

**STRUCTURE OF LOCAL GOVERNMENT IN SOUTH
AFRICA AND INDIA: A COMPARATIVE STUDY
(1994-2004)**

*Dissertation submitted to the Jawaharlal Nehru University
in partial fulfillment of the requirements
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MASTER OF PHILOSOPHY

VIJAY KUMAR BADEZIA



**CENTRE FOR WEST ASIAN AND AFRICAN STUDIES
SCHOOL OF INTERNATIONAL STUDIES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI – 110067
INDIA
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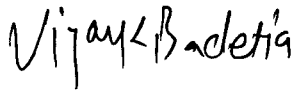
CENTRE FOR WEST ASIAN AND AFRICAN STUDIES
SCHOOL OF INTERNATIONAL STUDIES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI - 110 067, INDIA

Phone Off. : 26704372
Telegram : JAYENU
Fax : 91-11-26165886
91-11-26162292

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CERTIFICATE

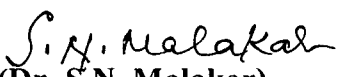
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Vijay Kumar Badetia

We recommend that this dissertation be placed before the examiners for evaluation.



(Prof. Girijesh Pant)
Chairperson


(Dr. S.N. Malakar)
Supervisor

Chairman
Centre for West Asian and African Studies
SIS, JNU, New Delhi-110067

PREFACE

Globalization has its impact on the entire world in which wideranging changes takes place at domestic and international level. In this environment there is a remarkable shift of interest and concern today in favour of giving concrete shape to the domestic upsurge and to local self government institutions. One reason cited for this upswing in democratic decentralization is negotiations held at multilateral level which have its organic effect on every country of the world. In such situation it is considered necessary that some kind of mechanism should be provided to the people at the local level by which they are able to adjust themselves in constantly changing environment. In such context comparative study is useful due to interdependency between different nation states. Every local government is known for its unique feature, apart from it local government institutions are working on the patterns which are generally accepted. On this basis identification of strength and weakness of the two structures is necessary by which lessons should be drawn from them for the further improvement in the working of the institution of local government.

Aim of my study is to assess the constitutional structures of local government by which they are able to provide democratic and accountable form of government to its people. How much they are capable in providing standard services to their people and find out the major challenges faced by them in the near future.

I have divided my dissertation into four parts. The first chapter deal with theoretical aspects of local government. This chapter finds out the major contributing factors for the evolution of the concept of democratic decentralization. Second chapter deals with the development of local government in Africa as a general and South Africa and India in particular. This chapter compare the context in which both the structures of local government has evolved. Basic constitutional structure of local government of both the countries have discussed in third chapter. In chapter four I have find out the major challenges faced by local government in South Africa and India in the near future.

I make thanks to my supervisor Dr. S.N. Malakar for his encouragement.

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CONTENT

| | |
|--|----------------|
| Preface | i |
| Chapter – 1 | |
| Introduction | 1-28 |
| 1.1 Essential Attributes of Local Government | 1 |
| 1.2 Local Government as a Concept | 12 |
| 1.3 Local Government in Different Systems of Government | 19 |
| 1.4 African States and Decentralization | 24 |
| 1.5 Political Nature of Governance of African States | 26 |
| Chapter – 2 | |
| Development of Local Government in South Africa and India | 29-64 |
| 2.1 Development of Local Government in Africa | 29 |
| 2.2 Development of Local Government in South Africa | 32 |
| 2.3 Local Government Transition Act 1993 | 43 |
| 2.4 Pre Interim Phase | 45 |
| 2.5 Interim Phase | 49 |
| 2.6 Development of Local Government in India | 50 |
| 2.7 Comparison | 60 |
| Chapter – 3 | |
| Structure of Local Government in South Africa and India a Comparative Study (1994-2004) | 63-106 |
| 3.1 Local Government Structure in South Africa | 65 |
| 3.2 Structure of Local Government in India | 83 |
| 3.3 Comparison | 93 |
| Chapter – 4 | |
| Conclusion | 107-123 |
| Bibliography | 124-135 |

CHAPTER – 1

INTRODUCTION

1.1 ESSENTIAL ATTRIBUTES OF LOCAL GOVERNMENT

The term local self-government defined in one way as the transfer of authority legislative, judicial or administrative from a higher level of government to a lower level.¹ The process of decentralization is related with the creation of greater energy, a higher sense of responsibility and better morale among the local community.

This definition is helpful in the characterization of the system of local self government, these are local body, local inhabitants, dealing with local subjects, local populations included in the election of local representative bodies and controlling that body, autonomy of local body in the sense of freedom from interference from higher authority assign to it by the statute. To sustain this structure at local level it is necessary that regular elections held of these bodies. Along with it adequate financial resources are necessary for proper implementation of the plans made by the locals for the development of their area and by which local institution exercise its power and functions properly. Nevertheless there should be distinction between local and non-local services to avoid any confrontation between central and regional authority with local

¹ L.D. White, Decentralization, Encyclopedia of Social Sciences, Vol. 5, New York, Macmillan, 1959.

authority. Basically, these are some features which is generally applicable to examine the institution to local government. These are the fundamental function by which an institution at local level deliver services properly to its locality.

In the context of India there is one aspect which distinguish ancient system of local government to the present system of local governance. Local self government in ancient time was far more widespread and more real and more successful than in days of British rule or the present system of local governance.² One reason cited for this widespread of local self government is due to economic self sufficiency of the village community which prevent them from establishing any intimate relationship with outside world other reasons is due to lack of means of transport develop isolation in the village community.³

Local government is one of the essential conditions on which a truly representative form of democracy is based. It has scope of impartiality because more and more people are interested to participate in it in order to improve their life and social conditions. Also such institutions are considered as the best avenue to educate people politically.

Apart from it such grass root level institutions are necessary to avoid all kinds of discontent and resentment against the political system prevail in the country. Through this system the periphery areas of the nation state consider

² M. Venkatarangaiya and M. Pattabhiram, *Local Government in India: Select Reading* (Allied Publishers, Bombay, 1969), p. 3.

³ T.N. Srivastava, "Local Self Government and the Constitution", *Economic and Political Weekly*, July 27, 2002, pp. 3139-3194.

themselves as a part of the administration and work according to the codified rules and procedures.⁴ The basic justification for various arrangement, designed to secure citizen cooperation and participations in welfare and developmental programme is help in maintaining the solidarity of the nation.

The term local self government is generally used in relations to local self government, state or the union government do not have a prefix before them.⁵ The local self government denotes that the local institution has certain sphere of functions which is followed by power to raise financial or grant of resources in accordance with the dispensation provided by the statute. In such a way local self government may be defined as a public organization authorized to decide and administered a limited range of public policies within a relatively small territory which is a subdivision of a regional or national government. Local government is at the bottom of a pyramid of government institutions with the national the top and intermediate governments, states, regions, provinces, occupying the middle range. The rational for local government institution is provided that they are helpful in providing second line of leadership.

The formal structure and character of the local government is determined by multiplicity of factors like national and local traditions, customary deference patterns, political pressures, party influence and discipline, bureaucratic

⁴ Third Five Year Plan, Planning Commission of India, 1961, Government of India.

⁵ T.N. Srivastava, Local Self Government and the Constitution, *Economic and Political Weekly*, July 27, 2002, p. 3191.

professionalism, economic resource controls and social organization and beliefs, for example, in Indian a village in the interior of a particular state where backward class existed, may explain more about level of local government than the structure of such institution.

Lawrence Pratchett is much more concerned to distinguish between local autonomy and local democracy. For him fail to distinguish between these two terms has its negative impact on the policy formulation for local government.⁶ Pratchett Consider local autonomy in 3 separate ways, as freedom from central interference, freedom to effect particular outcomes, freedom as reflection of local identity. From a theoretical perspective autonomy must not only be conceptualized as freedom from higher power, but also include the capacity for developing or expressing local identity. A conceptual separation of local autonomy from local democracy allows for the existence of locally determined differences within nation states. Whereas local democracy plays facilitating and encouraging role in political participation as part of a broader democratic polity because these local institutions of democracy are the most accessible locations for political skills to be acquired and practiced .

John Stuart. Mill argued that local democracy not only provides greater opportunities for political participation, but it is an instrument of social inclusion. He says, "In the case of local bodies, besides, function of electing, many citizens

⁶ Lawrence Pratchett, "Local Autonomy, Local Democracy and the New Localism", *Political Studies*, vol. 52 (2000), p. 358

in turn have chance of being elected and many, either by selection or by rotation, till one or other of the numerous local executive offices. It may be added that these local functions, not being in general sought by the higher ranks, carry down the important political education which they are the means of conferring a much lower grade in society". On this David Held argued that direct participation and control over immediate locals can most realistically advance the principle of participatory democracy.⁷

Local democracy provides more than simply the opportunity for individuals to influence those decisions that affect their immediate social and economic environment. It also builds and reinforces notions of participatory citizenship because it is primary venue in which most people practise politics. It follows that without some form of local democracy, the opportunities for developing democratic values and skills that can be used at broader institutional level would be severely limited, which results that local democracy provides the foundation for strong national and democratic institutions and practice.

The level of local democratic participation at local level rests on the level of local autonomy. Local autonomy simply means local freedom from central government interferences. This freedom does not mean that local have sovereignty over certain sphere of territory, instead of it, it is better to understand it in terms of jurisdiction under which local institutions do functions which are assigned to them by

⁷ David Held, *Models of Democracy*, (Polity Press Publishers, Cambridge, 1996), p. 269.

the statute without interference from the central government. Therefore, by local autonomy means ability of local governments to act unfettered by constraints from higher levels of governments.⁸

There are some essential attributes by which the locally administered area has called by the name self government. Centre and state government has divided many sphere of activity among themselves like transport, education, law, and order, sanitation, health etc these sphere of activities are looked after by local government. The **first** attribute of local government is its statutory states by which it has come into existence. **Second** power and functions assign to them by which they provide services to local communities effectively. **Third** is, its power of taxation in area under its jurisdictions. **Fourth**, participation of the local community in decision making on specified subjects and their administration. **Fifth**, the freedom to act independently of central control. **Sixth**, it has general purpose of character.

Scholars hold different views on the term local self-government when they define it. According to William A Robson in general local government may be said to involve conception of a territorial, non-sovereign community possessing legal right and necessary organization to regulate its own affairs.⁹ This is turn pre suppose the existence of a local authority with power to act

⁸ H. Wolman and M. Goldsmith, "Local Autonomy as a Meaningful Analytical Concept", *Urban Affairs Quarterly*, 26(1), pp. 3-27.

⁹ William A Robson, *Development of Local Government*, (George Allen and Unwin, London, 1931).

independently of external control or well as the participation of local community in the administration of its own affairs. The extent to which these elements are present must in all cases be a question of degree. According to Venkatrangaiya and Pattabhiram, local self government refer to administration of a locality.¹⁰ They said it is a system in which “a village, a town, a city or any other area smaller than a state by a body representing local inhabitant’s, enjoying a certain degree of autonomy, raising a part of its revenues through local taxation and spending it on services which are local in character as distinct from the services provided by the state or central agencies”. Both of them identified distinct features of local self government – these are “a local body, local inhabitants electing that body and ultimately controlling that body, freedom from control of higher authorities within a limited sphere to denote autonomy, a recognition of distinction between local and non-local services and local taxation.”

For William A Robson, the working of local self-government is question of degree like how much it is able to involve itself in local affairs. Whereas for Venkatrangaiya and Pattbhiram autonomy from central government is the central point for the local self-government. For them essence of self government lies in the freedom that a community enjoys in organizing its institutions of governance and giving shape to them. Exercise of autonomy is the main point of self governing institutions.

¹⁰ M. Venkatragaiya and M. Pattabhiram, *Local Government in India: Select Readings*, (Allied Publishers, Bombay, 1969), p.3.

Apart from it R. C. Majumdar¹¹ and R. Mookerji gives a detailed account of the system of governance in the villages in southern India based on inscriptions found at various places in the state of Tamil Nadu and Karnataka. For them what is significant is that a system of self governing institutions were in existence that had the freedom and flexibility, so essential for 'self governance in the matter of organization, functions, finance and functionaries and which had the sanction of the community and a ruler. The population of the village according to these accounts, constituted the general assembly of the village detailed administration was done through a system of elected village committees. There were separate committees for different functions that is, annual supervision, maintenance of tanks, gardens and administering charities and supervision of justice. R. Mookherji gave an account of executive functions exercised by the villagers / village local bodies¹², these are:

1. Management and ownership of land vested in the village community except that which belonged to the king in his private capacity.
2. Construction and maintenance of public works was done by the community like excavation of tanks and wells, damming of water courses etc.

¹¹ R.C. Majumdar, *Corporate Life in Ancient*, (Clarendon Press, Oxford, 1920).

¹² R. Mookherji, *Local Government in Ancient India*, (Cledron Press, Oxford, 1920), pp. 219-234.

3. Collection of revenue / funds to run the affairs of the village and to pass on the King's share to him.

R. Mookerji, gave an account of source of revenue these are:- land revenue; ownership taxes and taxes on different profession.

During the freedom struggle Mahatma Gandhi has developed his concept of "Gram Swaraj". He wants to made village a self sufficient unit of administration. According to Mahatma Gandhi the concept of "Grans Swaraj" which is equivalent to local self-government, has 3 basic principles.¹³

1. Economically village should be self-sufficient for its own vital needs.
2. Politically, the state should have least power, as it represents violence in concentrated and organised form and the rural communities should govern themselves through their elected Panchayats. This is what he calls panchayat raj or a system of governance under which panchayats will discharge all such functions as can be discharged for that level leaving residual functions to the authority of the state.
3. Morally everyone should try to attain Swaraj by a acquiring the ability to rule himself. He will rule himself in such a manner that he in not a hindrance to his neighbours.¹⁴

¹³ B.Ghosh and G. Kumar, *State Politics and Panchyats in India*, (Manohar, New Delhi, 2003), p. 33.
¹⁴ Ibid.

In the scheme of Gandhi, the structure of Indian Polity should be based on village republics, self sustained and capable of managing their own affairs and interacting with other outside their respective villages.

Local government finds mention in the constitutions of very few countries, India and South Africa both have these institution. Existence of these institution is not the only necessity, but a clear delineation of functions and responsibilities are necessary for the proper functioning of these institution. It would be helpful to determine the needs of the local bodies on the basis of what has been entrusted to them and what is expected from them. To the extent that the state divests itself from specific areas, transfer of resources will not be difficult, duplication would also be avoided. The state may strengthen these bodies by transferring the staff assigned for duties in these specific areas to the appropriate tier with complete control and supervision over them. Indirect supervision of the elected members would ensure the involvement of the community and ensure their cooperation.

Local self-government has been the forefront of any agenda of administrative reforms during the 20th century. By administrative orders and statues, transfer of functions and responsibilities was attempted rather in a narrow way. In India after independence a number of committees gave their reports especially on rural local bodies like Balwantrai Mehta Committee report

(1957), Ashok Mehta Committee report (1978).¹⁵ In South Africa the structure of local self government has improved after apartheid with the new constitution they acquire constitutional status and government at the centre also provide its constant support and resources for proper functioning of these institutions in new South Africa.

There are three basic questions according to which scholars collect sufficient information about operational characteristics to make generalization about the nature of local government. For them these question clears our understanding of the phenomena, these are

- 1) To what extent is there local self government? Do the people of the community have as opportunity to participate in government through meaningful elections and to have access to public officials to express their opinions by organized and individual activity.
- 2) To what extent does the municipality have relative autonomy and discretionary authority to act like there is decentralization of authority from the central government to the locality with little or no local discretion. Local authority to undertake programme and local initiative and related freedom from strict supervision from the central government.

¹⁵ Vasant Desai, *Local Government in India, Panchayati Raj Power to the People*. (Himalaya Publishing House, Delhi, 1990), pp. 221, 224.

- 3) Is the local government a vital and significant force in the lives of the people, like, the government is an institution with the will and authority to undertake activity that deeply affect the lives of the people.

1.2 LOCAL GOVERNMENT AS A CONCEPT

In the political science it is the pluralist tradition which has provided the theoretical and empirical basis for the division of functions and dispersal of power. Apart from it the theory of constitutionalism has evolved mechanism of division of power and between different tiers of government. Acceptance of democracy as a form of government has given further impetus for the need of division of power at the lower level. Decentralization in terms of sharing the decision making authority with lower levels in the organization should be understood in the context of the institutional framework of division of power.¹⁶

The argument given in favour of decentralization is that it is considered beneficial for the functioning of a democratic system at the national level as also at the level of locality. At the national level these values relates to political education, training in leadership and political stability. At the local level the relevant values are equality, liberty and responsiveness. The benefits of democratic decentralization with its electoral representatives form is that it is

¹⁶ S.N. Jha, *Decentralization and local politics*, by P.C. Mathur and S.N. Jha (ed.), (Saga Publication, New Delhi, 1999) p.13.

helpful in providing greater “transparency, accountability, responsiveness, probity, frugality, efficiency, equity and opportunities for mass participation.”¹⁷

The concept of democratic decentralization is also useful for the empowerment of social groups that are generally not covered by the process of development due to social and economic constraints. In such institution there was reference of provision of assured representation to the deprived groups in the elected local institutions so that their participation is assured. Although it is much more questionable that such measures will correct the distortions in the democratic process that are affected by the logic of a structured society. But the existence of such provision will make the decentralized system more democratic in so far as they will reflect the views of the wider society.

Decentralization is also advocated with reference to the size and socio-economic complexity of the country. A large territory is not easily administered from one centre. Apart from the size, the complexity of the territory in terms of religion, language, economic development and cultural conclave calls for decentralization.¹⁸ Scholars have view that tribal communities have their own district customary law, traditional practices, community ethos, mode of living, organization, cultural modes. For such communities they advocate prevention of their exploitation and building up political, economic and social strength of these communities. It is also helpful in containing their resentment against the political

¹⁷ R. Crook and J Manor, *Democracy and Decentralization in South Asia and West Africa*, (Cambridge University Press, Cambridge, 1998).

¹⁸ S.N. Jha, *Democratization and local politics* by P.C. Mathur and S.N. Jha (ed), (Sage Publication, New Delhi, 1999) pp. 14.

system of the country.¹⁹ In much complexities it is imperative to recognize the special needs and demands of the regions and groups of people which get reflected in political institutions as well as in the administrative process. In this way democratization is considered as an alternative system of governance where a people centered approach to resolving local problems is followed to ensure economic and social justice.

Leaders are afraid in some countries and they are not in favour of decentralization of power. They made their case strong by putting question mark over the decentralization and view that unitary state will not provide space to the centrifugal forces which endangers national unity and strength and not able to destabilize the system. A related fear is that if power is decentralized it may land in the hands of dominant group with may try to advance their own interest. If this happens, local elites would rule and in the course of time both challenge state authority and jeopardize public policy designed to benefit the people at large.²⁰ This may create situation in which local institutions might lost their legitimacy.

On the other hand those who favour in decentralization argues that not only is centralized power incapable of providing stability to the government but it may give rise to religious, ethnic and minority upsurges. It is admitted that monolithic states and progressive socialist states where power is vested in a central government are more enlightened than local governments as far as

¹⁹ Bhuria Committee Report, Government of India, 1995.

²⁰ R. Kothari, in P.C. Mathur and S.N. Jha (ed), *Democratization and Local Politics*, (Sage Publications, New Delhi, 1999), pp. 48.

protecting the larger interests of the poor and the minorities. Also centralized government structures are successful to a large extent in removing disparities. But at the same time it has also been observed that under centralized governance it is not possible to have a stable political system. Also centralized power is considered harmful to democratic values and approaches to solving problems. In such environment the poor in the rural area becomes more deprived. In such situation real power is concentrated in urban metropolitan cities and there is hardly any chance for the rural poor to share the benefits of development. As a result migration has taken place and the trend is towards degeneration of rural assets and ecological imbalance.²¹ To put rural economy on right track local governments and decentralized development planning have become a political necessity.

Only setting up governing structures would in no way promise effective decentralization. On this part one needs to ensure devolution of real powers and resources. Only then would the local institutions be able to pursue a real democratic path.

There are certain important socio-economic correlations of decentralization. Decentralized governance is an inadequate tool to empower people socially, economically, educationally and with respect to access to decent standards of livelihood like, health, housing etc. unless the economic policies of the central government are employment oriented. There is growing demand for

²¹ Ibid. pp. 49

the right to work and “International Labour Organization” and “United Nation Commission on Human Rights” has laid emphasize on this right, it is realized that people should be empower politically, economically and socially by ensuring them various rights so that they can participate in decentralized governance more effectively.²² Apart from employment, people have to be empowered with education, health, housing and should have access to common property resources. It is therefore essential that they participate in the planning process, identify their needs and aspirations and provide inputs for planning and implementing projects at the local level. In such way decentralization seeks to create greater energy, a higher sense of responsibility and better morale among the local representative bodies.²³ It shows that basic idea of decentralization is sharing the decision making authority with lower levels in the organization, power can be shared within the system at a lower level or by creating new mechanisms in the system.

On the bases of functions and resources scholars provide four categories of local government model.²⁴

- Decentralization

In such system there is handing over some amount of administrative authority or responsibility to lower levels within the government ministries or agencies.

²² Ibid p. 51

²³ A.K. Mukhopadhyay, *The Panchayat administration in west Bengal*, (The World Press Private Limited, Calcutta, 1980), p.5.

²⁴ D.A. Rondenelli, J.R. Nellis, G.S. Cheema, *Decentralization in Developing Countries*, (Washington, World Bank, 1984).

- Delegation

Transferring responsibility for specifically defined functions to organizations that are outside the regular bureaucratic structure and are only indirectly controlled by the central government.

- Devolution

Creation and strengthening of sub-national units of the government, activities of which are substantially outside the direct control of the central government.

- Privatisation

Passing all responsibility for functions to non-governmental organization or private enterprises independent of the government. In this way decentralization denotes more delegation to a subordinate officer of capacity to act in the name of the superior without a real transfer of authority. Delegation refers to relations in which powers are formally conferred under law on an executive agency or by an administrative order to a subordinate or from one level of government to another in which there is not real transfer of authority.²⁵ Through the process of privatization some governments have divested themselves of responsibilities for functions and have either transferred them to voluntary organizations and cooperatives or allowed them to be performed by private enterprises. But in most of these instances government continues to exercise some sort of supervision and support.

²⁵ A.W. Macmikon, *Delegation and Autonomy*, (Asia Publishing House, Bombay, 1961), p. 16.

Devolution refers to the process of the legal conferring of powers to discharge specific or residual functions upon a formally constituted local authority.²⁶

The study team on “community projects and National Extension Service” has said “It is, not infrequently that delegation of power is mistaken for decentralization. The former does not divert the government of the ultimate responsibility for the actions of the authority to whom power is delegated this authority is under the control of the government and is in every way subordinate to it. Decentralization on the other hand, is a process whereby the government divest itself completely of certain duties and responsibility and devolve them on the some other authority”.²⁷

Decentralization thereby creates a corporate sense of responsibility in local decision making agencies with more or less dependent existence and powers. It is a training in self government. Therefore decentralization relates to the devolution of powers resulting from the creation of bodies separated by law from the national centre in which local representatives are given formal power to decide on a range of public matters. Their political base is the locality and their area of authority is limited but within that area their rights to make decision is entrenched by the law and can be altered only by a new legislation. They have resources which within specific limit are spent and invested at their own

²⁶ H. Maddick, *Democracy, Decentralization and Development*, (Asia, Publishing House, Bombay, 1996) p. 23.

²⁷ Committee on Plan Project, Report of the Team of the Study of Community Projects and National Extension Services, 1957, New Delhi, p. 7.

discretion. A decentralized local body would have a separate legal existence, its own budget and the authority to allocate substantial resources on a range of different functions and decision would be made by the representatives of the local people who constitute the body.

1.3 LOCAL GOVERNMENT IN DIFFERENT SYSTEMS OF GOVERNMENT

Basically there are four broad categories of local government system these are.

- 1) Federal decentralized system;
- 2) Unitary decentralized system;
- 3) Communist system;
- 4) Postcolonial system.

1. Federal Decentralization System

The concept of local government with discretionary authority is not applicable generally on all federal systems, but it is true only of these with actual decentralization. In federal system with much decentralization the degree of autonomy of local government varies considerably from country to country, but one thing is common in all these cases that a considerable degree of local independence prevails. In the united state all local legislature bodies and most chief executives are directly elected. Local government organization varies enormously from the town meeting, where all registered voters may participate in

basic decision making to the highly bureaucratized governments of many large cities. In some cities powerful political party machines control decision making by the formal office holders, in others business elites have great powers, in others authority is widely dispersed to independent boards and commission which are relatively invisible to the voters and partiality beyond the control of the council. Swiss municipalities have a wide area of local authority but there are variations among the Swiss cantons (states) in this respect.

The Australian type federal system permit somewhat less local autonomy. In Australia the local actions are subject to review by the state government and ordinances are effective only after their approval by the governor, although there remains general autonomy for the locality with the limitation of its local character and the supervision of the local government by the state departments.

The vitality of local government in the federal decentralized countries varies both within and among countries. In the US and the role of local government expanded greatly with the maturational industrial society in the first half of the 20th century protective, regularly, welfare, planning, economic promotion and other activities were initiated are expanded. But the extent of expansion varies greatly with the size of the city, the area of the country and even for adjacent cities. In smaller rural or suburban communities, local government ranges from the moribund to fairly vital. In the Swiss communities where a town meeting style of government prevails, the sense of involvement and the level of

participations are high. In commonwealth federal system they have a range of variation in the vitality of local government that with the limited states.

2. Unitary-decentralized System

Great Britain and the Scandinavian countries are example of nations with unity (non federal) governments, which have a considerable degree of decentralization of autonomous power to localities. In such cases there is supervision by the central government and although localities can take only such actions as authorized by the central government. Local government in these nation state do have fairly wide responsibilities and make independent decisions about them.

3. Communist System

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The local government systems of communist nation have deconcentration of authority rather than decentralization. Here the local government unit is an agency of the central government and it functions as an integral element of the hierarchical administrative system of the state. The area of local independence is narrow and extends only to minor matters. Control local subject matters whereas control devices are extensive and are rigorously applied. The discipline of the community party is a means of controlling policy in details. As a supplement to and a check on the local administrative system, the communist party with its rigid discipline controls the positions in government.



4. Postcolonial System

The post colonial system of local government has emerged in the context of African and Asian countries. The creation of new nations from former colonies involves varying degrees of changes in local government. In some cases the imposition of a strong single party political system subverts old patterns almost entirely, in others when adjustment more than revolutionary change has been the theme, local government patterns have not altered drastically. The legacy of colonialism is omnipresent although most of the new leaders strive for complete breaks with the colonial past. The terminology and basic structures of the colonial local government system frequently persists for reasons of habituation and convenience. Some leaders of post colonial nations do not have a simple alternative of returning to a post colonial local government system because the post colonial powers undermined or abolished the old way and because the old systems were incapable of dealing with the conditions of westernized and modernized likes. The original tribal system of the past were appropriated to a rural, self sufficient and isolated kind of social life or to condition of minimal central control. But with urbanization and emergence of integrated economy, the simple forms of the past are inappropriate. Local government in these nations is beset by staggering social and economic problems. Countries of Africa and Asia lack the technology, organizational skills, resources and slowly developed institutions of the western city and are

often massive accumulations of squatters. Also as the new regimes the central government tend to be politically unstable. Extraordinary poverty, severe difficulties associated with economic growth and chronic overcrowding in the cities all produce a range of problems. In African cities the local politician cater to ethnic minorities and attempt to provide assistance to the city new comers in exchange for voting support. Remoteness of local communities where transportations is difficult means that many part of the postcolonial nations have a high degree of local independence through default by which the central government being unable to assert its political authority. Modernization is gradually prevailing over traditionalism throughout the postcolonial world. The virtual elimination of the tribal chief as a man of authority (like Ghana) is one patterns, where as retention of chiefs as significant factors (in Uganda) is another model of local government. Where political parties are extremely powerful, like in Tunisia, the forces of traditionalism have been hardest hit, although traditional forms have a way of surviving partly because they tend to rest on kinship relations that are basic elements of the social fabric. Like in Morocco orders from the central government to establish local councils to direct local affair meant that a few dominant families selected their leaders as the new ruling body.

The pattern of local government development in the postcolonial countries differs greatly. But the needs for economic growth and the extension of new

national power to the hinterlands and in the rapidly growing cities have the tendency to produce as much central control as the regime finds possible.

1.4 AFRICAN STATE AND DECENTRALIZATION

The national political context of African state have its impact on the local government system in Africa, like severe scarcity in money, skilled human resources, political legitimacy, lack of equipment, vehicles, electricity and reliable information are pressing development problems. Sufficiency is rare in these necessary ingredients. Scarcity is also characterized by intense competition among people for available resources. In such a situation building long term political institutions is fully depend on the key political actors. The result of such situation is to capture political power by a small group or individual that effectively turns it into private property for one or two persons benefit.²⁸ In such political environment and widespread poverty and unemployment prepare rulers to provide other people participation in governance by the simple necessities of personal and familial survival.²⁹ This factor particularly affects the poor and women because in terms of poverty the Africa's gain coefficient is second only to Latin America among the world's region, that is 44 percent and 52 percent respectively.³⁰

²⁸ D. Olowu, J.S. Wunsch, *Local Governance in Africa the Challenges of Democratic Decentralization*, (Lynne Rienner Publishers, London, 2004), p.13

²⁹ Ibid.

³⁰ World Development Indicators, Oxford University Press, New York, 2002.

Economic and social turbulence as a result of scarcity and poverty as well as government ineffectiveness, the economic context can be almost instantaneously turned upside down by a currency crisis, collapse in a commodity price or a structural-adjustment programme against which there are no local level defenses. Social turbulence often in ethnic, religious or other conflicts can also be a serious problem. Particularly as a result of these factors, local governments are chronically and severely short of resources, key personnel, institutional experience and the ability to sustain effective programs. Partially as a result of this weakness, any political-institutional arrangements is inevitably looked on skeptically for a very long time.³¹

Apart from it, there are severe asymmetries in wealth and power and the powerful informal political and economic structures of patron-clientage exist in the political environment. These often exist outside the state structure but they dominate decision-making. Formal political institutional arrangement has an accompanying shadow process that strongly affects political system. Thus local governance can nonetheless grow out of such situations. These often reflect “neopatrimonial” relationships that strongly effects what institutions at all levels actually function.

³¹ African Development Bank, 2001, “African Development report 2001: Fostering good governance in Africa, Oxford University Press, Oxford, 2001.

1.5 POLITICAL NATURE OF GOVERNANCE OF AFRICAN STATES:

In terms of state structure there is much variance in the performance of sub-saharan African states. At one extreme there exist areas of virtual state collapse like Sierra Leone, Liberia, Democratic Republic of Congo, and portions of Somalia. In such states central governments have little control of the countryside or in fact no longer even exist. Bureaucracies do not function and the Weberian concept of “rational legal” rule of law is absent. In these states notional government actions are inconsequential, infrastructure decays, lawlessness is frequent and governments are characterized by chronic instability.³² On the other hand are states such as Mauritius, Tanzania, South Africa and Botswana. Here central government rules generally without significant challenge, law and order is the prevalent norm, bureaucracies generally function and decisions are made on rational legal grounds and economies are stable. Instead of it they are still characterized by high levels of poverty and dependency. In these states there is beginning of democratic elections which even local opponents have accepted as relatively free and fair.³³

Apart from these states, there are states in African continent where low level of economic progress exist. In such a state many problems exist whose combine affect erode the ability of states to make and implement policy effectively, solve problems and engage the public to build support for the

³² D. Olowu, J.S. Wunsch, *Local Governance in Africa the Challenges of Democratic Decentralization*, (Lynne Rienner Publishers, London, 2004), p 15

³³ Ibid.

regimes. These factors have powerful impact on decentralization to the periphery.³⁴ Weak civil society organizations, closed circle of elites who run state owned enterprises and state, ineffective mass media, decaying of leading political parties after independence, all these factors weaken the ethos of professional, transparent, accountable, lawful and publicly oriented governances. These factors determine the level of decentralization in any country. In such a way the record of local government in Africa is not glowing.³⁵

European rule in Africa and Asia made traditional institution to become part of the colonial administrative system. Colonialism severely modified these institutions by making them much more powerful but they also made them more dependent on the colonial state and less accountable to their subjects. In such a state power were concentrated in selected, unaccountable traditional officers. In such situation power were abused and it give the impetus to the early beginning of “neopatrimonialism” in African politics and government.³⁶ Thus, in the post independence period these traditional institution confronted a serious dilemma, they were regarded as a part of the colonial apparatus of oppression against which the anti-colonial struggle was directed. At the same time they were accepted as the key institutions of indigenous governance. These dilemma are the most contentions issues that new states had to face in designing systems of local governance. In such a situation Tanzania and most of other socialist inclined

³⁴ Ibid. P. 16

³⁵ Ibid. p. 19

³⁶ M. Mamdani, *Citizen and Subjects, Contemporary Africa and the legacy of Late Colonialism*, Princeton, New Jersey, Princeton University Press, 1996.

African countries abolished the traditional institutions during 1970s, in the Republic of South Africa, Mozambique, Zimbabwe and Namibia, the roles assigned to traditional chieftaincy institutions have become major policy and constitutional issues, while in some countries, like Uganda, traditional institutions have replaced by modern institution and in some states they continue to exist under the subordination of elected local governments.³⁷

In such context local governance must deal with the continued power and status of traditional leaders in many African states, at the same time that it broadens participation, accountability and modernity. Traditional leaders may ignore, co-opt or try to erode local governance regimes as the latter are potential threats to their power. However traditional leaders can greatly enhance the success of local government if they appreciate that their communities are evolving dynamically like through improvements in economic production, availability of social and infrastructure services, access to modern information technologies and direct-donor activities in local communities and try to facilitate these processes. Apart from traditional leaders, other forms of local governance like associations, unions etc, can contribute a greatly in converting decentralization reforms into effective local governance. They can fulfill the critical role of a civil society partner for local governance, extend the legitimacy and reach of local governments, mobilize individuals into political affairs and enhance the process of participatory decision making.³⁸

³⁷ D.Olowu, J.S. Wunsch, *Local Governance in Africa. The Challenges of Democratic Decentralization*, (Lynne Rienner Publishers, London, 2004). pp. 20-21.

³⁸ Ibid.

CHAPTER – 2

DEVELOPMENT OF LOCAL GOVERNMENT IN SOUTH-AFRICA AND INDIA

2.1 DEVELOPMENT OF LOCAL GOVERNMENT IN AFRICA:

Britishers had occupied colonies in Africa and Asia. In these colonies they introduced “indirect rule”, which stands rule by a few colonial officials with the aid of traditional rulers. But this system of colonial local governance is different from the present system of local governance, because this system “could not serve as the spring board for political, economic and social development, it failed to provide avenues for political participation and it had lack of accountability to the public.”¹ After the second world war due to different political and economic reasons colonies considered costly in terms of money and human lives. Consequently the British secretary of state for the colonies Lord Creech Jones send his proposal in which he concluded that the key to success in African administration lies in the development of an efficient and democratic system of local governance.² It made representation of special interest in local government councils and independent revenue sources were established for the local governments. During the colonial rule this outline of a system of local government is provided to the African local communities.

¹ D Olowu, J.S. Wunsch *Local Governance in Africa the Challenges of Democratic Decentralization*, (Lynne Rienner Publishers, London, 2004) p. 30

² U.K. Hicks, “*Development from Below: Local Government and Finance in Developing Countries of the Commonwealth*”, (Calrendon Press, Oxford, 1961) p. 4.

In the post independence era the leaders want to get rid of colonial legacy. In such a way they consider local government as the obstacle in realizing their goal to build powerful state. They consider that realization of rapid development is done only by centralized state. In such state there was no place for the local government. On this line the leaders of African countries has established one party rule. In such a system local government were designed primarily for the maintenance of central control and for the implementation of centrally determined development plans.³ Philip Mawhood describe this situation in these word, “In the 1960s for most countries as swing away from local autonomy in favour of central planning and greater control over public resources. A deconcentrated administration was left in charge of the locality, similar to, but weaker than the colonial one. It was added by committees that hardly had a role beyond discussing development plans and giving help in this implementation”.⁴ On this leaders claimed that they were pursuing political objectives such as participation, but these led mainly by consultative assemblies that had no real power over the officials actually in charge of local governments. Therefore this was largely on “illusory” decentralization.

This model of state has led the economic and governance crisis in 1970 and 1980 for the African countries. This crisis situation has made them to adopt world bank sponsored structural adjustment programme. They perceive

³ J.S. Waunsch D. Olowu, *The-Failure of Decentralized State: Institutions and Self Governance in Africa* (West view press, San Francisco 1995).

⁴ P. Mawhood, *Local Government in the Third World: The Experience of Tropical Africa*, (Wiley and Sons Publishers England 1983), p. 8

the system of decentralization as a mechanism for cutting government expenditures. But again in this system of decentralization they assign responsibilities to local leadership which don't have resources to fulfill the responsibility. Of local governance.

The end of cold war in 1990 made the patrimonial and corrupt leadership of Africa to accept the conditions of donor countries without any reservation. Previous economic crisis became more deepen which made African leaders more dependent on donor funds for their development. On the other hand by 1990 donor countries became convinced that good governance was a necessary precondition for growth and substantial poverty reduction hence the increasing use of good governance conditionalities.⁵ These factors push for democratic decentralization.

Apart from it decentralization is considered as a effective mechanism for conflict resolution. Decentralization is used by central governments as a political mechanism to neutralize and contain conflicts with local elites has increased substantially.⁶ This mechanism has played an effective role in the “resolution of the long conflicts in Ethiopia, South Africa and Mozambique.”⁷ In short Power sharing with others are helpful to the ruling elites to stay in power.

⁵ D Olowu, J.S. Wunsch, *Local Governance in Africa the Challenges of Democratic Decentralization*, (Lynne Rienner Publishers, London, 2004) p. 49

⁶ C. Boone, “State Building in the African Countryside: Structure and Politics at the grassroots”, *Journal of Development Studies* vol. 34, no. 4, 1998 pp. 1-31.

⁷ D Olowu, J.S. Wunsch, *Local Governance in Africa the Challenges of Democratic Decentralization*, (Lynne Rienner Publishers, London, 2004) p. 51

Along with it globalization is also considered as the deriving force for the democratic decentralization. It makes “many national governments to focus their attention on strategic issues of national economic and political management, detailed management of cities and communities has at times been delegated to other institutional actors.”⁸

These are some of the factors which make the African countries to shift their resources from central to peripheral institutions. It is helpful for the culture of democratic decentralization to take its root on the continent.

2.2 DEVELOPMENT OF LOCAL GOVERNMENT IN SOUTH AFRICA:

In South Africa the story of apartheid has started from 1948 when National Party (NP) has formed government and began putting apartheid into practice. In the policy of apartheid each racial group has its own territorial area in which they reside, frankly this is the policy of segregation in which black African community has no political and economic rights. The policy of apartheid was based on social discrimination in which no administrative expenditure is done by the central, and provincial government on the development of homelands. In rural areas and townships water and electricity were supplied to white residents at enormous cost, but no attention had paid on the needs of the black rural areas.⁹ Homelands are “independent” and “self governing” territories established by the apartheid regime of South Africa as separate states for

⁸ Ibid. p. 52

⁹ The White Paper on Local Government, Ministry for Provincial Affairs and Constitutional Development, South Africa March 1998, p.2

different black ethnic groups of South Africa.¹⁰ After second world war the national party government has divided people on the basis of their colour. Under which whites were given priority over blacks. They were living in separate areas. The white area was well maintained and suitable living conditions has provided by the government in these areas. Whereas the black areas was known as shanty and overcrowded towns in which no services are provided by the government. These areas was known for low living standard in which poverty was widespread, no proper sanitation facilities provided and the schools of such area are overcrowded in which there was total absence of primary infrastructure like chairs, electricity, black boards etc. Government of National party has deliberately pursue this policy by which it separate white people from black and even restricts them to enter into the white areas.

During the period of 1948 to 1959 the racial government has introduced a series of inter-related laws and measures aimed at restructuring South African society to conform to apartheid doctrine. In this series, "Population Registration Act" provided for the classification of the entire population on the bases of race. Inter racial marriages were forbidden and through the "Immorality Act" there was ban on sexual relations between whites and blacks and it was extended to include relations between whites and colourds.

¹⁰ I.W. Kwaw "Transition to the establishment of Local Councils in South Africa's rural areas: A case study in the former homelands in the Northern Province", *Journal of Rural Development*, Vol. 18(2), 1999, NIRD, Hyderabad, p. 257.

Urban segregation was intensified by the “Group Areas Act” of 1950, which provided for the designation of particular residential areas for specific races. Through this act the existing provisions for the reservation of categories of employment for particular races were strengthened. Race segregation in public places, trains and buses, post offices, hospitals and even ambulances was introduced in different parts of the country. Blacks were excluded from the government formation process by denying them any voting rights, on this basis they don’t have any fundamental rights and even basic human rights has denied to them. Under the terms of “Separate Amenities Act” amenities provided for different races did not have to be of equal standard. The “Extension of University Education Act” removed the right of non-white students to attend the previously open universities of Cape Town and Witwatersrand. To strengthen its hand against racial opposition the apartheid government introduced the “Suppression of Communist Act” which forced the communist party of South Africa to disband itself.

The policy of apartheid is not only against black African population but also against coloured and Indian. In other words it was against all non white population of South Africa. “Group Areas Act” of 1950 was amended several times to ensure its implementation included not just segregation of the black and white urban areas but also aimed at the segregation of the coloured and Indian areas. Apart from it the establishment of Bantustan or native reserves constituted the homelands of different African nations was the policy of

apartheid government to segregate the Africans on the bases of tribalism or tribal identities. The final shape to the racial segregation was provided with the passing of the provisions of “Bantu Self governing Act”, in 1959. Under this act the African population was restricted according their ethnic group in the “Bantustans”, or homelands. The aim of this act was not to develop any community spirit among African people. It reflected the official stated policy of apartheid government that African not belonging to the city and they were citizen of homeland. Stricter control were imposed to prevent Africans acquiring permanent residence in urban area. They had to take pass issued by local authority to enter into white urban areas. Blacks have to leave urban areas when his services was no use for white people. In this way jobs performed by settled blacks were given to migrant labourers only. A massive campaign was launched to get rid of the white areas of surplus Bantu and forced them into overcrowded “homelands.” During 1960-70 more than 1.5 million people were forcibly resettled.

This Act was determine the local government structures in apartheid South Africa. It divided the African native homelands into eight Bantu homelands and every black person require to take the citizenship of one of the homelands. The government want to made homelands a self governing black area by which it was able to check black migration to cities. Therefore it was at the local government where segregation policy of government took shape and establish firmly. The worst form of apartheid was manifested at the local level

government where blacks had separate areas for their living and separate development plans were made for them. This manifestation of apartheid was seen in the weak revenue base of black municipalities. Apartheid regulations barred most retail and industrial developments in black areas. This limits the tax base and forced residents and retailers to spend their money in white areas. In this way the black municipality were deprived of the financial means to meet the needs of local residents.¹¹

The apartheid policy of government made African people to organise themselves against this discrimination. The government resisted the demands of black civic organization for democratization by initiating half hearted reform of the local administration and not at the national or provincial level.

The administration at different homeland townships was under direct centralized control. Government established “Black Advisory Boards” which was constituted by the representatives of the residents of the African township. These elected township council had status of advisory body only and they had limited financial and administrative resources. Further to resist the protest movement of African people the government introduced constitution in 1983 in which there was no change in the nature of racial segregation at the provincial and local government system. The demand for greater African participation in governance was met by establishment of “Black Local Authorities”, (BLA)

¹¹ The White Paper on Local Government, Ministry for Provincial Affairs and Constitutional Development, South Africa March 1998, p.2.

with full-fledge municipality for each black township, but all these were useless due to greater space of central interference. In this system black local authorities was controlled by the minister of constitutional development and planning. The introduction of “Development Boards” strengthen the hands of central government function which continue to enforce pass laws and influx control regulations. Through these development boards “government removed responsibility of townships from white municipalities”.¹² These reforms did not fulfill the thrust of Africans in the participation of governance. On the one hand Africans were resented against these reforms also they were unsatisfied with the status of “Black Local Authority” and “Development Boards” because they did not provide resources by which they fulfill their function. It made to perceive them as the “extension of apartheid” and their black councilors “as agents of the South African Government”. The direct result of such frustration was that the black local authorities lost their legitimacy among its voters. It create vacuum for the political struggle in the country, which led imposition of emergency in 1985 in 36 magisterial districts. Emergency years made “the emergence of civic organisations and umbrella bodies like United Democratic Front (UDF) which were backed by the African National Congress (ANC) and supported by different labour movements and the rise of Inkatha Freedom Party (IFP) that drew support mainly from the trial warlords and the squatter areas that surrounded the formal townships”. Another political strategy adopted

¹² Ibid.

by National Party to contain African resentment and continue with the policy of apartheid was reform in the functioning of “Regional Services Council.” Its aim was imposition of unitary control of the central and provincial over the municipalities. By this council came under the provincial administration and it worked as an umbrella organisation for the “Black local authority”.

The officially stated function of these council was to “provide municipal facilities specially to those local authorities that was unable to provide local services effectively, an introduction of multi-racial decision making at the third tier of governance and try to create financially viable local government structure for the African, coloured and Indian authorities who were financially too weak to provide effective services.” It had provision to control the biasness towards wealthier areas. But it was opposed by the African National Congress (ANC) because under it local authority had to have paid amount for the services it received.

Therefore after the introduction of 1983 constitution things were changed so fast that rebellion in the black townships exceeded the scale to proceed for political upheaval. Different organisation was organising protest movement, far this programme for protest movement has drawn up by the young leaguers of the African National Congress which was based on civil disobedience and boycott. The congress of South African Trade Unions (COSATU), a federation of black trade unions that were politically aligned with the ANC, was formed and demanded the abolition of pass restrictions and

the release of Nelson Mandela. The emergency which was imposed in 1985 was extended in the rest of the country in June 1986.

Instead of all these suppression protest movement was organised against “Group Areas Act”, “Pass laws”, “Population Registration Act”, “Immortality Act”, and “Separate Amenities Act”. Riots were widespread in the townships violence was directed against the government officers, servants and government building. People at local level has played an important role in organizing township revolt.

Upto 1990 crisis propped up in local government system which led collapse of the apartheid local system which made way far the realization for a new deal. Instead of it, it was known fact that “the National Party government was strong enough to remain in power and was never in any danger of being overthrown by revolutionaries but was not strong enough to restructure apartheid”.¹³ The opposition movement against apartheid was not strong thought to overthrow the National Party government. Such stalemate was broken by forced retirement due to ill health at P.W. Both and his replacement by F.W. de Klerk.¹⁴

In September 1989 elections F.W. de Klerk was elected President of South Africa. He released from prison many of the leading figures of African National Congress (ANC) notably Nelson Mandela, Walter Sisulu and Ahmed

¹³ C.Pycroft, “Local Government in the New South Africa”, *Public Administration and Development* vol. 16, 1996. p.234

¹⁴ Ibid.

Kathrada. In February 1990 he announced the lifting of ban on the African National Congress (ANC), the South African Communist Party (SACP), and the Pan-African Congress (PAC).

There are some causes which made de Klerk and his government to choose negotiation with the African National Congress rather than continue with the policy of repression. The local government development in South Africa has started from negotiating table. The main cause for the abandonment of policy of apartheid is necessary to understand for the development of structure of local government. Because negotiation between different groups and government and development of local government structure is interrelated.

Among the foremost thing which made abandonment of policy of apartheid was that the original impetus of "Afrikaner Nationalism"¹⁵ had disappeared. "The British empire had long ceased to be a bogey and if Afrikaners were not on average as wealthy as South Africa English speaking whites, the differentials were no longer so great that this was a major issue. However, the stagnation and decline of the South African economy were putting this white prosperity in jeopardy. Radical solutions had to be found, which could only come with 'political reforms'.¹⁶

The unrest which started from 1980's had taken its toll. The revolt in the townships and reserves had been defeated and despite the retreat from Namibia

¹⁵ Afrikaner is a Persons in South Africa whose ancestor was Dutch and who speak Afrikaans language that has developed from Dutch spoken in South Africa.

¹⁶ R.Ross, "*The Concise history of South Africa*", (Cambridge University Press, London, 1999), p. 183.

the threats from the North or from ANC guerrillas were not challenging to the core of the South African state. But both were costing too much in money and white lives. They also served to increase international indignation towards and thus pressure on South Africa. These international causes had started working effectively after 1980 onwards. Steps against ANC guerrillas had military, economic and moral consequences. It was facing negative effects of arms embargo. In the area of defence the government had always done utmost to satisfy its international creditors, but they were becoming less accommodating. The trading boycott was squeezing the investment which alone would revitalize the economy otherwise it had chances to go into recession.

The moral crusade against South Africa was beginning to strike home and theological certainties which had sustained apartheid were given way to criticism even from the reformed churches to which the Afrikaner leadership belonged.¹⁷

In this series the last was the collapse of communist rule in eastern Europe and the fall of the Berlin wall in November 1989, changed Afrikaner perceptions of their opponents and themselves. They could no longer claim to be “the bastions of Christian civilization against the borders of the evil empire.” A perception which their contact with the ANC top leaders had in any event done much to dispel and the government probably calculated that the withdrawal of Soviet financial support would emasculate the ANC. At the

¹⁷ Ibid.

same time these events meant that lingering American distrust for the ANC as a communist front and consequent support for the South African status quo no longer had any geopolitical rationale.¹⁸

All these causes made de Klerk to dismantle the old order. The core of this was the repeal of the “Population Registration Act” in 1991. Now no longer could people claim rights and more importantly be deprived of them on the basis of racial or ethnic classification. At the same time “The Group Areas Act” and “Natives Land Act” were repealed and a catch all “Abolition of Racially Based Measures Act” passed whose effect was the removing some sixty pieces of legislation. Its result was the total dismantling of the apartheid structure legally.

Dismantling of the apartheid structure was followed by negotiation between different parties and National Party government. In these negotiation the date set for polls to elect a new constituent assembly and central legislative assembly. After the elections the “Government of National Unity” formed on May 1994 Nelson Mandela took oath as the first black President of the country and F.W de Klerk and Thabo Mbeki became two vice president of the country. In this government all parties which had over five percent of the vote have ministerial office.¹⁹

¹⁸ Ibid., p. 185.

¹⁹ Ibid. p. 196.

South Africa's first post apartheid government has determined to reform and redesign the structure of government they inherited and the state for a newly democratic society. One of the most important issues revolved around the nature of local governance hitherto centralized under the national apartheid regime. Before the final deal was struck, the two main contestants the African National Congress (ANC) and the ruling National Party were divided on this issue. The National Party canvassed for a strong federal system of government in which each region would be semi autonomous, while the ANC made a strong case for a unitary system of government. Ultimately the South African transitional constitution provided for a compromise solution, a system of governance in which there are three spheres of governance - national, regional and newly created local governments.

2.3 LOCAL GOVERNMENT TRANSITIONS ACT 1993

The crisis in local government was a major force which paved the way to the national reform process. "National debate about the future of local government took place in the Local government Negotiating Forums, (LGNF) alongside the national negotiating process".²⁰ The "Local Government Negotiation Forum" came into being in September 1992 after the government of National Party, Provincial administrations and organized local government

²⁰ The White Paper on Local Government, Ministry for Provincial Affairs and Constitutional Development, South Africa, march 1998, p.3.

met with representatives from the “South African National Civic Organization (Sanco) to create the “Local Government Negotiations Forum”.

There was 60 members in the LGNF which were equally drawn from “statutory bodies (organized local authorities) and non-statutory bodies (primary civic organizations)”²¹ In March 1993 the LGNF in consultation with the Multi-Party Negotiating council, the body responsible for the interim constitution, was empowered to create “a democratic, non-racial, non-sexist and financially viable local government system.”²²

In July 1993 the LGNF published its recommendations for the local government transition. The recommendations of LGNF were enacted in the “Local Government Transition Act (LGTA) 1993” and incorporated within chapter 10 of the interim constitution of 1993.²³ The LGTA 1993 has provided transition of local government in phased manner. According to the LGTA 1993 the transition has implemented in three phases. Phase one has called pre interim phase,²⁴ phase two has called interim phase.²⁵ The final phase of the local government transition has not mentioned in the LGTA 1993. Therefore the present existing structure of local government in South Africa has come into being after two transition phases. During the two phases the arrangement

²¹ C. Pycroft, “Local Government in New South Africa”, *Public Administration and Development*, vol. 16, 1996, p. 236

²² Race Rations Survey: 1993-4 (1994). South African Institute of Race Relations, Johannesburg..P. 564.

²³ C. Pycroft, “Local Government in New South Africa”, *Public Administration and Development*, vol. 16, 1996, p. 236.

²⁴ Part IV, Local Government Transition Act No. 209 of 1993.

²⁵ Part V, Local Government Transition Act No. 209 of 1993

has made for the local government elections. Which was based on non-segregation and amalgamation of black and white areas. The existing structure of local government is considered as third phase in which non racial and democratic form of local government system has been established in South Africa. It is implemented after the negotiation of South Africa's final constitution was come to end. The final constitution came into existence on 8th December 1996 and took effect on 4th February 1997.²⁶

There is no question mark over the nature of LGTA, 1993 that it has incorporated the democratic aspirations of the LGNF. Alongwith it this act owes a considerable debt form the "Local Government Interim Measures Act" and to the apartheid structures of local government. Under it "rather than attempting to re-invent local government in South Africa, the apartheid structures have been adopted developed and democratized, reflecting an incremental progression to non-racial local government."²⁷

2.4 PRE INTERIM PHASE

The pre interim phase has started from February 1994 onwards and it last till the elections held for transition local government in October 1995. The aim of this phase was to replace the apartheid local government.

This phase has provided the recognition and establishment of negotiating forums for each province whose work was the restructuring of

²⁶ South Africa Year Book 2002/03 Editor: D. Burger Government Communication (GCIS), 2002, (Internet material).

²⁷ C. Pycroft, "Local Government in New South Africa", *Public Administration and Development*, vol. 16, 1996, p. 236.

local government. These negotiating forum has established for each “economically and historically bound area, ranging from a stand-alone town with our without satellite to a complex metropolis”²⁸. The membership of these negotiating forums was provided on the bases of representation. On this membership was provided in negotiating forums to statutory and non statutory bodies. The statutory bodies are defined as members of the existing local government bodies and persons representing bodies or organizations²⁹ and non statutory bodies are “those groups that had been previously excluded from local government but which represented local people”.³⁰ Apart from these bodies the membership of a negotiating form was provided to the,³¹

- “persons representing local organizations which are representative of substantial sector of the wider community having a vested interest in the political restructuring of local government”. and
- “Bodies such as local chamber of commerce and industry the Development Bank of Southern Africa and Supplies bodies of different commodities they have observer status”.

These negotiating forums were empowered to negotiate temporary per interim forms of local government. On this bases they negotiate on the establishment of “transitional local council for a non metropolitan area of local

²⁸ Part IV, Section 7 (1) Local Government Transition Act No. 209 of 1993.

²⁹ Schedule 1, Section 3, (5) (a) Local Government Transition Act No. 209, 1993.

³⁰ C. Pycroft, “Local Government in New South Africa”, *Public Administration and Development*, vol. 16, 1996, p. 237.

³¹ Schedule 1, Section 3, (4) (a)(i) (ii), (b), Local Government Transition Act No. 209, 1993..

government”,³² and for “transitional metropolitan council with transitional metropolitan sub-structures for a metropolitan area of local government”³³ After the negotiation on these the negotiating forum send its recommendations to their provincial member of executive council (MEC).

For the purpose of negotiating for the nomination of members, of a transitional council in local and metropolitan area and transitional metropolitan sub-structure and far nomination of members in local government co-ordinating committee for a local government bodies, the statutory and the most statutory components of the negotiating forums provided a list of candidates for the transitional council. The negotiating forums on the basis of consensus has appointed members to the new local councils, in this composition of councils, half of the members came from the statutory list and other half came from the non-statutory list.³⁴

On the based of these negotiation the transitional local council and transitional metropolitan council has performed the local government functions during the pre-interim phase. Their main responsibility was to ensure access services like water supply health service, financial administrations and the rationalization of the administration of the local bodies that were included in

³² Part IV, Section 7(1)(b) (i), Local Government Transition Act No. 209, 1993.

³³ Part IV, Section 7(1)(b) (ii), Local Government Transition Act No. 209, 1993..

³⁴ Schedule 1, Section 5 (1), Local Government Transition Act No. 209, 1993.

the former areas of jurisdiction bringing together personnel, and administrative structures of the previously racially segregated local authority bodies.³⁵

Local government services in the rural areas during the pre-interim phase became the responsibility of two organizations the “Regional Services Council “ (RSC) and the provincial governments. Both of them assumed all powers and functions of the previous “homeland governments”³⁶ During pre-interim phase the RSC were renamed “Regional Councils” (RC) which took over the responsibilities of the RSC. In pre-interim phase these RC were composed of the commercial farmers, levy payers and councilors from the established local councils and their membership were extended to include non statutory organizations including civics.³⁷

The essence of pre-interim phase was that it provide membership to the non-statutory bodies in the negotiating famous for local government. It is the pre-interim phase of negotiation on the basis of which apartheid form of local government cease to exist. It replaced the former homeland governments with a body who is considered as more representative than previous one. It provide democratic avenues on the basis of which non-racial form of local government has established in south Africa. In this way this phase has provided black population of the South Africa to have to say in the negotiating forum. The

³⁵ Part IV, Section 7 (c) (aa), Local Government Transition Act No. 209 , 1993.

³⁶ The Regional Services Council (RSC) were introduced between 1986 and 1989 to resist black demand of democratization of local system of governance. They were designed to cover large geographical areas, encompassing the jurisdictions of white and black local authorities.

³⁷ C. Pycroft, “Local Government in New South Africa”, *Public Administration and Development*, vol. 16, 1996, p. 237.

members of transitional local council and transitional metropolitan council and transitional metropolitan sub-structure were nominated from the list provided by the statutory and non-statutory bodies during this phase. These nominated members constitute local government at level and they were empower to perform local government function for their area of jurisdiction until the elections held for these transitional councils in the next phase.

2.5 INTERIM PHASE

In October 1995 pre-interim phase has come to end. The interim phase has began after 1st November 1995 when local elections for transitional local government were held. The local government which made after these elections continued until the final model of local government was decided by the final constitution of the Republic of South Africa in 1996. In this way elections held for transitional local councils in non metropolitan and metropolitan areas during the interim phase³⁸. Therefore from 1st November 1995 the transitional local council assumed responsibility for a full range of local government services, operating as autonomous local councils.³⁹ After these transitional local councils came into existence, it was the administrator who turned into members of executive council for local government in province after elections, was determine the powers and duties of any transitional metropolitan council

³⁸ Part V, Section 8(1) (a), (b), Local Government Transition Act No. 209, 1993.

³⁹ C. Pycroft, "Local Government in New South Africa", *Public Administration and Development*, vol. 16, 1996, p. 239.

and transitional metropolitan sub-structures.⁴⁰ Apart from it transition act was empowered to the administrator to delimit the areas of jurisdiction of transitional councils and transitional metropolitan sub structure.⁴¹

The interim phase of LGTA 1993 has continued till the negotiation on final constitution completed at the national level. Therefore, there was not any mention of final form of local government in the act of 1993. This act has made only far smooth transition of power in the phased manner by which former areas of blacks are easily amalgamated in the white areas. After this the existing form of local government established on the bases of model prescribed in the final constitutional of 1996.

2.6 DEVELOPMENT OF LOCAL GOVERNMENT IN INDIA

The local government in India has develop in different historical condition and the context that is from South Africa. The ancient time till today this institution in India have preserve itself as a unit of governance. In India the village Panchayats were disintegrated under the East India Company rule. But during the British rule from 1857 to 1947 there was the revival of the local self government in India through the gradual evolution of the British civil administration. Under the Governor General Lord Mayo in the year 1870 the local self government in India went a step ahead. He advocated decentralization from the centre to the provinces. He stated “We must

⁴⁰ Part V, Section 2 (a) (ii), Local Government Transition Act No. 209, 1993.

⁴¹ Part V, Section 2 (i), Local Government Transition Act No. 209, 1993..

gradually associate with ourselves in the government at this country, more as the native elements". Apart from it Ripon's famous May 1882 resolution promising elected majorities for natives in local bodies although it was implemented slowly and incompletely as local self government was not particularly successful in achieving the objectives, since municipalities and district boards were given little real power or financial resources. Although Ripon is regarded as the "father of the local self government in India". During his tenure he said that he has belief that the Indians should be given their first lessons in popular and political education through local bodies. Ripon's ideology led to the structural innovation which led the establishment of two tier system of local self government , i.e. the district boards and the sub-district boards at either tehsil on the subdivision level.

The Royal commission on Decentralisation established in 1907 it was considered as a significant stage in the history of the evolution of local government. This commission made a powerful plea for the rejuvenation of the panchayats by devolving more powers and ensuring such administrative changes like conferring more powers on "Municipal Boards", besides retaining the "District Boards" and "Rural Boards". The Government of India Act 1935 disinvested more authority and autonomy from the central government upon the more representative provincial governments under the scheme of provincial autonomy. In this act the local government was considered as a provincial subject which placed under the authority of the Indian congress ministers. The

provincial legislative list entry 12 gave the provincial legislature the power enact legislation. By virtue of this power new acts were enacted by many other states visting powers of administration including criminal justice in the hands of panchayat.⁴²

The Indian National Congress ministries in their tenure (1937-39) could not achieve much to place Indian local self government institution on a sound footing, so the progress of the local self government experienced a setback. At this time the attention of the Congress was on national level political scenario. The matters relating to the local level were left to the individual fancies of local and provincial leader while at the national level speedy dismentle the British rule occupied the pivot of interest. At the Amritsar session of the Indian National Congress patriotic public opinion turned away from the local self government institutions to the broader goals of achievements national “Swaraj”. Thus the issue of “Swaraj” got predominance over that of “gram Swaraj”. On the eve independence one third of the villages in India had traditional panchayts and many of these were in a form of flourishing condition.⁴³ In the princely state, the local self government institutions were in an anemic state, in comparison to the British period. Immediately after the transfer of power, steps were taken to revamp the pre-independence status regarding the local rural self governments. But-most of these reforms were of

⁴² D.D. Basu, *Introduction to the Constitution of India*, (Prentice Hall of India Private Limited, New Delhi 1997) p. 267

⁴³ Dr. B.L. Fadia, *India Government and Politics*, (Sahitya Bhawan Publication, Agra,1999), p. 531.

little significance and the basic feature of the pre independence period, remained in still, although leaders like Jawaharlal Nehru and Mahatma Gandhi sympathized with the rural masses, and also realised that the progress of the country lay in developing both the villages and the villagers. Thus although Jawaharlal Nehru had vision regarding the part of rural India's revival and development, yet in his ideological portfolio, regarding the reconstruction of rural politico – economy, Ripon style local self governments had a very low priority and on the contrary, administrative instrumentalities like adult franchise, mixed economy and economic planning got boosted up.

In the immediate years after attaining independence, the government was occupied of displaced masses. However, with the adoption of the constitution of India by the constituent Assembly on 26th November 1949, and subsequently its coming into force on 26th January 1950 and also with the establishment of parliamentary democracy based on adult franchise and setting up of planning commission in March 1950 truth dawned in minds of the government and planning officials that there was urgency in reorienting the administrative procedure towards development and social and social welfare.

The constituent Assembly upon understanding the significance of local government in rural areas, made specific provision in Article 40 of the constitutions relating to the organization of “village panchayats” it said, “the states 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”⁴⁴ But the main flow of this article is that it is under the chapter of “Directive Principles of State Policy”. Thus not much attention was given to hold elections of these local units of representative democracy of the nation. Article 37 of the part “Directive Principles of State Policy” gives direction about the application of the principles contained in the part, it follows “the provisions contained in the part shall not be enforceable by any court, but the principles there laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.”⁴⁵ Therefore, the very fact that organisation of village panchayats and their functions and powers, lacked proper constitutional status, created hindrances in the functioning of these bodies and rendered them basically powerless and panchayats remained almost on paper and no legislation was immediately enacted to implement them. In view of D.D. Basu, “Notwithstanding the legislature of Government of India Act 1935, the makers of the constitution of independent India were not much satisfied with the working of these local bodies and institutions of popular government”.⁴⁶ Consequently in the Indian National Congress, there was much of a din over the role and functions of the local self government in free India’s constitution. The

⁴⁴ P. M. Bakshi, “*Constitution of India*”, (Universal Law Publishing House New Delhi 2004), p. 88.

⁴⁵ Ibid. p. 84.

⁴⁶ D.D. Basu, *Introduction to the Constitution of India*, (Prentice Hall of India Private Limited, New Delhi 1997), p. 237

failure of Congress in preparing a concert blueprint regarding local governments was criticized by Gandhiji.

After the inclusion of the Directive Principles of State Policy, statutory provisions to organise panchayats were enacted in all states. In Madras where the panchayats were functioning actively, legislations were amended according to the Directive principles of the constitutions. In States, where statutory panchayat did not exist prior to this period like Punjab, Bihar, Madhya Pradesh, Orissa Saurashtra etc. the institutions were in the nascent stage. On the whole progress has not been good, so far as the functioning of the local self governments are considered, inspite of the fact that activity in this direction has been continuous and some states even, amended laws passed in the post independence period.

In 1950 Indian government established a planning commission with Prime Minister Jawaharlal Nehru as its chairman. It's goal is to prepare five year plans for the development of the Indian economy free from want, ignorance, disease and thus socially integrated and economically strong. The introduction of economic planning in India also harnessed the local self-government in the process of the formulation and implementation of the five year plans, as it was realised that the establishment of democratic institutions at the district and block level in additions to the Panchayats at the village level was an essential and inevitable step, if rural India's development was to proceed in an unobstructed manner on the basis of local efforts and resources.

Thus with the initiation of planned development, the organization of village panchayats received a further thrust and the importance of such an institutions responsibility in representing the entire rural community and provide able leadership for successful launching of development programmes was ensured. Thus the ideas of building panchayats activating their role in both formulation and execution of plans and imparting on them a wider basis of nations wide democratic planning gained momentum with the introduction of five year planning process.

The Balwantrai Mehta Committee (1957) has recommended the setting up of three tier panchayat system at the local level.⁴⁷ The Ashok Mehta committee has concluded that the “national scene would indicate that the activities of panchayat raj Institutions were meager, their resources bases weak and the overall attention given to them niggardly. The functioning of the panchayati raj system thus become discouraging. The lukewarm attitude of the political elite at higher level towards strengthening of the democratic process at the grasroot were generally the crux of the matter”.⁴⁸ In 1968 the L.M. Singhvi committee has suggested that the Panchayat Raj Institutions be constitutionally proclaimed as the third tier of government. The Committee considered the “Gram Sabha” as the embodiment of district democracy.⁴⁹

⁴⁷ B. Ghose and, G. Kumar, *State Politics and Panchayat, in India*, (Mahonar Publication of French Research Institutes in India, 2003). p. 9

⁴⁸ V. Desai, *Panchayati Raj Power to the People*, (Himalaya Publishing House, Delhi 1990), p.212.

⁴⁹ Ibid. p. 214.

The constitution amendment bill was introduced by Indian Government under the Prime Ministership of Rajiv Gandhi in Lok Sabha on 15th May 1989. In Lok Sabha this bill has approved by the majority of votes. But the opposition in the Rajya Sabha defeated the “Panchyati Raj and Nagar Palika Bill” on 13 October 1989.⁵⁰

The eighth five year plan (1992-1997) identified human development as its main focus. In the forward of the plan, Prime Minister P.V. Narasimha Rao stated that “human development in as its may facets is the ultimate goal of eighth plan. It is towards fulfilling this goal the eighth plan accords priority to the building up of peoples institutions”.⁵¹ Thus the implementation strategy of the plan was to build and strengthen people’s institutions and make people active participants as the role of government was only limited to creation of opportunities for the process of people’s involvement in developmental activities. In this plan for the first time a new direction as given to achieve these objective, by the adoption of institutional approach and the planning commission worked out institutional strategies by creating or strengthening various people’s intuitions at the district, blocks and village levels. Thus the plan directed the panchayats to play a greater role in the formulation and implementation of the development projects in the respective areas. In this plan the Deputy Chairman of the Planning Commission has stated that, “it is

⁵⁰ 64th Amendment Act.

⁵¹ Eight Five Year Plan (1992-1997) Planning Commission Government of India, Delhi, 1992.

proposed to launch the experiment of micro-level participatory planning in 150 blocks during the first year of the eight plan, through creation of a three-tier institutional system. The system required local committee at village, block and district level and implement plans using the collective wisdom of the people, knowledge of the experts and administrative skills of the government functionaries”.

After the independence the idea of local government has evolved gradually and it has culminated in 73rd and 74th constitution amendment act by which constitutional status have assigned to the panchayats and municipalities in urban areas. The 73rd and 74th amendment act came into existence in 1992. This amendment inserted parts IX and IX-A in the constitution. Part IX related to the panchayats whereby part IX A relates to the municipalities.⁵² The provisions in both the parts are more or less parallel or analogous.⁵³ The same amendment act has inserted scheduled 11 and 12 in the constitution. On the bases of these schedule powers and functions are assigned to the panchyats and municipalities.

The system introduced by these amendment act is known its novelty. This new system contained certain new provisions like direct elections based on adult franchise, reservation of seats for women and marginalised section, a

⁵² In Part IX which deals with Panchayats has 10 articles while Part IX A has 18 articles which deals with municipalities in, P.M. Bakshi, *The Constitution of India*, (Universal Law Publishing Company Private Limited, New Delhi, 2004) pp. 205, 211.

⁵³ D.D. Basu, *Introduction to the Constitution of India*, (Wadhwa Publishers, New Delhi, 2001) p.273.

state election commission to conduct election, a finance commission to ensure financial viability of these institutions. Another feature of this part of the constitution is that the basic provisions of this part are to be supplemented by laws made by the respective state legislatures which will define the details as the powers and functions of the various organs of panchayats and municipalities. The subjects which now belong to the panchayats are agriculture, land improvement, minor irrigation, small scale industries, roads, family welfare etc. Municipalities have subjects over which it has power of management these are urban planning, roads and bridges, water supply, Slaughter houses and tanneries etc.

Apart from it, the local government including self government institutions in both urban and rural areas is an exclusive state subject under entry 5 of list II of the 7th Schedule of the constitution.⁵⁴ Therefore in both the cases in part IX and IX A the union cannot enact any law to create rights and liabilities relating to these subjects. What the union has done is to provide outline of the scheme which would be implemented by the several states by making laws or amending their own existing laws to bring them in conformity with the provisions of the 73rd and 74th constitution amendment acts.

Part IX of the constitution envisages a three tier system of panchayat, that is on the village level, the District Panchayat at the district level, and the intermediate panchayats which stand between the village and district

⁵⁴ Ibid. p.274.

panchayats in the states where the population is above 20 lakhs. This part has come into existence within one year from April 25, 1993.⁵⁵ The part related to municipalities that IX A has come into force on June 1, 1993. It gives a constitutional foundation to the local self government units in urban areas. Here institutions of self-government are called by general name "Municipalities" they are three types, that in "Nagar Panchayats" for transitional areas from a rural to an urban area, "Municipal Council" for a smaller urban area and "Municipal Corporation" for a larger urban area.⁵⁶

2.7 COMPARISON

Both the structures of local government in both the countries have developed in different context. In South Africa the "homeland governments" and native areas was made part of the strategy of African National Congress to achieve borders goal at the national level. Local government during the 1970s, and 1980s, became one of the "principle battlegrounds in the struggle against apartheid".⁵⁷ In such a way the township revolt and the campaigns of non-payments, the rent boycotts and non cooperation disrupted the apartheid regime's attempt to stabilize local government in the townships.

On the contrary, in India people did not make any exclusive effort to raise a movement or became a part of the national movement for the establishment of local self government. In the context of India it is the union

⁵⁵ Ibid. p. 276.

⁵⁶ Ibid. p. 278.

⁵⁷ C. Pycroft, "Local Government in the New South Africa" *Public Administration and Development*, vol. 16, 1996, p. 234.

government which make constant efforts for the establishment of local government in the rural and urban area. In India after assigning constitutional status to the panchayats and municipalities through amendment the present phase is considered as the fourth generation of reforms.⁵⁸

In terms of constitutional structure the local governments has assigned their status in the constitution through negotiation. The constituent assembly was itself codify the provisions related to the local government from the very beginning of the constitution. But in India the constituent assembly has not made any elaborate arrangements for the local government system. The system of local government in India is not the result of negotiation at any level alike in South Africa. In India through amendment of the constitution local governments come existence and recognized by the constitution.

The South African system of local government is in its inception which came into existence after 1996. In India in some of the states the system of local government have established prior to the 73rd and 74th amendment act. By amendment act the union government want to establish uniform structure of local government in each state. Although in the constitutions the most prevalent form of local government practices were involved by which it is easy far states to implement these provisions of the constitution in uniform pattern. In this way the system of local government is not in inception.

⁵⁸ B. Ghose, and G. Kumar, "*State Politics and Panchayat. in India*, (Mahonar Publication of French Research Institutes in India, 2003), p. 11.

The basic thrust of both the institution of local government is to provide democratic avenues to the local people and provide them powers and functions to manage their own affairs at their own level. Apart from it these institutions are helpful to provide second line of leadership at the provincial and national level. It is helpful in generating democratic culture at the grassroots level, it is different thing that sometimes institutions are overpowered by the prevalent practices at the local level.

CHAPTER - 3
STRUCTURE OF LOCAL GOVERNMENT IN SOUTH
AFRICA AND INDIA A COMPARATIVE STUDY
(1994-2004)

Coordination, cooperation and work on the bases of mutual trust on each other are some of the bases on which different spheres of government work with each other. Generally such type of things are not find place in the constitution. In the context of the Republic of South Africa we find peculiar thing. It is the only known constitution in which intergovernmental relation has find place in the constitution.¹ Intergovernmental relations describe the distribution of powers and functions between the spheres of government according to the scheme provided in the constitution. Local self government has come within the preview of intergovernmental relations and it is considered as one instrument in the coordination of the policy of national government.²

In the 19th century the system of government in the two British colonies at the Cape and Natal was based on the Westminster Model (comprising central and local government under a governor appointed by the British government in London). The Boer replies at the Transvall and the Orange Free state comprised

¹ C. Murry, The Constitutional Context of Intergovernmental Relations in South Africa, in N. Levy and C. Taposcott (ed.) *Intergovernmental Relations in South Africa*, (University of Western Cape, Political Information and Monitoring Service, IDASA, 2001), p. 66.

² Norman Levy and Chris Tapscott (ed.), *Intergovernmental Relations in South Africa*, (University of Western Cape, Political Intermation and Monitoring Service IDASA, 2001), p. 4.

unitary state with less structured form of local government. The origin of the contemporary system of intergovernmental relation in South Africa can be traced back to the South African Constitution Act of 1909. This act came into effect in 1910 and it served to unite the Boer republics and the British colonies into one sovereign state. In the process it also set motion a train of legislation that effectively excluded Blacks from the legislative process and culminated in the racial separation of apartheid.³

From 1994 onwards local government has been a locus of viable social change because it is considered as one of the vital player to dismantled apartheid structure in the post apartheid South Africa.⁴ The objective of establishment of local government in South Africa is, to create the spatial planning frameworks for the elimination of the racist-ethnic enclave that were created by apartheid throughout South Africa, to develop a system of co-operative government which will help achieve the transformative goals of the constitution, effect a measure of economic justice through local government interventionary mechanisms in urban and regional planning, to provide services to the communities at the grass root level, to promote safe and healthy environment for social and economic development. Local government is an integral part of the intergovernmental relation in South Africa. In terms of India intergovernmental relation have not find explicit place in the constitution but the makers of the constitution build a system by which different organs and spheres of government coordinate with

³ Ibid.

⁴ Chapter 7, Constitution of the Republic of South Africa, 1996.

each other. In South Africa the intergovernmental relations have find explicit place in the constitution although it is silent about the procedure of regulating the relations of different spheres of government.⁵

In the Republic of South Africa the constituent assembly itself has mention the role and status of local government in the constitution. In the chapter seven the composition, role and status of local government explained by the constitution. In the context of India at the time of framing of constitution the local government was not find explicit place in the constitution instead of it, it has just mention the role and responsibility of the state in the part IV of the constitution and put full responsibility on the state to make whatever prospicious for the establishment of the local government. It is only after 1993 that with the amendment in the constitution of India the local government has got constitutional status for the rural and urban areas.⁶

3.1 LOCAL GOVERNMENT STRUCTURE IN SOUTH AFRICA

In the constitution of the Republic of South Africa the first part of the chapter seven has dealt with the status of municipalities.⁷ Local government falls within the area of district municipality. In this local government there is provision of local municipality which means “a municipality that shares

⁵ The constitution of the Republic of South Africa have not mention or constituted any institution which is considered or coordinating the working of the different spheres of government. It left this on the rulers of the country to make on their own choice an institution which work for this. On this line some institution has come into existence like President Coordinating Council (PCC). Provincial Intergovernmental Relations (P-IGR), Intergovernmental Relations Committee of Ministers and Members of Provincial Councils (MINMES) in N. Levy, *Instruments of Intergovernmental Relations – The Political, Administrative Interface*, in N. Levy and C. Tapscott (ed), *Intergovernmental Relations in South Africa*, (University of Western Cape, Political Information and Monitoring Service, IDASA, 2001), pp. 88-90.

⁶ By the 73rd and 74th constitution amendment act, 1992.

⁷ Article 151 (1), (2) (3) (4), Constitution of the Republic of South Africa, 1996.

municipal executive and legislative authority in its area with a district municipality within whose area it falls”. Local government and local municipality is come under the category B municipality. For local government there is provision for local council which means the municipal council of a local municipality. Part seven says that “local sphere of government has consists of municipalities and which must be established for the whole of the territory of the republic”. For the regulation of a municipality it constituted municipal council which has executive and legislative authority of a particular municipality which has right to govern particular municipality. On this part it is expected from the national or provincial government not to impede a municipality ability to exercise its powers or perform is functions.

In the subsequent article the objects of local government are defined.⁸ This part basically deals with the democratization of the local government by which it can provide democratic and accountable government for local communities. In this part mention that the object of local government is to ensure the provision of services to communities in a sustainable manner.⁹ It is expected from the municipalities try to achieve the objectives in its limited financial and administrative capacity. The objectives of a local government has defined as social and economic development of a community and participate in the national and provincial development programme.¹⁰ The “national government and

⁸ Article 152, Constitution of the Republic of South Africa, 1996.

⁹ Article 152 (1) (b) constitution of Republic of South Africa, 1996.

¹⁰ Article 152 (2), Constitution of the Republic of South Africa, 1996.

provincial governments by legislative and other measures must support and strengthen the capacity of municipalities to manage their own affairs to exercise their powers and to perform their function”¹¹.

The constitution has divided the municipality into three category in category A, B and C. **Category A** municipality has defined which has exclusive municipal executive and legislative authority in its area.¹² The Local Government Municipal Structures Act No. 117 of 1998 has clarify that there are following types of category A municipality, these are

- (a) A municipality with a collective executive system.
- (b) A municipality with a collective executive systems combined with a subcouncil participatory system.
- (c) A municipality with a collective executive system combined with a ward participatory systems.
- (d) A municipality with a collective executive system combined wth both a subcouncil and a ward participatory system.
- (e) A municipality with a mayoral executive system.
- (f) A municipality with a mayoral executive system combined with a subcouncil participatory system.
- (g) A municipality with a mayoral executive system combined with a ward participatory system.

¹¹ Article 155 6(a), 7, Constitution of the Republic of South Africa, 1996.

¹² Article 155 (1) (a) Constitution of Republic of South Africa, 1996.

- (h) A municipality with a mayoral executive system combined with both a subcouncil and a ward participatory system.

Category B is defined that shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls¹³. The Municipal Structures Act No. 117 of 1998 has clarify that there are following types of category B municipalities.

- (a) A municipality with a collective executive systems.
- (b) A municipality with a collective executive system combined with a ward participatory system.
- (c) A municipality with a mayoral executive system.
- (d) A municipality with a mayoral executive system combined with a ward participatory system.
- (e) A municipality with a plenary executive system.
- (f) A municipality with a plenary executive system combined with a ward participatory system.

Category C municipality has municipal executive and legislative authority in an area that includes more than one municipality.¹⁴ The municipality structures Act No. 117 of 1998 has clarify that there are following types of category C municipality.

- (a) A municipality with a collective executive system.

¹³ Article 155 (1) (b) Constitution of Republic of South Africa, 1996.

¹⁴ Article 155 (1)(c), Constitution of the Republic of South Africa, 1996.

(b) A municipality with a mayoral executive system.

(c) A municipality with a plenary executive system.

In terms of these categories, it is provincial legislation which must be determined for each category of municipality that must be established in that category in the province. Category A municipality is situated in metropolitan area that has exclusive executive and legislative authority in its area.¹⁵ District municipality comes under category C municipality.

This shows that in terms of different categories, it is national legislation which has sole authority to define the different types of municipality that must be established in each province. Apart from it again it is national legislature which fixes the criteria and procedure for determining when an area should have a single category A municipality or when it should have municipalities of both category B and C. Distribution of powers and functions between category A and category B and C is determined by the national legislature. The role assigned to the provincial legislature is that it must establish municipalities in its province in a manner consistent with the provision of the constitution and statutes of the local government.¹⁶ It is provincial government which must provide for the monitoring and support of local government in the province.¹⁷ It promotes the developmental of local government capacity to enable municipalities to perform their functions and manage their own affairs. In terms of powers and functions assigned to the

¹⁵ Article 155 (5), Constitution of the Republic of South Africa, 1996.

¹⁶ Article 155 (6) Constitution of the Republic of South Africa, 1996.

¹⁷ Article 155 (6) (a), Constitution of the Republic of South Africa, 1996.

municipality, the local government has executive authority on matters listed in Part B of schedule 4 and part B of schedule 5, apart from these functions it has to perform other matters assigned to it by national or provincial legislation.¹⁸ In terms to regulate the affairs of local government, the national government and the provincial governments have the legislative and executive authority to see the effective performance by municipalities of their functions in respect of matters listed in schedules 4 (B) and 5 (B)¹⁹. In this respect it is expected from the national or a provincial governments that they may not compromise and impede a municipalities ability or right to exercise its powers on perform its functions.²⁰ If there is conflict on legislation between national or provincial legislation, and local government legislation, it is “by-law” that is invalid. If there is conflict between a “by-law” and national on provincial legislation that is inoperative “by-law” must be regarded as valid far as long as that legislation is operative.²¹ Apart from the matters on which municipality has executive authority under Part B of schedule 4 and 5, by agreement the national government and provincial government must assign to a municipality the administration of a matter listed in Part A of schedule 4 or Part A of schedule 5 which necessarily relates to local government, the condition for such assignment is that, that matter would most

¹⁸ Article, 156 (1), (a), (b), Constitution of the Republic of South Africa, 1996.

¹⁹ Article 155 (7), constitution of the Republic of South Africa, 1996.

²⁰ Article 151 (4), Constitution of the Republic of South Africa, 1996.

²¹ Article 156 (3), Constitution of the Republic of South Africa, 1996.

effectively be administered locally and the municipality has the capacity to administer it.²²

The manner of election of a municipal council is done on the line of procedure prescribed by the national legislature.²³ The procedure of proportional representation has adopted to the election of a municipal council. The system of proportional representation is based on the municipality segment of the national common voters roll and which provides for the election of members from lists of party candidates drawn up in a party order of preference. Other than it this system is combined with a system of ward representation based on that municipality segment of the national common voters roll.²⁴

In municipality election a person is eligible to deliver his/her vote only if that person is registered on that municipality segment of the national common voters roll. A person is qualified to vote far a municipal council is eligible to be a member of that municipal council. The term of a municipal council is 5 years.²⁵ A municipal council shall consist as a elected chairperson and elect its own executive committee and other committees which is subject to national

²² Article 156 (4), (a), (b), Constitution of the Republic of South Africa, 1996.

²³ Article 157 (1) (b), (2) Constitution of the Republic of South Africa, 1996.

²⁴ Article 157 (2) (a) (b), Constitution of the Republic of South Africa, 1996. In this system of proportional representation it must ensure that the total number of members elected from each party reflects the total proportion of the voters recorded for those parties.

²⁵ This fixations of the term of a municipal council is determined by the national legislation under article 159. In the constitution of 1996, under article 159 the term of the municipal council is not more than 4 years. Again in 1998 by the "Local Government: Municipal Structure Act No. 117 of 1998" the term of municipal council has fixed for 5 years "This five years is calculated from the day following the date or dates set for the previous election of all municipal councils" under chapter 3 of Section 24(1).

legislation.²⁶ It has the powers to make decisions which is necessary for the exercise of all the powers and performance of all the functions of the municipality. The municipal council has the powers of the passing of by-laws, the approval of budgets, the imposition of rates and other taxes, levies and duties and the raising of loans. In performing these functions it is expected that a majority of the members of a municipal council must be present before a vote may be taken on any matter.²⁷ On these matters decision shall be taken by a municipal council with a supporting vote of a majority of its members. If a municipal council want to pass a by-law, it must fulfill one condition that all the members of the council have been given reasonable notice for it. It is the national legislative and not provincial legislative which determine the criteria for the size of a municipal council and whether municipal councils may elect an executive committee or any other committee and the size of the executive committee of a municipal council. A municipal council may make by-laws which prescribe rules and orders far the establishment, composition, procedure, powers and functions of its committees and its business and proceeding.²⁸ Proper attention has been paid by which different interests are represented in the proceeding of a municipal council and in its executive committees. In South African local government system, the act of parliament is necessary by which municipalities representing in

²⁶ Article 160 (1) (b) (c), Constitution of the Republic of South Africa, 1996.

²⁷ The functions assigned to municipal council, it is expected that they may not delegate these function to any other body. Article 160 (2). A municipal by-law may be enforced only after it has been published in the official gazette of the relevant province.

²⁸ Article 160(6) (b)(c), Constitution of the Republic of South Africa, 1996.

the national and provincial organization through which these municipalities get recognition. This act also determine the procedure by which local government may consult with national or a provincial government to designate its representatives to participate in the national council of provinces and nominate persons to the financial and fiscal council.²⁹

Apart from this basic structure of a municipality, further improvement in the working of local government has brought by the “Local Government Municipal Structures Act, 1998”. The act came into force on 1 February 1999. Powers and functions of the executive committee is clarified by the municipal act of 1998.³⁰ The function of an executive committee is to identify the needs of the municipality, it must recommended to the municipal council strategies, programmes and services to address priority needs through the integrated development plan and estimates of revenue and expenditure, taking into account any applicable national or provincial development plans³¹. In terms of its power, it is executive committee who can “identity and develop criteria in terms of which progress in the information of the strategies, programmes and services referred to in it can be evaluated including key performance indicators which are specific to the municipality and common to local government in general”³², to review the performance of the municipality in order to improve “the economy,

²⁹ Article 163 (a) (b) (i) (ii) (iii) Constitution of the Republic of South Africa, 1996.

³⁰ Chapter 4, Section 44, Local Government: Municipal Structures Act No. 117 of 1998.

³¹ Chapter 4, Section 44(2) (a)(c), Local Government: Municipal Structures Act No. 117 of 1998.

³² Chapter 4, Section 44 (3) (a), Act 1998, Local Government: Municipal Structures Act No. 117 of 1998 .

efficiency and effectiveness of the municipality” and “the efficiency of credit control and revenue and debt collection services” and “the implementation of the municipality’s by laws. Apart from these power, the executive committee has to “perform such duties and exercise such powers as the municipal council may delegate to it”.

Existence of traditional leaders have its own effect on the constitutional arrangement on local government. This situation poses a great challenge to South Africa because traditional authority brings hurdle in the establishment of local government at the grassroot level. It has both direct and indirect challenges. Indirectly it impaignes negatively on the democratization process of the whole South Africa. In such a situation instead of having constitution with a well codified rule people in some provinces are in well practice to follow customary law under the authority of their traditional leader. Therefore it creates hurdle in the democratization process in which there is no place for social and economic development. Indirectly this situation is not helpful in creating conditions by which previous structure of apartheid can be dismental. The central argument behind the adoption of local government clause in the constitution is to dismental the apartheid structure from the whole country. Different negotiating forum and constituent assembly has their faith in the local government by which they are able to dismental structure of segregation. They knew that it is only local government structure which provide a common platform to different people by which they can solve their common problem at their own level.

Traditional leaders have their own fear on this ground. If they comply themselves with the local government structure than they have their fear that they will lose their traditional sphere of influence in their own area instead of having constitutional status in the new constitutions. On the other side if national government want to dismantled the previous apartheid structure than it have to take help of traditional leaders by which germination of democratization process has taken place upto the grassroot level, without their help there was no effective implementations of local government structure in the interior. It impinges negatively on the democratization of the whole country. It creates a paradoxical situation in South Africa immediately after the commencement of new constitution. In the context of India such situation does not exist. There is no existence of traditional authority for ever in India. This situation helpful in the effective implementation of local self government under state supervision.³³ Before 1993-94 Gujarat and Rajasthan made legislation for the establishment of local government of the local level. After 1993-94 amendment of the constitutions, most of the state established local self government structure in their area. In rural area this local government has called by the name "Panchayat"³⁴. In India the situation is totally opposite to the South Africa. These people are

³³ Before 1993-94, under chapter IV of the directive principle of state policy, constitution of India has authorized the state to work for the establishment of grass root level government which is codified under article 40 in the name of "Gram Swaraj". Constitution of India, 1950.

³⁴ Panchayat is a traditional word used in old times by the village community in which there was body of five elderly person in the village community who is responsible for the administration of village. Basically this panchayat deliver justice in the village on different disputes which has binding effect on the whole village.

supportive in the establishment of local government structure in the rural and urban area. People are largely participated in this democratization process.

In both these situation one thing is clear that codification of customary law with modification is helpful in the effective implementation of the local government structure upto the grassroot level. This argument is justified in the case of India and South Africa, in which local government structure has get strength by codifying their own system of governance in the constitution.

Traditional authorities has assigned function in 1998 by which they have to work according to it.³⁵ Now it is the member of the executive council for local government in a province who is authorized to identify the traditional authority and leaders in a province.³⁶ The Municipal Act of 1998 says that “if it comes to the notice of the member of the executive council for local government in a province that one or more traditional authorities traditionally observe a system of customary law in the area of a municipality the member of executive council must inform the provincial house of traditional leaders of the maximum number of traditional leaders that may be identified to participate in the proceedings of the council of that municipality”. Section (2) of schedule six says that in “in a province in which no provincial house of tradition leaders has been established, the member of executive council (MEC) must consult the traditional authority

³⁵ Chapter 4, Part 6, Section 81, Local Government: Municipal Structures Act No. 117 of 1998.

³⁶ Chapter 4, Part 6, Section 81 (2) (a), Schedule 6, Local Government: Municipal Structures Act, No. 117 of 1998.

concerned before identifying any leader for the purpose of their participation in municipal council”.

Under the Act of 1998 traditional authority has identify which “traditionally observe a system of customary law in the area of a municipality”. Now these authorities got their right to participate through their leaders in the proceedings of the council of a particular municipality and “these traditional leaders must be allowed to attend and participate in any meeting of the council”³⁷. Apart from participating in the proceedings of a municipal council it is said in the act that “before a municipal council takes a decision on any matter directly affecting the area of a traditional authority, the council must give the leader of that authority the opportunity to express a view on that matter”³⁸. On this subject it is the member of the executive council for local government in a province who is not only sole authority to identify traditional authority in a province but he is also have the right to issue notice in the provincial gazettee “to regulate the participation of traditional leaders in the proceedings of a municipal council, prescribe a role for traditional leaders in the affairs of a municipality”³⁹.

The “Local Government: Municipal Structures Act of 1998” has separate the functions and powers between district municipality and local municipality. In this act there is inclusion of word district municipality under which powers and

³⁷ Chapter 4, Part 6, Section 81(1), Local Government: Municipal Structures Act No. 117 of 1998.

³⁸ Chapter 4, Part 6, Section 81(3), Local Government: Municipal Structures Act No. 117 of 1998.

³⁹ Chapter 4, Part 6, Section 81(4) (a) (b), Local Government: Municipal Structures Act No. 117 of 1998. Traditional leaders are also bound by the code of conduct, it is specified in Schedule 5, item 15.

functions assigned to it. In the constitution of 1996 the powers and functions assigned for local government under chapter seven which exclusively deals with local government. In 1998 there was the division between district municipality and local municipality's powers and functions. "District municipality has integrated planning for the district municipality as a whole including a framework for integrated development plans for the local municipalities within the area of district municipality taking into account the integrated development plans for those local municipalities", it has to provide services to its communities like establishment and control of fresh produce markets and abattoirs serving the area of the district municipality as a whole. Now the district municipality has the power to impose and collect taxes, levies and duties related to its functions or assigned to the district municipality in terms of national legislation.⁴⁰ Local government has the same function which is codified in section 156 of the constitution of the republic of South Africa.

It is district municipality who is entitled to receipt, allocate and the distribution of grants made to the district municipality.

It is the member of the executive council for local government who adjust the division of functions and powers between a district and a local municipality.⁴¹ The member of executive council for local government allocate function and powers from local municipality to the district municipality or from the district

⁴⁰ Chapter 5, Section 84 (0), (P), Local Government: Municipal Structures Act No. 117 of 1998.

⁴¹ Section 85 (1) (a) (b), Local Government: Municipal Structures Act No. 117 of 1998.

municipality to the local municipality on two grounds, that “the municipality in which the function or power is vested lacks the capacity to perform that function or exercise that power” and “the member of the executive council has consulted the demarcation board and considered its assessment of the capacity of the municipality concerned”⁴². It is the demarcation board who is determining the capacity of a district or local municipality to perform the functions and exercise the powers vested in the municipality. But in this capacity of a demarcation board and its recommendations, the member of the executive council is not bound to follow the assessment of the demarcation board, he is only bound to furnish reasons to the relevant municipality and the minister before finalizing on adjustment of power and functions between district and local municipalities.⁴³ After the adjustment of functions and powers between district and local municipalities, the member of the executive council for local government in the province must regularly review the capacity of the relevant municipality or reallocate that function as power to that municipality when that municipality acquires the capacity to perform that function or exercise that power⁴⁴. It is district municipality which on request by a “local municipality within its area may provide financial, technical and administrative support services to that local municipality”, this support service provided by the district municipality is within its capacity, on this same line but in separate context “a local municipality on

⁴² Section 85 (2) (a) (b), Local Government: Municipal Structures Act No. 117 of 1998.

⁴³ Section 85 (5), Local Government: Municipal Structures Act No. 117 of 1998.

⁴⁴ Section 85 (9) (a) (b), Local Government: Municipal Structures Act No. 117 of 1998.

request of a district municipality in whose area that local municipality falls may provide financial, technical and administrative support service to that district municipality”, this support provided by local municipality must be in its capacity, the exchange of support service is also done in between two local municipalities within the area of the same district municipality.⁴⁵

In chapter 7 section 157, the national legislation is prescribe manner in which the election of municipal council will be done. On this line the parliament has passed the statute in 1998. Under this act parliament has describe the manner of electoral system for metro and local councils which has wards. In such councils “a number of councilors equal to the number of wards in the municipality must be directly elected to represent the wards in the council, and the rest of the councillors must be elected from party lists in accordance with the system of proportional representation”⁴⁶. In the local councils which has no wards all the councilors are elected according to the system of proportional representation. For election of a councilor for a ward each voter has one vote to deliver for one candidate only. Apart from the direct election, there is a provision for proportional representation of elections, in this system each voter of a ward has two votes and may vote, one for ward candidate and another for one party only.⁴⁷ Local councils which has no ward they have only one vote and vote for

⁴⁵ Section 88, “Cooperation between district and local municipalities, Local Government: Municipal Structures Act No. 117 of 1998.

⁴⁶ Schedule 1, Part 1, Section 6, part 2, Section 8, Local Government: Municipal Structures Act No. 117 of 1998.

⁴⁷ Schedule 1, Part 3, section 9, Local Government: Municipal Structures Act No. 117 of 1998.

one party only. The party which submitted its list of candidates may not exceed double the number of seats in the metro or local council. Women reservation have provided in the metro and local councils. On the line of these terms “every party must seek to ensure that fifty percent of the candidates on the party list are women and that women and a men candidates are evenly distributed through the list”⁴⁸.

The quota of votes for a seat in the metro and local council is determined by the formula in which valid votes cast far all parties which consist of those cast on the party vote and those cast for ward candidates representing parties are divided by the number of seats in the metro or local council and subtract it to the number of independent ward councilors elected in the election than this equation is add by one. On this formula seats allocated to the valid votes cast for each party on the party vote and for the ward candidate representing the party, these must be divided by the quota of votes far a seat in the council.⁴⁹ Seats are allocated to the party candidates or the bases of quota of votes they received.

The election for district council will held on the bases of proportional representation, in which the number of councilors from municipality and from any district management area in the municipality must be elected from party list to proportionally represent parties in those areas. In the district council a local

⁴⁸ Schedule 1, item 11(3), Local Government: Municipal Structures Act No. 117 of 1998.

⁴⁹ Schedule 1, item 13 (1) (a), (3), Local Government: Municipal Structures Act No. 117 of 1998.

council must appoint its representatives to the district council within 14 days after the results of the elections of the local council has declared.⁵⁰

In the election of a district council each voter registered in the area of local municipality “within the district municipality has one vote and he may vote for one party only” and each voter registered in a district management area within the district municipality has two votes, and they may vote for “not more than one party that submitted a list for the district council and not more than one party that submitted a list for the district management area”⁵¹. In rest of the provisions for the election and composition of district council is same as it found in the election of a local council. Further to make clarification the act made provision for the allocation of seats in the district council. “District council must be appointed by the councils of the local municipalities in the area of a district council from among their members and district management area has its own right to appoint its member in the district council under the district in which district management area falls”⁵². The quota of seats for local council and district management area has been fixed on the bases of which seats in the district council has been allocated to the local council. The formula for this is that the total number of voters registered in the district council segment of the national common voters roll are divided by the number of seats the district council for representatives of the local council and district management area, this has to be

⁵⁰ Section 23 (4), Local Government: Municipal Structures Act No. 117 of 1998.

⁵¹ Schedule 2, item 3, Local Government: Municipal Structures Act No. 117 of 1998.

⁵² Schedule 2, part 2, Local Government: Municipal Structures Act No. 117 of 1998.

added by one, the result will be the bases of allocation of seats in the district council.⁵³

3.2 STRUCTURE OF LOCAL GOVERNMENT IN INDIA

National legislature in South Africa and India have sole authority to provide outline for the local government in the rural and urban area. It is expected from the provinces that they must establish the institution of local government in area of their jurisdiction on the broad outline provided by the national legislature.⁵⁴ The constitutional amendment act in India⁵⁵ do not directly confer any powers on municipalities and panchayats.⁵⁶ The establishment of panchayats and municipalities are left to be done by the states themselves.⁵⁷

The amendment require the state to create municipalities and panchayats, define their constitution and mode of management, outline the pattern of election to them, delineate the area of their powers, authority, functions and

⁵³ The number of councilors representing local municipalities and district management area in a district council is equal to 60 percent of the number of councillors determined by the act of 1998 is not be fewer than three or more than 90 councillors if it is local or district municipality and may not be more than 270 councillors if it is a metropolitan municipality.

⁵⁴ In the context of India the national legislature assumes the role of providing broad outline by the 73rd and 74th constitution amendment act of 1993 through which local governments get constitutional status. In the context of South Africa the constitution status to local government is provided not by the amendment act.

⁵⁵ 73rd and 74th constitutional amendment Act, 1993.

⁵⁶ In India local government in rural area is called by the name Panchayat and in urban area it is called by municipality. Basically the ward panchayat is related to early days when the village was the core of the community and urbanization had not denuded it of its importance, all problems of the society used to be attempted to be solved at the village level itself and the village panchayat was at once the repository of social, executive and judicial power.

⁵⁷ Under entry 5 of list II, schedule 7 of the constitution of India.

responsibilities, indicate the mode of financing them and include the topic of a planning at district and metropolitan levels as part of their municipal functions.⁵⁸

In the context of South Africa the pattern of election, powers and functions to local and district municipality are some factors from where the system of local government of South Africa got separate states from India. In South Africa it is national legislature which determined them far the state like local Government Municipal Structures Act No. 117 of 1998.

In India the amendment leave it to the legislature of the states to endow on the municipalities and panchayats so constituted such powers and authority as may be necessary to enable them to function as institution of self government with respect to the preparation of plans for economic development and social justice and the performance of functions and implementation of such schemes as may be entrusted to them including those specifically set out in the eleventh and twelfth schedules⁵⁹ and to endow the committees referred to in part IX-A with such powers and authority as may be necessary to enable them to carry out the responsibility conferred on them.⁶⁰ After these amendments the states must carry out the function – one is that all existing laws in relations to municipalities and panchayats prior to these amendments shall cease to be operative to the extent of their inconsistency with the provision of local government in the constitution

⁵⁸ Justice S. Ranganathan, *Constitution of India Five Decades (1950-1999)* (New Delhi, Bharat Publishing House, 1999), p. 408.

⁵⁹ Schedule 11 and 12 are inserted by the 73rd and 74th amendment act.

⁶⁰ Justice S. Ranganathan, *Constitution of India Five Decades (1950-1999)* (New Delhi, Bharat Publishing House, 1999), p. 408.

beyond one year from the date of commencement of the 73rd and 74th amendments. This date was 1st of June 1993 for municipalities and 24th of April 1993 for panchayats by the government. Second all presently existing municipalities and panchayats shall continue only until expiration of the present period of their duration.⁶¹ These steps are necessary to ensure that all state laws pertaining to local self-government have to be brought into line with the constitutional provisions of local government within the specified period. This is necessary to ensure a uniform pattern of local government throughout the country.⁶² The amendment act provides the validity of any law relating to delimitation of constituencies for municipalities and panchayats which is not challenged in any court.⁶³ The amendment act⁶⁴ outline the structure of local government in India. According to the amendment act there shall be a “Gram Sabha” (village committee) in every village within the area of each panchayat comprising of all persons registered in the electoral roll relating to the village.⁶⁵ Powers and function to gram sabha is provided by the state legislative from the subjects of the eleventh schedule of the constitution.⁶⁶ The real unit of rural administration in India is Panchayat. The composition of Panchayat is left to be determined by state legislature and panchayats may be one of three types.

⁶¹ Article 243N and 243 ZF, Constitution of India.

⁶² Justice S. Ranganathan, *Constitution of India Five Decades (1950-1999)* (New Delhi, Bharat Publishing House, 1999), p. 408.

⁶³ Ibid.

⁶⁴ 73rd amendment Act, 1992.

⁶⁵ Article 243A, Constitution of India.

⁶⁶ Article 243A, Constitution of India.

Panchayats at the village level, panchayats at the district level⁶⁷ in between these two levels there is panchayat at the intermediate level.⁶⁸ The area of each panchayat will be divided into territorial constituencies and on this bases membership is allotted to each constituency on the panchayat. The division of constituencies for membership shall be formed on the bases of ratio between the population of the panchayat area and number of seats on the panchayat shall be, as far as practicable, the same throughout the state and the ratio between the population of each constituency and the number of seats allotted to it shall be same throughout the panchayat area. Through direct election the members of panchayat shall be elected from the constituencies.⁶⁹ Membership of a panchayat is open to all persons of panchayat who attained the age of 21. The composition of panchayat at the district and intermediate level is included representation of chairpersons of panchayats of the immediately lower level, members of the house of people and state legislative assembly representing the constituencies which comprise the relevant panchayat area and members of the council of state (Rajya Sabha) and the state legislative council (if any in state) registered as electors within the relevant panchayat area. The chairperson of a panchayat at the intermediate or district level will be elected by its members but the mode of election of the chairperson of a panchayat at the village level is left to be governed

⁶⁷ Article 243B, Constitution of India.

⁶⁸ A level between the village and district levels determined for this purpose by the Governor of the State by a public notification. This type of intermediate panchayat will not be constituted in state having a population not exceeding twenty lakhs, Article 243B (2). Constitution of India.

⁶⁹ Article 243 C, composition of Panchayats, Constitution of India.

by legislation of the concerned state. On each panchayat, the chairperson as well as the members shall have the right to vote irrespective of whether they are or are not chosen by direct election from the constituencies.⁷⁰

In India municipalities are the unit of administration in urban areas. The municipality are one of three kinds.⁷¹ A Nagar panchayat⁷² for a transitional area⁷³ a “municipal council” for a smaller urban area and a “municipal corporation” for a larger urban area. What will be a transitional area, smaller area, larger urban area or the territorial area of a municipality are left to be notified by the Governor of a state on basis of its numerical population, the density of population, the revenue generated, the percentage of employment of its population in non agriculture activities, its economic importance is such other factors as the governor may deem fit. The governing body of each municipality will consist of a chairperson (elected from among the members) and members drawn from three category. One, each municipal area shall be divided into territorial constituencies known as wards and each of such constituencies shall elect members for the municipality. Second, the municipality will also comprise of such number of person with special knowledge or experience in municipal administration as the state legislature may provide, but they are not entitled to vote in the meeting of the municipal council. Third, the members of house of the

⁷⁰ Article 243C Para 5, Constitution of India.

⁷¹ 74th Amendment Act added part IX A related to municipalities, through this amendment the 12 schedule is added to the constitution.

⁷² Nagas Panchayat is opposed to panchayat simplicities, constituted at the village level, intermediate level or district level.

⁷³ Transitional area is representing an area which is in the stage of transition from rural to urban in character.

people and legislative assemblies representing constituencies comprising wholly or partly the municipal areas will be members of the municipality and the members of the council of state and legislative councils of states registered as electors within the municipal area will also be the members of the municipality. The composition of ward committees are in the area having population of three lakhs or more.⁷⁴ The constitution and territorial area of such committee are to be provided by state legislation.⁷⁵ The chairperson of a committee shall be elected from the elected members of the ward in the municipalities. Apart from it, the state legislature have power to make provision by which it may provide for the constitution of other committees in relation to a municipality, the chairperson of such committees will also become the member of the municipality. Except for the technical persons (having special experience in particular area) who may be members and the chairpersons of committees (other than wards committees), all the members of the municipality will be members elected by the municipal area. Apart from it the representation to the weaker section is pervaded in panchayats and municipalities. It ensured that a reservation is provided to scheduled castes and tribes⁷⁶ on the bases of population, representation to women which one third generally as well as among scheduled castes and tribes⁷⁷ and other backward classes of citizens in such manner as may be provided by the state legislature.

⁷⁴ Article 243 S, Constitution of India.

⁷⁵ Article 243 S (2), Constitution of India.

⁷⁶ Article 243 D, 243 T, Constitution of India.

⁷⁷ Article 243 D (2), (3), 243 T (2), (3), Constitution of India.

The reservation is provided by the state legislature for the post of chairperson in the municipality for the scheduled castes and scheduled tribes and women.

The constitution vests responsibility in state legislature for superintendence, direction and control of the panchayats and municipalities in its area. To conduct the election of local government the state government has appointed the state election commission.⁷⁸ This state election commission has delegated authority by the state legislature for superintendence, direction and control of the preparation of electoral rolls for the panchayat and municipal election.⁷⁹ Along with it, the legislature of a state may by law make provision with respect to all matters relating or in connection with election to the panchayats and municipalities.⁸⁰ The panchayats and municipalities are elected for the period of five years. The constitution has provided full power to the state to control supervise, or dissolution of panchayats and municipalities in the middle of their tenure. A fresh election in case of dissolution should be completed before the expiry of the five year period or within the six months of the dissolution. In such case the newly elected panchayat and municipality will be elected for the remaining part of the original period of five years.⁸¹

The objective for the establishment of local institution in India is to confer all comprehensive powers and responsibilities on the panchayats and

⁷⁸ The state election commission is appointed by the Governor of a State.

⁷⁹ Article 243 K, 243 ZA, Constitution of India.

⁸⁰ Article 243 K (4), 243 ZA (2), Constitution of India.

⁸¹ Article 243 E in case of panchayat and Article 243 U in case of the municipalities, Constitution of India.

municipalities to usher in democratic government at the lower than state level. The amendment act in the constitution has enable the state legislature to legislate for the local bodies by which these bodies have all powers and authority to enable them to function as institution of self government⁸², deliver all powers and responsibilities to panchayts and municipalities in regard to the preparation of plans for economic development and social justice, give them full powers and responsibilities to enable them to perform all the functions and implement all the schemes entrusted to them, empower them to perform functions for implementations of schemes in relation to the matters specified in eleventh schedule in case of panchayat and twelfth schedule in case of municipalities.⁸³ The list in eleventh schedule contains 29 items and the twelfth schedule has 18 items. On these items in the schedule it is the state government which has power to entrust local bodies with these functions and powers.

The inclusion of the provision of local institution has added as one more duty to the finance commission.⁸⁴ Now for making the recommendation to the president as to the measures needed to argument the consolidated fund of a state to supplement the resources of panchayats and municipalities in the state on the bases of the recommendation made by the finance commission of the state. The establishment of local institution in India has provide for the constitution of a

⁸² Article 243 C in case pf panchayat, Article 243 P in case of municipalities, Constitution of India.

⁸³ Article 243 G, 243W, Constitution of India.

⁸⁴ Article 280, Constitution of India.

finance Commission for each state.⁸⁵ This commission is constituted once in every five year after the commencement of the amendment act. It is state legislature which will provide for matters regarding the composition of the commission and its powers in relation to their functions. Basically the function of the finance commission of a state is to review the financial position of panchayats and municipalities in the state. It has make recommendation on “the principles of distribution between the state on the one hand and the panchayats and municipalities on the other of the net proceeds of all taxes, duties, tolls and fees levied by the state as well as all the allocation between the panchayats and municipalities at all levels of their respective shares”, principles for the determination of the taxes, duties, tolls and fees which may be assigned to as appropriated by the panchayats and municipalities, principles which should govern the grants-in aid to the panchayats and municipalities from the consolidated fund of the state, make recommendation for measures needed to improve the financial position of the panchayats and municipalities”⁸⁶. It is the state legislature on which the constitution has put responsibility to enact measures that will improve the financial conditions of a panchayats and municipalities.⁸⁷ On this line the state legislature may took measures which authorize the panchayats and municipalities to collect and appropriate such taxes, duties, tolls and fees, it may assign to the panchayts and municipalities such

⁸⁵ Article 243 I, 243Y, Constitution of India.

⁸⁶ Article 243 I, 243 Y, Constitution of India.

⁸⁷ Article 243 H, 243 X, Constitution of India.

taxes etc collected by the state government for such purpose, take measures by which grants-in-aid being made to the panchayats and municipalities from the consolidated fund of the state, constituted funds to which may be credited all moneys received by or on behalf of the panchayats and municipalities and from which may be withdrawn monies for the purpose of grass root institutions.

After amendment, the constitution has enable the panchayats and municipalities to make proper planning for the development of the area under their jurisdiction. District planning committees will consolidate these plans and prepare a draft development plan for the district as a whole.⁸⁸ The draft local and district plans thus prepared will be considered by a metropolitan planning committee.⁸⁹ This committee will then prepare a development plan for the metropolitan area as a whole. The plans prepared by the district planning committee as well as those prepared by the metropolitan planning committee will be forwarded to the state government for appropriate action. The details for the district and metropolitan planning committees are provided by the state legislature. In their composition it is essential that a majority (four-fifths in the case of the district planning committees and two-thirds in the case of the metropolitan planning committee) are to be elected from out of elected members

⁸⁸ Article 243 ZD, Constitution of India.

⁸⁹ Article 243 ZO, Constitution of India.

of panchayats and municipalities in the area on the bases of the ratio of the population between the rural and urban areas involved.⁹⁰

3.3 COMPARISON

The structure of local government in South Africa and India have similarities and differences which is find in terms of constitutional structures, in terms of the context in which they have been established and in term of their implementation.

In both the countries the institution of self government has got constitutional status in the first half of 1990's. In India through constitutional amendment act local government came into existence in 1992, in South Africa in 1993 they got constitutional status as the forum of transitional local council. In the constitution of 1996 the local government has firmly established in the provinces of South Africa. Panchayats in India and local council in South Africa are the third tier of administration which is established to develop the democratic culture upto the grass root level. The only difference is the inclusion of clause of cooperative government in the constitution of South Africa by which legal proceedings by government organs against each other is avoided and different tiers of government will work in cooperation of each other.⁹¹ In India there is no such codification of clause, but instead of it, it is expected that different government organs will work in cooperation of each other.

⁹⁰ Justice S. Ranganathan, *Constitution of India Five Decades (1950-1999)*, (New Delhi, Bharat Publishing House, 1999), p. 416.

⁹¹ Chapter 3 of the Constitution of the Republic of South Africa.

In the constitution of both the countries the model of self government is divided into 3 category. In South Africa it has divided its model of local government in category A, B and C, while in India there is same three types of local government model for rural and urban areas. In India the institution of local government in rural area is called by panchayats. While South Africa constitution has called them by the name local council and rural council.

In terms of constitutional provision the criteria to determine the structure of local government is same in both the countries, by which national legislature has the sole authority to fix the criteria and parameters in the constitution about these structures. In the context of South Africa it is national legislature which define a particular type of category of local government and fix the criteria for the establishment of the particular category of local government in the provinces. For provinces of South Africa it is obligatory to establish the institution of local government in their area. In the clause of local government in constitution the inclusion of word “must” has clearly that provinces have to establish institution of local government as envisaged by the constitution. In context of India the national legislation has got the same power from the constitution same as in South Africa. By this power it has made three models of local government for provinces, by which it has accorded constitutional status to the local government institution established by provinces. After the amendment act every state has establish panchayats and municipalities in its area by passing legislation to this effect.

Local government in both the countries has their prior existence but they don't have constitutional status. In South Africa the implementation of the policy of apartheid is effective on separation of areas between white and black which is effectively done on the local level by the national and provincial government before 1990. After 1993 and 1996 South Africa has eliminated the separate structure of local government for blacks and accorded constitutional status to them. In India there was prior existence of panchayats and municipalities but it is only in the states which has political will to establish them for the people. After 1992 they got constitutional status. Now every state in India have to implement the provision of panchayats and municipalities in their area as codified in the constitution. It shows that the local government in South Africa and India has got the legitimacy through the provision of constitution. In these term of the provision of the constitution the national legislature of both the countries are stand on the same stage.

The national legislation in both the countries determined the pattern of election for their institution of self government established by the state. In India the panchayats and municipalities are composed on the bases of direct election. This pattern itself is codified in the constitution through the amendment act by which panchayats and municipalities established in the provisions. Apart from it the election of chairman at the intermediate level and at the district level is left to be determined by the state legislature. Constitution has been fix the pattern of direct election to the "Gram Panchayat" only and not for other levels. In South

Africa national legislature itself decided the election pattern for the local municipalities. But the election pattern of South African local government is different from that of India. On this nothing has left to be established by state. Everything is codified in the constitution itself. In South Africa the election of metro and local council having ward will be held on the bases of direct election, while the election of local council without wards will be held on the bases of proportional representation. In this system of proportional representation the party produce its list of candidates in order of preference. In this party list fifty percent of the candidates in the candidates list should be women, in this list on this bases women and men are evenly distributed. It shows that direct election of women on the bases of reservation of seats in the municipal council is absent in South Africa. Although through party list women occupy the seat in municipal council. In India direct reservation is provided to women and the weaker section of society by fixing their seats in the panchayats and municipalities on the bases of their population in the provinces. In India members of state and union legislature get automatic membership of these institution. The constitution of the Republic of South Africa does not have such provision of providing automatic membership to the members of state of union legislature.

Powers and functions assigned to these institution of self government the constitution has provided exhaustive list. In India under eleventh and twelfth schedule the number of subjects is 29 and 18, while in South Africa this number is 15 in part B of fourth schedule and 23 items are in the part B of fifth schedule.

The system to deliver these functions to the local government by the provinces is different in both the countries. In South Africa the constitution and the subsequent statues of local government has accorded powers and function to local government which they are entitled to do under part B of schedule 4 and 5 of the constitution. The constitution itself makes it clear that it is the right of local government to “administer the local government matters listed in part B of the schedule 4 and part B of schedule 5”⁹². In South Africa the local government is central to the scheme of division of powers in the constitution. Local government is not only established as a separate sphere of government alongside the provinces and national government, but the constitution also anticipate that local government will develop into a strong and important sphere carrying substantial responsibility for the delivery of services and development of country.⁹³ This has accorded separate status to the local government of South Africa from India in terms of powers and responsibility. In South Africa the local government is not depend on the mercy of the provincial government for the delivery of powers and functions which is assigned to them through the constitution. But in India the panchayats and municipalities are heavily depend upon the provincial legislature for the powers and functions. In India the constitution itself elaborated the list of function related to the panchayats and

⁹² Article 156 (1) (a). Constitution of the Republic of South Africa, 1996.

⁹³ Christina Murry, *Intergovernmental Relations in South Africa the challenges of Cooperative Government* by Norman Levy and Chris Tapscott (ed.), (University of the Western Cape, IDSA, 2001), p. 68.

municipalities. But it depends on the discretion of provincial legislature to delivery these functions and powers to the panchayats and municipalities. In the constitution it is said that 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 institution of self-government.⁹⁴ Therefore, it is not mandatory on the part of the state government to implement the section related to the delivery of powers and functions to the panchayats. It implies that powers sharing with panchayats depends on the political leadership at the state level in India.⁹⁵ Apart from it, the member of executive council for local government in South Africa has power to adjust the division of functions and powers between a district and a local municipality.⁹⁶ In India due to discretion of provincial legislation no such authority is existing.

The term of local government council is 5 years in both the countries. Panchayats and municipalities in India have supervision of state over them. In this bases the state government can dissolve panchayats and municipalities in the middle of their tenure. On this matter the local government of South Africa has acquire separate status for itself from the panchayts in India. First of all in South Africa the municipal council can dissolve itself by passing resolution to this effect and resolution for this can be passed only after two years have passed since

⁹⁴ Article 243 G, Constitution of India.

⁹⁵ Mahi Pal (2001), “Panchayati Raj and Rural Governance”, *Economic and Political Weekly*, 2004, January 10, p. 137.

⁹⁶ Section 85 (1), Local Government Municipal Structures, Act No. 117 of 1998.

the council was elected.⁹⁷ The member of executive council for local government in a province may dissolve a municipal council in the province if “the electoral commission is of the view that a boundary determination effects the representation of voters in that council, and the remaining part of the existing term of municipal councils is more than one year”⁹⁸. The member of executive council for local government in a province may dissolve municipal council on grounds of council not being able to fulfil its obligation only after notice of that dissolution has been tabled in the national council of provinces and that council has approved the dissolution. In the constitution it is expected from the provincial government that they must provide for monitoring and support of local government in the province and promote the development of their capacity to enable municipalities to perform their function and manage their own affairs. The structure of cooperative federalism in South Africa has prevented the provinces from intervening in the local government. This aspect of constitution has firmly established the institution of local government in South Africa which can work freely within the sphere provided by the constitution.

The structure of local government in both the countries are almost same but in terms of allocation of powers and function and control mechanism the South African local government is superseded to the structure of local government in India.

⁹⁷ Section 34 (1) (2), Local Government Municipal Structures, Act No. 117 of 1998.

⁹⁸ Section 34 (3) (a), Local Government Municipal Structures, Act No. 117 of 1998.

The context in which South Africa has adopted local government is different from that of India. In 1970 and 80 the local government was the main battle ground in the struggle against the apartheid. The African National Congress (ANC) has appeal the non payment for the services which they are using.⁹⁹ In post apartheid South Africa, the leaders of the majority government want to dismented the previous apartheid structure of the central government. This can be done only by the all round democratization of the country. Strong and well functioning form local government is helpful to dismental the apartheid structure upto the grassroot level. The leaders of the post apartheid South Africa want an all round social and economic development of their country, in which people participate according to their capacity. Local government is the institution which provide adequate scope to the people to participate in the democratization process without discrimination. To provide guarantee and substantial role for local government and a process of amalgamating former white, Asian, coloured and black jurisdiction is an institutional framework are fulfilling the conditions by which the apartheid structure has dismantled and segregation become the thing of past.

In India the context of establishment of panchayats is different. Here there is no such policy as apartheid in South Africa pursued by the union government. Constitutional status is provided to the local government by which panchayats

⁹⁹ C. Pycroft, "Local Government in the New South Africa", *Public Administration and Development*, Vol. 16, 1996, p. 234.

work at the bottom of the whole structure of governance as a democratic institutions that will ensure the functioning of participatory democracy.¹⁰⁰ Constitutional provision have their necessity by which it will succeed in establishing local government structure which is different in every state. The amendment act accord constitutional status to local government to ensure a uniform pattern of local government throughout the country.¹⁰¹

A well functioning structure of local government has established in South Africa and India. They have capacity to develop into a well functioning institution of democracy. But not a single institution is immune from the challenges which come in its way of well functioning. In context of South Africa previously economic opportunities, infrastructure investment, access to services and political representation were the privilege of a white minority. The black majority of the population was politically and structurally excluded from local governance and the benefits that derived from them. This was the legacy of apartheid that persist today.¹⁰² The farmost challenge for local government is South Africa is to overcome this legacy on the practical grounds and empower communities to participate in and influence the way in which their municipal areas are well governed and developed. In the constitution and subsequent statutes it is expected from the local municipalities that they must think critically

¹⁰⁰ Medha Kotwal Lele, "Local Government: Conflict of Interests and issues of Legitimation", *Economic and Political Weekly*, December 22, 2001, p. 4702.

¹⁰¹ Justice S. Ranganathan, *Constitution of India Five Decades (1950-1999)*, (New Delhi, Bharat Publishing House, 1999), p. 408.

¹⁰² D.M. Powell, South Africa's Three-Sphere System: The Challenges for Governance, in N. Levy and C. Tapscott (ed.), *Intergovernmental relations in South Africa*, (University of Western Cape, Political Information and Monitoring Service, IDASA, 2001), p. 264.

about how they operate and relate themselves to local communities, develop their own strategies for meeting local needs and promote the social and economic development of communities in their areas of jurisdiction. These constitutions provisions assume that local government have the skills, expertise and political willingness to design and implement development programmes.¹⁰³ Without imparting adequate skills and expertise to the local communities codification of such type of functions for local government will have negative impact on the well functioning of such institution. These is lack of sufficient self generating financial resources for the local government. In such a condition it has negative impact on the performance of local government. Uneven revenue distribution between municipalities have their own impact on the local government, which has potential to develop itself as one challenge in the near future.¹⁰⁴ Due to new beginning of local government from 2000 onwards there is resistance to change from the old order. On this ground it has yet to stand on the test of time. In many provinces there are backlogs in infrastructure and service provision, growing urbanization side by side with large rural population living under traditional forms of governance, the need to extend service delivery to under serviced localities, reduced public sector expenditure and capacity constraints. These are

¹⁰³ John J. Williams, "Intergovernmental relations: Local government", in Norway Levy and Chris Topscott (ed.), *Intergovernmental relations in South Africa*, (University of Western Cape, IDASA, 2001).

¹⁰⁴ D.M. Powell, South Africa's Three-Sphere System: The Challenges for Governance, in N. Levy and C. Tapscott (ed.), *Intergovernmental relations in South Africa*, (University of Western Cape, Political Information and Monitoring Service, IDASA, 2001), p. 264.

some of the challenge which comes in the way of well functioning of local government in South Africa.¹⁰⁵

South African national political framework and context still presented significance challenges to local governance. In such terms many legislative, policy and organizational issues critical to provide a stable framework for local governance to emerge are unresolved.¹⁰⁶ Efficient local government will be judged on the bases of services provided by it. On this front little has been done on a more developmental, service oriented public accountability and antipoverty culture within the public service.¹⁰⁷

Intergovernmental relation like between national and local government was underfined instead of their place in the constitution. This led poor coordination among various levels and departments of government which results in poor reform and program performance.¹⁰⁸ In 1996 “President Review Commission” said that the “lack of a clear policy framework for intergovernmental relation as well as the continued existence of substantial legislation from the apartheid era has hindrances to developing dynamic and effective local government”. The review commission also noted that personal and organizational weakness at provincial level worsened such problems.¹⁰⁹

¹⁰⁵ Ibid.

¹⁰⁶ D. Olowu and J.S. Wuusch, *Local government in Africa The Challenges of Democratic Decentralization*, (Lynne Rienner Publisher, London, 2004), p. 83.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid, p. 84.

Future resource adequacy is less clear. The revenue base composed of property tax and water and electricity service fees has limited scope for expansion. Sales and income taxes are difficult to implement and root under consideration at the regional and national legislatures that would need to authorize them for local use. On this line also the revenue allocation from the national government are uncertain and will almost surely be limited in size to a small portion of local needs.¹¹⁰ Along with it the revenue sources in the former black townships are limited given the poverty there and the culture of non payment still exist there. The refusal by South Africans to pay water and electrical charges and taxes due in urban areas to protest apartheid.¹¹¹

In terms of India, it's local government has faced different type of challenges from South Africa. In India the constitution of the local government and their functions and responsibilities are to a considerable extent left to the state to define by their legislature. This has left much scope to politicize the issue of democratization without doing anything on the further development of this issue. The topics on which the local government will have jurisdictions are set out in schedule eleventh and twelfth, and it is left for the state the function which they want to assign to the local bodies. On practical grounds the only states and union territory which have transferred all 29 subjects to the local bodies are

¹¹⁰ Ibid, p. 86.

¹¹¹ Ibid, p. 86.

Karnataka, Kerala, Rajasthan, Sikkim, Tamil Nadu, West Bengal and Deman and Diu.¹¹²

In Indian system of local government there is grant of automatic membership of these bodies to the member of parliament and member of the legislative assembly of the local area. The presence of these persons could lead to procedural and operational complications.

Lack of adequate finance is the common challenge which is shared by the local government of both the countries. In India the challenge in term of finance is that, before listing the functions to be performed by the panchayts the state have introduced certain qualifying clause like “within the limit of its funds, “to the extent its funds allow to perform”¹¹³. Apart from it “there is lack of clarity of role as between tiers, lack of staff support, unviable administrative area, creation of parallel channels of flow of funds like MP funds, MLA funds, state sponsored schemes independent of panchayats like janmabhoomi in Andhra Pradesh are among the major factor explaining low revenue levels of local bodies” in India.¹¹⁴

In the context of South Africa its local government is facing the challenges which is emeneting from the environment and legacies of past rule. In

¹¹² Mahi Pal, “Panchayti Raj and Rural Governance”, *Economic and Political Weekly*, January 10, 2004, p. 139.

¹¹³ Ibid.

¹¹⁴ “Report of the Working Group on States Resources for the 10th Five Year Plan (2002-2007), Volume II, Planning Commission, p. 93.

India the local government have been facing challenges in terms of their constitutional structure which makes them to work on the command of the state. Both types of challenges are cope on the bases of mutual cooperation and political will of the different level of leadership.

CHAPTER 4

CONCLUSION

The argument put forward for the establishment of local government is to provide democratic avenues to the local people on the basis of which common subjects are managed by the community at the local level itself. Nevertheless the establishment of such institution is necessary to avoid migration of people from rural to the metropolitan area which is helpful in relaxing the burden on large cities. By this way it is also helpful in developing the vibrant economic system at the local level in which local inhabitants are able to get employment and manage the depleting natural resources in a sustainable manner. Indirectly it is helpful in ceasing the overcrowding conditions and other related problems of big cities. The local government model are rests on some preconditions these are the availability of local resources, local autonomy and authority, local accountability through an open and public political process and effective local institutions of collective choice. Local government is related to the special position of rural and urban democratic institutions which is entrusted with certain functions of local nature and it is accompanied by powers to raise financial and other resources in accordance with the dispensation provided in the statute. Modern form of local government is different from ancient one. In modern time the statute is necessary for the establishment of local governing institutions in rural and urban areas. Although such institutions have their existence in ancient time but they were

regulated on the bases of customary laws and practices which was different even in the same region. But modern system of institution of local government are working on uniformity of rules and they come into being by a single statute which is considered necessary for their establishment and recognition. In such way the local government is related to the community at the local level in which the community has assigned the responsibility of administration of its locality through its elected representatives who is responsible to the people of a particular area. Local administration of matters which has local importance through their elected representatives is the for democratic decentralization.

Apart from it the essence of self government lies in the freedom that a community enjoys in organizing its institutions of governance and giving shape to the development plans. Autonomy is consider as a necessary precondition for the exercise of powers and doing functions which a local government has authorized to do so. Also autonomy is determining the role of not only the governing body but also of each of its members, the role of different segments of the community, their duties and responsibilities, the ability to raise resources, lay down the rules of governance and manage its affairs without outside interference or guidance. All such things are useless if a local government does not have capability and skills to manage its affairs. It gives two sets of things. One is that a local government is ineffective if it has skills and resources but does not have authority to manage its affairs. On the other hand if a local government have autonomy and authority but not skills and expertise than it is ineffective in its

functioning. Therefore along with autonomy and authority, managerial skills and expertise is also necessary for the well functioning of local government. By this way only the democratic decentralization have been established in its true sprit.

Apart from it democratic decentralization should be viewed in the context of an emerging need to reconcile two contrary tendencies, one is globalisation and local self government is another. The entire world is undergoing wide-ranging changes. A renewed North-South dialogue, democratic upsurges make decline of authoritarian regimes, experimentation with new institutions, problems of ethnicity, religiosity and basic identities are some of the factors which give rise the need of redefinition and political orientations in any country. These need is being felt everywhere but more particularly by Asian and African countries. There is remarkable shift of interest and concern today in favour of giving concrete shape to the democratic upsurge and to local self government institutions. The reason cited for this is that an immediate effect of globalisation has been the impact of the world capital market on centralized and decentralized governance especially in respect of the making of vital decisions that affects the lives of the people. It is in this changed context of economic and technological development that there has emerged a need to understand the imperatives of decentralized governance.

The system of local government should be seen in the context of political mobilization in rural areas, the appalling conditions of women and the poor, in respect of poor literacy and growing urbanization and of growing incapacity and

unwillingness on the part of the state to solve these problems especially developing countries. Democratic decentralization is perceived as an alternative system of governance where the people centered approach to resolving local problems is followed to ensure economic and social justice. The entire process would be locating people at the center of power so that they become the basic engine of development process and not merely its beneficiaries.

The local government system has develop in different context in South Africa and India. In South Africa Britishers introduced the system of separate living areas for blacks and whites. At that time it was not officially declared policy. But after 1948 it was the National Party government of South Africa who introduced the apartheid system and declare it an official policy of the government of South Africa. Local government was the worst affected areas by apartheid. Because it was at the local level where greatest manifestation of apartheid appear. Under it areas were separated on the bases of colour and no official policy was made for the development of black areas. In such areas people pay heavy duties like rent tax, for the sub-standard services. One character of this policy was that it imposed restriction of blacks entries into urban areas. By the series of laws South African society has restructured to conform to apartheid doctrine. The 'Population Registration Act' made classification of the entire population on the bases of race, inter-acial marriages were forbidden and by an act sexual relations ban between whites and blacks. Urban segregation was intensified by the 'Group Areas Act of 1950'. Which provided for the

designation of particular residential areas for specific races. Under the terms of 'Separate Amenities Act', amenities provided for different races was not equal in standard.

Such officially declared discrimination give rise movement against apartheid. African National Congress (ANC) and its youth league started civil disobedience movement. Soweto Revolt (South West Townships) of 1976, Congress of South African Trade Unions (COSATU) demand for the abolition of pass restrictions and withdrawal of foreign investment and the end of cold war in 1990 are some of the reasons which made continuation of policy of apartheid at huge cost.

During the civil disobedience movement against the apartheid the local government were the main battle ground. Because local and homeland townships was the main avenues where apartheid practices in its effective form. On the appeal of ANC the people of homeland townships were refused to pay for the services. This rent boycott movement at local level had played its effective role in dismantling the apartheid structure. All these conditions made of negotiation inevitable between government and different organizations for restructuring the African political system. At the time of negotiation the local government was considered as the most important sphere of government to dismantle the apartheid structure. Therefore the negotiating forums for local government want to build a system of local government by which separate areas of blacks and whites are amalgamated and make them a unit of administration.

Indian system of local government has developed in the different context than South Africa. In India the local government has always existed and it has never been the subject of discrimination by the national government under any rule even rule by Britishers. The colonial requirements had institutionalized the district administration and the district collector as the effective unit of decentralized administration in India in the last quarter of the 18th Century, although by the last quarter of the 17th century local institutions were introduced in India by Britishers for the urban areas. It was in the 19th century they had introduced it in the rural areas. Madras was the first to have a Municipal Corporation in 1687 and Bombay and Calcutta have joined it in 1720. In 1870 the famous Lord Mayo resolution was came into being which talked about establishment of local institutions in rural areas. Apart from it more effective forms of local administration was emphasized in Ripon's resolution of 1882 and more comprehensively by the Royal Commission on Decentralization. By effectors of Ripon local self government institutions were established such as municipal and district boards. In India after the independence the institutions of municipal and district boards lost whatever powers they had. In the constitution the local government has made state subject and it left it on the state to establish local government institution in their area according to their convenience. Before 1993-94 panchayats and municipalities don't have constitutional status. In India by the amendment act in 1993-94 the constitutional status has accorded the institutions of local government in India. This amendment has added two more

schedule to the constitution in which the subjects are allocated to the panchayats and municipalities.

The local government institutions has developed in different context in both the countries. In the context of South Africa the people of homeland area led a movement against the apartheid to acquire equal status for their areas and institution. In this way it come out from the discriminatory policy of the government which establish separate areas for whites and blacks. But in India people never led any movement to acquire constitutional status for the local government system.

The institution of local government in South Africa has established in three phases. The existing structure of local government in South Africa is in the third phase which came into being after 1996. The final constitution of the Republic of South Africa has given the final shape to the local institution in South Africa. The phased transition of local government was inevitable in South Africa because of necessity to dismantle the apartheid structure. Under the “Local Government Transition Act of 1993” there was elaborate provisions for the transition of local government in South Africa. The first phase was address by the name pre-interim phase which began in late 1993. During this phase negotiating forums has been made in every province. In these negotiating forums membership has provided to both statutory and non-statutory bodies. These negotiating forums were nominated members of statutory and non-statutory bodies in the transitional local council and transitional metro subsection. These

nominated members of transitional local council was work as institution of local government until elections took place for the transition local council and new system has codified in the new constitution. The second phase has called by the name interim phase. This phase has start after 1st November 1995 local election for transitional local councils. During interim phase only elections were held for the transitional local and metro council. This election has replace the nominated members of the transitional local and metro councils.

Under Chapter 10 of the interim Constitution of the Republic of South Africa the constitutional status has accorded to the transitional local councils in South Africa. Finally in the constitution of the Republic of South Africa in 1996 under chapter 7 the local institution has got recognition.

In India the system of local government has not took shape in phased transition. Instead of it the amendment act is the culmination of the reform in local government process by which government act on its part at its own will.

In both the countries the structure of local government in South Africa has more strength and less weakness whereas the Indian system of local government has more weaknesses.

Local government is the third ties of government in both the countries. In the constitution of South Africa the local government structure has divided into three categories A, B and C. Category A municipality is situated in the metropolitan area. Category B municipality is for towns and rural areas and it shares municipal executive and legislative authority in its area with Category C

municipality. Category C municipality is situated in district and in the area of this municipality includes more than one municipality. In South Africa provinces establish local government institution in their area on the bases of these categories. Further by the parliament legislation these categories has defined more clearly by the government.

In India Panchayats and municipalities are the third ties of government. By the amendment act the three different models of panchayats and municipalities are provided by the constitution. On the line of these constitutional provision states in India have established institution of local government in their area according to the prevailing conditions of the particular area. In such a way both the constitution has provided models of local democracy to the provinces and national legislature has little say on this matter.

In terms of assigning powers and functions to the local bodies the South African system of local government has more powers and functions than Indian System of local government. The reason behind is that in India it is not obligatory for the states to deliver powers and functions to the panchayats and municipalities codified in the eleventh and twelfth schedule. But in case of South Africa it is clearly said that states must deliver powers and functions to the local bodies as codified in part B of 4th and 5th schedule. For powers and functions panchayats and municipalities in India are fully depend upon the mercy of the state legislature. Indirectly it effects on their ability to generate their own resources.

Another reason cited for having more powers and functions to the local government in South Africa is that the makers of the South African Constitution want to dismantle the apartheid structure and this can be done only by establishing a strong local government, due to its worst form of manifestation at the local level. Apart from it, in this task of local government the constitution maker did not leave any scope of unwanted interference in the local government functioning by the provincial government. To fulfill this objective the government has further enacted the “Local Government Municipal Structures Act” in 1998 and “Local Government Municipal Structures Act” in 2000. By these subsequent statutes the government in South Africa further strengthened the system of local government by bringing more clarity in the provision of their functions and organisation. In this way no scope has left for the states in South Africa in terms of assigning powers and functions to local government. Indian system of local government is the result of governments will and not the part of any movement. The basic objective of establishing these institutions in India is to strengthen and expansion of participatory democracy upto the grass root level.

Lack of any objective behind participatory democracy in India made the panchayats and municipalities to work on the bases of functions and powers assigned to them by the state government. It made them subordination to the state legislature although in terms of its organization it works as the third tier of government.

In both the system the provincial government are assign role to monitor the well functioning of the local government institution and provide support to these institutions by which they work effectively.

In South Africa there are two existing pattern of election for councilors of municipal council for rural and urban areas. The councilors of local councils which is having ward are elected on the basis of direct election. Proportional representation. system of election has employed for the election of councilors of local council which has no wards. In this way equal space is provided to the minority community of any area by employing system of proportional representation. The constitution and the subsequent statute is silent about the election pattern of chairman of a council. In this regard it said that the chairman is elected among the elected councilors.

In India the constitution has provided the pattern of direct election of the councilors of municipality and panchayats seats. In India the legislature of state has authority to decide the pattern of election of the chairman of the panchayats and municipality. The member of parliament and legislative assembly of a state are getting automatic membership of panchayats and municipalities in India. But in South Africa the local municipalities are free from such extra burden.

Deconcentration and delegation are the two key words on the bases of which the structures of local government in South Africa and India are precisely defined. The structure of local government in South Africa come within the preview of delegations and has the capacity to move towards devolution. In the

context of India the structure of local government is define in terms of deconcentration.

In terms of convention approaches South African system of local government has assigned authority and responsibility to manage their own affairs. In such capacity the local government institutions and their members has accorded responsibility to provide services to the people of their localities. In fulfilling these functions the municipalities in rural and urban collect taxes, and levies. On the bases of providing services to the local communities the municipal council in such area have the power to adopt and implement a tariff policy or the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements. In such capacity, a municipal council have authority to adopt by-laws to give effect to the implementation and enforcement of tariffs. In South Africa three different categories of municipal bodies exist therefore it seems that this tariff policy may differentiate between different categories.

The local government system in India is in practice from the long time. Now these bodies got constitutional status and every state has established local government bodies in their areas. In India the institution of local government are heavily depend upon the state government for their existence. The Panchayats and municipalities are authorize to levy, collect and appropriate to those taxes, duties, tolls which the legislature of a state assign to it. Along with it the state legislature has authority to assign to a Panchayat such taxes, duties, tolls and fees

levied and collected by the state government with some conditionalities. But the inclusion of the word may in the relevant article related to imposition of taxes by local bodies impinge on the ability of local bodies to mobilize resources at their own level. Because it is on the discretion of the state legislature to provide local institutions the base of taxes. Such discrepancy is met in the tenth five year plan. From the tenth five year plan onwards on some scheme 90 percent of the funds for them are now transfer directly to the committee at the village level. But again the local institutions in India does not have any independent resource base by which they generate their own resources at their own level.

On this bases it can be said that fiscal structure is one point on the bases of which both the structure of local government are stand on different footing. South African institutions of local government have much more powerful base of resources than India. Apart from it, they have assigned authority by the act of South African parliament to enact their local laws for the collection of the taxes and levies which the constitution has authorize them to collect. Resources base of institutions of local government in India can be improve in the line of fiscal structure of local government in South Africa. It provide much scope to the India system of local government to function effectively.

In South Africa the resource base like property taxes, water and electricity service fees, has limited scope for expansion. Rates are set primarily on site value rather than improvements and payroll taxes, sales taxes and income taxes are to particularly difficult to implement and at present not under consideration at

the regional and national level that would need to authorize them for local use. Apart from its revenue allocations from the national government are uncertain and it is limited in size to a small portion of local needs. Like the grants released under the "Reconstruction and Development Programme" was likely to meet only a small portion of the needs. But in South Africa local needs grow enormously with vast increase in local population caused by municipal amalgamation. The addition of traditional areas to the nearby areas will add the responsibility of a particular municipality without having adequate resources. Apart from its revenue sources in the former black townships are limited. On the other hand the culture of non payment is still in existence which has its own negative effect on the working of local government. In South Africa although municipalities have some resource base but they have experienced a substantial increase in personal cost with amalgamation with the former black townships.

The institutions of local government is judged on the basis of level of service delivery provided by them. On the second place service delivery system is effectively implemented only if it has resource base. In India and South Africa the constitution has provided system of self governing institutions which has potential to work effectively as an institution of local government. Well managed structure and adequate resources are not fulfilling the conditions of well functioning of democratic institutions at the grass root level, until and unless adequate skill of management and expertise in different sectors are not delivered to the grass root level than they are not able to function effectively. In such a

condition the other things like corruption malpractices and practicing of past things prevail heavily and these things have negative effect on the working of grass root level institutions.

To overcome from the apartheid legacy is the foremost challenge by which the local government in South Africa has met. Absence of adequate literacy rate is imposing constrain by which the people are far away to aware about the need of their areas and not able to indulge into the local matters. This is one reason of low level of politicization at local level in Indian and South Africa. The centre point of the argument is that after having well established structures of local government they have to overcome some of the challenges which is necessary for the well functioning of local government.

In the context of South Africa the problem of apartheid has a lingering effect, it is in terms of lack of skills and expertise in black people and they are in the process to acquire them. This follows the bureaucracy which takes time and still in the process of transition from the apartheid outlook to post apartheid state. To overcome from such challenge is necessary because they have potential to shake the very foundation of local government in the periphery of the country.

In the context of India the institution of self government has come into force after 1992-93. Although they have come into existence by the legislature of the state and have acquired power through the same but instead of this in some states they are functioning well. In India Panchayats and municipalities are having independent status and resource base which is provided by the state

legislature. In these state like Kerala, these institutions are working as self governing institution and have their orientation towards community service. Instead of it in India in most cases the old power structures of caste, class and patriarchy have remained unchallenged. An analysis of these ground processes is crucial to understand the possibilities that exist for the success of the local institutions in India. Women representatives who are elected for local bodies are still working under the control of her husband and elders of her family. It has potential to give rise to the crisis in the system of local government in India. It has potential to generate crisis of legitimacy of authority in the local institution instead of having well functioning structure. In India traditionally the local institutions has been elite bodies. But the 73rd and 74th amendment act have opened up a process of democratizing these elite bodies. With the introduction of reservation for women and marginalized section of society. But in reality the women and dalits are not in sound position. Legal provisions for women and dalits are not proving to be a guarantee for their empowerment. The social hierarchies and inequalities that exist in the society deter the marginalized from even voicing their differences and becoming a part of the deliberative process that local elites and dominant group hopes. It is near to utopia that without really charging the social hierarchies and inequalities that exist in civil society, it is impossible to hope that women and dalits became part of the local bodies and will function to empower the marginalized. The creation of panchayat and rules and regulations and procedures for their functioning alone will not really solve

the problem. The complexity of the social reality must be taken into consideration to be able to understand prevailing situation.

A well empowered structure of local institution is creating conditions of democratic decentralization at the local level. A prevailing conditions which have adverse impact on them must be dismantle by which the institution of local government will acquire potential to function as a service oriented institution. Therefore in India it is necessary to recognize that the 73rd and the 74th amendment to the constitution have really opened up a new legitimate space where the marginalized groups of people can legitimately have a say in the decision making process.

In both the structure institution of local government have developed over a considerable period of time and after 1990 this system has improved more towards democratic decentralization. In the local government system in South Africa it is facing the challenges which is heading from environment. But in the context of India the local government have been facing challenges both in terms of environment and constitutional structure which makes them to work on the command of the state. Challenges of such a nature are cope on the bases of mutual cooperation and maturity of the political leadership.

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