum charges, which it is legitimately entitled to, by way of revenue sharing. (Para No. 50)
- CAG's function is separate and independent and is not similar to the audit conducted by the DoT under clause 22.5 or special audit under clause 22.6. (Para No. 51)

### *Role of CAG in a changing audit environment*

In essence, these judgments have emphasised that the duties and powers of the CAG, being part of the basic structure of the Constitution, are to be interpreted and carried out to meet the changing needs and requirements of accountability. In the current scenario, the purpose of audit by CAG of records of private sector organisations can be stated as under:

- Providing an independent assurance that the terms and conditions of the agreements have been complied with in letter and spirit.
- Assisting in protecting the legitimate interest of public at large
- Ensuring parliamentary oversight

An independent assurance by the CAG, as an external auditor, to the Government is necessary and different from the roles of executive, the statutory auditor and the regulator. As the audit of such private sector records is to safeguard the interests of the State or its agencies or instrumentalities, it is the constitutional mandate of CAG and has been upheld in the above said judgments. Therefore, there may be no requirement of specific entrustment of such audits

### *Protocol*

The emerging audit scenario requires a new protocol to be established for accessing/auditing private sector records. This guidance note aims at laying down the procedure on the following aspects

- Identification of agreements involving private sector participation
- Determination of need to access private sector records
- Scope of examination of private sector records
- Mode of interaction with private sector
- Composition of audit parties and capacity building

### *Identification of agreements involving private sector participation*

The field audit offices are required to prepare a master data base of all agreements/contracts entered into by the Union and State Governments State and its agencies or instrumentalities with private sector

- For delivery of public goods and services
  - Dealing with transfer of natural resources (like land, water, spectrum and genetic resources) or public properties to private sector, if such transfer affects public interest
  - Nexus with consolidated fund of India or State
  - Having an impact on public interest
- Presence of one or more of the above-mentioned parameters could be the basis of identification of agreements for this purpose. These parameters would help in identifying the agreements / contracts which could require access to private sector records by CAG.

### *Determination of need to access private sector records*

The decision to access the records of any private sector organization has to be taken with the approval of controlling DAI/ ADAI. The necessity of accessing the private sector records would be decided by the HQ, on a case by case basis, depending upon the risk assessment of the subject matter and the ability/inability of the CAG to effectively fulfil his mandate only through audit of records of the government/public entity which comes under the CAG audit purview. HQ would also decide the applicable section of the CAG's DPC Act under which such audit would be conducted, deciding in turn the scope of audit. A self-contained proposal giving justification/necessity for such direct access has to be sent by the field audit offices to the headquarters. While recommending the need to access/audit private sector records the following aspects may be kept in view:

- The contract may provide for specific agreement clauses requiring private sector organizations to provide access to information / records to public sector partners or any other public authority.
- In most of the cases, it may be possible to get the required information through the public sector audited entity entering into agreement with the private sector entity in question. The public sector entity should be the first port of call.
- In certain cases, it would not be possible to provide assurance that the terms and conditions of the agreement are being complied with, unless the underlying records that are in the exclusive custody of the private sector organization are examined
- In all cases, the materiality and the risk perception need to be given due consideration.

### *Scope of examination of private sector records*

The scope and the extent of examination of private sector records needs to be clearly understood and mentioned in the justification proposal to the controlling DAI/ADAI. Following factors are crucial for determination of the scope of examination:

- The access to private sector audit records and the audit of such records should be limited to compliance audit to ensure that the terms and conditions of the agreement/ contract in question have been complied with. A financial audit or the performance audit of the private sector organization is not to be undertaken.
- In case performance audits of public sector audited entities, there may be a need to access the records of private sector partners. However, even in such cases, the audit of private sector records would be restricted to checking of compliance with the agreed terms and conditions of the agreement/ contract.
- Only those underlying records are to be examined which are essential to provide assurance for the above; request for access to be restricted to such documents only.
- The scope should clearly indicate the time period to be covered and the records to be accessed; audit should not be open ended.

### *Mode of interaction with private sector*

A communication protocol is required while auditing records of private sector organizations. Important components of the communication protocol are:

- Private sector should be approached, initially through administrative department /public sector audited entity. Scope and methodology of audit should be explained up front to the private sector entity, clarifying doubts, if any.

- Liaison officers from administrative department/public sector entity, private partner and the field audit office should be appointed for effective coordination. A regular communication channel would help in audit management.
- Concerned administrative department /public sector entity to be kept informed of all-important developments during the course of audit.
- All possible constraints in conduct of the audit should be identified and mitigating strategies should be planned.

*Composition of audit parties and Capacity Building*

Prima-facie, domain knowledge is not a constraint. We have cadres having specialized knowledge in sectors such as Railways, P&T, Defence and the staff is well versed with intricacies of functioning of these sectors. Even in other sectors like oil, road, and electricity, domain knowledge is available. However, it is important to keep abreast of latest developments in these sectors. Specific attention may be paid on the following issues for proper conduct of audit:

- The audit teams deputed for carrying out such audits should possess necessary professional competence to conduct these audits, as a group. This would include knowledge of the domain of the audited entity, sound knowledge of auditing techniques, as well as analytical, writing and communication skills. The considerations for selection of a particular audit team should be placed on record.
- In specialised areas, external experts can be used to complement the knowledge of the audit team. Auditors should evaluate whether and in what areas external expertise is required, and make the necessary arrangements. The procurement of the services of the expert or using their work will be as per the general guidelines approved by the C&AG office from time to time.
- Effective supervision of the implementation of such audits will ensure that the audit is performed as planned. The audit teams should be guided by the concerned group officers on a regular basis.
- Besides, the field audit offices should also give emphasis on specific capacity development with regard to audit of agreements in the particular and sophisticated IT systems – ERPs, etc. Specific requirements for specialized training may be sent to controlling DAI / ADAI, if necessary.

**Art. 270**

- **Taxes levied and distributed between the Union and the States.**—(1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles <sup>3</sup>[268, 269 and 269A], respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2).

4 (1A) The tax collected by the Union under clause (1) of article 246A shall also be distributed between the Union and the States in the manner provided in clause (2).

---

1. by the Constitution (One Hundred and First Amendment) Act, 2016 s. 8, (w.e.f. 16-9-2016).

2. by s. 9, *ibid* (w.e.f. 16-9-2016).

3. The words and figures in 268 and 269 substituted as –268, 268A and 269| by the Constitution (Eighty-eighth Amendment) Act, 2003, s. 3 (not enforced) and further substituted by the Constitution (One Hundred and First Amendment) Act, 2016, s. 10 (w.e.f. 16-9-2016).

4. Ins. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 10(ii) (w.e.f. 16-9-2016).

(1B) The tax levied and collected by the Union under clause (2) of article 246A and article 269A, which has been used for payment of the tax levied by the Union under clause (1) of article 246A,

and the amount apportioned

to the Union under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).]

(2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States

within which that tax or duty is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed in the manner provided in clause (3).

(3) In this article, –prescribed| means,—

(i) until a Finance Commission has been constituted, prescribed by the President by order, and

(ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.

## **Art. 205**

### **Article 205 of Constitution of India – Supplementary, additional or excess grants**

(A) The Governor shall

(i) if the amount authorised by any law made in accordance with the provisions of article 204 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(ii) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or

cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be

(B) The provisions of articles 202, 203 and 204 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or grant.

## **73rd Amendment Constitution of India**

### **THE CONSTITUTION OF INDIA**

**"PART IX \* THE PANCHAYATS 243. Definition** -In this Part, unless the context otherwise requires: -

1. "district" means a district in a State;
2. "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;
3. "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;
4. "Panchayat" means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas;
5. "Panchayat area" means the territorial area of a Panchayat;
6. "population" means the population as ascertained at the last preceding census of which the relevant figures have been published;
7. "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.

**243-A. Grama 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.

**243-B. 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.

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

**243-C. Composition of Panchayats** -(1) Subject to the provisions of this Part, the Legislature of a State may, by law, making provisions with respect to the composition of Panchayats:

*\* Inserted vide Constitution 73rd Amendment Act, 1992 and came into force on 22.04.1993.* 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 ratio 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 -

1. a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

2. 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.

243-D. 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 are a bear 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 Chairpersons 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, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and 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.

**243-E. 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 the 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).

## **The Constitution (74th Amendment) Act, 1992**

The Constitution (Seventy-fourth Amendment) Act, 1992

Statement of Objects and Reasons appended to the Constitution (Seventy-third Amendment) Bill, 1991 which was enacted as the Constitution (Seventy-fourth Amendment) Act, 1992

STATEMENT OF OBJECTS AND REASONS

In many States local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersession and inadequate devolution of powers and functions. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government.

2. Having regard to these inadequacies, it is considered necessary that provisions relating to Urban Local Bodies are incorporated in the Constitution particularly for-

(i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to-

(a) the functions and taxation powers; and

(b) arrangements for revenue sharing;

(ii) Ensuring regular conduct of elections;

(iii) ensuring timely elections in the case of supersession; and

(iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.

3. Accordingly, it is proposed to add a new part relating to the Urban Local Bodies in the Constitution to provide for-

(a) constitution of three types of Municipalities:

(i) Nagar Panchayats for areas in transition from a rural area to urban area;

(ii) Municipal Councils for smaller urban areas;

(iii) Municipal Corporations for larger urban areas.

The broad criteria for specifying the said areas is being provided in the proposed article 243-0;

(b) composition of Municipalities, which will be decided by the Legislature of a State, having the following features:

(i) persons to be chosen by direct election;

(ii) representation of Chairpersons of Committees, if any, at ward or other levels in the Municipalities;

(iii) representation of persons having special knowledge or experience of Municipal Administration in Municipalities (without voting rights);

(c) election of Chairpersons of a Municipality in the manner specified in the State law;

(d) constitution of Committees at ward level or other level or levels within the territorial area of a Municipality as may be provided in the State law;

(e) reservation of seats in every Municipality-

(i) for Scheduled Castes and Scheduled Tribes in proportion to their population of which not less than one-third shall be for women;

(ii) for women which shall not less than one-third of the total number of seats;

(iii) in favour of backward class of citizens if so provided by the Legislature of the State;

(iv) for Scheduled Castes, Scheduled Tribes and women in the office of Chairpersons as may be specified in the State law;

(f) fixed tenure of 5 years for the Municipality and re-election within six months of end of tenure. If a Municipality is dissolved before expiration of its duration, elections to be held within a period of six months of its dissolution;

(g) devolution by the State Legislature of powers and responsibilities upon the Municipalities with respect to preparation of plans for economic development and social justice, and for the implementation of development schemes as may be required to enable them to function as institutions of self-government;

(h) levy of taxes and duties by Municipalities, assigning of such taxes and duties to Municipalities by State Governments and for making grants-in-aid by the State to the Municipalities as may be provided in the State law;

(i) a Finance Commission to review the finances of the Municipalities and to recommend principles for-

(1) determining the taxes which may be assigned to the Municipalities;

(2) Sharing of taxes between the State and Municipalities;

(3) grants-in-aid to the Municipalities from the Consolidated Fund of the State;

(j) audit of accounts of the Municipal Corporations by the Comptroller and Auditor-General of India and laying of reports before the Legislature of the State and the Municipal Corporation concerned;

(k) making of law by a State Legislature with respect to elections to the Municipalities to be conducted under the superintendence, direction and control of the chief electoral officer of the State;

(l) application of the provisions of the Bill to any Union territory or part thereof with such modifications as may be specified by the President;

(m) exempting Scheduled areas referred to in clause (1), and tribal areas referred to in clause (2), of article 244, from the application of the provisions of the Bill. Extension of provisions of the Bill to such areas may be done by Parliament by law;

(n) disqualifications for membership of a Municipality;

(o) bar of jurisdiction of Courts in matters relating to elections to the Municipalities.

4. The Bill seeks to achieve the aforesaid objectives.

NEW DELHI; SHEILA KAUL.

The 11th September, 1991.

THE CONSTITUTION (SEVENTY-FOURTH AMENDMENT) ACT, 1992

[20th April, 1993.]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Forty-third Year of the Republic of India as follows:-

1. Short title and commencement.-(1) This Act may be called the Constitution (Seventy-fourth Amendment) Act, 1992.

(2) It shall come into force on such date\_681 as the Central Government may, by notification in the Official Gazette, appoint.

2. Insertion of new Part IXA.-After Part IX of the Constitution, the following Part shall be inserted, namely:-

`PART IXA

THE MUNICIPALITIES

243P. Definitions.-In this Part, unless the context otherwise requires,-

(a) "Committee" means a Committee constituted under article 243S;

(b) "district" means a district in a State;

(c) "Metropolitan area" means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;

(d) "Municipal area" means the territorial area of a Municipality as is notified by the Governor;

(e) "Municipality" means an institution of self-government constituted under article 243Q;

(f) "Panchayat" means a Panchayat constituted under article 243B;

(g) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

243Q. Constitution of Municipalities.-(1) There shall be constituted in every State,-

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

243R. Composition of Municipalities.- (1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide-

(a) for the representation in a Municipality of-

(i) persons having special knowledge or experience in Municipal administration;

(ii) 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 the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality.

243S. Constitution and composition of Wards Committees, etc.- (1) There shall be constituted Wards Committees, consisting of one or more wards, within the territorial area of a Municipality having a population of three lakhs or more.

(2) The Legislature of a State may, by law, make provision with respect to-

(a) the composition and the territorial area of a Wards Committee;

(b) the manner in which the seats in a Wards Committee shall be filled.

(3) A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.

(4) Where a Wards Committee consists of-

(a) one ward, the member representing that ward in the Municipality; or

(b) two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee, shall be the Chairperson of that Committee.

(5) Nothing in this article shall be deemed to prevent the Legislature of a State from making any provision for the constitution of Committees in addition to the Wards Committees.

243T. Reservation of seats.- (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality 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 Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(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 Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

(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 Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

243U. Duration of Municipalities, etc.- (1) Every Municipality, 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:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality 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 Municipality 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 Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

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

243V. Disqualifications for membership.-(1) A person shall be disqualified for being chosen as, and for being, a member of a Municipality-

(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 Municipality 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.

243W. Powers, authority and responsibilities of Municipalities, etc.- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a) the Municipalities 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 Municipalities, subject to such conditions as may be specified therein, with respect to-

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

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

243X. Power to impose taxes by, and Funds of, the Municipalities.-The Legislature of a State may, by law,-

(a) authorise a Municipality 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 Municipality 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 Municipalities 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 Municipalities and also for the withdrawal of such moneys therefrom.

as may be specified in the law.

243Y. Finance Commission.-(1) The Finance Commission constituted under article 243-I shall also review the financial position of the Municipalities and make recommendations to the Governor as to-

(a) the principles which should govern-



(i) the distribution between the State and the Municipalities 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 Municipalities 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 Municipalities;

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

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

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

(2) 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.

243Z. Audit of accounts of Municipalities.-The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

243ZA. Elections to the Municipalities.-(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.

(2) 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 Municipalities.

243ZB. 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 references 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.

243ZC. 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 be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal.

(3) Notwithstanding anything in this Constitution, 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.

243ZD. Committee for district planning.-(1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

(2) The Legislature of a State may, by law, make provision with respect to-

(a) the composition of the District Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district;

(c) the functions relating to district planning which may be assigned to such Committees;

(d) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every District Planning Committee shall, in preparing the draft development plan,-

(a) have regard to-

(i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(ii) the extent and type of available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

(4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZE. Committee for Metropolitan planning.-(I) There shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.

(2) The Legislature of a State may, by law, make provision with respect to-

(a) the composition of the Metropolitan Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than two-thirds of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area;

(c) the representation in such Committees of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;

(d) the functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees;

(e) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every Metropolitan Planning Committee shall, in preparing the draft development plan,-

(a) have regard to-

(i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;

(ii) matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(iii) the overall objectives and priorities set by the Government of India and the Government of the State;

(iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

(4) The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZF. Continuance of existing laws and Municipalities.- Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of THE CONSTITUTION (Seventy-fourth 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 Municipalities 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.

243ZG. 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 243ZA shall not be called in question in any court;

(b) no election to any Municipality 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.!

3. Amendment of article 280.- In clause (3) of article 280 of the Constitution, sub-clause (c) shall be relettered as sub-clause (d) and before sub-clause (d) as so relettered, the following sub-clause shall be inserted, namely:-

"(c) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;"

4. Addition of Twelfth Schedule.-After the Eleventh Schedule to the Constitution, the following Schedule shall be added, namely:-

"TWELFTH SCHEDULE

(Article 243W)

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries."