

**LOK SABHA**

**JOINT COMMITTEE**

**ON**

**THE CONSTITUTION (SEVENTY-  
THIRD AMENDMENT) BILL, 1991  
(INSERTION OF NEW PART IXA AND  
ADDITION OF TWELFTH SCHEDULE)**

**EVIDENCE**



**LOK SABHA SECRETARIAT  
NEW DELHI**

*July, 1992/Asadha 1914 (Saka)*

*Price: Rs. 25.00*

JOINT COMMITTEE ON THE CONSTITUTION  
(SEVENTY-THIRD AMENDMENT) BILL, 1991.  
(INSERTION OF NEW PART IXA AND ADDITION OF  
TWELFTH SCHEDULE)

....

**CORRIGENDA TO THE EVIDENCE BEFORE  
THE JOINT COMMITTEE**

<u>Page</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
5	27	<u>Omit</u> 'will have to be allowed by the local'	
6	32	that nor	that not
8	18	tax farming	tax framing
19	36	problems	problems to
19	37	or a part	or a
20	17	tax various	tax varies
20	20	roperly	properly
24	8	they might	there might
27	16	or there	or three
49	8	in it	is it
50	32	present	President
51	7	in congruity	incongruity
52	4	farm	form
54	7	illiciting	eliciting
61	28	military/station	military station

P.T.O.

<u>Page</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
62	16	This,	thus,
63	19	alienate	alineate
64	11	vialble	viable
70	25	ordinance	ordnance
82	40	पवर्ती	पवर्स
90	38	pland,	plank,
102	20	certain	certain
112	7	sceme	scheme

----

JOINT COMMITTEE ON THE CONSTITUTION (SEVENTY-THIRD AMENDMENT) BILL, 1991 (INSERTION OF NEW PART IXA AND ADDITION OF TWELFTH SCHEDULE)

COMPOSITION OF THE COMMITTEE

Shri K.P. Singh Deo — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Pawan Kumar Bansal
3. Shri Chitta Basu
4. Shri Girdhari Lal Bhargava
5. Prof. Malini Bhattacharya
6. Shri Probin Deka
7. Prof. Ashokrao Anandrao Deshmukh
8. Shri Dau Dayal Joshi
9. Shri Shankarrao D. Kale
10. Shri Tarachand Khandelwal
11. Kum. Padmasree Kudumula
12. Smt. Sumitra Mahajan
13. Shri Suraj Mandal
14. Shri Yelliah Nandi
15. Dr. Debi Prosad Pal
16. Shri Hari Kewal Prasad
17. Shri Ebrahim Sulaiman Sait
18. Kumari Selja
19. Shri Hari Kishore Singh
20. Shri P.C. Thomas

*Rajya Sabha*

21. Shri Mohammed Afzal *Alias Meem Afzal*
22. Shri N.E. Balaram
23. Shri Radhakishan Malaviya
24. Shri Bhaskar Annaji Masodkar
- \*25. Shri Ghulam Rasool Matto
26. Shri S.K.T. Ramachandran
27. Shri Santosh Kumar Sahu
28. Shri Digvijay Singh
29. Shri K.N. Singh
30. Shri S. Viduthalai Virumbi

---

\*Nominated w.e.f. 13.5.1992 vice Smt. Bijoya Chakravarty ceased to be member on her retirement from Rajya Sabha.



(ii)

**SECRETARIAT**

1. Shri G.L. Batra — *Additional Secretary*
2. Shri S.C. Gupta — *Joint Secretary*
3. Shri R.K. Chatterjee — *Deputy Secretary*
4. Shri Ram Kumar — *Assistant Director*

**LEGISLATIVE COUNSELS**

1. Shri K.L. Mohanpuria — *Secretary*
2. Shri B.S. Saluja — *Joint Secretary and Legislative Counsel*
3. Shri K.N. Chaturvedi — *Deputy Legislative Counsel*

**REPRESENTATIVES OF THE MINISTRY OF URBAN DEVELOPMENT**

1. Shri R.V. Pillai — *Additional Secretary*
2. Shri K. Dharmarajan — *Joint Secretary*
3. Shri R.P.S. Pawar — *Deputy Director*
4. Dr. (Mrs.) Kiran Chadha — *Deputy Director*

**JOINT COMMITTEE ON THE CONSTITUTION (SEVENTY-THIRD  
AMENDMENT) BILL, 1991 (INSERTION OF NEW PART IXA AND  
ADDITION OF TWELFTH SCHEDULE)**

**Witnesses Examined**

<b>Sl. No.</b>	<b>Name of Association / Organisation Individual etc.</b>	<b>Dated of which evidence was taken</b>	<b>Page No.</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
1.	Indian Institute of Public Administration, New Delhi Spokesman Shri Abhijit Datta Professor	31-3-1992	2
2.	All India Council of Mayors, New Delhi Spokesman Shri K. Narayanaswami Chairman	31-3-1992	14
3.	Town and Country Planning Organisation, New Delhi Spokesman Shri D.S. Mesram Chief Town Planner	31-3-1992	22
4.	National Institute of Urban Affairs, New Delhi Spokesman Shri K.C. Sivaramakrishnan Vice-President	8-4-1992	32
5.	Ministry of Railways, (Railway Board) Government of India, New Delhi Spokesman Shri Y.P. Anand Chairman	8.4.1992	51

1	2	3	4
6.	Ministry of Defence, Government of India, New Delhi Spokesmen (i) Shri K.A. Nambiar Additional Secretary (ii) Shri P.K. Kumaran Director General Defence Estates	8-4-1992	60
7.	Executive Councillor Delhi Spokesman Shri Vijay Kumar Malhotra Former-Chief Executive Councillor	22-4-1992	76
8.	Central Advisory Board on Social Defence, Bhubaneswar Spokesman Shri R.N. Mohapatra Ex-Member	22-4-1992	90
9.	Executive Councillor Delhi Spokesman Shri jag Parvesh Chandra Former Chief Executive Councillor	6-5-1992	97
10.	National Centre For Human Settlement and Environment, Bhopal Spokesman Shri M.N. Buch Chairman	6-5-1992	107

**JOINT COMMITTEE ON THE CONSTITUTION (SEVENTY-THIRD  
AMENDMENT) BILL, 1991**

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE  
CONSTITUTION (SEVENTY-THIRD AMENDMENT) BILL, 1991**

**TUESDAY, THE 31 MARCH, 1992 FROM 15.00 TO 18.15 HOURS IN  
COMMITTEE ROOM NO. 63, PARLIAMENT HOUSE, NEW DELHI**

**PRESENT**

**Shri K.P. Singh Deo — *Chairman***

**MEMBERS**

***Lok Sabha***

2. Shri Pawan Kumar Bansal
3. Shri Chitta Basu
4. Shri Girdhari Lal Bhargava
5. Prof. Malini Bhattacharya
6. Shri Probin Deka
7. Shri Dau Dayal Joshi
8. Shri Shankarrao D. Kale
9. Smt. Sumitra Mahajan
10. Shri Suraj Mandal
11. Dr. Debi Prosad Pal
12. Shri Hari Kishore Singh
13. Shri P.C. Thomas

***Rajya Sabha***

14. Shri N.E. Balaram
15. Shri Radhakishan Malaviya
16. Shri S.K.T. Ramachandran
17. Shri S. Viduthalai Virumbi

**SECRETARIAT**

**Shri R.K. Chatterjee — *Deputy Secretary***

**Shri Ram Kumar — *Assistant Director***

**REPRESENTATIVES OF THE MINISTRY OF URBAN DEVELOPMENT**

**Shri R.V. Pillai — *Additional Secretary***

**Shri R.P.S. Pawar — *Director (L.S.G.)***

**REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY  
AFFAIRS**

**Shri B.S. Saluja — *Joint Secretary and Legislative Counsel***

Shri K.N. Chaturvedi — *Deputy Legislative Counsel.*

**WITNESSES EXAMINED**

<b>Witnesses</b>	<b>Organisation</b>
1. Shri Abhijit Datta	Indian Institute of Public Administration, New Delhi.
2. Shri K. Narayanaswamy } 3. Shri Hira Lal }	All India Council of Mayors.
4. Shri D.S. Meshram } 5. Shri R.P. Bansal }	Town and Country Planning Organisation, New Delhi.

**1. Indian Institute of Public Administration, New Delhi**

*Spokesman*

Shri Abhijit Datta, Professor

*(The Witness was called in and he took his seat)*

MR. CHAIRMAN: Before you start your evidence, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as Confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI ABHIJIT DATTA: Before we start, I may submit that I gave evidence before the Joint Committee on Panchayat Bill also. In my view, these two are inter-related. If there are some changes in the Panchayat Bill, this will also affect the Municipalities Bill. Therefore, management of Panchayats will have relevance for Nagar Palikas also. I will go into the specifics later. But the point I would like to make is that it would perhaps help if we keep this aspect in mind.

MR. CHAIRMAN: Will you please stop for one minute. We are not able to hear you Because of the quorum bell. We have to wait till the quorum bell is over; we will continue after that.

SHRI CHITTA BASU : It would be better if the copies of the replies are given to us.

MR. CHAIRMAN: Thousands of such replies will come. They have to make copies and give.

SHRI CHITTA BASU: If you supply us now, it will be easy for us to follow.

**SHRI ABHIJIT DATTA:** The proportion of grants to the municipal budget is rather smaller than what is happening elsewhere in the world, but, the proportion of public expenditure routed through municipalities is very small. In fact, these two things need to be carefully considered. In 1961, for instance, the proportion of public expenditure routed through the municipal bodies was about 8 per cent of the total expenditure.

**SHRI CHITTA BASU:** That is referred by way of grants.

**SHRI ABHIJIT DATTA:** The total public expenditure by the Central Government, by the State Governments, by the municipalities and Panchayats, if these are all taken together as 100, then the municipalities were discharging about 8 per cent of the total expenditure in 1961. As per the world average of public expenditure routed through local governments (i.e., the Urban land rural local bodies taken together) this average comes to anything between 20 to 30 per cent. So, the status of local governments, both Panchayati Raj as well as the municipalities, is very low in our country. This must be corrected if these bodies are to function as decentralised institutions so that the proportion of grants to the municipalities will have to be seen as one of the alternative means of helping the municipalities. If more internal revenues are to be provided, and if more shared taxes are due to the municipalities then they may not need the additional funds at all by way of grants. On the other hand, if they are not given the Required revenue capacity shared taxes and assigned taxes and so on, the proportion of grants necessarily will have to be much larger. But the basic question is, finances for what? Finances ought to be for a wider level of functions as agreed beforehand.

It seems that the Bill is somewhat vague on that particular question. The Eleventh and the Twelfth Schedules, particularly the Twelfth Schedule with which we are concerned, show that these are only some ideas about the functions of the municipalities. These have no binding force as such. There is not only a generic difference between the Twelfth and the Eleventh Schedule in terms of local functions, but even in the Twelfth Schedule things are vague in some respects, as compared to the Seventh Schedule, which has a binding force.

So then, it is quite possible that in spite of the Twelfth Schedule the State Governments may ignore the Schedule and carry on with the existing devolution of local functions and their financing. In that case, the future State Finance Commissions will have very little to do with regard to an optimum level of fiscal devolution. Unless this functional arrangement is corrected, the financial devolution will become meaningless.

**MR. CHAIRMAN:** What is your suggestion? Do you want it to be codified?

**SHRI ABHIJIT DATTA:** There are two ways of dealing with it. One way to deal with is—this has been suggested umpteen number of times—that there should be a separate local list in the Constitution, the fourth list in which both local functions and local taxes are to be explicitly provided for. If this route is not taken, there has to be some other means for ensuring that the local bodies get the kind of functions that they ought to have. My suggestion would be to provide for a specific minimum percentage of public expenditure, which ought to be made by the Municipalities and by the Panchayat Raj institutions.

In the context of Panchayat Raj, I have suggested a minimum of ten per cent of total public expenditure. At the moment, Panchayats are dealing with not more than three per cent of the total public expenditure in the country. I want that ten per cent of the State expenditure to be devolved to them. In that sense, municipalities should be devolved State-related functions within a range, rising from 10 per cent to about 20 per cent, because the degree of urbanisation is not the same throughout the country. The most urbanised State may have to devolve more functions so that more public expenditure will be routed through the municipalities. So, Maharashtra, Karnataka, Gujarat and West Bengal may have to devolve to the municipalities about 20 per cent of the total State functions, which are at the moment being handled by the State Government. On the other hand, smaller States and medium sized States may vary this percentage between 10 and 15 per cent. So, functional devolution ranging from a maximum of 10 per cent of about 15 per cent would be necessary for these States. If the amendment which has been proposed by me for the Panchayats is accepted in regard to Panchayats, it is deemed to have been accepted for the municipalities also. That is the first point I would like to make.

Before the Finance Commission is constituted, the State Governor will have to satisfy about the minimum percentage of public expenditure to be routed through the local bodies. In that case, the state Finance Commission will have an idea about the total quantum of funding needed by the Municipalities to discharge these functions. If that is decided upon first, and it is really upto the State Governments to decide which are functions that require priority devolution and which are the functions which could be devolved later on, so that the 12th Schedule becomes somewhat meaningful and a phased devolution programme could be worked out. Without that the State Finance Commission will not be able to decide about the finances needed by the Municipalities. They can start with what is being done now. But what would be the optimum functional devolution and in that context what would be the different sources of funding, the State Finance Commission cannot decide that question in a vacuum. It is because there is a fundamental difference between the Federal Finance Commission which we have and the State Finance Commission that is now being suggested for the local bodies. In the Federal Finance Commission, they do not have to

worry about the state functions as such, because these are stable. No one can touch these. In the case of the local bodies, there would not be a given list of functions as such. Whatever has been provided in the 12th Schedule, this is only indicative. This does not represent the reality. The reality now and in future will have to be decided by the individual State Governments. But the Constitution must provide for a phased pattern and phased quantum of devolution of functions so that the State Finance Commission can perform its job effectively.

Let me read out the exact construction of the amendment that I have suggested, and you may like to consider. At the appropriate place Clause 243(1) under sub-para 1 to 3 and this will be the fourth para:

"Provision of functions of the Panchayats listed under the 11th Schedule, aggregating at least ten per cent of State expenditure in the base year of the estimation of the financial needs of the Panchayats."

If this is adopted for the Panchayats, it would apply to the Municipalities as well *vis-a-vis* the 12th Schedule.

SHRI R.K. CHATTERJEE: Please give us one copy.

SHRI ABHIJIT DATTA: I have a few copies with me. I will give one copy to the Committee.

This is the first amendment that I have suggested. I am not really worried, Mr. Chairman, whether the municipalities have tax a, tax b or tax c, or whether among the State taxes some of these are only assigned and some of these taxes are partially assigned and so on. I am not concerned with this question. It is really for the State Finance Commission to work out the package, so that if the financial needs are worked out in terms of this percentage of State expenditure, then the necessary financial provision is to be will have to be allowed by the local made available to the municipalities through a fiscal package to be suggested by the State Finance Commission. Now, from the existing devolution of taxes and transfer arrangement, if this cannot be met, then obviously it is for the State Finance Commission to suggest whether additional taxes are to be devolved or whether these are to be met through State fiscal transfers. My own preference would be that in the case of local bodies, the grant element, by and large, should not exceed 30 per cent; after local budget, so that about 70 per cent of the financial needs of the municipalities will have to be from their own revenue shares. This is my submission. But in the context of some States this may have to be varied according to the conditions obtaining in those States. The local tax base may be very poor in some States, so that the grant element will necessarily have to be more there. In other States where the local tax base is more strong, that needs to be exploited much more vigorously. In that case the municipalities will be given the autonomy to rely more on their own taxes, perhaps supplemented by some share taxes. The main point is that again depending on the degree of urbanisation, the proportion of expenditure of local



bodies would vary. My suggestion is, at least you have 10 per cent of the State expenditure to be devolved to the municipalities. I am taking the minimum degree of functional transfers to the municipalities at the same level as the rural local bodies so that in case of more urbanised States, it may have to be increased up to 20 per cent. So, if a minimum is prescribed, then that minimum has to be met. This is the first submission of mine.

The second part of my submission which I have already made to this Committee is that the present Bill seems to be too much concerned, maybe rightly, with the democratisation of the Council of the local bodies or of the membership representation of the local bodies, but it is not at all concerned with the way they are actually managed or administered. What I am saying is that a democratic local government would not be regarded as fully democratic unless both its management and its membership have a democratic base and it is in this sense that I am suggesting specifically in the context of Municipalities Bill that there would be a provision for a political executive in the case of Nagar Palikas. This may mean that clause 243R(5) may have to be amended, but I have suggested in my letter that it could also be done by insertion of the new sub-para under clause 243V(a) and my suggestion is as under.

The new sub-clause V(a) and sub-para (iii) would read as follows:

“The selection of the Leader of a Municipality by its elected members, who, in turn would nominate a Council of Executive Members limited to one-tenth of its total membership to work under the Leader for collectively sharing the executive responsibilities of the Municipality.”

What I am in fact suggesting is induction of a cabinet system of Government in the municipalities, both in the ordinary municipal bodies and for the municipal corporations. Ordinary municipal bodies, I have already suggested, should start with a population of more than 20,000 and I am not so sure that its division into municipality and a Municipal Corporation may have much relevancy. And since I am suggesting that nor more than one-tenth of the total membership of the municipal body could form a council. It means that depending on the size of the Municipal Council itself, its corresponding size of the political executive also will be determined, that is to say, that if the smallest size of a municipal council is 30, then its Executive Committee would be limited to three members.

I am not suggesting something out of the blue. It is already functioning in this country since 1984. In the case of West Bengal, two Municipal Corporations, Calcutta and Howrah, have adopted the Mayor-in-Council system and that has really ended the internal feuds between the appointed wing and the elected wing. I think, the only way out of this conflict situation is to make a clean break from the past and go in for a Cabinet System of government in which there should be political accountability of

executive decisions. The line of control would be clearly demarcated and the role of the local body *vis-a-vis* the State Government also will be effectively defined. The existing position is that the State Governments have entered into the municipalities through the backdoor by having a Chief Executive Officer or an appointed Commissioner in the municipal bodies and there is not formal political executive to safeguard the appointed officials them from political onslaughts. Everybody in the Council works for small favours, but nobody takes political responsibility for taking the decisions.

SHRI S.K.T. RAMACHANDRAN: Do you have any suggestion for augmenting the resources of the local bodies?

SHRI ABHIJIT DATTA: This is somewhat premature at this stage. The need for this will vary from State to State and it is for the State Finance Commission to see as to how best to meet the financial requirements of the municipalities.

SHRI S.K.T. RAMACHANDRAN: They need some local taxation also for increasing the revenue.

SHRI ABHIJIT DATTA: They need not. If you look at the 12th Schedule and super-impose it on the Seventh Schedule, you will see that about 20 per cent of the total government expenditure will have to be spent through the municipalities. Now, out of 20 per cent, the Municipalities are at the moment spending four or five per cent. Unless a State Government actually devolves the 12th Schedule functions to the municipal bodies, where is the question of their additional financial need? If such functions devolution is granted, then it is assumed that the same amount of funding will have to be transferred to the municipalities also. About the need for increased tax and grants to the municipalities, it is for the State Finance Commission to decide.

MR. CHAIRMAN: You need not shy away from that the local bodies need finance. If you are able to give some suggestions, you can pass on. Could you give some suggestions for the local bodies to augment their own revenue?

SHRI ABHIJIT DATTA: My own thinking is that the type of taxes the local bodies should may differ among the States. These taxes are inefficiently administered. The policies of the State Government in this regard also vary from time to time. The taxes which used to be productive taxes are being transformed into State taxes that not much can be done by way of their efficient management *per se*. A total view has to be taken by the State Finance Commission.

MR. CHAIRMAN: You could give us a note on this. How the local bodies could augment the resource base?

SHRI CHITTA BASU: I want your opinion on whether there should be a 4th List for these local bodies in the Constitution.

**SHRI PAWAN KUMAR BANSAL:** What would be the functions of the municipality concerned?

**SHRI ABHIJIT DATTA:** Technically speaking, the construction of a fourth list is not difficult but my own feeling is that it will be difficult to put it into practice. It is somewhat easier to draw up a 4th List consisting of only local taxes. But if you have a common local list of both functions and taxes, which a List generally contains, then this would be somewhat difficult because there are many functions which can be perhaps delegated only when, a degree of development has been reached. If we have to take a minimum cushion for all the States, then we have to keep that List at such a low level, which means such minor functions and minor taxes, that the main purpose of having this will be defeated. I would say that the 4th List idea may not really work-out in practice. It will place more responsibilities on the future State Finance Commissions to work out the rigidities within the States, because even when you have in the Seventh Schedule, the three Lists, there are provisions in the Constitution which provides for compulsory transfer of certain taxes, optional transfer of certain other taxes, tax farming at one level to another level and then on top of it for the Finance Commission to suggest the residual transfers through grants-in-aid and so on, so that if this need is to be replicated at the municipal level also, this will mean not only construction of 4th List but all the other types of sharing and tax devolution system which will affect other parts of the Constitution which we are not tackling at the moment. Since such a List has not been found to be practical in other countries also, I would say that a better route would be to enable the future State Finance Commission work out its recommended fiscal devolution in terms of an agreed level of functional devolution. If this is attended to, then the purpose of fiscal devolution would also be met. But in the absence of a concrete functional devolution, fiscal devolution has no meaning at all.

**SHRI PAWAN KUMAR BANSAL:** What is your view about auditing of the accounts of the Municipalities?

**SHRI ABHIJIT DATTA:** We say that both local auditing as well as local elections should be under the overall supervision of the Constitutional Officers of the C&AG and the CCE respectively. The responsibilities are to be given to them. The existing arrangement is that the Examiner of Local Fund Accounts functions under the State Finance Department. Instead of that, now the C&AG is to be made responsible. He could start functioning by prescribing the budget and accounts formats. As far as the auditing is concerned, the Accountant-General of the State would perform the duties through the Examiner of Local Fund Accounts.

**SHRI HARI KISHORE SINGH:** I would like you to comment on whether the tax on vehicles and the theatres should be included in the income of the Municipalities or not.

**SHRI ABHIJIT DATTA:** We presume that each State Government will give the type of tax to the Municipalities which the State Government considers fit. It really does not matter if the vehicle tax is given to the Municipalities or some other tax is given to the Municipalities. The question is that of working out the optimum amount of devolution of functions. There must be an optimum amount of financial devolution corresponding to such functional devolution. If that is done, that will be all right. The question whether this is to be made through grants or specific taxes or through sharing the taxes or a combination of all the three will have to be decided by the Finance Commission. It does not matter how the money come from which source.

**SHRI S. K. T. RAMACHANDRAN:** He has suggested something about the C&AG's auditing of the accounts and election to be conducted by the CEC. There is the popular opinion that this may cause some inroads into the powers of the States. What is his opinion.

**SHRI ABHIJIT DATTA:** My opinion is that the C&AG and the CEC are the servants of the Constitution. If they have to discharge their constitutional responsibilities with regard to the Central Government and the State Governments separately, they should be allowed to do the same in respect of the municipal authorities also. There is no question of transgression into anybody's rights.

**SHRI S. VIDUTHALAI VIRUMBI:** What he says is that the C&AG and the CEC are constitutional authorities. In the eyes of law it is *de jure*. But *de facto* it is different. That is what I feel.

**MR. CHAIRMAN:** He is giving his opinion. We can debate it within the Committee later on.

**SHRI PAWAN KUMAR BANSAL:** I would like to know whether there would be any real utility of the Schedule.

**SHRI ABHIJIT DUTTA:** It raises some expectations. But there are no means of fulfilling the expectations. There is nothing you can do about it.

I wonder why these Schedules have been made. That is why, I have suggested that the functional devolution will have to be made in a more concrete way and in a phased manner and also in terms of the requirements of particular States so that it is relevant to the particular context. We have such a large variation of States, such a large variation of degree of urbanisation, that even a minimum agreed list of functions becomes somewhat meaningless.

**SHRI N. E. BALARAM:** I would like to address to you on two issues. One is, with the urbanisation taking place, we will be having more and more municipalities. In the present situation, it requires a certain financial expenditure. It is not clearly fixed. For instance, take the question of environment protection. You cannot see it either in the State List or in the Union List. There are many problems coming pertaining to slums. The

Seventh Central Finance Commission and the Eighth Finance Commission had made some studies about the financial situation. I do not know why they did not make any recommendation. I completely agree with you on the question of functional devolution. In that case, I think, you will agree with me that the Central Finance Commission must also give a part of the Central money for the expenditure of municipalities.

SHRI ABHIJIT DATTA: I would say that the urbanisation is a national problem. The first level of talking about this problem is at the State level where the municipalities are located. But the national Government cannot totally ignore some of the larger dimensions of urbanisation so that the States are able to alleviate the problems arising out of the urbanisation through the general purpose grants to the States as also the grants evolved to assist the municipalities. We have not really worked out any scheme for the general purpose grant except to say that an *ad hoc* grant of Rs. 50 crores was given to Bombay and Calcutta earlier. There is no permanent arrangement. But once the State Finance Commission start functioning, it is possible for the Central Finance Commission to direct its emphasis on this aspect if they consider that it is attacking some of the major problems of urbanisation like slums and so on. This will have to be done at the national level.

Successive Finance Commissions, that is, Federal Commissions, have taken up particular functions on which there should be a minimum standard for the country. At one point, they took police administration, at some other point, they took roads administration and so on, so that the States where the expenditure is below the national norm, will have to be given additional grants. But apart from that, it is also possible that some conditional grants may be made available for the municipal functions for plan purposes and also for Conventional capital expenditure as well as for maintenance expenditure. The federal funds will have to be made available in a much more systematic fashion in the future to finance seemingly local functions having material importance.

At the moment, the terms of reference of the Federal Finance Commission does not include municipal institutions directly. But there is nothing in the Constitution that debar them from doing so, provided the President, in the appointment of these Finance Commissions, requests them to look into the municipal finances also, "in the interest of sound finance," which is a residuary clause in the Finance Commission Legislation which has never been used so far. If the President says that the Federal Commission shall look into the state of municipal finances and make appropriate recommendations, then the Federal Finance Commission is bound to do that. And whether they will consider specific performance grant or a general grant or through a mixture of these two, it is for the Federal Finance Commission to decide.

I must clarify one misgiving as to whether the Central Government can

give direct assistance to the municipal bodies and to panchayats because these are elected public institutions. Article 282 says that the Union or a State may make any grant for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws. This particular Article has been used only for plan assistance to the States, but it can also be used for maintenance assistance to municipalities which function under the State Governments. There is nothing under the Constitution that debars the Centre from doing so.

**SHRIMATI MALINI BHATTACHARYA:** Can your suggestions be accommodated in the text of the Bill?

**SHRI ABHIJIT DATTA:** I think the present Bill is concerned with that. All I am suggesting is that sooner or later this will come up and the functioning of the State Finance Commissions will have to be facilitated through widening of the scope of the Federal Finance Commission.

**SHRI N. E. BALARAM:** Who will meet the expenditure for growing environmental protection in the municipal and rural areas—the State or the Centre?

**SHRI ABHIJIT DATTA:** There are many functions which are not mentioned in the Constitution. Technically speaking, these are residuary functions that form part of the subjects that are under Central List. But in practice, they are treated as if they are under the State list. Apart from environmental protection, there is another function, that is housing. Technically speaking it is a Central subject since it has not been mentioned in the Constitution. But it is treated as if it is a State subject. So both Central and State Governments are involved in this function and for all practical purposes, the Central Government says that it is a State subject. This is not so. The Constitution which was framed in the 1950s, that was not an original document, that was bodily lifted—particularly the functional list—from the 1935 Constitution. The functional list was again borrowed from the functional description of the 1919 Constitution. Now we are not operating on a clean slate. If we have to re-write the Constitution, may be the need for these things are must more logical and much more relevant now. But meanwhile the Seventh Schedule functional list remains where it is.

**SHRI N. E. BALARAM:** Since you agree with the function of devolution I think you will also agree with me that if those tasks are assigned to the local bodies, specially to Municipalities, Plan funds can necessarily go to the Municipalities.

**SHRI ABHIJIT DATTA:** In so far as the Central funds for State Plan purposes are concerned, so far the Central Government has not made it a condition that a part of it will have to be devolved to local bodies. But it is possible to make a condition that a part of the Plan funds will have to be necessarily devolved with the proviso that unless the States actually do that

they will not get the next instalment of money. This has been done in the USA and this can be done here also.

So far as the State Governments are concerned, I believe that the intention of the Constitution Amendment is that the proposed State Finance Commission will function at the State-level both as a Finance Commission as well as a Planning Commission. The dichotomy that you have at the federal level will not be there at the State-level at all. So the State Finance Commission will have to look into both the revenue requirements of the Municipalities as well as their capital needs.

SHRI N. E. BALARAM: According to you it is your suggestion that the duty of the State Finance Commission is to distribute the money according to the functional devolution. But they have other jobs also. That should be made clear in the Act.

SHRI ABHIJIT DATTA: I am not sure on that point. I am objecting to that because it is always open to the Government to accept or reject the recommendations of the Finance Commission. This body has only recommendatory powers. So the Government's inherent power of decision making cannot be delegated to another body which is not responsible to the Parliament or State Legislatures.

SHRI N. E. BALARAM: I am not questioning the inherent powers of the State. Suppose the primary education is handed over to the Municipalities, I think the job of the Finance Commission is to distribute that money to be spent for the purpose of primary education automatically to the municipalities. But most of the State Governments are run with the help of the Reserve Bank of India. So, if they do not have money to devolve, how can the primary education be run by Municipalities?

SHRI ABHIJIT DATTA: Even the Central Government is not completely free from that. I would say that if the State Governments are made to devolve a fixed quantum of functions, then the corresponding finance will have to be provided for.

Secondly, once the functions are devolved, the Finance Commission's job is to find our resources for that. Whether they give straightway the funds through grants or whether they find new sources of taxation to fund this or whether they find some sharing arrangement, is for the individual State Finance Commission to decide.

We cannot say that necessarily some functions will have to be devolved, e.g., primary education. It is possible that at the district level, you may have a viable administration for discharging that function. If that function is administered at the district level by the Zilla Parishad, then, within the district, all the municipalities can take advantage of that administration. All that they will do is to enter into an agreement with regard as to who administers that particular function. Partly it will be

financed by the States, partly it will be financed by the sharing-authorities and partly it will be financed through fees arrangement and local contributions etc.

**SHRI N.E. BALARAM:** What is your opinion about the administrative expenditure for these municipalities?

**SHRI ABHIJIT DATTA:** If you see the administrative expenditure of the municipalities, you will find that in no way their expenditure is above the level of the State Governments. The State Government's administrative expenditure and the municipalities' expenditures are more or less at the same level. Their excess staffing is also more or less at the same level. Municipalities do not have, by and large, undertakings except a few. So, the competition for public undertakings is not relevant, but the municipalities are mainly concerned with functions which are either of the regulatory nature or which are man-power intensive. The man-power cost in a municipality or municipal institution is quite heavy. But that does not mean that they are out of tune with the State Government expenditures at all. I would say that about 70 per cent of the municipal expenditure is spent on staff; so is at the State level.

**SHRI N.E. BALARAM:** Some studies made by the Ninth Finance Commission show that the expenditure of the municipality is coming down every year whereas the duties are not. So, how do you solve the problem?

**SHRI ABHIJIT DATTA:** It is a different problem altogether. I have already explained. If you take the municipal expenditure right from the sixties, it is coming down and that means that more and more functions are centralised by the states. That is all. In 1960s, about 8 per cent of the functions have been done by the municipalities, and in 1990s, not more than 4 per cent of the functions are being done by them, which means that half of the functions which used to be done by the municipalities are now being done by the State Governments.

**SHRI PAWAN KUMAR BANSAL:** What is your view about the public transport system—should it be with the municipalities or not?

**SHRI ABHIJIT DATTA:** It should not be either with the State Governments or with the municipalities. It should be privatised. The regulatory powers as city transportation should be left with the municipalities.

**MR. CHAIRMAN:** Are you suggesting this inspite of BEST's performance?

**MR. ABHIJIT DATTA:** BEST is not a profit-making organisation. They are able to run transport services because of the profits from the electricity undertaking. If the electricity undertaking is taken out of the BEST, then its transport undertakings will collapse.

**MR. CHAIRMAN:** Thank you very much. You have answered the Questionnaire. But, you have not given us anything about the finances.



We have gone through some of your articles about the finances and that is why we were interested to interact with you today. Would you kindly give us a note on this?

SHRI CHITTA BASU: You may give a comprehensive note on 'municipal finances'.

MR. CHAIRMAN: We may have occasion to trouble you again.

SHRI ABHIJIT DATTA: It is all right, Sir.

*The witness then withdrew.*

## **2. All India Council of Mayors.**

*Spokesman:*

Shri K. Naryanaswami,  
Chairman

*(The witness was called in and he took his seat)*

MR. CHAIRMAN: I welcome you, Mr. Narayanaswamy. In fact, the Committee would like to elicit your views on various points which have been emanating from the Bill. You have already given memorandum and also a questionnaire. The Committee would also expect you to give your views freely and frankly which would help us in arriving at a proper conclusion.

I would also like to mention that as per the directions of the Speaker, your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of it would remain confidential.

Further, even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. I may, however, add that the proceedings of this Committee shall be treated as confidential and shall not be permissible for anyone to communicate to the Press any information till the report of the Committee has been presented to Parliament.

MR. CHAIRMAN: You have given a written memorandum. Members may like to elicit any further clarification.

If you would like to emphasise any point, you can do so. Otherwise, Members would like to seek some clarifications from you.

SHRI PAWAN KUMAR BANSAL: You have suggested that there is indeed no utility of having committees in wards. It seems quite interesting because there could be some overlapping of functions then. At the same time, I would like to present a hypothetical case. For instance, a big city like Bangalore and another smaller city may both have a municipal corporation according to the definition. One State Government may say that a city or town with a population of two lakhs will have a municipal corporation. But in another State towns having a population of ten lakhs

may be given Corporations. So, should there not be ward level committees?

**SHRI K. NARAYANASWAMY:** The system of ward committees is never tried anywhere in the country. This is a novel idea which has been put forth in the amendment. There may be standing committees which can be represented by the councillors. If ward committees will be formed, then there may be a clash between the councillor and the chairman and they may not see eye to eye. Thus, they cannot resolve what exactly is required for the development of a particular ward. They may have different views.

**SHRI PAWAN KUMAR BANSAL:** What do you suggest for bigger cities? I tend to agree with you and therefore, I am putting this question to you.

**SHRI K. NARAYANASWAMY:** The standing committees can take not of all the requirements even of the bigger cities and what a particular ward wants. The ward people can also contact their respective councillor about the development works that have to take place during the year.

**SHRI S.K.T. RAMACHANDRAN:** So, ultimately they have to come to the Councillor. We are in a period of decentralisation and devaluation of powers to the lower level. So, we want some revolutionary change in the aspect. Since the corporation is very big and you cannot look into the overall development, some decentralisation is necessary. Considering this part of the aspect, what is your suggestion? Only the local people will have more knowledge about the area. Everytime they need not come to you for grants and other things. This will relieve the head of the system or the centralised council also from its burden.

**SHRI K. NARAYANASWAMY:** The existing practice is that there will be a council. There are standing committees which will be represented by election. So, the committee is entrusted with a specific task of education, health and so on. The respective councillor of the ward will have to take care of the required development of the ward. Only on his representation, development work will be taken up and will be enumerated in the programme. I think that system is enough even for bigger cities also as bigger cities will have more number of standing committees.

**MR. CHAIRMAN:** Why should you presume that there will be a conflict between the councillor and the ward committees? Why have you got an apprehension that there will be a conflict? We know the existing structure and we want democracy to go down to the grass-root level.

**SHRI K. NARAYANASWAMY:** It may become redundant.

**MR. CHAIRMAN:** Are you having concrete proof or a reasonable apprehension or experience?

**SHRI K. NARAYANASWAMY:** Suppose a ward is represented by the respective councillor, then it will be all right. Suppose if some others are accommodated in that committee and if they want to create some problem,

then in that case, whatever suggestions given by the councillor of the ward may not be taken into account by the committee.

**SHRI PAWAN KUMAR BANSAL:** We can think of a higher level. The Bill as such says, "Ward or any other level that the State Legislature may deem appropriate." For instance, ten wards of a particular area can have a small committee which will be further represented in the Municipal Corporations.

**SHRI S.K.T. RAMACHANDRAN:** In Madras, some wards are taken as a circle. They have demarcated 150 corporation divisions, which are grouped into 10 or 15 circles. So, such circles may come into existence and they may exercise the powers devolved on them. This is what is decentralisation.

**MR. CHAIRMAN:** What is your experience? Is it complimentary or does it lead to conflicts?

**SHRI S.K.T. RAMACHANDRAN:** It is both complimentary and supplementary.

**SHRI N.E. BALARAM:** You want that the source of revenue should be allotted to the local bodies by the Constitution itself and you suggested amendments to Clause 243. Does it mean that it can be done by the Central Finance Commission?

**SHRI K. NARAYANASWAMY:** My suggestion is that it would be better if it is incorporated in the Constitution, so that there will be a constitutional guarantee of getting those taxes, without depending on anybody's whims and fancies.

**SHRI N.E. BALARAM:** Finances are directly distributed by the Central Finance Commission to the States. Suppose, there is a provision or suggestion or recommendation that the Central Finance Commission also should look into the financial problems of local bodies and suggest recommendations, would it satisfy you?

**SHRI K. NARAYANASWAMY:** Yes, definitely. Because, the local bodies are trying for some finances.

**MR. CHAIRMAN:** His is a very simple question. He wants to know whether it should be a State Finance Corporation or a Federal Finance Commission? We agree that the municipal bodies require finances and guaranteed finances. So, he wants to know whether the finances should come from the recommendations of the Finance Commissions or as envisaged here (a) The Finance Commission should look after municipal bodies within the States. Take the example of Karnataka. There, there will be a Karnataka Finance Commission, (b) Or do you want an Indian Finance Commission?

**SHRI K. NARAYANASWAMY:** The Central Finance Commission should decide upon what should be the share that should go to the State bodies.

**SHRI N.E. BALARAM:** I am not talking about anti-mosquito campaigns. I am talking about the massive campaigns of several kinds that are taking place in the Bangalore city. How do you find money for this? Are you doing anything about the pollution in the Bangalore city?

**SHRI K. NARAYANASWAMY:** We have started Solid Waste Management Programme. Whatever sewerage goes, it should be treated and it should be purified. That is the only thing we are doing. We have no money. Even for that also, it is very difficult. We are finding it difficult even to remove garbage.

**PROF. MALINI BHATTACHARYA:** Would it not be more logical to settle it at the State levels as to what kind of money would be needed by the municipalities, under different heads? The taxes on that may be allocated to the municipalities or funds may be shared with the city. Don't you think that it would be more logical to settle it at the State level than at the Central level by having a Central Finance Commission?

**SHRI K. NARAYANASWAMY:** All these years, it had been tried and it had been futile. That is why, at least, now, the Central Government is coming with an Act to strengthen the position of the local bodies. So, it would be better that all the shares that we could get, through the Centre as well as through the States are demarcated.

**MR. CHAIRMAN:** What is your opinion? Since, you are advocating the Finance Commission at the Centre, would you think that the State Finance Commission would be necessary or would it be redundant?

**SHRI K. NARAYANASWAMY:** It is necessary at the State level also. They collect Motor Vehicles tax. Devolution is not correct. It is not upto the mark. They are giving a very meagre sum. They are collecting the professional tax. They are not giving anything at all. They are collecting turnover tax and they are not giving anything at all.

Whatever amount the State Government collects, should also be devolved upon the local bodies. For that matter, the State Finance Commission should play a vital role.

**PROF. MALINI BHATTACHARYA:** Don't you think it is better to settle it at the State level?

**SHRI K. NARAYANASWAMY:** They are not doing it properly.

**PROF. MALINI BHATTACHARYA:** Do you want that a uniform recommendation for all the States should be imposed from the Centre?

**SHRI K. NARAYANASWAMY:** Yes.

श्री दाऊद दयाल जोशी: नगर परिषद और नगर निगम जो औद्योगिक वसूल करती है इसके विषय में आपका क्या कहना है क्योंकि औद्योगिक ही एक ऐसा विषय है जो डायरेक्ट म्युनिसिपल कोरपोरेशन वसूल करती है। और टैक्स स्टेट गर्वनमेंट वसूल करती है और सैन्ट्रल गर्वनमेंट को वापिस करती है। कहीं पर टोल टैक्स है कहीं पर मोल टैक्स है। आप औद्योगिक पसन्द करते हैं या कोई और सब्स्टीट्यूट बताना चाहेंगे।

SHRI K. NARAYANASWAMY: It has become a controversial issue. Some States are collecting it and some are not collecting it. It would be better to collect on the basis of the price of the commodity, and not on weight.

SHRI CHITTA BASU: He wants centralisation of power and that too at the hands of the Central Government; he considers it necessary to add certain taxes which are to be levied by the Municipal Corporations, etc. He recommended for a model Act to be taken up by the Parliament. The spirit of the Bill is that the power is to be given to the States; and the States should also provide certain facilities for collection of resources. Do you not think that in this case — as you are a Mayor of the Bangalore Corporation — it is an interference with the autonomy of the States?

SHRI K. NARAYANASWAMY: It is not so in my view. Because regarding augmentation of resources of local bodies, several committees have been constituted right from 1924, even after independence. They are suggesting a uniform code and also more share in the taxes for the local bodies. What has happened is, even after independence, whatever resources that were available for the local bodies have been taken away. And instead of that, some grants are being given and that system is not working properly. So, it would be better that the Central Government comes out to make a legislation to ensure that all these safeguards are taken and it will not be cutting the powers of the State to regulate the resources of local bodies which are very much in a bad shape.

SHRI CHITTA BASU: Do you not agree that these things differ from one municipality to another, one corporation to another and therefore a uniform legislation will not be helpful for the involvement of the local people in the matter of development?

SHRI K. NARAYANASWAMY: That is why we have urged for a model Act here. There are differences in powers and functions from corporation to corporation and from State to State.

A corporator who comes from Bangalore to Delhi finds a different system here, a different tax here. He goes to Haryana and he finds something else different. In order to bring uniformity and regularity it would be better to evolve a model so that it would be useful for the whole of India.

SHRI CHITTA BASU: May I also know, whether funding of the

metropolitan cities like Bombay, Madras and Calcutta needs some special assistance from the Union Government?

**SHRI K. NARAYANASWAMY:** Definitely. It has been suggested by the local self-government and Urban Development Committees and the other committees on taxes which have been constituted earlier. They have been telling that some grants should be given to metropolitan cities for water supply, environmental matter, slum clearance, etc. They cannot do them on their own. That is why the Central Government should help them.

**SHRI CHITTA BASU:** Do you consider it desirable that the system of Mayor-in-Concil has to be introduced and that that will be part of a model Act you propose?

**SHRI K. NARAYANASWAMY:** A Study Group constituted at the Central level has gone through it and given that proposal. That has been adopted already in West Bengal, in Howrah and Calcutta. That system is working very well. The elected body is under the mercy of bureaucrats and the Mayor has no powers under the present system. Everything has to go to Executive. The Mayor cannot do anything.

**श्री दाऊदयाल जोशी:** मेरा निवेदन यह है कि म्यूनिसिपल काउंसिल में या नगर निगम में चित्र-पित्र संस्थाएँ काम करती हैं। जैसे इन्फ्रामैट ट्रस्ट भी है, विकास प्राधिकरण भी है और उसके कारण नगर निगम के काम में यह सहयोग न करके रोड़ा अटकाते हैं, — विशेष रूप से कंस्ट्रक्शन के मामले में और उसके डिमाकेशन के कारण अपनी लायबिलिटीज़ को एक दूसरे पर डालते हैं इसलिए नगर निगम इतने सक्षम हों, उनके पास इतनी पावर्स हों कि दूसरी कोई संस्था उनके काम में व्यवधान पैदा न करे और वह अपने कार्य का सही ढंग से निष्पादन कर सकें, आपका इसमें क्या विचार है?

**SHRI K. NARAYANASWAMY:** The development authorities, metropolitan authorities have got a distinct objective in doing that. Whenever the metropolitan authority is constituted in the metropolitan cities, they can sit together and finalise some schemes. This is altogether a different thing. That system should continue. This is only in respect of local bodies. We can have development authorities and metropolitan boards.

**MR. CHAIRMAN:** What is your experience in Bangalore?

**SHRI K. NARAYANASWAMY:** As far as Bangalore Development Authority is concerned, there is a lot of confusion. We do not have a full-fledged metropolitan authority. They constituted it but it is not functioning and it is almost defunct. So, the Bangalore Development Authority is creating a lot of problems Bangalore City Corporation. They do not give civic amenity sites and whenever we require to form a playground or a part park or a place for police station or hospital, we have been in quandary. I had suggested to abolish the Development Authority in Bangalore.

**DR. DEBI PROSAD PAL:** There are various sources of funds for the local bodies. They are: utilising the tax power, which is given to the local bodies; the State assistance to the local bodies; the Central assistance to

the local bodies. If the tax power which is given to the local bodies for certain limited fields, then should they be exercised uniformly by all the local bodies? Suppose the rate of tax on certain by local bodies regarding agriculture, marketing and others, if they are not uniform, do you think that it will adversely effect upon the growth of the economy in that particular area? Secondly do you think that the central assistance should come directly to the States, to the local bodies or through the agency of the States?

SHRI K. NARAYANASWAMY: Taxing power is given to the Corporations. It is very very limited. They collect property tax. That is the major income that is available to the Corporations. Octroi in some States is not available. State Government has put entry tax and licences and big amount is collected by this. Central assistance is not at all available. Only some metropolitan cities might have taken. All other municipalities and corporations have not been given because they have no status of metropolitan cities. As you know, the State assistance, the stamp duty and entertainment tax various from State to State and this entry tax they give once in quarter. So, that is not suffice to fulfil the needs of the cities because now-a-days cities have become so attractive. Most of the population lives in cities. Commensurate with that the resources are not roperly augmented. Unless sources from the State and Centre and also taxing power increased, it is very difficult for the Corporations to do the best for the citizens.

DR. DEBI PROSAD PAL: Now entry tax is levied by different bodies. What will be its impact upon the growth of the economy in the particular sector?

SHRI K. NARAYANASWAMY: Entry tax is collected by the States, not by the Corporations and local bodies.

DR. DEBI PROSAD PAL: It means local bodies will have no power.

SHRI K. NARAYANSWAMY: No.

DR. DEBI PROSAD PAL: The power of taxing should be little enlarged for the local bodies. What will be the area within which the local bodies can impose the taxes?

SHRI K. NARAYANASWAMY: Now, in my view the present taxing power is very very limited. It has to be enlarged by allowing the local bodies to collect the entertainment tax by themselves, profession tax and also stamp duty tax, so that it will have money liquidity for doing their day to day needs.

SHRI S. VIDUTHALAI VIRUMBI: From the observation made by our beloved Shri *Nair*, I can uiderstand that he wants the Central Finance Commission because even to discharge their day-to-day duties, the funds are standing on the way. Due to paucity of funds, they are suffering. When asked whether the State Finance Commission, or Central Finance Commission, he said from the past experience what they had since 1924 or 1929,

suggestions made by the Commissions were not implemented in spirit by the State Governments. Therefore, instead of State Finance Commission, if it is a Central Finance Commission it would be much helpful for the local bodies, that is why what I understood from the observations made by Shri *Nair*. What I feel is that so far the recommendations made by so many committees are only in a suggestive manner, but once the Finance Commission is instituted, the recommendations of the Finance Commission is more or less mandatory. Even a State Commission makes some recommendation means, it would bind on the States. They have to implement that recommendation. Therefore, as far as the enforceable power is concerned, the State Finance Commission and the Central Finance Commission both will be on equal footing.

Secondly, considering the field work of the State Finance Commission and Central Finance Commission, the people who are going to work in the State Finance Commission are more knowledgeable because the conditions will vary from State to State, even within the State from one municipality to another municipality. If the people working in the State Finance Commission are selected from their own State, they would be more knowledgeable than the people in the Central Finance Commission. Therefore, from the past experience it was felt that if the Central Finance Commission goes through these problems it will be much helpful. But what I feel is that once the State Finance Commission is instituted, the decision of that Commission has to be mandatory. Therefore, why not Mr. Narayanaswamy select the State Finance Commission instead of Central Finance Commission? Powers will be the same. But as far as knowledge is concerned, the State Finance Commission is more advantageous than the Central Finance Commission. How do you feel about it.

SHRI K. NARAYANASWAMY: What you say is correct. But what happens is that States are different in so many aspects. In order to bring them to uniformity, it would be better to have a Central Finance Commission for the purpose of uniformity in so many aspects because of reasons like backwardness or excess of population and so on.

SHRI S. VIDUTHALAI VIRUMBI: Still do you feel that the Central Finance Commission is better than the State Finance Commission.

SHRI S.T.K. RAMACHANDRAN: In every Municipal Corporation or Municipality there should be a Cabinet. Each Cabinet member should be entrusted with some departments. This will be a third one. The real meaning of self-government will come to be proved only through this system. Is it the same thing? Can every Cabinet Minister of Cabinet Council or whatever it is be provided with some mandatory power or it may be merely some advisory Council? If a local Government like that with some more power is set up, will it be conducive to the growth of a good system?



**SHRI K. NARAYANASWAMY:** Definitely. Such a system is in vogue. It has been recommended by the Central Government Committee. So it should be better if such a system is introduced so that the elected Executive will have more say in it.

**SHRI S.T.K. RAMACHANDRAN:** What is the system which is existing in West Bengal?

**SHRI K. NARAYANASWAMY:** It is Mayor-in-Council. Instead of a committee, a person will look after. Within the city limit, he will act. The Central Government and the State Governments are enjoying their powers under the Constitution, but the poor local bodies are suffering. If some items are brought under Concurrent List, they will be helped.

**MR. CHAIRMAN:** The other day in Parliament, the hon. Minister for Urban Development, in response to a query, was saying that there are some enquiries made by local bodies for garbage disposal. What is your view on that?

**SHRI K. NARAYANASWAMY:** The correct system is not evolved anywhere in India. In Bangalore city, we cannot afford to purchase lorries and we are disposing garbage by engaging private contractors. We have to take the help of the private people.

**MR. CHAIRMAN:** We would like to benefit from your experience regarding having of development authorities.

You give us note on that.

**SHRI K. NARAYANASWAMY:** As far as Bangalore Authority is concerned, it has become a white elephant.

**MR. CHAIRMAN:** You can give a note as to what is the experience of the role of local bodies *vis-a-vis* the Development Authority. In certain areas, it is functioning beautifully because it is complementary and supplementary to each other.

**SHRI K. NARAYANASWAMY:** I can elicit views from all the Mayors consolidate it and submit a note.

**SHRI N.E. BALARAM:** You have said 11 kinds of taxes which could be levied by the Municipal Corporation by amending the Constitution. Do you think, the State Government will agree to that?

**SHRI K. NARAYANASWAMY:** The local bodies are also in a very bad shape. Once Parliament takes some sort of decision which helps the local bodies, I think, it can be agreed to.

*(Witness then withdrew).*

**3. Town and Country Planning Organisation, New Delhi**  
*Spokesman*

**Shri D.S. Meshram, Chief Town Planner**

*(The witness was called in and he took his seat)*

**MR. CHAIRMAN:** I welcome you to the Joint Committee. The Committee would like to elicit your views on various points and we expect you to be free and frank with us and this will be helpful in arriving at proper conclusions by the Committee. Before you start your evidence, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as Confidential. Even though you might desire your evidence to be treated as Confidential, such evidence is liable to be made available to the Members of Parliament. Would you like to elaborate on any point before the hon. Members would like to seek any clarifications from you; you have not given any memoranda except the Questionnaire.

**SHRI D.S. MESHRAM:** We have already filled in the Questionnaire. I would like specifically to dwell on 12th Schedule. I am a city planner. My basic duty is to look to the development of the cities and the towns. First Clause of 12th Schedule deals with urban planning including town planning. Due to the introduction of the 12th Schedule, definitely there will be a planned and orderly development of the towns and cities in the country and I specifically welcome this particular Bill.

Urban planning is generic planning and town planning is specific planning or towns and cities. You may come across inadequacy of the present municipal laws. Nagar Panchayat has been specifically included in this particular Bill. It takes the rural areas into consideration. The rural areas are going to become urban areas. I feel that these areas are being neglected due to which most of the fringe areas are not looked after properly. The fringe areas will be definitely developed by the introduction of this particular Bill. I am mainly concerned with it. I am to touch some general points. Specifically the local bodies are weak in financial terms. I have got the experience of implementing the Centrally-sponsored IDSMT Scheme. The financial position of the municipal bodies is generally weak.

There are two types of Components of the scheme. One is remunerative and another is non-remunerative. Keeping in view this point, the financial position of the municipal bodies is very weak and this Act is likely to strengthen the financial position of the municipal bodies.

The second point which I would like to highlight is that there are a number of local bodies, and this Bill is going to categorise all these local bodies into three categories, i.e., the municipal corporation, the municipal committee and Nagar Panchayat.

At present, there are many local authorities and they are creating confusion. This confusion will definitely be removed by this Bill because there will be only three local bodies.

**SHRI BANSAL:** You have urban area where you find unregulated

growth of colonies in the fringe areas. It shows that the problem still remains. Nagar panchayat will be for a different area altogether than the council or the Corporation.

**SHRI D.S. MESHRAM:** It will be for the areas which are going to become urban areas. That is why we have given the population at 10,000. They have specifically mentioned the population of Nagar Panchayats over 10,000. As I told earlier, they will soon become urban areas.

**SHRI PAWAN KUMAR BANSAL:** I think basically they might remain rural areas with no development. The only thing is that certain villages or the existing Panchayat areas with a particular level of population will be termed as Nagar Panchayats even though there is no development. How do you deal with the situation?

**SHRI D.S. MESHRAM:** I have already told what types of agencies will come up. At present, we are neglecting these areas which are in the transition period. Then, by the time they become urban areas, the problems will be further aggravated. Definitely, their development should be in an orderly manner. This is what the first Clause of Schedule-XII says. It says urban planning including that of town planning.

**SHRI PAWAN KUMAR BANSAL:** In such areas, the Municipal Committees by whatever name called, will continue. The question is: can outer parts of big cities be formed into different Nagar Panchayats?

**SHRI D.S. MESHRAM:** I would like to say that I view the development of town in its totality. Otherwise, the development of the towns will begin in piecemeal. My opinion will be that additional areas should be brought in under the control of the Municipal Council at that particular area. Definitely it has to have continuity. It should not be seen in piecemeal. It has to be seen in its totality.

Further, specific suggestions have been given here regarding the Finance Commission to be set up at State level. This is a very welcome step. At present, the audit of the local bodies is done by the Municipal Audit Department. A suggestion has come that this should be taken up by the C&AG. Definitely, it will be channelising the finances of the Municipal Bodies, local bodies in the proper direction. The thing is that specific provision for the weaker societies, specifically women, is also being provided in the draft Bill. These are the few points which I wanted to highlight.

**SHRI N.E. BALARAM:** Do you think the present Bill can meet the existing on-going environmental problems and protect the environment? Are you satisfied with the present Bill? For instance, I can cite the setting up of chemical industries, tanneries, slaughterhouses etc. All these are creating innumerable problems. Much more problems are coming day-today. Do you think the present Bill will meet the challenges?

**SHRI D.S. MESHRAM:** To some extent, it is 'yes'.

**SHRI N.E. BALARAM:** What are the amendments you are suggesting?

**SHRI D.S. MESHRAM:** Please refer to the XII Schedule. It refers to land use and construction of the buildings etc. Whenever a decision is taken for the location of a specific industry, etc. that will definitely come under the land use. If the regulation of land use is taken care of, it will definitely solve the problems. There is a separate Act in respect of pollution etc. That has to be covered separate legislation.

**SHRI N.E. BALARAM:** What about setting up of many chemical industries in the urban areas? They cause innumerable problems.

**SHRI D.S. MESHRAM:** That will be taken care of under the regulation of land use. If it is not permitted according to the land use regulation, then definitely it cannot be located in a particular area town.

**SHRI N.E. BALARAM:** Unless there is a definite provision in the law, how can you prevent it?

**SHRI D.S. MESHRAM:** Land use has to be regulated in that area.

**SHRI PILLAI, Additional Secretary, Ministry of Urban Development:** The arrangement is that, master plans are prepared for separate metropolis or urban areas which takes care of the land use. For example, in Delhi, DDA ensures that only about 50 per cent of land that they require is used for building purpose and the rest is kept for developing parks, roads etc. When the master plan takes care of these requirements, there need not be a separate provision in the Act.

**SHRI PAWAN KUMAR BANSAL:** Would local compulsions compromise with the best use of land?

**SHRI PILLAI:** Master plan is also a statute. Once it is approved by the State legislatures or the Parliament, this assumes the statutory powers. This provision will have to be seen in the context of the master plan. Municipal bodies will have to take into consideration local conditions.

**MR. CHAIRMAN:** Some States have already adopted town and country planning Acts. They have a unit in the municipalities. Some of the notified areas do not have it. Some States have town improvement trusts, some have got development authorities. Now no building can be constructed with the sanction of the Town Planning Unit.

**SHRI PAWAN KUMAR BANSAL:** I suppose, the improvement trusts have more power than the local expert committees. Is it so?

**MR. CHAIRMAN:** It is a fact.

**SHRI HARI KISHORE SINGH:** What is your suggestion to remove the obstacles — whether there should be one single agency or separate agencies. We have got the DDA, NDMC and the central agencies. What is your view on this?

**SHRI PILLAI:** In fact, I am putting this question on behalf of the

Chairman. The Chairman of the All India Council of Mayors was here and he appeared as a witness before your coming here. He said that he did not find the existence of a Development Authority in the Council. He was of the view that the Development Authorities, they need not be there at all. In that context, you may answer the question which the hon. Member had raised.

SHRI D.S. MESHRAM: As far as planning is concerned, there is only one agency and that is DDA which prepares the Master Plan or the Development Plan, Other agencies are there for the implementation.

MR. CHAIRMAN: What is your opinion on what Shri Pillai has said? Have you done any study where there are more than one authority and what is the outcome of that study?

SHRI HARI KISHORE SINGH: All over the country, especially in major cities, there is some kind of Development Authority besides the Municipal Corporations or Municipalities or whatever it is. But because of this duplication, there is lot of confusion and as a result the people are suffering. Therefore, this Act should give some guidance and clarity on this issue. So what is your opinion?

SHRI D.S. MESHRAM: I will quote the example of Maharashtra where planning and the preparation of the Development Plan, even though it is being done by the Directorate of Town Planning. The implementation it is being done by the specific Council/Municipal Corporation. My opinion is that we have Municipal Corporations which are adequately staffed and they have got the capabilities for the preparation of the development plans, there is no reason why we should deny them this function. But where there are no capabilities, definitely the Development Authorities are in a position to prepare the Development Plans or taking the coordinated and over all view of that particular town.

Supposing there are two or three agencies, then one agency can definitely take the coordinated over all view. In such circumstances, there should be one agency, otherwise everybody will plan only for their jurisdiction and in between areas will be neglected. What I am saying is that as far as planning is concerned, the development plan, is being prepared by the Delhi Development Authority taking into consideration the NDMC and the complete Delhi Metropolitan Area. In that sense, when more than one agency is allowed, they will, I think plan for their own area and the other areas may get neglected and that agency may not be in a position to take an integrated view.

As far as the implementation is concerned this falls under the jurisdiction of the Municipal Corporation of Delhi and definitely they will implement it. But the overall planning has to be done by one agency.

SHRI HARI KISHORE SINGH: In a place like Bangalore or Patna where there is only one agency, still there is a Development Authority.

What is the need for a Development Authority when there is the Corporation? You have rightly said about Bombay and other places where the planning wing of the Corporation should be strengthened to the extent that it can plan for itself. There might be a situation where the State Government is controlled by a different political party and the Corporation is controlled by a different political party. The State Government in order to interfere with the working of the Municipal Corporation may appoint somebody as the Chairman of the Development Authority. This is the practical problem and that is why I have asked for your opinion.

MR. CHAIRMAN: Please be free and frank, do not hold your opinion.

SHRI S.K.T RAMCHANDRAN: You said that a coordinating agency to coordinate between different agencies is essential. Already the civic body or the Municipal Corporation is existing. If another body to coordinate this also is there, is it not overlapping?

SHRI S. VIDUTHALAI VIRUMBI: If the institution itself becomes an integrated one it will be much better. Instead of having two or three agencies where there is the possibility of over-lapping, why not have an integrated organisation?

SHRI D.S. MESHRAM: I have quoted the example of Thana. If the Municipal Corporation is adequately staffed and they are in a position to prepare the master plan for them, then they should be assigned that particular task.

MR. CHAIRMAN: Could this town planning unit be strengthened and made as one organisation? You are saying that the planning unit should be well equipped. Unless it is well equipped and well staffed it cannot do planning. Supposing that unit is allowed and that particular local body is strengthened by this unit, then you do not need two or three separate organisation.

SHRI D.S. MESHRAM: There is no need for separate organisations. Otherwise there will be overlapping in functions. When two or three agencies are there, there has to be one agency to act as a coordinating agency. It is for planning only. But, the implementation has to be divided within the different agencies. I am commenting only on the planning aspect.

There are two or three models on this. If you take the model of Maharashtra, the master-plans are prepared by the Director, Town Planning. For Bombay, BMRDA is there.

MR. CHAIRMAN: What is your experience with Bombay?

SHRI D.S. MESHRAM: Different models are there. For Maharashtra, BMRDA is there which does it for Bombay exclusively. Some of the small towns and larger towns are also being done by the Director of Town Planning. There cannot be one specific model. Whatever is suitable to the area, it should be done accordingly.

**SHRI N. E. BALARAM:** Now there is paucity of funds with the Central Government, State Governments and Municipalities, etc. What is your opinion for the building up of small township, satellite townships, development of certain areas? Is it possible or is it acceptable to hand over the construction of all these to the private party within the parameters of the municipal council or corporation? What are we going to do? How can we do it?

**MR. CHAIRMAN:** You are provoking him to talk about privatisation.

**SHRI N.E. BALARAM:** We are talking about the coordination of DDA. I can tell you this. Due to the population of the present day, thousands are coming every day to settle here. How are we going to solve the problem? You may have so many ideas, but you cannot implement them. Would you like to respond to it?

**SHRI D.S. MESHRAM:** The private sector should be involved. It is a welcome step.

**SHRI N. E. BALARAM:** But, you have never said that.

**SHRI PAWAN KUMAR BANSAL:** When we are talking of the planning as such, you have got to have a body for larger area, for example, a district. That should have representatives from various Panchayats and municipalities for integrated planning.

**MR. CHAIRMAN:** Let us not go into the rural milieu. Then, we will be opening the Pandora's box.

**SHRI PAWAN KUMAR BANSAL:** This will come under the ambit of the municipal law of the state concerned. As far as planning for the future is concerned, you have got the district planning boards, not for every small town or municipal area or for the village. It has to be for the entire district.

**MR. CHAIRMAN:** Prior to 1992, certain industries used to be located in certain specified backward areas. Now with the removal of subsidy and licensing and all that, the industrialists will go where the infrastructure exists. So, naturally the infrastructure exists near the metropolis, near the urban areas. Therefore, there is going to be an exodus from the rural areas to seek employment.

Is your organisation thinking about the consequences of this budget and other such policy changes in Government's thinking? Have you started any exercise? Is there any mechanism to start such an exercise?

**SHRI D.S. MESHRAM:** As far as the industry is concerned, there is a scheme of growth centres. The industries are located in the urban areas. The exodus will come to these areas.

This scheme of the growth centres is of the Ministry of Industry. We are specifically requesting that these should be located away from the urban centres.

**MR. CHAIRMAN:** Now you do not have control where it is going to be located. Does your organisation or other similar organisations, the State Government or the Central Government, have any mechanism to think about it?

**SHRI D.S. MESHRAM:** Control is already there for all the larger settlements and towns. Master plans and development plans are there.

**MR. CHAIRMAN:** You are talking about prior to the introduction of the budget. After the budget is passed, that is, after the Finance Bill is passed in the month of May, there is going to be an exodus.

**SHRI D.S. MESHRAM:** Whatever industry is to be located, if it is not in conformity with the existing master plan or the development plan, then definitely that will not be located in that particular town.

**MR. CHAIRMAN:** He is right in a way. If the town planning unit has not kept that area prescribed for industry, it cannot be set up. Suppose he has kept it as 'green', that land cannot be made available. It can be made available where it has been specified for 'industry'.

**MR. CHAIRMAN:** Do you feel that you have to enforce it?

**SHRI D.S. MESHRAM:** Yes, Sir.

**MR. CHAIRMAN:** Apart from the statutory powers of planning, do you have statutory powers to see what you have planned, and what you have prescribed is followed in toto, in letter and spirit.

**SHRI D.S. MESHRAM:** Yes, Sir.

**MR. CHAIRMAN:** In the case of violation, do you have any powers to eradicate that?

**SHRI D.S. MESHRAM:** Yes, Sir.

**SHRI PAWAN KUMAR BANSAL:** They will not be able to enforce.

**SHRI N.E. BALARAM:** If industrialists have to set up industries near a river where they get water, they will have their own townships.

**MR. CHAIRMAN:** They cannot.

**SHRI N.E. BALARAM:** Is your Bill meeting the requirements and the problems of environment?

This is applicable for establishing municipalities. Now, new things are coming up.

**MR. CHAIRMAN:** Is your jurisdiction confined to municipalities and corporations or to panchayats also?

**SHRI D.S. MESHRAM:** It is for the urban areas. Actually, once the master plan is approved by the State with the statutory backing, then nobody can violate it. It is definitely not permitted to violate it. Under the provisions of the master plan, we have got the power to say them 'no'.



**SHRI P.C. THOMAS:** Several bodies have got specific powers of their own for planning, implementation, etc. and they shall not enter into the powers of others. But in practice, don't you feel that conflicts do occur between these organisations? For example, there are NDMC, MCD, etc. Are there not cases where conflicts do occur and because of those conflicts several developmental projects do not get through? Have you got any practical experience like this?

**SHRI D.S. MESHRAM:** If we are preparing a developmental plan, we will be interested to implement it in letter and spirit. In that case, there should not be any conflict. If some interests are involved, then conflicts will come. I am not saying 'vested' interests but some interests may come.

**MR. CHAIRMAN:** Thank you very much, Mr. Meshram.

*(The meeting then adjourned.)*

**JOINT COMMITTEE ON THE CONSTITUTION (SEVENTY—THIRD  
AMENDMENT) BILL, 1991**

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE  
CONSTITUTION (SEVENTY—THIRD AMENDMENT) BILL, 1991**

**Wednesday, the 8 April, 1992 from 15.00 to 18.15 hours in Committee  
Room No. 62, Parliament House, New Delhi.**

**PRESENT**

**Shri K.P. Singh Deo—Chairman**

**MEMBERS**

**LOK SABHA**

2. **Shri Pawan Kumar Bansal**
3. **Shri Chitta Basu**
4. **Shri Girdhari Lal Bhargava**
5. **Prof. Malini Bhattacharya**
6. **Shri Probin Deka**
7. **Shri Shankarrao D. Kale**
8. **Shri Tarachand Khandelwal**
9. **Shri Yelliah Nandi**
10. **Kumari Selja**

**RAJYA SABHA**

11. **Shri Radhakishan Malaviya**
12. **Shri Bhaskar Annaji Masodkar**
13. **Shri S.K.T. Ramachandran**
14. **Shri Santosh Kumar Sahu**
15. **Shri K.N. Singh**
16. **Shri S. Viduthalai Virumbi**

**REPRESENTATIVES OF THE MINISTRY OF URBAN DEVELOPMENT**

**Shri K. Dharmarajan —Joint Secretary**  
**Shri R.P.S. Pawar —Director (L.S.G.)**

**REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY  
AFFAIRS**

**Shri B.S. Saluja —Joint Secretary and Legislative  
Counsel**  
**Shri K.N. Chaturvedi —Deputy Legislative Counsel.**

**SECRETARIAT**

**Shri S.C. Gupta — Joint Secretary**

Shri R.K. Chatterjee  
Shri Ram Kumar

— Deputy Secretary  
— Assistant Director

### Witnesses Examined

Witnesses	Organisation
1. Shri K.C. Sivaramakrishnan	National Institute of Urban Affairs, New Delhi.
2. Shri Y.P. Anand	Ministry of Railways (Railway Board)
3. Shri L.C. Monga	
4. Shri S.K. Jagdhari	
5. Shri K.A. Nambiar	Ministry of Defence
6. Shri P.K. Kumaran	
7. Shri Ranjan Dutta	
4. National Institute of Urban Affairs, New Delhi	

### Spokesman

Shri K.C. Sivaramakrishnan, Vice-President

*(The witness was called in and he took his seat)*

MR. CHAIRMAN: I welcome you to the sitting of this Committee. Before you start your evidence, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as Confidential. Even though you might desire your evidence to be treated as Confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI K.C. SIVARAMAKRISHNAN: I thank you for giving me this opportunity to make my submission before you.

MR. CHAIRMAN: You have sent your note to the Committee, which will be circulated to the Members.

If you could highlight urban-rural relationship, it would benefit the Committee.

SHRI K.C. SIVARAMAKRISHNAN: We are going through a massive urban transition in this country. There is still a view that the country is rural and will remain so. Along with other countries, we are also facing urban transition; it has to be viewed in the economic context because contribution of the primary sector to the economic product of the country is going down. Maharashtra is an example where in 1961, primary sector contribution was 42 per cent; in 1986, it came down to 28 per cent; by the end of the century, it will be 18 per cent. In the country, as a whole the contribution of the primary sector is around 40 per cent only.

We find in those districts which in agriculture are doing very well and contributing one per cent of the country's wheat and rice production. The rate of urbanisation is very strong, such as East Godavari, Balasore, Bilaspur and Kurukshetra etc. There the urbanisation is somewhere between 32 to 60 per cent which is well above the national average.

For increasing productivity the agricultural sector can not absorb more labour force; There is an inevitable economic change that is bringing about urbanisation. Therefore, the economic performance of the urban areas which are providing jobs is important to the country; better municipal management is required for better economic performance.

A question arises whether a constitutional amendment is necessary at all for better municipal management.

I would like to submit that there is an ambivalence as it is, in the existing Constitution because 'local authorities' is broadly included in the term 'State' in Article 12, in Part III of the Constitution. The term 'local self-government' interestingly, has been mentioned only in Item 3 in the Union List; relating to Item 5 of the State List mentions only "Local government", having it to question whether "Self-government" is implicit.

There have been some debates in the Constituent Assembly even about this particular word "self-government". I would also submit for your kind consideration that in the decades after Independence [we have made some analysis about this in the National Institute] 40 to 50 per cent of the municipalities have been under supersession at any given time. In some places we are almost reaching a "silver jubilee of supersession" if I am permitted to use that expression.

So, in regard to this particular point, why a constitutional amendment is necessary at all, I think the right to live of a municipality or an urban local body, unfortunately has not been sustained and therefore requires to be enshrined in the Constitution. This is not a new approach under Article 263 of the Constitution the Central Council of a Local Self-government was set up in 1964 which has repeated argued for such constitutional recognition.

The next question is whether such a constitutional amendment will have an impact on the existing provisions in the Constitution mentioned in the questionnaire. I would submit that any measure or amendment whether it is viewed as decentralisation, re-organisation, rationalisation or strengthening, is bound to have an impact on the existing scheme of things. I would also submit that we should look upon the entities in a federal set up not in any ascending or descending order but which have a long standing effect on the issues. At the same time, it may not be necessary for all the provisions to be considered for strengthening, to be stipulated in the constitutional amendment itself. But a broad list of functions and the nature, of and delegation of other powers should definitely be mentioned in the Constitution.

The present Bill contains a Schedule the Twelfth Schedule which lists some of these functions. While this is a welcome step, I would submit that such a list should be comprehensive rather than limited. It can very well be concurrent with the State Government because it is quite possible that in many States certain functions like education, health care, welfare or energy can be taken up by local authorities also large cities like Bombay are a very good example for this. So, I would submit that the Twelfth Schedule in the present Bill is considerably narrow as compared to the Twelfth Schedule of the 1989 Amendment Bill. I feel that when an amendment has to be introduced in the Constitution, it should be comprehensive rather than restrictive.

The next point is about strengthening of the municipalities. There is a bewildering variety of Corporations. We have Corporations for Rajnand Gaon, Devas and Satna and we also have Corporations for cities like Delhi, Calcutta and Bangalore. We have corporations for 20 lakhs of people and there are some corporations for one lakh of people also. The municipalities are themselves divided into various classes. I think, the rationalisation of size is extremely important. Therefore, there should be a cut off population. I would submit that perhaps for Corporation, a cut off of atleast three lakhs should be thought of. Now if we have a cut off of five lakhs, the total number of corporations would be only 53. As against that we already have 73 corporations in the country. Perhaps the existing corporations could be protected. If a cut off of three lakhs may be established.

As far as Municipalities and Nagarpanchayats are concerned—this is one of the points you have raised with regard to rural and urban—I feel that in our country following the census definition we have a very wide classification of towns. We have towns of Class VI which have 5,000 and Class V which have 10000 population. So, this rationalisation is very important. May be a cut off for a Municipality should be like 50,000. The previous Bill, 69th Bill, aimed at a cut off of 25,000. This is some thing one should examine in a little more detail. I feel that in regard to rural/urban problems, we have to specifically address the problem of settlements in transition.

While the present Bill makes a mention of the words 'Nagarpanchayat' 'Municipality' and 'Corporation', I feel that it fails in its purpose, in not specifying the criteria according to which such bodies should be established.

Tamil Nadu, Karnataka and Gujarat examples are there. As far as Nagarpanchayat is concerned, Gujarat is probably an improvement on the Tamil Nadu and Karnataka legislation, where Nagarpanchayat is able to convert into Municipality later on if need be. This is an extremely important set up.

The question arises from this is about rural/urban aspect and in what manner we should take note of it. Sir, in our country the urban local

bodies and the panchayat bodies are at present two parallel but unconnected streams. I feel that this is wrong. Eventhough the District as such is recognised very clearly as an administrative unit and for many purposes as a development unit as well, we find that in the case of urban local bodies, there is really no way by which the requirements are assembled together at the District level or even if they are done, it is only done by the administration. There is really no interaction between urban and rural representatives. Some of the questions that will be raised in the rural/urban relationship such as the sharing of physical resources is extremely important. I feel, water is perhaps the most striking example in Tamil Nadu. Currently a very large—Tamil Nadu water supply scheme is under execution, which will supply a number of towns and a number of villages.

We also have other physical resources, whether it is mineral resources or other things. We have common facilities like roads drainage. I think, this interaction is extremely important. The problems occurs in the fringe areas cannot be relegated as just a rural problem or as a urban problem. I would therefore submit to the Committee's consideration that we do consider a district planning set up. The question then arises is, what should be the nature of this district planning set up. Sir, when the 69th Bill was being discussed in the Parliament as also elsewhere there was a question as to whether the planning entities in this country should really have any formal status. The Planning Commission itself does not have a legal status. The Sarkaria Committee has observed that if the Planning Commission were to be given a legal status, it would be caught in legalism and dispute. But it will have its expert function. That may be very well so. At the same time, we do have the District Planning Boards, Committees of Zilla Parishad and District Planning Committees etc.

In the very least they provide a forum for discussion; at the very best they provide a forum for consensus. I feel that when we do have such a planning platform available at the district level, advantage should be taken and we should find a way whereby the urban local bodies are able to participate in the district planning exercise. I personally feel that one need not insist on such an arrangement being elective. What is important is participation and I would submit at the district level there are ways other than election for securing such participation. The district planning mechanism should find some kind of recognition in the Amendment and it may be left to the States to determine how this planning mechanism should be set up; what should be the frequency of meetings; what are the inputs; what are the experts to come in etc. I do feel that without such an arrangement, bringing together the rural and urban, in the minds of the administration and in the procedures of planning in the district and State, there will be a continuing hiatus.

The next question is with regard to the multi tier and single tier set up in urban bodies. As you are aware, since the Constitution froze the delimitation of Constituencies with the 1971 census and such delimitation is

to be taken up only after 2000 AD census, there is a considerable asymmetry as far as Assembly and Parliament Constituencies are concerned. Out of about 3900 assembly constituencies in the country, there are nearly 600 assembly constituencies where the number of electors is much more than that of the State average. In about 100 constituencies which are mainly in urban areas, the number of electors is more than 50 per cent than that of the State average. For example, in Andhra Pradesh Khairatabad Assembly has 3 lakh voters as compared to 1.4 lakh voters which is the State average. In Surat, Gujarat it is four lakh thirty one thousand voters as compared to 1.3 lakh voters which is the State average. In Maharashtra, we have Constituencies like Malad, Kurla and Thane which have 3 to 4 lakh voters. Now, the Constitution says that by and large the ratio of Members *vis-a-vis* the number of electors should be roughly the same within the State: However in these urban Constituencies this is not so. This asymmetry is more pronounced in the Lok Sabha Constituencies. For example, Thane is the largest Lok Sabha Constituency with nearly 16 lakh voters. This asymmetry is also reflected in the municipal structure. We find that in very large cities when it reach a population of three lakh or ten lakh, the ward sizes become extremely distorted. Normally, a municipality with, let us say 50 to 100 wards, usually has five thousand voters in each ward which is a manageable constituency for an elected representative of the municipality. But, in large cities we find some of the ward sizes are very high. In Delhi the average is 48 thousand but in Kalkaji it is one and a half lakh; in Nangloi it is 4 lakhs. You find this kind of distortion in many other large cities also. So, what this really means is that when you reach a particular size of say 10 lakh population or so, it is not possible to have a traditional structure of municipal administration whereby a city is divided into a number of territorial wards only. Therefore, a suggestion has been made for a two-tier arrangement.

The two-tier arrangement may be considered for cities with at least more than ten lakhs of population. I feel that even for cities of five lakhs population or more, such a two-tier arrangement is necessary so that the city is divided into zones. To begin with, I would submit, that such a measure could be taken up administratively. Madras and Bombay already have such an arrangement. Let us take the example of Delhi. For a citizen of Shahdara, it will be very far off to go to the Delhi municipal office. May be, he would like to have some relief to his difficulties in the trans-yamuna area itself. So a Zonal arrangement should at least begin as an administrative entity and later, depending on the State Government, could be formalised into elected and separate entities. This could be considered later.

In the earlier Bill there was a proposal for a 3-tier set up, like a ward committee or neighbourhood committee etc. My personal view is that this proposal should be gone into very carefully. It should be recognised that

there is a need for distinguishing an urban area from a rural area and a simplistic comparison between the number of elected representatives for rural voters vis-a-vis the number of elected representatives for urban voters may not be proper. Informal kind of arrangements at the neighbourhood level should be given a chance before we get into a rather expensive arrangement of a 3-tier set up. Such informal arrangements can be taken up at mohalla or locality level and we can consider the pros and cons. I feel we should avoid artificial division of our urban neighbourhood.

There is another point concerning the planning with regard to metropolitan cities. I feel that the present Bill has a major omission in so far as it does not make any reference to metropolitan planning. Today we have 23 cities of more than 10 lakhs population in this country. About 33 per cent of the total urban population in this country is living in these metropolitan cities. These cities are responsible for the bulk of the revenue and income of this country. They are the engines of the economy. These engines have to perform because the country can perform only on the basis of these engines. The infrastructure deficiencies which are crippling the economic performance of these cities can only be at the country's cost. But, at the same time, these metropolitan cities—by definition—Comprise multiple entities. Many of them have non-municipal units. The Calcutta metropolitan area has more than 30 municipalities 60 non-municipal units, Madras has more than 20-such units etc. Bombay also is having many such units. In addition there are a number of State Government agencies as well which are responsible for infrastructure. There are also a number of Central Government agencies. For example, the Railways the Posts and Telegraphs, the airports, the harbours are all crucial service agencies in a metropolitan context. I do not think that the upkeep and maintenance of these large metropolitan cities can be relegated either as a municipal problem or as a State problem. I feel their survival and better performance depends on a participative arrangement between the Centre, the States and the local bodies. The most striking example of this is Calcutta itself. From 1960 onwards, when several plans were made for Calcutta, what finally moved planning to action was a decision on behalf of the Government of India in 1971 that a metropolitan development programme would be started in which the State, the Centre and the local authorities would participate. This was followed in the case of Bombay and Madras as well.

In the case of Railways the position today is that Calcutta metropolitan Transport Project is entirely funded by the Ministry of Railways. The State Government is not participating. Its operations are not tied up with the operations of other surface transport modes. The opportunity for redevelopment of the station-points land values have considerably gone up has also been lost.

In the case of Madras the land acquisition cost for the rapid transit system under consideration has been met by the Tamil Nadu Government. In the case of Bombay on the other hand, it is a financial participation



between the State Government and the Centre and the urban transport package that is now being put together by Maharashtra is a participative arrangement. These are examples to show that in metropolitan cities we cannot afford to deal with them only under the limited provisions of a municipal law a special planning platform has to be provided. Here again I would urge that one could take a look which provided for an elected metropolitan planning committee at the earlier Amendment Bill. Whether an elective kind of platform is necessary or nor can be examined further but a formal recognition of a metropolitan planning entity is essential so that the State, the Centre and the local authority fully recognise that they are in the metropolitan city together and cannot pull out from the platform at somebody else's convenience or contingency.

Finally, in regard to elections I would say that, there are interesting experiences from what is happening in some of the States in India where, in municipalities we have direct elections. In the case of the Panchayat Bill, which is also under consideration by another Committee, I find that for the chairpersons of the panchayats at the intermediate level, direct elections are proposed. It is worth considering whether direct elections could be considered at least for the municipalities. I would also submit for your consideration that for larger cities to ensure continuity of attention and the Mayor-in-Council system could be considered as in Calcutta.

The only remaining point that I would like to mention is with regard to the financial resources. Sir, we are all aware that the limits of taxation of every kind have been pretty much reached. There is only so much re-arrangement or reallocation that one can do between tax earned and tax proceeds to be shared. But in the case of the local authorities, much more than taxation what is important is a set of enabling provisions so that municipalities and corporations could have access to capital market. Here, in our country, prior to Independence and even for a few years after Independence, large cities used to float municipal bonds and debentures. That door has been virtually closed. The power is still there in law but the access to the market is controlled by the executive powers of the Central and State Governments. Access to the capital market and setting up of a municipal fund at the State level, I feel, are very much more important. I feel that our purpose will not be served by merely looking at the assignment of taxes since most of these taxes have reached their limit. The decision to set up a Finance Commission for every State as indicated in this Bill is welcome, but, Sir, the Finance Commission at the State level cannot merely stop at making some kind of an award; I feel such a Finance Commission should also have expertise and advisory kind of jurisdiction because I think it is extremely important to find out what are the opportunities available for an urban area to raise its own resources in various ways. For example various alternative methods have been prescribed for property taxation. I believe at least 50 to 60 doctoral theses have been made in this country on improving property taxation, but

property taxes are not improving. The very basis of property taxation may have to be revised and this is an expert function. Various suggestions are available. Since the State Finance Commissions would be common to Panchayat and Urban bodies, I feel, its jurisdiction should not be only that of an umpire or an arbitrator; it should be of a much more supportive role. So, it would be better if we put it in this expertise role the Constitution (Amendment) Bill itself.

I would only like to make one or two concluding observations. We are not the only country seeking this kind of an arrangement to strengthen local bodies and it is there in many countries of the world, like Brazil, Nigeria, Philippines, Mexico etc., I have had the good fortune of being exposed to some of these countries' experiences in this field, where the national and provincial governments are finding their hands full already limited in meeting the aspirations of the people. The resources that are available with higher levels of Government are not adequate. More importantly, local authority, by definition, has to have local accountability. I would plead that local authorities are, perhaps, much more vulnerable to public and political pressures because they are physically more accessible. They are dealing with items of daily importance to the people and therefore, I feel that this accountability and performance have to go together. I also feel that we do have a valuable opportunity in the history of this country to enshrine this particular principle whether you look at it as decentralisation or re-organisation, the local needs would be perceived better, understood better and responded to better, at the local level provided you specify the functions clearly, endow the power and hold them accountable. In our country, like many countries with a colonial past, the traditions of Governments have been on scrutiny and control, not on support and positive response. I feel, therefore, that the Bill which is under consideration before you is a path-breaking opportunity and I do hope that it will make a difference to urban survival and urban governance in the future.

SHRI S.K.T. RAMACHANDRAN: First of all, I am thankful to my friend Shri K.C. Sivaramakrishnan for his comprehensive presentation on this subject. It is not only valuable, but it makes us to think in a perspective direction. Rapid urbanisation and paucity of funds have caused a havoc in the development of urban areas and they have limited the scope of service of these local self-governments. Our object is to provide a better life to the people living in the urban areas. It has led to implant colonies in and around the municipal areas, growth of slums and also absence of services. These three things have caused our leaders to think as to whether in what way we could develop the local self-governments. With this object we started this revolutionary Bill. First of all, it was thought that only if we transfer power to the local people, then only all these problems could be solved. Note the differences from place to place. So, only the local people could gauge what they need and how their need could be met. With this

tremendously valuable object, we started to amend the Bill so as to give power to the people. In the 65th Amendment Bill, we have made some provisions to give enough powers to the local people. What happened to the present Bill? In the present Bill, the powers which we wanted to transfer to the people have not been properly given. Gradually there is a dilution in this Bill. I want to know from Shri Sivaramakrishnan whether the diluted Bill could meet with the requirements of the local self-government to strengthen their local area or to develop their local area. What sort of calamity is there now? How is it an eye sore to unplanned colonies? With unhygienic conditions and meagre provisions, the people are living in hell. I need not say much about the slums. We have to root out the slums and eliminate them and we have to plan for the area around the city. It requires funds and also power to the local people. My grievance is in the present Bill, we are not providing enough power to the people. The local bodies acquire funds through three sources, one from the Central Government though it will not be given, secondly from the State Government and thirdly from their local taxation.

MR. CHAIRMAN: Can we seek clarification?

SHRI S.K.T. RAMACHANDRAN: I want to pinpoint.

MR. CHAIRMAN: Other Members would also like to speak.

SHRI S.K.T. RAMACHANDRAN: He is the man who knows about this. He could also throw some light and we can clarify something. Now we need funds. The funds are routed through three sources. We thought if the Central Government provides funds through the State Government, sometimes there is a cause for some block at the State-level. Not only that. The fund is diverted to some other kind.

MR. CHAIRMAN: He is telling about Government service. He may not be able to comment on what you said. We can seek clarification.

SHRI S.K.T. RAMACHANDRAN: I want to know from him whether we could build some provision so that the funds which are allotted by the Central Government could reach direct to the local bodies without having any block at any intermediate level. Is there any such provision in the Bill? If not, would you make some suggestion to modify the Bill?

Coming to the Planning Body, some Corporations are in fact feeling that a separate entity of such a Planning Body is not conducive to the growth or development of the Corporations because instead of helping them, these bodies are blocking the development. So, I want to know whether the local bodies should be allowed to have a separate planning forum for themselves or at the State-level or District-level there may be a larger Planning Body so that they could give some plans for the Municipal Organisation as well as the other organisations. So, regarding the two aspects I seek clarification from my friend Shri Sivaramakrishnan.

SHRI K.C. SIVARAMAKRISHNAN: I will clarify.

**MR. CHAIRMAN:** You may clarify. Further, I would suggest that you may give it in writing also. In case you would like to respond, you can do so.

**SHRI K.C. SIVARAMAKRISHNAN:** I would say that when I referred to Metropolitan Planning, I did not mean an ordinary Development Authority. I should also clarify that when I pleaded for a comprehensive list of functions, what I wanted to convey was that many of the functions that should be performed by the Municipalities and which are now being performed by the so-called Urban Development Authorities should be really reversed. Today in many States, the Municipalities do not provide water. A State entity i.e., a special purpose authority provides water to the citizens. Sanitation, planning roads etc. are also dealt with by special authorities. I may jocularly say that in the case of most of the Municipalities their response is only for removing the garbage and catching of stray dogs. Otherwise, they hardly have any worthwhile function. I feel that this particular position should definitely be reversed and the Urban Development Authorities which were brought in as Special Purpose Authorities/Bodies have neither accountability to the local needs nor do they really encourage financial necessity. I would say that the local authority's involvement in basic services is a financial necessity because if, a higher-level Government is going to provide basic services, why should a citizen pay for that service to a local authority. In the metropolitan cities having a population of 10 lakhs and above, you have a number of local bodies/authorities. For example, in the case of Calcutta, you have got 33 Municipalities, 3 Municipal Corporations and 33 non-Municipal Bodies and so on. In such situations, the State and Central Agencies are also involved. The Metropolitan Planning Body would be responsible for investment coordination and investment priorities. For example a question can be raised: should we put Rs. 1000 crores in an underground transport system or should we put Rs. 600 crores in a surface transport system? Should we have an extra bridge or should we have a major land development there? Some of these questions will emerge. I am not all submitting that basically the functions of the Municipalities should be performed by the Urban Development Authorities. We should reverse that direction and that is possible only if we give a list of functions in the Constitution because till now our experience has shown that these functions which are given to the local bodies by the State Government can be taken away at any time and that is why I thought that the municipal sphere of competence has to be delineated in the Constitution itself.

**MR. CHAIRMAN:** Having a wide experience in the administration both in the States as also in the Centre, you know how authority and accountability go hand in hand. So also, responsibility and resources also must go hand in hand. We will be very happy if you could give us a comprehensive note on your ideas. It will be of great help to the Committee.

**SHRI CHITTA BASU:** As a matter of fact, can we get an idea from you as to what other item, apart from the items which have already been included in the Twelfth Schedule, is to be included? You may react to it now or you may incorporate this in your note.

The other point is, the whole perception is that whether you want full decentralisation of power or centralisation of power. The present Bill talks about the decentralisation of power. In that case, the basic difficulty is that there is no delineated area. And even if there is delineated area for the municipal corporations or so on, there are no resources to perform that obligation. What is your suggestion regard augmentation of financial resources to meet the growing aspirations of the people?

The idea of having metropolitan cities is a good one. But I do not exactly know what is the revenue which are being earned from the Central Government for utilising the infrastructure of the State. What is the Central Government paying for the improvement or maintenance of the services that they get from the metropolitan bodies?

**SHRIMATI MALINI BHATTACHARYA:** My question is related to the question posed by Shri Chitta Basu. The question is that when you have said that there has been no reference to metropolitan planning in this Constitution Amendment Bill. I would like to know whether you would consider the suggestions which have been made by the Charles Correa Commission on this. What would be your response to the recommendations of that Commission in this respect and also with regard to the mobilisation of resources on which also the Charles Correa Commission has made suggestions?

The other question which is slightly different is about the direct elections. You are quite right that in the Panchayat Bill and in the Municipal Bill, there is slight difference. You have said that you would prefer direct election as in the Panchayat Bill. I think, one of the reasons why a doubt has been expressed about the direct election is that it might enhance the possibility of devolution of authority within the municipal body. That would be one of the possible difficulties in the case of direct election of the Chairperson. So, I would like to know your response on this also.

**SHRI K.C. SIVARAMAKRISHNAN:** Thank you. So far as the list of functions is concerned, I have submitted that the earlier Amendment Bill has a more comprehensive list than the present one. Now we can argue that before we decide on any list of functions, we should tie up the resources. That is one way of looking at it. Another way of looking at it is like this. After all, we are dealing with a dynamic situation. Take for example environmental protection. I am talking about a regulatory activity.

I have presently been engaged in a research study on the environmental problems in large cities. And I find that the Bombay Municipal Corpora-

tion knows much more about the environmental problems in Bombay city than the Maharashtra State Pollution Control Board. And the reason may be historical because by 1916, we had a Smoke Nuisance Act both in Calcutta and Bombay. In those days, the equipment was limited to glass pieces and you looked at a factory Chimney through a glazed piece; if the picture was too hazy, you knew that there was pollution and if it was reasonably transparent then you knew that there was less pollution. Subsequently the equipment has improved.

But it is the Bombay Municipal Corporation which maintains a total list of the chimneys, the chimney heights, the smoking industries and so on. The point is that Maharashtra State Pollution Control Board alone cannot deal with Bombay. Similarly Bombay Municipal Corporation with its antiquated procedure and equipment alone cannot deal with pollution. So the question is why not put environmental protection as specific item instead of merely saying ecology and allow the municipalities also to deal with it.

The second thing is about health. Again, Bombay has a good number of hospitals; other cities also have some municipal facilities. Why should it not be placed as a concurrent item? The State can provide health care; let it be an item in the case of municipalities also. So depending on the situation, once the functions are available, a municipal body can also see how best it can supplement.

So my plea is that let us not be restrictive; let us be comprehensive. The second point is with regard to metropolitan planning. As the hon. Member has mentioned, it is very true that there are several Central Government agencies but I would make a distinction between Central Government offices on the one hand and the Central Government agencies providing infrastructure. For example one can say that an Income-Tax office employs 4,000 or 5,000 people in its different offices and what do they really pay to the municipalities? That could be one question.

But more importantly, the Ministry of Railways is operating suburban railways. It is one of the largest suburban railway system in the whole world and they are getting revenue from that suburban railway. And that particular revenue is subsumed into the Railway Budget. If there is a financial arrangement whereby we can say that the role of the Ministry of Railways in the suburban railways is that of a transport operator and it is not the same as that of Ministry of Railways, as a wing of the Central Government, then there is a qualitative difference. If it is possible for the Ministry of Railways to say "all right, this is the money we are getting out of Bombay, by running a transport service" this is the money that BEST is getting; this is the money that Maharashtra State Transport is getting; these are the possible ways by which we can develop our railway station premises and use the proceeds

for service improvement and so on, then it becomes possible for a special financial arrangement to be made so that the urban transportation can be taken care of.

Normally what happens is that a Central Government agency like Posts and Telegraph say that we have our national priority plan, sorry, if you have a very high demand, we cannot help you unless the Ministry of Telecommunications decides on the priority. The Port people may have their own national plan. My point is whether it is possible for us to make a distinction between Central Government agencies operating infrastructural services in urban areas and other agencies. Then you have opportunities for collaboration.

Today Tamilnadu has been thinking about a special financing arrangement of the extension of the Beech-Luz rapid transit railway line. The funding has not been as much as needed. For the last so many years a lot of discussions have been going on about the possibilities of Tamilnadu and the Ministry of Railways coming together? Recently the thinking in Tamilnadu may set up a separate financing body to collaborate in the extension of the Beech Luz line. This is the way other metropolitan cities in the world are also providing for the infrastructure.

Finally with regard to direct elections; here again I am citing international experience. In Korea and a few other countries they have a strong executive, a municipal commissioner who is an appointed official. Then the Chairperson becomes a ceremonial chairperson and the municipal body becomes a deliberative body. In Latin America there is a system where you have a strong mayor. The direct election has this advantage that at least with regard to smaller municipalities, below three lakhs population, the chairperson comes with a very strong public mandate and that mandate is not diluted by any requirement of survival during his term. I feel that kind of a strong mandate is a major advantage. There is any kind of an elective arrangement, there is bound to be some difference of opinion. After all checks and balances is the essence of any kind of a democratic arrangement. In a few States like Tamilnadu, Andhra Pradesh and so on you had that at least with regard to smaller municipal bodies. The directly elected chairperson is able to assert and is able to relate his mandate to people. That is why I made this point for your consideration.

**SHRIMATI MALINI BHATTACHARYA:** In this particular Bill it is not specified as to how the chairperson should be elected. It is left to the State Legislature. What is your response to that?

**SHRI K.C. SIVARAMAKRISHNAN:** My submission would be that in Indian urbanisation there is a great deal of commonality between our cities. I feel that it would be better if we try and increase the commonality rather than decrease it. It can also be left to the State Government. That is one way of looking at it.

Another point is, if there is some general procedure which we can

follow, then the system can get itself geared to it. In States of UP, Rajasthan and MP elections to local bodies have not been held for several years until recently. When you do not have frequency of election a whole generation of people who grow up would not know even that there is something called municipal election. If in our cities people get used to the idea that there is going to be an elected chairperson, that chairperson will have to perform. If he does not perform, he will be answerable to the electorate. I think that the balance of convenience has to be judged here. I personally feel that for smaller cities, direct election will be our advantage. I am not making the suggestion for metropolitan cities where the Mayors and councillors are indirectly elected. With regard to the Charles Correa Commission, it has been mentioned that metropolitan cities should be regarded as national cities. Whether you attach a label as a national city or not, is not the point; the point is that the metropolitan cities are very crucial and vital for the economy of the country. Therefore, I would fully support the Correa Commission's recommendations that they deserve better attention. I am suggesting that better attention need not be given exclusively by the Centre; it need not be given exclusively by the States. Let it be a participative inter-governmental interaction.

**SHRI PAWAN KUMAR BANSAL :** Your intervention has been very informative and thought provoking. One thought that comes to my mind is this and which is about the District Planning set up. I do visualise the case of any particular district in which there may be some ten towns with a population of 50,000 and 700 villages with about 300 panchayats in all. It has to be inter-dependent, as far as district planning is concerned, because the city or the small town is inter-dependent. Suppose if you have two separate Bills, there will be dichotomy between the panchayats where we have village level, district level and the municipalities. So, here what should be the set up or formation of the district planning set up which must include the representatives of the panchayats as also the municipalities or the councils or the corporations. How do you include this aspect in the Bill?

**SHRI K. C. SIVARAMAKRISHNAN:** I would submit that the Bill should definitely recognise the element of a district planning committee. I also feel that this district planning committee should be attached to the Panchayat at the district level because I think, in the scheme of our Government we regard the district as a very important administrative unit. If there is a panchayat at the district level, I think it would be right to say that the district Panchayat or the Zilla Parishad will be the body, under whose aegis the district planning committee can be created. Hon. Members have very rightly pointed out that it must have representation from the urban bodies as well as rural bodies. The question is whether that representation should be an elective arrangement or a non-elective arrangement. To help matters stabilise, it should be left to the State Government. The Bill should provide for a district planning mechanism as



it was done in the case of the 65th Amendment Bill, where the State Government was given powers to bring about that committee by nomination. I would also suggest that the Bill should also stipulate that the State Government should indicate the frequency of the meetings, the terms of reference of this planning committee and also the kind of inputs which should be provided.

Let me give one concrete example. Many districts in Western UP are now undergoing a very major transformation. Anyone who drives to Dehra Dun will see that between the big town and small town, between Meerut-Modi Nagar; Modi Nagar-Modi Puram; Modi Puram-Muzaffarnagar, there is hardly any difference. You will find continuity of corporate. There are a number of *mandis* or markets. We all know that the *mandis* have a system of collecting fees and they are collecting a lot of money.

But the *mandis* are not able to invest in the infrastructure of the surrounding area. The Mandi itself may have concrete pathways and yards but the link road between the main road and the mandi may still be a *katcha* track because the mandi committee as such cannot deal with that problem. The terms of reference will have to be stipulated by the State Government. What we are really looking for is a way in which the rural representatives and the urban representatives would be able to interact.

I expect that there would be a lot of friction normally because it is quite possible that the rural representatives may cite the example that Meerut is extremely doing well. They have got cinema; they have got everything. We have nothing. Or for example, some other town may say that rural area have this facility; we do not have that facility.

Essentially we are trying to create a mechanism whereby the elected representatives would be able to grapple. There would be no escape except to grapple with the issues. At the moment, the urban representative may say, integration of my municipal plan with the district is not my responsibility. I have sent my plan to the Commissioner, Meerut; and the Commissioner, Meerut has sent it to Secretary, Urban Development, Uttar Pradesh. Let Uttar Pradesh Government decide. Similarly, the rural representative can take that stand. I am suggesting that if we mention in the Bill an essential mechanism and leave the procedure of its working to the State Government, you are able to provide flexibility and you are able to establish a working procedure.

MR. CHAIRMAN: Do you mean to say that at the moment no such mechanism exists?

SHRI K.C. SIVARAMAKRISHNAN: At the moment, it exists somewhat informally, as far as I know I stand to be corrected. I do not think in the zila parishad meetings or in the district planning board meetings, there is formal representation even by nomination of urban body's representatives.

MR. CHAIRMAN: There is. I know of my own State.

**SHRI K.C. SIVARAMAKRISHNAN:** It is possible in some States.

**MR. CHAIRMAN:** Himachal Pradesh is one step better than my State. I know it with authority. There is Cabinet Minister of the State Government who is the chairman of the district planning board. The Member of Parliament, who has a majority of the largest segment, within the district, is the associate president or the vice-chairman as it is used to be known. The district collector used to be the member-secretary. Some members of the Assembly, some members of the Panchayat Samiti and some chairman of the urban bodies and a few economics, sociologists and other groups are also represented. But again it was more of a debating society than anything worthwhile. That is the experience.

What I want to know from you is, when you think of a planning machinery, it has to have certain inputs: Number one is the collection of data and that also a reliable data; and number two, the machinery to feed the planning machinery with available data or the authority to plan and see the implementation. How do you envisage this aspect?

**SHRI K.C. SIVARAMAKRISHNAN:** I would submit that in the 65th Amendment Bill, it was provided that the district planning board will have recourse to matters of common interest between the panchayats and the municipalities, including spatial planning, and in preparing the district plan it should note the overall objectives and priorities set by the Government of India and the Government of the State, the extent and type of available resources — financial or otherwise — and consult such institutions and organisations as the Government by order may specify. At that time, there was a good deal of debate while framing this particular clauses. The Planning Commission felt that an exercise at the district planning level can be a limited exercise for some amount of funds placed at the disposal of the district but the rest of it should be taken care of by the State. This could be one option.

The other option is to say, 'all right', let us indicate what is likely to be the magnitude of the resources available for the State, what is likely to be the kind of investment which will be taking place at the district level, to be, is it the continuation of the previous plan, what is really the scope for new schemes and give some indications to that effect, provide data with regard to the possible resources which can be mobilised at the district level and so on. It was felt that if the district planning committees are properly constituted, whether by nomination or by election, and if they are given clear terms of reference over a period of time, then it would be able to make an important change. I would also submit that it may be considered that we have very wide experience so far as district planning and district panchayats are concerned which varies from one State to another. One viewpoint is that active participation at the State level, by a minister or an MP, in some cases, had tended to reinforce the deliberations of the district committee. In some case, it had tended to shift the focus also. Here again,

if you are talking about decentralisation at levels below the state governments, perhaps, it would be better to give the terms of reference to the District Planning Committee and say that this is your district, you happen to come from an urban area and he comes from the rural area, so grapple with the problem; there is not going to be any umpire and so you have to come to terms within yourself. Only then, the eventual agreed result will be possible.

MR. CHAIRMAN: Our experience is that in the late 1970s and early 1980s, a grant was given to the planning committee or planning board known as untide funds with which the planning board was supposed to do their micro level planning. But of late, those untide funds are used for tiny little things like building a temple or given to some clubs. So, the entire grant of untide funds has become unproductive and it does not have any effect at the micro level planning. Secondly, with the nation and state plans, there is actually no scope for the district level planning to innovate anything. The reason for my pointing out this is you may like to give us a note on the subject and we have zila parishads in the States which are functional. Would it be complementary or will it be at cross purposes? What would be their role?

SHRI SONTOSH KUMAR SAHU: After hearing Mr. Sivaramakrishnan, I would like to ask some questions. Everytime, it is pointed that 40 to 50 per cent of the municipalities had been subsidised and there are no elections. Do you think that the provision of suspension in municipalities should be avoided? My second point is we can have a comprehensive work described in the constitutional amendment. But until we have the resources, it is very difficult to fulfil.

Can you suggest some innovative way by which the funds will really percolate to the bottom level? 80 per cent of the resources are with the Centre and 20 per cent are with the States. The municipalities have very limited ability to collect their own resources. You may suggest some ways of raising resources in your note.

My experience is that through the machinations at higher levels, local self-government is being killed in India. Nowhere in the world is it done, except in India. There is no use giving long arguments if we cannot have effective local bodies. By bringing forward an amendment, can we ensure regular elections to local bodies? Can we also ensure that there is no supersession of these bodies? Can we have a set of rules for the conduct of regular elections in all States in a uniform manner? Can this be done by the Election Commission? All these may please be explained in your note.

SHRI PAWAN KUMAR BANSAL: Regarding division of the city into zones and formation of ward level committees, what should be the concept? In a town with a population of say, four lakhs and more, when we have ward committees, should they be separate entities as such with separate elections and separate representatives?

**SHRI BHASKAR ANNAJI MASODKAR:** I have some questions.

1. Does your study show that there are any particular reasons as to why supersession of the bodies takes place?
2. Does your study also show the reasons why elections are not held in many of the States?
3. Have you made any comparative study of the laws operating in different States today? If so, according to you, what are the deficiencies? In other words, is it necessary to provide a chapter in the Constitution itself?
4. Under the Constitutional structure as it exists today, matters relating to self-government and local government are left to the State Legislatures.

If you see the present Bill, it also says that the State may pass a law. Are we enhancing the Constitutional provisions or are we just writing down the law again so as to embarrass the State because there is a fear in the minds of the people that by passing such a law we are encroaching upon the powers of the State legislatures. So, I would like to know whether this will envisage any basic constitutional change in the structure of the laws and administration of various parts of the country. Let me make myself more clear on this aspect.

Under the Indian Constitution areas are divided into territorial groups which under the Article 3 are called as States. The power to formulate the boundaries and all that rests with the Parliament. Then there is a Union Territory. In the State list the world local Government has been introduced, and that is to take care of all the earlier enactments passed. So, will there be a proper constitutional amendment to include all these provisions? From place to place and from territory to territory the problem changes and the best judge of the problem in such a situation would be the State Government. It is possible that I may think that there should be a Municipal Corporation or a Municipality in a given area but the State Government or district administration may be of the view that there cannot be a Municipality there. So, what is your suggestion with regard to this Bill?

**MR. CHAIRMAN:** You can give us in writing.

**SHRI S. VIDUTHALAI VIRUMBI:** Complementing the argument put forth by the hon. Member regarding the amendments that we want to pass relating to the State subject—it comes in the Entry 5—the Ashok Mehta Committee suggested that the devolution of power from the Centre to State should precede the devolution of power from State to local bodies. Subsequently, in the Sarkaria Commission's report it has been stated that if you want to have any change in the local body administration you must convene an inter-State Council meeting and once a consensus is arrived at the Bill can be drafted indicating each and every State. Or, in the Inter-

State Council, alternatively, they had suggested that the State Government may give powers to the Union Government to legislate, that is on common, agreed draft model with the consent.

So, this is according to the Sarkaria Commission's Report. Now, being in the State List, what I feel is this.

Article 249 says: "Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force."

I want to know whether the word 'law' includes Constitution Amendment also.

Article 249(2) it is said: "A Resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein:

Article 250 says: "Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory with respect to any of the matters enumerated in the State List."

MR. CHAIRMAN: Mr. Sivaramakrishnan has given his views on behalf of the organisation which he represents, that is the National Institute of Urban Affairs. Do you have any clarification on that?

SHRI S. VIDUTHALAI VIRUMBI: Yes. The basic structure is going to be changed by amending the law. Therefore, whether it is possible to pass this particular Amendment in view of what Article 249 says.

Then, I will mention about the Finance Commission.

Article 280/(c) says: "any other matter referred to the Commission by the Present in the interests of sound finance."

So, it can utilise this Clause (c) for augmenting resources for the local bodies. That is also there. Here, I want some clarification from him. If it is possible for Mr. Sivaramakrishnan to tell now, that would be better. Or else, he can write a letter or get the same from the Law Commission or in whichever manner he wants, he can do that.

SHRI PAWAN KUMAR BANSAL: You referred to instances with predominantly, agricultural base. Maybe, with a population of 20,000 people. On the other hand, there may be a small town, where there is no agricultural activity or some such thing. There maybe cottage industries, also some other factories. There, the population may be only 7000 or 8000.

If you were to fix one rigid definition for Nagar Panchayat—maybe with 20,000 population—then what will be the position? Whereas, it would actually remain a village but the functions of that Panchayat—with the population of 20,000 people—would be governed by the Schedule given in this Bill, whereas in case of even smaller Municipal towns, it would be covered by Twelfth Schedule of the Bill on Panchayats. This in congruity will come up.

SHRI BHASKAR ANNAJI MASODKAR: You must have read the provisions of the Constitution. Do you find any practical difficulties in enforcing them? Will Article 243(Q) and Article 243(R) lead to contradiction? Suppose a State does not pass a legislation. What mechanism would you provide? Some States are very small. Would you still think that they must have Corporations? They can reach the people directly. Goa, for example, is there.

MR. CHAIRMAN: You can send answers to the points raised by the hon. Members later on. Thank you very much.

*The witness then withdrew.*

##### **5. Ministry of Railway (Railway Board)**

*Spokesman*

Dr. Y.P. Anand, Chairman

*(The witness was called in and he took his seat)*

MR. CHAIRMAN: Dr. Anand, I am sorry, you had to wait for some time because the previous witness took some time to answer clarifications put by the hon. Members. Before you start your evidence, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

DR. Y.P. ANAND: I am thankful to you for giving me this opportunity to present our views freely and frankly.

With your permission, I would state the case of the Railway Ministry in brief. As you are aware, we have vast properties spread over the whole of the country. Under the Railways Act, 1989, there are two provisions which are relevant to the subject under reference. One is Section 11 which confers power on the Railway administrations to execute all necessary works in connection with the operation or working of the railway system in the country.

Section 184 of the Railways Act, 1989, governs taxation of railway property by the local authorities; which exempts all railway properties from taxation by local authorities, unless the Central Government by

notification declares the Railway to be liable to pay the taxes specified in such notification.

The Ministry of Finance has from time to time, been, notifying to what extent the railway properties can be taxed or in the form of compensation to the local municipal bodies for some of the services which they provide us. Thus, the detailed of rules are being made by the Finance Ministry from time to time. And, there is also Article 285 of the Constitution which also exempts the property of the Union from the State taxation save in so far as Parliament may by law otherwise provide.

So, our case in brief, is that the Railways maintain, and provide practically all municipal services by themselves. However, to the extent we utilise the services provided by the local bodies service charges are paid in accordance with instructions issued by Ministry of Finance from time to time. The other point is that if any major charge is levied, then it would be automatically passed on to the rail users because Railways is a utility service for the public at large. Our humble request is that the present exemptions which are available to the Railways *vis-a-vis* the other contract Govt. Depts. may kindly be continued.

MR. CHAIRMAN: Why are you trying to be defensive, Dr. Anand? Many Members were keen to know your contribution to the local bodies. I do believe that you have some hesitancy in appearing before this Committee because of the intervention of the Law Ministry or something like that. You should not have such fear. We are trying to have an interaction before we form an opinion. We want you to tell us very freely. This is not PAC or EC or PU Committees and we are not going to pass any stricture. We are going to arrive at a national consensus. You need not feel shy at all.

DR. Y.P. ANAND: I owe a word of explanation.

MR. CHAIRMAN: It came as a shock to me that people are preventing you from appearing before this Committee. I want this to go on record. That is why, I mentioned this.

DR. Y.P. ANAND: It was not that anybody prevented me. It was a request from my own side because I found that within my Ministry the legal aspects had not yet been properly gone into. Then I was told that we will have to take legal clarifications from the Ministry of Law because our Ministry do not have adequate legal expertise. So, it was my own request. I thought that in case it is not inconvenient, if it is possible, next time I am much better prepared on the legal aspects. I am from Civil Engineering discipline. This is my subject for my whole service of 35 years. Other than the legal aspects, I can certainly handle the matter.

MR. CHAIRMAN: You can send your reply after clarifying from legal persons. Now, the Members would like to ask some clarifications from you.

**SHRI CHITTA BASU:** You claim that Railways do not use generally the Municipal or Corporation services. Even for a small station, you have to depend on the roads of the Municipalities. You do not create your own roads. You do not have a special arrangement of providing drinking water. Therefore, you are enjoying certain infrastructural facilities which are being provided by the Municipality or Corporation. And it is not your fault. I do not say that. Do you mean to say that this Railway Act, which you have come forward, require some kind of amendment so that you are in position to help the Municipalities or the Corporations instead of augmentation of the resources in lieu of the resources you get from them?

**Dr. Y.P. ANAND:** We are already paying certain charges to a number of municipalities all over the country depending upon the services actually being rendered by them. This, infact, vary from about 33 to about 75 per cent in certain areas. Within railway land, 100 per cent of the roads are constructed and maintained by the Railways. Within railway land no maintenance of roads is required to be done by the municipality unless the railways have allowed that road to be used as a totally general public road and not for coming to the railway area. Whenever we are making use of drainage and we are making use of water supply, we are paying charges. We are paying to a number of municipalities. We do not have detailed information but a few cores of rupees we are paying to the municipalities in the country for the services, as per the Finance Ministry's notification which gets amended from time to time.

**SHRI BHASKAR ANNAJI MASODKAR:** I am just supplementing what Shri Chitta Basu has asked. What exactly is the point that this Railway Act is antiquated? What you are paying really is a fee for the services rendered and it is not a tax. If your structure and your establishment is located within the municipal area or in a given area where the citizens pay for property, why you should be exempted?

**DR. Y.P. ANAND:** In respect of pre-Constitution properties, we are paying property taxes according to the pre-Constitution rules for whatever the properties before the Constitution of India came into effect. But, after Constitution of India came into force it is Article 285 (1) which is governing and as per detailed notification issued by the Ministry of Finance. Our Railways Act has been amended as late as in 1989 and it is called Railways Act, 1989. The old Railway Act has been superseded by this Act.

**SHRI BHASKAR ANNAJI MASODKAR:** That is no reason.

**SHRI CHITTA BASU:** But, in Stations there are some establishments. Even a grocer shop has to pay something. But, you do not



pay the license fee also. Whatever may be the law, the problem we are facing is to whether we can augment our resources for this municipalities through the Central Government agencies.

DR. Y.P. ANAND: How are the stations to be treated as a property or a railway yard becomes a property?

MR. CHAIRMAN: I can understand his discomfiture. We are only ascertaining and illiciting information. You need not have any apprehension.

SHRI VIDUTHALAI VIRUMBI: Sir, with your permission I want to ask a small question. It is said here that 75 per cent of the property tax is paid by the Railways according to the service rendered to them, by the local bodies. But there is a different version in the notes given to us when compared to what is being said here. Railways avail of all the services that the Central Government provides which the residents of other areas also avail. Why should there be a difference between what an ordinary man is paying and what the Railways are paying? Why should not the Railways pay 100 per cent of the property tax? What is the reason of this?

SHRI DHARMARAJAN, Joint Secretary, Ministry of Urban Development: Ministry of Finance had issued a notification, in this regard. The amount to be paid by the Railways varies in terms of the percentage of the property tax payable. It depends on the services which are utilised from the municipal bodies. It is, of course, open to the committee to discuss whether there should be an amendment. A Central legislation can be introduced for the purpose of taxation of Government property. We are examining whether some changes are needed in the notification issued. As indicated earlier, the Ministry of Urban Development is undertaking an exercise with regard to the property tax to be paid by the Central Government. We asked for the information and we hope it to arrive in next couple of months. We are waiting for it.

MR. CHAIRMAN: Do you want the Committee to wait till such time?

SHRI DHARMARANJAN: No, it is not like that.

SHRI SHANKARARAO D. KALE: Mr. Chairman, Sir, I want to ask a small question, with your permission. My question is not related to the amendment of the Constitution. But the practical experience is the base for it. In my constituency there is a Srirampur railway station. There was an encroachment of railway land, by somebody. The Railway authorities had started construction of a compound wall. The municipal authorities said that their permission was not taken for the construction of the compound wall. There was a dispute where the Railway area starts and where the municipal area starts. In the case of other ownership, there is an Inspector of Records who maintains the land records and does the demarcation. Who is the authority in the above case to demarcate the land?

**DR. Y.P. ANAND:** In case of any dispute regarding the ownership of the land, we are entirely binding by the decision of the revenue authorities. The decision of the State Government will be final. We shall be referring such things to the district administration for a decision.

**SHRI PAWAN KUMAR BANSAL:** So far we have been discussing cases with regard to the Railways paying money to the municipal authorities. What really concerns me is that in some cases municipal authorities may also have to pay to Railways. They may have to contribute in executing certain works like the overbridges or sub-ways etc. No doubt the Railways render useful service to the people, but the fact remains that when the Railways happen to pass through the towns or the thickly populated areas and if there is a need to have a fly-over the Railways do not pay the entire amount. For a simple level crossing they do it, but if a local body wants a fly-over on a particular piece of land, the Railways' attitude leaves much to be desired. I would like to have the response of the Chairman of the Railway Board to this effect, whether it be a footbridge over certain tracks at the railway station or another fly over at a place where there is a single track, what would be their response to it?

**SHRI SHANKARRAO D. KALE:** Day by day cities are increasing and sometimes across the railway the city is going on. So, there must be a link between the two branches of the city. So, Railways should really construct overbridges or underground bridges.

**MR. CHAIRMAN:** Railways are a commercial undertaking, you must be mindful about that also. Probably it is the largest public undertakings in the world.

**SHRI K.N. SINGH:** In case we are going more for privatisation, what would be your reaction to that?

**DR. Y. P. ANAND:** As far as the road overbridges are concerned, the rules have been jointly drawn up by the Central and State Government. The rule is that if a pathway already exist at the time of construction of a railway line or if a pathway comes up upto 10 years after the construction of the Railway line, the railways are to provide suitable level crossings or overbridges. Cost of such level crossing or road over/under bridges is fully borne by the railways.

**MR. CHAIRMAN:** When this rule came into effect?

**DR. Y.P. ANAND:** It is an old rule.

If the railway line is ahead there, and a new road comes, then they will have to pay. But if the road as well as the railway exist and if the point is to upgrade a level crossing, then both the parties share 50 per cent of the costs and in no case we have said that 'we do not have money in the budget'. Even if we have less money, we are always willing. But it is not only the municipality, but it is basically the State Government that is

involved. Therefore, the State Governments have to pay 50 per cent, we have to pay 50 per cent and we have never shirked from it.

**MR. CHAIRMAN:** Don't you keep the 10-year schedule?

**SHRI PAWAN KUMAR BANSAL:** The local bodies have no money. Therefore, the work is not executed.

**DR. Y.P. ANAND:** The rules are jointly framed by the Central and State Governments.

**SHRIMATI MALINI BHATTACHARYA:** In the present state of affairs, as you have said, there is coordination between the Central Government and the State Governments with regard to certain developmental activities in a particular area. Do you think that in the Bill itself, there should be some kind of a provision which might improve the coordination that exists at present or do you feel that the rules as they exist at present without any reference to the Constitutional Amendment are enough?

**DR. Y.P. ANAND:** At present, we do not normally have any major coordination problems with the local authorities. Even if some problems come up, they get sorted out without any major hurdle. Our fear is that, with this constitutional amendment which is under reference now, the present balance may get disturbed or may be put to question. I want to give an example. In Punjab, there was a case three years ago or so when the Defence Ministry was to pay something to the local authorities, they went and they got an attachment order issued against the Central Government and because the only Central Government property that happened to be at Bhatinada was the railway hospital, that got attached by the court. It is a very isolated incident. So, the present balance, as far as railway properties are concerned, is well understood by the municipalities and the local authorities. We do not know as to what will be defined as a property. There are so many things like platforms, waiting rooms and yards, etc. which may come under the definition of property.

**SHRIMATI MALINI BHATTACHARYA:** Would you like to have included in this Bill, some provision to protect this coordination between the Central and State Governments?

**DR. Y.P. ANAND:** I would say that whatever are the present exemptions to the Central Government properties as far as railways are concerned, those exemptions should not get affected by the passing of this Amendment Bill.

**SHRI BHASKAR ANNAJI MASODKAR:** If you look at the Twelfth Schedule and the proposed Article 243(b), there are various matters which will require exemption.

**MR. CHAIRMAN:** You have not given your comments to the questionnaire so far. Since you want certain provisions to be included, you may like to give your suggestions through questionnaire.

**SHRI BHASKAR ANNAJI MASODKAR:** If you look at 12th Schedule, if it becomes a part of the Constitution, then roads and bridges Item 4, Planning including Town Planning, Regulation of land use in construction buildings, all these matters will be constitutionally with the Municipal Corporation.

**MR. CHAIRMAN:** This List is only illustrative. It is not exhaustive.

**SHRI BHASKAR ANNAJI MASODKAR:** You are saying that exemptions will have to be larger than merely taxes because you cannot build a railway station once this constitutional provision is there unless municipality also thinks that there is a need for a railway station.

**MR. CHAIRMAN:** You may now consult your Law Department. It is a good thing you appeared before us.

**SHRI BHASKAR ANNAJI MASODKAR:** You may respond to it.

**MR. CHAIRMAN:** Don't worry. Law Ministry is adequately represented.

**SHRI BHASKAR ANNAJI MASODKAR:** They will look into it.

**MR. CHAIRMAN:** You must come to the aid of the railways instead of advising them not to appear before the Committee!

**SHRI DHARMARAJAN (MINISTRY OF UD):** Certain issues relating to coordination are raised just now. One of the areas in which there have been some differences of opinion between the railways and local bodies has been in terms of appeals and sanction because the operational properties of the railways are exempt from getting sanctions from local bodies. It really means seeking guidance the way they are having their railways because for technical reasons States are to be exempt from local bodies. But the definition is not very clear. Sometimes there have been problems between the railways and local bodies as to whether they get the sanction of the local body or not.

Secondly, the question of coordination arises where the railways have certain plans of development in terms of increasing capacity of railway platform stand or staying in depots in terms of container terminals. There is a sequence in terms of development of urban local body and in terms of access roads. If the coordinating mechanism is not there or some mechanism in which these things can be sorted out is not there, there can be possibility of friction.

**MR. CHAIRMAN:** Would the local bodies have experts to sit in judgment?

**SHRI BHASKAR ANNAJI MASODKAR:** I am not saying that.

**DR. Y.P. ANAND:** I will tell one particular case. This is a case of Madras. Railway was of the view that a particular building was an operational structure whereas local bodies were of the view that it was

unauthorised construction as the construction was not as per the bye-law and railway did not take the sanction of the local body. So, there was a friction going on with the local bodies. Railway says that they do not have to take any sanction. There has to be a clarity in the sort of areas in which local body can exercise its functions and the areas in which it is not proper to exercise control because there are certain technical constraints. This clarification is needed which will be useful to the Committee to decide whether this definition should be there or not.

**SHRI PAWAN KUMAR BANSAL:** That would definitely require the sanction of the local body.

**MR. CHAIRMAN:** Is it necessary for the railways to go to the NDMC or DVA or Calcutta Corporation or Howrah Corporation? I would like to know for our own information.

**DR. Y.P. ANAND:** There have been a few instances. I do not claim knowledge of all such instances. Regarding the Rail Yatri Niwas, our problems have been primarily in Delhi area. We have not had any problems which are worth mentioning in Bombay. But in Delhi area, there has been some difference in perception. We have felt that the Rail Yatri Niwas is a passenger amenity set-up like the retiring-rooms etc. and a Passenger amenity work is an important operational structure. The operational structure should not require a local body's prior approval. That was the perception of the Railway Ministry. But the perception from the other side was that the Yatri Niwas is like a hotel construction. They, therefore, felt that we should have taken prior approval. Unfortunately the matter continued to hang fire between the two Ministries even after the building was constructed in Delhi and it did create problems. For some time, the buildings remained unutilised on this account. I would say that this is an isolated example. I do not know of any other example where the situation has gone to that extent.

**SHRI PAWAN KUMAR BANSAL:** There is one aspect. For example, the Railways get some piece of land. The stipulation in most of the laws would be that construction on that land should be done within a given period of time. In the case of Railways you can have it for 10 years. There may be a provision somewhere entitling the local authorities to resume the land, if an individual is not able to construct within the prescribed period. I suppose the same thing should apply to the Railways regarding such constructions.

**MR. CHAIRMAN:** That is your personal opinion.

**SHRI PAWAN KUMAR BANSAL:** Only when it comes to construction of platforms, laying down of tracks etc. the Municipalities should have nothing to do with it. The decision of the Railways should be final.

**SHRI BHASKAR ANNAJI MASODKAR:** Would you favour the

decision that the Railways should be made a State subject through legislation? If that is done, the problems will be solved.

DR. Y.P. ANAND: Any constraints which are avoidable constraints will finally react on the Railway's facilities. It will discourage the Railways from providing facilities, from expending on that score.

MR. CHAIRMAN: You have not reacted to the suggestion whether the Railways should be made a State subject.

DR. Y.P. ANAND: I would say that the Railways should remain as a Central Subject.

MR. CHAIRMAN: You have 4.19 lakh hectares of Railway land distributed throughout the country. But you do not have any single organisation to manage your land or to oversee or coordinate or to do anything. You have left it to the various divisions. You do not have uniform policy. Could you explain?

DR. Y.P. ANAND: We have a land control management. It is part of the duties of the Civil Engineering Department. The duties are well-defined. But as the time has passed, now we feel that this land management organisation has to be strengthened. For that, the Railways have set up an Expert Committee of three Members. That Committee is going on since December 1991. It is supposed to give its report to us as to how we should restructure the existing organisation so that there is more specialisation in the matter of land management.

MR. CHAIRMAN: Do they not feel the necessity of having a Body?

DR. Y.P. ANAND: We have, in every Chief Engineer's Office, a cell. There are officers and staff. Similarly, in the divisions, a nominated cell is there which maintains land records, records of encroachments, afforestation, land use etc. We have not strengthened it with the modern facilities. We are in the process of doing it.

The only thing is, we have set up a committee of three officers to guide us.

MR. CHAIRMAN: Since how long is this exercise going on?

DR. Y.P. ANAND: They started in December 1991 and they should give the report in June. In the meantime, they are discussing with us.

MR. CHAIRMAN: You have the railway property, railway land as well as construction work in metropolitan cities, in municipal areas. you may be interacting with them in regard to panchayats, We would like to know what is your experience of interaction and whether there is any area of conflict. you just let us have a note on this so that we arrive at some decision. We would also like to have information about what is the service charge that Railways pay to the various bodies.

You are free to get back to us in case you have any doubt. We would like to have notes as also the clarifications asked for, in a fortnight's time.

DR. Y.P. ANAND: We will give you that.

*Witnesses then Withdrew*

## **6. Ministry of Defence**

*Spokesman*

(i) Shri K.A. Nambiar, Additional Secretary

(ii) Shri P.K. Kumaran, DGDE, M/o Defence, Director General of Defence Estates

*(The witnesses were called in and they took their seats)*

MR. CHAIRMAN: I am sorry, we kept you waiting because Members wanted certain clarifications.

First of all, may I welcome you to this sitting of the Committee? We request you to be free and frank in your views. Before you start your evidence, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

MR. CHAIRMAN: I hope you have gone through the Bill which you must have received along with the questionnaire. You only gave a memorandum, not actually a memorandum, but a write-up on the defence lands in the cantonments. And you have not answered the questionnaire. We would like to have your views on the questionnaire also. You are welcome, if you would like to highlight any aspect of what you have given to us. After that, I will request the hon. Members to seek clarifications, if any.

SHRI K.A. NAMBIAR: With your kind permission, Sir, I would like to bring out the broad perspective of our problem, so that we could thereafter discuss it.

As you are aware, the Government of India Act. 1935, brought in the Federal structure in the country. At that time, cantonments as a special subject was given in the federal list. Later, in 1948, when our Constitution was being conceived and drafted, there was a Committee of the Ministers In-Charge of Local Administration which went into this question once again. That Committee, after due deliberations, made a unanimous recommendation that defence lands in cantonments should continue to remain in the Central list. It is the context in which it is there today in List-I, Entry-III of the Seventh Schedule.

Now the main reason which the Ministers' Conference then recognized was that security, discipline and health of the troops in areas where large concentration of troops reside with their families, is of paramount importance. The cantonments and military stations have a predominantly

military population. Administration of these areas must, therefore, continue to meet the objective of the security, discipline, health, welfare, training etc. of the troops stationed there. The Station Commander, who is the overall in-charge of these functions should, therefore, have the overriding voice in the administration of these cantonments and military stations. There has been a demand that there should be more voice for the civilian residents of these cantonment areas. This has already been met by the Government of India by providing for 50 per cent of the Membership of the Cantonment Boards for elected people.

The superintendence and control alone remain with the General Officer Commander-in-Chief of the Army Command and then with the Central Government officials. In regard to the day-to-day functioning, these cantonment Boards are free to perform their statutory duties.

Now it is proposed under Article 243 (p) and we would submit that it should, therefore, specifically exclude the cantonments and military stations from the definition of municipal bodies. Otherwise, when a cantonment or a military station gets any Bodies in a municipal area, as proposed to be defined in this Article 243 (p), it will have separate administering bodies as contemplated in Article 243 (p) and Article 243(s) and this will take away the present role of the Station Commander and will not be in the interest of the troops.

Another point which we would like to highlight is that in the Statement of Objects and Reasons attached to the proposed Bill, it has been stated that this Bill provides to build up the relationship between the State Governments and the Local Bodies on a firm footing. Such a relationship already exists on a firm footing between the Cantonment Boards and the Central Government.

Then military/station is another category where we have large concentration of troops residing with their families or sometimes troops alone. These are not local bodies: these are only departmentally administered defence estates where the troops and the officers stay. So it cannot be called as a local body and there is no question of any Self-Government in such military stations.

We see from the Statement of Objects and Reasons again that it apprehends about the elections not being conducted regularly. This would not apply in the case of cantonments and military stations because Cantonment Boards' elections have been held systematically right through and there has hardly been ever any supersession of any Cantonment Board elections *per se*.

There is a reference in the Bill to the need for auditing by the Accountant General of Public Funds. Such a system already exists in the case of Defence Cantonments and Military Stations where the Director of Defence Accounts, who is a Central Government counter-



part of the State AG, performs such an audit systematically. The Comptroller of Defence Accounts also functions under the CAG of India.

We would also like to highlight that the administrative reports of these Cantonment Boards are regularly tabled, after review by the Government, in both Houses of Parliament.

Another advantage in the proposed Bill relates to the setting up of a Finance Commission to consider devolution of funds. In the Cantonment Act as it exists at present there is a provision for Cantonments to levy the same taxes as are applicable to municipalities of the concerned State. So when such a facility is set up for municipalities, *ipso facto* they will be made applicable to the Cantonment without any structural changes to the Cantonment Boards.

Finally service are very much perturbed about the present security environment in the country. When they are required to move to forward areas or counter insurgency they have to leave back their families and they require a safe and secure environment. This, the Military Station and cantonments are able to provide adequately at present. The Services are therefore very anxious that there should be no change in the system in any way which is detrimental to this arrangement.

**श्री राधाकिशन भालवीय:** यह बड़ा कॉम्प्लेक्स सबजैक्ट है। डिफेंस मिनिस्ट्री वाले कहते हैं कि हम सभी प्रकार की सुविधाएँ सिविल एरिया के लोगों को देते हैं पानी, सड़क, एजुकेशन, हेल्थ जो भी है, सब देते हैं। मगर प्रैक्टिकल तौर पर जिन सुविधाओं में सुधार करना चाहिए, वह सिविल एरिया में नहीं मिलता है। डिफेंस का यह कहना है कि वह कैम्प एरिया है, उसको हम सुरक्षित रखते हैं, वह रखना चाहिए। हम भी उससे सहमत हैं मगर जो सिविल एरिया है, वह डिफेंस के एरिया से बिल्कुल सैप्रेट रहता है। वहां पर रेलवे स्टेशन रहता है, बस स्टैंड रहता है, पुलिस स्टेशन है, सड़कें हैं, रोडवेज की बसें जाती हैं। इनके डिफेंस के आफिसर, इनके कमाण्डर, लैफ्टीनेंट जनरल और इन्टीर्यूट का, रिसर्व का एरिया अलग होता है। इन्होंने कहा कि वहां पर 50 प्रतिशत सिविलियन को इलैक्ट करके देते हैं और वह सजेशन देते हैं, वह तो ठीक है लेकिन जो बुनियादी सुविधाएं वहां पर लोगों को मिलनी चाहिए, वह डिफेंस एरिया में या कैम्प एरिया में नहीं मिल पाती हैं। जब पिछली बैठक हुई थी तो मैंने अपना एक सजेशन रखा था कैम्प एरिया है, तो वहां पर कैन्टोनमेंट बोर्ड लागू है। उसके चेयरमैन जनरल कमांडर होते हैं और सिविलियन का वाइस-चेयरमैन होता है। वाइस-चेयरमैन के पास कोई पावर नहीं रहती है, वह पावरलैस रहता है। यदि सिविलियन एरिया में किसी को अपना मकान बनाना है, उसकी परमीशन लेनी है, तो उसको वह परमीशन नहीं मिलती है। पानी का नल लगाना चाहता है, तो उसकी भी परमीशन नहीं मिलती है। सैप्रेट बिजली का कोई काम करना चाहता है, तो उसकी भी परमीशन नहीं मिलती है। इसी तरह की कई और भी परेशानियां हैं। यह हालत तब है, जब स्टेट गवर्नमेंट द्वारा वहां पर एजुकेशन फैसिलिटीज, रोड फैसिलिटीज, ट्रांसपोर्ट फैसिलिटीज, रेलवे फैसिलिटीज, सब प्रकार की फैसिलिटीज दी जाती है उस क्षेत्र में। इस बारे में मेरा एक सुझाव है, कैन्टोनमेंट बोर्ड का एरिया जो सिविलियन एरिया कहलाता है, वहां पर नगर-पालिकाये और नगर-निगम बन जाते हैं, तो उस क्षेत्र में फिर परमीशन देने में कैम्प एरिया में तकलीफ नहीं होनी चाहिए। मैं यह कहना चाहता हूँ कि उस क्षेत्र में म्यूनिसिपैलिटी बननी चाहिए, अगर म्यूनिसिपैलिटी नहीं बनती है, तो उसका कारण क्या है?

**SHRI K. A. NAMBIAR:** The hon. Member has raised about half a

dozen very important points. I will try to answer them one by one. The first was that, the civil areas do not get adequate civic amenities. Another point which was raised is that the civic areas are totally distinct from the military areas of the cantonment and so it should form a separate municipality. The third point was that although there is a Vice-Chairman for the Cantonment Board who is an elected Member, he has no powers. Finally, he raised about the problem that the civil houses are not even permitted to be renovated or repaired, etc. This possibly is the most serious one.

I will answer the last question first because that has the largest amount of public grievance involved in it. It is true that under the present policy of land use in cantonment, there is a ban on renovation or repair of private buildings. The background of it is like this. In the Cantonment Boards, we have lands which are known as 'old grant lands'. These are originally belonged to the Government during the British days. But, private citizens have been permitted to build their houses with the condition that the house alone will be belonged to the person and the land will be owned by the Government; and the person concerned cannot alienate it or sell it without the prior permission of the Government. Till about 1968, there was no problem with regard to repairs and renovations of houses. But, then due to the pressure of urban land, during 1968-69, the Government noticed that in the name of repairs and minor alterations, people were putting up altogether a new structure, where one floor has been converted into three or four floors. it was in this context, that the ban was imposed.

Now, the Defence Ministry has realised the public problems arising from the present negative policy. This policy is being reviewed and we are trying to provide for repair of the buildings, provided they do not extend beyond what is originally the authorised construction. Once this policy is revised, this major complaint is likely to go away from the cantonments.

MR. CHAIRMAN: I think this problem is there for long I think, they are all more than hundred years old. you have said that the policy is being reviewed for repairs. I want to know whether the policy for addition and alteration is also being reviewed or not.

MR. K.A. NAMBIAR: The policy which is under contemplation is the one to permit liberally the repairs and reconstruction. And number two, new construction, if necessary, to an equivalent extent.

The rationale in not permitting additional floors and more construction is that civic amenities are over-extended. To the extent we put up more floors, more population will come. That will require more water, more electricity, more sewerage. It is in that context that we are chary about permitting additional areas to be built up.

With regard to the powers of the vice-chairman, I am glad to tell you

that the vice-chairman has practically full powers with regard to the civil areas of the cantonment. Even in matters of taxation there, the vice-chairman's decision, as a convention, is accepted as final.

With regard to the civil areas being totally distinct from the military part of the cantonment, there are certain areas known as sadar bazar or the civil bazar areas. That is slightly distinct. Even in the military areas, we have, what are known as bungalow areas. In these bungalow areas, we have much dispersal of civilian population. So, it will not be possible to totally segregate the civilian population.

Number two, in many of these cantonments, the civil areas are not viable enough to form a separate local body themselves even if they are segregated.

MR. CHAIRMAN: You have gone through the Bill. Even after the proposed Bill, they do not become viable?

SHRI K. A. NAMBIAR: It is unlikely to be viable because we have given the statistics. It may be viable in certain areas. But mostly it may not be viable.

The other thing is, starting from 1948, more than half a dozen times, Government of India had appointed various committees to go into the question of excision, taking away all the civilian areas and forming them in the local bodies. They have been identified. In three areas, the excision could be done.

About six months back in the consultative committee of the Defence Ministry, this subject of cantonment administration came up for one full meeting review. After that review, the committee has recommended that a small committee of parliamentarians under the chairmanship of the Raksha Rajya Mantri should study this issue once more. We are formally awaiting Government of India's approval for constitution of that committee. That committee will also be going into this in depth.

With regard to lack of civic amenities in the civil areas, Government of India are giving grants-in-aid on year-to-year basis apart from what is there locally by way of taxation. We concede that this amount is not enough. But then the defence budget has certain constraints. In spite of these constraints, the maximum possible allocations are being made.

In addition to this, from 1986-87, government of India have also started paying to the cantonment boards what are known as service charges. These service charges are at 33½ of the municipal tax which would have been payable had it been a private property. So, all these things are improving. I would not say that cantonments are ideal in every respect. But with the constraints, we are doing our best. It is commonly acknowledged everywhere that cantonments in relation to neighbouring civil municipalities have much better environmental impact and environmental purity.

SHRI RADHAKISHAN MALAVIYA: I would like to put one question

to Mr. Nambiar. There are two points of references in provision 243Q. One is area and another is population and it is a compulsory provision. This being a part of the Constitution, your submission that cantonment can be treated separately cannot hold good. So cantonments should not be there.

SHRI K. A. NAMBIAR: It is only in this context that we made a submission that cantonments and military stations must be specifically excluded from this definition.

PROF. MALINI BHATTACHARYA: The Cantonment Board should be excluded from the Bill.

SHRI P. K. KUMARAN: when the definition of municipal area is given under provision 243P, we desired that cantonments and other military stations should be excluded. Therefore, no urban area shall constitute a body incorporating these cantonments and major military stations. For example, consider Hissar, Pathankot, Bhatinda, etc.

MR. CHAIRMAN: You cannot exclude the whole of Bhatinda.

SHRI P. K. KUMARAN: We are talking only about the military part of it, when we refer to Bhatinda.

SHRI RADHAKISHAN MALAVIYA: You should be clear in what respect you want exemption under Item II of 12th Schedule in which regulation of land use for construction of buildings is given.

MR. CHAIRMAN: Mr. Kumaran, you did not give a good example of a cantonment when you referred to Bhatinda. It is not that the cantonment came after the civilian population. It is that the civilian population which came after cantonment.

SHRI P. K. KUMARAN: We are not mixing that with Bhatinda. The land which we acquired from 1970s is 14,000 acres approximately. Bhatinda military station is outside the Bhatinda municipal corporation area. The land we acquired is outside the corporation area. Bhatinda is the corps headquarters and troops are located there. They should not be part of the Bhatinda municipality.

Coming to the point raised by the hon. Member, once it (Amendment) comes into force under provision 243Q, constitutionally it is mandatory for the State to create its local bodies. Whereas today, under the Constitution, declaring a place as a cantonment is an administrative action under the Cantonments Act. When that is done Cantonments Act comes into application. I believe that once this (Amendment) is enacted under the Constitution, then Cantonments Act will itself become redundant. There is a threat of the cantonment being wiped out and military stations being encompassed by these authorities. A conflict will arise between the provisions contained in the Cantonment Act and the authority that is being provided by this constitutional provision and the mandate of the con-

stitutional provision will prevail over the Cantonment Act. These are our apprehensions.

SHRI B. S. SALUJA: As per the definitions given in the Bill, a municipal area means the territorial area of a municipality. Municipality, in turn, is defined as an institution constituted under 243(Q). All those areas for which the municipalities have to be set up, are to be specified by the State Government. In view of the Entry 3 of the Union List, areas where cantonments have been set up, cannot be specified for this purpose. Therefore, *ipso facto* this Bill will not cover cantonment areas.

SHRI K. A. NAMBIAR: There are two points. We have 62 cantonments. But we also have 239 military stations. Even if we concede that the cantonments will be excluded, these 239 military stations will be directly affected.

MR. CHAIRMAN: It was decided by the Government in 1962 not to have cantonments. After 1962, military stations came into being. Their apprehension is that the military stations are not specified.

SHRI PAWAN KUMAR BANSAL: That is a reasonable apprehension. Supposing a station were to be notified as a municipal area, it would create problems.

SHRI K. DHARMARAJAN: There seems to be some difference of opinion here as to whether it will affect or not. It would be much safer for us to specify these things in definite terms so that we do not leave it to the interpretation of courts or State Governments.

MR. CHAIRMAN: Mr. Kumaran and Mr. Nambiar, while the Ministry of Urban Development is responding to your apprehensions, you too should respond to our hon. Members. There should be some *quid pro quo*. In our internal meeting, hon. Members have expressed very strong views about the administration and management of the civilian areas within the cantonment. They are of the opinion that the administration of the civilian areas is not upto the mark at all.

MR. CHAIRMAN: I must convey the very strong feelings of the hon. Committee because administration and management of the civilian areas need a lot to be desired and people are not very satisfied. Unless you pull up your socks, it will be very difficult to satisfy the Members.

SHRI K. A. NAMBIAR: Sir, we will give the most earnest consideration to the points which you have made. We will certainly take action on them.

श्री नंदी चेल्लैया: सभापति महोदय, टोटली 62 कैन्टोन्मेंट हैं। मिसाल के तौर पर मैं समझता हूँ कि सिकन्दरबाद कैन्टोन्मेंट में एक लाख से ज्यादा अबादी है। यहाँ पर मिलिटरी और सिविल एरिया है। सिविल एरिया में जो "ए" क्लास कैन्टोन्मेंट है तो वहाँ पर सात मैम्बर होते हैं जिसमें नॉन आफिशियल प्रेजिडेंट रहता है। मैंने पहले भी कहा था कि उस क्षेत्र में एक लोक सभा मैम्बर और एक विधान सभा मैम्बर भी होता है जिनको उस कैन्टोन्मेंट के बोर्ड में भाग लेने का अधिकार नहीं है। मैम्बर, जिला

परिषद् में जा सकते हैं और प्लानिंग बोर्ड, मंडल प्रजा परिषद्, और म्युनिसिपल कारपोरेशन में बैठ सकते हैं। लोक सभा में हम बहुत बड़े-बड़े मसले हल करते हैं, लेकिन कैंटोन्मेंट के हालात को देखते हुए उसमें भाग लेने का अधिकार नहीं है। इन 62 कैंटोन्मेंट में ए, बी और सी क्लास टाइप के कैंटोन्मेंट होते हैं। अभी मालवीय जी ने कहा कि जो वाइस प्रेजिडेंट होते हैं, वे सिर्फ नाममात्र के हैं। नंबियर जी ने सुरक्षा के बारे में कहा। हमारी उसमें कोई दखलान्दाजी नहीं है। 292 मिलिटरी स्टेशन हैं, वहां पर डिफेंस फोर्स होती है और कमांडर होता है। इलैक्ट्रेड मैम्बर को बहुत दिक्कत आती है। सिकन्दरबाद के कैंटोन्मेंट में कुछ हिस्सा मिलिटरी का है और कुछ हिस्सा सिविल एरिया का है। वहां की इन्कम बहुत कम है। इनके पास आर्डिनरी और स्पेशल ग्रीट है और दूसरा सर्विस चार्ज भी आप देते हैं। इस कैंटोन्मेंट का आजादी से पहले या आजादी के बाद जो एक्ट बना था, वह वैसा ही है। लेकिन एक दफ्तर मैंने रक्षा मंत्री श्री शरद पवार जी को लिखा था। वहां के सिविल एरिया के लिए पीने का पानी देने के लिए जो सैक्शन हुआ तो मिलिटरी के आफिशियल ने उसको रोक दिया। इस तरह के मैं बहुत उदाहरण दे सकता हूं। मैंने अपने विचारों को इस मंत्रालय में भी पहुंचाया था। वहां के लोकल एमपी और विधायक, उस बोर्ड में भाग लेने के लिए आए। इस बिल को अमैज करना जरूरी है, यह राय ज़ाहिर की थी।

SHRI K.A. NAMBIAR: Sir, the point made by the hon. Member had been considered in the past more than once in the Defence Ministry. He has rightly mentioned and the answer has also been given by the Defence Minister that it may not be desirable to make such an arrangement. Mostly, the Cantonment Boards are presided over by an officer of the rank of Brigadier. The hon. Members of Parliament and hon. Members of the State Legislative Assemblies are public functionaries and they are very much higher in the rank and status. So, we thought that it may not be appropriate to make such functionaries—VVIPs—sit in a Meeting presided over by an officer.

MR. CHAIRMAN: Can you evolve a machinery? Because after all, both the members of Parliament and the State Legislative Assemblies are elected members. These Cantonments and military stations also constitute their constituencies. They have their voters. I would leave it to the Ministry of Defence to see if a machinery can be evolved where either the participation or the views of the Members of Parliament or the Members of the State Legislative Assemblies can be given due weightage. So, such a system can be evolved; machinery can be evolved so that there is interaction and there is also sharing of views. If it is there, then, their opinion can also be taken into consideration. Otherwise, they will be left out totally from it. The intention of this Bill is the participatory democracy. Here, a segment of the elected representatives have no interaction or have no say because they do not have any *locus standi*.

SHRI K.A. NAMBIAR: We will certainly examine this aspect.

MR. CHAIRMAN: In the Panchayat Samiti meetings, a Member of Parliament does have a representative. So, let them think it over.

If you can evolve a machinery, then the feeling of non-participation by the Members of Parliament and the Members of the State Legislative Assemblies can be got over. Because this is a dynamic society and a dynamic nation which on the move. We may have to evolve some archaic concept which was there 200 years back.

In your Memorandum, you have said that one of the functions of the Director-General of Defence Lands and Cantonments is to acquire and hold lands. Does it imply also selling of land? Because, we are concerned, that military stations and cantonments are in the process of being sold off to private co-operatives, private parties in Delhi, in Pune which are supposed to be very rich Cantonments, at a time when you are feeling very protective to your defence lands and cantonments. you are not willing to give even democratic rights to the civilians living in that area. At the same time, when you say that the defence land has to be conserved and protected for future expansion, you are contradicting yourself when you are thinking of selling off all the lands in Anand Parbat, that is 300 acres of land.

How do you remove this anomaly? There are reports in the newspaper that Anand Parbat land is being sold for Rs. 300 crores. The reason is that this money will go to the Defence Budget. After that, what will happen?

SHRI P.K. KUMARAN: There is no proposal to sell any land in any of the cantonments. The Government has taken a decision that Army should optimise use of the land.

MR. CHAIRMAN: You know how difficult it is to acquire land for Defence purpose? Here the move is to sell the Defence land.

SHRI P. K. KUMARAN: We preserve all the land we have. We have infrastructure and we have requirement to expand it. But if any location has become not relevant and we do not have infrastructure or where we may not create infrastructure, then it is better that instead of that land being encroached, we encroach it and recycle it to create infrastructure. But there is no proposal to dispose of any land in Delhi Cantonment on any land in Poona Cantonment.

MR. CHAIRMAN: Is that the present state of affairs as on today?

SHRI K.A. NAMBIAR: Defence land requirements are constantly reviewed.

श्री राधाकृष्णन मालवीय: मैं इस संबंध में यह कहना चाहता हूँ कि सिविल एरिया और सेना एरिया की भूमि अलग होती है। सेना भूमि में सिविल का कोई भी आदमी नहीं जा सकता है क्योंकि वहाँ रोज़ ट्रेनिंग होती है, डिफेंस का एरिया है, मिलिट्री के आफिसर रहते हैं, इसलिए आप नहीं जा सकते हैं। यहाँ तक कि उनकी सड़क पर नहीं जा सकते हैं। वह प्रोटेक्टिव एरिया होता है। जिसको कैटोनमेंट बोर्ड एरिया कहते हैं, वह सिविलियन होता है। वहाँ आबादी एक लाख या उससे अधिक हो सकती है। इन लोगों को बुनियादी सेवा या सुविधा देने का मामला है। वहाँ पानी, बिजली, सड़क की सुविधा हो, इसलिए म्युनिसिपैलिटी वहाँ होनी चाहिए। मैं एक तस्वीर उदाहरण देता हूँ। हमारे मध्य प्रदेश में 5 कैटोनमेंट एरिया हैं—महु मेरे ख्याल से सबसे बड़ा कैटोनमेंट एरिया है। वहाँ पर होली पर एक

विवाद हो गया। चूंकि अभी आपने कहा कि वाईस चेयरमैन बहुत पावरफुल होता है, वह जो कुछ कहता है, वही होता है। लैफ्टिनेंट जनरल श्री सकलानी कैबिनेट बोर्ड के वाईस चेयरमैन हैं, उनसे मिलने को मना कर दिया गया। यदि यही बात है तो इलेक्शन कराने की क्या जरूरत है? तो बता रहा था कि जब झगड़ा हो गया तो 5-7 लोग उनसे मिलने गये, वह नहीं मिले, मुझे मालूम हुआ तो मैं इन्दौर से पहुंच गया, टेलीफोन किया, रिक्वेस्ट किया कि यह मामला बड़ा विचित्र है। वहां पर कफरू भी लगू हो गया था। सिर्फ मुझे ही मिलने दिया गया और मैंने उनसे बातचीत की। वहां का कैबिनेट बोर्ड ए क्लास का है, सात पार्षद इलेक्ट होकर आते हैं, वाईस चेयरमैन हैं, स्टेशन कमांडर उसका चेयरमैन होता है और वही पावरफुल होता है।

वाइस चेयरमैन को कोई पावर नहीं रहती है। अगर संपर्क हो तो कमेटी किसी भी एरिया का एक दिन निरीक्षण करे। सिविल एरिया का डिमांडेशन अलग रहता है। वहां एक मकान क्या आप सड़क भी नहीं बना सकते। वहां राजीव गांधी की आम सभा तक नहीं हुई। जब वे प्रधान मंत्री के रूप में गए तो वहां एक गैरिसन ग्राउंड है। तो मिलिट्री ने कहा कि वहां आम सभा नहीं होगी। जबकि वह लाख डेढ़ लाख की आबादी का मऊ कैण्ट एरिया है। शरद पवार जी वहां गए थे जो आज डिफेन्स मिनिस्टर हैं। वहां अंबेडकर जयंती का एक कार्यक्रम था। बाबा अंबेडकर मऊ में पैदा हुए थे इसलिए ये वहां गए थे। राजीव गांधी भी गए थे जब जनता दल की गवर्नमेंट थी। उस वक्त भी उन्होंने वहां पर आम सभा नहीं होने दी। उन्होंने कहा कि यहां नहीं होगी। मेरा कहना सिर्फ इतना है कि सिविल एरिया अलग होता है और इनका अलग होता है। इनके बंगले अलग हैं, वहां काम करने वाले नौकर अलग हैं और वह भी सर्वेंट क्वार्टर में रहते हैं, सिविल एरिया में रेलवे स्टेशन, बस अड्डा, स्कूल कॉलेज, हॉस्पिटल है, वह अलग एरिया होता है। अब ये कहते हैं कि कैण्ट एरिया है। अगर वहां लाइट चली जाए तो रिपेयर नहीं हो सकती। आपके पानी का कनेक्शन लेना है तो नहीं लगेगा, और कुछ जरूरत है तो नहीं कर सकते। ये कहते हैं कि हम सब रिपेयर करते हैं मगर वहां सड़क वगैरह रिपेयर नहीं होती। आप रात में चले जाएं तो खड्डों से हाथ-पांव टूट जाएं। कभी स्लीपर हड़ताल कर दें तो कचरा भी साफ नहीं होगा। उसके लिए अलग से रूल बना दिया जाए कि कैबिनेट बोर्ड में म्यूनिसिपैलिटी किसी को जमीन नहीं देगी, मगर सुविधाएं तो उस एरिया में होनी चाहिए। एजुकेशन और हेल्थ फैसिलिटी भी स्टेट गवर्नमेंट वहां पर देती है।

MR. CHAIRMAN: Which are the three cantonments where you have been able to complete the accession?

SHRI K.A. NAMBIAR: They are Ahmednagar, Ambala and Agra. Ambala was done in January 1977, and Ahmednagar and Agra between 1954 and 1958.

The hon. Member has raised two or three points concerning the Mau Cantonment. The whole proposal about the Mau Cantonment has been received and it is presently under examination in the Central Command Headquarters. After they take a view on it, it will come to the Ministry of Defence and thereafter we will study it and take a decision.

The hon. Member has mentioned some incidents which have taken place at Mau. The Raksha Mantri is personally aware of all those incidents. An inquiry has been ordered and action will be taken after the report is received.



Coming to the main issue of disposal of land, the use of all the lands held by the Ministry of Defence is required to be reviewed on an yearly basis for assessing the optimum utilisation of the land. Due to paucity of time we have not been able to do it on an annual basis but we do do it on a periodic basis. When such reviews are undertaken we try to assess what is the land required for the present and for the future use of Defence Forces.

We have our 15-Year perspective plan and on that basis we review and find out whether there is any land which is likely to permanently become surplus to defence requirements.

Now it is only such land which, if left unused for a long period of time, may result in encroachment and also result in Government capital being locked up without any purpose. Only in such cases, decisions are taken to dispose them of. This is not a new policy. This policy has been in existence for many years. Earlier we have a priority list, under which such lands could be disposed of. Firstly we give them to Central Government Departments. Secondly we give them to State Governments and then to public sector undertakings and local bodies. And finally when we dispose them as house sites, we used to give it firstly to ex-servicemen at the rate of one plot per ex-serviceman on priority basis. Those things are not on commercial basis. The main change that we are now doing is in certain prime urban areas, where we have surplus lands and which we may not need for a very long time, we decided to develop those lands and dispose them of to the maximum advantage of Government revenues. I will tell you a typical case. In Kanpur, today we have a major ordinance depot, which spread over 850 acres. To give protection to this, we have a security wall. The length of that wall is 28 kms. This entire length has to be lit and we have to watch all over. Trees grow and grass grows there. In summer, there may be chances for fire hazards. The loss due to this runs into lakhs of rupees. We undertook a comprehensive study in this regard and decided to have a modern complex here in 350 acres. The number of vehicles required will come down very greatly; the manpower can be saved and we can pay back the cost of reconstruction in six years. In addition we have prevented storage loss. When the remaining became surplus and since the area is in the heart of the Cantonment town we decided to sell them to the maximum advantage after developing it through official agencies.

In Delhi also we have identified some sites like this. I would like to assure this Committee that the financial interests of the Central Government are our first and foremost consideration while we dispose them, which are not required in the foreseeable future for Defence. This has been done after a detailed analysis at various levels.

**PROF. MALINI BHATTACHARYA:** When you dispose of land which you are not going to use in the foreseeable future, it is very likely that you are thinking of the financial interests of the Central Government. But, at the same time, by selling them — through commercial transactions,

you may be creating certain problems for the local bodies. Do you not think that either the State Government or the local bodies should have a say when you are disposing of this land, which may be then used by promoters or other commercial parties for their own interests? By disposing of this, you are creating problem to the local bodies.

SHRI K.A. NAMBIAR: Even in the new policy, when we dispose of it to the State Governments and public sector undertakings will get first priority. But they have to pay market value. This is the main point that I was making.

PROF. MALINI BHATTACHARYA: As to whether you pay any taxes or what do you pay for the facilities that you get?

SHRI K.A. NAMBIAR: Madam, in many places, we have water supply schemes. Where we take power from the State Government schemes, we pay to them. At a normal charge they charge. Electricity is sold to us on commercial rates as it is supplied to any private person.

MR. CHAIRMAN: The illustration would be Shrimati Malini Bhattacharya's own State Kalimpong, one would be Ranikhet where you do not have water supply and you get it from the State Governments. Do you pay service charges?

SHRI P.K. KUMARAN: When we take services, we agree to rates. In many places we pay them for the water.

SHRI K.A. NAMBIAR: We have advanced money to the State Governments in this regard. Secondly, I would not be disclosing any major secret by saying that we are far short of married and other than married accommodation for our soldiers in our army today. Even to give a limited say 25 per cent accommodation at today's estimated rate, we need approximately Rs. 850 crores. We understand that there are large areas of deficiencies. There are idle places which we can use and thereby make their moral high. Our intention is not to give it to private builders. We would give the first preference to the State Governments and public sector agencies. We insist on market value because it is needed for such purposes only. We make the offers to the State Governments. We will not go to the private sector.

MR. CHAIRMAN: When you are insisting on the market value because the financial return is the main concern, the security aspect is not the main concern.

SHRI K.A. NAMBIAR: Only areas which are outside the parameters, we will give.

PROF. MALINI BHATTACHARYA: In the Bill as it is now, there is to be added 12th Schedule to the Constitution. In this Schedule, it is mentioned that certain facilities are to be under the control and the supervision of the local bodies. Now, some of these facilities you,

of course, provide and you are self-content. But, in some ways you do have to depend on others like in the matter of water, in the matter of electricity etc. and you are not self-content. May I ask you the question.

**SHRI P.K. KUMARAN, DIRECTOR GENERAL, DEFENCE ESTATES:** Mr. Chairman, Sir, as you are aware, many Cantonment Boards have got bore wells and their own water supply scheme. When there is a breakdown or where it is felt that bore well is uneconomical, the piped water of local municipal authorities is asked for by us. Many Cantonment Boards have their own bore wells. Of course, there are not bore wells—obviously—in the hilly areas and we depend on the local sources there.

**श्री यालैय्या नन्दी:** आपके जो कैन्टोनमेंट एरियाज हैं उनमें डिस्ट्रीब्यूशन ऑफ वाटर का इंतजाम तो होगा, वाटर सप्लाई की स्कीमें तो होंगी ही, तो क्या कैन्टोनमेंट बोर्ड की तरफ से सिविल एरियाज में भी वाटर सप्लाई का कोई प्रॉविजन है या नहीं?

मैं समझता हूँ कि इनको उसकी जानकारी नहीं है क्योंकि बहुत से कैन्टोनमेंट में स्टेट गर्वनमेंट की तरफ से वाटर सप्लाई करने के बावजूद भी काफी दिक्कत होती है। यदि इसे सैप्रेट कर दिया जाए तो कैन्टोनमेंट में बहुत सी परेशानियों को रोका जा सकता है। मिलिटरी वाले अपने हिसाब से काम करते हैं, इलेक्ट्रेड मैम्बर की डिफिकल्टी नहीं जानते हैं, हमेशा कहते हैं कि पैसा नहीं है। आज भी ऐसे बहुत से लोग हैं जिनके पास चार गज जमीन भी नहीं है। ऐसे लोगों के लिए यदि स्टेट गर्वनमेंट की तरफ से वीकर सेक्शन कालोनी बना दी जाए तो अच्छा रहेगा।

**सभापति महोदय:** आपके सिकन्दराबाद, हैदराबाद में बहुत पैसे वाले आदमी हैं। जो मार्केट प्राइस देगा उनको ही देंगे। दूसरी बात इन्होंने बताई है कि राज्य रक्षा मंत्री की चेयरमैनशिप में जब गर्वनमेंट का ऐसैट आ जाएगा तो उसके बाद तय करेंगे।

**MR. CHAIRMAN:** Is there a time-frame for it? Does it require the President's approval?

**SHRI P.K. KUMARAN:** There is a time-frame of six months. The approval of the Prime Minister will do.

**श्री राधाकिशन मालवीय:** इन्होंने बहुत अच्छा प्रश्न किया है। स्टेट गर्वनमेंट उस एरिया में ड्रिंकिंग वाटर पहुंचाती है। सरकार नल तो सार्वजनिक लगाएगी। यदि वहां पर कोई सिविलियन अपने घर में प्राइवेट नल का कनेक्शन लेना चाहता है तो कैन्टोनमेंट बोर्ड परमिशन नहीं देता है। स्टेट गर्वनमेंट कैन्टोनमेंट बोर्ड के एरिया में सब सुविधाएं देती है लेकिन पब्लिक को नहीं मिलती है।

**MR. CHAIRMAN:** Supposing the State Government instals a bore well, what will be the position?

**SHRI P.K. KUMARAN:** We will be welcoming it.

**MR. CHAIRMAN:** That is O.K. But what about the cases where it is not provided so far? The hon. Member is specifically referring about

Mhow. I would request that you please enquire into the matter and give the detailed reply to the Committee.

SHRI P.K. KUMARAN: Yes sir. We will be examining the entire issue and a detailed reply will be submitted to the Committee.

SHRI K. A. NAMBIAR: Last year the State Government put up 26 hand-pumps and we had permitted.

SHRI BHASKAR ANNAJI MASODKAR: I would like to know the response of the Department to the question. Is the power to exempt conferred on the State Government? I am only concentrating on the law. Instead of giving *ipso facto* leaving it to construction or excluding totally depending on the local conditions, if the power is conferred on the State Governments to exempt certain areas, what would be the response of the Government?

MR. CHAIRMAN: This is an enabling Bill giving wide powers to the States to pass legislation on various aspects of the municipalities and other local self-governments. So, in the case of cantonments and military stations, power is given to them. What would be your reaction?

SHRI K.A. NAMBIAR: All these perspectives are left to the best judgment of the Central Government because there is likely to be difference in perceptions and if something is done which interferes with the security, we would have done irreparable damage to the fabric. So, we would submit that exemption would be the best. Otherwise the powers should be with the Central Government.

SHRI PAWAN KUMAR BANSAL: A proviso will have to be added taking of both the aspects.

SHRI S.K.T. RAMACHANDRAN: We are explaining the difficulties of civilians and now the Bill should be suitably drafted so that all these points are covered. That is our object. Now, the cantonment is not having any exemption, at the same time, giving more powers to them will entangle the civilians in difficulties. This aspect will have to be discussed.

MR. CHAIRMAN: We will discuss when the Committee meets again.

SHRI S.K.T. RAMACHANDRAN: Let them give their suggestions.

MR. CHAIRMAN: You may like to ponder over this and give us a note regarding your response, how the Ministry of Defence has security, at the back of its mind. I do not think the Bill passed 60 years back can be held at the 'holy cow' of the changing scenerio and changing circumstances.

SHRI K.A. NAMBIAR: The 229 military stations do not have residences for the civilian population. It is a large military population with their families.

**MR. CHAIRMAN:** Mr. Bansal says that we will discuss that within the Committee and not leave any grounds to ambiguity.

Thank you very much.

*(The Committee then adjourned)*

**JOINT COMMITTEE ON THE CONSTITUTION (SEVENTY-THIRD  
AMENDMENT) BILL, 1991**

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT  
COMMITTEE ON THE CONSTITUTION (SEVENTY-THIRD  
AMENDMENT) BILL, 1991**

**WEDNESDAY, THE 22 APRIL, 1992 FROM 15.00 TO 17.00 HOURS  
IN COMMITTEE ROOM NO. 62, PARLIAMENT HOUSE,  
NEW DELHI**

**PRESENT**

**Shri K.P. Singh Deo — *Chairman***

**MEMBERS  
LOK SABHA**

2. Shri Pawan Kumar Bansal
3. Shri Girdhari Lal Bhargava
4. Prof. Malini Bhattacharya
5. Shri Probin Deka
6. Shri Dau Dayal Joshi
7. Shri Shankarrao D. Kale
8. Smt. Sumitra Mahajan
9. Shri Hari Kishore Singh

**RAJYA SABHA**

10. Shri N.E. Balaram
11. Shri Radhakishan Malaviya
12. Shri Bhaskar Annaji Masodkar
13. Shri S.K.T. Ramachandran
14. Shri K.N. Singh
15. Shri S. Viduthalai Virumbi

**REPRESENTATIVES OF THE MINISTRY OF URBAN DEVELOPMENT**

**Shri K. Dharmarajan — *Joint Secretary*  
Shri R.P.S. Pawar — *Director (L.S.G.)***

**REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY  
AFFAIRS**

**Shri B.S. Saluja — *Joint Secretary and  
Legislative Counsel.*  
Shri K.N. Chaturvedi — *Deputy Legislative Counsel.***

**SECRETARIAT**

**Shri R.K. Chatterjee — *Deputy Secretary***

Shri Ram Kumar

— Assistant Director

**Witnesses Examined**

**Witnesses**

1. Shri Vijay Kumar Malhotra

**Organisation**

Executive Councillor  
Delhi.

2. Shri R.N. Mohapatra

Central Advisory Board on Social  
Defence (Bhubaneswar)

**7. Executive Councillor, Delhi**

*Spokesman*

Shri Vijay Kumar Malhotra, Former-Chief Executive Councillor

*(The witness was called in and he took his seat)*

MR. CHAIRMAN: Shri Malhotra, I extend a very happy welcome to you on behalf of the Committee. You are a former colleague of us. You have been a very effective Chief Metropolitan Councillor from the mid-1960s to early 1970s. The Committee would like to have your views from your experience. Before you start your evidence, I may point out that inaccordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as Confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI VIJAY KUMAR MALHOTRA: I am Vijay Kumar Malhotra. As I was the former Chief Executive Councillor of Delhi, I am invited for this Committee and I am grateful to you Mr. Chairman and all the Members of this very important Committee for giving me an occasion to make some submissions about this Bill.

The Constitution (Seventy-Third) Amendment Bill, I think, is a very very important Constitutional Amendment Bill at the moment. It took so much time because of the question whether any State-powers are being snatched away by the Centre or not. Naturally all the States are and I am also one of the votaries of that idea that States should have more powers and the federal criteria of our Constitution should, in letter and spirit, be adhered to. I have always advocated that more economic and political powers should be given to the States. The States are not being treated by the Centre as they should be treated. As I said, I have headed the Delhi Administration and was the Chief Executive Councillor. My experience had been that the Centre many a times, treats the States just like the local bodies. At the same time, we should keep this idea in mind and without entering into any activity of the States, we have to deal with the corporations, municipalities, local bodies and district boards. I think, we have already dealt with the Panchayats in some other Act.

Their conditions and their positions have been extremely bad financially as well as administratively. In the Constitution, there must be some clauses to give some constitutional status to the local bodies also.

I attended some meetings of the Mayors' Conference and some meetings of the Presidents of the local bodies throughout the country. Every time it was advocated that the State Governments continuously—not only for years together but may be for decades, 18 or 20 years—had not held elections to the local bodies—whichever party was in power. I can say that if I am also in power, then my vested interest or my indirect interest remains in this idea that indirectly if I can rule the whole Corporation or the local body, I would like to have that easier method of doing so. So, the bureaucracy, the party in power, whosoever is there, try to keep the local bodies suspended for 10, 15, 16 or even 20 years. We have been asking that there should be elections in Punjab or elections in Kashmir. We have been asking for elections in Delhi. But in Delhi there would not be any elections. The last elections were held in 1983 for four years. Now it is 1992—nine years. It was a term of four years and for nine years, no election was held later on.

Similarly, in Uttar Pradesh, the people had to go to the High Court. The High Court ordered that the elections must be held. Then after 15 or 18 years, elections to some corporations could be held. Similarly, in Himachal Pradesh, my party is in power. Simla Corporation elections were ordered by the High Court.

What I mean to say is that which ever party is in power, they feel that let there not be elections and bureaucratic rule should be there. To my mind, if we really feel that at the grassroot level democracy should be there, then this point has to be put in the Constitution that elections shall be held in time. Once the State Government dissolved a local body, then within six months, the election shall be held. It does not infringe upon any rights of the States once you put it in the Constitution. Naturally, the only idea is that election must be held. All other things must be left to the State Governments. They should make the rules, etc.

I know for certain that in the Western countries, even if there is a war, they hold their elections to the local bodies. They feel that the election to the local bodies is a local affair and election must be held.

I do not know why so much delay has taken place to put it in the Constitution. First, there was a Bill perhaps in 1989, then in 1990 and another Bill in 1991. Now it is 1992 and it may also lapse. Ultimately, somehow or the other, the Bill does not come into operation.

The second major point is about the representation to the women. I think, there is no constitutional provision for that. We have given constitutional provision for women in the panchayats perhaps. But if in the local bodies there is no provision, I do not think, many women can be



elected. I do not know whether I should quote it or not. Even in the elections to the Congress' Working Committee, no woman could be elected. That shows that, by and large, to get women elected is very very difficult. If 30 per cent representation has been decided and once it is put in the Constitution, there should not be any objection to that. Those 30 per cent seats will go to the women. There should be their representation.

Now I come to the third important point. I think, it has not been specified specifically.

What should be the financial resources of the local bodies? This part has been left vague. I think, just as there is a demarcation clearly for the central and State taxes, taxes for the local bodies also should be mentioned. States, on their own, will not and do not allocate those resources to the local bodies definitely. So, it should be mentioned specifically in the Constitution that such and such taxes will be there for the local bodies. There are so many taxes in the States like the property tax, house tax, professional tax and road tax. Now, no State Governments give road tax to the Corporations. Roads are to built by the local bodies but the entire tax is taken by the States. No grant is given to the local bodies. As far as entertainment tax is concerned, the local bodies have to make all sorts of arrangements for entertainment in that area but that tax is not given to the local bodies. No benefit is there is to tax also. I have mentioned taxes on the sale of property in the questionnaire. So, I would like that it should be mentioned serial-wise about the taxes for the local bodies. Once this is done, then they will not be at the mercy of the State Governments. Many times it happens that the Corporations and the State Governments cannot be at the same wavelength. So, unless the local bodies are on a solid footing both financially and administratively, they will be at the mercy of small officers of the State Governments. If they are at their mercy, then the purpose will never be served.

Always the argument has been that members do not behave properly and there is corruption and so, we dissolve to create a fresh election. Then, we are to come to the conclusion that this can be taken to the Assemblies and Parliament also. Now, the basic question of democracy is also involved, whether the nominated people or the elected people bureaucracy should control the picture. This discussion is going for so many years. If we have to reach a conclusion that democracy is the only best way, then constitutional provision should be there. This should have been done earlier. It is already delayed very much.

The Bill of 1990 was a little more specific but the 1991 Bill is not satisfactory. We have simply said that this clause of the 72nd amendment will be applicable here. By this, one will not get a clear picture. Again, we may have to go to the annexures or appendix and so on. When the Bill is there, why not it be specifically mentioned that the term should be five years and when dissolved, within six months, elections should be held,

etc.? Why should we look into the 72nd amendment whether that part of the 72nd amendment will be applicable to this one or not? Looking at the 72nd amendment and then coming to this part will not be appreciable. But 1990 Bill was specific and definite about these points.

**SHRI K. DHARMARAJAN:** 1990 Bill was a composite Bill. Common provisions were there. There were separate chapters. There was one chapter for panchayats and another chapter for municipalities and common provisions are applicable to all local bodies including municipalities.

**SHRI VIJAY KUMAR MALHOTRA:** When you see the aims and objects of the Bill, there are so many things mentioned. But when you look at the Bill proper, it contains nothing. I know that it is linked up with the Bill on 72nd Amendment. But who knows what is Article 243 (d), (e), (f), etc.? My view is that this Bill should be complete in all respects in its own right. It should not depend on another Bill.

Then, with regard to the 12th Schedule, there is some scope for its enlargement.

By and large, this Bill is desirable and it should be passed at the earliest.

**SHRI SHANKARRAO D. KALE:** The Head is designated as Chief Executive Councillor. Councillor is not an executive. How is it named in this way?

**SHRI VIJAY KUMAR MALHOTRA:** This is the nomenclature given to the elected leader of the ruling party in the Metropolitan Council of Delhi. He is equivalent to the Chief Ministers of the Union Territories. Since it is a metropolitan council, it is named like that. This is only a question of nomenclature.

**SHRI S.K.T. RAMACHANDRAN:** Now, you have talked about elections once in five years. Once in five years elections should be held. Suppose if the affected party goes to court and gets injunction or something like that, is there any provision in the Bill to get away from that?

**SHRI VIJAY KUMAR MALHOTRA:** When the Constitution says that elections should be held within 6 months nobody can go to the court saying that elections should not be held within 6 months and the court will not give stay for that. That is why I say that if there is no such Constitutional provision then hundreds of ways can be found out to see that the elections are not held.

**SHRI S.K.T. RAMACHANDRAN:** Regarding the State financial resources, you said that some items should be exclusively earmarked for the local bodies. Could you enumerate some of these items?

**SHRI VIJAY KUMAR MALHOTRA:** I said that at the moment States are discriminated so far as the State financial resources are concerned. We go on increasing the additional excise duty but that does not go the States

at all. Many States do not have the entertainment tax. I would say that the States must have road tax, entertainment tax, house tax—I think the house tax is there generally in all the States—Duty on the transfer of property. The Corporation charges 5 per cent on the transfer of property and the State Government charges 3 per cent. Everywhere it is only the State who charges tax on the transfer of property.

In the questionnaire some more taxes are mentioned which can be given but these 4 or 5 taxes which I have mentioned should be given to the local bodies. And, if the toll tax is abolished then the share of that tax should be earmarked for the local bodies. In many States the toll tax or the Octroi tax does not go to the local bodies. If it is abolished then it must be given to the local bodies.

**SHRI SHANKARRAO D. KALE:** The Councillors are the Members of the local bodies who are reluctant to impose taxes on public. Because, they have to face the public there. They have to go to the public for their votes. They are very reluctant to impose taxes. So, there is a provision in the tax itself. I have got the experience.

I was the President of the Zila Parishad in Maharashtra for ten years. There was provision in the Maharashtra Panchayat Samiti and Zila Parishad Acts to impose taxes on the whole of the district. But the Members are very reluctant. So, how can we increase the income of the local bodies unless and until you yourself do not think of increasing the resources? So, what is your view?

**SHRI VIJAY KUMAR MALHOTRA:** The State Governments also do not impose taxes and they are mostly in deficits. They do not have planned money. Most of them have not even increased their resources. Even there is a charge made on the Central Government that they do not take unpopular decisions. Already the deficit is there to the tune of Rs. 13,000 crore and they have to print notes. That point is very much there. The point is that the State Governments can do one thing which the Central Government cannot. So, a minimum tax can be fixed. Just like Property Tax. Where you shall have to put 10 percent or 15 percent of the rateable value it can be done here also. If a model of the property tax is circulated and if the States are taken into view, than it is all right. Now, more important exemptions are given. Even if it is specified in the Act itself that the property upto a rateable value of Rs. 500 should be taxed, then they cannot even charge tax on the property worth Rs. 4,000 or Rs 5,000. I have a doubt whether that can be done in the Constitution. If a percentage is fixed in the Constitution, then it will be difficult. It should not be done there. But the resources can be specifically mentioned.

**SHRI BHASKAR ANNAJI MASODKAR:** I have only one question to ask. You are in favour of amending the Constitution in this way. But, are we not changing the Constitutional unit, which is presently the State and the Union?

**SHRI VIJAY KUMAR MALHOTRA:** I do not think it infringes any power of the State at all. Because all other powers are given to the States. To simply say that the elections shall be held within six months of the dissolution, does not infringe any State's power at all. It is a general provision and for all State Governments, it is the same. How can this affect the State's authority? Already, I am told, it has been passed for Panchayats, that is 72nd Amendment.

Then, why should we mention it?

**MR. CHAIRMAN:** The Meeting of the 72nd Amendment Bill is going on. Because, here there are certain provisions in the Bill which refers to 72nd Amendment Bill.

**SHRI VIJAY KUMAR MALHOTRA:** Once the States know that these elections to the local bodies have to be done, they will be rather happy to do it. Otherwise, the bureaucracy will always tell them, please do not hold elections, this will be in your interest. This is desirable and elections should not be held. Let us first make the finances available. The bureaucracy will continue to rule and the political leaders will come under their influence. But once it is in the Constitution, it will be never done.

**SHRI BHASKAR ANNAJI MASODKAR:** According to you, the present bureaucracy is responsible.

**SHRI VIJAY KUMAR MALHOTRA:** Yes.

**PROF. MALINI BHATTACHARYA:** Do you think that this business of resource mobilisation should be included in the Bill; if so, to what extent it should be included? Or do you think that this should be left to the States to decide with their own local bodies? Do you think that devolution of powers to the local bodies should be done through the mediation of the Centre or it should be done in consultation between the States and the local bodies? In other words, should it be a matter between the Centre and the local bodies or should it be a matter between the States and the local bodies?

**SHRI VIJAY KUMAR MALHOTRA:** It is irrelevant which is being done; it is an imaginary threat which is being imposed. How can the State Government have any objection to this point that after five years the elections shall be held within six months? Once it is provided in the Constitution, everyone will have to accept it. But the experience is that they have not done it. In 80 per cent of the cases, the elections to the Corporations have not been held in many States; they were suspended or dissolved or superseded. Once we accept this principle that powers should be decentralised and should go to the grass-root level, we must accept these two things. It is only making a constitutional provision. If you do not like that, that is a different thing.

Many State Governments do not have their own resources. They do not give their resources to the local bodies. So, 90 per cent of them are totally

destroyed either functionally or administratively. If you want that this democracy should go to the grass-root level, constitutionally give them some respectability by having some constitutional status.

**SHRIMATI MALINI BHATTACHARYA:** My question was not with regard to the whole of the Bill. It was only with respect to two specific points, one is resources mobilisation and the other is the Twelfth Schedule. The question was about division. There are certain taxes which the States levy. Now which tax should go to the State and which tax should go to the local bodies? Should this be determined in this Bill or should it be determined by the States in consultation with the local bodies?

Again, in the Twelfth Schedule, there are certain specific areas on urban development which have been given to the local bodies. The question whether this Twelfth Schedule, if there is a Twelfth Schedule, should be decided upon in this Bill or should it be left once again to the States to be decided in consultation with the local bodies?

**SHRI VIJAY KUMAR MALHOTRA:** I say once again that the first point is resource mobilisation. The States do not have the resources at the moment, because they do not have the resources, if the money comes in there, it will have to go to the local bodies. So, it must be completely decided that this will for the resources for the local bodies. Only then will that money go to them. If the State is deficit to the tune of Rs. 200 crores how will it give grants to the local bodies? Then if at all the State Government has to give them money, they have go to A or B. The local bodies have their acts to govern. Until and unless there is some constitutional provision, it will differ from State to State. In one State the road tax would be with the local bodies and in another they would not be getting it.

Then this question of the Twelfth Schedule comes as to whether it should be there. There is also a new trend that has started that for water and sewerage there should be separate boards. The Central Government will have the power to man the water and sewerage boards. Perhaps some other offices would be upgraded. But they are going into this and they said that the local bodies or the State Government should have no control over them. Neither Parliament nor the local bodies, not even the State Governments would control them. They will all be autonomous. All these things are to be covered in this Bill.

Even if the money is provided through the Twelfth Schedule, the money will not go to the local bodies, as it is not given by the State Governments. There will be Corporations and local bodies. लेकिन ये जो प्राधिकरण आदि बन जाते हैं, किसी के प्रति इनकी जवाबदारी नहीं होती। स्टेट गवर्नमेंट्स के फायरिंग भी कम हो रहे हैं।

Once it is done through a Constitutional amendment, it will be better. Now the bureaucrats are telling the State Governments that their power is going.

**SHRI HARI KISHORE SINGH:** It is a pleasure to hear you. You have been candid about your experiences. While talking about the set up at Delhi how do you react to the multiplication of the agencies in Delhi? There is a Metropolitan Council, there is a Delhi Municipal Corporation and there are numerous authorities. You have rightly reacted to the constitution of the Boards taking away the power of the local bodies. But, every now and then, we hear the complaint about duplicity of the agencies, and the life is difficult for the ordinary people.

**SHRI VIJAY KUMAR MALHOTRA:** Only the common man suffers. He does not know where to go. He has to go to the twenty authorities to get a work done. This is not only in Delhi but it is also happening every where. Even small bodies like Ghaziabad etc. Water and Sewerage Boards are separate, electricity is separate, distribution is separate etc. So, the more authorities if created, again they will not be elected. The power is remaining with the Central Government. It does create a lot of difficulties and the common man suffers like anything. It cannot be discussed in local bodies and so on. So, they become autocrat.

**SHRI SHANKARRAO D. KALE:** Sir, what about the 72nd amendment Bill? What is the latest position?

**MR. CHAIRMAN:** They are on the Clause-by-Clause consideration. We are going to have a Joint Session sometime next week.

**SHRI N.E. BALARAM:** Sir, I fully agree with the opinions expressed by Shri Vijay Kumar Malhotra. Now, the Bills have been introduced in Parliament so that we can have regular elections in the Panchayats and Municipalities. Of course, we are talking about the Municipalities. Regular elections to the municipalities means there will be expenditure to conduct regular elections every five years. Every five years, there will be elections throughout each State. I hope since this desire is coming from the Parliament and from the Central Government, naturally, we will be interested in meeting the expenditure on these elections. I think, Shri Malhotra would agree with me.

**SHRI VIJAY KUMAR MALHOTRA:** The question will be in respect of the State Assemblies also. The Centre bears the expenditure of elections.

**SHRI N.E. BALARAM:** I was following the argument of Shri Malhotra throughout. The State Governments are not interested in holding elections for years together. There must be some material reasons for it. I want to know the reasons. People who are ruling the States are also people who believe in democracy.

**SHRI VIJAY KUMAR MALHOTRA:** I think, it is the local bodies themselves who have to conduct elections. The State Governments are not concerned, I suppose. At least in Delhi they do not do it. Election is a normal process.

MR. CHAIRMAN: At least in my State,,the local bodies elections are held by the State Government.

SHRI VIJAY KUMAR MALHOTRA: It would then amount that the Centre is bearing the expenditure of local bodies' elections. I think we should fight of more economic powers for the State. More and more resources should be given to the States instead of asking the local bodies elections to be conducted by the Central Government. I think it will be an indirect infringement there. It should be totally State Government controlled affair.

SHRI N.E. BALARAM: According to the Bill, the elections are conducted by the Central Election Commission.

MR. CHAIRMAN: No, it is not like that.

SHRI VIJAY KUMAR MALHOTRA: I am totally against the idea of Central Election Commission to hold elections to local bodies in remote parts of the country. It is not possible. It is not in the Bill.

SHRI HARI KISHORE SINGH: I feel that there should be some kind of election Commission at the State level.

SHRI VIJAY KUMAR MALHOTRA: That is for the States to decide.

MR. CHAIRMAN: Also for the Finance Commission.

SHRI N.E. BALARAM: My only question would be whether the Central Finance Commission will have a say or a financial role with regard to the local bodies when they submit their reports to Parliament and would it be better for the Central Finance Commission to find some allocations for these bodies throughout the country. They can allot special amount. Otherwise the States cannot do on their own.

SHRI VIJAY KUMAR MALHOTRA: States must have more money for local problems like water, drainage etc. This money must come from the Centre. But that cannot be part of the Bill. You can say that the Centre will bear some portion of the expenditure.

SHRI S. VIDUTHALAI VIRUMBI: My hon. friend raised the issue of resources. We could not get any satisfactory answer from any corner. I feel that they are going in the reverse direction. I am convinced that the power must devolve from Delhi to the States and from States to the local bodies. I feel that this Bill is not going to succeed in the implementation of this. About the funds issue, raised by Shri Malhotra, that is due to the paucity of funds. We cannot expect the States to give money to the local bodies.

I feel that a clear picture should emerge as to what are the powers that are going to be given to the States from the Centre with regard to financial side. It should also be known as to how they are going to benefit by the devolution. Unless this is done, how can we come to the conclusion that the local bodies will get such and such thing?

Therefore, in my opinion, first we must go through the Sarkaria

Commission's Report. We must see that it is implemented. After getting it implemented, then we can go to the local bodies. Without giving funds to the States, simply to say that these things are to be left to the local bodies means that in practice it is not going to succeed. That is what this honourable gentleman is explaining from the beginning. How can the States look after the funds? That is why before passing this Bill we must see that the devolution of power takes place from Delhi to the States. Do you think that without getting the devolution of powers from Delhi to State capitals, this Bill will succeed? You want to give some powers to local bodies. There is no difference of opinion among all Members regarding this. Regarding other matters there is difference of opinion. For this, what I feel is that without giving the powers to the States we are trying to assign powers to the local bodies. So, I feel the local bodies may not function smoothly and efficiently unless complete powers are given to the States and then to the local bodies.

SHRI VIJAY KUMAR MALHOTRA: Perhaps I was not able to explain the point correctly. If this question comes up, I will oppose the point that the Centre should not have more say in these things. But simply because the States are not in a good financial position this question should not be decided at all is not correct. You look at the point that at the moment the States' resources are defined by the Constitution, the Centre cannot touch them, it is just like sales tax and other States' taxes. The Centre cannot come into this. But the Centre from its own taxes can decide how much they can give to the States. Similarly, these are the minimum funds which the local bodies should get. Let the States decide whether they could give anything to the local bodies or not. After giving the share to the States, the Centre allocates to the local bodies further. They do not touch the States' resources at all. Similarly, these local bodies may not even by these taxes be in a firm position. It must be left to the States in what way they can give funds to the local bodies. So, my contention only was that minimum taxes are to go to the local bodies. I am totally in agreement with my friend when he said that the Sarkaria Commission's Report must be implemented as early as possible. The misuse of Article 356 should be stopped and the powers of the Governors, the dissolution of the State Assemblies and other powers of the Centre must be curtailed as early as possible.

SHRI B.A. MASODKAR: My point is that we are trying to amend the Constitution and with regard to the local bodies, it is again governed by certain laws made by the States. It is a child of the Government. One problem before us is the economic development and the last and the most important is the betterment of the civic life. According to you, who will be the best guardian of these powers? Do you think that going to the local bodies will further the powers to the people? As of today, there is no power to the people. When you speak of power to the people, the power really rests with the people today in the form of the Legislature and the



question is whether it will be misused in the same manner in the local bodies. How the matters of development will be looked into by smaller local bodies? Will they not refer again to the States?

**SHRI VIJAY KUMAR MALHOTRA:** My experience in this matter is that there are many drawbacks in the elected representatives taking control of very small portion and the other people taking responsibility. For example, there is no control over the Delhi Development Authority. It has been taken out of the purview of the local body. They say that it is directly under the control of the Central Government. But the Central Minister does not have time even to have one meeting in a year. Once it is taken out of the control of the elected people, it will not improve.

इससे निकम्मापन आता है, कर्त्तव्य आता है और कहीं ज्यादा दिकत होती है।

It will not work, it has never worked.

It could be removed only by having democracy.

इस तरह से पावर्स लेकर आटोनामस बाडीज बना दें तो काम कैसे हो सकेगा। यहां पर तो प्रॉब्लम ही पूरी डिसकस नहीं हो पाती, गिलोटिन करना पड़ता है, तो बाकी काम कैसे हो सकेगा। इसलिए लोकल बाडीज को ज्यादा पावरफुल बनाना चाहिए। इसमें आपने स्टेट गवर्नमेंट की तरफ से नामीनेट करने का भी प्रावीजन रखा है। एक्सपर्ट्स को नामीनेट करने की पावर्स तो स्टेट गवर्नमेंट अपने पास रख सकती है, लेकिन लोकल बाडीज को भी तो तोड़ते रहते हैं, इसका भी डर बना रहता है।

इसमें यह है कि 5 साल के बाद चुनाव होंगे और 6 महीने से ज्यादा सस्पेंड नहीं रख सकते तथा 30 परसेंट महिलाओं का रिजर्वेशन होगा, इन चीजों के लिए तो कोई विरोध कर ही नहीं सकता। इस काम को स्टेट्स कर सकती है, 1952-53 में मेयर्स ने मांग की थी कि चीज को कांस्टीट्यूशन में डाल दो, नहीं तो इलेक्शन नहीं होंगे, उस समय इस काम को नहीं किया गया।

इसी तरह से रिसोर्सेस की बात है। अगर इसके लिए कुछ नहीं करेंगे तो लोकल बाडीज को स्टार्व किया जाता रहेगा।

**MR. CHAIRMAN:** What about having Finance Commission for the State and the Municipal bodies? What should be the share between them and what should be the percentage or quantum of share between the State and the municipal bodies? What are the taxes which would be levied by the local bodies and by the States?

And then, what about the Ward Level Committee?

**SHRI VIJAY KUMAR MALHOTRA:** It is not clear. I tried to understand what will be the position. In certain places, it is mentioned that ward committee will also be elected. They will form a central committee. In the original Bill, it was said, there would be a ward committee in the bigger area.

A Municipal Corporation is divided into 10 wards. All the members elected in that ward form a committee. This is one way. Another way is, you elect the ward committee. Once ward committees are elected directly

by the people, then out of proportional representation, they form a central local body and that coordinates various activities.

**MR. CHAIRMAN:** Mr. Dharmarajan, Joint Secretary will explain it in detail.

**SHRI DHARMARAJAN:** I will go back to the 1989 Bill when the concept of ward committee was more detailed. They will set up ward committee in larger municipality of over one lakh and above population. Ward committees will have elected members. There will be two elections—election of Council separately and election of Ward committee members separately. It is also provided that the Councillor within the Ward would also be automatically a Member of the Ward so that the linkage between the Ward Committee and the Municipal Council is maintained.

In the sharing of functions, it was laid down that the State Government will not only decide what powers will go to the municipal level and when all the Ward Committees are formed, they will decide which functions may be performed at the Ward level committees.

Certain routine functions like street cleaning or conservancy may be supervised at the Ward Committee level. That is what is in the minds of those who are drafting this Bill. This was entering into too much details with reference to structural local body. If we get something, that should be really left to the States. With that view, the present Bill merely states that the State Government may, if they so choose, have committees at ward and other levels, as they may think, at zonal and ward level.

**SHRI VIJAY KUMAR MALHOTRA:** Why do you want to have this sort of thing in the Constitution? The State Government may do it or may not do it. To me it looks very odd to have in the Constitution in which the States may or may not do it.

We have to be specific. What happens to the Ward Committees or not, should not be in the Constitution. The thing which could be in the Constitution is the areas of the Corporation.

Look at London Corporation. London city has 33 corporations and 33 Mayors in one city. A Corporation is called a County. Each County has a Mayor and Deputy Mayor. The total population is not more than two lakhs and they have 33 Counties.

The electorate of a Corporation is not more than 4,000.

In Delhi, one Corporation has 2½ lakh voters. Can you imagine a Corporator can act and look to the needs of 2½ lakh people?

Similarly, there is provision at many other places.

यहाँ पर डाय़ लाख वोटों से कन्फ़ैरेशन की सीट बनती है। इस तरह से अगर प्रतिनिधि 24 घंटे भी कामना रहे, तब भी सब से संपर्क नहीं कर सकता। कभी देशों में ऐसा नहीं है। यहाँ पर एक एक शहर में कई कई कन्फ़ैरेंस है। यहाँ पर भी वही सिस्टम होना चाहिए।

इसी तरह से वार्ड कमेटियों की बात 1989 में रखी गई थी। हर इलाके में वार्ड कमिटी होंगी और वे काम करेंगी। उसके बाद कोऑर्डिनेट करने के लिए सेंट्रल बाडी बना दी जाए या स्टेट गवर्नमेंट करे।

**SHRI BHASKAR ANNAJI MASODKAR:** It cannot be left to the discretion of the State that this may be done or this may not be done. It is in the interest of the local administration that there should be a Ward Committee as explained by Shri Vijay Kumar Malhotra and it must come in the Constitution Amendment itself. He is right in saying that the provisions which we are examining merely say "State Government may". This 'May' is going to cause lot of embarrassment to the State.

**अध्यक्ष महोदय:** आपने आटोनामस बाडीज का जिक्र किया था, जैसे दिल्ली में एनडीएमसी है, एमसीडी है, डीडीए है, इसी तरह से ये बाडीज अन्य बड़े शहरों में भी हैं।

**SHRI BHASKAR ANNAJI MASODKAR:** Would you like to enlighten us whether such a multiplicity of organisations can be autonomous or otherwise, how can they be better withdrawn?

**श्री विजय कुमार मल्होत्रा:** इस एक्ट के दूरे इसे रोकना बहुत मुश्किल है। यह लोकल बाडीज के पास होना चाहिए, इसीलिए आपने द्रव्य शैड्यूल बनाया है।

**MR. CHAIRMAN:** The All-India Mayors' Council Chairman was here. His view was very drastic. There, they are trying to get rid of the Bangalore Development Authority. They are totally opposed to the Bangalore Development Authority because they say there is some interference. There is some grey-area between the two.

**SHRI VIJAY KUMAR MALHOTRA:** There should be one single authority instead of so many authorities.

**MR. CHAIRMAN:** We have got a different view point from one of the gentlemen. It has been stated that in Bombay it is working very satisfactorily. But the Chairman of the Mayors Council says that the BDA should be abolished. There should be one authority. In Bombay, they are doing it extremely well. That is one aspect of the matter. That was one of the views expressed.

**SHRI VIJAY KUMAR MALHOTRA:** They are having the three under them. That is the Maharashtra system. But the Delhi Act followed the Bombay Act. Under the Municipal Corporation of Bombay, there is the Water Supply & Sewerage Board, the Electricity Board and also the Transport Services. In Delhi it is being done that they would not be under the Corporation; they would be autonomous bodies totally to be nominated by the Central Government. New Bills are being brought forward. This will further create so many other problems. They must remain with the local body. This is a local function. But there is the other aspect. Now, the Central Government is going to give the electricity generation to the Private Companies like the Tatas etc. The Electricity Boards may be privatised. That is a different thing. Even then, it will be looked after by the local body.

**SHRI BHASKAR ANNAJI MASODKAR:** About Maharashtra, I would like to say that there are Improvement Trusts. You must be aware of that. Their functions are demarcated quite differently. The local body does not come into the picture at all. Area-wise, Improvement Trusts are there.

**MR CHAIRMAN:** They are also not accountable to anyone.

**SHRI BHASKAR ANNAJI MASODKAR:** They are accountable to the State Government in the matter of development of the city.

**MR. CHAIRMAN:** Shri Vijay Kumar Malhotra, I thank you very much for having given your views.

**SHRI VIJAY KUMAR MALHOTRA:** I would also like to mention that Shri Kidar Nath Sawhney was to have come. But he says that he would concur with whatever I am telling here. So, he may be excused.

**MR. CHAIRMAN:** That is all right. Shri Jag Parvesh Chandra will also be coming at a later date.

**SHRI VIJAY KUMAR MALHOTRA:** It is very important. It is going to decide the fate of the local bodies of all the States. Thank you.

*(The Witness then withdrew)*

**MR. CHAIRMAN:** Before we call the next witness, I think we can just go through the future programmes of the Committee. We have drawn up a PERT Chart on a Critical Path Method. We were 13 days behind time according to our programme. Today, we have caught up with the Schedule. According to Members' wishes, the Secretariat has prepared a tentative programme of the three groups. We will be circulating it to you and we would request you to kindly give your preference. We are seeking hon. Speaker's permission also to have these Sub-Committees so that the Sub-Committees can go and record evidence also. Each Sub-Committee would be going for about 8 days inclusive of Sunday and it will be visiting four or five States. We are going to cover some of the island territories. We will circulate the notes to you and we would like to have your response as to when you would like to have this. Would you like to have it in the last week of May and first week of June? Because by fourth of July we must have to have our final draft ready. Probably, Parliament will be reconvened around 20th of July. The Secretariat will take about ten to 12 days to print the report. By the last day of the first week of the next session we have to submit the report. I think, the last week of May is convenient to Members. We will try to finish it by 2nd of June or so.

There is one Committee which will be going to Shimla. I personally do not wish the Members to go by road because of security reasons particularly in the stretch from Kalka to Shimla. I have been insisting that

we use trains. But if any Member wishes to use the road, we will have to arrange for it.

We will be circulating the programme of the Committees giving the details of the States they are visiting.

We are planning to go to Andaman and Nicobar and we shall have to see whether we go by air or by steamer. And in case time does not permit, we will then have to forego that also. The programme will be circulated to all the Members and in the next two or three days, you may kindly give us your views.

Next week, we are planning to have a meeting with the Joint Select Committee on Constitution (72nd Amendment) Bill because there are lot of common provisions in this Bill as well as in that. So before they complete, we must have a dialogue with them.

SHRI N.E. BALARAM: They have completed their work and why should we drag on like that?

MR. CHAIRMAN: We have done more than three times work than them. But we have not yet come down to the clause by clause discussion.

### **8. Central Advisory Board on Social Defence**

*Spokesman*

Shri R.N. Mohapatra, Ex-Member

*(The witness was called in and he took his seat)*

MR. CHAIRMAN: Shri Mohapatra, I welcome you to this sitting of the Joint Select Committee. Before you start your evidence, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as Confidential. Even though you might desire your evidence to be treated as Confidential, such evidence is liable to be made available to the Members of Parliament. Now you introduce yourself to the Members of the Joint Committee.

SHRI R.N. MOHAPATRA: Sir, I am R.N. Mohapatra from Bhubaneswar. For some time, I was a Member of the Central Advisory Board on Social Defence. And at present, I am President of the Citizens and Consumers' Association, Bhubaneswar.

For the past 12 years, I have been writing on an issue which is most relevant here also. That is, on the formation of "Ward-Level-Committees involving all voters in rotation and associating these with the activities of the Government at the grass-root level". On the legal pland, I have already got clearance from the Chief Justice of India, who has said that it has great significance and if it is accepted by the Government, it will provide permanent platform at the grass-root for reconciliation of disputes.

This is legally possible. This is one aspect of legal side. On the developmental side, in 1989 Prime Minister's office had given indication that they understand my point and that the Panchayati Raj Bill would be shaped accordingly. I had seen the late Rajiv Gandhi also personally and he assured me this. Now that the Government is advancing with many things like restructuring of the economy, I have made a submission to the hon. Prime Minister to make this also a package as the social need of the country.

The very concept of the Constitution starts with "We, the people of India..."; but there is no trace of it so far. In request this august body to bear me and make it a point to apprise the Government and the Parliament that "We, the people of India..." concept is very significant. We have commemorated many things in honour of Dr. Ambedkar who wrote "We, the people of India...". If this is given some consideration, then there is no difficulty in the implementation of this "ward-level-committees involving all voters in rotation and associating them in all the activities of the Government in the country" as the basic approach to the needs of the consumers' of justice—social, economic and political and also the equality which has so far been denied to major cross-sections of the people.

This is in brief my submission. I have given my papers to the hon. Chairman; probably it has been circulated. 243 S(e) may specify a provision to that effect. I have given details of it. In that it is simply said that there is not much confusion here. My submission to the hon. Prime Minister after the Tirupati Session is, that we have to entrust this work of "ward-level-committees involving all voters on rotation", gives some remuneration to everybody, by the Planning Commission. By this, I have details that the Government exchequer can save to the tune of Rs. 4000 crores. It may spend something; but gains very-very much. There is financial implication as in other sphere; but otherwise it is difficult to progress the works in a stop-gap manner. Therefore I have submitted to the hon. Prime Minister to entrust this work to the Planning Commission, so that the 72nd and 73rd Constitution Amendment Bills can take this with ease. If that is delayed somehow, I request this august body to consider this.

We have to make a provision for forming ward level committees, involving all the voters on monthly rotation basis and associating these with the activities of the local self-bodies. My request here is to take a member from every ward to the first tier of the municipality, without voting power. They will observe what is going on and what is their position with regard to the developments contemplated by the municipality. I have requested for a two-tier system only. So, if it is a two tier, then one-third of the Members of the first tier will go to the next tier and that is on a monthly rotational basis. It cannot be more than one month. Every citizen

will be given a chance to participate in the deliberations of the municipal bodies. This will be the local self-bodies and these local self-bodies have a significance, rather more significant than others. Actually, everything is equal here because it is a small entity and it may be possible. It will be a bit easier, of course. I request the Committee to kindly consider making it by having a provision to form "ward-level-committees involving all voters on monthly rotation for associating this in the activities of the municipalities at the grass-root level"; and send one member from every ward, so that there will be a councillor and another man who is non-voting. This is my submission.

MR. CHAIRMAN: Okay, now Members may like to seek clarifications and you may kindly clarify. Before that, would you like to elaborate on the idea of the participatory democracy which you have mentioned in your paper? The paper has not given the full idea of what you are trying to arrive at.

SHRI SHANKARRAO D KALE: His idea is a new idea to us. I would like to know how many voters will be there in the municipality and how many area will be covered in the ward level committees. I will request him to explain more on this.

If the panchayat is very small, there are seven members in that panchayat. If it is so, there are nine members or eleven members or fifteen members. Like that, the panchayat or a gram panchayat is now constituted according to the members as per the population.

SHRI R.N. MOHAPATRA: For every ward committee, 21 members will be elected who will be from the voters' list. Every member of one household will be a member of the committee for one month till the voters' list is completed.

SHRI PROBIN DEKA: Is there any provision that those who have got the holding, would cast their vote in the municipal ward?

SHRI R.N. MOHAPATRA: In a municipality, there is always a holding except the hutments. For that purpose, every hut which finds a place in the voters' list will be taken as a household. Voters's list is there.

SHRI PROBIN DEKA: Who will make an assessment of those houses?

SHRI R.N. MOHAPATRA: The municipality has a voters' list. It has a list of the holdings. One household means one voter.

SHRI PAWAN KUMAR BANSAL: One household would means one family. But one house is definitely from one household and one building may be having four independent families or tenants. So, will you treat that also as one?

SHRI R.N. MOHAPATRA: For every holding, there will be one opportunity. It will be rotated and everybody will come into the picture at some time or the other.

**MR. CHAIRMAN:** Ultimately, it is desired that every voter will have a chance in a particular time. In the Jawahar Rozgar Yojana, we have got Gram Sabhas. Gram Sabha also elects 21 village level committees which means that the Gram Sabha meets once a year. But they meet twice a year. Now, he is saying one month as the time. Now, who is going to conduct it and who is going to see or ensure that things are going all right?

**SHRI R.N. MOHAPATRA:** The first committee will be constituted by the ward councillor. In subsequent membership to the Committee, it will be done by the Committee itself.

**SHRI PAWAN KUMAR BANSAL:** You said that you are working on the consumer front also. What are the activities in the consumer movement?

**SHRI R.N. MOHAPATRA:** Social, economic and political justice are also the needs of a consumer. According to the Consumer Protection Act, the consumer has a limited sphere.

**SHRI PAWAN KUMAR BANSAL:** How do you think that the ward level committees will have some sort of a control over the PDS?

**SHRI R.N. MOHAPATRA:** When there are detail points in the PDS, they are looked after by these committees which will be rotating every month. Then, there will be lot of improvement. I am coming to say that hundreds of bags from the PDS are going to the black market and I have got the cuttings also with me.

**SHRI K. DHARMARAJAN:** I am working some arithmetics in this regard. If you take a city of a population of one lakh, then there will be 20,000 families. Now you are saying that we can assume that there can be 20 or 25 wards in a city of that size. We are talking of each ward having about thousand families. According to a scheme, there will be 21 households and they will be represented in one month, that means we can cover 240 or so in a year and it will take four to five years to cover the whole number. During the period of the council, each family will have one opportunity to serve. That is all. Now, how do you provide for continuity? For example, this month 21 people are there in the ward committee and you are saying that one of them will be represented in the municipal council as a non-voting member. That means, one of the 21 will have one opportunity to sit in the municipal councils. Even if he takes part in the deliberations of the council, then there will be no continuity, there will be no follow-up action and nobody will come back and report. After the first month, that 21 gets dissolved and there will be another 21 newly formed. And they will start the process all over again. So, how is the continuity going to be maintained? This might be a learning experience for people. They may be knowing about the deliberations of the committee. I do not know how interactions at the grass-root level will be implemented and involvement will be achieved through this process?



**SHRI R.N. MOHAPATRA:** To start with, at least 21 families will be covered by this method. People will get a chance to participate in the deliberations and voice their views. This is what is direct involvement of the people in decision-making process.

**MR. CHAIRMAN:** The problem arises only when the 21 people who are represented in the local bodies have no aptitude for the work, and then it will not serve the purpose. You will have to have some element of elections always.

**SHRI N.E. BALARAM:** The hon. witness feels that it will lead to direct participation and interaction. This may be tried on experimental basis.

**SHRI R.N. MOHAPATRA:** This is a new Sarvodaya idea. Though it sounds a little complicated, it can be worked out practically. There is nothing romantic about it. The whole locality gets involved and people's awareness grows.

**MR. CHAIRMAN:** We are worried about the mechanics of how it functions.

**SHRI R.N. MOHAPATRA:** A start has to be made somewhere and modalities can be worked out. Even the Chief Justice of India also stated that it could be possible legally.

**MR. CHAIRMAN:** Thank you Mr. Mohapatra.

*The Witness then withdrew.*

**MR. CHAIRMAN:** Mr. Dharamrajan is preparing a report on work done so far and the important points made by various witnesses who have appeared before the Committee. We will visit various States and have discussion with the Chief Minister, Urban Development Ministers and also if some Mayors or council bodies would like to meet the Committee we will invite them and they are most welcome to express their views which will be recorded so that it becomes part of the proceedings. We are planning to visit different States from 25th May to 3rd of June. The date and time for receipt of notice of amendment from Members or from the Government is 11th June, 1992. I must request the hon. Members that within 3 days or may be spilling over to four days we will finish clause-by-clause consideration of the Bill, that is from 17th June to 19th June. Consideration and adoption of draft report will take place on 30th of June because we should give the Secretariat a little time to respond. Since we require seven days' notice time, the last date for receipt of minutes of dissents, if any, will be 7th of July. Date of presentation of the report will depend on us.

We will be having the next meeting on 6th for taking the oral evidence of Shri Jag Parvesh Chandra who could not come today. Then, we will have to have the evidence of Mr. Butch. On the 28th of this month, at

3.00 p.m. we may have to have a Joint Meeting with the Committee on 72nd Amendment. I think, they are also keen to meet us. Because, they will have the final opinion on the 30th and after that, there is no use, meeting with them. They will be taking up Clause-by-Clause consideration at 6.00 p.m. on the 28th of this month. So, let us tentatively fix our programme for the 28th, unless there is a change.

*(The Committee then adjourned)*

**JOINT COMMITTEE ON THE CONSTITUTION (SEVENTY-THIRD  
AMENDMENT) BILL, 1991**

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE  
CONSTITUTION (SEVENTY-THIRD AMENDMENT) BILL, 1991**

**Wednesday, the 6 May, 1992 from 15.00 to 17.30 Hours in Committee  
Room No. 62, Parliament House, New Delhi.**

**PRESENT**

**Shri K.P. Singh Deo—*Chairman***

**MEMBERS**

**LOK SABHA**

2. Shri Pawan Kumar Bansal
3. Shri Chitta basu
4. Shri Girdhari Lal Bhargava
5. Prof. Malini Bhattacharya
6. Shri Probin Deka
7. Shri Dau Dayal Joshi
8. Shri Shankarrao D. Kale
9. Kumari Padmasree Kudumula
10. Smt. Sumitra Mahajan
11. Dr. Debi Prosad Pal
12. Kumari Selja
13. Shri Hari Kishore Singh

**RAJYA SABHA**

14. Shri Radhakishan Malaviya
15. Shri Bhaskar Annaji Masodkar
16. Shri S.K.T. Ramachandran
17. Shri K.N. Singh

**REPRESENTATIVES OF THE MINISTRY OF URBAN DEVELOPMENT**

**Shri K. Dharmarajan—*Joint Secretary***

**SECRETARIAT**

Shri S.C. Gupta	— <i>Joint Secretary</i>
Shri R. K. Chatterjee	— <i>Deputy Secretary</i>
Shri Ram Kumar	— <i>Assistant Director</i>

**Witnesses Examined**

**Witnesses**

1. Shri Jag Parvesh Chandra
2. Shri M.N. Butch

**Organisations**

Executive Councillor Delhi.  
National Centre for Human  
Settlement & Environment,  
Bhopal.

**9. Executive Councillor, Delhi**

**Spokesman**

**Shri Jag Parvesh Chandra, Former-Chief Executive Councillor**

*(The witness was called in and he took his seat)*

**MR. CHAIRMAN:** Shri Jag Parvesh Chandra, I welcome you to this sitting of the Joint Committee on Constitution (Seventy-third Amendment) Bill. The Committee would like to elicit your views with a view to help the Committee in their deliberations. Before you start your evidence, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as Confidential. Even though you might desire your evidence to be treated as Confidential, such evidence is liable to be made available to the Members of Parliament.

**SHRI JAG PARVESH CHANDRA:** I was the Chief Executive Councillor of Delhi for seven years.

**MR. CHAIRMAN:** May I also add that Shri Jag Parvesh Chandra was the Secretary to our first President, Dr. Rajendra Prasad?

**SHRI JAG PARVESH CHANDRA:** With due respect, may I say that there is contradiction between the Statement of Objects and Reasons and the contents of this Constitution Amendment Bill?

The objects are laudable but the contents certainly go against spirit and letter of the objects. And whereas it is just the opposite. The contents of the Bill must be in conformity with the declared objectives and reasons.

I will make a few points. The first thing that has been stated in the Statement of Objects and Reasons is that the State Governments have been neglecting local self—governments and that was the main reason for our beloved late Prime Minister, Rajiv Gandhi, to bring forward this Bill. Over the years, the State Governments have considered democracy as some kind of transitory political lobby. Now, Mr. Chairman, you know very well how much hard labour was put in by the previous Government. For almost four years, several discussions took place, several Seminars took place, and then the Bill was brought. Now the basic things that were incorporated in the first 65th Amendment have been taken away from this Bill. It seems to me—if some minds it I withdraw my remarks—that the

Bill has not been drafted by the present Government but by some opposition members because these were the opposition stand when this Bill was being debated. The basic action that was contemplated previously was that the pattern of all the self-government institutions should be the same all over the country as it is in the case of State Assemblies because, as you know, Sir, 16 entries which are in the State List, directly and indirectly referred to municipal units. Most of the things, now, had been left to the sweet will of the State Government. And the State Governments will not take away any initiative or action in that matter. The plea that is taken is that the power of the States is being taken over by the Centre. It is just the opposite. The devolution is downhill to the States and not uphill from the States to the Centre. This constitutional status has been given in many foreign countries, you know better than me.

There are a few instances. Normally it was the Election Commission, which has been empowered to hold elections to these local bodies. We know, in State Governments, the conduct of election is not fair. The Chief Electoral Officer is after all State Government official, directly under the Chief Minister. So, that is why complaint arose. People lost faith in the local elections and in the institution of Municipal Government as well. If the procedure is left to the State Government, I am sorry to say, it would be different in different States. The same old confusion will prevail. The Municipal Act, they may enact according to their political convenience or other reasons, will again be different. But, that will not be a binding force in the democratic institute of India. It is wrong to presume that Election Commission means the Government of India. I do not want to go into the detail. If that is so, so many differences would not have arisen at certain quarters. So, I do not want to go into the details at all. I do not know who gave the idea that the elections to these bodies should be held differently. Why not simultaneously? Are we going to have in India nothing else but elections? If the elections are held simultaneously, it is wonderful. Every year there are mini elections in some parts of India and the electorate do not like this, leave alone the expenditure on the Government. It sometimes shows a reflection on the Government's functioning also. I totally oppose the Chief Election Commissioner being empowered to held elections. It is true that the work of the Election Commission will increase but the benefits will be far greater. The cheapest form of Government is dictatorship but its harms are too many. My third objection relates to a proposal that there was a District Level Planning Committee, Metropolitan Planning Committee, Now, that has been done away. New guidelines will be issued. Some type of balance would be there in the Municipal Councils. Unless there is a centralised body of monitoring the planning at the district level, the imbalances will remain in the region itself as they are remaining today in spite of the best efforts of the Planning Commission in different areas. In 1982 when Lord Rippen was the Vice-Chancellor, there was no planning at district level. Planning at the district level is something which

was never known and the democracy without planning means nothing. I do not want to dilate on that. You all know better than I do. If a plan is not monitored then there will be monarchy and people will lose faith in democracy. Fourthly, my objection relates to fundamental. I do not say that there is *Golmaal* in the Municipal Committees. It may be at any other place. It was decided that the C.A.G. should supervise the accounts or advise the Government how the Accounts should be kept and all that. My request is that the accounts should be controlled by the CAG and misuse of funds should be avoided. People should be told in clear terms that whatever the new taxes that the Municipal Committees are raising, are being properly utilised for their benefit. Otherwise, this new experiment will not have that respectability. One thing, I would like to ask—may be I am wrong—in Section 5 of Article 243 it is laid down that Chairman will be chosen, as prescribed.

What does that mean? The manner in which it will be held should be specified. Same is the case with regard to the committee at ward level also. So, this has to be made clear.

You have provided for reservation of seats in municipalities which are of three kinds, but what about the Wards? Why are you dilly-dallying to give reservation to Scheduled Castes and women in the case of Wards? The Ward committees are most important because they are like the neighbourhood committee in which every man is interested. He sees the democratic institution next door. He sees the members everyday. He knows what they are doing. When this representation to women and Scheduled Castes is not given, what will they say? They will say that it is just a lip sympathy for the weaker sections, it is just for the sake of saying so, if representation is not given to them, then where is the social justice about which we have been talking so eloquently.

One more suggestion that I would like to make is that you have used the word 'Chairperson' for all Ward Committees *Nagar Panchayats*, Municipal Councils and Corporations. If in the case of Corporations, you call them 'Mayors', then the status of the Municipal Corporations will go high.

Earlier it was statutory to have Ward committees. But now you have made it optional. The State Government may have it or may not have it. I do not know why you have done that. My suggestion is that it should be mandatory.

So far as your Twelfth Schedule is concerned, you have abridged it to sixteen points. I want to add a few points. After (9), that is safeguarding of the interests of the weaker sections of society, including the handicapped and mentally retarded, I would like to add (9A): 'Particular steps should be taken for the all-round upliftment of women.'

After (14), when you talk of burials and burial grounds, cremations and cremation grounds, if you take me seriously, may I say you should add:

**'Electric crematoriums should be encouraged'? Time has come when we should encourage them now or after one year.**

Then, after (16), I would like to add: **'Steps shall be taken to popularise the concept of a two-child family'.**

I will also add after (16): **'Non-conventional sources of energy and solar cookers and solar heaters'.** So much sun is available in the countryside; it may not be available in Delhi or in other big cities.

I would like to add to encourage the use of non-conventional sources of energy. I know during my days of governance, we sold thousands and thousands of solar cookers and the price was much better and the position was much better then.

These are a few observations I have made. I thank you for having given me the opportunity to express my views.

Shri S.K.T. Ramachandran: Shri Jag Parvesh Chandraji, on behalf of my colleagues I am very grateful to you and on behalf of all of them I express my gratitude to you for the valuable suggestions and some criticism of the Bill made by you.

At the outset you said that so far the States are neglecting the lower lever institutions of self-government. The objective of the Bill is to make the States understand the responsibility of constituting some powerful local committees so that they could plan for themselves and could share the power also. It is in other way a sort of transfer of power or decentralisation of power. That is what is meant by the Bill brought out during the tenure of Shri Rajiv Gandhi.

I agree with you that not only the spirit has gone but the life of the Bill has been taken away. There should be uniformity in the pattern of the lower level institutions, local bodies in different States, the constitution of them, the conduct of elections for those bodies etc. But now the States have been left for themselves. They can have the lower level or the local bodies as they wish. When the uniformity is gone, when the uniformity is not insisted upon, I do not think that there is no difference between the *status quo* and what we propose to change. You have very nicely expressed your view on that. You suggested simultaneous elections. I feel that these two things are very much valuable. While agreeing with you, I want to know from you as to what sort of amendment you propose to the Bill to have these changes carried out. You talked of planning bodies. What sort of institution do you want to propose at the district level and the State level? Do you want a democratic body or a bureaucratic body or a mixture of both, just like what is now existing in some States as District Development Councils?

I want to know from you as to what sort of institutions you like to propose. Another good suggestion made by you—which was in the original (65th amendment) Bill also—is that the accounts should be audited and

controlled by the Comptroller and Auditor General. The C&A.G. is also an independent office. I think that it is an autonomous body formed under the Constitution. That is also a good suggestion and it may also be incorporated in the Bill. I want to know from you as to how they could be incorporated in our Bill.

Then about reservation, it is also a valid point. That is the test of our democratic institutions. At the base if we deny the right for the weaker sections, then at all levels weakness will take place and it will persist. So, what you suggested is a valid point. My request to you is: Do you want that the specific amendment Bill is to be taken as it is with slight variations or should this Bill be amended with some modifications?

**SHRI JAG PARVESH CHANDRA:** It is a very good Amendment because the Finance Commission should be appointed after two years. Here you have said that it should be appointed after one year. That is a very good improvement. The basis should be the 65th amendment because so much labour went into it, but the district planning is not going to be a bureaucratic body. It has to consist of Mayor of the Municipal Council and all that.

**SHRI S.K.T. RAMACHANDRAN:** Is it to be under the control of the local bodies or is it to be autonomous.

**SHRI JAG PARVESH CHANDRA:** It should consist of the Heads of these local municipalities. Of course, the State Government has to finance. But the merit of the Bill is that people at the local level should raise funds and utilise the funds, people should know where they are spending and similarly, they should know about all other things. There should be a District Planning Board which is purely an elected body, not a bureaucratic body. About simultaneous election, if a clause can be added that elections to all these bodies should be simultaneous, an atmosphere can be created that all elections are taking place at one time. Otherwise people of Delhi and New Delhi will have elections every six months. There will be a great joy when all the elections are held together.

One request I want to make if you take me seriously, and that is we have talked about these Scheduled Castes and Scheduled Tribes and all sorts of injustice.

Your Committee will create history if you were to consider my suggestion. In the Bill adequate reservation is provided for the Scheduled Castes, Scheduled Tribes and women. In all the Government departments, we have reservation for handicapped persons. So, some reservation should be there for the handicapped persons. When you see one member like that, naturally, all the members will be sympathetic towards him. I want 30 per cent reservation for women also. So, my suggestion is that there should be a provision for reservation for the



handicapped persons. All the points in the previous Constitution (Amendment) Bill have been taken away. Everything have been left to the State Governments.

**MR. CHAIRMAN:** Even with this watered down draft Bill, still there is a feeling that probably we are imposing too much on the States' rights and trying to change the basic structure of the Constitution. That is why, we would like to satisfy ourselves by having interaction with so many persons. We realise that it is a Watered down Bill, as compared to the one which was introduced in 1989. But, we have to take into account all shades of opinion. This Bill has been brought so that there is no ambiguity in the minds of the people that it is an effort to curtail or take away anything of the States' rights. We are not changing the basic structure of the Constitution.

**SHRI JAG PARVESH CHANDRA:** The States think that they are sovereign States and they want to have more powers. They think they are the country and the country is somewhere else. In the good old days when all the States were Congress ruled States, all were like a family.

**SHRIMATI MALINI BATTACHARAYA:** The Bill that we have today has certain provisions. There is an overall uniformity whereas in certain parts, certain powers have been left to the State Legislature. There are certain specific areas in which State legislatures have been asked to enact laws instead of having it prescribed by a Central Act. We are concerned about these specific clauses where power has been given to the State. For instance, in the business of taxation, so far as taxation is concerned, what part of taxes will devolve on the municipality and corporations and what part would be left to the State, do not you think, it is much better to decide this between the State and the municipality rather than to have it decided by the Centre.

Similarly, there are two or three points. The Bill states that the State legislature shall decide what the constitution of municipality or panchayat would be. Do you not think that in different parts of the country, in different States, the composition of the municipality or corporation is so different that it is much better that these details should be left to the State? If we ask for too much uniformity, that will only lead to the municipality remaining inactive.

**SHRI JAG PARVESH CHANDRA:** No State Government wants to give power to the local government. I plead guilty myself. When I was in-charge of Delhi Administration, I did not allow panchayat elections to be held. It is the monopoly all round to keep the power both at political level and at bureaucratic level. Unless strict measures are contained in the Constitutional amendment, nothing is going to happen. What you say is very laudable. I wish we have that democratic commitment which we are supposed to have.

**SHRIMATI MALINI BHATTACHARAYA:** I come from the State of West Bengal. For the last 14 years or so, there have been regular municipal elections and a part of the finances of the State is devolved to the local bodies. Distribution of finance is being done through the local bodies.

The State has quite willingly given up these powers. So, if one State can do it, then I do not see why the other States should not do it. I do not think that your suspicion of the State is entirely justified.

**SHRI JAG PARVESH CHANDRA:** One thing goes to your credit. It is because of your good credit that your Chief Minister is having such a base. He has been very careful at the ground level. He has got a good base. The credit goes to the Chief Minister, not to the State Government.

**DR. DEBI PROSAD PAL:** When we are amending the Constitution, there should be demarcation of the powers which the municipalities should enjoy with regard to the powers of taxation. Otherwise what happens is that in a particular State, there are municipalities. We are not having the heterogeneous bodies of all the municipalities. Therefore, a particular State may grant certain amount of subsidy or certain amount of grants to certain municipalities where the particular party which is in power in the State may win the election. This sort of individual discrimination is there and it is also there in West Bengal from which State I also come. Therefore, when we are amending the Constitution, it will be better that at certain spheres, the municipalities should be given the powers of taxation and in certain other spheres, the States. But if we leave grants and subsidies exclusively to the States, then it may not be a very ideal situation where the States will have a large amount of discretion to exercise in respect of different municipalities which may not be panchayats, which may not be constituted on the basis of the ruling party in power. Therefore, the Constitution should provide a specific demarcation of the areas within which the municipalities can raise their funds. In addition to that, the State also should be given the power to give certain amount of grants but unless this sort of demarcation is made, it is likely to create certain amount of confusion and also certain amount of problems in the administration of the panchayats because our whole idea is this: We are distributing democratic systems to the lowest level. That is the idea. If the municipalities do not get the funds for their administration and they have to depend largely upon the State just as today also the States are complaining that they do not get adequate funds from the Centre and they are trying to increase their powers of taxation. Similarly, problems are likely to arise in the case of municipal or panchayat administration.

**SHRI JAG PARVESH CHANDRA:** It will remain a Union Territory even when we get a Legislative Assembly. I asked them to incorporate the word 'Delhi'.

**SHRI PAWAN KUMAR BANSAL:** Regarding the application of the proposed amendment to the Union Territories, the new Article 243L,

clause(2) may not be invoked for the National Capital Territory of Delhi, but will you please let us have your opinion about this clause. Will it not empower the bureaucracy now administering the Union Territories to avoid the establishing of local self Government Institutions in the Union Territories? वहां दिल्ली का नाम ही हटा दिया है इन्द्रप्रस्थ चला हुआ है। Delhi was not there. It has been invaded dozens of times. The Congress Government has taken away the name of Delhi. With great difficulty they have accepted it. सरकारिया कमिशन ने फूक देने के लिये "नेशनल कैपिटल टैरिटरी आफ दिल्ली" नाम प्रयुक्त किया है। Such a big name they gave. Nobody will understand it. It will remain a Union Territory. According to Article 239(1), the President will have the overriding powers. In the new Act, such a thing is there. He will always remain so, pass any order to the Lt. Governor, to the State Government to do this and that. His power remains supreme as long as Article 239(1) is there. This is a corollary of that thing. If you say cut off this thing and then say that the other thing may remain, then it will be contradictory. When it is said that the provisions of this amendment will apply to the Union Territories also, do you find any contradiction?

**SHRI PAWAN KUMAR BANSAL:** According to clause (2) of the proposed Article 243L, the President may direct that these provisions shall not apply to any particular Union Territory.

**SHRI JAG PARVESH CHANDRA:** Article 239(1) is the basic Article governing the Union Territories and the powers of the President. He can always use it as and when he likes. This may or may not be there. Even if you remove it, then also the powers will remain with him unless the legal experts give a different opinion.

**SHRI PAWAN KUMAR BANSAL:** I think if Clause (2) of proposed Article 243(L) is removed, then Article 239 will not have overriding effect. Article 239 only provides that Union Territories shall be administered by President through Administration. If Article 243(L)(2) is removed, 239 will not come in the way of setting up Municipalities in the Union Territories.

**SHRI JAG PARVESH CHANDRA:** But my reading of this is that the President is the supreme head of the Union Territory even if you remove this thing. In my seven years of working, no Ministry had ever interfered with my working. Nobody called me to North Block. If the Chief Minister is a strong person, who cares for them.

**SHRI PAWAN KUMAR BANSAL:** I have in mind a Union Territory like that of Chandigarh where there is no Assembly. It cannot be deprived of institutions which we are wanting to otherwise ensure elsewhere through this Constitutional Amendment.

**SHRI JAG PARVESH CHANDRA:** Ask for an Assembly for Chandigarh.

**MR. CHAIRMAN:** Now I ask Shri Dharmarajan to respond to your queries because he has been associated with the 89th Constitution

(Amendment) Bill, 90th Constitution (Amendment) Bill and the 91st Constitution (Amendment) Bill.

**SHRI JAG PARVESH CHANDRA:** How do you justify the contradictions?

**SHRI DHARMARAJAN:** I would not like to say anything about the contradictions because here there is no question of having my personal view in the matter. If I were to appear as an expert, then it is a different matter.

**SHRI JAG PARVESH CHANDRA:** Do you mean to say that an expert is one who has no personal views at all?

**MR. CHAIRMAN:** He has gone through the entire metamorphosis of the Bill and he is in a better position to explain it.

**SHRI DHARMARAJAN:** The reason for the difference between the Bill in 1989 and the present form in which it has appeared now in the shape of 73rd Amendment Bill is that there was a conscious effort to try and avoid those provisions which might be construed to be entering too much into the powers of the State Government. In the light of the debate that took place on the Bill in 1989, there was tremendous amount of opposition in regard to certain provisions as if there were encroachments on the State's powers. It was thought better to leave it to the State Governments themselves to specify these things in the State laws. This whole Bill is drafted on this principle. In this process, lot has been left to the State Governments. One can question: whether by doing so, the State Governments will act themselves as one would like them to. The result is that some basic provisions are predicted in the Bill and the State Governments are required to make their own municipal laws at least in regard to some basic provisions. It is also hoped that by leaving certain illustrative powers to be delegated to the municipal bodies, the State legislatures may not delegate anything. The fact that such a list is provided in the Constitution would, in course of time, make the local self-Governments to act on the State legislatures to get more powers.

And it was in this context that these wordings were used, as you see in the Bill. How strong the constitutional amendment Bill will be, this is a matter which the Committee has to debate and they will have to arrive at some method by which if you want, it can be made more specific. But basically, you have to take a decision in principle.

The second question which you asked about was in regard to the CAG audit. In 1989 Bill, it was provided for CAG audit of all municipal bodies. After discussion with the CAG, it was felt that auditing of all the smaller local bodies may not be necessary and it may be difficult also. And considering the fact that it is really the larger municipalities particularly, the Corporations which are over three lakhs,

which are dealing with lot of money, it would be sufficient if we can keep the audit of the CAG restricted to municipal corporations.

In regard to the nomenclature of Chairperson of local bodies, it is just a generic term because each State has its own designation of what is a Chairperson. Some persons are called as Mayor and some others as President. It is a local term that is used for the particular body. For example, we use the word municipality. In some cases, the head of the institution is called as Mayor in Council, in some other cases they call as Chairman. So it depends from State to State. The word Chairperson as a generic sense, being the head of that organization, who is elected as the head of that elected body. And it would be left to the States in prescribing in their own law as to what will be the name of the Chairpersons. They can call him as President or Mayor, depending upon the local situation.

In regard to the reservations in Ward Committees, in the 1989 Bill, the provisions of Ward Committees, it was a mandatory provision. And reservations in the Ward Committees was also made mandatory because the Ward Committees themselves are mandatory. In the present formulation, we have left the Constitution of Ward Committees or Zonal Committees to the State Legislatures to decide whether they want such Ward Committees. It has become optional.

**SHRI PAWAN KUMAR BANSAL:** Why should we not have such a provision in the Constitution itself? That will ensure greater participation of people in their affairs.

**MR. CHAIRMAN:** We will take up that when we discuss clause by clause consideration.

**SHRI JAG PARVESH CHANDRA:** Mr. Chairman, this Parliament, or this Committee, it seems, is not serious about having the Ward Committees. Gandhiji once said: "I feel proud, if I were a Municipal Councillor."

**MR. CHAIRMAN:** We need not show our seriousness. When we come to clause by clause deliberations, then we will go into the entire thing. There is no question of not taking it seriously. The hon. Members have been deliberating for the last three months and we would like to benefit from your interaction. Therefore, we sought to have an interaction with you because of your distinguished past. After your evidence, we are going to deliberate amongst ourselves. So, right from the beginning, we are keeping our minds open.

**SHRI DHARMARAJAN:** One more point was, the election of Chairperson. We have left it to the State Legislatures to decide. But the question was, whether we should prescribe direct election for Chairperson or whether it should be by indirect election. This particular question came up for discussion and it was felt that it may be left to the State legislatures to decide whether they need a direct election or an indirect election. In

fact, there have been cases where one felt that in some cases, it should be direct and in some other cases, it should be indirect. There are pros and cons in either of these. Much depends upon the local conditions or may depend upon how politics works in each District. It was left to the State legislatures. They will lay down the manner of election of Chairperson. These are the issues which were raised and I have given the answers to the clarifications.

MR. CHAIRMAN: Thank you very much, Shri Jag Parvesh Chandra.

SHRI JAG PARVESH CHANDRA: Sorry, I have been a bit harsh. But, you have not given the answers for my question— the reservation for the handicapped persons.

MR. CHAIRMAN: Well, this is food for thought. We are yet to deliberate on it.

*(The witness then withdrew)*

MR. CHAIRMAN: Please call the next witness.

#### **10. National Centre for Human Settlement and Environment**

*Spokesman*

Shri M.N. Buch, Chairman

*(The witness was called in and he took his seat)*

MR. CHAIRMAN: Mr. Buch, I welcome you to the deliberation of the Joint Committee on Constitution (Seventy-Third Amendment) Bill. We would like to have your very free and frank opinion and we would also like to interact with you. Before you start your evidence, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as Confidential. Even though you might desire your evidence to be treated as Confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI M. N. BUCH: Thank you very much for having given me this opportunity to appear before this august Committee, on an issue which is of very great importance.

The Constitution of India in Article 1 talks of India as a Union of States. In other words, the constituent of our republic or the Union, in turn, is made up of the sovereign element, called, States. One does not exist without the other. But it does not recognise a third set of sovereign governing bodies. The Directive Principles lay down that the State shall endeavour to promote village self-government, that is, through panchayat institutions. Perhaps a lacuna lying in this was that the Directive Principles did not lay down that there should also be urban government in the same manner as you have rural self-government. In fact, the National

Commission on Urbanisation did suggest that just as the Constitution enjoins upon the State to encourage village self-government, a similar provision could be introduced in the Constitution. But the question which now comes before us is this. As per the present proposed amendment to the Constitution and the earlier amendment, which had been suggested and which, I believe, Parliament did not ultimately push through, did not indicate that we are trying to introduce into the Constitution a third tier of government which should be carved out not from the Union but from the States.

We can look at the Constitutions of other countries, whether written or unwritten, whether it is Britain or whether it is the United States of America or Germany. Britain is a unitary State where there is a long tradition of local Government. It goes back to the moot village assembly, which is an Anglo-Saxon concept. It preceded the Norman concept. The village or the community did have the right of self-government. But this right came by means of a Royal Charter. It is not a part of the Constitution like the sovereign and parliament have in that country. In the United States, it is a federation with their strong centrifugal forces because the residuary powers rest not in the federal government but in the States as per the Constitution. Again, there is a long tradition of local government. The Constitution does not mention local government. The only Constitution that I have come across, which does mention local Government, is the Constitution of Federal Republic of Germany.

It is one of those which is not only a federation but which has the lender of the States as the residuary powers. I would like to tell you that the relevant Article in this regard is Article 28 of the German Constitution. This Statute is the State Statute which is not a federal Statute. I would submit that this is a country in which the Constitution itself recognises diversity. I will give a few examples. I know that some people are referring to Article 370 as giving special status to a particular State. That is not the only Article of that kind. There is an Article which states that in Bihar, MP and Orissa, there has to be a Tribes Advisory Council which should be constituted regarding tribals and that there should be a special minister for tribals. These three States are somehow different from other States. I am not talking of North-Eastern States. I am talking about Gujarat and Maharashtra. It was provided that there can be separate regional development boards which would have great deal of autonomy. In fact, they would even, to some extent, be within the basic framework of the rules laid down by the Legislature. There are similar provisions for Andhra Pradesh also. In AP, there is mulki and gehar mulki and there are certain other provisions in Sikkim, Nagaland, etc. We do recognise diversity and yet, by a single constitutional amendment, we want to bring about almost total uniformity in the matter of local government in which the power of the State Legislature to legislate on a matter, like Seventh Schedule which is exclusively in the State List, would be restricted by a

constitutional amendment. I would submit that that kind of controversies are already there in this country about State sovereignty, overcentralisation. After all, Sarkaria Commission was set up to look into some of these issues. Even then some kind of movements have a violent overtone and conflicts arise between centralisation and decentralisation. It is of consideration whether we want to go in for detailed constitutional amendment which is included in the proposed 72nd Amendment Bill or whether one would like to leave it by (a) making an amendment in the Directive Principles or (b) putting in a provision similar to Article 28 of the German Constitution which says that we do recognise that the federal Government is there, the States and the country and the parish or the panchayat is there and that these will control their own affairs subject to the Statute and the Statute is left to the State Legislatures. This is for your consideration. I would like to submit that with the vast diversity in our country, it would be better to go in for amendment to the Directive Principles and propose recognition that there should be levels of local Government also on which the States can legislate and leave it to the State Legislatures to decide what type of local Government they would like to have in different areas. The local government in a city like Calcutta or Madras or Bombay would be totally different from that of cities in foreign countries.

I would like to submit that these are matters in which, the more flexibility is given, the better it is. I would like to add one minor point. I do not think there is any controversy among political parties about the need for local government and decentralisation. These aspects are mentioned in all manifestos. Government of Karnataka went in for type of rural decentralisation which was far ahead of the kind that is prevailing in Gujarat or Maharashtra. The State was virtually shorn of all powers. Now, there is some backtracking. Instead of putting things in a straight jacket where we cannot backtrack, it is better to have a model legislation in the form of guidelines and leave it to the States to have similar legislation. I say this because if a State government refuses to enact a law, what then? Does the Centre have the power to intervene in a matter which is in the State list? One can go upto High Court and ask for a writ directing the State Government to introduce the legislation. But can you ask the legislature to enact a legislation? I think there is enough controversy even now between the legislature and judiciary. Should we aggravate it further?

I submit that it would be better to declare a framework in which the legislatures at their own initiative, bring out legislation within the given parameters.

**SHRI SHANKARRAO D. KALE :** He has given generalised views. He may comment with specific reference to the present amendment Bill.

**SHRI M.N. BUCH :** I have already given my views in writing. Basically, I am against the specific provision of the Bill as it is framed



today, because this Bill virtually takes away the functions of the State Legislature. You please see 243U, which says

"The accounts of the Municipal Corporations constituted under Article 243Q shall be kept in such form as the Governor may, on the advice of the Comptroller and Auditor General of India, prescribe."

State legislatures in many cases provide for a Directorate of Local Fund Audit which is under the state Government and not under the CAG. CAG has also got the authority to audit after the Directorate of Local Fund Audit. But how can Parliament prescribe that the form of audit shall be of a particular form? It may not be suitable.

Similar is the case with Article 243Q. Right now we have Municipal Councils, notified area committees, special area development authorities, and Municipal Corporations of different types. Why do you want to introduce another type of local bodies? Why should we go into this sort of exact details that there should be another Panchayat and so on. The legislature may decide that even for a small town they would not like another Panchayat. They may like to have a municipal body. Suppose, there is a town where a resource specific industry is located. They may have a Special Development Authority which may have both developmental as well as municipal functions.

SHRI PAWAN KUMAR BANSAL : Once these provisions are enacted, will the State Government be debarred from setting up such special development authorities?

SHRI M.N. BUCH : I think they would be debarred. The constitution lays down that there will be three types of urban local bodies. The Constitution specifically does not lay down that there shall be two or three or four types of Panchayats.

It says, you shall have Panchayat bodies. You can have two or twenty types of it. Here, it is categorically stated that "you shall have another Panchayat for a transitional area, Municipal Council for a smaller urban area. You shall have a Municipal Corporation for a larger area." The larger area means, the areas that are having 1 lakh or ten lakh population. Certainly, I agree with it. Anything else which is in conflict will lead to any kind of litigation.

SHRI PAWAN KUMAR BANSAL: The Parliament is not taking away the other powers of the State Governments.

MR. CHAIRMAN: The Special Area Development Authority of Madhya Pradesh, does it have local representatives or elected representatives or nominated representatives? You have cited the examples of Bhilai and Ghaziabad.

SHRI M.N. BUCH: It is a nominated body. Because, there are two types of areas which get covered. Take the first example of Khajuraho. There lots of tourists come. The number may be three or four lakhs in a

village of 1300 to 1400 people. How do you manage this? Who gets the representation? The village panchayat would be incapable of giving expertise which can develop or manage the functioning in this area. These are transitional bodies.

The other is an area in the middle of wilderness. In the case of Korba, in an area where a total population is 800, you put down Rs. 7,000 crore worth of investment and in a short period of time, you have two lakh population emerging, how do you manage this area? There is no stable population which can even give you an elected Government. For managing such an area, we have this Special Area Development Authority. But the idea is that, as soon as the population stabilises, the development is over, you can then go in for an elected body. In Maharashtra, SIDCO, was set up in new Bombay. It was completely a Government body. Now, they are setting up a Municipal Corporation. The elections are going to be held shortly. Now, they have converted this into a Corporation.

There are so many shapes and nuances. Why should this Constitution specify three tiers or why should it name them? Why did it not follow the German Constitution that there shall be Communes and Counties in which the people shall be guaranteed, by the Federal Government, through law, their right to representation through open election, through a secret ballot—and where they will manage their own affairs? It is necessary to spell out all the things that have been laid down there? Because, this is almost virtually a Municipal Act. They have indicated it through a Constitution Amendment.

**SHRI PAWAN KUMAR BANSAL:** We referred to Articles 243 Q and 243 U. You had also referred to these two Articles. No doubt, in Article 243 Q, three types of municipalities have been referred to, viz. Nagar Panchayat, Municipal Council and the Municipal Corporation. This does not connote a three-tier system which were talking about. It is something else, and not one body above the other in a hierarchy for the same city. One town would have Nagar Panchayat only and another would have Municipal Corporation or Municipal Council. It will be only in certain cases where the concerned State Legislature so feels, that there may be a Ward Level Committee also within the territorial boundaries of a municipality.

It is only Article 243(U) which does not talk of a municipality as such; it distinguishes between three types while providing for maintenance of accounts for Municipal Corporations. The Municipal Corporation is for the larger urban area; for others, it is a different nomenclature. Otherwise, the provisions are just the same.

**SHRI M.N. BUCH:** You kindly read Article 243(R) also.

**SHRI PAWAN KUMAR BANSAL:** Here the Parliament is acting as a constituent body. The experience shows that certain States have not been encouraging the strengthening of the municipal administration and the

local self-governments. Elections are not held regularly. There should be some provision that every State shall ensure that elections take place after five years. Really, we are leaving everything to the State Legislature.

**SHRI M.N. BUCH:** Are we questioning the intention and democratic motivation of the State Legislature? Are we even sitting in judgment over the commitment to democracy of the State Legislature? Therefore, I would suggest, in the scheme of things, that we should have no value judgment about the commitment to democratic functioning of the State Legislatures. The State Legislature in India, even Parliament in India, tends to move more through the initiative of the Government of the day in the matter of legislation rather than by a Private Members' Resolution.

**SHRI PAWAN KUMAR BANSAL:** The Constitution enforces certain things upon the President; it enforces certain things upon the Parliament; it forces certain things upon the Legislature also. We have a strong provision like Article 356; and that was not incorporated by any subsequent amendment. If we bring about certain amendments based on experience, it does not mean that we have lost confidence in the States; it only shows that certain basic things necessary for governing the functioning of the local bodies need to be given a Constitutional status to make grass-root democracy strong and meaningful.

**SHRI M.N. BUCH:** You read Article 343(R).

**SHRI PAWAN KUMAR BANSAL:** There shall be a municipality for a town. The Constitution is going to ensure this provided this Bill is cleared. Depending upon the categorisation, there shall be a municipality for every town. There may be a Ward Committee also if the State Legislature so feels; and the elections shall be held regularly. If it is superseded the State Government shall take steps to ensure that the elections are held within six months.

**SHRI PAWAN KUMAR BANSAL:** There shall be reservation, proportionate to the population in the case of Scheduled Castes and Scheduled Tribes and 33 and one-third per cent for women. And this shall be by rotation. These principles are being given constitutional recognition.

**SHRI M.N. BUCH:** I can say this with confidence after having headed the National Commission for Urbanisation for some time. What we provided was a legal obligation to have a municipality elected periodically in the same manner as a legislature of Parliament has to be elected periodically. For example, there is no question of President's rule and after five years elections have to be held for Parliament. Otherwise, there would be a constitutional crisis. For this what we provided was, the elections to local bodies shall be held with regular periodicity and the periodicity can be laid down. But in order to do that, to circumscribe the demands of the State Legislatures of the type of local bodies there shall be, to lay down a rule, that the State shall enact certain types of legislation; I think this is an exhaustive reaction to a situation. Then why not we follow the German

example where it lays down that there will be certain types of local government at the community i.e. the Panchayat level, country or district level or canton level? It also covers zones. If you like, you can put it in the Representation of People Act.

I do not think that you require a drastic amendment to the Constitution like the Seventy-second Constitution Amendment Bill. Supposing the States gang up and insist on a similar kind of amendment to the Centre, to the Union Territories then you can have all sorts of conflicts.

For example, Singapore does not have a local government at all. The State of Singapore is also the municipality of Singapore. There is no separate municipality. Of course, that is a different matter.

The main aim of having democracy, or for people to have democracy, is to have a democratic scene or near democracy brought about by a detailed amendment like this, or amendment of Article 42 of the Constitution, to the Directive Principles of State Policy, or bring it into the Fundamental Rights and extend it to the municipalities. You can make it mandatory. You do not require such a detailed amendment. This does not read like a Constitutional Amendment. This reads like a Bill, like any Act of Parliament. Therefore, Amendments to the Constitution should take the form of that is given in American Constitution. They have 25 Amendments. One Amendment automatically covers all criminal law. So, I request you to keep it simple, leave all the details to be filled in by the State Legislatures. This is my submission.

MR. CHAIRMAN: Mr. Buch, you must have gone through the Bill definitely. Even after reading the Objects and Reasons of this Bill, do you still hold this view?

SHRI M.N. BUCH: I do not know whether I should do with the Committee or not. There was a time when it was felt that sometimes the interaction of the State Government and the Central Government was necessary.

SHRI SHANKARRAO D. KALE: Kindly look at the first paragraph of the Statement of Objects and Reasons. It says:

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

What is your view on this? This only reflects the importance of this amendment. We are also coming from the rural constituencies and we know about Gram Panchayats.

SHRI M.N. BUCH: There can be no disagreement on this.

SHRI SHANKARRAO D. KALE: Do you feel that this Constitution Amendment Bill is not necessary?

**SHRI M.N. BUCH:** If you go into the details of administration of any Government, Central or State, you will find that there are many areas, on which both the Central Government and the State Governments have been guilty of not doing the things which they should have been doing, and weakening institutions. Ultimately the Constitution cannot be like an umbrella during the rain. The Constitution can only be a guide and it can tell you that it is about to rain and do not go out. With great respect, I would like to submit that one should be careful in bringing about amendment to the Constitution. Why is it that all parties of authorities, even the entire bureaucracy across that devolution of powers and development of local participation through democratically elected bodies are important? Why is it that in almost every State including Maharashtra and Gujarat, which have strong traditions of cooperative movements, which are with cooperative bodies, are regularly superseded? There are certain States where local government is much stronger than anything given in this particular Constitution. Have we to provide separately for them? One has to be very careful about Constitutional Amendments. Of course, one agrees with the Statement of Objects and Reasons of this Bill.

**SHRI CHITTA BASU:** The question I am putting is very simple. Do you suggest that there is no necessity or there is no need for this kind of Amendment to the Constitution? Please explain to us 'Yes' or 'No'.

**SHRI M.N. BUCH:** I wish I could say 'Yes' or 'No'. Certainly 'No' as far as present Amendment Bill is concerned. Certainly 'Yes' in making the articles of the Directive Principles relating to local Government mandatory rather than merely a Directive Principle. You need a Constitutional amendment on that.

**SHRI CHITTA BASU:** Do you mean to say the manner in which this Bill has been framed, constituted an erosion into the State reforms?

**SHRI M.N. BUCH:** Yes I do. For example, let us take the State of West Bengal—level of urbanisation. Same is the position in respect of Manipur. Now, you have that kind of thing. You have a State like Maharashtra where you have urbanisation which is now approaching 40 percent and 60 percent rural. Do you mean to say that by a constitutional amendment similar level of municipal bodies will be constituted in all the States?

**SHRI CHITTA BASU:** This is not contemplated.

**SHRI M.N. BUCH:** It is contemplated.

**SHRI CHITTA BASU:** There could have been a legislation regarding the Municipal Administration. What is provided here is that the State Governments are to frame laws in order to fulfil certain objectives. Those objectives have been clearly defined in the first paragraph of the Statement of Objects and Reasons. The simple thing is that there should be periodic election; there should be some kind of reservation; there should be a

Finance Commission. These are the major framework and within these framework, accepting these framework, every State Legislature has got the right to legislate according to their own wishes, according to their own need, a legislation for the local self-bodies. I think this is my view in that perspective. In that context, there has been no erosion into this.

SHRI M.N. BUCH: There shall be a Finance Commission. The State Government will enact. There will be a Finance Commission. Finance Commission will take the model of the Finance Commission laid down in the Constitution so far as the devolution of revenues to the State Governments are concerned. There will be a Finance Commission. But the Finance Commission's recommendation will be advisory and not mandatory. There will be a Finance Commission which shall like of Gujarat which has got Municipal Finance. But, what is the purpose of Finance Commission?

MR. CHAIRMAN: Had the Federal Finance Commission acted satisfactorily, there would not have been any reason for the Sarkaria Commission?

SHRI M.N. BUCH: Sir, with great respect, the Federal Finance Commission acted satisfactorily. The Federal Ministry of Finance has been clever. Instead of putting taxes, they put surcharges, which are not part of the kitty. That was the dishonesty on the part of the Central Government.

SHRI CHITTA BASU: You are for decentralisation of power. There should be decentralisation from the Centre to the States and State to the Local Self-Government. This is the entire perspective. Therefore, this Bill does not prevent a State Legislature to decentralise its powers to the Local Self Government organisations, and in that respect it does not choke up the democracy.

SHRI M.N. BUCH: May I again read out to you article 28? The German Constitution provides for basically two levels of government—the federal and the constituents. The constituent landers or the States can frame their own Constitution but they have to be democratic, republican, social and within the framework of the German Constitution. It goes on to say that in each of the landers, counties and communes, the people shall be represented by a body chosen in general, direct and free elections. So, it lays down that there shall be elections. It says that the communes shall be guaranteed the right to regulate, on their own responsibility, all the affairs of the local community within the limits set by statute. In other words, each State will frame a law which guarantees to the communes the right to regulate the affairs of the local community. Within the framework of the statutory functions, the association of communes shall also have such rights as may be provided by statute. This is a very simple worded provision of the Constitution and we can have a similar amendment. There shall be local bodies. These local bodies shall be guaranteed by the State Legislature the right of representation by the people and we can say that

they cannot be superseded by more than six months and that the State shall ensure that the laws shall conform to the rights of these people to regulate their own local affairs. We do not need a more complex form of amendment because the more complex you make it, the more complications will arise.

**SHRI HARI KISHORE SINGH:** How do we ensure that there will be elections? In our experience we find that in many States, both with regard to the Municipalities or Corporations or with regard to *Gram Panchayats* elections have not been held for fourteen years, fifteen years or even twenty years. So, how do you go about it? Corporations or Municipalities have been superseded. All right. You have equal institutions in Notified bodies where all the members are nominated and they find that this nomination vitiates the representation of the local bodies in the Legislative Councils, whichever party's government is there. If they want to give them the right of representation, then the nominated people will dominate over the elected people, even if the Municipalities are not superseded or the Corporations exist there. How do you go about it and how does it take away the functions of the State? I want to know how it interferes in the functioning of the State and intrudes upon the powers of the State Government.

**SHRI M.N. BUCH:** There are two points. One is the constitutional amendment which says that there should be local bodies. The local bodies shall have the right to elections periodically and that no local body can be superseded for more than a given prescribed period just as the President's rule cannot be exceeded over a particular period. One can certainly bring about such kind of constitutional amendment. There can be no problem. Let us take the second part. You have a tribal State, like the State of Manipur where it is felt that for any form of local body which deviates from the tribal kind of a situation, tribal formation of local government including autonomous councils etc. it will lead to distortion. You cannot force them into such kind of framework.

I am trying to submit to you that this country does not consist of only diversity only in the context of tribal Vs. non-tribal. It has immense diversity even in non-tribal areas. It should be that there shall be local government—as the German Constitution says—and it shall be elected by saying that elections shall normally be held in 'x' number of years as decided by the Constitution (Amendment) Bill, and that no authority either Centre or State, including Parliament, shall have the authority to supersede it beyond a limit. The whole thing should be put in the Election Commission's purview, either State Election Commission or the Central Commission. One can guarantee this. But why a constitutional amendment say that the State Legislature may decide what powers to be decided and what are the functions etc. This is not a constitutional amendment to say so. I object to the form of presentation.

**MR. CHAIRMAN:** How would you ensure that—supposing we take your views and we do not have this constitutional amendment Bill at all—that the existing framework of provisions in the Constitution or in the State Legislatures that are empowered, would be safeguarded? How would you ensure that there will be regular elections to local self-governments? How would you ensure that the periodicity would be maintained there? How would you ensure that they would not be superseded at the drop of a hat? Please explain to the committee.

**SHRI M.N. BUCH:** I would like to submit that by making an amendment in the Constitution, for urban and rural areas that there shall be local bodies we can achieve it.

**MR. CHAIRMAN:** Is it like the German Constitution?

**SHRI M.N. BUCH:** More or less like that. There shall be representative. The elections will be held for them for five or four years regularly. You may put it in whatever figure you like. But they shall not be superseded by any authority. Elections shall not be postponed beyond a period of say six months or a year. It should be a part of the Constitution.

**MR. CHAIRMAN:** Has it to be incorporated into the Corporation? Is there any other way out?

**SHRI M.N. BUCH:** I could say that we can do it by eliciting public opinion.

**MR. CHAIRMAN:** It may take twenty years. That is not possible.

**SHRI M.N. BUCH:** One can certainly put it in the Constitution that there shall be local bodies and leave it at that and not to go into all kinds of details.

**SHRI PAWAN KUMAR BANSAL:** I tend to agree with the suggestions made by you regarding the form of amendment though there are areas where I can not agree with you. However, I want to know what amendment you would suggest about the provisions in proposed Article 243(H) and (I) of the Constitution as now sought to be incorporated?

**SHRI M.N. BUCH:** Under the Seventh Schedule they already have this power. You say, you authorise the Panchayats to levy such taxes. That is already there in the Seventh Schedule and now you are repeating the same. It states that it lies within the competence of State Legislature to legislate on certain issues including to authorise panchayats to levy taxes. This entry here includes various powers, functions and everything. This is an omnibus provision. Therefore, this is a repetition, it is not necessary.

**SHRI PAWAN KUMAR BANSAL:** In this Article we have been specific about it 'that the Legislature of a State may authorise the panchayat to levy, collect and appropriate such taxes ... as they may prescribe'. My humble submission is that 'may' here has to be interpreted



as 'shall', if the courts were ever to do that. Once you incorporate this provision in Article 243(H), the State Legislature will be required to do it.

SHRI M.N. BUCH: My submission is that you say that the State Legislature shall be required to do it. But why do you assume that the State Legislature can ignore the local bodies once the local bodies come? After all they constitute the panchayats in Gujarat and Maharashtra. The State Legislatures made them powerful. They now enjoy immensely the local prestige. What you are trying to tell through this Constitution Amendment is, 'Yes we want to build the prestige and authority of the local bodies'. After that if item 5 of List II of the Seventh Schedule is not Legislated upon—inciting, even today the position is, it is not legislation which is wanting.

The complaint of all the State Governments is that the Federal Government in India has kept with itself the power of laying the taxes and that is an encroachment of the Federal Government on the States' finance. The local bodies also have this feeling. So, you have to build public opinion; you have to bring pressure on State Legislatures to see that they do function properly. The Article 243H contains nothing more than the List II of Seventh Schedule.

MR. CHAIRMAN: We are extremely grateful to you, because we had exactly the opposite view just before you came. So, this will help in our deliberations.

*(The Committee then adjourned)*