CHAPTER III

LOCAL GOVERNMENT: COMPARITIVE ANALYSIS

Local government may be defined as government by elected representatives of the people, charged with administrative and executive functions in matters connected with day-to-day life of the population in one particular locality, and vested with powers to make byelaws for guidelines. De Tocqueville pointed out that the local assemblies of citizens constitute the strength of free nations. Town meetings are to liberty what primary schools are to science, they bring it within the people’s reach, they teach men how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions it cannot have the spirit of liberty.\textsuperscript{136}

The local government is primary school for democracy. The success of democracy depends on the proper functioning of local bodies and its institutions. With this preposition in view, this chapter elucidates the historic experience of different nations and political systems. It may be an eye opener in the evaluation of the process of democratization of governance and the relevance of local polity in such conceptual changes.

3.1 British system

The liberal emphasis in England may be ascribed above all things to her free local institution. British local government is empowered with administration of most of the social enactment or impact of a revolution. It is the result of various legislative attempts as well as policy formulations.

The modern period of local government began in 1832 and developed in 1835 through two main legislations\textsuperscript{137}. On the foundation of these two legislations the British boroughs (cities) were established in 1885\textsuperscript{138}. The system still continues with little changes. In 1888 the elective councils for local bodies were established. The unified urban and rural council as districts were established in 1894. Elected Metropolitan Borough Councils were set up within the country of London in 1899.

\textsuperscript{136} Alexis de Tocqueville, \textit{Democracy in America}, (1835), See Chapter V

\textsuperscript{137} The Reform Act, 1832 and The Municipal Corporation Act, 1835.

\textsuperscript{138} The Municipal Corporation Act, 1885
The present system of local government was established as a culmination of the legislative and administrative steps on 1929\textsuperscript{139}. Still the policy in this regard has been the same, i.e., retaining and improving local autonomy in the sphere of administration.

Though local government system was evolved over a period extending hundreds of years and local governance was there long before the origin of Parliament, they have got the present importance and features from various legislation of the Parliament.

In the Saxon period local authority consisted of shires, heredrads, townships and boroughs. But in the middle ages they were reduced into three, viz. county, borough and the parish. Counties were administered by the Crown directly. Thus lesser amount of self-governance was there in such bodies during that period. Maintenance of law and order and variety of other functions were entrusted with the bodies. The boroughs were chartered municipal bodies with urban population. The parish was equivalent to modern village and had rudimentary type of mansions. This system continued till the industrial revolution. During modern period major attempt was made through reorganization of local government in 1972-74 period through establishing them with larger powers\textsuperscript{140}. But that was also made under the direct capacity of the Crown and not in a democratic self-governance process.

Local authorities are not local organs of the Central Government as in many continental countries. Every local authority has its own separate existence, to act within the extent of specified powers. Though Central Government exercises numerous powers with ever increasing influence over the manner in which local authorities carry on their affairs, local authorities are in law dependent entities and are not mere organs of the Central Government.

The kinds of local authorities at present are mainly five. They are

1. The Parish:

In rural areas the smallest unit of local government is the parish. The population of parish is managed by the parish meeting in which all rate payers attend. The parish council consists of five to fifteen members selected from residents. The members hold office for three years. Parish

\textsuperscript{139} The Local Government Act, 1929
\textsuperscript{140} The Local Government Act, 1972
councils discharge minor civil as well as ecclesiastical duties. It shall appoint an overseer responsible for the administration of charity funds of the village, maintenance and repair of footpaths, recreation of grounds, and lighting of roads. The higher authorities may entrust them more powers so as to enable them to provide libraries, workshops, and water supply. A paid clerk may be engaged by the council to perform the office functions.

2. Rural District Council

Rural District Council is formed by group of parishes, Rural District Council consists of representatives of parishes, elected as councilors. They are elected for a period of three years. It has a permanent existence as one third of its members retire every year. The Chairman may either be chosen from the councilors or from outside and can act as justice of peace which in office. The council meets at least once in a month. Functions of the council are discharged through committees, such as Sanitation, water supply, public health, road works and that for other miscellaneous activities. But Rural District council are not statutory bodies.

3. Urban District Council:

The Urban Districts Council includes towns and other areas having dense population, not being rural areas. Where there is increase in population and industrial growth a county may request to be converted to an urban district. Constitution of urban council has been similar to that of rural districts through elected councilors from each parish. Urban district has the power to maintain minor highways, housing, sanitation, public health and other licensing functions. Urban District Council also is not a statutory body.

4. Boroughs:

It is an urban area organized for self-governments within limits prescribed by Central Government. There are two types of boroughs, county boroughs and municipal boroughs. The former is outside the jurisdiction of county council. The municipal borough is geographically and administratively part

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141 The Municipal Corporation Act, 1855
of the county borough and is endowed with powers and functions of a county, and exempted from county jurisdiction. Borough is a municipal corporation with perpetual succession, corporate seal, coat-of-arms, a town hall other appearances of show or pomp. Each borough has a council elected from different wards or constituencies, each returning three or multiple of three councilors. One third of the councilors retire each year. The councilors in turn elect aldermen, one third of their number. The borough council elects its own Mayor either from among the councilors or from outside. The Mayor holds office for one year and may be re-elected. He presides over the local bench of justice of peace. Borough council has powers of a large Urban District Council and additional powers conferred on them. Most of the works of borough council are done through committees. Borough council has its own budget and can appropriate money. It may borrow money with previous sanction of the Central Government.

5. The County:

Every county is divided into electoral divisions, each returning one councilor at elections, which are held once every three years. The councilors, in turn, elect a number of aldermen whose number is to be 1/3rd of the councilor’s number. Their term of office is six years, but half of their members will retire every three years. County council has an elected Chairman. County can appoint its own administrative staff. Powers and functions of county council are extensive so as to include buying tax, rates, borrowing money for public purpose, public health protection, maintenance of highways, licensing of buildings for amusements etc. Education, control of county police, agricultural production, housing etc. are functions of county councils.

**Characteristics of English local governance**

The main characteristic features of English local governance are enumerated as follows:

i) Local authority is a separate legal personality;

ii) It has governmental powers over a defined local area. As explained above a two tier system of local government’s functions exists in most of the areas. For some particular areas three tier system also exists.
iii) The authority will be financed at least in ‘part’ by local taxation of inhabitants of the area.

iv) The authority must be controlled by representatives elected directly on an adult franchise by the inhabitants of the area.

The powers of the local government system were modified in 1985, by which the metropolitan county councils were abolished\textsuperscript{142}. The functions were transferred to either the various metropolitan district councils within the area of former metropolitan county, or to specially established joint authorities. On 1\textsuperscript{st} April, 1996 new unitary authorities were created to carry out all local government services within the area. The structure of local government, except in London after the change consists of counties, metropolitan districts, non-metropolitan districts and province unitary councils. The principal functions of local governments are now exercised by either metropolitan district councils or specially created joint authorities for service matters such as police, fire force etc. Non-metropolitan councils consist of parish councils, county councils and district councils.

In London, local government was reorganized a decade earlier than rest of England and Wales. However, the new enactment abolished the system that existed up to 1985. Hence the Greater London Council along with borough councils and City of London Corporation were abolished. The functions were reallocated to either the London Borough Council or to a specially constituted joint authority in respect of fire and civil defense.

In Wales, the two tier structure of local government consisting of county councils and district councils has been replaced and unitary authorities were established\textsuperscript{143}, the first tier known as county and the other known as council boroughs.

Local authorities are not agents of Central Government. They exercise functions conferred on them by statute rights. But they are not absolutely free and to be controlled by the Government. They can function only within the framework which can be changed at any time by legislature by the Parliament. Hence they function under three fold controls, i.e., judicial, administrative and political. Some other extra-legal controls also operate over them.

\textsuperscript{142} The Local Government Act, 1985
\textsuperscript{143} The Local Government (Wales) Act, 1994
i) Judicial control is imposed through the doctrine of *ultra-vires*.

ii) Administrative controls are financial control, approval and consent, directory and advisory control. Loan sanctioning, resource mobilization, audit and grants are examples of financial control. Compulsory purchase order, permissive orders, schemes, byelaws, guidelines, discretionary powers, appointment power, disciplinary power etc. are forms of administrative control. Regulations, impositions, directions, circulars, ordinances are forms of directory and advisory control.

iii) Political control imposed through public opinion, press and media and election process.

All local governmental authorities work under control and supervision of Central Government. The control over local governments is a compromise between flexible US system and rigid continental system. Hence England was the first country to succeed in reconciling a decentralized system of municipal government with order and efficiency in local administration. Departments of Central Government like Home Office, Board of Education, Board of Trade, Ministry of Health etc. exercise wide powers of control and supervision over local government. The supervisory control includes inspection, inquiry, statistical examination, authorization of loans, issue of advisory circulars and statutory instruments, administration of exchequer grants, audit etc.

The Central Government exercises control mechanism over local authorities through the following methods.

i) Grant-in-aid system: Infringement of autonomy of local self-government will not be popular in democratic polity, hence they are not absolutely autonomous. The usual method adopted is to offer “something for nothing” such a grant-in-aid or subsidies by the Treasury, is the main administrative channel through which central control of municipal government has developed in England. This is because the grant-in-aid is conditional resources, entailing inspection and an evaluation of the operation expenditure.

ii) Block grant: Subsidies and grants to local government were given for designated purpose like health, education, housing, drinking water etc. Not it has switched over block grants with general provision to meet expenses of
local body according to its discretion. Nearly half of the local government expenditure now flows from Treasury. Thus the Central Government calls the tune or sets the trend making local bodies political subsidiary.

iii) Parliamentary control: Local Government is subject to the supreme control law enacted by the Parliament. The term law includes delegated legislation also.

iv) Constitutional control: If a local government neglects its legal duties, the Central Government may intervene by moving the High Court requiring any such neglect to be set right. Help from courts may be taken by the Central Government to check any illegal action.

v) Institutional control: Local government system is in declining phase in the place of its origin itself. Many of the national agencies and centralized authorities, public corporations and multinational agencies established to undertake new services are severely affecting the autonomy and existence of local governments.

Overlapping of functions of local government and Central Government is another concern. Demarcation of spheres has high relevance. The particular sphere to be assigned to local bodies is not a question which is or wholly can be addressed by considerations democratic freedom or responsibility. It is to be considered as capability of development by the ties of neighbourhood and the activity of local communities or by the consideration of the local government as an educative process and invaluable to democracy on that account. The assignment of functions to local government must mostly be on administrative efficiency and practical considerations.

### 3.2 Swiss System

*Cantons* are the units of the Swiss Federation. Originally there were 222 *cantons*, three out of them had divided into 6 half *cantons*. The half *cantons* have their own constitution and government. But they have provided with half representation in the council of states and voting referendum.
Under Swiss constitution, *cantons* have been guaranteed autonomous status. As such they exercise all powers which are not delegated to the Federal Government. Thus *cantons* are not mere administrative units but autonomous units of the federation\(^\text{144}\).

Full *cantons* and half *cantons* of Switzerland may be divided into two categories from an administrative point of view.

i) *Cantons* in which direct democracy exists; and

ii) *Cantons* in which representative democracy exists

The *cantons* have their own constitutions. They can amend the same subject to two conditions like

a) they should provide a republican government; and

b) they should have nothing contrary to the Federal Constitution.

*Landsgemeinde* is the legislative assembly of all adult male citizens of the *cantons*. It is an open air meeting and this practice of *Landsgemeinde* is termed as democracies of the open air type, an initiation of agora of ancient Athens. Attendance in the meeting is compulsory and the defaulters in some of the *cantons* are fined. The meeting is presided over by the *Landsgemeinde*. Its functions are extensive including passing legislation, amending cantonal constitution, voting on budget, approving accounts, electing the members of executive council, representative of *canton* to the council of states, most conspicuous example of what Rousseau and certain other political philosophers pointed out as the only democracy.

While *Landrat* or the cantonal council is the body elected for four years by separate electoral district, they are known as subsidiary legislatures which deal with details which could not be attended by *Landsgemeinde*. They are empowered to issue ordinances, pass smaller expenditures, examine accounts, prepare legislative measures for *Landsgemeinde*, and elect petty officials. Hence up to a considerable extent it acts as an advisory body to formulate and draft proposals for submitting to popular assembly.

\(^{144}\) Quoted by L. N. Srivastava, *World Constitutions* (1984)
Third component of local canton is regierungsrat or the administrative council. It consists of seven members elected by Landsgemeinde. It is the executive council of the cantons. Landsgemeinde who is the head of the government will preside over them.

The cantons having representative democracy rely on the elected representatives and governmental agencies. They practice extensively twin institutions of direct legislation referendum and initiative. Constitutional referendum is compulsory in all cantons. Legislative referendum is compulsory for full canton and one-half cantons and eight full canton and one-half canton. Except in Geneva all other cantons provide for initiative for proposing both constitutional and ordinary laws. The cantons are supplemented by devices of direct democracy and sovereignty of the people is maintained.

The main organs of governance in cantons are:

i) The great council – the legislature
ii) The government council – the council of status of the executive
iii) The cantonal courts – the local judicial authority

Great council or cantonal legislature is directly elected for one year to six years in different cantons. Generally it is for four years. The legislature is unicameral. Membership may vary from canton to canton. Members do not draw any salary but get nominal daily allowance. Great council meets once in an year. Its normal duties are performed passing canton laws, voting annual budget, controlling administration, electing members of the executive council, higher judges and other cantonal officials. They are also empowered to declare emergency and call for cantonal troops if required. It has a power to ratify inter-cantonal treaties, and to grant pardon and general amnesty.

Each canton has a collegial or plural executive known as council of status or government council. The members of executive vary from five to eleven. They are elected by great council for a term of one to five years. But they may be reelected as long as they wish to serve and they may serve effectively and honestly. Members are drawn from political parties, hence it has much party colour as a business board. It is presided over by chairman known as Landsgemeinde who is the first among equals. Each member is responsible for each department of the government. Executive is directly responsible to the cantonal legislature. The members of cantonal council can
draft and initiate bills in the legislature. They participate in debate but do not enjoy the right to vote.

The Swiss cantons have their own judiciary with three categories of courts.

i) At the lowest level of justice peace court
ii) special magistrates to deal with first instance of civil and criminal cases.
iii) Cantonal district court is at the apex level in the hierarchy of cantonal courts. It acts as the final court of appeal as well as in some cases federal tribunal and hears appeals against the decisions of other two cantonal courts in the lowest level. The judges are directly elected or elected by great council. They are actually elected for a fixed tenure but frequent election guarantees them life tenure. The judges are assisted by assessors to dispense justice. They are fair, impartial cheap and prompt judiciary.

The cantons are divided into districts and the districts in communes. There are roughly more than three thousand communes in Switzerland. The communes act as the basic units of political life of the country. Here the districts are mere administrative units in between cantons and communes. There is an elected chief district officer, sometimes assisted by a council to perform administrative functions with advice of the council. He is the representative cantonal government and is responsible for execution of cantonal orders and enforcement of its laws.

Communes are the basic and smallest territorial unit and play the primary role in Swiss political governance. They can be classified into urban and rural. Urban communes are of bigger size and larger population. But majority of communes are rural. Citizenship is granted only when one requires citizenship in a commune. A person residing and settled in a place for minimum three months can exercise his right to vote in the commune as a member.

In all, communes have a democratic setup of Government. In smaller communes popular assemblies, including the entire adult male population of the commune act as legislature. Bigger communes have representative legislatures known as general council. They have executive government known as communal council. Referendum and initiative are practiced in all communes. Administration of commune is concerned with matters like police, education, sanitation, water supply, poverty relief etc.
Charitable hospitals and asylums are managed by more prosperous communes.
Switzerland is characterized by country of communes and are more independent and in
many respects more democratic in organization than English parishes. Rural districts
and counties as members of the communes, the Swiss people reach sentiments in the
principles and practice of democracy.

3.3 Japanese System

Alexis de Tocqueville opined that the local assemblies of citizens constitute the
strength of free nations, as primary schools are to science, town meetings are to liberty.
They bring it within the reach of people, they teach people how to use and how to enjoy
liberty. A nation may establish free government but without the spirit of municipal
institutions. It cannot have the spirit of liberty. Local government is a school for
democracy so as to encourage the spirit of common interest and shared administration.
The common will of the people of a locality gives a sense of confidence in doing things
by themselves.

In the Japan the history of local government has two distinct phases: Prewar local
government and postwar local government. The prewar system of local government
originated after the Meiji Restoration and abolition and liquidation of feudalism. The
original fiefs were reorganized into new units of administration called prefectures.
Town and villages were also reorganized by the government. The government had an
objective to prevent popular participation over local administration and to introduce
centralized rule from the capital for the sake of full control, proper function and good
administration in local bodies. For this home affairs ministry was established.

The constitution of Japan is unitary and prescribed composition of each prefecture
with executive and legislature. The head of the government executive was the
Governor, who was appointed by the Central Government as its representative. He had
complete charge of local governance including election, education, poor relief, police,
public health, protection of industry, conscription, supervision of subordinate officials,
supervision of communal government etc. as the chief executive of the prefecture the
Governor was in charge of all matters which were entrusted to local self-government.
Sometimes he administered such matters according to the consent of prefectural
legislature, sometimes according to discretion. In this concern the Governor enjoyed
vast discretionary powers as the sole supervisor of local governance. He was responsible to the ministry of home affairs for commission and omissions. It is doubtful to say the prefectures are units of local self-governance in Japan.

The prefecture legislature consisted of thirty legislators, elected by popular vote and prefectural council members were ex-officio members of the legislature. Every Japanese male of 25 years or above and was paying some direct tax for the time being and who was not disqualified otherwise had the right to vote and elected to the prefectural legislature. Term of office of prefectural legislature was of four years. The assembly should be convened at least once in a year by Governor so as to discuss and provide consent to general principles or policies and to pass annual budget. But the legislature had no control over the acts of Governor because he was not responsible to the legislature and had overriding authority on the decisions of legislature.

The prefectural council was composed of the Governor, two higher officials of the prefecture and seven to ten elected members of the prefectural legislature. It was a standing committee of the legislature. It was empowered to deliberate on matters delegated to it by the assembly, to advise Governor to inspect treasury, to dispose administrative disputes and other allied subjects.

Prefectural government was under a higher rate of control by Central Government owing to two reasons. They were Governor, the nominee of the Central Government, was the role supervisor and controller of administration and the chief executive and high officials were changed along with the change of cabinet of the Central Government.

As in the case of villages and communes in cities, the government has modeled the local government pattern of their own. Chief of the executive of city administration was Mayor appointed by the throne from amongst the list of three candidates nominated by the city assembly. He had the duty to supervise and administer the functions of local government. In the performance of the functions he had to take the consent of the city legislature. He also carried out business of the Central Government as its agents the direction and supervision of the government officials. The city legislature had power to interfere with actions of the Mayor when he dealt with the central affairs.

The city legislature consisted of city assembly and city council. The members of council were elected by the people of the city as in the manner of election of prefectural
legislature. Town and village government were organized and established in the manner that of the city government. The chief executive was elected by the town or village assembly, with the approval of prefecture Governor. He has similar function and powers to that of the Mayor. The town and village assemblies were constituted in the pattern of city legislature.

During the post-war period the occupation authorities thought that there should be wide extension of local authority and autonomy to nurture development of grass root level democracy as a check against the national regimentation.

The New Japanese constitution had incorporated the above vision and provided that regulations concerning organization and operations of local public entities should be fixed by law in accordance with the principles of local autonomy and local governance shall establish assemblies as deliberative organs. The local bodies shall have the right to manage their property, affairs and administration and making of regulations within law, and special law which was applicable only to one local public entity cannot be enacted by the Diet without the consent of the majority of voters of the local area concerned. As a result the members of laws were envisaged in order to define the structure of local government, its powers and authority including the most important legislation in 1947\textsuperscript{145}.

The governor is the chief executive of the prefectural government. Any Japanese national aged 35 years or over is eligible for the post of governor. A governor should not essentially be a resident of that particular prefecture in which he was appointed. There is no restriction on sex basis and men and women may be selected to the post of governor.

A governor cannot be concurrently a member of the Diet of the local legislature. The governor is to be elected by the people of prefecture and the tenure is to be 4 years, unless he resigns earlier or a no-confidence motion is passed against him in the local assembly. In such a circumstance the governor can either dissolve the assembly or resign or and call for an election. A no confidence motion shall be passed with 2/3 majority of the total members of the assembly. The newly constituted assembly may unseat the governor through a second no-confidence motion, with simple majority of

\textsuperscript{145} The Local Authority Law, 1947
membership in the assembly. The governor may also be removed through the method
popular recall by the public, if 1/3rd of electorate of the prefecture file a petition for
removal of governor and is supported by majority of voters in the election.

The governor can appoint one to three assistant governors who can be removed by
him, with duties determined by the governor. Such duties include political as well as
administrative including the capacity to act as governor in his absence. In the absence
of a governor or assistant governor the prime minister may appoint a temporary
governor to deputize the gap in a prefecture. The prefecture has an accumulate, a
treasurer, an auditor and other essential functionaries as may be provided for in their
bye-laws.

Governor co-ordinates and represents the administration of the locality as an agent
of Central Government in national matters and an officer of the prefecture in local
matters. His important duties are as follows.

I) Appointment, removal and supervision over officials of the locality.
II) Custodian of official documents and other important papers.
III) Preparation of budget for the prefecture under his guidance and control.
IV) Collection of taxes and payment of expenditure, along with management of
property.
V) Issue regulations or ordinances without reference to prefectural assembly.
VI) Require property after paying compensation.
VII) Order fines up to 2000 year for violation of regulations or ordinances.
VIII) Take over the powers of perpetual assembly during emergency.

Though governor has administrative, regulatory and supervisory powers and
functions he may share directive power over local governments, his position is
responsible to and answerable to the Central Government being its agent. His action or
inaction may be made accountable through mandamus while he has wide administrative
powers to co-ordinate, to direct, to supervise, to check municipalities, their records, and
accounts. In addition to these the governor has important socio – political
responsibilities.
In cities, town and villages local governments are run by municipalities. Executive powers of municipality are vested with the mayor and legislative powers are given to municipal committee. Mayor is elected on the basis of universal adult suffrage. He may be removed from office by governor if he fails to perform functions according to law or directives. He cannot be a member of Diet or local legislature simultaneously. He can get salary for performance of duties. He may resign office or may be removed on a vote of no confidence. He may be ousted by recall by people when a recall election has passed with 1/3rd support of voters.

An assistant mayor may be appointed by mayor to assist him in functions, and may be removed from the post by the mayor. Usual function of assistant mayor is political and administrative in character. Mayor has dual functions, while acting as agent of the Central Government, in national matters he is also responsible to the governor and while acting as an executive officer of the municipality he is not so really. As the Chief Executive of municipality he may appoint, supervise, and punish local officials. He is bound to prepare budget and place it before the committee for consideration.

Mayor is responsible for collection of taxes, fees, to account them and to audit of all appropriations and transactions. He has regulatory powers during emergency.

The members of municipal assembly are elected for a term of four years. They may be re-elected. Members of assembly cannot act as member of Diet or prefecture assembly at the same time. In small towns and villages general meeting of the electorate may substitute municipal assembly. Municipal assembly shall meet six times in an year as regular sessions. Special sessions may be held on a demand from mayor or from at least ¼th of the total members. Assembly can elect its own chairman and standing committees at its first meeting after the election. Municipal assembly has powers to enact byelaws, pass annual budget, fix penalty for violation of byelaws and impose taxes and decide fees for public services. It can conduct investigations regarding local affairs and direct local officers to appear before it for producing their testimony.

3.4 French system

Regarding a general discussion on France, apart from the continental system of governance, there is a centralized form of administration. In France the local
government system is highly centralized owing to unbroken chain from the communes to ministry of interior at Paris. There is sharp centralization and uniformity in local government. The local government is neither autonomous nor self-governing, but consists of convenient administrative divisions.

Local government history begins from 1789 and before that there was no such system because the king had carried out administration during this period, but the country was divided into small units of administration called generalities. In 1789 changes were made in the structure and powers of local government. The rural areas were divided into departments (provinces) and subdivided into *Arrondissements* (district) which were further divided into *cantons*. The urban areas were divided into communes. Powers, authorities and functions were also distributed in accordance with the change. But the abrupt revolutionary change from strong centralized autocracy to complete decentralized autonomy without adequate preparation and planning resulted in lawless anarchy, corruption and failure of administration.

During 1800 through the efforts made by Napoleon the weaknesses were remedied and a strong centralized local government system was established, and it is still continuing with some reforms. Under the system there are four major constituents.

1. Department
2. *Arrondissements*
3. *Canton*
4. Commune

Highest unit of local administration is department headed by a prefect appointed by the President of the Republic, on recommendation of the minister of interior. He has a dual function as an agent of the Central Government and an executive of the local department. As part of enforcement of central laws administrator is executive head of local body. He should enforce resolutions of the council.

The department general council is elected for six years term. It shall meet twice in a year. It has elected president. It can deal with functions of poor relief, roads, buildings, public welfare, communication etc. But the power is limited owing to over ruling by the Central Government.
Every department is sub-divided into smaller *arrondissements* under a sub-prefect appointed by the President of the Republic on recommendation of the minister of interior. There is an Arrondissement council elected for six years having very limited powers. *Arrondissements* are further divided into the basic units called *cantons* in rural area.

Communes are constituted as local bodies for urban area with fixed population and having a municipal council of 10 to 36 members, who are elected by universal adult suffrage. Term of municipal council is six years. They will meet at least four sessions in a year. Executive head of the commune is mayor who is elected by the council for six year tenure. He can act as the president of the council and executive head of the municipal committee. He cannot be removed from office before the completion of tenure but may be suspended for one month by the prefect or for three months by minister of interior. He may be removed from office only by an order of the President of Republic.

Departments are generally classified into four categories on the basis of their importance. The top most class is known as lords class or special class, next category is first class, the other one is second class, and the last on is called third class. Though general council and its president are entrusted with functions, a representative of the national government appoints cabinet speaker to preside over the council meetings and is authorized to take steps to ensure public order, safety, security and solidarity. Before 1982 departments were administered by prefect appointed with limited power. Prefects enjoyed some authority within the department and as the agents of the State they played a key role in the local administration. But centralization of decision-making in the national government reduces the extent of decentralization.

*Arrondissements* are constituent parts of departments but have no corporate personality. The essential functions of those bodies are to reduce the load of departments in administration whereas communes are basic independent units of local governance when compared to geographical divisions called *cantons* and *arrondissements*. Communes may be of rural or urban but legally recognized, politically constituted, and administratively organized. Each commune has elected peoples council and a mayor elected by members of the council. But within the department, the prefect has great amount of control over the affairs of the commune.
because they act as intermediary between people and the government. The powers, authority and position of the prefect have placed it on an eminent status in the French governmental system so as to perform innumerable functions and to act in exceptional circumstances.

After 1981, along with the centralistic traditions of government, the national government has permission to devolve the fullest rights and freedom of regional and local authorities through the reforms introduced in the law by March 1982. Main reform in this regard has been the constitution of 22 regions with wide variety of functions, powers and activities including economic social and cultural areas, complementing such authorities of departments and communes. Each of the regions comprises of 2-7 departments and has been represented by elected council through universal adult suffrage. The reforms had two distinct phases, first one is redistribution of powers and restructuring administrative, financial and technical matters being abolished. The second phase includes the decentralization of duties, redistribution and gradual transfer of functions to local authorities. Such transferred power includes education, environment and so as to give more participation to local public.

3.5 Chinese system

To have a look into local government in the communist system, the best example is the village autonomy of China. Economic, political and social relations in the Chinese country side are presently undergoing transformation. Unquestionably the transformation in the formation of rural society has produced far reaching changes in basic, or grass root level organizational system.

In ancient China, neighborhoods and shiros established their own terms of self-government. This form of autonomy continued for several thousands of years. In contemporary times, the drive for modernization broke open the formerly closed isolated country side, cleavages among the peasantry sent warning in rural areas resulting in a comprehensive mobilization of rural areas. The Chinese Communist Party’s (CCP) assumption of power in 1949 began a process of national administration presenting down to village level, then setting the stage for implementation of rural autonomy.
After founding of the People’s Republic of China in 1949, the new Government set up peasant organization, district and township administrations. In Orkin areas village governments were established under the district level. In China by 1952, the Government had districts and townships below the country level. But on the eve of the movements to create peoples communes in 1956 number of townships dropped further.

Between 1954 and 1957 the Government’s new administrative village system was imposed upon the constituencies of the people, due to any reason, thus denying them any substantial freedom to act on their own. The administrative village had representative director selected by its own village representative committee. This type of system can be seen as preliminary attempt at direct democracy at the grass root level. From this period onwards village level organization became an important economic and social unit.

From the inception in 1958, the people’s communes replaced township governments, taking on administrative as well as social, political, and economic functions. The government converted 94 countries into people communes. In September 1962, the revised draft on people’s commune works regulations divided the people’s communes into two levels, i.e. the commune and the production team and thereafter into three levels, the commune, the production brigade and the production team. As the basic assenting unit of the people’s communes, each production team adopted a system of independent accounting making it solely responsible for its profits and losses.

The turning point in the development of grass root democracy came with the advent of household responsibility system in 1979. This new arrangement dealt a fundamental blow to commune system. By the new arrangement the Government set up village committees to replace production brigades and production team. The policy opened the door for autonomy at the grass root level.

The drive for village autonomy was an outcome of the national democratization process initiated after the cultural revolution. In June 1981 CCP Central Committee Documents entitled the Party through Resolution of certain Historical Problem since the founding of People’s Republic of China, emphasized the gradual expansion of direct
democracy at the grassroots level as an integral step in the construction of a highly
democratic socialist system. The new constitution in 1982 reinstated the system of
township, minority nationality township and small town governments. It also created
the village committee on the primary grass roots mass based organization of self-
governments with its director, deputy director and committee members to be elected by
popular vote within the village.

The Central Government decreed the dismantling of the entire people’s commune
system in 1983. Most districts set up township management to replace people
communes, village committees to replace production brigades and village groups to
replace production teams.

The law reform made in 1988 expressly stipulated that the village committee was
a grass roots autonomous organization that would be seen by the people and be
responsible for local administration. Each village committee was to be established
based upon local residential conditions population size and other factors which base
served the principles of village self-governments. The director, deputy director and all
committee members were to be chosen for an unrestricted number of three year term
through direct popular election. Regarding the function, village committee was
responsible for local administration, public projects mediation of disputes and public
security and serve as the inter communication link between the people and
governments.

After 1990, the drive for village autonomy entered a new stage. During the
period, criticism about the wisdom of grass root democracy dispelled. The most
outstanding achievements in implementing grass root autonomy were:

1. Central Government defined village autonomy as a threefold process; democratic
elections, democratic decision making and democratic administration.
2. Vast majority of village committees held direct elections.
3. The village committee organizational structure became increasingly sound.

In the peoples communes, the grass root level were made jointly by the village
party branch and the production brigade management committee. After the abolition of
peoples commune system, village committee took over the role of the production
brigade management committee. The authority of village committee expanded and eventually led to the growth of the village council system.

The village council is comprised of village representatives, villagers who are representatives in people’s congresses at various levels, village group chiefs and village committee members. The formation of village council led to a large scale transformation of village committee policy-making system. In the new circumstance, neither the village party branch nor the village committee could enact policy without the approval of village council.

At present, favourable trend has emerged in village autonomy in China. In the midst of China’s political development the advent of village autonomy has produced the following impacts:

1. Village autonomy has effected fundamental change in the direction of rural political developments;
2. Village autonomy provides the problem of democracy and developments;
3. Village autonomy closely integrates the problem of democracy and developments;

China’s experiments with village autonomy proves that implementing political reform which calls for decentralization in a nation with a long standing tradition of centralized authoritarianism require two important steps:

1. Real power must be transferred downward to lower levels and the remaining division of power between the Central and local government must be clearly defined;
2. Real power must be handed over to the people to expand genuine right of citizen.

Two constituent organs of local governments were organized according to the Constitution of China, viz. (i) Local people’s congress (ii) Local revolutionary committee\textsuperscript{146}. The People’s Congress in provinces and municipalities was directly under the Central Government. They are elected for 5 year period whereas people’s

\textsuperscript{146} The Constitution of China, 1975
congress of prefectures, cities and countries are elected for 3 year period. People’s congress for rural communes and towns are elected for a period of two years.

The Local People’s Congress is the legislative organ of each locality at each level. Their main functions are:

i) Elect People’s revolutionary committees.
ii) Ensure the execution of laws and decrees within.
iii) Lead Socialist revolution and socialist construction.
iv) Maintain revolutionary order.
v) Safeguard the citizens’ rights.
vi) Maintain public order.
vii) Protect public property etc.

A fixed number of deputies are elected by people’s congress at the next lower level as per the method fixed by law. Two methods are used for election, Secret ballot and show of hands.

Local revolutionary committees at each local level shall be permanent organs of local people’s congress and local people’s governments at various levels respectively. Each revolutionary committee shall consist of a chairman, vice-chairman and other members. Such a committee shall be elected subject to recall by the people’s congress at the corresponding level. But election and recall are not final and they shall be subject to the examination and approval of the organ at the next higher level.

The local revolutionary committees are responsible and accountable to people’s congress at corresponding levels. They are also accountable to the organ at the next higher level.

Organs of self-government of national autonomous areas at the levels of region, prefectures and counties are provided by the Constitution itself. The people’s congress and revolutionary committees are to be the organs of local self-government. They shall exercise the same functions of the local congress as well as exercise autonomy within the area of legal authority. It is also provided that higher organs of the State shall

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147 article 22 of the Constitution of China, 1975
148 article 24 ibid
extent fully safeguard and create support to autonomy and socialist revolution and socialist construction at the national autonomous areas of local government.

3.6 Comparative overview

i) Constitution of local governments:

In England the local government is constituted by election on the basis of citizenship and adult suffrage. But rate payers are made participants of meetings in which the election is carried out in the case of parish. But the rural district and urban district council consists of representatives from parish. Direct election is the procedure to elect members of such councils. Borough council has multiple representations by councilors. Aldermen are elected from among the councilors. The election of councilors and aldermen in country council also follow the same procedure.

In Switzerland the Landsgemeinde has a practice of democracy of the open air and compulsory participation of people in the meeting. Defaulters are to be penalized. The landrat is cantonal legislative council and Regierungsrat i.e., Administration has representative character of membership but the method of election is not a direct, whereas in the case of communes, the adult male population of the commune is empowered to serve as legislature. In communes the legislature has representative character. Hence participation of all citizens especially women is not present in local governance.

In Japanese system the prefectural legislator is elected by local residents having 20 years or more age. But in municipality the mayor is elected by people of the locality through adult suffrage. He may be ousted by a recall of the people, hence his election is direct one different from election of members of the council.

In France, before 1789, there was no elected assembly for local governance. The administration was run by officials appointed by the King. After the reforms in 1789 the power of administration was entrusted to prefect, who was appointed by the President of the Republic and not elected from among the people but its decisions may be overruled by the Central Government. Sub-prefect of arrondissements also was not elected by appointed by the president. Hence there was no democratic participation of local public in their administration.
Under Chinese system local people’s congress was directly elected by people. But local revolutionary committee members were elected by people’s congress through indirect voting system. At the same time, office bearers of the revolutionary committee may be recalled by people’s congress. This will create a hold up on local administration by people. The control shall be usual according to supervision of Central Government because the people’s congress functions directly under it.

From the above analysis one thing stands out clearly that direct democracy is in name only and democratic practice in local governance is under different kinds of centralized controls. Public participation as well as role of local public is very limited because most of the local bodies are mandatorily accountable to central administration.

ii) Autonomy of local bodies:

All local government authorities in England work under the supervision and control of the national government. Its control over local bodies is a compromise between flexible U.S. system and rigid continental system.

Control measures are:

i) Parliamentary control or legislative control is exercised through the law making power of the national parliament by framing statues.

ii) Policy-making method is exercised by the central departments. The local bodies are bound to follow such policies while exercising powers and performing duties.

iii) Administrative control is imposed over the local bodies through the means of inspiration, inquiries, authorization, statistical examination, advisory circulars, guidelines and statutory instruments through the superior departmental authorities.

iv) Financial control is the most effective control because local bodies are highly dependent on grant-in-aids and other resources like block grants and development grant paid to them by national government. Any such grant consists of conditions, regulations and prescription by the Central Government. In addition to this, local bodies have no way of resource mobilization of their own. Their accounts and expenses are under strict scrutiny and audit of the national government.
v) Judicial control is through the intervention of judiciary through writs in the functions of the local government authorities. This is mainly through the doctrine of ultra vires.

vi) Development control is imposed through multiple kinds of agencies and authorities, neo national and international corporations and companies, which are constituted to undertake the new services thus severely cut the autonomy and existence of local bodies. Globalization policies, co-ordination and unification programmes, standardization with high specification etc. also penetrate into the realm of local government.

Hence in England methods of centralized control, overlapping functions of local and national governments, and new trends of globalization have resulted in curtailing the relevance of local governance and affect the functioning of local bodies.

In Switzerland there are two types of local government mechanism, one with direct democracy and the other with representative democracy, but both of them are under the control of the federal constitution. Swiss Constitution guarantees the autonomous status of local government authorities by providing that such units are sovereign in-so-far as sovereignty is not limited by the Constitution. As such they exercise all the powers which are not delegated to the federal bodies. Hence in Switzerland the local bodies are not merely administrative units of national government but rather autonomous units of the federal governance.

In Japanese system of local government during the prewar period, it was aimed to prevent popular control of local governance and to introduce the rule from Tokyo. The ministry of Home Affairs established during that time was with aim to ensure full control and proper function of local administration through villages, towns and cities. Within that system the governors of prefectures, who are appointed by and answerable to the Central Government had acted as the head of the executive government with full charge of local administration. Under this dual capacity as the representative of Central Government and chief executive of the prefecture governor he had administrative, supervisory, discretionary, regulatory and advisory powers in respect of matters including subordinate officials and their functions, powers and activities of communal
government etc. The governor was accountable to the minister of Home Affairs with respect to the commission and omission of his powers and functions.

In addition to the centralized control over local administration through governors another drawback was that the Central Government can change the governor and his high officials among with the change in the central cabinet. This has adversely affected efficiency and efficacy of prefectural governments. The prefectural councils also were composed of the governor, two high officials of the prefecture, and few members of the prefectural assembly and also acted as standing committee of the prefectural legislature; which had powers to advise the governor, inspect treasury, decide administrative disputes and allied subjects. But they also function according to the dominance of the governors, the nominee of Central Government. In cities the mayor, even though he was ‘appointed’ by the Throne from a list of three candidates nominated by the city assembly, was accountable to the governor for his actions and omissions. Mayor was also bound to carry out the business of Central Government as its agent, under direction and supervision of the various government officials.

The town and village government election, functions of town and village assembly and their chief executives were under the approval and confirmation of the governor. But there was a considerable change in the approach of lawmakers during the post-war period and it was expressed through the constitution itself that the regulations concerning the organizations and operations of local public entities should be fixed by law in accordance with the principle of local autonomy and local governments should establish deliberative bodies according to law. Such bodies should have the right to manage property, affairs and administration, and to enact own regulations. Special law applicable only to a local public entity was not to be enacted by the Diet without consent of the majority of voters in the local area concerned etc. were some of the basic approaches in the changed situation. But the system had the governor as the chief executive of a prefecture, and assistant governors appointed by governor had considerable powers and authority in policy-making as well as administrative functions. Apart from the prewar period the Prime Minister was empowered to appoint temporary governor to deputize the duration of the absence of governor or to assist the governor. These chief executives had power to co-ordinate administration and represent the Central Government in the concerned local government. Hence even in the post-war liberal period of local administration the governor had considerable powers and
authority like powers enjoyed by governors of Indian provinces before independence. In addition to this the Minister of Home Affairs shares the power of control and direction over local government with the governor. Hence the governor had dominance over local governments not only in administrative but also in socio-political aspects in Japan, whereas the local government authorities were subject to the supervisory and control power of the national government and its officials.

Under the French administrative system local government was highly centralized and was subjected to the regulations of Ministry of Interior at Paris. Here the local governments are neither self-governing nor autonomous. Before 1789 there were no elected bodies but the administration was run by the officers appointed by the king. By the 1789 reforms an abrupt change from strong centralized autocracy into absolute decentralized autonomy at different levels ended in total lawlessness. Once again in the history of local governance in France, strong centralization was introduced from 1800 during the napoleonic period so as to remedy lawlessness, anarchy and corruption due to absolute decentralized autonomy. In the existing system, the administrative head of department called as prefect and *arrondissements* and *cantons* called as sub-prefect are appointed by the President of the French Republic and accountable to the president for their actions and inactions. Hence there is only limited autonomy provided to the local government authorities. While considering the experience of China in the field of local government, it is evident that a number responsibilities and functions are there to discharge by the local government under local people’s congress and local revolutionary committees, but the actual practice of autonomy does not exist because the highly centralized Communist Party of China exercises the material control over such bodies. The higher organs of the state shall fully protect the exercise of autonomy of local bodies but it must be within the limits of their authority as prescribed by law. This means that there no absolute autonomy for local authorities but are living limited autonomy within the preview of legislation. These legislations are prepared according to the centralized policy of the national government and communist party.

**Functional comparison**

In England the local government have provided with the following functions.

a) Parish
i) Maintenance of local charity funds.
ii) Maintenance, repair and constructing village roads recreation grounds, lighting of roads.
iii) Water supply, sanitation, public health.
iv) Library and work house.
v) Electrical functions.

b) County

i) Borrow money for public purpose.
ii) Public health
iii) Maintenance of highway, lightning of roads.
iv) License buildings, amusements, entertainment etc.
v) Control of county police.
vi) Agriculture and housing.

It denotes that important areas entrusted to the local bodies. But they are subjected to financial, legal and administrative supervision at higher levels. Hence the local governments have come to depend on Central Government who plays the role of bagpiper who calls the tune to control and convert them into agents or subordinates of the national government. In addition to this, the national government can intervene in the functions of local authorities through advices, inspection, regulations, approvals and with-holds. Hence an indirect and implied control by Central Government exists in the Local government system. In addition to this the functionaries also are appointed by Central Government.

In Switzerland also the main functions entrusted to local governments are matters like cantonal police, education, sanitation, water supply and poor-relief. But the cantonal council is empowered to issue ordinances, vote for small expenditure, audit of accounts, making of rules, byelaws for local area as well as advisory powers. The practice has considerably helped to maintain direct and representative democracy in the local governance up to a certain extent. They were entrusted also with the duties of cantonal judiciary. Hence, the system in Switzerland in local legislation, administration and judicial implementation, is rather progressive and role model to other legal systems.
Under local government system of Japan, the Governor or Assistant governor has been vested with wide powers including appointment and removal of officials, custody of documents, preparation of budget, collection of taxes, audit of expenses, management of property, promulgation of regulations and ordinances, acquiring property and spending money during emergency services within the authorization of law, and imposition of tax or decision on rates or fee according to legal prescription. They are also entrusted with the power to penalize disobedience or violation of such decisions or laws. Hence in Japan system the actual executive powers and functions are run by governors and mayors and not by local autonomous bodies.

Whereas in French local government system the executive prefects and sub-prefects are entrusted to perform duties regarding education, sanitation, agriculture, highways and police according to the policy of the departments in the Central Government. The local council is vested with powers such as poverty relief, roads, buildings, public welfare, public communication etc. But they enjoy only very limited powers. As in the case of Britain, here also functionaries are appointed by Central Government through the Ministry of the Interior.

In the case of China the local people congress are entrusted with some important powers like election of local revolutionary committee, execution of laws and decrees, with approval and implementation of local economic plans, budgets and accounts, maintenance of revolutionary order, safeguarding of citizen’s right, protection of public property etc. These powers may be utilized only under the guidance and control of national government.

i) Decentralization of power and local self-governances are the only ways to sustain true democracy in society.

ii) Local government authorities shall have no absolute autonomy, but have only limited and controlled autonomy according to the law of the land.

iii) Functions of the local government bodies shall be re-fixed so as to convert them as true governmental authorities instead of mere executive agents or apparatus of the various levels of government.

iv) Sufficient functionaries, funds and infrastructure facilities shall be statutorily provided to local government authorities so as to revitalize them as self-dependent governmental bodies.
v) Actual participation of local public shall be collectively mobilized and utilized to reduce the centralized, bureaucratic, sway in public governance.

vi) Instead of control, regulation and supervision from higher levels of government, guidance, assistance, empowerment etc. shall be provided only to strengthen democratic decentralization and local level governance of administration.