Role of the State in Decentralized Governance:  
Macro, Meso and Micro Levels

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THE HISTORY of decentralization in India was a watershed in 1992. The passage of the 74th Amendment Act to the Constitution of India in that year is an important landmark in the evolution of municipal governance. The first ever initiative in this regard was taken in 1989 by the late Prime Minister, Mr. Rajiv Gandhi who was committed to “vest power in the only place where power rightfully belongs in a democracy, in the hands of the people.” This required constitutional guarantee to provide for active involvement of elected representatives in governance at the grassroots level.

As per the Constitution, India was to be a Union of States, that is, it consists of a two-tiered administration. The local governments are therefore an artificial layer. As local governance is a State subject as such the 74th Amendment directed the States to amend their acts to empower the municipalities to function as institutions of self-government. This envisaged functional and financial devolution of powers to the local bodies and ensured participatory governance at the local level.

The functions of urban local bodies have been illustrated in the 12th Schedule (Article 243-W) of the Constitution. This includes:

- Urban Planning including town-planning
- Regulation of land use and construction of buildings
- Planning for economic and social development
- Roads and bridges
- Water supply for domestic, industrial and commercial purposes
- Public health, sanitation, conservation and solid waste management
- Fire services
- Urban forestry, protection of the environment and promotion of ecological aspects
- Safe-guarding the interest of weaker sections of society, including the handicapped and mentally retarded
- Slums improvement and upgrading
- Urban poverty alleviation
- Provision of urban amenities and facilities such as parks, gardens, playgrounds
- Promotion of cultural, educational and aesthetic aspects
- Burials and burial grounds, cremations, cremation grounds, and electric crematoriums
- Cattle ponds, prevention of cruelty to animals
- Vital statistics, including registration of births and deaths
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- Public amenities, including street lighting, parking lots, bus stops and public conveniences
- Regulation of slaughter houses and tanneries

Some important measures enshrined in the Constitution (74th Amendment) Act 1992 to facilitate responsive and responsible municipal government include:

- Regular and fair conduct of municipal elections by statutorily constituted State Election Commissions;
- Restricting the power of State governments to do away with democratically elected municipal governments;
- Reservation of seats for adequate representation to weaker sections and women in municipal bodies; (33% for women; 22% scheduled castes and scheduled Tribes; 28% other backward castes)
- Constitution of Wards Committees in cities with population of 3 lakhs or more with enabling provision for such committees in cities/towns having lesser population, to ensure peoples participation in civic affairs;
- Specifying by law the powers and responsibilities entrusted to the municipalities and wards committees;
- The states are required to constitute Metropolitan Planning Committees and District Planning Committees for the preparation and consolidation of development plans;
- Integration of special and socio-economic planning by urban and rural local bodies with due regard to the sharing of physical and financial resources; and
- Assignment of critical roles to elected local representatives in civic affairs including town, district and metropolitan planning.

By the 74th Amendment, the states are statutorily required to constitute finance commissions once in every five years to recommend to their legislatures means to improve municipal finances including (i) assignment of taxes, duties, tolls and fees, (ii) shares of state revenues and (iii) provision of grants in aid. The Central Finance Commission is obligated to recommend measures needed to augment the consolidated funds of State Governments on the basis of recommendations made by the State Finance Commissions.

Recently, the Government of India has constituted the Eleventh Central Finance Commission to:

- Analyze the recommendations of the State Finance Commissions;
- To look into the existing powers of the municipalities to raise financial resources including those by way of raising additional taxes by municipalities and review the powers, authority and responsibility to municipalities under Article 243-W of the Constitution read with Twelfth Schedule.

Thus, the 74th Amendment stipulates “by law” rather than “by rules” of actual devolution of power to the people. It mandates that the local government is to plan, execute and
maintain services to ensure economic development and social justice. The political objective was to promote democracy at the grassroots level, ensure a decisive role for elected representatives in local governance and transfer of power to the people.

But, over the past two decades preceding the 74th Amendment the role of local bodies had been progressively undermined leading to bureaucratization of municipal administration directly under state government supervision. The organizational incapacity of the local bodies that have led to severe defects, haphazard peripheral growth of cities had provided the excuse of supercession of elected local bodies. Most of them remained superceded for over 15 years or so but no perceptible change in the functioning of these municipalities was visible.

The fallout of the 74th Amendment Act is that despite provisions for reservation for women and Other Backward Castes (OBC’s) and regular municipal elections, the state acts do not devolve functional and financial autonomy to local governments.

During the supercession period of local bodies the functions enumerated in the 12th Schedule were divided between independent government agencies created by state governments to perform different municipal functions. For instance urban planning including town planning, regulation of land use are prerogatives of development authorities created by state governments. Water supply and sewerage corporations vests with water works created as autonomous bodies distinct of municipal bodies. Poverty alleviation programs are designed and executed by state and district administration with very little or no interference of local bodies and environmental issues are in the concurrent list and programs are mostly designed and executed directly by the Ministry of Environment, Government of India. Even after the passing of the Constitution Amendment Act, the scope and nature of functions performed by local governments at the present is very restrictive in nature.

A study of various state acts indicate that they have variously included from two to all eighteen functions illustrated in the 12th Schedule. But barring a few states like West Bengal and Kerala most of the enumerated “essential” functions remain suspended by government orders. No distinction has been made by them between “essential,” “assigned,” and “agency” functions. Very few states have assigned additional functions to the urban local bodies. The tendency of higher governments is to control important activities in municipalities through separate corporations and other governmental bodies manned by state bureaucracy. Overlapping of functions between municipalities and state governments are also not ruled out. Though provisions for Ward Committees, Districts and Metropolitan Planning Committees have been made in State Acts, yet, they either remain in suspension or, the function of these committees have not been elaborated or clarified beyond the stipulation of the 74th Amendment. The conformity legislations do not provide enough directions as to how the District and Metropolitan Development Plans are to be integrated with the State Development Plans and how they will be financed, implemented and monitored. No linkages have been developed between District and Metropolitan Planning Committees, Municipalities and Panchayats (rural local bodies) nor mechanisms developed to coordinate preparation and effective implementation of the plans. The municipalities basically remain maintainers and not planners and developers...
of services. However, they are accountable to the people for all shortcomings in town and city planning more so after the 74th Amendment Act.

The 74th Amendment Act conceives of autonomous local bodies yet except in a couple of states, higher level governments interfere in the day to day functioning of municipalities. They are not allowed to frame rules, determine taxes and cesses or spend funds without the prior approval of the state government. The municipalities are in the strong grip of state governments.

The State Acts have by and large vested the bureaucracy with executive control over municipalities. The Municipal Commissioner wields all administrative powers. He is the appointing authority and the controller of all municipal activities. He has the authority to refuse implementation of resolutions of the house of elected representatives on grounds of safeguarding the interests of the municipality. Since he is directly responsible to the state the municipality has practically no control over him. This invariably leads to a clash between the elected representatives and the bureaucracy. The higher levels of government have the impression that the elected bodies are responsible for service delivery at the local level but powers and authority are vested indirectly in the state government through the bureaucracy controlled by it.

The approximately 2,850 municipalities are divided into three categories on the basis of their nature and population. The smaller municipalities are known as Nagar Panchayats and Nagar Palika Parishads, while very large ones are called Municipal Corporations or Nagar Nigams. They are governed by a separate set of Acts. The heads of smaller units are known as chairpersons while the heads of Corporations as mayors.

The All India Council of Mayors has been actively engaged in lobbying for the incorporation of the spirit of the 74th Amendment in the Corporation Acts and have demanded that a Model Corporation Act be designed for adoption by all States. The Government of India has agreed to hold four regional conferences to discuss and design the “Model Act.” Three conferences have been held and recommendations submitted to the Government of India. The last workshop is to be held in the end of June 1999.

The general consensus is for the adoption with minor changes of the Mayor-in-Council system as functional in the city of Calcutta, West Bengal. The Calcutta Municipal Corporation Act provides for the cabinet system of local government. It devolves full functional and financial autonomy to the Corporation and conform closely to the provisions of the 74th Amendment. The mayors are also seeking legal opinion for seeking judicial intervention for actual implementation of the 74th Amendment by the states.

Financial devolution is imperative to the success of decentralization. Urban local bodies derive finances from tax and non-tax sources. They also receive funds from the state governments in the form of grant-in-aids and share in taxes collected by the state government.

In a federal system the allocation of expenditure and revenue functions between various levels of government is most central. Little attempt has been made to improve the revenue
base of urban bodies. The Twelfth Schedule does not lay down a framework for linking municipal functions with corresponding revenue instruments. It is for the state legislatures to evolve a framework. However, the 74th Amendment stipulated setting up of State Financial Commissions in each State to determine the share of local bodies in state revenue. After an inordinate delay most of the states have submitted their SFC reports which indicate a general hitch on behalf of states to share revenues. Recommendations range from 2 to 36 percent. The Government of India is currently reviewing the reports.

It is most desirable that own sources should be the major source of revenue for urban local bodies. Each local body levies and collects all taxes and non tax items which are obligatory in nature. The SFC’s have attempted to relate state share to ULB’s performance in recoveries of their tax and non-tax revenues. The two most significant local taxes are the house tax or property tax and octroi. Much against the will of the Urban Local Bodies (ULB’s) octroi has been abolished in majority of states pending abolition in others. The system of compensation as it evolved is arbitrary. The alternative to octroi as derived is deemed as state revenue and shared with local bodies. The 74th Amendment suggested municipal sharing in state revenue besides local sources of income. The abolition of octroi is a great financial blow to ULB’s.

Similarly, variations among states in matters of tax powers and tax structures require immediate attention. The government formulates rules for different taxes and levies leaving very little scope for local decision making. At present, property tax is not a buoyant source of revenue for municipalities and governments developing a scientific and acceptable basis of house assessment.

A major shortcoming is that the finance commissions have not looked seriously into the debt position or accumulated financial liabilities of municipal bodies in their states. It runs into millions and state municipalities are barred from preparing and presenting deficit budgets. High revenue projections and low expenditures or a surplus budget is but illusionary. The SFC’s have generally recommended that State governments wipe off accumulated debts up to 1994, when elections commenced after the 74th Amendment has not been accepted by them. Thus lack of budgetary back-up to municipal functions will soon lead to loss of credibility of local governments. However, some municipalities have augmented their finances by means of innovative practices in terms of “land use,” floating “municipal bonds” etc.

Cities contribute about 60 percent of the Gross Domestic Produce (GDP) but own sources remain woefully pathetic in comparison to the State and Center (Approx. 1/5th of Center and 1/3rd of State). It is evident that municipal governments have not benefited from the economic activities that take place in their jurisdiction and remain peripheral to the Indian economy.

The 74th Amendment Act mandates for peoples’ participation in local governance. While some states have not provided for the participation of weaker sections of the society by means of reservation all state acts lack provisions to promote public-private partnership, privatization etc. The District and Metropolitan Planning Committees have not been set up in
the absence of necessary executive orders. NGO’s on their own have contributed to cities’ development by innovative practices in environmental management and in providing shelter, education and professional training to the needy.

The 74th Amendment marks the beginning of decentralization in India. The process is on-going and it will take some time for structures to evolve.

**Recommendations**

- A second round of legislative exercise by States and Union Territories is needed to clearly define the functions of the municipalities and their relationships with other para-statals such as development authorities, water boards etc.

- The 74th Amendment Act should be implemented within a time frame failing which the Government of India should take strong action against the erring states.

- The local governments should be strengthened financially and democratically.

- Model Municipal Act should replace the variety of existing state municipal acts.

- Rationalization of the distribution of subjects between the states and urban and rural local bodies is necessary.

- Distinction to be drawn between the functional responsibilities of different levels of municipalities.

- Model alternatives be developed through national consensus regarding (i) local taxes (ii) assigned taxes & (iii) inter-governmental transfers.

- Devolution of administrative powers to the local bodies by the state governments.

- There is a need for creation of a separate cadre for the municipal employees.

- Training a capacity building of both elected representatives and administrative staff is needed.

- Lobby to recruit qualified women with leadership qualities in local political parties.

- Transparency and accountability to the people is absolutely imperative.
Public and citizen groups need to be assigned definite roles and participatory opportunities in local governance.

Rules for interface between various groups of stakeholders need to be spelled out clearly including privatization of municipal services.

A National Urban Development Bank or National Development Corporation should be set up for loans and financial assistance to the Urban Local Bodies (ULB’s) for infrastructure development.

The ultimate power in a democracy rests in the people and they must have the right to monitor the performance of public representatives and bureaucrats.

The All India Council of Mayors is deeply concerned with the diversity in state municipal acts as well issues of actual devolution of power. Devolution is not possible without sharing financial and functional authority. It is therefore very essential to free the municipal administration from the “capacious and arbitrary” supervision of higher levels of government. Dillinger rightly calls it “preversely controlled local sector.”