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## FUNCTIONING OF LOCAL GOVERNMENTS: A COMPARATIVE STUDY OF INDIA AND U.S.A.

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### ABSTRACT

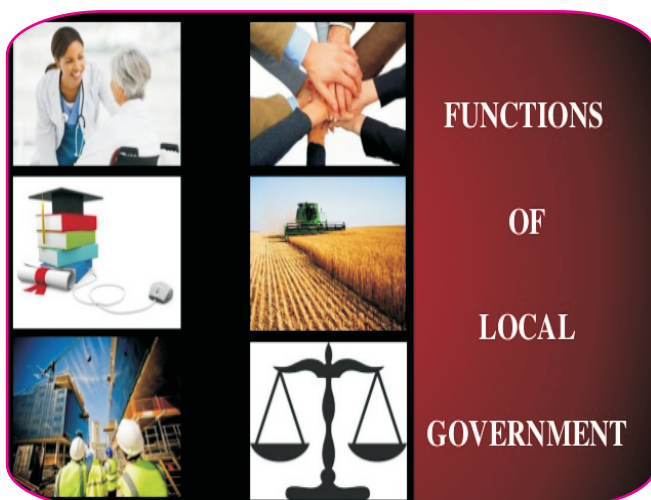
**L**ocal Governments are administrative bodies that carry out the functions in a specific geographical location, be it a village or a city. They do not have the powers to make laws, but they aid the national functions at the ground level. The local governments aim towards establishing smaller units, so that the needs and development of the people can be better taken care of. The core idea behind the formation of such local bodies mainly revolves around the concept of the welfare of the people. Since these bodies operate at the micro level, they can sketch a much realistic picture of people and in turn administer the functions according to the needs of the people depending upon the specific requirements which can be more area specific.

**KEYWORDS-** *administrative bodies , national functions , geographic boundaries ,cultural dimensions.*

### INTRODUCTION :

Usually, when a law or regulation is made at the union level, the government can only look into the holistic picture of the country. It is not possible to consider the region specific needs or issues. As such, if the administrative system knits into it, the functioning of local bodies, this varied need and the dynamism of the society can be incorporated into the working of the system. This is a very good concept, especially for countries with huge geographic boundaries. Larger territory automatically implies varied socioeconomic, political, geographic, demographic and even cultural dimensions among people in different parts of the same country. As such, it is obvious, that the needs of the people will also vary owing to their geographic location. Human activity being highly dynamic, it becomes essential to incorporate these dynamics while discharging the administrative functions as well. Having said so, since the national rules and laws are defined to be applicable uniformly throughout the country, flexibility in the implementation of the administrative function considering the divergent need of the people is a welcome system.

Therefore, setting up local governments, would reflect more efficiency, care and responsibility on the part of the government towards the people at large. The idea of local self government was greatly propagated in India by the Father of the Nation, Mahatma Gandhi. In his words, "India lives in Villages". Therefore, it is very important to bring reformation in the country starting from the grass root level. He believed the best and most efficient way to bring in development is by building up the foundation of the nation. Gandhiji believed that every village should become a self-sufficient



republic, so that it can be self-sustaining and is capable of managing its own affairs. Mahatma Gandhi advocated Panchayati Raj, a decentralized form of Government where each village is responsible for its own affairs, as the foundation of India's political system. He firmly believed that developing village Panchayats would give more space for public opinion to grow. It would further allow the complete development of peoples ideologies and would enable people live a much more meaningful life with independence and overall development. This article aims at studying the conceptual framework and the working of the local governing bodies in India in comparison with the political functioning of a few other countries. It brings forth a comparative study of the functions and powers of the local self governing bodies in India, and the U.S.A.

## India

Municipal bodies date back a long time in the history of India. The first Municipal Corporation was set-up in the former Presidency Town of Madras in 1688; and was followed by similar corporations in the then Bombay and Calcutta in 1726. Coming to modern day definitions, it may be said that they are public organizations, authorized to decide and administer a limited range of public policies within relatively small territory which is a subdivision of a regional or national government. As per the General Clauses Act, 1897 "Local Government shall mean the person authorized by law to administer the executive government in the part of British India in which the Act or Regulation containing the expression operates and shall include a Chief Commissioner." The word Local Government also finds mention in the Government of India Act, 1935. The term "Local Government" or "Local-self government" means the government by freely elected local bodies which are endowed with the power, discretion and responsibility to be exercised and discharged by them, subject to the supremacy of the national Government. It can be said that they are local governmental bodies that exercise their jurisdiction locally, over a particular city/town/village. Local inhabitants representing local body possessing autonomy within its limited spheres, raising revenue through local taxation and spending its income on local services constitute the local self-government. A Local Government's operation is essentially limited to a specific area and its functions relate to the provision of civic amenities for the people inhabiting within that particular jurisdiction. It is subordinate to the State Government which exercises control and supervision over it.

## U.S.A

The American government system began after their independence in 1776, based on the principles of liberty and democracy, but United States are more accurately defined as a constitutional federal republic. The government in States is based on a Constitution which is the supreme law of the country. The USA is the federal country with 50 states having their own governments which are again run by the elected representatives, being a republic nation. The Constitution defines the structure and powers of the federal government, and also contains the provisions regarding state government. Each state, in turn, has its own constitution, which contains provisions for local governments within the state. Local governments may include cities, counties, towns, school districts, and special-purpose districts, which govern such matters as local natural resources or transportation networks. A local government is chartered based on the individual state constitutions and are subject to the legal environment created by the state's constitution and statutes. Since the matter of local government is defined in the state constitution, the structure varies in each state. Local Government officials include city council members, school board members, mayors, sheriffs, and an array of other individuals who serve in various capacities.

## STRUCTURE OF LOCAL GOVERNMENT

This section attempts to understand the structure of the local governmental bodies which operate in different levels in the governing systems of the three countries viz. India, UK and USA. An understanding of the structure would also help to develop an idea about the functions and the range of activities that a particular local body is to perform.

## India

The structure of the local self governments has been defined in Part IX and IX A titled 'The Panchayats' and 'The Municipalities' respectively. These were inserted in the Indian Constitution with the 73rd and 74th Amendment Acts, 1992. The difference in the nomenclature of the local bodies is based on the urban-rural divide. The local governing bodies in rural areas are referred to as Panchayats, and the local governing bodies in urban areas are called Municipalities. With the 73rd Amendment Act, the constitution of 'Gram Sabha' and three tier system of Panchayati Raj at district, block and village level was introduced in every state, excluding states having less than two million populations. With this, the PRIs (Panchayati Raj Institutions) no longer had to operate at the whim of state governments and their laws. The amendment envisaged Gram Sabha as the foundation of the Panchayati Raj system. A village having population not less than 1500 forms Gram Sabha and every adult of the village is a member of the Gram Sabha. And Gram Panchayat is the organization of elected panchayats by the members of the Gram Sabha of the village. It is a self-government organization. The number of members in a Gram Panchayat depends upon the population of the village. The amendment also entailed provisions regarding direct elections to all seats in the Panchayats at the village and intermediate level, if any, and to the offices of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Tribes in proportion to their population for membership of Panchayats and office of Chairpersons in Panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of five years for Panchayats and holding elections within a period of six months in the event of supersession of any Panchayat. The 74th Amendment Act provides for three types of Municipalities, i.e., Nagar Panchayats for areas in transition from a rural area to urban area, Municipal Councils for smaller urban areas and Municipal Corporations for large urban areas. Further the provisions also provide for a fixed duration of municipalities, the appointment of the state election commission, the appointment of state finance commission and constitution of metropolitan and district planning committees. State/UTs has set-up their election commissions. This provided a common framework for urban local bodies.

## U.S.A.

Local governments in the USA generally include two tiers: counties, also known as boroughs. In some states, counties are divided into townships. Municipalities can be structured in many ways, as defined by state constitutions, and are called, variously, townships, villages, boroughs, cities, or towns. While discussing the structure of the local government, the classifications developed by the U.S. Census Bureau can be referred. The Census Bureau designates two categories of local government, General Purpose and Special Purpose.

### GENERAL PURPOSE GOVERNMENTS

#### Counties:

Being the largest political subdivisions, their primary function is to administer state laws within their borders. They maintain peace, maintain jails, collect taxes, build and repair roads and bridges, and record deeds, marriages, and deaths. A number of counties even have their own charter.

#### Municipalities:

The number of municipalities may vary widely across the 50 states in the USA. They may be called cities, towns, boroughs, districts, plantations, or villages. They generally have similar powers and perform similar functions. They derive their authority as granted by the states. Geographically, municipalities lie within counties, although they may cross county boundaries.

#### Townships:

These are established to govern areas without a minimum population concentration. They do not exist in all states, and have different responsibilities in those that have them. A township is a town or city, or a subdivision of a county. In some area townships, enjoy broad authority and perform functions similar to municipalities.

## Special Purpose Governments

### Special Districts:

These are independent governments existing separately with substantial administrative and fiscal independence from. They may levy taxes and issue bonds. Unlike general-purpose governments that exercise multiple functions, most special districts are dedicated to a single purpose.

### School Districts:

School districts are public school systems that provide regular, special, and/or vocational education services for children in prekindergarten through 12th grade. Public school systems in the United States are locally administrated, and their geographic structure varies by state and region.

### India

The Directive Principles of State Policy refer to village Panchayats, but there is no specific reference to municipalities except implicitly in entry 5 of the State List, which places the subject of local self-governments as a responsibility of the states. But realizing the importance of strengthening local governance in the country, Parliament enacted the Constitution (74th Amendment) Act, 1992 relating to municipalities in 1992. Through these, a constitutional status was attached to the city and village councils in India. With regard to village Panchayats, Article 40 of the Indian Constitution enshrines the Directive Principles of State Policy, which laid down that the State shall take steps to organize village Panchayats and endow them with such powers and, authority as may be necessary to enable them to function as units of self-government. In the light of the above, a new Part IX relating to the Panchayats was inserted in the Constitution. A new Part IX-A was incorporated in the Constitution, which provides the functioning and structure of local bodies in urban areas. The local governments are public bodies and are "State" within the definition of Art.12 for the purpose of fundamental rights contained in Part- III of the constitution. It says that local authority includes a state. The said constitutional provision has been upheld by the Hon'ble Supreme Court in the cases Rashid Ahmed v. Municipality Board, Khairana<sup>13</sup> and Ajit Singh v. State of Punjab<sup>14</sup> where by it has been said that the Municipality and Gram Panchayats are local authorities against whom fundamental rights can be enforced.

### U.S.A.

The US Constitution is silent on the matter of local governments. But, tracing the mandate of reserved powers as provided by the Tenth Amendment in 1791 which stated "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people", it can be said that the organization and establishment of local governments have been left to the state governments. This is the reason that there is a great diversity in state-local relations between and within different states. Thus, the local governments in the United States reflect different legal and political situations. Since created under the state constitution, they are public bodies which are institutionalized in thousands of compacts, charters, special acts, statutes, constitutional provisions, resolutions, ordinances, administrative rulings, and court decisions. But mainly, they are created by the State Constitutions, and they derive their powers from the State General Assemblies. But they are public bodies which functions for the benefit of the people. As such, the powers of the local bodies can be changed, modified or altered by the state legislatures. This point has been confirmed by the Supreme Court of North Carolina in 1929 in the case Holmes v. The City of Fayetteville, where the court held that "[Municipal corporations] are creatures of the Legislature, public in their nature, subject to its control, and have only such powers as it may confer. These powers may be changed, modified, diminished, or enlarged, and, subject to constitutional limitations, conferred at the legislative will. There is no contract between the state and the public that a municipal charter shall not at all time be subject to the direction and control of the body by which it is granted.

## Power sharing

This section focuses on the mode and scheme of power sharing of the local bodies. Since they operate at the lowest strata of government functions, the extent and definition of their powers and responsibilities are important, in order to develop an idea about both their effectiveness and constraints. Additionally, this also draws a picture of the power equations in government functioning.

## India

The powers of the local governing bodies in India are determined by the state governments. The 11th and 12th Schedules inserted in the Constitution enlist the matters on which the Panchayats and the Municipalities may be devolved with powers and responsibility by the State Legislatures, by law. The 11th Schedule lists 29 subjects that may be entrusted to the Panchayats by the State Legislature at its absolute discretion. Similarly, the 12th schedule lists 18 subjects for urban local governments based on the subjects enlisted as List II in the Seventh Schedule. However, the extent of the powers of local governments, even in respect of subjects listed in the 11th and 12th Schedules is entirely dependent on the State Legislature, and they have no independent powers. Elaborating this point, the Supreme Court in *The Quarry Owners Association v. The State of Bihar & Ors*<sup>16</sup> observed "...minor minerals are mostly used locally and are of local importance and hence their treatment is left to the State Government at the provincial level. This is in recognition of State's original power to determine such royalty under Entry 54 of List II of the Seventh Schedule. This is also in tune with the principle of federalism which requires local matters to be left for it being dealt with by the State Government."

In order to strengthen rural areas, the Ministry of Panchayati Raj was set up primarily to oversee the implementation of Part IX of the Constitution. The Constitution also states the provisions relating to District Planning Commission in Article 243D of Part IX-A. Further, Article 234G read with the Eleventh Schedule of the Constitution stipulates that States may, by law, endow the Panchayats with such powers and authority as may be required to enable the latter to function as institutions of self-government. Parliament also passed a separate legislation in 1996 as an Annexure to the 73rd Amendment specifying special provisions for Panchayats in Schedule V areas. Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) extends Part IX of the Constitution to the areas listed under the Fifth Schedule subject to certain exceptions and modifications. A major function of the Ministry of Panchayati Raj is to oversee the implementation of the provisions of PESA by the nine States, namely, Andhra Pradesh, Jharkhand, Chhattisgarh, Himachal Pradesh, Madhya Pradesh, Gujarat, Maharashtra, Orissa, Rajasthan that have the areas listed in the Fifth Schedule. The PESA Act enjoins the State governments to endow Gram Sabhas and Panchayats at the appropriate level with the power to enforce prohibition, ownership of minor forest produce, power to prevent alienation of land and restore lawfully alienated land, power to manage village markets, power to exercise control over money lending, power to exercise control over institutions and functionaries in all social sectors and power to control local plans and resources for such plans including tribal sub-plans. These changes in the Constitutional structure in the recent past, to a great extent, define the power sharing schemes of the Local Self Governments.

## U.S.A.

Though the structure of the local governments varies across the different states in the USA, they have greater impact on people's lives than the federal government. Important matters relating to marriage, birth and death certificates, school policies, driving age and qualifications for licensure, laws regarding theft, rape, and murder, as well as the primary responsibility of protecting citizens from criminals, etc., are all taken care of by the local governments. The concept that the local governments can function only with the express authority derived from the state governments has been followed in the USA for a long time. The judiciary has also favored this position. In this context, it is worth mentioning the *Dillon's Rule*, which is the corner stone of American municipal law. In *Clinton v. Cedar Rapids and Missouri River Railroad*,<sup>18</sup> Judge John F. Dillon, opined that a local government may engage in an activity only if it is specifically sanctioned by the state government. *Dillon's Rule* was then challenged by Judge Thomas Cooley of the Michigan Supreme Court in 1871,<sup>19</sup> with the ruling that municipalities possess some inherent rights of local self government. *Cooley's Rule* was followed for a short time by courts in Indiana, Iowa, Kentucky and Texas until the U.S. Supreme Court upheld *Dillon's Rule* in two

consequent cases. One was *Merrill v. Monticello* in which the Court ruled that states could alter or abolish at will the charters of municipal corporations without infringing upon contract rights. And again in *Hunter v. Pittsburgh* the US Supreme Court reaffirmed the *Dillon's* rule. Since then, the American municipal law has applied these rules to municipal powers in most states. These rules state that a municipal government has authority to act only when: (1) the power is granted in the express words of the statute, private act or charter creating the municipal corporation; (2) the power is necessarily or fairly implied in, or incident to the powers expressly granted; (3) the power is one that is neither expressly granted nor fairly implied from the express grants of power, but is otherwise implied, as essential to the declared objects and purposes of the corporation.

Therefore, the *Dillon's* Rule allows a state legislature to control local government structure, methods of financing its activities, its procedures and the authority to undertake functions.

### Allocation of funds

This section tries to develop an understanding about the system of fund allocation to the local bodies. For any organ or institute to discharge its functions effectively, finance is a vital factor. However strong and effective the plans are, and howsoever efficient the manpower is, unless there is a proper channel of fund allocation, it is extremely difficult to get the desired results.

### India

Article 243H of the Indian Constitution lays down the powers of the Panchayats to impose taxes whereby, it is said that the state legislatures may authorize a Panchayat to levy, collect and appropriate taxes, duties, tolls and fees. It also stated that the Panchayats may be assigned taxes, duties, tolls and fees levied and collected by the State Government or provide grants-in-aid from the Consolidated Fund of the State, or it could constitute funds for crediting or withdrawal of moneys. It should be noted here, that all these provisions are subject to the will of the state governments and the language used is 'may' and not 'shall'. Further, Article 243I provides for the constitution of the Finance Commission to review the financial position of the Panchayat in every 5 years. Again, this Commission will be constituted by the Governor of the State and will make necessary recommendations. The provisions regarding financial assistance to Municipalities are also similar. Articles 243X and 243Y entrusts the state governments with the duty to provide financial assistance or enact such laws which may allow the Municipal bodies to collect taxes for financial purposes. Thus, as far as the financial assistance and allocation of funds to the local governing bodies are concerned, be it Panchayats or Municipalities, the power is vested with the respective state governments. They can control and regulate the functioning of the local bodies. But, some amount of fiscal autonomy of the local self governments is based on the preparation of a plan for economic development, by keeping the available resources in mind. Article 243(I) & 243(Y) spells out the tasks of the State Finance Commissions.

### U.S.A.

A major source of revenue for the general purpose units like the counties and municipalities are property taxes and other charges. These taxes in most cases fund the common services in the locality such as police and fire departments, maintenance of public places like parks and grounds. As these taxes are levied by the local governments, they also vary considerably across the different states. Apart from this they also get some intergovernmental transfers of which school and special districts are the primary recipients. Townships rely more on property taxes and charges for services that they provide. Other revenue sources, such as income and sales taxes, are not evenly available because states generally prefer to keep this revenue stream for themselves. As regards to the federal government fund allocations, they are either based on formulas established by law or through competitive processes for project grants. Some formulas are based on historical distributions of grant funds, while others are based on a more complicated set of demographic or other factors relevant to the purpose of the grants. Therefore, apart from property taxes, the local governing bodies in the USA are dependent on the intergovernmental sources



## CONCLUSION

By way of conclusion, it can be put forward that local governments being the public bodies which operate closer to the people, they have a greater responsibility towards the people at large. Moreover, their functions are discharged by the people who are the residents of the locality itself. As such, the accountability is much higher. According to the eminent scholar and political scientist Clarke, "Local Government is that part of the Government of a nation or state which deals mainly with such matters as concern the inhabitants of the particular district or place, together with those matters which parliament has deemed it desirable should be administered by local bodies, subordinate to the Central Government. "In this context, it is relevant to refer to the discussion in the preceding paragraphs, where the working of local bodies in India and the USA has been viewed in a comparative format. Since the idea of local government is to specifically focus on the need and requirements of the local people, the role they play in the day to day life of the people in general is much far-reaching and deep in nature. For example, basic household needs such as recycling of the kitchen wastes, or community halls and public places for social gatherings, are taken care of by the local governments. Unlike in India, the local bodies in the USA to some extent, also manage protective activities such as police and fire services. In India, these services are taken care of by the state governments. But, the point to be enumerated here is that, basic functions which are the requirements of daily life are the responsibility of the local governments.

And to this extent, the theory and concept of the local governing bodies are similar in all the three countries that have been discussed in this article. In discussing the structure of the local government in the USA, there is no parity in the structure of the local bodies. Not only in the structure, but the functioning too is quite different indifferent parts of this country. However, the scenario in India is more structured and comprehensive where the functions and establishments of the local bodies are concerned. Although each local government functions separately even in India, but in terms of their powers and structure, there is greater similarity and parity as compared to the USA. While searching for the statutory provisions of local governments in the USA, it was found that the provisions in India are much more structured and comprehensive. In the Indian Constitution, Part IX and IX-A have laid down the basic provisions which are further put into action by the state legislatures. On the other hand, in the USA, the Constitution has entirely left the matter of local governments to the States. And since in the USA, each state has its own constitution and provisions for local governments in each state are different. Therefore, they have 50 different sets of provisions pertaining to the existence and functioning of local governments. As such, it is difficult to point out one single statute or system that forms the base of the statutory provisions in this respect. Some interesting points that have been revealed in the study includes the functionality and power sharing of the local governments, which are quite similar in the all two countries. Although the systems are quite different in the two countries, there is a great similarity seen when it comes to the point of the mode and scheme of power sharing by the local governing bodies in all these countries. In all, the two countries, the powers and functions, and also the autonomy to a great extent of the local bodies, are defined by the state legislatures. In all, the two countries, it is the individual state legislatures that define the powers of a local body operating under its jurisdiction.

The Constitution of India lays down the foundation of local bodies, but it is for the states to decide their powers and functions ultimately. Similarly, even in the USA, it is the individual state constitutions that determine the extent and limit of powers of local bodies. One such examples the matter of fund allocation. In all, the two countries, the local governments have been awarded very limited financial autonomy. They are dependent upon the respective governments for funds and economic grants. Another similarity noticed between the system of the USA and of India is that, local governments operate under the state governments. The government structure in the USA being strictly federal, the federal government does not interfere with the functioning and the provisions of the local bodies. However, the federal government does make certain financial grants, but through the state governments. As far as the Indian scenario is concerned, the provision of local government falls in the State List, thereby the state legislatures regulate and monitor their powers, functions, autonomy and the financial aspects. After careful scrutiny of the working of the local bodies in all, the two countries we can come to the conclusion that they are more or less similar. But the functions carried out by them in these countries vary to some extent. This could also be due to the varied cultural aspects in and the varied local needs of the people in

the respective countries.

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