



gtz

Comparative Analysis of Activity Mapping in Himachal Pradesh

PRI Report 2008-2

Capacity Building for Panchayati Raj Institutions in Himachal Pradesh -
Government of Himachal Pradesh (Department of Panchayati Raj &
Department of Irrigation and Public Health) & Deutsche Gesellschaft für
Technische Zusammenarbeit (GTZ) GmbH



Activity Mapping (or “functional assignment” as it is known internationally) had been identified as a key thematic pillar of the Indo-German technical cooperation in Himachal Pradesh. In December 2007, a first exploratory workshop was conducted in Shimla in order to assess existing Indian and international experiences and lessons learnt with activity mapping & functional assignment. As part of the preparations for the workshop, the PRI project had commissioned Dr. Gabe Ferrazzi, one of the international presenters at the workshop, to prepare an assessment of the current status quo of activity mapping in Himachal Pradesh from the perspective of international experiences elsewhere. This PRI Report 2008-2 has been prepared by Gabe Ferrazzi and Rainer Rohdewohld reflecting the main results of Dr. Ferrazzi’s assessment, and outlines areas where more work needs to be done to clarify the allocation of government functions at various levels in Himachal Pradesh. As such, the assessment provides important inputs for the implementation of activity mapping & functional assignment for selected priority subject matters, which is envisaged as one of the three thematic pillars of the Indo-German cooperation “Capacity Building of Panchayati Raj Institutions in Himachal Pradesh” between now and 2010.

Dr. Shrikant Baldi
Secretary (Panchayati Raj)
Government of Himachal Pradesh

Rainer Rohdewohld
GTZ Principal Advisor

Capacity Building of Panchayati Raj Institutions in Himachal Pradesh, B-2 Lane-1 Sector-2, New Shimla, Shimla 171009, Himachal Pradesh, India. Tel/Fax ++91-177-2671074, 2671330. PRI Report 2008 – 2 (March 2008)

Disclaimer: Opinions and assessments expressed in this document are those of the authors and do not necessarily reflect the opinion of the Government of Himachal Pradesh or of the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH.

Abbreviations	4
Introduction	5
Background of Activity Mapping & Functional Assignment	6
Identification of Issues and Action Required	8
Overall Architecture: Modes, Roles and Structures	8
Legal Framework and Mechanisms for Adjustments	13
Criteria & Mechanisms for Functional Assignment	15
Concurrent Functions	17
Formulation of Functions	18
Prescription versus Discretion	20
Organisational & Personnel Implications of Functional Assignment	21
Finance's Fit with Functions	22
Process of Functional Assignment/ Activity Mapping	23
Annexes	30
Typology of Decentralized Tasks/Functions	30
Sectoral Decentralization Lag	31
Criteria for functional assignment	32
Function of Gram Panchayat in HP	34
Comparison of Key Functions by Level of PRI in HP	30

LIST OF ABBREVIATIONS

CLM	Central Line Ministry
GoI	Government of India
GR	Government Regulation
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit GmbH
HP	Himachal Pradesh
IMCC	Inter-ministerial coordination committee
LG	Local Government (interchangeable in most contexts with sub-national government)
LGA	Local Government Act
MDG	Millennium Development Goals
MSS	Minimum service standards
OECD	Organization for Economic Co-operation and Development
OF	Obligatory functions
PRI	Panchayat Raj Institutions
SNG	Sub-national government
WASH	Strengthening Local Administration for Rural Water Supply and Minor Irrigation in Himachal Pradesh (Indo-German Bilateral Cooperation Project, 2005 – 2008)

In a multi-level government system, it is critical that a well designed and conducted assignment of governmental functions be carried out as the success of decentralized governance depends on pushing responsibility down to the lowest level possible (in line with the principle of subsidiarity). Furthermore, attaining clarity in “who does what” is a prerequisite for ensuring proper accountability mechanisms. The importance of getting this foundational functional assignment right is recognized in many countries,¹ but experiences with decentralization over the last two decades indicate that it is not easy to get it right, and a serious effort is required to even get it somewhat right. This review attempts to place the earlier efforts of Himachal Pradesh (HP) in “activity mapping” in the context of international efforts in functional assignment (the more common terminology). It comments on the evident merits of the HP approach as used in the 1990s, its connection to the India-wide effort, and its standing in relation to emerging practices internationally.

Functional assignment in this review is understood to encompass a number of elements, and its soundness needs to be seen in the choice of specific elements and the fit between these (its overall architecture). The review will therefore examine the following elements of functional assignment:

1. Overall architecture (modes, roles, structures)
2. Legal framework and mechanism for ongoing adjustment
3. Criteria for assigning functions
4. Concept of concurrent functions
5. Formulation of functions
6. Prescriptive versus discretionary/own initiative
7. Organizational and personnel expression of functional assignment
8. Finance’s fit with functions
9. Process of functional assignment and capacity development required

These nine issues treated under functional assignment are examined in turn; each section begins with the backdrop of international practice, proceeds to the status in Himachal Pradesh/India, and ends with suggested work to be done.

¹ See for example East Asia Ministerial Conference on Forest Law Enforcement and Governance in Bali, Indonesia (2001) 11-13 September 2001 Ministerial Declaration; pg. 1.

1. BACKGROUND OF ACTIVITY MAPPING

1. Federal-State Dynamics in Activity Mapping

In the Indian system of government, the constitution addresses the status of state and local government. The state, desirous of greater decentralization, amended the constitution (73rd amendment) in 1993 to encourage state legislation on Panchayati Raj Institutions.² The formulation was not binding however, as the states were enjoined to decentralize (Article 243G)

the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level...

This construction resulted in uneven progress among states. In 2001, a “Task Force on Devolution of Powers and Functions” established by the GoI Ministry of Rural Development concluded that

in most of the States, the PRI are not very clear about the role that they are expected to play in rural development. This is mostly due to the absence of ‘role clarity’ with regard to the statutory functions assigned to them...

The November 2006 “Mid Term Review and Appraisal” of the GoI Ministry of Panchayati Raj notes that “in the assessment of the Ministry, 16 states ... and 3 Union Territories have adequate activity maps,”³ but urged further improvement. To gauge the progress made, the Union Government is designing a devolution index which might be linked to fiscal transfers to well-performing states. Increasingly, access of states to centrally-sponsored schemes is made conditional on the implementation of such schemes by PRI. Despite these political efforts of the national government to foster real decentralization, the conceptual guidance of the federal level on how to do activity mapping needs more emphasis and institutional support.

2. Himachal Pradesh Activity Mapping initiative

State action in HP came on the heels of the constitutional amendments, with the Himachal Pradesh Panchayat Raj Act of 1994 introducing a three-level system of Panchayats (see Table 1). The exercise to formulate activity maps in the sectors was only conducted two years later, in 1996. Guided in a general way by a model matrix suggested by the Union Ministry of Panchayati Raj,⁴ each of the subjects devolved to the PRIs⁵ was addressed in a Fact Sheet⁶ which specified the devolved subject, and details of the activities to be undertaken by each level of the PRI system. Details of functions/activities retained by the state level are not listed in the fact sheet. Furthermore, while the fact sheets do make provision to list details on the devolution of funds and functionaries, in all cases information on these crucial items are missing.

² For instance the Himachal Pradesh Panchayati Raj Act was passed in 1994.

³ See the Himachal Pradesh State Profile on the Status of Panchayati Raj prepared in the context of the 2006 Mid-Term Review and Appraisal conducted by the union ministry (download at <http://panchayat.gov.in/mopr%2Dirmapublication2007%2D08/>).

⁴ See GoI 2006:69 (Table 4a).

⁵ The 1994 HP PRI Act devolved 27 out of the 29 subjects stipulated in Schedule XI of the Constitution to the PRI. The 2001 amendment of the 1994 act reduced the number of devolved subjects to 19, involving 15 different departments.

⁶ Download from <http://hppanchayat.nic.in/pdf%20files/ActivityMapping.pdf>.

Table 1: Nomenclature and basic data on the three levels of Panchayats in HP

Level of Panchayat	Name used	Numbers	Pop. average
District Panchayat	Zilla Parishad	12	400,000
Intermediate Panchayat	Panchayat Samiti	75	60,000
Village Panchayat	Gram Panchayat	3243	1,500
	Up-Gram Sabha	19411	250

Source: Government of Himachal Pradesh in Status of Panchayati Raj State Profile Himachal Pradesh

The HP state government issued Notification No.(PCH-HA (1)12/87) in July 1996 to further the objectives set out in HP PR Act, 1994, devolving functions of 15 departments to all the three levels of Panchayati shown in Table 2:

Table 2: Subjects devolved to Panchayats (accompanied by actual executive instructions)

1	Agriculture	5	Food & Supplies	9	Industries	13	Rural Development
2	Animal Husbandry	6	Forest	10	Irrigation and public health	14	Ayurveda and Homeopathy department
3	Education	7	Health and family welfare	11	Public works	15	Social and women's women welfare department (social justice & empowerment dept)
4	Fisheries	8	Horticulture	12	Revenue		

Source: Government of Himachal Pradesh in Status of Panchayati Raj State Profile Himachal Pradesh pg. 215

The tasks and responsibilities devolved related largely to “supervision, monitoring, reporting and planning” in respect of all matters listed in the Eleventh Schedule of the Constitution. The HP report admits that “this notification was never fully operationalised due to resistance from the staff.”⁷

⁷ Government of Himachal Pradesh in Status of Panchayati Raj State Profile Himachal Pradesh pg. 220.

2. IDENTIFICATION OF ISSUES AND ACTION REQUIRED

In assessing the status of activity mapping in Himachal Pradesh, for each of the nine elements identified above some background on international practice is provided as a backdrop,⁸ followed by a situation description and analysis for Himachal Pradesh/India. Lastly, policy options for further work required are suggested.

1. Overall Architecture: Modes of decentralization, SNG Roles and Structure

International practice

Modes of decentralization

Three classical modes of decentralization have been widely cited in literature: deconcentration, delegation/agency tasks, and devolution. Limiting the discussion to the government realm,⁹ these can be understood as follows¹⁰:

- **Deconcentration** is the delegation by central government organization head quarters of administrative tasks to its representatives or branches dispersed over the national territory in a functional/administrative pattern that serves that organization.
- **Delegation/Agency tasks** are assigned to general purpose local government or a special purpose/semi-autonomous agency to be discharged on behalf of the assigning central government/organization. The entrusted entities are democratically accountable to their citizens but must also report on the tasks to the assigning entity.
- **Devolution** is the transfer of functions, requisite power and resources, to local government (including a council) that has considerable autonomy and is democratically accountable to its citizens. Reporting is primarily to the local council but also to the central government.

More detailed differentiation can be seen in Appendix 1.

Roles and hierarchy in multi-level sub-national governments

A variety of choices are possible when more than one sub-national government (SNG) is in place. *In federal systems*, the formative units of the federation (like states, provinces) are particularly dominant units as they often have sole jurisdiction over lower-level SNGs (as in United States, Canada) or shared jurisdiction (as in Germany). *In unitary states*, there is a wide range of hierarchy relations between SNGs. Considerable degree of supervision/guidance can derive from higher level SNGs. This may be embedded in the regional government itself (e.g., Italy's regions and the Philippines' provinces) or be defined as the carrying out of duties on behalf of the central government/state (e.g., Yemen's governorates and Cambodia's provinces). It can be argued that in unitary states, particularly those concerned with national integration and stability, the central government is keen to deal directly with all levels of SNGs, and will delegate regulatory and supervisory roles to a senior level of SNG (like the provincial level) only where this is seen as not threatening those national imperatives. The option of imposing a dual role on SNG or on specific officials/politicians in SNG (where in addition to the regional government orientation there is

⁸ The content of the international sub-section draws liberally from the report being prepared for the Decentralization Support Facility/GTZ in Indonesia (draft form, due in February 2008).

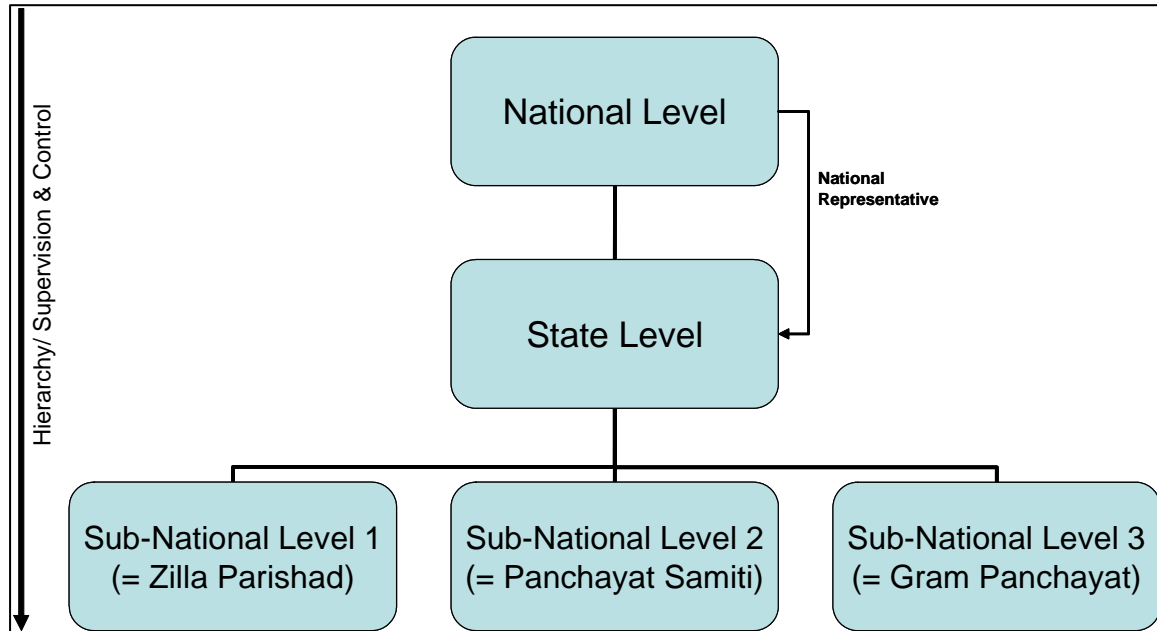
⁹ The definitions are oriented to the simple case of a unitary state, but in a federal state the formative units generally can be seen to act, towards the SNG, as the central government would in a unitary state.

¹⁰ See for example Rondinelli (1981). Many refinements or deviations from Rondinelli's definitions can be found, and those offered in this section are provided by Gabriele Ferrazzi.

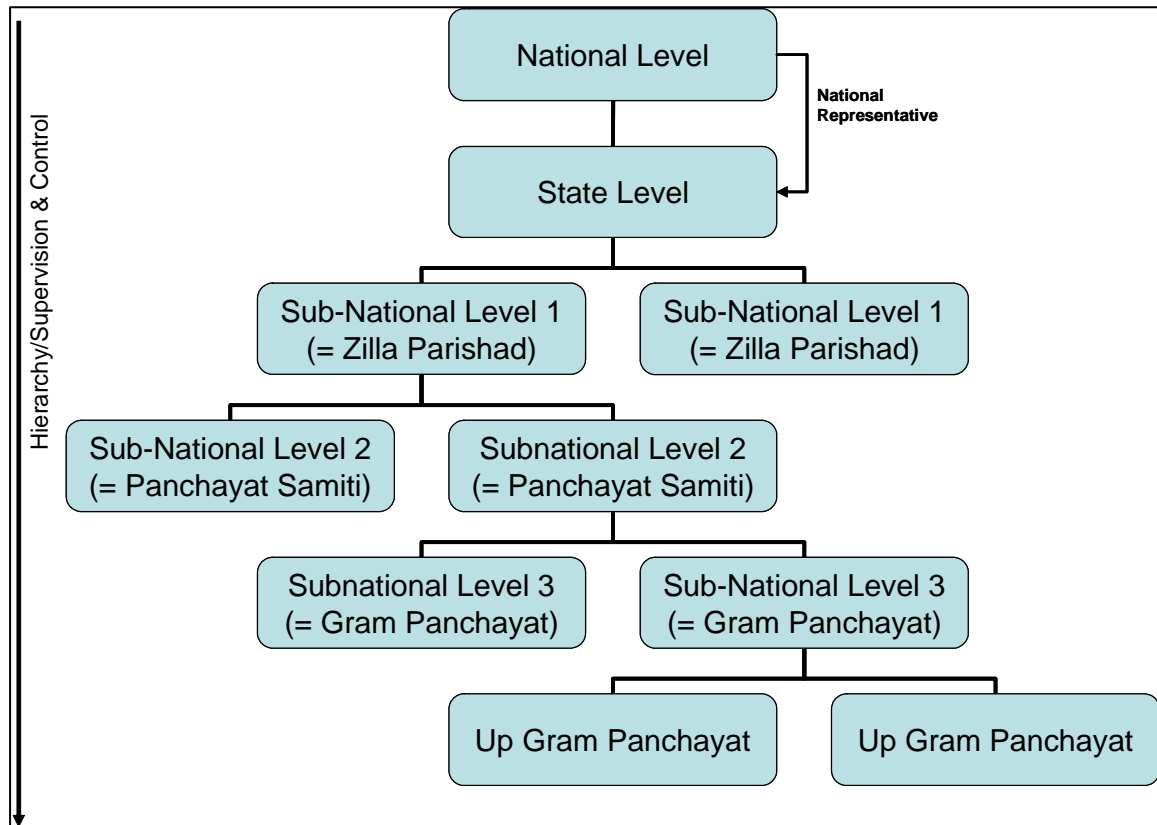
the representation of the central government in the region) is one mechanism to allow delegation while retaining control.¹¹

Figure 1 Examples of hierarchies between national and sub-national governments

a) *Absence of hierarchy between levels of SNG*



b) *Hierarchical Relationship between levels of SNG*



¹¹ An example would be the Governor of the provinces in Indonesia: although elected directly by the electorate of the province as the head of the provincial administration, s/he also represents the national government in the province.

There have been no surveys in readily available international literature of governance patterns that focus on issues of hierarchy between central government and SNGs. It is therefore difficult to identify good practices in this respect. It seems that a variety of approaches are workable and that the choice has to relate to overall political stability and demand for autonomy from all SNG levels and in particular on the perceived role and identity of the meso level that could play a regulatory and supervisory role toward lower-order SNGs.

Structure of sub-national government functions

One way of assigning functions is to make a detailed list of what SNG can or must do (a “positive” list). This gives clarity and contains SNGs within the bounds of these lists, making any other action of SNG “*ultra vires*” (beyond its legal bounds). The positive list can be complemented with a “negative” list; what the SNG cannot do. Even where the *ultra vires* principle is not explicitly invoked, the use of a list of functions makes SNG cautious, as the implicit understanding may be that SNG should not take up something that is not on the list.

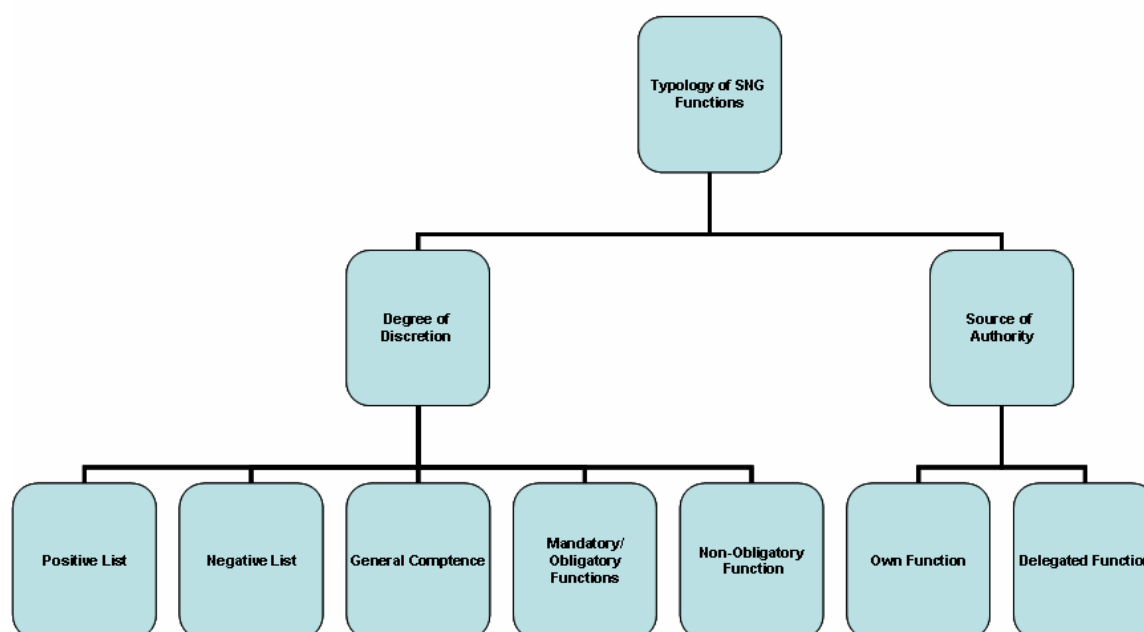
In OECD countries, where decentralized governments have had some time to take hold, or where it was the starting point for any other higher order government, the functions given to local government have historically been quite permissive, *de facto*. In cases, it has also been permissive *de jure* for some time (e.g., home rule in US counties). However, for many decades the *ultra vires* construction generally held sway as government grew, became more formalized, and more centralized. This trend has seen some reversal over the last two decades. Recently, functional assignment reviews around the world have resulted in more permissive formulations (e.g. provinces in Canada, states in Australia, and local government in the United Kingdom).

In many countries, a particular level of SNG of sufficient scale is targeted as the main service delivery level, and efforts are made to ensure that it can function as a **“general purpose local government,”** empowered to fulfil the multiple needs of its population.¹² This designation is increasingly accompanied with as “general competence” construction of functions, meaning that the functions are not listed in detail but rather in broad form, to give as much freedom as possible to SNG to act in fulfilment of its broad mandate.

While general competence seems to be in the ascendancy, this construction is sometimes misunderstood. It is a construction generally found in the organic law for SNG/decentralization, but generally this law coexists with a number of other laws (e.g., sectoral laws, procurement law, planning law) that prescribe or proscribe functions/services and set performance standards. Hence in practice OECD countries that are said to have general competence in actual fact have a hybrid between general competence and *ultra vires* constructions.

¹² There is no consensus on what scale is sufficient, but general purpose local government that provides a number of important services (basic education, primary/preventive health care, water and sanitation, local roads etc.) begins to be realistic when an urban (or fairly dense) population exceeds 10,000 people. Efficiencies are believed to be more attainable when it reaches 100,000 or more.

Figure 2: Typology of Functions of Sub-National Governments



Status in Himachal Pradesh/India

Modes of decentralization

The HP PR Act, 1994 does not always clearly specify the modes of decentralization employed, rather these modes come through indirectly in some sections emphasising delegation/agency tasks:

- 82 (2) *Where functions are entrusted to a Panchayat Samiti under sub-section (1), the Panchayat Samiti shall in the discharge of those functions, **act as an agent** of the State Government.*
- 93 (2) *Where functions are entrusted to a Zilla Parishad under sub-section (1), the Zilla Parishad shall in the discharge of those functions, **act as an agent** of the State Government.*

In the 1996 notification on activity mapping, the lists of activities allocated to the various levels of PRI (apart from not mentioning the state level at all) do not differentiate between different modes of decentralization, giving the impression that the effort lies squarely in the devolution stream. But some functions so transferred seem much more like agency tasks, e.g., “Provide infrastructure facilities and other logistic support to facilitate implementation of the programme” in reference to Child Development services provided by the Zilla Parishad. Similarly, Panchayat Samiti are to undertake the “Execution of approved cases under technical guidance of the staff of the Department” for Biogas projects that are of the Zilla Parishad.

The agency nature of the Articles 82 and 93 functions are further reinforced, in consonance with international good practice, with the tight relationship to the assigning entity. This can be seen in both the case of the Panchayat Samiti and Zilla Parishad. To use the example of the former

(4) The Panchayat Samiti shall, for the purposes of discharging the functions entrusted to it under this section, be under the general control of the State Government or any other authority appointed by it and shall comply with such directions as may form time to time, be given to it.

It has to be said that the formulation of the functions ostensibly to be “devolved” to the Panchayat turn out on close inspection to resemble “agency tasks,” where the local government is directed to fulfil

restricted tasks on behalf of higher levels of government (the state level in this case). Even state officials concede that there is a widespread perception “that rural local bodies are essentially agencies of the state government (primarily for implementing contracts and works)” and that they “have little or no autonomous responsibility at their own level, for any function.”¹³

Hierarchy between Panchayat levels

The federal government seems to take the stance that there should be hierarchy between the Panchayat levels

the higher tier, especially the District Panchayat is also expected to pass on funds and responsibilities to the lower tiers. This is partly necessary because of the fact that a number of DP-wise programmes are required to be desegregated into smaller, territory-based components. It may also be necessary in a situation in which the DP may have to take up certain ad-hoc programmes and provide necessary funds to the appropriate tier for carrying them out.

This extract from the Federal Task Force (pg. 917) sounds very much like a description of agency tasks. It may be that there is to be less hierarchy in functions that are deemed to be “own functions” of Panchayats. However, this possibility is diminished by other provisions, particularly pertaining to the hierarchy between the Zilla Parishad and lower levels, as evidenced by the provision in 92. 1(i) to “[] control, co-ordinate and guide, the Panchayat Samiti and Gram Panchayat within the district.”

General purpose Local Government and structure of functions

The legal framework for India (and HP) does not make clear which level of Panchayat should be the general purpose local government, where most important public services are provided. The Gram Panchayat, with an average population of 1,500 seems much too small, yet it has in Schedule I and II of the 1994 HP Act the most likely functions of a general purpose local government. This construction has been seen in Cambodia as well, where the average *commune* (with a population of less than 2,000) has not been able, or allowed, to take on a general purpose LG role – despite its general competence structure of functional assignment.

A more likely level for a general purpose LG in HP would be the Panchayat Samiti, with an average population of 60,000. But there may be historical and spatial reasons why this level has not been seen as the provider of most basic services. Whatever the reasons, it is fair to ask whether decentralization has been impeded by having placed the general purpose role at the level of the Gram Panchayat.

Summary of observations for HP

- **Preferred mode of decentralization (devolution vs. agency task) not always clear in the formulation of functions**
- **Arrangement of hierarchy between levels of SNG not clear**
- **Level of “general purpose local government” not defined**

Leaving aside the locus of the Schedule I (19 functions)/Schedule II (29 functions), it is difficult to know what construction was intended in HP. The lists hold a varied set of functions, some narrow and others very broad (sectors). It is how they are to be interpreted and elaborated by state legislation that will determine whether they give scope for general purpose LG, or whether they will mean a limited and restrictive *ultra vires* construction. It should be noted that the constitution (and the subsequent HP act of 1994) does not indicate that there exists for the Panchayat a “right of initiative”; even the possibility of requesting and adding Schedule II functions does not make for a proper right of initiative.

¹³ *Government of Himachal Pradesh* in undated, Status of Panchayati Raj State Profile Himachal Pradesh pg 220.

Further work suggested

- ☞ It may be useful to reflect on the three main modes of decentralization as indicated in Appendix 1 of the 1994 HP Act in order to determine if the intent is to truly devolve functions and how the three modes are to coexist.
- ☞ Connected to the above effort to discern the modes of decentralization, if a general purpose local government is desired, the level of Panchayat for this should be determined with due consideration for scale and capacities entailed in the key public services to be provided.
- ☞ Consideration should be given to forging an effective hybrid construction that allows for general competence for the “general purpose local government” while identifying clearly what functions must be performed and to what level of performance.

2. Legal Framework & Mechanisms for Ongoing Adjustments

International practice

Most countries recognize that functional assignment ought to be stable but at the same time have some dynamism as conditions change over the years. The legal framework employed differs considerably between countries, but there is some consensus on good practices on this point. As the European charter states¹⁴

The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.

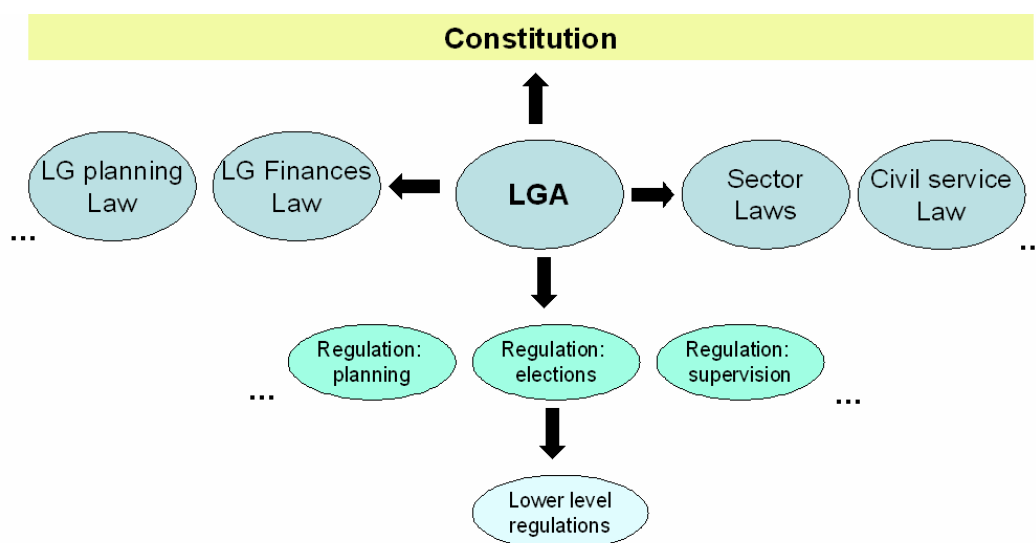
A similar guideline is nearing ratification by the Governing Council of the United Nations Human Settlements Programme (HABITAT).¹⁵ Constitutionally defined functions are common in federal countries, as with Malaysia for instance (with federal and state lists). But it is not only federal countries that do so: South Africa (quasi-federal) and Italy (unitary, but has concurrent function listed in Constitution and some general functions and proscriptions) are two examples of other states that have seen fit to do so.

At the level of laws, the functions of a particular SNG are generally found in an organic law (referred to in Figure 3 as Local Government Act – LGA). But as Figure 3 shows, there are a number of other laws that also shape functions, particularly sectoral laws. Lower level regulations are often used as well to provide details and levels of expected performance.

¹⁴ European Charter of Local Self-Government Strasbourg, 15.X.19.

¹⁵ UN-HABITAT (2007). Draft guidelines on decentralization and the strengthening of local authorities, January.

Figure 3: Legal architecture influencing functional assignment



Once set in law, not many frameworks are very clear on the mechanisms to make adjustments, whether for the case of further decentralization or (re)centralization. Some clarity on these matters would help to set expectations and facilitate incremental decentralization or centralization.

Status in Himachal Pradesh/India

The Indian Constitution sets the framework for territorial divisions and requires the states to empower sub-state level government. The functions of the Panchayat/Gram Sabha are to be set in “law.” This provision can be deemed to be executed in HP through the state law of 1994.¹⁶

However, some of the functions in the 1994 law are rather broad in their scope and require further elaboration. It appears that these details, and the possibility of supplementing (or revoking) functions of the Panchayat can be accomplished by “general or special order” (e.g., Art. 11(3), Art. 83(2)). The HP law therefore does not require that legislation be used for devolving functions to PRI – executive orders/notification are sufficient. It could be argued this gives quicker response to the State in transferring functions (although in fact this has not happened very quickly). The advantage of legislation is that it can be a more weighty instrument that makes it more difficult for resisting Departments to ignore.

It is not clear whether the PRI 1994 law superseded prior laws/regulations governing the various sectors listed in the PRI law. For instance, the 1976/1979 Act and Rules pertaining to Fisheries still seem to be in place (they are displayed in the Fisheries Department of HP web site); the provisions in this act/set of rules, do not mention the role of the sub-state level governments. A quick examination of the Department of Education website, under the description of the functions of the Department, reveals no mention of how the Panchayat are involved in the provision of any level of education.¹⁷

Summary of observations for HP

- **Devolution of functions does not require legislation (statutory laws)**
- **Relationship of 1994 PRI Act with existing sectoral legislation unclear**
- **Little execution of decentralization policy in departmental instruments**

¹⁶ Unlike some federal countries (e.g., United States), the state of HP does not have its own constitution to guide subsequent legislation.

¹⁷ See http://www.educationhp.org/dept_Function.html

The brief scan of some key departmental instruments/information suggests that although some measure of execution has been undertaken in realizing the intent of the 1994 law, this has yet to seep into the consciousness and operational instruments of sectoral departments. It might be said that HP's decentralization effort suffers from a "Sectoral Decentralization Lag" (see Appendix 2 for a generic description). This state of affairs is not uncommon in developing countries where it is difficult to generate and implement coherent policies.

Further work suggested

- ☞ Discussion is needed on the legal architecture desired for realizing decentralization; whether this is to be achieved by
 - omnibus executive orders that formalize an "activity mapping" matrix, or
 - amending sectoral laws/regulations themselves
- ☞ Officials have noted some resistance from Departments to decentralization. This observation reflects a common phenomenon (*Sectoral Decentralization Lag*), and requires a well thought out approach to engage departments in a dialogue over their concerns and political will to address these and move forward with a robust legal framework that will find acceptance among key stakeholders.

3. Criteria & Mechanism for (ongoing) Functional Assignment

International practice

The need to set a process for the ongoing adjustment of functional assignment is more pressing in countries that have chosen to use an *ultra vires* construction. The need is more obvious for facilitating decentralization, but there is also sometimes the need to re-centralize functions or to acknowledge functions that had not been anticipated in earlier times. In contrast to the *ultra vires* construction, the broad mandate of general competence allows for initiative by the SNG, although this may be limited by any subsequent laws/regulations of higher levels (which can also be imposed to stop SNG from carrying out tasks they have been doing for some time, presumably if they are been done badly).

In either the *ultra vires* or hybrid constructions, it is good practice to indicate how adjustments are to be made, specifying the legal instrument and key procedures (e.g., consultation mechanism).

For whatever direction of movement of functions, some countries undergoing decentralization have seen fit to specify the criteria that will govern "who does what." The general principle of "subsidiarity" is now slowly being applied in Europe and is finding its way to other countries. This principle dictates that the function/tasks in question should be undertaken by the smallest jurisdiction that can do so effectively and efficiently.

International lists of criteria used for assigning functions are not as available as the lists themselves, and the process of applying the criteria (who sits at the table and how criteria are weighed, or how trade-offs are made) is even less transparent. The most frequently cited criteria are spill-over and efficiency/economy,¹⁸ but capacity of local government has also been a recurring theme. The GoI has suggested principles of public finance (economies of scale, externalities, equity, heterogeneity of demand) and principles of accountability as yardsticks for making allocative decisions.¹⁹ Appendix 3 provides some examples of sets of criteria promoted/applied in other countries. It is important to point out that the use of criteria is far from a mechanical exercise; there is much room for interpretation of how these criteria

¹⁸ See Ferrazzi, G. (1998). Criteria for Transferring Functions to Sub-national Governments: Selection and Application in Indonesian Decentralization Initiatives, unpublished doctoral thesis, University of Guelph.

¹⁹ See presentation by T.R. Raghunandan (Joint Secretary, MoPR) at the December 2007 workshop on Activity Mapping and Functional Assignment in Himachal Pradesh (PRI-Report 2008-1, Annex E).

are best applied. Lists of functions prepared in a particular country by interested or disinterested parties using the same criteria could yet vary considerably.

Status in Himachal Pradesh/India

According to the Union Government, the allocation of functions is to be based on the principle of subsidiarity, with economies of scale, equity, heterogeneity and public accountability being additional principles and criteria to be taken into account. The subsidiarity principle was confirmed by the Seven Roundtable exercise.²⁰ It is seen by federal officials as the “attribution of appropriate activity to a Panchayat level, based on the principle that each activity ought to be undertaken at the lowest level that it can be undertaken.”²¹

The federal Task Force report stresses two major criteria to be applied for the distribution of powers and functions:²²

- a) a function should be performed by a tier to which it belongs naturally, and
- b) a function may need to be disaggregated into tasks to be performed by different tiers (this will call for mechanisms for close inter-tier co-ordination).

The report also states that “another set of criteria which has to be applied for the distribution of functions is based on the nature of the subjects to be dealt with,” but gives no further guidance.

Summary of observations in HP

- **Distribution of functions to PRI levels does not indicate whether and how criteria & principles were applied**

There is no documentation in the HP/India cases of how the above criteria have been applied. Others have added the criterion of “managerial or technical capacity needed for performing an activity”²³ which is closely related to the size of the local government; if a SNG has a reasonable size of population it is likely to have or be able to find the financial and human resources to establish a capable administration.

Further work suggested

- ☞ It is important to push the principle of subsidiarity further, making it more operational. Sensible criteria be considered in the preparation of Activity Mapping include externalities, cost/economy of scale, and the administrative capacity. The Federal list has similar criteria but adds some that are difficult to operationalize – these may need clarification/examples of application, or may perhaps best be ignored.
- ☞ The application of the criteria should be flexible but transparent. Some stakeholders will for instance raise criteria that are important to specific groups or localities; these should be given consideration as well. **It is more important in initial decentralization efforts to attain consensus and a workable arrangement, rather than the most optimal “economic” efficiency.**

²⁰ Government of India, Implementation status of seven Roundtable conferences held during, 2004. Comments on the recommendation of the 7 Roundtables held by GOI from July- December, 2004.

²¹ Raghunandan T. R. (2006). Strengthening Grassroots level planning – Policy and institutional issues, December 11.

²² Government of India (2001). Report Of The Task Force On Devolution Of Powers & Functions To Panchayati Raj Institutions, Ministry of Rural Development, Department of Rural Development (Panchayati Raj Division), New Dehli, pg 197.

²³ Anon. (2007). Issues for Panchayati Raj Reforms, Panchayats as ‘institutions of self-government: Constitutional structural and institutional issues, how to make them effective for delivery of services?’ pg. 5.

- ☞ Some way of adjusting the assignment over time should be considered as well. This may be through provisional lower level legal instruments, but over time might be embedded in law.

4. Concurrent Functions

International practice

The principle of concurrence in functional assignment can refer to two different situations:

1. A particular function can be carried out by more than one level of government, simultaneously (e.g., the concurrent list for federal and state levels in Malaysia and India).
2. A particular function can be taken up by a level of government if it has yet to be taken up by another level of government or does not infringe on another level of government (usually higher level, e.g., agriculture and immigration in Canada-provincial constitutional lists).

The first case is a fairly common approach that encompasses a sub-set of all governmental functions, usually a small to modest proportion. Too much concurrence is thought to lead to difficulties in determining roles and in determining lines of accountability..

The second case sees concurrency to mean “opportunity” to take on a function rather than joint occupation. Usually a lower level will be allowed to take on a function if the higher level has yet to regulate it in a way that would prevent it from doing so. It is debatable whether this provisional and sequential occupation of a function should be called “concurrent.” When this mechanism gives protection to lower level government to hold its ground if they have taken the initiative first, then it is essentially similar to the “right of initiative” (see Section 6 in this chapter).

Status in Himachal Pradesh/India

The HP lists in PRI law of 1994 would seem to indicate a measure of concurrency in the functional assignment for Panchayat. Appendix 4 shows the Schedule I -functions given to the Gram Panchayat, and Schedule II - functions that may also be given to Gram Panchayat. To the extent that not all functions are given to the Gram Panchayat (because they are held at state level or given to the Zilla Parishad or Panchayat Samiti), it might be expected that there will be a lack of clarity for some functions that seem to overlap between the two lists and the different PRI levels involved. For instance:

- “drains, tanks, wells” vs. “drinking water”;
- “plantation and preservation of Panchayat Forests vs. “social forestry and farm forestry/minor forest produce”;
- “maintenance of Gram Panchayat property” vs. “maintenance of community assets”;
- establishment, management and regulation of markets and fairs vs. markets and fairs.

Other lists are problematic in this regard as well. Appendix 5 shows the Gram Panchayat, Panchayat Samiti, and Zilla Parishad lists side by side. Because of the too broad format, or unclear boundaries of the terms, there are considerable overlaps/duplication. Some examples are:

- **Cottage industry:** given to both Panchayat Samiti and Zilla Parishad
- **Animal husbandry:** given to both Panchayat Samiti and Zilla Parishad
- **Markets:** given to both Gram Panchayat and Panchayat Samiti
- **Panchayat Forests/Social Forestry:** given to Gram Panchayat and Panchayat Samiti

Summary of observations in HP

- Existing functional assignment indicates concurrency – by purpose or result of insufficient un-bundling?

This raises the question of whether the formulation constitutes a purposeful attempt to introduce concurrency, or is merely an insufficient unbundling of functions that resulted in inadvertent concurrency.

Further work suggested

- ☞ Consider whether concurrent functions are desirable, keeping in mind the tussle and problems of accountability they can generate.
- ☞ If concurrent functions are not desired, then
 - give the functions to one level only or
 - un-bundle the functions sufficiently and assign the parts to appropriate levels.

5. Formulation of Functions

International practice

A wide range of formulations are seen in lists of functions adopted throughout the world. Some principles that might be gleaned from their construction, and experiences in application, might be:

- recognize when functions need to be unbundled, to avoid unwanted concurrency or giving parts of functions that are not suited for the level in question;
- nonetheless, keep the function whole if possible (inject some exceptions if that helps to retain a holistic formulation);
- avoid framing functions as projects or schemes – functions are the underlying and stable mandates that give rise to projects, programs and schemes that will change over time;
- avoid limiting jurisdiction by value of projects/activities; procurement should be wrapped with its substantive function;
- management functions should be implicit or mentioned as a global reference;
- avoid the use of the term “scale” or even “level” as explanatory terms as they lead to multiple interpretations or simply do not add any information;
- functions should not be mere reflections of pre-existing organizational mandates.

Keeping the functions whole makes government more easily accountable and efficient (e.g., capital and maintenance expenditures are more easily matched), and makes the lists a lot more readable. Readability is also enhanced when norms/standards and supervision roles are stated in a blanket fashion for all of the functions to which they pertain – rather than listing them for each and every small “substantive” function.

Difference between levels can be framed as one of “scale” but generally only if the scale dimension is already “standardized”: e.g., sea jurisdiction in miles from shoreline; parks that have been already been listed as belonging to various levels; municipal airports where location of facility and destinations/status are obvious; roads that have a technical designation (e.g., arterial roads joining district capitals).

Scale should not be the term used to differentiate functions that relate to different target groups. For instance, if the placement of specialized staff is to be a Zilla Parishad level function with the scope being “district scale,” this formulation will lead to two possible interpretations: a) that it pertains to all staff from all PRI levels that fall within the boundaries of this district, or b) that it only pertains to staff that are part of the district establishment.

Functions and organization are often conflated or confused. Organizations should follow functions; reflecting practical/efficient ways of discharging functions.

Status in Himachal Pradesh/India

The functions devolved to the PRI are in the nature of much too broad ‘subjects’ rather in the terms of ‘activities’ or ‘sub-activities.’²⁴ The federal government recognizes that²⁵

.. activity mapping has proven to be somewhat difficult for States to achieve for several reasons. The most important impediment has been the persistent lack of clarity when deciding as to which of the disaggregated activities ought to be devolved...most policy papers and strategies place devolved activities in a kind of concurrent list, with different tiers of government expected to share responsibility. This seriously undermines their individual accountability to the people.

Above observations (under Section 4) confirm that this applies to Himachal Pradesh as well. Other weaknesses evident in the formulation of functions in HP include:

- Too often, there is unnecessary reference to financing, e.g., “Construction of Anganwari Centers in the Gram Panchayats. Funds to be transferred” [authors’ emphasis]. The generic management functions should be assumed, or stated as blanket references wherever possible.
- Significant functions seem to arise in the specific roles of standing committees of the Zilla Parishad that are not explicit or foreshadowed in the functions of the Zilla Parishad itself (e.g., social justice; addressing justice and welfare of marginalized groups).
- A great deal of tasks is narrow in scope and relates to the implementation of higher level projects and schemes, e.g. “distribution of food grains under JRY/IDDRY/EAS”
- Planning is separated out from its substantive subject, and thus is more easily given to more than one level because the clash of jurisdiction is not evident in this treatment (e.g., preparing an agriculture production plan is to be found both at Panchayat Samiti and Gram Panchayat levels).
- Functions that are closely related are nevertheless separated between levels of the PRI, thus splintering accountability, e.g., in the education sector (related to high schools) one can find “supervision of distribution of high school uniforms, books etc. for target group students” as a function of the Zilla Parishad, while “maintenance of high school buildings and related infrastructure” is given to the Panchayat Samiti.
- Concurrent functions that may not be intended: e.g., “elimination of bogus ration cards” at Panchayat Samiti and Gram Panchayat levels

Further work suggested

- ☞ Introduction of good practices for formulating functions needs to be undertaken as a prerequisite to the Activity Mapping exercise.
- ☞ Examples of lists from other countries may be helpful, not as templates but as inspiration for formulation that is most clear.

Summary of observations in HP

- Sometimes formulation of functions too narrow
- Substantive function and related management functions mentioned separately
- Concurrence of planning functions for same subject matters
- Separation of activities dealing with same objects (like high schools)

²⁴ GoI (2001). Op. cit. pg. 906

²⁵ GoI (2006). Op. cit. pg. 65-66

6. Prescription versus Discretion

International practice

It bears repeating that a wide variety of practice is found internationally in the assignment of functions. Many countries have policy/legal frameworks that emphasize functions of SNG or make them obligatory (see Fig. 2). For this category of functions, which are particularly introduced in the context of basic public services, often norms and standards are set through sectoral instruments, laws and regulations in order to specify the performance expected of SNG. The standing and enforceability of these standards vary considerably in legal and practical terms. One concern in instituting such minimum service standards is financial adequacy to meet them – i.e., the desire to avoid so-called “unfunded mandates”.

If a country opts to specify obligatory functions for SNG, this choice suggests that some room should be given to SNG to take on activities other than those specified as obligatory functions. What is done purely at the initiative of SNG might be deemed to be discretionary (non-obligatory) functions; such a complement to obligatory functions would enhance local autonomy in view of the somewhat restrictive nature of obligatory functions (the degree of restriction depends on the nature of the performance expectation attached to obligatory functions).

Various countries have instituted discretionary functions, explicitly or implicitly. For instance, Cambodia allows, in principle, *communes* to undertake functions not set out in regulations if these are proposed first and approved by a central level body – this is a rather awkward form of local level discretion and belies the general competency formulation of functions of the *communes*. In some countries, the functional architecture includes a provision that can be called a “right of initiative,” which may be particularly helpful when a positive list (like obligatory functions) is used inducing an unduly self-restricting stance on the part of the local government. The “right of initiative” provision encourages the LG to take on activities that are not spelled out in the positive list. The Philippines is one country with this construction.

It is important to note that there can be no discretionary functions in an absolute sense; at a minimum SNG activities must comply with the higher-level legal frame (e.g., must be non-discriminatory, in line with the criminal code etc.). The discretionary functions are those that arise from the creativity and priorities of the SNG and that are taken up as resources permit, after a determined effort to take care of the core business of local government. They are local priorities, but do not displace what are the highest priority functions of SNG, which are set as the obligatory functions of SNG.

In a multi-level sub-national government context, discretionary functions and/or “right of initiative” provisions are ideally accompanied with rules to adjudicate who in fact has the right to move forward in a particular activity if two levels are vying to do so, e.g., there may be rules that allow both to do so for particular kinds of activities. It is difficult to find information on such arrangements, but some good practices could be imagined. For instance, if parallel or joint approaches (concurrency) are not practical then the first to initiate may be given preference, or if activities have yet to be launched a particular level may be given blanket precedence (e.g., the level designated to be the general local purpose local government).

Supervisory and oversight mechanisms between the state level and the levels of SNG (the PRI) need to be aligned with the character of local government functions performed: obligatory functions need a much closer and detailed supervision than discretionary, non-obligatory functions.

Status in Himachal Pradesh/India

Clarity on what must be performed by the Panchayats is evident for the Gram Panchayat, where the preamble in Article 11 states that the Gram Panchayat “**must** perform the functions in Schedule I.” The Panchayat Samiti (Art. 82(1)) and Zilla Parishad (Art. 93(1)) are also entrusted with some “functions of State Government” and both “**shall be bound to perform** such functions.” The Panchayat Samiti is also seen to have a **duty** to undertake functions indicated in Art. 81, but some flexibility is introduced with the

clause “so far as the Panchayat Samiti funds allow.” It is not clear whether this was injected to let the Panchayat Samiti, or the State, off the hook. To the extent that the State is serious about imposing obligations and duties on local government, then it must be equally serious to ensure that funds and other resources are made available to fulfil the expectations; imposing obligatory functions is a two-way street.

The project team did not yet have time or documents to ascertain the status of expectations regarding the obligatory functions in the HP legal framework. It does appear that some norms are established for some services. For instance the Irrigation and Public Health Department sets out a service requirement that a water stand post be provided for 50-60 people within 100 meters.²⁶ It is not clear however how these norms are shifted to be a performance responsibility of the Panchayat in the context of decentralization.

Further work suggested

☞ In undertaking Activity Mapping it may be helpful to consider carefully what the prescriptions in functional assignment entail in HP, and to align the financing and supervision systems to be consistent with the expectations.

☞ If it is deemed important to give the Panchayat institutions (one or more level) some freedom to take on activities that are not prescribed, then this possibility needs to be inserted explicitly as a “right of initiative” and/or as part of a general competence construction.

Summary of observations in HP

- **Gram Panchayat functions formulated as obligatory functions („must perform“).**
- **Obligatory functions of Zilla Parishad and Panchayat Samiti less clear, sometimes linked to availability of funds.**
- **Existence and relevance of minimum service standards needs to be ascertained.**

7. Organizational/Personnel Implications of Functional Assignment

International practice

Just as “funds follows functions” so does “form follows function.” If SNG structures are adapted to discharge the newly-assigned functions, then organizational adjustments need to be made to resize sector ministries/departments in accordance with functions that have been shed or re-defined in order to ready them to better take up their revamped roles. It is often the case that decentralization designs and their legal frameworks address only the former, but it is widely acknowledged that the success of decentralization depends also on the proper and timely undertaking of organizational adjustments of the decentralizing levels of government. The experience of decentralizing countries where central ministries resist change has been noted (e.g., Philippines, Ghana, Yemen, and Indonesia to some extent), and this resistance leads to substantial inefficiency at central level and less than adequate preparation to play out the revamped role of the sector ministries.

While decentralizing organizations (like central or state-level departments) must shed some functions, it is important for them to retain some control over local government and personnel in decentralized systems. Here, a number of possibilities can be seen internationally. Some SNG personnel services are part and parcel of the national public service system, with type/size of organizations and the establishment set by the central/state government. Strict conditions of service are set for SNG, on payment and other personnel procedures. In other countries, some SNG are fairly independent in some respects, particularly regarding recruitment, movement, performance evaluation, and salary. In other countries the systems are entirely separate, with only some general labour laws pertaining to all services.

²⁶ Irrigation and Public Health Department (2005). Information provided in the context of the 2005 Information Act, State of Himachal Pradesh, pg. 19.

Status in Himachal Pradesh/India

The provisions regarding organizations and personnel appear inconsistent. In places it seems that the three “Fs” (Functions, Funds, and Functionaries) are to be devolved as a package. But other provisions seem weaker, like the statement that functionaries will be “placed at the disposal of the Panchayats concerned.”²⁷ This does not seem to be very strong language if devolution is desired. Who will have control over the establishment, and will make decisions regarding hiring, evaluation of performance, firing, promotions?

Summary of Observations in HP

- Inconsistencies regarding devolution of three „F“s
- Need to define personnel management system for SNG

It seems in fact, as the union government itself notes, that “no functionary has yet been transferred to the PRIs pertaining to the functions devolved.” Some movement in this direction has taken place however, with the State government “... empowering Panchayats to appoint their own servants on contract basis at fixed monthly remuneration to be paid out of Government grants.”²⁸

Further work suggested

- ☞ Some consensus needs to be attained on the nature of the PRI establishment and local organizational structures. Discussions of the various general options will be needed, drawing on international practice where organizations/personnel are allowed to be shaped by LG within frameworks that reflect the values/concerns of higher levels.

8. Finance’s fit with functions

International practice

The principle of “money follows functions” is widely acknowledged and frequently breached. There are several reasons for this mismatch, some perhaps with justification. For instance, to kick start decentralization, lower-level governments (e.g., municipalities in South American countries and *communes* in Cambodia) have been given some funds without clarity on what functions they are responsible for (at most they have been given a menu to choose from in using their funds). There is (or was) the hope that this “training” period will lead to a more institutionalized approach where LG becomes responsible for the entire service/service area, based on a better delineation of financing required to provide the service.

Further frustrating the linkage between funds and functions has been the reliance on formula-based transfers that have no evident connection to the real expenditure needs of SNG; the proxies involved (e.g., population size, poverty index, cost indices) do help with horizontal equalization but do not necessarily create a match between service needs (at expected levels/quality) with revenues.

Where decentralization has been a precipitous political process, there has not been time to adequately cost the functions that are devolved to local government (e.g., Indonesia). Few countries are willing to invest in costing exercises to fine tune their LG financing systems, though this is now changing as pressure mounts to cost MDG attainment – where LG expenditures are paramount.

²⁷ Statement of Conclusions Arrived at Between The Honourable Union Minister for Panchayati Raj and the Honourable Chief Minister of Himachal Pradesh at Shimla, on 29th May 2006, pg. 11.

²⁸ Government of India, Implementation Status of Seven Roundtable Conferences held during, 2004. Comments on the recommendation of the 7 Roundtables held by GOI from July- December, 2004.

Status in Himachal Pradesh/India

The 73rd constitutional amendment makes reference to the establishment of sector accounts that would enable states to finance the PRI. It appears that the State of HP has yet to establish sector accounts that would enable it to quickly follow the Activity Mapping effort with the decentralization of finance to accompany the functions given to the PRI. It is also not clear if the tax raising powers of the PRI are to be bolstered, or if the additional finances are to come only through increased transfers. If local taxes are too small a proportion of local revenues, it will be difficult for citizens to be vested in their local government and make demands for the taxes they contribute.

The link between functions and finances is made quite clearly for agency functions of Art. 82(3):

“There shall be paid by the State Government to the Panchayat Samiti such sum as may be deemed necessary for discharging the functions entrusted to it under this section.”

And similarly in Art. 93 (3):

“There shall be paid by the State Government to the Zilla Parishad such sum as may be deemed necessary for discharging the functions entrusted to it under this section.”

Summary of Observation in HP

- Establishment of PRI sector accounts not clear
- Issue of local taxation
- Legal provision for funding of agency tasks, however reality less certain

How these transfers are to be established is still not clear. Neither does it become evident that indeed funds have been transferred.

Further work suggested

- ☞ More attention needs to be paid to the specific mechanisms to ensure financial adequacy and discipline for the devolved functions and agency tasks to be consolidated through the Activity Mapping exercise.
- ☞ Attention must be paid to maintain consistency between the type of functions pursued, and the financing mechanisms. For instance, if agency tasks are seen to be assigned to the Panchayats as a organ of local self-government, then it would not be appropriate to let Departments channel funds directly to implementing organs of the Panchayat - bypassing the respective Panchayat budget.

9. Process of functional assignment (activity mapping)

International practice

It has been noted that decentralization works best when the decentralizing level of government has the capacity to retain control (in a refashioned sense) and is able to guide and support SNG. The quality of functional assignment very much depends on the quality of the process used to attain it. Most developing countries will need to deal with a “**Sector Decentralization Lag**” (see Appendix 2) as the sectoral departments/ministries are often at different points in their understanding of cross-sectoral decentralization policies, or in the development of decentralization policy for their sector, and in making concrete efforts to further decentralization. It takes more than progressive constitutional and legal provisions to realize decentralization.

The key to legitimate and workable functional assignment is the genuine involvement of key stakeholders, among them of course the central/state line ministries/agencies (CLMs). CLMs generally fear the following:

- **Capacity gaps** - inability of LG to rise to the challenge given their low capacity;
- **Service disruptions** - due to capacity and transition challenges, service provision may be placed in peril;
- **Misalignment with national objectives** - in view of insufficient time or experience in reworking vertical relationships, or overly permissive LG framework, LG efforts will not be sufficiently aligned with national objectives.
- **The motives of the Ministry/Department responsible for LG** - there is sometimes fear among CLMs that the ministry responsible for LG promotes decentralization as a way to shift control away from specific service sectors and augment it in its own “LG sector.”

These concerns are often justified, and must be constructively addressed. A prolonged period of misalignment of CLMs with the central policy of decentralization can have debilitating consequences for the decentralization effort and for the entire policy making environment of the country/state. Specifically, the following unwanted results may come to pass:

- Inefficient use of limited sectoral resources due to stagnation in adjustments/innovation in service delivery arrangements within the lagging sector.
- Sub-optimal decentralization results in other sectors/services that have moved forward in view of lack of synergies with related services/sectors (e.g. decision making is still vertical for related services; critical mass of administrative staff/resources is not obtained in LGs).
- Unhealthy tensions between policy actors.
- Persistent contradictions between legal provisions and reality on the ground, or conflicting legal provisions in LG versus “sectoral “ legal frameworks leading to a loss of public trust/confidence in the rule of law and government policies.

A sectoral lag can sometimes be turned to good advantage, as a leading sector becomes a “pilot” and a role model for the rest, in a sectorally-phased approach. But a phased approach that is unduly prolonged and is not used in preparatory work across sectors will only invite the downside listed above.

Gaining the interest of a CLM to take part in the piloting rests to a large extent on the leadership to be found in the CLM itself. At the same time, some body is needed to ensure cross-CLM coherence. This can be established early in the functional assignment process, involving a dialogue/policy development platform cutting across CLMs. The ministry concerned with LG, planning, finance, or administrative reform may be well placed to facilitate this dialogue and joint policy development; the choice may rest on relations of trust and capacity.

Within the CLM itself, it may be helpful to establish some form of organization to undertake functional assignment, on a temporary or permanent basis. Several options can be considered, and the chosen option must be suited to the CLM in question with respect to achieving the following:

- Cross-unit analysis and dialogue within the CLM
- Flow of information from technical to political level in the CLM
- Engagement with the coordinating ministries and any established inter-ministerial coordination committee (IMCC)

The CLM may choose any, or a combination of the following:

- **A focal point**; a person with overall responsibility to facilitate internal activities and be the technical link to cross-sectoral dialogue/policy platforms and stakeholders. The individual may be senior, in a deputy minister or secretary general role, or an advisory/staff position that requires technical and political expertise. This approach has been seen in Yemen and Cambodia.
- **Existing ministry policy unit** that is established as a staff function and draws in part from line units for information and views on decentralization. This works best if it is not a “default” option but is purposefully selected and launched.

- ***New decentralization policy group*** that is established as a staff function and draws in part from line units for information and views. This approach was seen in the health and education ministries in Indonesia.
- ***Sectoral stakeholder forum***; a formal or informal organization that brings together the CLM with relevant stakeholders. This tends to complement internal organizational choices.

There is no best way to set internal organizational structures for decentralization, but having well respected individuals in these positions/structures is certainly advantageous.

The internal and external dialogue can be enhanced through a number of measures that together form a **Communication Strategy** on decentralization for the CLM, for example:

- ***Pamphlets*** explaining the CLM task structure for decentralization or specific initiatives
- ***Web site*** or a devoted page in the CLM website to indicate the organization, work plan, initiatives, progress, and events.
- ***A feedback mechanism*** (e.g., telephone, email) linked to the organization/focal person charged with decentralization
- ***Internal orientation sessions*** (e.g., over lunch) should be provided for the CLM staff to understand the approach and work plan and other matters relating to the decentralization efforts of the CLM. In particular, the sessions should clarify what is expected from each relevant unit in the CLM and the opportunities provided to make a contribution or to gain skills and knowledge.

The dialogue should at some point extend beyond the CLM officials, encompassing local governments and their associations, relevant professional associations (e.g., teachers, health workers), experts from research and higher education organizations, non-government and private sector organizations involved in service delivery or in advocacy.

Great care must be taken in explaining how external actors will participate in the implementation of the sectoral decentralization work plan. Identifying stakeholders is a useful step, and there will be differences of opinion regarding who should participate, or at what point they should participate.

Content of work plan of the CLM:

- Confirming or establishing the internal organizational set up of CLM to boost/guide decentralization
- Diagnostic work to be undertaken; including desk work and field work
- Key internal meetings to gain support and launch key activities
- Participation in cross-sectoral CD activities
- Progress meetings in the CLM

It is exceedingly difficult in a complex undertaking of this kind to set out a work plan that will hold for the period in question. Nevertheless, an adaptable work plan can be useful to keep the focus on key milestones.

It may not be possible for the CLMs or the coordinating ministries themselves to point to a clear timetable for sector decentralization. Policies may be made in an ad hoc way, as political pressures make themselves felt. A realistic time frame needs to be set, usually spanning one or two years, giving

enough time to explore current arrangements, develop and explore options, and make decisions. It may be necessary to undertake some pilot activities, or to phase in functions across or within sectors.

Status in Himachal Pradesh/India

The approach used by HP to move forward on the commitment set out in the 1994 PRI law is not well documented, but an initial effort referred to as Activity Mapping led to the preparation of a Fact Sheet²⁹

²⁹ Download from <http://hpanchayat.nic.in/pdf%20files/ActivityMapping.pdf>.

produced for each of the subjects devolved to the PRIs,³⁰ setting out detailed activities to be undertaken by each level of the PRI system.³¹ No state level functions were listed, nor details on the devolution of funds and functionaries,

According to GoI, Activity Mapping is to be more comprehensive than the first HP attempt entailed (see box below). It is a way to systematically move toward decentralization. It requires functions to be “broken into activities” so they can be assigned to different levels of government. The activities should “not be unduly influenced by the way budget items or schemes are arranged.” It seeks to reassure various stakeholders that “there is no gain or loss of power through Activity Mapping.”

The GoI canvassed all states recently and determined that progress on Activity Mapping was variable between them. As of October 2007 it could point to:

- States that have issued Activity Mapping notifications and have or are operationalising them: **Kerala, Karnataka, Orissa, West Bengal, Haryana, Assam, Sikkim**
- States where Panchayati Raj Acts themselves incorporate detailed roles for Panchayats: **Maharashtra, Gujarat, Goa.**
- States where Activity Mapping is ready to be notified and operationalised: **Andhra Pradesh, Chhattisgarh, Madhya Pradesh, Punjab, Rajasthan, UP, Uttaranchal.**
- States where there is gathering momentum: **Arunachal Pradesh, Bihar, Himachal Pradesh, Manipur, Tamilnadu, Tripura.**

Spurred by the recommendations of the Seven Round Tables, HP set out to address these recommendations with “all deliberate speed,” undertaking to clearly demarcate the responsibilities of the three tiers with respect to functions, funds and functionaries, with notifications of transfers based on Activity Mapping to be issued by August 2006.

Activity Mapping according to GoI

- Identification of activities related to devolved functions and
- Attribution of appropriate activity to each level, based on the principle that each activity ought to be undertaken at the lowest level that it can be undertaken,
- Activity mapping to touch all levels of government, from the Central level to the GPs,
- Activity Mapping to trigger fiscal decentralization

Criticism has been aimed at the state efforts, suggesting that “most of the exercises on activity mapping in different states have remained essentially a bureaucratic exercise”.³² Reversing this trend, inviting stakeholders into the process in a genuine way would work to add views on what is workable, and would add legitimacy and support for the implementation stage.

In HP, the momentum for a renewed effort at Activity Mapping in HP came when the departments were

requested on 27th March, 2006 to list out the activities which can be devolved to the PRIs and finalize the Activity Mapping “immediately”. So far, the Departments of IPH, Ayurveda, Horticulture have prepared the Activity Maps, presently under review by the Panchayati Raj Department. This process is expected to be completed within the fiscal year 2007-08.³³ It is not clear how the current lists have been prepared, and how subsequent ones will be concluded – the approach is currently being fashioned.

Summary of Observation in HP

- **Process of previous (1996) exercise not documented**
- **HP lagging behind other states in India according to GoI analysis**

³⁰ The 1994 HP PRI Act devolved 27 out of the 29 subjects stipulated in Schedule XI of the Constitution to the PRI. The 2001 amendment of the 1994 act reduced the number of devolved subjects to 19, involving 15 different departments.

³¹ It seems that this effort sought to follow the Activity mapping model evolved by Ministry of Rural Development.

³² Issues for Panchayati Raj Reforms Panchayats as ‘institutions of self-government: Constitutional structural and institutional issues, how to make them effective for delivery of services? Pg. 5

³³ HP Implementation status of Seven Roundtable Conferences - Comments on the recommendation of the 7 Roundtables held by GOI from July- December, 2004.

Further work suggested

It appears that the past round of Activity Mapping was essentially a compilation of the Constitutional and HP law functions. It was neither a representation of actual on-the-ground arrangements nor a vision of the legally possible devolution that the State wished to effect. In moving forward, it may be useful to see the challenge as a series of required steps, as follows:

- ☞ The State must achieve a common view among all departments regarding the fundamental objective of the Activity Mapping exercise.
- ☞ The effort could begin by describing the current service arrangements, breaking down the services into generic management functions where necessary.
- ☞ Stakeholders could be engaged to discuss what new arrangements might be workable, in line with the intent of the Constitution and HP Act of 1994.
- ☞ A time line should be set with a clear process of internal sectoral discussions, inter-sectoral discussions, and consultations. This should allow sufficient time to undertake a good process (1-2 years).
- ☞ Ministries concerned with financing, and personnel need to be involved at critical points to make the approach reflect the 3 “F” principles.

Table 3: Summary of Analysis

Elements of Functional Assignment	Observation for HP	Main suggested further steps
1. Overall architecture	<ul style="list-style-type: none"> Preferred mode of decentralization (devolution vs. agency task) not always clear in the formulation of functions Arrangement of hierarchy between levels of SNG not clear Level of “general purpose local government” not defined 	<ul style="list-style-type: none"> Determine mix in modes of decentralization Determine level of general purpose local government Combine general purpose local government with clear allocation of obligatory functions
2. Legal Framework, mechanism for adjustment	<ul style="list-style-type: none"> Devolution of functions does not require legislation (statutory laws) Relationship of 1994 PRI Act with existing sectoral legislation un-clear Little execution of decentralization policy in departmental instruments 	<ul style="list-style-type: none"> Determine whether focus should be on omnibus regulation or adjustment of sectoral instruments Engage sector departments
3. Criteria for assigning functions	<ul style="list-style-type: none"> Distribution of functions to PRI levels does not indicate whether and how criteria & principles were applied 	<ul style="list-style-type: none"> Operationalise the principle of subsidiarity and consider other criteria Apply criteria in flexible but transparent way Attain consensus and workable arrangements – this is more important than pursuing the most optimal “economic” efficiency Consider ways of adjusting the assignment over time
4. Concept of concurrent function	<ul style="list-style-type: none"> Existing functional assignment indicates concurrency – though not clear if by intention or as a result of insufficient un-bundling 	<ul style="list-style-type: none"> Determine whether concurrent functions are desirable If not, give the functions to one level only or un-bundle .
5. Formulation of functions	<ul style="list-style-type: none"> Sometimes formulation of functions too narrow Substantive function and related management functions mentioned separately Concurrence of planning functions for same subject matters Separation of activities dealing with same objects (like high schools) 	<ul style="list-style-type: none"> Introduction of good practices for formulating functions needs to be undertaken as a prerequisite to the Activity Mapping exercise. Examples of lists from other countries may be helpful as inspiration for formulation that is most clear.
6. Prescriptive & discretionary functions	<ul style="list-style-type: none"> Gram Panchayat functions formulated as obligatory functions („must perform“) Obligatory functions of Zilla Parishad and Panchayat Samiti less clear, sometimes linked to availability of funds. Existence and relevance of minimum service standards not clear. 	<ul style="list-style-type: none"> Consider prescriptions in functional assignment and align the financing and supervision systems Insert “right of initiative” stipulation if deemed necessary as part of a general competency construction Standards of performance on services need to be considered for prescribed functions.

Elements of Functional Assignment	Observation for HP	Main suggested further steps
7. Organization and personnel expression of functions	<ul style="list-style-type: none"> • Inconsistencies regarding devolution of three „F“s 	<ul style="list-style-type: none"> • Build consensus on nature of the PRI establishment and local organizational structures • Need to define personnel management system for PRI
8. Finance's fit with functions	<ul style="list-style-type: none"> • Establishment of PRI sector accounts not clear • Issue of local taxation • Legal provision for funding of agency tasks, however reality less certain 	<ul style="list-style-type: none"> • Ensure financial adequacy and fiscal discipline for the devolved functions and agency tasks • Ensure consistency between the type of functions and financing mechanisms
9. Process and capacity development needs	<ul style="list-style-type: none"> • Process of previous (1996) exercise not documented • HP lagging behind other states in India according to GoI analysis 	<ul style="list-style-type: none"> • Achieve consensus on objective(s) of the Activity Mapping exercise • Start with describing current service arrangements • Engage stakeholders to discuss what new arrangements might be workable • Establish time line with a clear process of internal sectoral discussions, inter-sectoral discussions, and consultations • Involve departments concerned with financing, and personnel

Appendix 1: Typology of decentralized functions/tasks³⁴

Aspect of the service	Deconcentrated Task	Delegated/Agency Task	Devolved function
Instrument	Ministerial decree and circular.	Law, regulation, government decree, or ministerial decree/circular.	Constitution, law and related regulations.
Source and receiver of authority	From Ministry, “delegated” to its own dispersed branches.	From representative body or ministry/agency to local government or special purpose agency.	From state, or central level representative body to local government.
Funding	From ministry to its branches directly. Does not show in local government budget.	From the assigning entity to the local government/special agency. In cases task is funded from broader transfers that are deemed to be sufficient to cover delegated tasks. Shown in the local government/agency budget.	Receiving level (through assigned revenues or block or conditional grants). Shown in the LG budget.
Staffing	Branch staff are central level civil servants, part of the Ministry establishment. Their duties may include coordinating with local government.	Local government/ special agency have own staff, but operate under a national frame. May also use seconded staff of central government.	Local government have own staff, but operate under a national frame; considerable discretion in hiring, firing, size of establishment etc. May also use seconded staff of central government, who is treated essentially as local government staff.
Internal organization structure discretion	Branches are structured by the Ministry, though often approved at cabinet or higher level.	Local government/ special agency can shape their units within a national frame, and handle tasks in/within units of their choosing.	Local government can shape their units within a national frame, and handle functions in units of their choosing.
Implementation Discretion	Variable but usually limited by Ministry regulations, procedures, standards and instructions. May be considerable ad hoc guidance.	Considerably constrained by policy, procedures and standards set by assigning entity; some discretion on implementation in some cases.	High degree of discretion, but may be limited somewhat by national standards.
Reporting/ Accountability	From branch to Ministry headquarters.	Primarily to the assigning entity, but also to the local council and citizens	Primarily directly to citizens of receiving level through the local council; vertical accountability remains and in principle is more pronounced in early stages of decentralization.

³⁴ Developed by Ferrazzi (2007), based on previous elaborations of basic typology of decentralization modes (e.g., report from Yemen’s sectoral support provided through UNCDF/UNDP, see Ferrazzi 2006).

A country/state may have a relatively progressive foundation (constitution and Decentralization/Local Government Act), coexisting in some tension with Central/State Line Ministries that exhibit any number of the following :

- Differ in their understanding of decentralization terminology
- Knowingly or otherwise, have opted for deconcentration/agency tasks - sometimes sold as “decentralization”
- Bypassing of LG – “direct to local institutions/the people” (e.g., capitation)
- Are tentative in undertaking innovation
 - some testing/piloting
 - mostly ad hoc accommodation to pressure groups/donors
- Maintain legal contradictions/fragmentation between the LGA and sectoral instrument of functional assignment and procurement rules
- Have not begun Ministry re-organization
- Do not have specific sector plans for decentralization
- No connection with an overall cross-sectoral plan
- Have not indicated how they will reconfigure vertical relationships
- Have a fragmented internal discourse/low engagement with stakeholders

Appendix 3: Criteria for functional assignment used in other countries

a) Criteria Reviewed by ACIR (USA)

1. Spillover minimization
2. Scale economy maximization
3. Geographical area sufficiency
4. Legal and Administrative ability
5. Functional sufficiency
6. Controllability and accessibility of constituents
7. Maximization of citizen participation consistent with adequate performance

Source: Advisory Commission on Intergovernmental Relations, Performance of Urban Functions: Local and Areawide, September 1963.

b) Criteria Suggested by ACIR (Australia)

- | | |
|----------------------|--------------------------|
| General Criteria: | 1. National unity |
| | 2. Co-ordination |
| | 3. Overriding importance |
| | 4. Multi-functionality |
| Responsiveness: | 5. Responsiveness |
| | 6. Community |
| | 7. Accessibility |
| Equity and Equality: | 8. Social justice |
| | 9. Redistribution |
| | 10. Equalization |
| | 11. Uniformity |
| | 12. Portability |
| Efficiency: | 13. Mobility |
| | 14. Stabilization |
| | 15. Internalization |
| | 16. Economies of scale |
| | 17. Regional unity |

Source: Advisory Council for Inter-government Relations, Towards Adaptive Federalism - A Search for Criteria for Responsibility Sharing in a Federal System, Australian Government Publishing Service, Canberra, 1981.

c) Criteria Proposed by Advisory Committee in Ontario (Canada)

1. To the extent that income redistribution is a program or service objective, policy/service management and program financing should be provincial responsibilities.
2. The degree of involvement in policy/service management for each level of government should be determined by the type and level of spillovers.
3. Services should be produced at the level of government that can do so most economically.
4. Services should be delivered by the level that can do so most effectively.
5. The degree of involvement in service management for each level of government should be dictated by the level of interest or the need for standards.

Source: Government of Ontario, Report of the Advisory Committee to the Minister of Municipal Affairs on the Provincial-Municipal Financial Relationship, 1991.

d) Criteria Formulated Under Auspices of World Bank

1. Economies of scale
2. Economies of scope (bundling of public services that brings other consequences)
3. Benefit/cost spillovers
4. Proximity to beneficiaries
5. Consumer preferences
6. Economic evaluation of sectoral choices

Source: Shah, A. (1994). The Reform of Intergovernmental Fiscal Relations in Developing and Emerging Market Economies, Policy and Research Series # 23, The World Bank, Washington D. C.

Schedule I (fixed)

1. Sanitation, conservancy and prevention and abatement of nuisance;
2. Construction, repair and maintenance of public wells, ponds, tanks and conventional /traditional sources of water;
3. Construction and maintenance of village paths, mule roads and rural roads, culverts, bridges and bunds which are not constructed or maintained by the Public Works Departments;
4. Construction, maintenance and cleaning of public streets, latrines, drains, tanks, wells and other public places;
5. Regulating the construction of buildings, latrines, urinals, drains and water closets;
6. Collection and disposal of refuse and earmarking places for dumping of refuse;
7. Filling of disused wells, in sanitary ponds, pools, ditches and pits and conversion of step wells into sanitary wells;
8. Lighting of village streets and other public places;
9. Removing of obstructions and projections in public streets or places and in sites not being private property or which are open to use of public, whether such sites are vested in the Panchayat or belong to the State Government;
10. Management of public land and management and development of village site, grazing lands and other lands vested in or under the control of the Gram Panchayat;
11. Maintenance of ancient and historical monuments other than those declared by or under law made by Parliament to be of national importance;
12. Maintenance of Gram Panchayat property;
13. Plantation and preservation of Panchayat Forests;
14. Regulating places for disposal of dead bodies, carcasses and other offensive matters;
15. Disposal of unclaimed corpses and carcasses;
16. Regulation of sale and preservation of meat;
17. Establishment and management of cattle ponds and maintenance of records relating to cattle;
18. Establishment, management and regulation of markets and fairs; and
19. Maintenance of records of births, deaths and marriages.

Schedule II (possible)

1. Agriculture, including agricultural extension.
2. Land improvement and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi Village and Cottage Industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular of the Scheduled Castes and Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

Source: Himachal Pradesh Panchayati Raj Act, 1994 Act No. 4 of 1994.

Appendix 5: Comparison of Key Functions by PRI Level in Himachal Pradesh

	Zilla Parishad³⁵	Panchayat Samiti	Gram Panchayat/Gram Sahba³⁶
Rural Development/Agriculture Forestry	Agriculture production, animal husbandry, co-operation, contour bunding and reclamation; Advise the state government in social forestry	Integrated rural development, agriculture; animal husbandry and fisheries Social forestry,	Establishment and management of cattle ponds and maintenance of records relating to cattle; Plantation and preservation of panchayat forests;
Health/water	Advise the state government in sports; health services, hospitals, water supply family welfare and other allied matters.	Health and sanitation family planning sports	Sanitation; construction, repair and maintenance of public wells, ponds, tanks and conventional /traditional sources of water; regulation of sale and preservation of meat;
Education Social Welfare	Adult literacy Advise the state government in family welfare disabled, destitutes, women, youth and children amelioration of the scheduled castes and scheduled tribes and backward classes;	Adult education Welfare of women, youth and children, welfare of disabled and the destitutes and welfare of backward classes	Mobilize voluntary labour and contribution in kind and cash for the community welfare programmes
Culture		Arrangement in connection with local pilgrimage and festivals	
Energy/Electricity Public works		Communication and public works	Lighting of village streets and other public places; Construction and maintenance of village paths, mule roads and rural roads, culverts, bridges and bunds which are not constructed or maintained by the public works departments; construction, maintenance and cleaning of public streets, latrines, drains, tanks, wells and other public places;

³⁵ Some are taken implicitly from the roles assigned to Standing Committees of the Zilla Parishad

³⁶ Not including Schedule II functions that could be given to the Gram Panchayat

	Zilla Parishad³⁵	Panchayat Samiti	Gram Panchayat/Gram Sahba³⁶
Transportation Markets		Management of public ferries management of public markets, public melas and exhibitions; and	Establishment, management and regulation of markets and fairs;
Industry	Village and cottage industries promotion of industrial development of the district	Cottage industries	
Employment Emergency		Rural employment programmes Provision of emergency relief in cases of distress caused by fires, floods, drought, earthquake, scarcity, locust, swarms, epidemics and other natural calamities	
Guidance Roles	Control, co-ordinate and guide, the panchayat samiti and gram panchayat within the district; co-ordinate and consolidate the panchayat samiti plans; co-ordinate the demands for grants for special purpose received from the panchayat samiti and forward them to the state government; secure the execution of the plans, projects schemes, or other works common to two or more panchayat samitis in the district; distribute grants		