

Subtheme Paper

The Functioning of Local Government in Federal Systems: Perspectives from India

Vinod Vyasulu

Abstract

This paper reflects on some critical issues in the functioning of local self-governments (LSGs), based on India's experience after the 73rd and 74th constitutional amendments of 1992, ratified in 1993 and implemented soon afterward. The first section sets forth some issues about local government that have come to the fore in recent years. The second section discusses 12 conundrums regarding LSGs in India. These puzzles refer to reasons for amending the Constitution to establish LSGs, the artificial division between urban and rural LSGs, the meaning of local self-government in contrast to local government, use of the caste-bound term "panchayat", the rigid structure of multiple levels of LSGs, whether LSGs are legislative or executive in nature, why reserved elected LSG positions for women are capped at 33 per cent rather than 50 per cent, the deleterious effects of state-government control of the devolution of powers to LSGs, the reluctance of LSG officials to use local tax powers to raise revenue, why elected LSG representatives are referred to as "non-officials" by state-government civil servants, the belief that decentralization amounts to little more than the decentralization of corruption, and conflicts between civil-society organizations and LSGs. These conundrums highlight weaknesses in the conceptualization and functioning

capacities of local self-governments. This section is followed by three key issues around which the conference working group based its discussions. These issues involve the transition to local self-government, capacity-building, and institutional development. The last section presents some specific state cases that highlight some well-functioning aspects of LSGs in India.

1. Changing Federal Systems

Discussions on federalism have often been about a level below the nation state; provincial or, as per Indian usage, *state* governments. The debate on “Centre-State” relations in India in the 1980s resulted in more effective powers being accorded to the states. This of course also had much to do with the changing nature of Indian politics. In the 1990s, many countries opted for some form of decentralization—from a big-bang approach in Indonesia to a more limited local system in Pakistan. The Philippines, Mexico, and Brazil are other countries that decentralized in a big way.

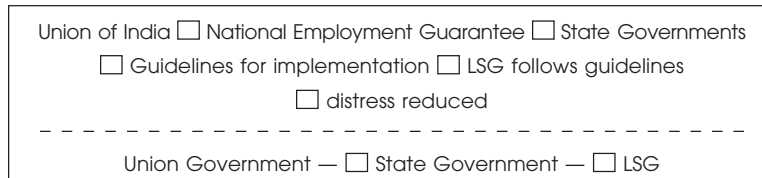
The point is that today *the debate has moved on to a level below the states*; to local self-governments (hereafter LSGs). Federalism in this context is much more complex, and its practice is so much more complicated. Experience is varied, from the participatory budgeting in Brazil to local planning in India.

Local government functions are often described in terms of the principle of *subsidiarity*; that is, work should be undertaken at the level that is appropriate, not at higher levels. For example, street lights should be managed by local government, not by a higher level of government. This means that decisions on such subjects must be taken at the level where they are implemented. A local service is provided locally, and the matter ends there. (The 11th and 12th Schedules in the Indian Constitution provide an indicative list of such activities.)



In large and diverse countries, local jurisdictions differ a great deal in terms of the resources they can draw upon. Some are well endowed, but many are not. For example, in Karnataka in India, Bengaluru is a city possessing excellent resources to fuel its development; the rest of the state is way behind. In a democratic set up, such regional inequality is not accepted; national governments have to make efforts to reduce such disparities. In India, this is enshrined in the Directive Principles of State Policy.

In such situations, *the equalization principle* becomes relevant in the organization of LSGs. Higher levels of government have a responsibility to transfer resources to the poorer areas in order to ensure that citizens everywhere get roughly equivalent services. For this, higher levels of government use tax funds they collect. This implies, however, that decisions on such resource transfers cannot be taken locally; the very nature of the problem requires regional or national planning. Higher levels of government need to play an important role in this decision-making. For example, in India:



A local need—work to ensure a minimum level of consumption—is met in this example by higher levels of government from funds they transfer for the purpose. The LSG implements a programme of local importance, but the decisions are taken at a higher level. The LSG is an *agent* of that level, at the end of the policy chain, not at its beginning.

These are two extreme situations; most issues fall in between them. The LSG has limited autonomy, and this limit varies across LSGs. It depends on higher levels, which often control more resources and then give directions on how those resources are to be used by LSGs. Such resources (more than just funds) may be transferred on different terms—from outright grants to the offer of matching funds, and with various conditionalities attached to them. The

dilemma of autonomous local governance lies in this band of uncertainty.

For example:

LG local plans local funds its own works ... grants from above
schemes for local people guidelines from above LG.

When grants are greater than local funds, equalization dominates subsidiarity because funds are "tied"; autonomy is relatively reduced, other things remaining equal.

Where then is the locus of control to be located? It is desirable that LSGs make their own decisions on matters of local importance. It is also important that the poorer among them be given grants to improve the quality of life of their people. This must be done in a manner acceptable to people in the richer areas who must feel that the transfer of their resources to others is justified. Conditions vary, and there is no unique solution to this question.

The issue is essentially political; such decisions can be taken and implemented in a democratic manner, as there is no unique or optimal solution to cover all situations. The tensions in the working of LSGs owe a great deal to this duality of managing to implement the 'local' wishes along with the mandates of the 'higher' authority. This is an inbuilt tension.

Different countries have dealt with this tension in different ways. The same country may deal with it in different ways at different times. India made a major effort in the early 1990s through constitutional amendments.

There has been a great deal of literature on what has been achieved and what the shortfalls are. This paper reviews these issues. It cogitates on some conundrums that seem unique, perhaps to the Indian experience. The intention is not to imply that these are more important than others; instead, it defines the zone of ignorance of this writer and an understandable desire to stay in the region of least ignorance.

2. Some Conundrums

2.1 *Was a constitutional amendment to introduce LSG necessary in India?*

This is not an idle question. The Directive Principles of State Policy (Article 40) have a provision for village panchayats. Several states had established local panchayats from 1959 onwards. Two states—West Bengal in the 1970s and Karnataka in the 1980s—had brought in, by law, decentralized institutions and held elections to bring them into existence. Both have been widely written about. But states also routinely superseded them. Often elections were not held for years together. Their existence was therefore shrouded in uncertainty.

After he became prime minister, Rajiv Gandhi, based on extensive consultations, became convinced that “people’s participation” in development programmes would remain a dream if there were no locally elected bodies to facilitate such participation. Providing such bodies a constitutional status would give them credibility and legality and help them in their work. He proposed a constitutional amendment that could not clear the Rajya Sabha. Later however, the 73rd and 74th amendments were passed in 1993.

These amendments included the following constitutional features. Below the level of the state, local governments became constitutional bodies. They were to be elected every five years; reservations were made for scheduled castes and tribes in proportion to their population; and at least 33 per cent of the seats were reserved for women. In rural areas, there are three levels of local self-governments—at the village, development block, and revenue-district levels. In urban areas, there are various sizes of municipalities and city corporations. States cannot dismiss them arbitrarily. Elections must be held within six months of the expiry of their officials’ terms. Each state had an independent election commission to conduct elections. Each state was to set up a Finance Commission to recommend how revenues were to be shared between the state government and the various local self-governments. Also, a District Planning Committee was to be set up, based on representation from

among those elected to the various LSGs, to integrate urban and rural local plans. What the LSGs were to do was to be decided by the legislature of each state.

The LSGs had existed before these amendments, and in some cases have not done well after them. India has a long history of urban governance through municipalities. Were these amendments necessary? One can argue that they are neither strictly necessary for LSGs to exist in India, *nor*, given the findings in the literature, are they sufficient to ensure they work. Why, then, this legal garb? I believe that the amendments are necessary if regular and timely elections are to be ensured, and if the power to supersede them arbitrarily is to be checked.

States can no longer arbitrarily supersede and dissolve LSGs as in the past. Elections must now be held at regular intervals. Because the states are reluctant to do so, this legal compulsion is important for the existence of LSGs. Recently (February 2007), the state election commission went to court to force the Karnataka government to hold elections for municipal bodies whose terms had expired. States are clearly reluctant to devolve responsibility below their own level—although they want powers devolved from above to their own level!

This protection is not an unimportant step forward because it ensures the existence of LSGs. It provides a foundation on which LSGs can build better governance.

2.2 *Why is LSG schizophrenic, with an urban avatar and a rural avatar?*

The issues that LSGs are to grapple with are similar—street lights, drinking water, sewage, etc.—even if the urban and rural contexts are different. In India, we have two constitutional amendments—the 73rd for rural areas and the 74th for urban areas. There are two ministries—Urban and Rural Development—that deal with LSG issues. The 74th Amendment provides for a District Planning Committee (DPC) whose mandate it is to “integrate” the plans of the rural and urban areas within a district. DPCs have not been set up everywhere yet. The two worlds are, and continue to be,

poles apart. In discussions, this often becomes a “rural” *versus* “urban” issue, when that is likely to be a false dichotomy.

Pakistan, which, until 1947, shared the same administrative culture, removed this dichotomy in the Local Governance System introduced after 2000. The sub-provincial units are now districts and city districts. Given that Pakistan’s colonial administration was common to India’s, this is indeed an important innovation requiring more detailed study in India. Does abolishing this distinction and focussing on *governance* work better?

This rural-urban dichotomy is an anomaly from the past. It serves no purpose other than to distract attention by diverting political energy in different directions. Civil society has so far failed to surmount this diversion. In this paper, the focus is on *local governance*, without the distraction of the urban-rural divide. Perhaps this change in focus is itself important.

2.3 *Why do we speak of local self-government rather than local government?*

In fact, the common practice in India is to use the term “local bodies”. not even LSGs. Is this simply because “self-government” is a translation into English of the word “*swaraj*” or self-rule? We do not speak of the Self-Government of India or the Self-Government of Andhra Pradesh. Does the term reflect something we have not fully internalized? Is Local Self-Government less than government in some way?

Could it be that the term reflects the end result of an historical process? After 1857, India had a viceroy, and the large presidencies had governors who reported to the viceroy. The presidencies were so large that it was not possible to administer them from the capital. The solution was to carve out districts—which were boundaries with a single revenue jurisdiction, and delegate power to the “collectors” of these districts. The revenue village was at the bottom of this pyramid. The revenue officer mattered locally.

The collector became over time the face and fulcrum of all government activities in the district. He reported to his superiors at the state capital, but worked locally with a great deal of auto-

nomy, as much because of the large distances involved as for any other reason. This system of administration continued after 1947. The Constitution used the term self-rule in the Directive Principles of State Policy.

Is this a reference to a shift from collector rule to some other form, which being self-rule is better? Does the term have a localized meaning? If so, what is the implication of this localized meaning? Is it a subtle way of reducing the prestige of the institution? Should we not shift to local government as the preferred term? This leads to the next conundrum.

Pakistan has moved away from the collector system to one where the district is headed by an elected *nazim*. If this works well on the ground, there is much to learn from this experience.

2.4 Why do we use the word panchayat rather than gram sarkar or gram shasan, which mean government?

The word “panchayat” is an old one, which referred to a traditional form of dispute resolution in many parts of India. While it has survived over the ages, it must be remembered that such panchayats were caste-based in composition, and they certainly were not elected bodies.

The head of the panchayat, the sarpanch, was the village headman, often the largest landowner and one who belonged to the dominant caste. While his decisions were accepted, that was a tradition of a bygone era. With one of the objectives of national independence being equality (enshrined in universal suffrage), efforts were made in the early days of independence to erase caste as an identity. In democratic India, then, why do we stick to the use of a term that has non-democratic connotations?

There have been reports in the media, especially on television, of cases where villagers have nullified inter-caste marriages and sometimes put the married couple to death. These have been decisions of village caste panchayats, not their modern namesakes, but the news reports often fail to make this distinction. On whom, then, does the onus of such behaviour fall?

Have we doomed LSGs to a dark corner of our history by the name we have given them? And do we use this word because in some corner of our mind they are not “government”? Should we not use the words “sarkar” or “shashan” instead?

2.5 Why is the structure so rigid, with multiple jurisdictions, for the country as a whole?

The Constitution requires that there be three levels of LSGs in rural areas. In urban areas, there are different classes of municipalities and city corporations. The state government plays an important role at each of these levels. In most states, one rung is dysfunctional. In Kerala, the gram panchayat counts, the block does not. In Orissa, historically the block panchayats mattered; the grams did not. This is true in other states too.

Why, then, such a rigid structure? Is it not an overdose of democracy, too much of a good thing, because there are elected people with no work to do, and who then unintentionally upset the system in a search for political relevance? Has the system, to bring in a conspiratorial note, been designed to malfunction because of over-regulation and a multiplicity of agencies created for a given set of functions? In the light of experience, is there not an urgent need for change?

2.6 Are LSGs a part of the legislative wing of government, or are they elected executive councils?

Political theory unbundles “government” into three branches—legislative, executive, and judicial. Each has its independent domain, and the system works well when each performs its role constitutionally. What are LSGs in this unbundling?

Traditional panchayats, as dispute-settlement mechanisms, had an accepted judicial role. Modern panchayats, created by the Constitution, do not have a judicial role.

Modern LSGs have no legislative power. Although they are compared to the state legislatures, whose creatures they are, they

are meant to help involve people in the implementation of development schemes. Thus, they are a kind of *elected executive council*.

Is this the reason why the elected representatives of LSGs are not part of the Electoral College to elect the president of India? Would not making them part of that Electoral College give them greater prestige?

Recently, in Karnataka, some presidents of gram panchayats wanted to file a writ under Article 226 of the Constitution on the manner in which the Suvarna Karnataka programme was bypassing them. The High Court refused to admit the writ on the ground that the president of a gram panchayat has no *locus standi*; it is the secretary who must file such a case. It would be appear that the elected head of an elected executive council depends on a civil servant who reports to the state government in this important matter.

Given that LSGs have no staff of their own, and that state government officials are deputed to work in them, have LSGs been appropriately designed for the functions they are to perform? If indeed function determines form, then there is a problem of institutional design here.

2.7 *Why are reservations for women capped at one-third?*

During the 1980s, foreign donors began to bring in some concepts that were relatively new to India. These were “people’s participation”, “ecological concern”, and “women’s empowerment”. In projects they funded, they wanted measures that would bring these concepts into operation. Civil-society organizations began to include these concepts in their programmes. Since many of these were government programmes, this rubbed off on the state governments as well. One effect was the inclusion, in the Karnataka Panchayat Raj Act of 1985, a provision for a reservation of 25 per cent of the seats in the newly created LSGs for women. This provision drew attention, and when the Indian Constitution was amended, it provided for a one-third reservation of seats for women. This was the result of the efforts of women’s groups. It went through because so many new seats were being created that the question of taking seats away from men did not arise. This historical fact has ensured that

such reservations have so far found no place in state legislatures and in the national Parliament.

Political parties were not putting up women as candidates for elections. Reservation was essential to give women an entry point to political office.

However, why not demand 50 per cent of the seats for women, or legislate that political parties must field women in every election? If we had two representatives per constituency, then it would be easy to ensure a 50-50 female-male ratio.

2.8 Why is devolution to the local level a decision of the second level—the state?

State-authorized devolution was necessary to get the political support required to pass the constitutional amendments. It is also possible that many lawyers felt, in light of a Supreme Court decision that the basic structure of the Constitution cannot be amended, that a shift from a two-tier federal structure to a three- or multi-tier federal structure might result in the proposal being challenged in the courts and getting delayed for a long time. It is commendable that the states have passed conforming legislation and held elections to LSGs across the nation.

The states, however, have created line departments that have been providing services to all parts of the state. These departments continue to work. Arrangements have been made to give LSGs some role, and this is a matter in flux. But this is the reality of India. It is the state legislatures and civil servants who have to take the decisions on devolution, which will remove many things from their jurisdiction. How this will evolve remains to be seen.

The key to progress for LSGs remains with the state government, and the states are not very keen today on substantial devolution.

2.9 Why are tax powers hardly used to raise funds?

In most states, LSGs do not take an interest in tax collection—even in collecting rates for the supply of utilities such as electricity

and water. Studies have shown that elected representatives in India take an interest in expenditures, but not in revenue generation, which they feel is the job of “the administration”. They are also reluctant to antagonize voters (to whom they are very close) by paying attention to tax collection. Given that the major expenditures are from devolved funds, it makes sense for local elected officials to clamour for more state funds than to collect local revenues. The absence of a budget process—formulation of projects, arranging funds for them, implementing these decisions, answering audit queries—means there is no institutional pressure to deal with this issue.

A hard budget constraint would change this situation because it would impose fiscal discipline. New expenditures would then mean a need for local officials to have at least some recourse to local funding.

2.10 *Why are elected representatives referred to as “non-officials” by civil servants in the state?*

The word “non-official” suggests a lack of authority, of legitimacy. It is difficult to argue that those elected to office have no legitimacy. It is also not likely that civil servants will give up the authority they have hitherto enjoyed at the local level. At the development block level, the Block Development Officer has been supreme. He sees no reason to give up the authority he has legitimately enjoyed simply because some people have been elected to office. Use of the word “non-official” is an ingenious—even if unconscious—way of marginalising them in day-to-day functions. Non-officials “interfere” while officials implement policy!

The use of this term to refer to elected representatives is symptomatic of the struggle for turf at the local level.

2.11 *Why is it felt that decentralization means little more than decentralising corruption?*

This has often been mentioned as a reason to oppose decentralization. Yet, the evidence on this issue is far from clear. There seems

to be good reasons to believe that corruption has decreased—or increased—in specific situations. *A priori*, it would appear that decentralization to LSGs is corruption neutral, that corruption depends on many other factors. And surely corruption is not limited to LSGs.

This argument is a good example of a red herring that avoids the key issues. Corruption has to be fought, but it need not distract from efforts to decentralize authority.

2.12 *Why is there conflict between some civil-society agencies and LSGs?*

This conflict has been noticed in many parts of India. Civil-society organizations (CSOs) have been involved in the implementation of development projects since the 1980s. Many CSOs work closely with the line departments of the state governments. Many line departments depend on these CSOs to help foster people's participation and to encourage and sustain local committees. These CSOs have felt a threat from the emerging LSGs, especially losses of turf and influence. That the LSG is a democratic, representative, constitutional body is lost in the local din.

CSOs need to be educated on this matter. CSOs have strengths when it comes to new ideas and innovation; they lack the reach and democratic character of LSGs. This conflict is another pointer of the changes in local society in India.

3. Three Key Issues for Debate

1. The Constitution created LSGs, but they are to take on functions that have till now been the domain of state government. There is, then, a question of a *traverse* to the new system from the old. This question of transition from the old to the new has not been debated adequately in India. We have assumed that with elections being held, the new system has not only come into existence, but is functioning too. Studies that compare implementation by LSGs with implementation by line departments make the mistake of assuming that LSGs are indeed implementing programmes.

How should this traverse be managed? What should be the focus of attention, and what can be kept for the future? How can elected officials assert their authority in this situation? What can India learn from the experience of other countries?

2. Capacity is lacking in LSGs. They exist after elections, but there is no clarity on their functions. Also, many LSG officials come into political office with no preparation. Training on a vast scale is essential, but so far, it has been lacking. How can capacity be built among elected representatives without trying to influence them in any given direction?
3. Institutional development, and insisting on procedures like a budget process, would help to build such capacity. If, at the beginning of the financial year, a presentation was made to the LSG by the elected member chairing the finance (or equivalent) committee, it would serve many purposes. It would bring together horizontally the various schemes relevant to the area and permit economies of scale and coordination. It would result in a sharing of information that would remove the asymmetries between civil servants and elected representatives. It also would force the elected body as a whole to debate finances and policies and, where necessary, to agree on local priorities. For example, if there is money for only three health centres, such a debate can help in the rational location of these centres. Today, such a mechanism does not exist in most LSGs. Sometimes, such practices in themselves help institutional development.

4. Cases of LSG Functioning

In terms of the involvement of the local population, gram panchayats in Kerala have a remarkable record. Not only have large numbers of residents been mobilized in this process, there have been extensive debates that have led to the writing of local histories. The result is well thought out plans of local development that form the basis for work over the next couple of years.

In Madhya Pradesh, gram panchayats and janpad panchayats played a very important role in implementing the Education Guarantee given by the state. The gram panchayat articulated the

demand for schools and helped find a teacher. The janpad panchayat verified these claims and appointed the teacher. The results speak for themselves—a more than 20 per cent increase in literacy in the 1990s in the state.

In West Bengal, in the late 1970s and early 1980s, the gram panchayats played an important role in the implementation of Operation Barga—identifying those who tilled land and registering their rights. Agricultural output has shown a dramatic increase in the state since then. Subsequently, in the late 1990s, in Midnapore, the panchayats played an important role in disseminating an innovative sanitation package that has become a model in the country.

In Karnataka and Maharashtra, gram panchayats took an interest in the proper collection of house taxes. The result was an increase of over 200 per cent on average in the own-source revenues of these LSGs. The base for implementing what they consider important has been laid.

In Gujarat, the Surat Municipality, after the appearance of plague in the early 1990s, turned around its functioning. It is today among the cleanest cities in India. The role of the municipality in this turnaround from a crisis situation has been remarkable.

In Bangalore, the city corporation has not only been able to respond to the queries of civil society on its budget, it now regularly releases quarterly information the citizens can debate.

5. Conclusion

This paper has examined federal systems at the local level in a framework of devolution. There is another view we have not pursued, that of village republics expanding outwards, delegating to upper levels what they cannot do. This is the Gandhian vision of the village republic. It is not necessarily utopian. Switzerland has cantons as the basic unit of democracy, and the federal government derives its authority from the cantons below.

Within the framework, the point for debate relates mainly to the transition from an existing way of doing things to a new way. Changing the law does not automatically change the way things are done. Power relationships are involved, and the implementation

of devolution has to be strategic. Capacity and institutions for effective LSGs are to be built. These are the challenges before LSGs, and a great deal has to be done. On this there was agreement at the conference.