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DECENTRALISATION: PANCHAYATI RAJ INSTITUTIONS AND HUMAN RIGHTS IN INDIA

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INTRODUCTION

1. India had, from ancient times, developed a number of systems of community-based management of local affairs. In most of the country these institutions were known as *panchayats*, which means, literally, a council of five persons. Their functions bordered on local governance akin to what was developed in other countries during their agrarian phases like the Russian *Mir*, German *Mark* and the medieval *Manor* of England. However in most parts of India, the panchayat system was based on the age-old caste system², social status and family. During British rule in India, in the latter part of 19th century the local self-government concept was introduced first in the town areas and later in the villages³. Since then, it took more than hundred years for the local self-government bodies to become part of the Indian Constitution. These bodies are termed panchayats⁴, but are now democratic institutions with new content. With the coming into being

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² The Indian Caste system broadly divides the society hierarchically into two categories: *varna* and *jati* on the criteria of purity and pollution. Under the varna system there are Brahmins (priestly class and teachers), Kshatriyas (warriors and rulers), Vaishyas (traders and merchants), Shudras (peasants and artisans) and *Atisudras/Antyajas* (outsiders therefore untouchables). The main characteristics are; there is a single all-India hierarchy without any variations between one region and another; there are only four *varnas*, or, if the “untouchables”, who are literally “beyond the pale” of caste, are included, five; and the hierarchy is clear and immutable. There are hundreds of *jatils* or endogamous groups in each of the linguistic areas of India. See M N Srinivas, *Social Change in Modern India*; Orient Longman, New Delhi, 1972, # pp 2-6.

³ Around the trading centres the British rulers constituted municipal corporations as early as 1687 (Madras) and in 1870 Lord Mayo got a resolution passed by his council for decentralization of power to bring administrative efficiency. During Lord Ripon’s Viceroyship in 1882, the Government resolution providing for local boards with elected representatives was the watershed.

⁴ On 22-23 December 1992, the Parliament of India passed two Constitution Amendments (73 and 74) and on 24 April 1993 they were incorporated as Part IX for the Panchayats and Part IX A for Municipalities. In December 1996 the Parliament extended the 73rd Amendment to the Schedule V Areas where tribal populations predominate. Gram Panchayats constitute the lowest level in the three-tier local government system. The Panchayat at the village level covers about 2000 - 5000 population in north India and in southern states 10, 000 – 15,000.

of the new generation of panchayats from the early 90's it is widely believed that tremendous possibilities have been opened up in the areas of decentralization, development, social justice, people's participation and grassroots democracy. How does the new phase of decentralization affect positively or otherwise the human rights situation in India?

2. Human Rights cover a broad spectrum of ideas and concepts, which are predominantly rooted in western political thought. There are numerous charters and agreements that have been signed by nations to protect the rights of the citizens of their respective countries. According to the Universal Declaration of Human Rights, human rights constitute both civil and political rights (Articles 1 to 21) and economic, social and cultural rights (Article 22 to 28). In fact, the Universal Declaration reflected the immediate post-war consensus about human rights based on what President Roosevelt described as four freedoms – including the freedom from want – which he wanted to be incorporated in an International Bill of Rights. There was also a consensus in Vienna at the Second United Nations World Conference on Human Rights in 1993, where the “right to development” was recognized as a universal and inalienable right and an integral part of fundamental human rights.⁵ But these did not have any significant impact on the character of the Indian state for some time.
3. In India human rights have to be studied at three levels: first, state violations of human rights; second, socio-economic factors which work against the rights of the people; and third, denial of the right to livelihood and decent living conditions leading to indignity and lack of self-respect for a majority of the people. In more than one sense the strengthening of the village councils in India has contributed in one way or the other to all the above three levels of human rights. Therefore an attempt is made in this paper to analyze all these aspects with the available data and also eliciting views of human rights activists and experts in decentralization and panchayat studies. Although an all-India perspective is taken for this paper, it may be mentioned here that availability of data from all the states is not uniform.

SIGNIFICANCE OF THE 1992 CONSTITUTION AMENDMENT

4. Although the Indian independence movement, under the leadership of Mahatma Gandhi, had villages and their self-governing system at the center, when the Constitution of Independent India was written they did not get a place in its main body; only a reference in the Directive Principles of State Policy.⁶ Therefore the states did not take both the urban and rural local bodies seriously. The Indian state was functioning as a federation only at two levels -- Union and the States.⁷ Administrative units below the district (today India has 594 districts) were not considered a federal tier. Over the years it was felt that without taking the local communities seriously and devolving powers to them, neither the development of the people nor their governance was possible. As a result of campaigns by civil society organizations, intellectuals and progressive political leaders, the Parliament passed on 22 and 23 December 1992 two amendments to the Constitution -- 73rd Constitution Amendment for rural local bodies (panchayats) and 74th Constitution Amendment for urban local bodies (municipalities) making them “institutions of

The next level is the intermediate (block/tehsil/mandal) Panchayat, constituted at the sub-district level, corresponding to between 40 and 45 gram panchayats on an average. The highest level is district or Zilla Panchayat.

⁵ Arjun Sengupta, Right to Development as a Human Right, *Economic and Political Weekly*, July 7, 2001, p.2527.

⁶ The Directive Principles of State Policy are not justiciable. Article 40 of the Indian Constitution says, “The State should take steps to organize village panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self-government.” No State government took Article 40 seriously.

⁷ The Constitution of India says that India is a Union of States. The Constitution adopted by the Constituent Assembly on 26 November 1949 envisaged a strong Centre.

self-government”⁸ Within a year all the states passed their own acts in conformity to the amended constitutional provisions.

5. As a result of these constitutional steps taken by the Union and State governments, India has moved towards what has been described as ‘ multi-level federalism’, and more significantly, it has widened the democratic base of the Indian polity. Before the Amendments, the Indian democratic structure through elected representatives was restricted to the two Houses of Parliament, 25 State Assemblies⁹ and two assemblies of Union Territories (Delhi and Pondicherry). And they had just 4,963 elected members.
6. Now there are nearly 600 district panchayats, about 6000 block panchayats at the intermediate level and 250,000 gram panchayats in rural India where 72.2 per cent of India's population lives. Urban India, with 27.8 per cent population, has 96 city corporations, 1700 town municipalities and 1900 nagar panchayats. Today, every five years, about 3.4 million representatives are elected by the people through the democratic process, out of whom one million are women. Women head about 175 district panchayats, more than 2000 block panchayats and about 85,000 gram panchayats. Likewise, more than 30 city corporations and about 600 town municipalities have women chairpersons. A large number of excluded groups and communities are now included in these decision-making bodies. As the Indian population has 14.3 per cent Scheduled Castes (SC) and 8 per cent Scheduled Tribes (ST), about 6,60,000 elected members, i.e., 22.5 per cent of the total membership in the rural and urban local bodies will be from Scheduled Castes and Tribes.

SALIENT FEATURES OF THE NEW LOCAL GOVERNMENT

7. In order to give the local government institutions the necessary status and dignity certain basic and essential features were enshrined in the Constitution. They pertain mainly to regular elections, representation of weaker and hitherto excluded sections like Scheduled Castes, Scheduled Tribes, women, devolution of powers and financial resources aimed at imparting certainty, continuity and strength to them.¹⁰ The main features are: provision for a Gram Sabha (village assembly) for each village or a group of villages comprising all the adult members registered as voters; not less than one-third of the total number of seats and posts of chairpersons reserved for women; reservation of seats and offices of the chairpersons for Scheduled Castes (SCs) and Scheduled Tribes (STs) in proportion to their population (in this one-third should be women); liberty to the state legislatures to provide reservation of seats and offices of chairpersons in favour of backward classes; specific responsibilities to prepare plans for economic development and social justice in respect of the subjects listed in the Eleventh Schedule¹¹; constitution of state finance commissions and elections commissions to ensure financial devolution and elections respectively. The term of the panchayats is five years.

⁸ Article 243 says, ‘Panchayat’ means an institution of self-government. And 243 G entrusts the State legislatures to “endow the panchayats with such powers and authority as may be necessary to enable them to function as institutions of Self-Government. It also says that “ such law may contain provisions for the devolution of powers and responsibilities upon panchayats” for preparation of plans and their implementation for economic development and social justice.

⁹ In October 2000 three new states were created making it a total of 28 states today. The new states are Jharkhand, Uttaranchal and Chattisgarh.

¹⁰ See Article 243 A to 243 O and Article 243 P to 243 ZF in Part IX and Part IX A of the Indian Constitution respectively.

¹¹ There are 29 subjects in the Eleventh Schedule applicable for the Panchayats and 18 subjects in the Twelfth Schedule for the Municipalities. They include subjects ranging from education, agriculture, drinking water, rural housing, health and sanitation to poverty alleviation programs, family welfare, small-scale industries etc.

THE ARGUMENT

8. After the new generation of panchayats have started functioning several issues have come to the fore, which have a bearing on human rights. The important factor which has contributed to the human rights situation vis –a-vis the panchayat system is the nature of Indian society which of course determines the nature of the state. The Indian society is known for its inequality, social hierarchy and the rich and poor divide. The social hierarchy is the result of the caste system, which is unique to India. Therefore caste and class are the two factors, which deserve attention in this context. At another level it is essential to look into the question: who are the victims of the social system and nature of the state? They are women, the former untouchables (who now call themselves *Dalits*, which means ‘oppressed’), tribal people and the poor. How can the process of decentralization through strengthening the democratically elected local bodies tackle these human rights issues? Does the decentralization process and the decentralized institutions increase human rights violations or enhance the possibility for respecting and observing human rights? This paper investigates first the social factors- the caste and class - then those who are at the receiving end and finally the response of the state. The paper concludes with an analysis of the present human rights situation in the context of decentralization raising some questions as to what it holds for the future.

CASTE

9. Caste in India is a social phenomenon that is extraordinarily difficult to define because of the diversity of its nature. In the villages the caste system is deep rooted and life is widely affected by it, as caste is “rooted in the religious order and may be thought of as a hierarchy of hereditary, endogamous, occupational groups with positions fixed and mobility barred by ritual distance between each caste”.¹² For this paper we take the approach of two scholars, F G Bailey and Louis Dumont on the caste system. In Bailey’s view caste is a rigid and extreme form of social stratification. He defines caste as an exclusive, exhaustive and ranked group system, which are closed, and relations, which are organized by the summation of roles; cooperate and do not compete. Bailey looks at caste without attaching any ideological strings to it and sees no necessary connection with Hinduism or with ideas directly derived from Hinduism. On the other hand Dumont considers caste to be integrally connected with Hinduism and which is inconceivable apart from the Hindu context that provides the basic ideological base to its understanding. For Dumont, caste is a stable and powerful social system presenting a value system, which is based on hierarchy and religiously sanctioned concepts of purity and pollution.¹³ For the present analysis we are taking a combination of the above two views on caste.
10. How does caste affect human rights? The human rights activist and scholar R M Pal observes that the caste system has created impregnable walls between groups of human beings where birth solely determines the social position in society.¹⁴ This social position is whereby one is born into a certain caste because of his/her doings in the previous life. In his view, the caste system is one of the worst forms of societal violations of human rights in India even today. Pal argues that the *Manusmriti* or the ‘Laws of Manu’¹⁵ from where the caste system takes its roots, is the most deprecating aspect of Indian tradition. It advocates that the position of women in society can never be independent of men. More so, the caste system denies basic education to the lower caste and women. This ancient tradition has been passed on down the ages and it has a significant impact on the life of the rural people even today. People belonging to the lower castes are forced to live separately, away from the upper castes, mostly in the outskirts of villages. They

¹² Duncanted G. Mitchell, 1979, *A New Dictionary of Sociology*, London and Henley: Routledge & Kegan Paul.

¹³ See Duncan B Forrester, 1980 *Caste and Christianity* London, Curzon Press, .pp 1-4

¹⁴ RM Pal, The Caste System and Human Rights Violations, *PUCL Bulletin*, XII, 10:2-4, 1992.

¹⁵ Manu according to ancient legacy is known as a lawgiver, lived 3000 years ago.

are often denied the right to vote and they are also forced to work without any remuneration and treated as bonded labourers.¹⁶ Therefore what one sees is the age-old caste system which is still being practiced in its most humiliating form on the one hand and the Indian Constitution which provides equality before the law based on democratic principles on the other. Ramendra, a human rights activist and scholar is of the view that the reality lies somewhere between the above two extremes and reiterates that the caste system is a major source of human rights violation in the society.¹⁷

11. There has been a sharp increase in violent manifestations of casteism in local communities ever since the local government system got strengthened through the Constitution amendments. When the panchayati raj institutions have been seen by the upper castes as the tool for the lower castes to assert their right as individuals living in a democratic polity the latter have become targets of caste based discrimination and violence. This rising unrest at the local level has become a common phenomenon.
12. It is evident that the upper castes that have been controlling the affairs of the village and the community and the rural economy cannot tolerate the changes that are being brought about by the decentralized democratic institutions. Therefore, from the beginning of the implementation of the panchayat system, tensions, violence and killings have taken place in order to resist the transformation.
13. The elections to the local government bodies have been the first and foremost point of attack by the casteist groups. From the very first election under the new system, the rights of the lower castes to participate in the democratic process and hold positions were questioned by the upper castes. The classic case is that of a village in Madurai district of Tamil Nadu, a southern state in India. In Melavalavu, the dominant castes of the area murdered the panchayat president and the vice-president who both belonged to a lower caste, merely because they dared to fight the panchayat elections. When Melavalavu was declared a panchayat reserved for the lower castes in the October 1996 local body elections, the dominant castes resented this and the polls could not be held. The second attempt to hold elections was also foiled by violence and booth capturing. Finally, when the elections were held on December 30, 1996, the upper castes boycotted it. Members of the lower caste were elected as president and vice-president amongst others despite stiff resistance from the upper castes, but they were never permitted by the dominant caste to enter the new panchayat office. Finally on June 30, 1997, the president and vice-president along with three others were murdered in broad daylight; their only crime was that they had been elected through the democratic process.¹⁸
14. These kinds of violations continue unabated even today. In the recent local body election in the same state the upper castes are still suppressing the rights of the lower castes to exercise their franchise.¹⁹ Similar incidents have occurred in most of the states. The northern states, which are prone to more caste conflicts, are witnessing human rights violations after the introduction of the new phase of panchayats. There are a number of instances indicating the presence of powerful caste elites that continue to thwart attempts for a constitutional resolution of social justice issues at the village level.²⁰ The frequent reports on the killings of low caste men, women and children are not only restricted to backward states, where the process of decentralization of power to the

¹⁶ The institution of a *begar* (a labourer from the lower castes, being forced to work without any remuneration) is sanctioned by the *Manusmriti*.

¹⁷ Ramendra, 'Human Rights and Caste system, *PUCL Bulletin*, January 1993, pp.8-10.

¹⁸ George Mathew, 'The Meaning of Melavalavu', *The Hindu*, 30 September 1997.

¹⁹ *Panchayati Raj Update*, Institute of Social Sciences; Vol.VIII.No.10, October 2001,p.3

²⁰ G.K Lieten and Ravi Srivastava , 'Unequal Partners – Power Relations, Devolution and Development in Uttar Pradesh', New Delhi, Sage Publications, 1999; pp. 105-141

local level has not really taken off. Caste violence is part of the social reality in other states as well except in West Bengal, Tripura and Kerala where political consciousness is high.

15. In the recent panchayat elections in Bihar, over 96 people including a magistrate and several candidates were killed during the polling and more than 40 candidates were murdered in different districts between notification of polling and filing of nominations. Studies have shown that most of these killings were the result of 'caste war'.²¹
16. Even after duly getting elected, the lower castes are not getting the power and status they deserve. They are made to sit outside the panchayat offices, on the floor while the traditional village headmen occupy the chairs. Even when upper caste groups are committing atrocities against the lower castes, the latter do not have a supportive redress mechanism. It may also be mentioned that the police (law and order machinery) is not under the authority of panchayats. The people belonging to the lower castes are being subjected to unabated atrocities particularly through the connivance and collusion of the state administration and the local police. In many instances, cases are not even registered against the perpetrators (who are mainly the upper castes) by the police who are greatly influenced by the upper castes or majority of whom belong to the upper castes.²² Therefore the fact finding report of the collective of concerned writers and intellectuals of Tamil Nadu on the caste riots in Rajapalayam Area of Kamarajar District, 1997 has recommended that at least one third of the officials of various ranks in both revenue and police departments must be from the affected sections.
17. The new era of decentralization is still grappling with caste tensions that exist in its most crude form in the rural areas. Atrocities and human rights violations against the lower castes can be controlled only through a culture of equality of human beings. This can be achieved by human rights education and eradication of illiteracy. The panchayats have a crucial role in this.

THE ECONOMIC FACTOR

18. Poverty is the denial and absence of human dignity.²³ In India nearly 300 million live below the poverty line in appalling conditions of extreme deprivation. Pervasive poverty that is widespread in India is in sharp contrast to the ideals of solidarity, social justice and equity that are embodied in the Indian Constitution. Despite the presence of a number of schemes for the upliftment of the rural poor, there has not been much change in poverty levels, over the years. Recent estimates of rural poverty levels show that 26.1 per cent are below poverty line, out of this 27.1 per cent are in rural areas and 23.6 per cent in urban. Nearly half the rural population is still illiterate (50.56%). The illiteracy among rural women is 60%. The literacy rate among the women belonging to the Scheduled Tribes is 24 per cent as against 45.72 per cent for the all India women's average (2001 Census). On the health front, the situation is far worse. The Infant Mortality rate is 63.19 per thousand live births and under 5 mortality rate is 98 per thousand live births. The underweight children are 53 per cent. Population with access to sanitation is only 31 per cent. More than half of the children between one to five years in rural areas are under-nourished and 60 per cent of the rural households do not have electricity connection.
19. According to Alan G Smith "the laws of choice suffered by the rural poor at the village level, in which uncertainty of attaining even minimal food and health is intertwined with the deprivation

²¹ *Panchayati Raj Update*, Institute of Social Sciences, Vol. VIII, April 2001.

²² Human Rights Watch; Broken People-Caste Violence Against India's "Untouchables"; 1999

²³ *Human Rights and Poverty Eradication – A Talisman for the Commonwealth*; 2001, Commonwealth Human Rights Initiative, New Delhi, p 6.

of significant choice, has not been the subject of an integrated human rights assessment.”²⁴ This is true of India more than any other democratic country although India took a radical step towards the realization of democratic ideals in 1950, along with addressing “the need to promote a wide range of social opportunities”.²⁵ According to Amartya Sen and Jean Dreze, in fact, the “directive principles of state policy”, which supplement hard legislation, go much further than the strict legal provisions. For instance, they urge the state “to secure a social order for the promotion of welfare of the people” as well as to uphold a range of more specific entitlements, from the “right to an adequate means of livelihood” and “free legal aid” to “free and compulsory education for all children” and “the right to work”.²⁶ The local government system was aimed at bridging the widening gap between the constitutional provisions and the economic realities. However, this is not happening the way it should have.

20. In the initial years of the introduction of the new Panchayati raj system, the poor in India have become vulnerable to violence and exploitation. However there are exceptions. In some states like West Bengal, Karnataka, Kerala the issue of poverty has increasingly become a human rights issue and decentralization is seen as an effective tool to address this problem.
21. In the subjects listed under the Eleventh Schedule pertaining to the panchayats, majority of the 29 subjects are related to economic development. For instance, agriculture, land improvement, minor irrigation and water management, dairy, fisheries, social forestry, small-scale industries, rural housing, fuel and fodder, roads, ferries and waterways, rural electrification, poverty alleviation programs and so on.
22. In the Indian context broadly caste is co-terminus with class. The lower castes and the outcastes are the poorest. Since in the lowest rung, the social and economic factors are intertwined in the community life they face multi-pronged attacks on their rights.
23. It has become well known that the programs and development measures handled by the local governments do not reach the poor as the rich and the powerful corner most of it. Corruption in the decentralized institutions has been attracting attention of civil society organizations and the state. Although there is a check and balance system and social audit, the rich corner the benefits and the poor remain where they are. A number of such instances have come to light. Although corruption is prevalent at the higher levels, when it happens at the grassroots level its impact is felt more on the poor and their right to livelihood. Cases of punishing chairpersons of panchayats for mis-appropriation of development funds (Andhra Pradesh), officials for showing huge expenditure under different development schemes in agricultural sector but the targeted beneficiaries never receiving the funds (Assam), suspension of presidents for financial irregularities like spending huge amounts on purchases without proper procedures (Haryana) and massive graft in civic bodies by awarding contract of construction works (Karnataka), are some of the examples reported in 2001.²⁷ Field studies in one of the advanced states-Maharashtra – has shown that huge sums of money allocated for poverty eradication and rural development are pocketed by the officials and the politically powerful.²⁸ Thus the poor remain where they are and in some cases their condition deteriorates becoming more vulnerable to human rights violations.

²⁴ Alan G Smith; *Human Rights And Choice in Poverty – Food Security, Dependency, and Human Rights-Based Development Aid for the Third World Rural Poor*; Praeger Publishers, 1997, pp. vii.

²⁵ Amartya Sen and Jean Dreze, ‘Problems of Indian Democracy’, Unpublished Paper.

²⁶ Ibid.

²⁷ *Panchayati Raj Update*, January-December, 2001.

²⁸ George Mathew, ‘Maharashtra’s Gram Sevak Raj’, *The Hindu*, 13 August 2001.

DALITS

24. In the traditional varna system mentioned above, the fifth category is the untouchable or outcaste. Mahatma Gandhi gave them the name 'Harijans' which means 'Children of God'. But after independence members of the group prefer to call themselves Dalits, meaning oppressed. Constitutionally they have special rights and today they are known as Scheduled Castes.²⁹ In fact after the decentralization through the Constitutional Amendment they were at the receiving end more than anyone else. The father of the Indian Constitution BR Ambedkar, himself a member of an untouchable caste, had stated that the villages were the ruination of India because a village in India is a den of ignorance, communalism and corruption. What he said fifty years ago is still valid in much of India even after the new panchayat system has been introduced. After the elections, reports from states showed that the human rights of the dalits were violated in more than one sense even after strengthening of the local bodies.
25. The democratic process at the village level in many cases has not given the strength and power to the participants of that process, namely the deprived castes. A study conducted after the 1993 elections in Madhya Pradesh on the beating up of a dalit panchayat member by the police at a meeting where the Chief Executive of the district was present revealed that the Chief Executive Officer (CEO) visited the villages after a case was filed on the event with the Human Rights Commission. It was stated that he asked people not to appear as witness in favour of the dalit member. The people were frightened to comment on the issue, as they were afraid of being harassed by the authorities.³⁰
26. The local bodies elections were a nightmarish experience for the dalits. Elections could not be held in four gram panchayats reserved for dalits in some districts of Tamil Nadu – because not a single nomination paper could be filed in the face of threats from upper-caste people in these villages. In many areas, dalit candidates are still living in terror, because they defied the dominant caste of their villages by filing their nomination papers for different party posts. Dalit voters were prevented from voting in many panchayats. A number of houses and colonies were attacked to intimidate them.
27. It should be noted that empowering dalits and marginalized groups through ensuring their participation in the decentralized mechanism was one of the stated objectives of the Central Act. However, the ground reality reflects some negative trends too. It was observed that high caste Hindu groups resorted to various measures to dilute or sabotage the attempts to empower marginalized groups especially dalits. There are instances where high caste groups challenge the reservation for Scheduled Caste/Scheduled Tribes in the court of law, and when this attempt fails they announce a boycott of elections. There are also numerous cases of violence against dalits to prevent them from contesting elections or to influence them to favour interest groups. If these efforts also fail and elections do take place, they look for candidates who can be coaxed to carry out the whims and fancies of the dominant castes. On the other hand if somebody out of favour of the dominant caste manages to get elected, they do not cooperate with the person concerned.³¹
28. Even after coming to positions of power, dalit elected representatives are restricted in effective exercise of their leadership. This is more in the case of women dalit members who have to face double oppression. Instances are not uncommon where the women dalit Sarpanches sit on the floor during the course of the panchayat meetings while the male upper caste members sit on the

²⁹ The President of India is empowered to draw up a list of castes for special provisions for the protection of their interest. They are called Scheduled Caste (SC).

³⁰ George Mathew and Ramesh Nayak; 'Panchayats at Work; What it means for the Oppressed?'; 1996; *Economic and Political Weekly*.

³¹ *Frontline*, October 26, 2001, pp. 34-35

chairs. Problems also arise when the *Gram Sachiv* (Panchayat Secretary) happens to be from the upper caste community. On the positive side it was observed that the presence of a dalit sarpanch or dalit ward member has greatly contributed to the participation of greater numbers of the dalit community in gram sabha meetings. Disillusionment arises when the dalit sarpanches are forced to give priority to activities favouring the upper caste community.

TRIBALS

29. The Scheduled Tribes³² or *Adivasis* (original inhabitants) include around 400 aboriginal communities, mainly inhabiting remote and forested areas of India. They constitute 7.8 per cent of India's population. The 73rd Constitution Amendment's importance was that it aimed at achieving grassroots democracy guaranteeing adequate representation to the marginalized groups like the Scheduled Castes, the Scheduled Tribes and women. However, the 73rd Amendment was not automatically applicable to the Scheduled Areas (geographical area where the *adivasis* are concentrated) because of their unique characteristics and special needs. An amendment act was subsequently enacted in December 1996 titled, 'The Provisions of the Panchayat (Extension to the Scheduled Areas) Act, 1996. The Scheduled Areas and the Tribal Areas are specified in accordance with the provisions in Article 244 and Vth and VIth Schedules of the Indian Constitution.³³ The Extension Act is one of the potent legislative measures of recent times, which recognizes the tribal peoples mode of living, aspirations, their culture and traditions. However, studies to assess the implementation of the Extension Act and to examine as to what extent the 1996 Act was able to establish grassroots democracy in Scheduled Areas in accordance with the ethos of the tribal people reveal that nothing notable has taken place in these areas and that the condition of the tribals remain more or less what it was before.
30. It is a sad commentary on the political will of the state leadership that several states, e.g., Rajasthan did not amend their Acts according to the 1996 amendment act even after the stipulated time. A brief survey of the state acts show that the states have tried to fulfil the constitutional mandate half-heartedly and not in its letter and spirit.³⁴ Some state acts do not deal sufficiently with important provisions of the Extension Act like ownership of minor forest produce, prevention of alienation of land, control over natural resource, etc. This shows widespread apathy on the part of the state government towards the tribal areas and their resistance to give so much power to the tribal institutions. On the other hand violations of tribal rights take place at regular intervals. In December 2001 in the state of Madhya Pradesh, tribals who were relying on fishing for their livelihood in a reservoir as their sole means of subsistence were up in arms against the state government as they feared that steps were being taken to deny them the right to market their produce.³⁵ In Gujarat, more blatant violations have taken place recently when the government denied reservation to tribals just 48 hours before the village council elections were announced.³⁶

³² Just as in the case of lower castes, for tribals also, the President of India is empowered to draw up a list for special provisions to protect their interest. They are Scheduled Tribes (STs)

³³ The criteria generally followed to specify the Scheduled Areas are; preponderance of scheduled tribes, geographical isolation and general backwardness. The ten states that have been prescribed as scheduled areas are; Andhra Pradesh, Bihar, Jharkhand, Gujarat, Himachal Pradesh, Madhya Pradesh, Chhatisgarh, Orissa and Rajasthan. The Tribal Areas specified are in Assam, Meghalaya, Mizoram and Tripura.

³⁴ In the Andhra Pradesh Act some of the mandated provisions envisaged in the Extension Act have not been incorporated. The State Act has endowed the intermediate tier with more powers whereas the Extension Act lays down more vigorous role for the Gram Sabha.

³⁵ *The Hindu*, 14 December 2001

³⁶ The Gujarat government issued a two-part notification amending the Gujarat Panchayat's Act, 1993 dated 23 November 2000 lays down that provisions of sub-clause (a) of sub section 5 of Section 9 of the Panchayat's Act shall not apply to the gram panchayats in the Fifth Schedule areas, where the population of the Scheduled Tribes is less than 25 per cent of the total population of a gram panchayat. The original sub clause provides reservation

31. Scheduled Tribe men and women who get elected to office are not allowed to function in the decentralized institutions of self-government. Just like the Scheduled caste, the tribals also are not treated with dignity by the panchayat bureaucracy. Elected tribal women members face violence and rape if they dare to challenge the authority of the officials or the powerful.
32. A tribal woman sarpanch was stripped naked while unfurling the national flag on 15th August 1998 (Independence day) in a district of Rajasthan. In another case a tribal woman sarpanch in Madhya Pradesh was stripped naked in a gram sabha meeting because she was not consulting the leader of the dominant caste.³⁷ Such violations of human rights are everyday occurrence in the tribal areas of India, in spite of powerful legislations for decentralized governance.

WOMEN

33. When India was under colonial rule it was only the restricted male members who could vote and contest elections while women were totally absent from the political scene. For instance, the Bombay Village Panchayat Act 1920 categorically stipulated that no person could become an elected member who was a female and that the election was to be held in each village by the adult male residents at a meeting presided over by the assistant or Deputy Collector.³⁸ Even after independence the Indian Constitution did not mention or specifically provide reservation for women's representation in the Parliament or state assemblies³⁹. It took nearly forty years for women to find political representation in the formal political institutions. As stated earlier, this was made possible through the 73rd Constitution Amendment Act, which had the landmark provision of reserving not less than one-third of the total number of seats in the local bodies for women. It provided the much-needed opportunity for women to actively participate in the decision-making processes of their locality through the political right that was conferred on them through the central Act. In this new era of panchayati raj, there are now more than one million women elected representatives elected to the three tiers of panchayats who are more representative in character as they are from the same locality.
34. Women's political empowerment in the last nine years through the Constitution Amendments has exploded several myths, like the belief that they are passive and disinterested in political institutions; only the well to do, upper strata women will come through reservation; only the kin of powerful politicians will enter panchayats through political connectivity to keep the seats for them; and lastly and most importantly, women are only proxy – 'namesake' – members and they do not participate in the panchayats. Without discounting the existence in panchayats of some women who do fit into this patriarchally oriented framework, one can say that these myths have now been buried.⁴⁰ Today the buzzword is that women can do it.
35. It is widely recognized that decentralization of power to the local bodies and women's proactive participation on a large scale (in the state of Karnataka women's representation in the local bodies has reached 43 per cent and the time is not too far when women may capture 50 per cent) in the management of the local affairs in the villages has enhanced their status and rights. In

of panchayat seats for the STs and SCs in proportion of their population to the total population of the village. When this notification is given effect to, reservations for the STs in gram panchayats having less than 25 per cent ST population will be curtailed or even scrapped.

³⁷ Reported in *Panchayati Raj Update*

³⁸ Nirmala Buch; "Panchayats and Women", in 'Status of Panchayats in the States and Union Territories of India 2000'; New Delhi, Institute of Social Sciences; 2000; p. 34.

³⁹ It should be noted that the percentage of women in the State Assemblies and Parliament of India is very low. The percentage of women in the Parliament is around 8 per cent however; one cannot also assume that this percentage represents the whole women community.

⁴⁰ Nirmala Buch, op.cit. pp 34-35.

many states there is greater awareness about gender equality and women's rights through the work of women's organizations and especially where human rights initiatives have taken it as a challenge to protect the interests of women in society.

36. It has also been proved that wherever women hold positions in local bodies there is greater efficiency and transparency in the running of public affairs. Ms. Gangamma Jayker, president of a gram panchayat in Malgudi district in the state of Karnataka, is a product of reservations in the panchayati raj system. She belongs to the Scheduled Caste category and had the privilege of completing her primary schooling. She was very keen on promoting education and has been running literacy classes for women in village. On hearing of the Government program for girls' education, she got the details of the scheme, and followed the procedures to get a school opened in her village.⁴¹
37. The State governments and civil society organizations are today recognizing the outstanding women leaders in the panchayats by instituting yearly awards.⁴²
38. However there are serious backlashes too from the male dominated patriarchal Indian society. Elected women have become the victims of exploitation, violence and harassment. There are stories from all over the country of the violations of their rights despite the constitutional provisions. The case of a woman councillor of a city corporation in the state of Tamil Nadu is a case in point. The people of Villapuram had no permanent water supply facility and were totally dependent on water that was brought by the corporation tankers. Moreover, this water was sold to the people for a fee that was levied by the local henchmen. Attempts to provide water pipes from a water source to Villapuram were scuttled as the mafia saw the above arrangement more profitable for them. Leelavathy had campaigned during the elections for the sole mission of bringing drinking water to her constituency. With her unstinted pressure on the local bureaucracy, this was almost a reality. But three days after a trial run, armed men murdered her in broad daylight. Leelavathy came to be known as a symbol of the people's struggle for water.⁴³
39. Initially, women were hesitant to enter this whole new political arena, political parties and vested interest groups took advantage of the situation and proxy rule prevailed. Thus the power remained in the hands of the traditionally powerful groups. A new class of *sarpanch patis* also emerged where the husband of the women sarpanch managed the affairs of the panchayat, while the woman acted only as a rubber stamp. A study in the state of Karnataka has shown that many women elected to the local bodies/panchayats are surrogates for husbands and fathers who could not contest because of reservation. Some were put in place by the wealthy and powerful, for their malleability – a kind of puppet to serve the vested interests while appearing to be an elected representative.⁴⁴
40. A major concern of human rights activists is the prevalence of the two-child norm as a criterion for contesting elections, especially in the states of Haryana, Madhya Pradesh, Rajasthan and Himachal Pradesh, where this rule has come into force. It should be noted here that early child bearing is the norm in rural India, which means that the fertility rate is also high. This restricts many women from coming into the political fray.

⁴¹ Poornima and Vinod Vyasulu; Women in Panchayati Raj: Grassroots Democracy in India? Experience from Malgudi; March 1999.

⁴² Some of the awardees have done excellent work in raising women's economic status, took campaigns against child marriage, child labour, bringing piped water supply, building health centres, strengthening primary schools and self-help groups and so on.

⁴³ Mythily Sivaraman, 'Blow to Goodness', *The Hindu*, May 18, 1997

⁴⁴ Poornima and Vinod Vyasulu, op cit.

41. Even after being given the space in a democratic process, women belonging to traditionally marginalized groups were at the receiving end of further upper caste atrocities. After more than a year of the elections to the panchayats in Madhya Pradesh, there were reports from four districts – Raigarh, Chhatarpur, Raisen and East Nimar – of a lady sarpanch being stripped naked, another lady sarpanch being gang raped, an *upa-sarpanch* (deputy president) being tortured and a dalit panchayat member being beaten up.⁴⁵

THE STATE RESPONSE

42. The nature of a society is reflected in the character of the state. Although the Constitution of India has the ideal of equality and social justice enshrined in it, the ground reality is altogether different. The nature of the ruling party and the coalition also determine policies regarding decentralization and transfer of power to the people at the village level. The experience shows that the constitutional mandate is not implemented in letter and spirit, especially regarding the panchayats and municipalities.
43. The first instance is postponing panchayat elections on one pretext or the other. Several state governments have not taken the provision of the Constitution to hold elections on the expiry of the five-year term of the panchayats seriously. Article 243-B of the Indian Constitution is categorical that there shall be in every State, panchayats at the village, block and district levels and that (i) every Panchayat shall continue for five years from the date appointed for its first meeting and no longer, and (ii) election to constitute a panchayat shall be completed before the expiry of its five year duration or within six months of its dissolution (Article 243 E (1) and (3)). Political parties are keen to capture the panchayats from the village level itself and the ruling party in the states are afraid of facing the people either midway or at the fag end of their term. It must, however, be said that to the credit of India's maturing democracy that every election is unpredictable and the political parties can no longer take the people for granted.
44. In most cases the opposition parties also join hands with the ruling party to postpone elections because of their fear of facing the panchayat electorate. Political leaders belonging to the opposition parties are vocal about giving powers to the local bodies, but it has been observed that once they are in power, they change colour. In some cases they indirectly sponsor writ petitions in the High Courts to obtain injunctions on the holding of elections. This is a very important aspect of the formal institutions of government themselves denying the people the opportunity to elect their representatives.
45. The panchayat elections have been completed in all states except in Jharkhand, Arunachal Pradesh, Punjab and Pondicherry, this too after prolonged battles in the courts and successful interventions by civil society organizations. The problem is that the State Election Commissions in some of the states are succumbing to the pressures of the state governments in this regard. However, there have also been exceptions like the states of Orissa and Andhra Pradesh, where the State Election Commissions have successfully withstood undue pressure and discharged their constitutional obligations.
46. The second instance of the State trying to delimit the powers of the panchayats is the emergence of bodies functioning parallel to Panchayati Raj Institutions. In this aspect both the central and the state governments seem to be competing with each other in creating or promoting parallel bodies. Funds are placed under the disposal of these registered bodies by ministries and departments. The line ministries at the centre and the line departments in the states also undertake many centrally sponsored or state-sponsored schemes ignoring the panchayats.

⁴⁵ George Mathew and Ramesh Nayak, op cit

47. An instance of state government manipulating the democratic process was reflected in the scheme called the *Samras* Gram (harmonious village), by the government of Gujarat, under which incentives up to Rs.1, 00,000 will be given to those gram panchayats whose members are elected unanimously. Another instance was that of auctioning of seats, where the highest bidder gets the seat. Once this is decided, nobody can oppose him by contesting against him. If anyone defies this, he is likely to suffer physical violence or social ostracism. In a village in Madurai district of Tamil Nadu, a candidate secured the post of panchayat president by bidding for Rs 5, 60,000. Bidding started from Rs 10,000 for the post of a ward member. The auction money is usually used at local festivals and on similar occasions.
48. Such attempts by state governments only weaken the local democratic processes or rather they make a mockery of the whole process. On the one hand they provide an opportunity for the dominant classes/communities to take charge of the whole affairs of the village and on the other hand they deny the opportunity for women, dalits, tribals and other marginalized groups to be active participants of the local decision-making processes.
49. The right of the people to participate in the decision-making processes of their locality is legally mandated as per the 73rd Constitution Amendment, through the Gram Sabha (village council). On the one hand Gram Sabha is a forum for people in the locality to discuss their local development needs and problems and be an integral part of the planning process. On the other, it also provides a forum for people to monitor the functioning of their representatives, whom they elected to the panchayats, thus ensuring accountability and transparency in panchayat affairs. A major lacuna is that the 73rd Constitution Amendment while providing for the constitution of Gram Sabhas, fails to detail out the powers and functions of Gram Sabha. This has been left to the respective state governments. This provision has not really empowered the Gram Sabhas, so as to make them significant and efficient. Policies crafted on a foundation of human rights give primacy to participation and empowerment of the poor.

HUMAN RIGHTS, PANCHAYAT INSTITUTIONS INTERFACE – AN ANALYSIS

50. The decentralization process that has gathered momentum in India in the last one decade or so has deep implications for human rights situation in India. This is particularly so for the villages in rural India. The democratic process has brought people closer in the villages, and they could now take part in the local election every five years and assert their right to vote. The elections in India are a big education process. The rights of the excluded people had been violated over the years owing to lack of democratic system of governance at the community level where they could participate effectively. The system of local self-government as manifested in the panchayati raj institutions has taken a leap forward in guaranteeing a life of dignity and respect to the citizen at the local village level. Ideals of social justice based on gender equality and liberty are best pursued at the local level.
51. In a formal sense, all the States have conformed to the constitutional requirement of ensuring the participation in the PRIs to the hitherto excluded groups (women, dalits and adivasis) through the system of reservation. The problems of the poor have been sought to be addressed by transferring some of the poverty alleviation and development programs to the panchayats due to the constitutional obligation. By and large women have found representation in the panchayats through the one-third reservations of seats. The dalits and adivasis have been represented to the extent of their share in the population.
52. Evidently, formal representation need not necessarily be an indication of participation. Since the new phase of decentralization, there is evidence that some of the worst forms of exclusion that plagued the rural society in India are no longer practiced in a number of states. Elected members

sit together and discuss issues in formal and informal meetings. A symbolic participation of all in the village, including the dalits and adivasis and women does take place at least as a constitutional requirement. This is due to the slow but sure changes in the larger political landscape in India.

53. Social transformation through a democratic process is not peaceful in India. Therefore on the other side after India has taken bold steps to strengthen decentralization and local governance system the human rights violations at all levels have gone up. The main reason is that all those who were enjoying the powers and privileges so far are trying to subvert the constitutional mandate overtly or covertly.
54. This has to be seen from another angle too. In a traditional society any change that has structural implications involves conflict. The conflict of interests is so powerful that it leads to violence, bloodshed and loss of life. Ever since India got independence this has been happening but it did not take on a prolonged bloody character because of the developing democratic system in the country.
55. Since 1993, in the new generation of panchayats, at least two rounds of elections have been held except in a couple of states. It is ironical that elections in India become an occasion for serious human rights violations. During the election period, the rich try to dominate the poor by buying their votes or keeping the poor as 'vote banks'. In many cases the upper castes stop the lower castes from exercising their democratic rights if they come to know that the poor and disadvantaged will exercise their votes independently. In the process violent incidents take place many losing their lives. Although it happens even during elections to the states and parliament the violence is more in the local elections as the polling percentage is higher at this level.
56. Violence has increased at the village levels as political power is the most important variable that exists at the local level and everyone wants to wield it. Therefore, tensions that have existed earlier mount when those who aspire for power come up against those who resist giving it up. Muscle, money and caste power are worse at the local level during elections. An analysis of this violence shows that whenever political consciousness is low and development is relatively backward the people in those areas are more prone to violence.
57. It may be stated here that there are no consistent and systematic attempts with a political will to combat casteism. The implementation of the legal provisions has been minimal and utterly insufficient and often the violations go unpunished. The members of the Indian Parliament belonging to the Scheduled Castes publicly acknowledged the Government of India's unwillingness to enforce legal sanctions against casteism and the continued abuse of lower caste people. They said, "It is a shameful tragedy and irony of fate for the hapless Indian belonging to the Scheduled Castes and Scheduled Tribes that inhuman and barbaric treatment is meted out to them by their own countrymen. Sometimes their women are paraded naked in streets and their children butchered like animals, their hearths and homes are burnt at whim destroying their meager source of livelihood. The State and its machinery play at best, a helpless mute witness or indifferent analyst or still worse active collaborator."⁴⁶
58. State Scheduled Caste/Scheduled Tribes Commissions have been set up following the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989, but the victims are afraid to report caste atrocities for fear of retribution, despite the protection and monetary compensation that the Commissions promise.

⁴⁶ South Asia Human Rights Documentation Centre (SAHRDC); Racial Discrimination: The Record of India, September 2001, pp. 36-37.

59. Panchayats have, all the same, opened possibilities for bringing to surface most of the things previously swept under the carpet.⁴⁷ No more it is hidden or secret. Although gram sabha and gram panchayat are hotbeds of manipulative politics, they provide a democratic forum to grapple with social and political issues in the open. Such a forum is now available, for the first time, with the Constitutional backing.
60. Here the role of political parties is crucial. The earlier concept of consensus (in effect, consent to whatever the powerful was saying or doing) is giving way to people aligning on party lines to call into question every action that is less than transparent. If one political party becomes protector of the oppressed for whatever reason, another party becomes the guardian of the oppressor. In the local situation, state politics or national level ideology is of little consequence. As of now, open participation of political parties in the panchayat elections is the best way to challenge the age-old autocracy of caste or family.
61. The mass media, communication technology and spatial mobility have broken the isolation of villages. Incidents even in remote village panchayats are thrown up promptly at the state and national level. The new panchayat system, with all its current weaknesses, has helped to weave the village into the broader social fabric.
62. The silver lining on the otherwise dark horizon is positive intervention of judiciary upholding the human rights of the downtrodden at the local level. Although, Indian judiciary is notoriously slow, the public interest litigation has been a successful tool to give meaning and content to the local bodies legislations. There was an instance where a woman belonging to a dalit community who was elected as the head of the panchayat had to face retribution by the defeated candidates belonging to the upper caste. The First Information Report (FIR) lodged with the police station by the dalit woman president stated that the miscreants looted her house and abused her using derogatory language. A case was filed in the court. The high court refused to quash the FIR and observed that “ the caste system in India, based on the feudal occupational division of Labor in the past, is today totally outmoded and is a great hindrance to the nations progress...no doubt, the word *chamar* is a word denoting a certain caste, but the said word is also used in a derogatory sense for persons who are regarded as inferior by the so-called upper caste, and, therefore, it should not be used by the members of the so called upper castes or OBCs [other backward castes] as it hurts the feelings of the Dalits.”⁴⁸
63. Several elections more to the local bodies are a necessary condition to create a culture of genuine democracy and political participation. There is no doubt that the local governments based on vibrant democracy at the local government level with the support of civil society organization will protect the human rights of the people at all levels. But in a traditional society like India this will take time through the democratic process.

⁴⁷ For details see George Mathew and Ramesh Nayak; op.cit.

⁴⁸ *Panchayati Raj Update*, February 2001.

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