

# LEGAL FRAMEWORK FOR CITIZEN PARTICIPATION IN LOCAL GOVERNMENTS IN SOUTH ASIAN REGION SYNTHESIS REPORT

June 2004

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Learning Initiative on Citizen Participation  
and Local Governance  
[www.ids.ac.uk/logolink/](http://www.ids.ac.uk/logolink/)



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\* *with input from* Mukti Rijal, Zarina Khan, Balraj Chauhan, G.K. Reddy, S.L. Asati and G. Umashankar

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## PREFACE

This report is a part of a global research initiative undertaken by the Institute of Development Studies, the Ford Foundation and the regional partners (in East Africa, Latin America, South East Asia, Northern Countries and the South Asia) through the LOGO Link programme. LOGO link is a global network of practitioners from Civil Society Organisations, Research Institutions and Governments working to deepen democracy through greater citizen participation in local governance. The experiences of Logo Link partners and other actors devoted to promoting citizen participation suggested that national and local laws and policies mandating citizen's participation are important enabling conditions for participation to ensure. While this is fairly widely recognised, there has been little systematic research to date in to the legal frameworks and policies exist, their nature and scope. Against this a research has been initiated in select countries in South Asia. South East Asia, East Africa and Select countries from North and South America. The outcomes of the research are disseminated as region wise synthesis reports. This report in particular is the outcome of the research conducted in South Asia which comprises of India (North - Uttar Pradesh, Centre- Madhya Pradesh and South Andhra Pradesh), Nepal and Bangladesh. . The research was coordinated by PRIA – Society for Participatory Research in Asia a partner of Logo Link in South Asia.

PRIA, as a regional partner, initiated this study in three countries: India, Bangladesh and Nepal. Taking into considerations, the regional variations, India was divided into three regions: North, South and Central. Country researchers for Nepal and Bangladesh were identified and contacted to undertake the research on Legal frameworks and their implications on citizen participation in their respective countries. Similarly, for India regional researchers and PRIA's regional partners were requested to take this process forward in different regions of India. The South Asian regional report is based on the country/region reports prepared by following researchers/organizations.

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- 5. **Prof Z. R. Khan, Dhaka University, Bangladesh<sup>2</sup>**
- 5. **Prof. Balraj Chouhan, Lucknow University and Sahbhagi Shikshan Kendra (SSK), Lucknow : India (North)<sup>3</sup>**
- 5. **Mr. S. L. Asati, Govt. of Madhya Pradesh and Samarthan, Bhopal: India (Central)<sup>4</sup>**
- 5. **Dr. G. K. Reddy, Osmania University, Hyderabad and PRIA (A.P): India (South)<sup>5</sup>**

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<sup>1</sup> Rijal, M. 2002, 'Framework for Participation in Local Governance in Nepal - An Overview', unpublished research report.

<sup>2</sup> Khan. Z. K. 2002, ' Framework for Participation in Local Governance in Bangladesh – An Overview', unpublished research report.

<sup>3</sup> Chauhan, B. 2002, 'Legal and Policy Framework for decentralization of Local Self Governance in Uttar Pradesh through Gram Panchayat', unpublished research report.

<sup>4</sup> Asati, S.L. 2002, 'Legal and Policy Framework for decentralization of Local Self Governance in Madhya Pradesh through Gram Panchayat', unpublished research report.

<sup>5</sup> Krishna Reddy, G. 2002, 'Citizen Participation in Local Governance : A Case of Andhra Pradesh', unpublished research report.

## PREFACE

As the South Asian region is predominantly rural, emphasis on rural local self governance in this report is very obvious. Research and field experiences across the regions and countries were shared in a 'closed' regional meeting at PRIA where researchers from Nepal, Bangladesh, 3 regions of India and PRIA team discussed and debated in detail the 'similarities' and 'dissimilarities' in the actual legal frameworks and also in their manifestations on the ground. Later a synthesis of the patterns across the South Asia was presented to an 'open' roundtable to elicit the comments and suggestions from the learned participants of the regional roundtable on legal framework and citizen participation.

Like any synthesis report, the present report has many limitations and results presented in the report should be examined with caution, taking into considerations variations across countries and also variations across the regions in a country. India being the largest country with varied experiences across different states finds relatively more space in the synthesis report. However, the more detailed analysis of region/countries has been presented in respective region/country reports. The various region and country reports synthesised in this report are, ***'Legal and Policy Framework for decentralization of Local Self Governance in Uttar Pradesh, Andhra Pradesh and Madhya Pradesh, 'Framework for Participation in Local Governance in Nepal - An Overview', and ' Framework for Participation in Local Governance in Bangladesh – An Overview'***. We are thankful to our learned respondents, participants of the Roundtable, region/country researchers, colleagues in LOGO Link programme at IDS, partner organisations in Uttar Pradesh (SSK), and Madhya Pradesh (Samarthan) and our Andhra Pradesh (PRIA-AP) office and also colleagues in PRIA head office for providing enriching inputs to give a shape to this synthesis report, which has been restructured according to an agreed outline during writeshop at the Institute of Development Studies (IDS). I am thankful to my colleagues G. Umashankar and Jose George for providing all editorial supports in this report.

***June 2004***

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# 1. INTRODUCTION

**L**egal and Policy frameworks for participation are one aspect of interaction between the civil society and government. They make it possible for these actors to interact, regulate the terms of their engagement and affect the nature of their relationship by increasing the scope for one group to enter the others arena and in some cases, introducing joint actions of governance that the two groups undertake together. Hence the interest has grown to explore the frameworks. While the idea of exploring the frameworks is evolved, the following aims of the research has been fixed.

- ***To conduct a comprehensive, comparative survey of legal and policy frameworks for citizen participation in local governance that operate in countries or states of India, Nepal and Bangladesh.***
- ***To synthesise existing knowledge about how these frameworks in practice: and***
- ***To draw lessons about effectiveness of particular kinds of legal and policy framework for promoting citizen participation, including the importance of context in making models work or limiting their effectiveness and the scope for transferring models in to different country or regional contexts.***

In order to decide the scope of the research and to take foreword the study in a more effective way a set of questions has been framed through which the study is executed.

***What patterns exist across the region in terms of legal and policy frameworks?***

***How do countries compare in terms of the frameworks themselves, the citizens groups that take them upon and use them, how they are implemented, and the support structures that are in place for their effective implementation?***

***According to the existing research and informant interviews, how do governmental and non-governmental actors at the local level(s) of governance experience these frame works?***

***To what extent can they be considered enabling frameworks for citizen participation? Are there forms of participation that have arisen in direct response to them? Are there forms which have arisen not because of them but in spite of them?***

Thus, against this background the study was conducted and the outcome of the study has been presented in terms of historical context and constitutional framework, national laws specifically relating to participation, local governance, systems and structures under local governance, participation and its forms, strengthening accountability through Right to Information and finally the lessons and conclusions. The

presentation is made country wise with relevant examples or illustration of various models in practice.

The ancient and rich civilisation of South Asia has been shaped by various combinations of geo-political, economic, social and demographic forces, which produced a rich variety of institutions, social movements, traditions, system of belief and practices. The South Asian region has a long history and culture of local self-governance. Village communities in India during the time of *Rig Veda* (1200 BC) had self governing bodies called *sabhas*. Village administration in Nepal is said to be as old as the geography of the country. In old days Nepal was divided into self-governing *thums* (territories) and each thum had its own panchayats composed of five elected members. The local bodies regulated and administered the villages so much so that they were termed as '**little republics**'. The traditional social norms in South Asia co-exist with liberal democratic institutions in an uneasy, ambiguous, and contradictory relationship. So, it can not be again said that the system of local government was a democratic institution at the grassroots level endowed with adequate power, clearly defined functions and sufficient financial resources. The tendency with South Asian governments has been to concentrate power in authority of the state. Nepal, Bangladesh and India are geographically different but dynamics of central- local relationships are almost same in these countries.

Nepal is small land locked country sandwiched between India and China. Its geographical position has been traditionally characterized as being analogous to a yam caught between two rocks. It comprises a total of 147, 181 square kilometers of land. The recent census reveals that Nepal's population has reached 23 million. Nepal's average literacy rate stands at 54% while 80% of the people are farmers living in rural areas.

Bangladesh came into existence in 1971 when Bengali East Pakistan seceded from its union with West Pakistan. About one third of the population is extremely poor, country faces severe annual floods during the monsoon rainy season, hampering economic development. Bangladesh is in the northeastern portion of the Indian subcontinent, bordered on the west, north, and east by India and on the southeast by Myanmar (formerly known as Burma), and on the south by the Bay of Bengal. The area of the country is 147,570 sq km. Geographically, historically, and culturally, Bangladesh forms the larger and more populous part of Bengal, the remainder of which constitutes the neighboring Indian state of West Bengal. On December 16, 1971, Bangladesh emerged as a sovereign country, and is now a country of about 120 million people.

India measures 3214 km from north to south and 2933 km from east to west with a total land area of 3,287,263 sq.km. It has a land frontier of 15,200 km and a coastline of 7516.5 km. Andaman and Nicobar Islands in the Bay of Bengal and Lakshadweep in the Arabian Sea are parts of India. Indian population is polygenetic and is said to be the melting pot of various mosaic. As per 2001 census<sup>6</sup>, population of India on 1<sup>st</sup> March 2001 was 1.03 billion. The sex ratio was 933 and total literacy rate was 65.38 % (Male:

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<sup>6</sup> *Census of India 2001: Provisional Population Total*



75.85 %, Female 54.16 %). India has 18 officially recognized languages. However, there are more than 1650 languages spoken as mother tongues by different population groups. Indian Constitution provides for a Sovereign Socialist Secular Democratic Republic. The country of more than a billion people living in 28 states and 7 Union Territories is governed in terms of the Constitution, which is federal in structure with unitary features.

Majority of this region's population is rural. Village communities and their organisations have been in existence in India, Nepal and Bangladesh for over centuries. As we could see that predominant population is in the rural areas the concept of local self governance has a similar association with the process as the participation of the citizens becomes an integral part of the governing process.

## 2. HISTORICAL CONTEXT AND CONSTITUTIONAL FRAMEWORK

It is very essential to have an understanding about the historical perspective and constitutional evolution of the legal and policy frameworks as from the introduction it is very clear that these South Asian Countries are having a very long cherished history over this context. Hence it has become necessary to make an understanding at this point of discussion.

India, Nepal and Bangladesh have democratic forms of governance. While in India democracy has deepened and matured, democracy in Nepal and Bangladesh is new and still growing. India is the federation of states while Bangladesh and Nepal have unitary forms of governance. Constitutions of these three countries provide for supremacy of Parliament. Each of the three countries is governed by democratically elected cabinet (lead by the Prime Minister). The cabinet performs executive functions as per the written Constitution and is accountable to the Parliament.

People in these countries have been provided rights to participate in the affairs of governance of their respective country. Constitution of each country (wordings may differ) provide for many fundamental rights including the rights of: Equality before law, Protection of right to life and personal liberty, Safeguards as to arrest and detention, Protection in respect of trial and punishment, Freedom of movement, Freedom of assembly, Freedom of association, Freedom of thought and conscience, and of speech, Freedom of profession or occupation, Freedom of religion, Rights to property, Protection of home and correspondence and Enforcement of fundamental rights (*Source: these words are from the Constitution of Bangladesh but almost same rights have been constitutionally provided to the people of India and Nepal*).

In addition to fundamental rights guaranteed to citizens, the Constitution (for example: India) 'directs' state (in the form of directive principles): to secure a social order for the promotion of welfare of the people, Equal justice and free legal aid, Organisation of village panchayats, Right to work, to education and to public assistance in certain cases, Provision for just and humane conditions of work and maternity relief, Living wage, etc., for workers, Participation of workers in management of industries, Uniform civil code for the citizen, Provision for free and compulsory education for children, Promotion of educational and economic interests of Scheduled Castes (SCs), Scheduled Tribes (STs) and other weaker sections, Duty of the state to raise the level of nutrition and the standard of living and to improve public health, Organisation of agriculture and animal husbandry, Protection and improvement of environment and safeguarding of forests and wild life, Protection of monuments and places and objects of national importance, Separation of judiciary from executive, and Promotion of international peace and security (*Source: Directive Principles of State Policy : Constitution of India*).

The role of Civil Society has not been specifically mandated by the Constitutions of India or Bangladesh. However, the principles and policies of Local Self governance in Nepal says : ‘His Majesty’s Government shall, in accordance with the guidelines set forth in the Constitution of the Kingdom of Nepal, 1990, on decentralization, pursue the principles and policies for the development of local self governance system having the Local Bodies oriented towards establishing the civil society based on democratic process, transparent practice, public accountability, and people’s participation, in carrying out the functions devolved on them.’

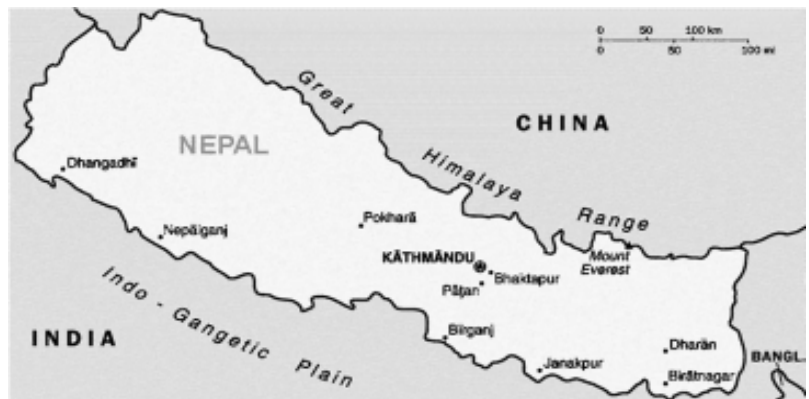
From above it can not be inferred that the Constitutions of India and Bangladesh restrict or disable Civil Society participation in governance. Constitution provides ample spaces for Civil Society to participate in Governance through Fundamental rights of Citizens for free expression of thoughts and freedom to form associations. Civil society in each country has been in the forefront to propose alternative bills and acts to governments and parliaments. For example, the Right to Information bill pending before the Indian parliament was originally proposed by the Civil Society and government later with minor modifications introduced the bill in the parliament.

## 3. NATIONAL LAWS SPECIFICALLY RELATING TO PARTICIPATION

### 3.1. LAWS AND CONSTITUTIONS

#### 3.1.1. Nepal

The state structure follows the standard pattern of a parliamentary democracy with a constitutional monarch as a symbol of national unity. The government is accountable to the parliament. The parliament consists of two houses and Lower House is called the House of Representatives directly elected every five year though an adult franchise. Following the principle of the separation of powers, the judiciary is kept fully independent of the other branches of the government. The Constitution of the Kingdom of Nepal identifies Nepal, 1990 as a unitary state which provides for the habitual exercise of supreme legislative authority by one central power. It is therefore, distinguished from federal system which presupposes the existence of two levels of legislative authority, one at the union level and other at the state or provincial level. The preamble in the Constitution of the Kingdom of Nepal 1990 states the fact that the Constitution was made with the widest possible participation of the people. It also intends to consolidate the adult franchise to guarantee that all adult citizens have, without distinction, equal voting rights. There is no qualification attached to the right to participate in the election – right to vote, contest election and hold political office – on the grounds of sex, ownership of property, payment of taxes and so on.



Political parties are at the heart of the Nepal’s new constitutional party. Political parties are indispensable and integral parts of a democratic system. The importance of the political parties and the need of running them democratically have been underscored by the Nepalese Constitution. Article 112 provides that the persons committed to common political objectives shall have the ability to form political parties and to campaign for support around the country. The Constitution of the Kingdom of Nepal, 1990 is different from the constitution of other countries in South Asia including India. No other constitutions mention provisions relating to inner democracy within political parties. The Constitution also requires making of a separate law relating to political parties to ensure that they are democratically structured and their transactions are transparent.

Article 114 of the constitution aims to ensure that women participate in national politics by providing that at least five percent of the candidates of a party seeking to contest elections must be women. However, a

party which wanted to disregard the intent and spirit of Article 114 could do it by fielding women candidates for the constituencies where party prospects are weak. Out of 265 members in both Lower House (205 members) and Upper House (60), only 13 women were elected to the Parliament during the last election. The constitutional intent about minimum representation of women has become the maximum for almost all parties.

Participation is enshrined as the directive principle of the state policies. Article 25(4) of the constitution states “It shall be the responsibility of the state to maintain conditions suitable to the enjoyment of the fruits of democracy through wider participation of the people in the governance of the country and by way of decentralization”.

The Constitution of the Kingdom of Nepal 1990 in its Article 46 implies a structure for decentralized administration by its requirement that fifteen members - three from each of the development regions - of the Upper House of the parliament (Natural Council) be elected by the electoral college consisting of the Chairman and Deputy Chairman of Village Development Committees (VDCs), Mayor and Deputy Mayor of Municipalities, President, Vice-president and members of District Development Committees (DDCs). This constitutional provision implicitly provides for the two decentralized levels, the village (town) and district levels. Accordingly, village development committees and municipalities are the local government units at the rung DDCs are the intermediate unit acting as via media between lower units and central government.

From constitutional point of view, the status of local governance and decentralization can be termed as a weaker version of the actual concept of decentralisation because there is no specific articulation about organizational framework and competencies in the basic law of the land. Political parties are debating the agenda for constitutional reform, and agreed to incorporate separate chapter on Local Governance in the Constitution.

### 3.1.2. Bangladesh

Bangladesh is a unitary, independent, sovereign Republic to be known as the People’s Republic of Bangladesh. The state religion of the Republic is Islam, but other religions may be practiced in peace and harmony in the Republic. The citizenship of Bangladesh shall be determined and regulated by law. All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution. This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution and other law shall, to the extent of the inconsistency, be void.

The principles of absolute trust and faith in the Almighty Allah, nationalism, democracy and socialism meaning economic and social justice, together with the principles derived from them as set out in the Constitution, has constituted the fundamental principles of state policy. These principles frames the

fundamental to the governance of Bangladesh. They are applied by the state in the making of laws, made as a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and forms the basis of the work of the state and of its citizens, but will not be judicially enforceable.

The state will encourage local Government institutions composed of representatives of the areas concerned and in such institutions special representation will be given, as far as possible, to peasants, workers and women. Steps will be taken to ensure participation of women in all spheres of national life.

In Bangladesh, relationship between the national and local government units has been authoritative in nature always heavily in favour of the national government. The colonial legacy and the absence of democratic government at the national level for a considerable period of time may have contributed in creating this.

Besides other regulatory mechanisms, the national government primarily exercises its control over local bodies and government officials 'attached' to these bodies. The national government controls local institutions by issuing orders and circulars (quite often against the spirit of legal framework) from time to time. Under the law, the national government enjoys sweeping powers over elected local bodies. The central government is empowered to carry out enquiries into the affairs of these institutions and can suspend them. In short the local government in Bangladesh is totally dependent on national government for its functions and survival.

### 3.1.3. India

India is a Union of states. Citizens of India have fundamental rights to form association and express their thoughts. Every adult citizen has right to vote and contest the election. Constitution has delineated very clearly the roles and rights of Central and State Government. Union list and state list for indicative subjects of jurisdictions (of Centre and states) have been provided. There is a concurrent list dealing with common



(to Union and state) subjects. Before Constitution (73<sup>rd</sup> and 74<sup>th</sup> Amendments) Acts. The two amendment acts are considered as the land marks in the context of strengthening local self governance in the context of rural and urban respectively and enhancing citizens participation. The details are available in the following sections of the report. India had only Union Territories (UTs) and States as part of its federal structure and Panchayats were mentioned in the Directive Principles (Directive Principles of State Policy is under the PART – IV of the Constitution of India. The Provisions contained in this part shall not be enforceable by any court, but the principles there in laid down are never the less fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.) only. But with the enactment of these acts, defacto a third tier of governance with a wide democratic base has come into existence in the country. Till then, in Parliament and in the States and UT assemblies there were about 5000 elected members. But now every five years three million people’s representatives are elected. The Acts have opened up spaces (for the first time) for political participation of women and marginalised caste groups.



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Panchayats in India are still a subject of ‘state lists’. So, under the 73<sup>rd</sup> Constitution Amendment, it has been left to the states to endow the panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government. However, the Amendment casts a duty upon the states that the devolution of powers and responsibilities to panchayats may contain provisions in respect to: (a) the preparation of plans for economic development and social justice, (b) the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the matters listed in the Eleventh Schedule of the Constitution. The 73<sup>rd</sup> Amendment aroused a great deal of expectation that hereafter, the panchayats would really be entrusted with substantial functions at the ground level and that they would come back to life once more. No doubt, there is progress, but not up to a level desired by the Act. Every other day, there is pressure exerted by Ministers and Members of

Legislative Assembly (MLAs) to take away the powers and functions of the panchayats. Unless the functions of PRIs (Panchayati Raj Institutions) are clearly defined, problems will continue to persist. State governments, in the first place, perceived panchayats as parallel institutions created to erode their authority. Therefore, distortion started from the very beginning, with the making of the new Panchayat Act itself. In fact, in practice very few states have devolved specific functions to panchayats. This is notwithstanding the fact that they amended their Acts in conformity with the provisions of the 73<sup>rd</sup> Amendment. An examination of the Panchayati Raj Acts of different states, which have been enacted after the 73<sup>rd</sup> Constitution Amendment Act, 1992, reveals that there is no uniformity in assigning the functions to different levels of panchayats. Genuine devolution of Finances, Functions and Functionaries has still not taken place. Union and state governments have still to develop a mentality of power-sharing with local governments. The higher governments and their organs are using their genius and ingenuity to constantly invent ways to frustrate rather than further the Constitution. However, there are many notable exceptions inside these governments and also many outside the governments (Civil Society organisations (CSOs)) who represent deep and positive commitments towards local self-governance in India (as well as in other countries of the region).



## 4. LOCAL GOVERNANCE

The concept Local Governance has the connotation that the process of governance has its own way out. Never the less the systems and structures varies from one part to another. Similarly, the terms of citizens participation also depends on the nature of the structure and on the system upon which it is operationalised. The prime category of the structure are two namely, the rural and the urban respectively. The participation component operates as direct participation, indirect participation and also the participation of the indigenous people. One of the major components in this context are the role of the Civil Society Organisations. Where in the role is legitimised in a case and others it is not. Similarly it has a high impact on the context of the citizens participation. Hence it has become to make a note on the structures and systems of local self governance, types of participation of the citizens and the joint action of the civil society and local governance.

### 4.1. LOCAL GOVERNANCE SYSTEMS AND STRUCTURES

#### 4.1.1. Nepal

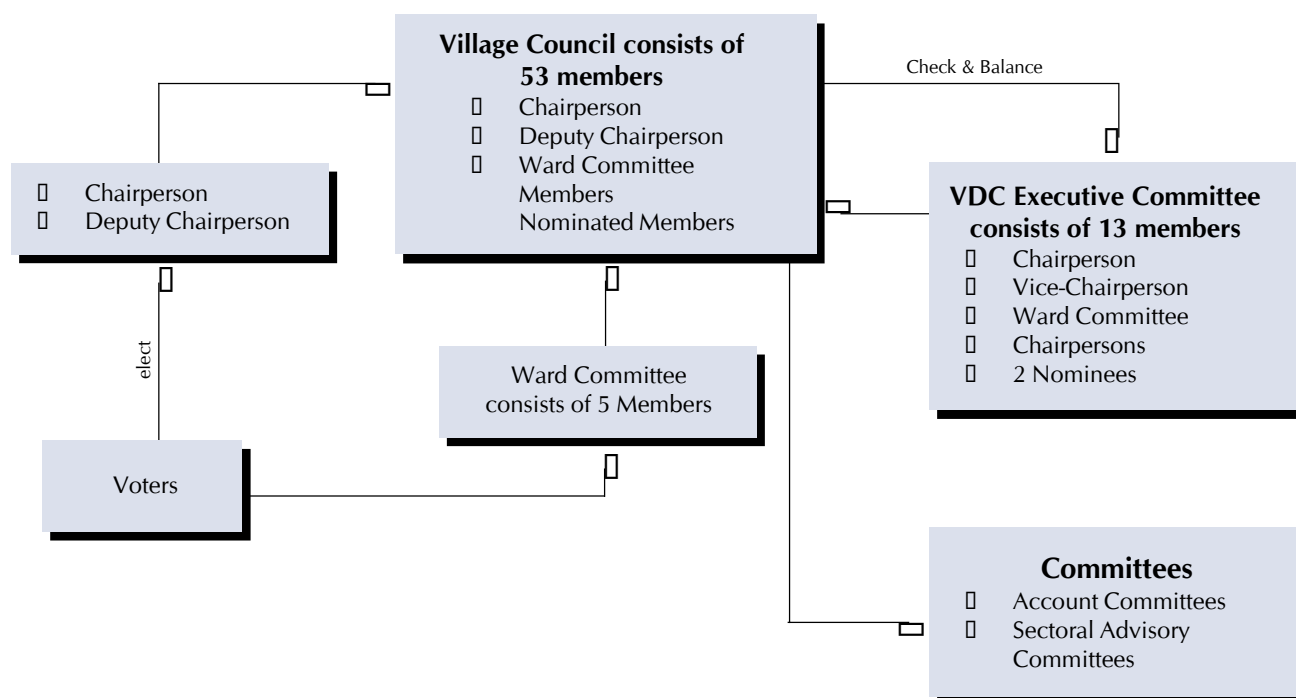
The Local Self-Governance Acts, 1999 recognizes decentralization as the major policy subject to be coordinated and steered by the head of the government himself. A Decentralization Monitoring Committee (High level over-sight committee) headed by the Prime Minister is provided. Leaders of the opposition, parliamentarians, representatives of stakeholders and experts and bureaucrats are members in the committee. The Act provides for the creation of Local Government, Financial Commission to recommend further financial authority to Local Governments. The Act introduces the concept of revenue sharing between the centre and the local bodies. Moreover, it guarantees royalties from the development projects implemented within the area of local units. The Act separates power between the deliberative and executive organs of local bodies. Local Government Associations are legally recognised as stakeholders in decentralization. The Act creates local service commissions to provide separate cadres and personnel for local government units. The Act requires political parties and law enforcers (Police) to help local bodies to co-ordinate and carry out their functions. The Act reserves twenty percent seats to women and disadvantaged groups at the local government. The Act mandates the existence of the association of local governments to articulate, represent and defend their respective interests.

Local Self-Governance Act, 1999 defines participation, and explains that the rationale of decentralization is enhancing partnership of local government with civil society . Sustainable development, accountability and transparency are mentioned, among others, as the most important objectives of decentralization and Local Self-Governance in Nepal. The local government system in Nepal as divided into two tiers, the bottom tier consisting of village and municipal bodies. The next intermediate tier is district level. The country is divided into seventy five districts as a result there are seventy five DDCs at the district level

## LOCAL GOVERNANCE

which are split into a number of Areas (Ilakas) for election purposes. At the lower level, 58 municipalities and 3913 VDCs exist. Each Municipality and VDC is subdivided into a minimum of 9 to a maximum of 36 wards based on the size of the population. However, subdivision (wards) of VDCs is fixed at nine irrespective of the demographic size

### STRUCTURE OF LOCAL SELF GOVERNMENT IN NEPAL



#### 4.1.2. Bangladesh

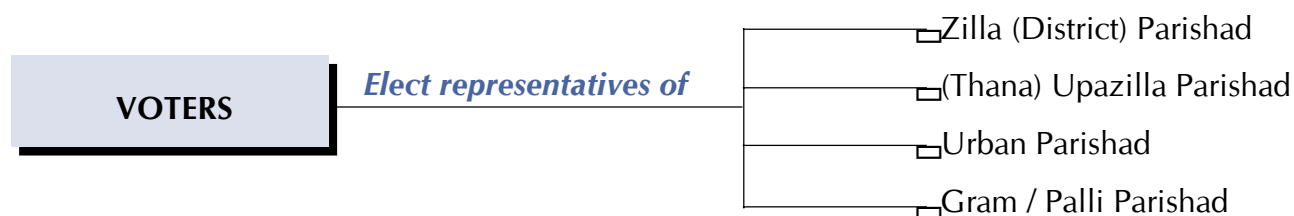
Immediately after Independence in 1971, a significant change in the local government system was brought about in 1976 through the Local Government Ordinance. This ordinance provided for a Union Parishad for a union, a Thana Parishad for a Thana and a Zila Parishad for a district. The Union Parishad comprised one elected Chairman and 9 elected members, two nominated women members and two peasant representative members. The Thana Parishad consisted of the Sub-Divisional Officer being the ex-officio Chairman, the Circle Officer and a Union Parishad Chairman. The Zila (District) Parishad was to consist of elected members, official members and women members whose numbers were determined by the government. Its term of office was five years. However, no elections were held and government officials ran the Parishad. In 1980, as a result of an amendment of the Local Government Ordinance, the Swanirvar Gram Sarker (self-reliant village government) was introduced at the village level, but was abolished by a

Martial Law Order in July 1982. A major change was initiated in the local government system through the introduction of the Local Government (Upazila Parishad and Upazila Administration Reorganization) Ordinance in 1982. This Ordinance was followed by the Local Government (Union Parishad) Ordinance in 1983, the Local Government (Zila Parishad) Act in 1988 and the three Hill Districts Acts and Palli Act in 1989.

The Upazila Parishad Ordinance (1982) was particularly significant as this was supposed to help implementation of the decentralization programme of the government. In the Upazila System (as it came to be known), the (directly) elected Chairman would have the principal authority in running the affairs of the Upazila, his tenure being five years. The Upazila Nirbahi Officer would be subservient to the Chairman. After nine years of reasonably effective implementation, the Government of the Bangladesh Nationalist Party, who came to power through election, abolished the Upazila system in 1991. During its five-year tenure, the government could not provide an alternative democratic form of local government. When after another election in 1996 the Bangladesh Awami League came to power, they constituted a Local Government Commission and came up with a Report on Local Government Institutions Strengthening in May 1997.

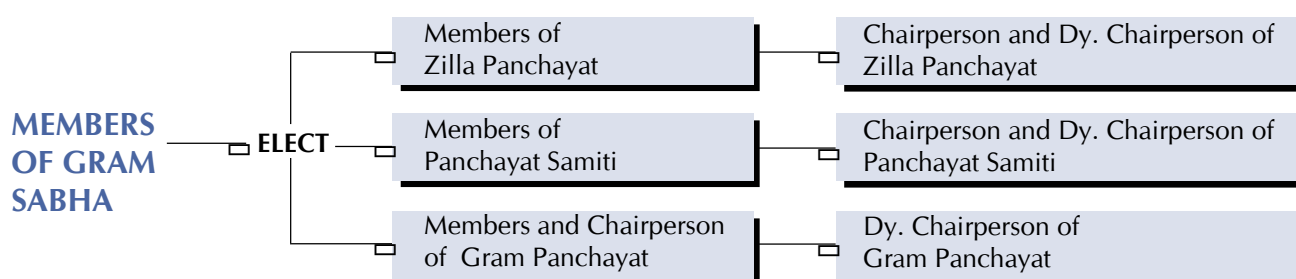
The Commission has recommended a four-tier local government structure including Gram/Palli (Village) Parishad, Union Parishad, Thana/Upazila Parishad and Zila (District) Parishad. All these tiers are concerned with rural/regional administration, while urban local governments remain outside the Commission's purview. The two major tiers of urban local governments, Pourashava (for smaller Municipalities) and City Corporation (for four of the largest cities) are very well within the established structural framework..

The rural/regional local government as proposed by the latest commission on local government would have four tiers: Gram (Village) Parishad, (40,000); Union Parishads (4403); Thana/Upazila Parishads (460); Zila (District) Parishads (64). Urban areas have a separate set of local governments. The Bangladesh Census Commission recognized 522 urban areas in 1991 (with a population of about 5000 or more) but only about 138 of the larger urban areas among these have urban local governments in which the four large cities come under corporations and the remaining as municipalities as mentioned earlier.



### 4.1.3. India

The structures of local self-governing institutions in India are totally different from one another. Especially the rural and urban. There are different and clear frameworks evolved over the period of time. The most significant is the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional amendment acts in 1992 for rural and urban local self governance respectively. More significantly the scope for citizen participation in the local governance was emphasised in a clear cut legal framework is under the rural local self governance. The Constitution (73rd Amendment) Act, 1992 which came into force on 24th April 1993, was meant to provide constitutional sanction to Panchayats and establish ‘democracy at grassroots level as it is at the state level or National level<sup>7</sup>. Except three north-eastern states (having tribal councils) and two urban UTs, all the states/UTs coming under the purview of this Act have amended their Panchayat Acts in conformity with the Central Act. The Gram Sabha or village assembly has been envisaged as the foundation of the Panchayati Raj system. There are three tiers of Panchayats: Gram Panchayat - at village level; Panchayat Samiti - at intermediate level; and Zilla Parishad -at district level. The states having population less than 2 million have not constituted the Panchayat at intermediate level. As a result, at present, there are about 3 million representatives of Panchayats at all levels. These members represent more than 0.25 million Gram Panchayats, about 6,000 Panchayat Samitis and over 500 Zilla Parishads. All the seats in a Panchayat at every level are filled by elections from respective territorial constituencies. Not less than one-third of the total seats for membership as well as office of chairpersons of each tier has been reserved for women. Reservation for weaker castes and tribes (SCs, STs and Backward - Dalits) has been provided at all levels in proportion to their population in the Panchayats. To supervise, direct and control the regular and smooth elections to Panchayats, a State Election Commission has been constituted in every state and UT. The Act has ensured constitution of a State Finance Commission in every state/UT, for every five years, to suggest measures to strengthen finances of Panchayati Raj Institutions (PRI).



<sup>7</sup> Lok Sabha, 1992: The then Minister of Rural Development, while moving the Bill to further amend the Constitution of India, Debate on Constitution (Seventy-third Amendment) Bill

The constitutionally decentralised institutions have come into being. But they cannot be a solution to one and all of governance. The reality is quite harsh. Rigid patriarchal structure inhibits women participation in public affairs. Moreover, majorities of the elected representatives are first timers with little or no prior knowledge of functioning of PRIs. Many of the women PRI members are illiterate and have to comply with social taboos and patriarchal values. These women members, as per rigid rules of the patriarchy, are expected to be shy and submissive resulting in weak articulation skills. It is not easy for the rural weaker section to actively participate in development process. The literacy level among SC, ST and women is quite low. The distribution of rural assets and powers is heavily skewed in India - the bottom 39 % of rural households (belonging to lower castes) own only 5 % of all assets, while the top 5 % own 46%<sup>8</sup>. Also at local levels, the powers held by some individuals have traditionally always superseded the limit legitimised by social institutions. If the people and their institutions are not active, the state and its institutions, whether in centralised or decentralised form, are forced to assume leadership of the people. Under these conditions, people's ability to exercise options in civil society interactions and within social hierarchies often becomes the requisite condition for the local government to be responsive and accountable.



#### 4.2. Direct Participation

The Local self Governance Acts of the three countries provide spaces for direct participation of people at grassroots. But only Indian constitution has very clearly provided legal sanctity to direct participation of people through the Gram Sabha. Article 243 of the Constitution of India defines Gram Sabha as “a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level”. The seventy third amendment to the constitution of India has made it compulsory to have a Gram Sabha, an institution of direct democracy, at the root of the institutional structure of Panchayati Raj. Gram Sabha is the only forum which provides opportunities to all the adult villagers to directly participate and suggest what can and need be done for their own village and how. However, the constitution does not stipulate any details regarding the structure, powers, and functions of this institution.

<sup>8</sup> S. S. Meenakshi Sundaram, 1994 : *Decentralisation in Developing Countries*, Concept Publishing Company, New Delhi

As per varying statutory provisions across the states, there are considerable variations in matters like the structure, jurisdiction, and frequency of meetings, powers and functions of Gram Sabhas in different states. While the jurisdiction of a Gram Sabha extends to the entire area of the concerned Gram Panchayat in some states (Andhra Pradesh, Haryana, Himachal Pradesh, Madhya Pradesh, Rajasthan and Uttar Pradesh, etc.), it is confined to a ward or a single rural habitation in some other states (Kerala, Orissa, West Bengal, etc.). Some states stipulate 5 percent to one third of total electorate as the quorum required for the Gram Sabha meetings, in other states no quorum is prescribed for Gram Sabha. It is the (mandatory) responsibility of concerned Gram Panchayats that the Gram Sabha meetings be held at least twice a year with provision for calling special or additional meetings whenever necessary. The PRI members should inform (through posters, notices, beating drums or visiting houses) the date, time and place of Gram Sabha meeting to all the community members well in advance. The chairperson of Gram Panchayat chairs the Gram Sabha meeting.

Almost all the states have delineated functions of Gram Sabha in their State PR Act. The Gram Sabha shall consider annual accounts, proposals for fresh taxation, etc. It will consider plan for development programmes. The Gram Sabha shall render assistance in the implementation of development schemes pertaining to the village. It identifies the beneficiaries for the implementation of development schemes pertaining to village. The voluntary labour and contributions in kind and cash or both for community welfare programmes is to be mobilised by the Gram Sabha. In states like Maharashtra and Bihar, the Gram Sabha plays an important role in vigilance committees. Vigilance Committees is a local mechanism to monitor the activities of different kinds especially related to resource mobilisation and utilisation. They play the check and balance role in the gram panchayat.

### GRAM SABHA IN DIFFERENT STATES: AN OVERVIEW

Maybe change the column titles to 'In principle' and 'In practice'

#### [STATUS - OVERVIEW] IN PRINCIPLE

#### [CONCERNS] IN PRACTICE

##### **POPULATION AND AREA**

1. Entire area of Gram Panchayat
2. One revenue village
3. Voters in a single ward or one electoral constituency of Gram Panchayat
4. Spread over few hundred meters to many kilometres

1. The larger size of Gram Sabha (if it exceeds a few hundred people) discourages meaningful deliberations.
2. Many times a voter has to spend more than an hour to reach to the venue of the Gram Sabha.

### **MEETINGS- FREQUENCY AND SCHEDULE**

1. At least two meetings in a year
2. Gram Panchayat should communicate date, venue and time of meetings to Gram Sabha members.
3. Meeting dates fixed in advance, e.g. 15th Aug., 2nd Oct., 26th Jan., 13th April, May 1<sup>st</sup> etc.
1. Gram Sabha members are often not informed about forthcoming Gram Sabha meeting.
2. Apathy among villagers about the outcome of Gram Sabha meeting.
3. Fixed date, timing and venue should be chosen considering harvesting season, availability of villagers in the village and caste dynamics.
4. Simultaneous Gram Sabha in whole state on a particular date discourages full participation of government officials. Many times the meetings of Gram Sabha turn out to be mere formality ones.

### **PARTICIPATION, POWER AND FUNCTION**

1. Quorum varies from 5 % of voters to one third of voters to no quorum at all
2. No provision to ensure/enhance participation of women and dalits.
3. Status of specifically appointed (in Gram Sabha meeting) government official ambiguous
4. Decision of Gram Sabha is not binding to Gram Panchayat
5. Except few states Gram Sabha does not have any role in relation to line agencies of government
1. Gram Sabha has not been enabled to consider subjects of general interest- all levels of developmental work, line departments.
2. No follow-up of Gram Sabha decisions
3. A process of consultation with concerned Gram Sabhas should be initiated in case of all developmental programmes across sectors like education, health, agriculture, MCH, nutrition, etc.
4. Gram Sabha decisions should be binding.

In many states, the dates for Gram Sabha meetings are fixed in advance by the concerned state governments. Fixation of dates in advance helps Gram Sabha members and other concerned persons (officials) in remembering these dates. For meaningful deliberations in Gram Sabha, it is essential that these officials be present in Gram Sabha meetings to assist people with relevant information about government's (development) programmes, etc. Also this process ensures accountability of officials towards Gram Sabha.

The agenda placed before the Gram Sabhas in most states is limited to selection of beneficiaries for

various poverty alleviation programmes or decisions on various works like roads or drains proposed to be taken up by Gram Panchayat. Therefore, in such Gram Sabha meetings attendance tends to be limited to potential beneficiaries of poverty alleviation programmes or persons interested in taking various works on contract. To complete formalities, (bureaucracy sponsored) Gram Sabha meetings are often held to prepare beneficiary lists: Below Poverty Line list, Indira Awas Yojana, etc. Naturally participation in such Gram Sabhas can't cannot be treated as genuine participation. Moreover, Gram Sabha being only a recommending body (or a debating forum for the people) the views expressed and decisions taken in Gram Sabha loses their importance. People's participation in Gram Sabha would certainly be enhanced if the decisions of Gram Sabhas were made binding to Gram Panchayat and concerned line department and if agenda of Gram Sabha covers a range of subjects (village school, Primary Health Centres, water supply, sanitation, Public Distribution System, etc.) that affect people's day to day affairs.

Most of the states have so far focused their attention on defining powers and functions of Gram Panchayats and other tiers of PRIs. The states like Madhya Pradesh, Rajasthan, Maharashtra, Karnataka Tamil Nadu and Kerala have made earnest attempts to place the institution of Gram Sabha on firm footing. The village development plan prepared by Gram Sabha members are binding to all agencies in Kerala, M.P., Maharashtra, Rajasthan and Tamil Nadu. Kerala government has assigned planning function to Gram Sabha in the states for preparation of people's plan. Gram Sabha has control over social sector institutions and functionaries and work completion certificate is issued on the basis of social audit by it. Gram Sabhas were conveyed for the identification of the felt needs of the people and to identify gaps in local development. Involvement of Gram Sabha in People's Campaign in Kerala generated awareness among the people about decentralisation process and role of local bodies in development. In Madhya Pradesh, Gram Swaraj Act has virtually transferred all powers to Gram Sabha regarding local development. However, the empowerment of the Gram Sabha involves both a process of political awakening and a measure of administrative organisation. It cannot be achieved merely by enacting legislation and issuing guidelines. A sustained movement should be organised to educate the people and to train the elected representatives and officials to internalise the potential of the Gram Sabha as an institution of participatory democracy.<sup>9</sup> It requires political will and economic support.

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<sup>9</sup> Ministry of Rural Development, GOI, 1999: *Empowering the Gram Sabha - Report of the Subgroup of Taskforce on Panchayati Raj*, Minister of Rural development, Govt. Of India, October 1999



### 4.3. INDIRECT PARTICIPATION

Election to local bodies is a common feature of Local self Government Acts in the region. Each village development committee in Nepal has a village council and executive committee called the village Development committee. The council is deliberative and policy making and it consist of VDC chairperson, Deputy chairperson, ward-committee members representing women, disadvantaged groups, minority and Dalits Hence, council has 53 members in total. The council approves policies, programs and budget of VDC.

VDC has thirteen members as its executive board. They are VDC chairmen, vice chairmen, nine ward chairman and two nominated members from among the members of the council. One such nominated member should be women. The VDC has its own secretariat and administrative setup. The secretary of the VDC is a government employee of Ministry of Local Development (MLD).

There are provision for committee system in both VDC and village council. The Council can appoint short term five sectoral committees - Infrastructure development, agriculture, forest and environment committee, Population as and Social Committee, Organization and Administration Committee and Water Resource and Land Committee as per need to assist in development efforts of the village. In addition, there is also provision of an Audit Committee. This committee is authorized to assess the resources mobilization performance of VDC, see concordance and synergy between VDC programs and budget allocation, financial irregularities and revenue collection. This committee can invite local intellectuals and businessmen to participate if required.

In **Bangladesh**, Union Parishad is the only functional tier for which election has been held. A typical Union Parishad is composed of 10 to 12 villages with an average population of 20,000. In 1997, women for the first time were allowed by legal enactment to be directly elected to the Union Parishad from three reserved seats. Election to about 4,500 Union Parishads were held on the basis of universal adult franchise and in all about 14,000 women were elected to Union Parishads.

In **India**, for example Uttar Pradesh, Gram Sabha elects members of Gram Panchayat, Chairperson of Gram Panchayat, member of Block Panchayat and the member of District Panchayat. Chairpersons of block and district panchayats are not directly elected by the people. They are elected by elected members of respective tiers.

Indian Constitution, to ensure electoral participation of marginalised, has reserved seats at all levels of local government for women and dalits. The affirmative action through the 73rd Amendment has provided an opportunity for women and dalits to come out of shadow of traditional rural lords. At a simplistic level the 73rd Amendment assured women and dalits space within political processes at local level with the

reservation of seats (one-third to women and territorial population size based reservation to SCs and STs). About one million women representatives and about 0.6 million SC/ST members have been elected to different level of PRIs.

Though the reservations were perceived as a form of redistributive justice, in practice most of the women face constraints on account of traditional power structures and their (women's) lack of access to knowledge. When the 73rd amendment came into being, a lot of men saw their rule ending within Panchayats and therefore pressurised their wives or other female members of their family into standing for elections. When she got elected, she was expected to act like a puppet. She has to face many structural and institutional constraints. The lack of adequate information about their roles and responsibilities inhibits women Panchayat leaders to function effectively. In almost all states more than 90 % of the Panchayat Secretaries are males. Local government officials at the block level feel uncomfortable in dealing with the women members. Such a feeling is partly due to gender bias and partly due to lack of experiences in public roles for women. In case of SC/ST members the prejudices of majority of officials is discernible. Used to interaction based on well defined caste hierarchy, these officials had to reorient themselves in dealing with women and SC/ST panches and Sarpanches.

To provide real substance to grassroots governance, CSOs like PRIA has put greater emphasis on ensuring participation of women and Dalits in the Gram Sabha and Gram Panchayat meetings. Special programmes for promoting awareness generation, attitudinal changes and skill developments are conducted for women and Dalits. Experiences teach us that developing individual leadership is as important as ensuring participation of groups in Gram Sabha/Gram Panchayat meetings. Their leadership should be developed by building individual capacities.

Legislation is a necessary but not sufficient component of process of decentralisation. Just by providing reserved seats to marginalised, it can not be ensured that they will freely and frankly participate in the election process. Moreover, caste and class dynamics in the region are not so favourable for marginalised sections. So, it requires that marginalised people in particular and people in general should be encouraged by the Civil Society to participate in the election process. Voters should be educated and made aware (e.g. Pre Election Voters Awareness campaign (PEVAC), undertaken by PRIA and Partners) about their roles and responsibilities for free and fair elections. Civil Society and the Governments can collaborate for mass public education.

### **4.3.1. Participation of indigenous people**

*Extension of Panchayats to Scheduled Areas: Implementation of Central Act 40 of 1996:*

The 73<sup>rd</sup> Amendment when passed in 1992 excluded Scheduled Areas and Tribal Areas from its purview. However, Article 243 M(4)(b) provided that Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and Tribal Areas subject to such exceptions and modifications as may be specified in

such law. The states having Scheduled Areas were thus bestowed with no authority to extend to the Scheduled Areas, the Panchayat conformity Act passed by them following the 73<sup>rd</sup> Amendment. They were obliged to take cognisance of Article 243 M. But most states having Scheduled Areas, violated Article 243M and enacted Panchayat laws for the entire state including the Scheduled Areas contrary to law. Neither the state legislature nor the executive paid heed to 243 M\* .

Taking cognisance of the growing unrest among the tribals in different parts of the country and the judgement of the High Courts, the Government of India in the Ministry of Rural Areas and Employment constituted a Committee of Members of Parliament and Experts (Chairman: Shri D.S. Bhuria, M.P.) on June 10, 1994. The overall emphasis of the report of the Bhuria Committee was that any legislation on the Panchayats for the tribal areas should be based on basic premises of participative democracy and that it should be in consonance with the customary laws, social practices and traditional management of community resources. The Committee visualised that the institutions at the grassroots and district levels should have functional autonomy, power relating to management of natural resources be vested in the Gram Sabha and the role of lower level government functionaries be minimal and confined to law and order in Scheduled Areas. The proposals recommended by the Bhuria Committee paved the way for passage of a comprehensive legislation extending provisions of the Constitution relating to the Panchayats in the Scheduled Areas.

The Act called the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (Central Act No. 40) was made applicable to the states which have Scheduled V areas. These states are Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Madhya Pradesh, Chattisgarh, Maharashtra, Orissa and Rajasthan. The concerned state governments were allowed a period of one year to amend such provisions of their existing Panchayat Acts which contravened the provisions of the Central Act. This Act received the assent of the President on 24<sup>th</sup> December 1996.

The Central Act No. 40 also made some specific and significant exceptions and modifications, such as: *Exceptions and Modifications to Part IX of the Constitution* – Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely:

1. State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;
2. Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their culture identity, community resources and the customary mode of dispute resolution:

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\* It is curious what advice the law departments of the States furnished to their government, and later the advice given by the Advocate Generals when the Acts were challenged in the High Courts.

3. Every Gram Sabha shall :
  - a approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;
  - b every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the plans, programmes and projects referred to in clause (c).
  - c the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas shall be coordinated at the State level;
  - d planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;
  - e the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas;
  - f the prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;
  - g while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specially with –
    - (i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;
    - (ii) the ownership of minor forest produce;
    - (iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;
    - (iv) the power to manage village markets by whatever name called;
    - (v) the power to exercise control over money lending to the Scheduled Tribes;
    - (vi) the power to exercise control over institutions and functionaries in all social sectors;
    - (vii) the power to control over local plans and resources for such plans including tribal sub-plans;

- h *the State legislations that may endow panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that panchayats at the higher level do not assume the powers and authority of any panchayats at the lower level or the Gram Sabha.*
- i The State Legislature shall endeavour to maintain the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district level in the Scheduled Areas.

#### 4.4. JOINT ACTION OF CIVIL SOCIETY AND LOCAL GOVERNMENT

Local Government structure provides spaces for civil society to work with institutions of local self government for socio-economic development of the locality. In Nepal legal provisions have been made for Civil Society and Local Government collaborations. But despite the absence of such provisions in acts of India and Bangladesh, Civil Society is using its fundamental rights and platforms like Gram Sabha (India) to collaborate. Two sets of experiences are found. In Nepal the role CSO's are more legitimised whereas in India and Bangladesh it is not. In the context of India the CSO's are playing the pivotal role in making the citizens to participate in the local governance process within the established legal frameworks.

##### 4.4.1. Village planning in India

As per Article 243-G, Panchayats in India are constitutionally mandated to prepare plans for economic development and social justice. Thus every Panchayat has to prepare a plan taking into account local needs and local conditions. Participatory micro-planning is<sup>10</sup> (a) a way to turn (centralised-top down) planning on its head, (b) a way to mobilise resources, (c) a basis for negotiating with block/district government, and (d) a framework for accountability (of Gram Panchayat to Gram Sabha). The whole process develops a framework of agreement within the Gram Sabha about development priorities. Villagers sit together to prioritise the community problems, prepare a list of resources available and ask the Gram Panchayat to implement the plan. Since the Plan is implemented year around, it provides a more rigorous framework for the Panchayat to be accountable to Gram Sabha. A plan allows villagers to scrutinise and judge the performance of their Gram Panchayat.

A typical micro-planning process involves many stages and in majority of cases, requires facilitating support from Civil Society. Informal meetings are organised at ward levels to orient people. (In a Gram Sabha there are a number of wards- each ward elects one Gram Panchayat member). In these meetings the community analyses the village situation. Often individuals and groups come up with their specific individual needs and problems. Ensuring full participation of all the (caste, class and gender) groups, and synthesising

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<sup>10</sup> Rajesh Tandon, 1998 : Opening remarks by Dr. Rajesh Tandon - National Workshop on experience sharing on micro-planning at PRIA

specific needs, an exhaustive list of community problems/needs is prepared. The ward/village level needs are prioritised and synthesised to prepare Gram Panchayat level plan. Then these needs are prioritised and a detailed village plan is prepared. On the fixed date (usually fixed in advance by the state government), the Gram Sabha meets under the chair of Gram Panchayat Chairperson. The plan is made known to every one in the Gram Sabha meeting. The Gram Sabha approves the village plan. It is now the responsibility of the Gram Panchayat to mobilise resources from village (with the help of Gram Sabha) and other sources, including funds from Union and State governments, to implement this plan. It has been found that from preparation to implementation of the plan, the Gram Sabha keeps an eye over the Gram Panchayat. Even an ordinary villager feels a part of the village development plan, resulting in the direct participation of the community in village government. The whole process of micro-planning, it has been seen, helps strengthening of Gram Sabha by enhancing people's participation in Gram Sabha meetings.

Many times these Gram Panchayats feel frustrated because of their inability to implement their participatory (village) micro-plans. Their own village resources - both human and economic are beyond their control. Control of development resources remains with local administration and officials, who don't wish to share power with PRIs. The government and line departments are indifferent to the Gram Panchayats' demands. The frustration results from devising plans that can not be implemented because of scarcity or lack (or misappropriation) of resources. Except a few states like Kerala and Himachal Pradesh, there is no discernible initiative by State governments to promote participatory micro-planning. Where as the 'rich' (Donors created) Local groups like Village Education Committee (of the District Primary Education Programme), Water Users' associations, etc. are not organically linked to Gram Panchayats but are working parallel to undermine the PRIs.

Presently, the complete micro-plans are mostly prepared in those Panchayats where NGOs are involved. The whole process involves a great deal of effort and time. Micro-planning should become people's agenda. The Gram Sabha /Gram Panchayats and line departments need to be sensitised on the importance of micro-planning processes. The whole process of village level planning also needs to be demystified. So, what is required is a packaging of micro-plans, which can be replicated by non-experts. The planning and implementation of village plan should be integrated. The planning process must discourage over dependence on funds from outside. The Gram Sabha should come forward in mobilising its own (natural, physical and human) resources. However, Gram Panchayats need support from above as well. The government supports in this direction are very crucial.

#### **4.4.2. Peoples' Participation in Alternative Dispute Resolution (ADR) in Nepal**

Community participation in dispute settlement has been in vogue in Nepal since ancient time. Participation of people in dispute settlement has been formally enshrined in the Local Self Governance Act, 1999. Justice has been indeed becoming costlier in Nepal. The formal justice dispensing machinery has been rendered inaccessible to the poor and the marginalized. The process is professionalized and made more

cumbersome. The Act, therefore, gives justice dispensing roles and functions to the community under the ambit of subsidiary governance. The Act emphasis on harmonious and non-adversarial approach to dispute resolution. The various forms of alternative dispute resolution-negotiation, facilitation, mediation and arbitration have been well combined in the law. It is to be noted that management of local conflicts and disputes has been indeed integral to local governance for long.

#### **CIVIC PARTICIPATION IN DISPUTE RESOLUTION**

- A mediator should be a person belonging to the locality concerned
- A mediator should be an independent and impartial person
- A mediator should be a person of integrity, impartiality and intelligence of mind

Section 35 and 102 of the Act provides recognition to local elders, social workers and credible people as processors and resolves of local disputes by bringing them together in the mediation board formed by VDCs and Municipalities. For the purpose of dispute resolving –VDCs and Municipalities have been empowered to prepare a panel of medi-arbitrators in which locally trusted credible and impartial people have to be included

The context of citizen’s participation is more valid when there are more valid legal frameworks. As we have seen the different categories of participation there are few other aspects to be discussed more importantly as mentioned in the following paragraphs.

## 5. STRENGTHENING ACCOUNTABILITY

**A**ccountability is one of the most important salient feature of local governance process. The principle of accountability is based on the viability and validity of the legal framework established for citizens participation. This feature is very much emphasised in the Indian context. The elected representatives of local self-governments are close to people. This closeness is in the form of physical proximity as well as mental wavelengths. Because of this proximity they are continuously being watched by the people for their performances as elected representatives and are being asked about their accountability to the people.

The process of no-confidence motion, when used in its true spirit (in India, there are example of misuse of these processes by powerful caste groups against women and dalits), ensures accountability of elected leadership towards the elected body. The elected representatives by majority votes can frame charges against an ordinary member or the chairperson in the form of a no-confidence motion. When passed in the Panchayat, the concerned member/chair has to leave his/her position.

State conformity acts in different states of India have empowered the Gram sabha to undertake social audit of Panchayat's performance. In a Gram sabha meeting, the villagers can 'legally' ask the Panchayats to furnish all the details regarding their functions and finances. Each activity and related financial aspects are discussed in details. Since most of the villagers have seen the actual activities and their different components (and also know about local prices and quality of products), the process of social audit, which is often facilitated by CSOs, leads to transparency and accountability in the system of local self governance. Even Bangladesh and Nepal, using right to freedom of speech and right to information respectively, the CSOs have been able to initiate such processes at local levels.

Madhya Pradesh is one of pioneer state in India to bring out legislation in the form of Right to recall. This legislation is especially for Local self Governments. Gram Sabha can initiate a process to recall its elected representative on the basis of charges of non-performance or irresponsible behaviour. However, to provide electoral stability to system, it has been fixed that right to recall motion against the elected representative can be brought only after two years of his/her election to Panchayat.

Beside these legislative provisions, Civil Society through its public hearings has promoted transparency and accountability. Committee system of Local Bodies in Bangladesh, Nepal and India has also helped to widen the participation of people in direct governance. It has promoted better accountability and has helped in checking the behaviour of institution and its leadership. For example, guardians of 'actual students' in Nepal have been made members of primary school management committee to ensure accountability of the teachers and education department.



## 6. RIGHT TO INFORMATION IN SOUTH ASIA

Governments in South Asia have started to respond to the inside and outside pressures, and take on board the global recognition of right to information. While Right to Information is the part of Constitution of Nepal, no such right is pronounced in the laws of Bangladesh. The Freedom of Information Act, 2000 is now before the Indian Parliament and several Indian states have already adopted freedom of information laws or orders. In Nepal there has been some official acceptance of the need for legislation and it is hoped that developments currently underway will lead to the adoption of freedom of information laws.

In 1982, the Supreme Court of India ruled that access to government information was an essential part of the fundamental right to freedom of speech and expression in Article 19 of the Constitution: The concept of an open Government is the direct emanation from the right to know which seems implicit in the right of free speech and expression guaranteed under Article 19(1) (a). Therefore, disclosures of information in regard to the functioning of Government must be the rule, and secrecy an exception justified only where the strictest requirement of public interest so demands.

Several Indian states (Goa, Tamil Nadu, Madhya Pradesh, Rajasthan, Delhi, Maharashtra and Uttar Pradesh) have passed either right to information laws or executive orders to implement this right. A comparative overview of these state laws shows that the various models adopted have different kinds of pros and cons. Some of the state laws have a long list of exceptions and few have adequate provisions for imposing liability for not providing information. Moreover, as pointed out by a legal expert, ‘the somewhat sparse public debate of the peoples’ right to know began to concentrate on the need for legislation rather than providing and making information available to the public immediately. Somehow, the basic strategy that seems to have evolved in public discourse became ‘legislation first, information later.’ India presents a mixed picture with much secrecy legislation still in place restricting the free flow of information, but at the same time some significant developments at state level in terms of promoting freedom of information laws, as well as draft national legislation.

**Nepal:** The Right to Information appears in the Nepali Constitution for the first time under Article 16. It is a novel provision in the constitutions of a South Asian country. A democratic system is an open system. Citizens should not be kept in dark regarding official activities of public importance. A citizen has a right to know whether the country is properly governed or not or whether government is proceeding in accordance with the law and recognised ethical values and social norms. The Supreme Court, in different cases, has ruled that every citizen has the right to demand and receive information. “Openness is the main characteristic of democratic society and that a regular flow of information to the people is necessary in order to enable them to undertake regular supervision of the government and to watch whether it is clean and heading in the right direction”.

## RIGHT TO INFORMATION IN SOUTH ASIA

Nepali Press has been able to strengthen itself. Civic forums and groups have become active to criticise and hold the government officials accountable to the people. However, Civil Society actors in Nepal like their counterparts in Bangladesh are still demanding actual manifestation of this right.

The frameworks are made legally for the participation of citizens with concern to every respect of participation. But in practice the legal frameworks are not facilitating the participation of the citizens. Still a long way has to go in this context. This is evident from the following.

## 7. LESSONS AND CONCLUSIONS

Altogether it is not a common framework that guides and promotes the participation of the citizens in the process of local self governance . As discussed earlier there is a series of factors are operating in enabling and avoiding the citizens to participate. But there are various factors enables the citizens than making them to avoid. The key lessons learnt and the conclusions arrived are presented in the mode as how the citizens are not allowed to participate and factors enabling the citizens to participate. Finally it also suggests recommendations to have more effective participation.

Legislations are necessary but not sufficient in themselves. In South Asia, where traditional social structures (caste, class and patriarchy) are prominent, conflict between social and legal orders is obvious. With the passage of time, and also with the effect of global restructuring, constitutional provisions of democratic decentralisation are gaining strength over tradition autocratic structures. It is not uncommon to see that caste like structures are 'gradually adjusting' to reservation of seats for dalits. But field is not open. There are inherent risks. Traditional powers are trying their best to manipulate the whole process with direct or indirect supports from vested interests. Proxy women and dalit panches are many. Time is too short to judge the overall impact of the decentralisation but trends are emerging clearly.

Because of varying socio-political environment and civil society engagement in different Countries and regions, there is an uneven development in Local Government Institutions across the States and Countries. It necessitates a judicious and synergistic mix of interventions from government and CSOs. Attempts should be made to bring local self-governance on agenda for all institutions and an issue of concern for all citizens. Sustained public education is needed to build a commitment towards local self-governance. People should be made responsible to monitor functioning of the Institutions. Using new information technology as well as conventional means, the authentic, timely and easily accessible information about institutions of local self governance should be made available to concerned citizens on sustainable basis.

Special emphasis is needed on orientation of elected women and dalit representatives. The leadership capacity of women and dalit leaders should be strengthened by providing them training and exposures. If need be, the family and community members of the women representatives be involved in these capacity building efforts. They should be empowered to act as responsible, accountable and effective leaders.

Panchayats need more money to fulfil their constitutional responsibilities. At present the fiscal devolution ratios are against the institutions of local government. The PRIs should be provided with more functional powers to generate their own revenue. They should have control over their own natural, physical and human resources. The grants from Central and State governments should be untied in nature. These grants should reach the PRIs timely and smoothly.

## LESSONS AND CONCLUSIONS

Role of political parties and their political will to strengthen local self governance is not clear in India and Bangladesh. In some states of India the exceptions are there. But in majority of states there is conflict between the state and local political powers. State bureaucracy is not accountable to local governments.

Local Self Governance is a contested terrain where a number of stakeholders are players. They are not only local or national. International players are also influencing the system of governance at local levels (donor created parallel bodies or country assistance conditionalities). So, naturally multi-stakeholder approach is required by Civil Society to intervene to bridge the gap between Legal and Social Orders. Working with like minded is necessary but bringing to fold the opponents is also must.