



**MUNICIPAL GOVERNANCE IN MAHARASHTRA AN ASSESSMENT OF 74TH
CONSTITUTION AMENDMENT A NEW PERSPECTIVE**

Shahid M. Zakaullah, Ph.D.

Associate Professor, Department of Political Science

Maharashtra College, Mumbai

Abstract

Governmental structure all over the world will be incomplete and inadequate without local government. Both in urban and rural areas they are regarded as essential tool for implementing the policies of the government. Although the British founded the system of municipal governance in modern period, the constitutional status has been accorded to them very recently. The issues being faced by the government while implementing the provisions of the Constitution 74th Amendment are still being sorted out. A process of assessment may bring about a desired change in the urban local governance.

Keywords: *Municipalities, 74th Amendment, Urban Local Government, Empowerment, Reservation, Planning, State Election Commission, State Finance Commission*



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The genesis of municipal governance in India can be traced back to 1687 A.D. with the setting up of a civic body in the city of Madras. In independent India, systematic efforts were made to recognise the significance of local government. Jawaharlal Nehru, the first Prime Minister of India put emphasis on its relevance and termed it as the basis of true democracy. In order to further strengthen the concept, article 40 of the Constitution of India, directs the State to organise and empower the Village Panchayats. Recognising its importance at the national level, article 246 of the Constitution of India gives special powers to state legislatures to make suitable laws to strengthen the local bodies and realise the fruits of democracy at the grassroots level. However, despite efforts to empower the institutions of local self-government, urban local bodies continued to be in a state of neglect and stagnation for a long time. As compared to significant changes in the rural local government, the development of urban local government had been slow and disheartening. As the Constitution of India allotted local government to the State List, the urban local bodies were stifled and mistreated by the

respective states. With an elaborate state-control on the functioning of municipal authorities, they could hardly be treated as embodiments of self-government. Their financial dependency on the state government did not allow them to emerge as institutions of empowerment for a long time.

The increasing criticism of the status of the urban local government in India by the concerned intellectuals and urban planners finally led to some active discussion and rethinking on the structure and functioning of the urban local bodies. Academics and urban experts in the last decade of the 20th century came forward with revolutionary ideas to re-energise these bodies and make them truly functional as institutions of self-government. They were unanimous in suggesting the Central Government to bring about policy changes and devise a plan that would lead to both decentralisation and empowerment of the urban local bodies in India. In 1989, the Central Government led by Rajiv Gandhi took interest in this direction and emphasised the need to rejuvenate grassroots democracy in the country. The Union Government held wide-ranging consultations with the elected members of the municipalities in different parts of the country. A number of seminars and conferences were held with municipal officers, chief secretaries, ministers of local self-government and chief ministers. The theme of the entire deliberative exercise was to evolve an appropriate mechanism to provide a constitutional base to urban local bodies in India. As a result, the Union Government led by Rajiv Gandhi introduced in the Lok Sabha the Constitution 65th Amendment Bill, 1989 which however could not be passed and lapsed due to dissolution of the Lok Sabha. Subsequently, the other bill with almost the same content and intention better known as 74th Amendment was introduced in 1991 and was passed in December, 1992. Hence, the idea of decentralization and the debate to empower urban local bodies finally culminated in the enactment of the Constitution (74th Amendment) Act, 1992. (Jha, 2018, pp.23-29)

The objective of the central legislation was to facilitate the democratic decentralisation at the grassroots level and strengthen and empower the municipal authorities so that they can acquire the institutional capability to deal with the problems created by the processes of urbanization and tremendous growth in the urban areas. The idea behind the legislative initiative was to have a constitutional amendment to accord constitutional status to the urban local government so that they could directly derive powers from the Constitution itself and enjoy security of tenure in terms of uninterrupted existence for five years and work as autonomous unit of local government. The other intention of such an amendment was to create a conducive political environment to enable all sections of society to associate with local administration in the country. Attempts were made to ensure that the local administration becomes more accountable

to people. Planning which was so far the domain of the central government came to be initiated at the grassroots level. The purpose of the amendment was also to give a direct message to the state governments to re-frame their administrative powers and stop treating local bodies as extended arms of their governments and devolve more and more functional and financial powers to the local units of governance.

The Constitution 74th Amendment Act further provides for a uniform system of urban local government in the country. Women have been guaranteed due representation in the urban local bodies. The Act also provides for the constitution of a Finance Commission every five year to review and recommend the resources to strengthen the urban and rural local bodies financially. The Act has also provided for a District Planning Committee to consolidate the plans prepared by the 'Panchayats' and urban local bodies in the district and to prepare a draft developmental plan for the integrated development of the district. There is provision for a Metropolitan Planning Committee for metro cities. The Constitution Amendment has also introduced a separate schedule enumerating a number of functions for the urban local bodies. (Jha, 2018. Pp. 32-37)

The Constitution (74th Amendment) Act, 1992 provides to constitute three types of urban local bodies, viz; (a) 'Nagar Panchayat' for a transitional area; (b) 'Municipal Council' for a smaller urban area; and (c) 'Municipal Corporation' for a larger urban area. The classification of the mentioned areas would be specified by the Governor of the State on the basis of population, density, the revenue generated, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he deems fit.

In terms of composition, the Act provides that all municipal seats need to be filled by persons chosen by direct election. For this purpose, the city area will be divided into electoral wards. However, with a view to give a municipality a representative character, persons having special knowledge or experience in municipal administration, Members of Parliament and State Legislature whose constituencies comprise wholly or partly the municipal area, the members of Rajya Sabha and the State Legislative Council registered as electors within the area and the chairpersons of the different committees can be included in the council. Many states have however, not included the higher level of politicians.

In order to make municipal government more accessible and responsive to the common citizens, the Act provides for the creation of Ward Committee in the cities having population of 3 lakhs or more. The Act has also made it mandatory to complete the election before the expiry of the normal duration, i.e., five years. In case of dissolved municipality, the election

must be held within six months. The Act also provides for the elections to be conducted by the State Election Commission.

The Constitution of India has provided for the representative parliamentary democracy in the country. The 74th Constitution Amendment Act intends to take care of this provision at the grassroots level itself. It provides for reservation of seats for the Scheduled Castes and Scheduled Tribes based on their ratio in the local population of the area. The Act promotes representation of women to the extent of not less than one third of the total number. Even the seats of chairpersons and mayors have been reserved for members of the above categories. This decision has certainly helped in bringing about a social change in the country. As the role of the urban local bodies was curbed and undermined in the past, the Act attempts to reconsolidate and strengthen them. It empowers the municipalities to prepare the plans for economic development and social justice. They are now expected to perform 18 types of functions as mentioned in the 12th Schedule of the Constitution. (Joseph, 2007, pp.56-59)

As the urban local bodies were facing a resource crunch, they were not in position to even maintain basic civic services. Performance of developmental function was even more difficult. In order to strengthen them financially the Act provides for constituting a Finance Commission every five years which would review their financial position and make appropriate recommendations to the Governor in regard to the distribution of taxes between the state and the local bodies. It would also suggest different measures to improve and enhance financial position of the urban local bodies. However, recommendations of the State Finance Commission are not mandatory on the state government.

The 74th Constitution Amendment has been quite historic in promoting a local approach to the idea of planning which has generally been treated as sectoral in nature. It provides for constituting a District Planning Committee which will consolidate the plans prepared by both the rural as well as urban local bodies and in turn finalise a draft development plan for the district as a whole. Not less than 4/5th of the total members would be elected by and from amongst the elected members of both the local governments in proportion to the ratio of the population of the rural and of the urban areas in the district.

The 74th Constitution Amendment also provides for constituting in every metropolitan area which has a population of 10 lakhs or more, a Metropolitan Planning Committee (MPC) to prepare a draft development plan for the area. Not less than 2/3rd of the members of the MPC shall be elected by and from amongst the elected members of the municipalities and chairpersons of the rural bodies falling in the metropolitan area in proportion to the ratio

between the population covered by both types of local governments. Several States however, have not made these committees operational.

Thus, the Constitution (74th Amendment) Act, 1992, was finalised by P.V. Narasimha Rao Government and came to be enforced nationally on 1st June, 1993. However, as the urban local self-government along with the rural local bodies is a state subject as specified by the Constitution of India, all states were legally required to ratify the Constitution (74th Amendment), Act, 1992 and bring all their existing relevant legislations in conformity with that of the 74th Constitutional Amendment provisions by May 31st, 1994. The Government of Maharashtra ratified and confirmed the parliamentary legislation through Maharashtra Municipal Corporation and Municipal Council (Amendment) Act, 1994. According to government declaration, the provisions of conformity legislation came into force in the State of Maharashtra on May 31, 1994 itself. (Mathur, 1999, pp. 66-68)

In the post 74th amendment period all urban local bodies in the State of Maharashtra are constituted and governed in accordance with the provisions of the following Acts which have undergone several amendments from time to time as per the requirements of the situation to incorporate various necessary rules and regulations of the government.

- i. Mumbai Municipal Corporation Act, 1888
- ii. The Bombay Provincial Municipal Corporation Act of 1949
- iii. The City of Nagpur Corporation Act, 1948
- iv. Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965

The entire city of Mumbai and the extended suburbs as defined by the Bombay High Court are governed by the provisions of Mumbai Municipal Corporation Act, 1888 as amended from time to time by the State Legislature of Maharashtra. Except Mumbai and Nagpur, all other municipal corporations have been constituted and are governed according to the provisions of the Bombay Provincial Municipal Corporations Act of 1949 which again has been amended from time to time to incorporate various constitutional amendments and other governmental rules and regulations. The City of Nagpur Corporation Act of 1948 was the exclusive Act for the City of Nagpur because of certain historical reasons. The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act of 1965 has been amended several times in the post 74th Amendment period and has in fact taken a new name to incorporate several provisions of the Constitution (74th Amendment) act, 1992. All municipal councils and Nagar Panchayats in Maharashtra are constituted and governed according to the provisions of this Act. (Mohanty, 1996, pp. 42-47)

In the post Constitution (74th Amendment) Act, 1992 implementation period, a number of remarkable changes have taken place in the structure and functions of urban local governments of Maharashtra. A number of new municipal corporations were set up to fulfil the new criteria of population mentioned in Constitution 74th Amendment. All those urban areas where the population had crossed three lakhs were declared as larger urban areas and were considered eligible for having municipal corporations. According Brihanmumbai Municipal Corporation (BMC) websites, there are at present 27 municipal corporations in Maharashtra. The total number of municipal councils presently in the State of Maharashtra is 263 and there are 137 Nagar Panchayats in the State.

In Maharashtra, the Constitution 74th Amendment Act and its implementation has generally been viewed positively by the people as well as the political class. The political leaders have welcomed the Act and have often acknowledged it as a mechanism to strengthen the urban local bodies. The amendment which came to be implemented in the State of Maharashtra with effect from 31st May, 1994 has in effect stopped the state government from dissolving local bodies as and when they wanted it for political reasons or delay their elections. In the pre-Constitution 74th amendment era, the state governments were almost free to do what they wanted to do with the local bodies. If they could foresee benefits, elections were conducted otherwise it was a near norm to postpone the polls for 10 years altogether. This however has changed since the time the 74th amendment has come to be followed in the state. Still, there are areas where there is a need to critically assess the progress made in regard to the implementation of the key provisions. (Shahid, 1997, pp. 34-37)

It is important to highlight the functional status of urban local bodies and their institutions in Maharashtra as mentioned in the various provisions of the 74th Constitution Amendment. A focus on the nature and structure of the local self-government in Maharashtra in the post Constitution Amendment era is interesting. In the context of Maharashtra, the 74th Constitution Amendment was expected to provide a new life to the old urban local bodies and to constitute the new bodies in a more democratic environment. In order to implement the 74th Amendment in the State, Government of Maharashtra made necessary changes in its existing municipal laws dealing with corporations, councils and panchayats as mentioned above. In order to further implement the major provisions of the 74th CAA separate Acts were enacted to constitute the committees and appoint the officers as required by the law. The Bombay Provincial Corporation Act, 1949 has been amended to fix the uniform criteria for the constitution of new municipal corporations in the whole state of Maharashtra. The minimum population of a corporation should not be less than three lakhs and the corporation has been specified as 'larger

urban area' as required by clause (2) of Article 243-Q of the Constitution of India. Moreover, the state government has now to confirm the city status of the larger urban area by notification in the official gazette. In the pre-74th amendment era there were 11 municipal corporations in the state of Maharashtra. In the process of giving effect to the provisions of the 74th Constitution Amendment Act, 16 new municipal corporations were formed in the state according to the new criteria. An effort was also made to introduce Mayor-in-Council System in Mumbai and Nagpur. As the experience was not found to be politically and administratively viable, it was discontinued. Similarly, the Government of Maharashtra followed the new criteria regarding the constitution and composition of Municipal Councils which were regarded as 'smaller urban areas.' The state has also ensured that the seats are reserved in Corporations, Councils and Panchayats as required by CAA. Criteria for deciding the number of elected councillors in Municipal Councils has also, been worked out. In order to constitute Nagar Panchayats which are urban local bodies for areas in transition from rural to urban, specific criteria have been finalised. Similarly, specific guidelines were finalised to constitute Industrial Township in special areas. The provision of Wards Committees has been regarded as a remarkable provision and a progressive idea to further decentralise the decision-making process in the municipality. The State of Maharashtra has worked out demographic criteria to constitute wards committees in Municipal Corporations. (Sivaramakrishnan, 2006, pp. 65-68)

In the process of implementation of 74th Constitution Amendment, the Government of Maharashtra has adopted specific laws regarding imposition, sharing and distribution of the taxes, duties, tolls and fees for different levels of corporations and councils. Similarly, there are separate provision of taxation for municipal councils and Nagar Panchayats. The state government may also issue any general or special order to the councils to impose a parking fees and fees for the use of public streets and pavement spaces.

In order to comply with the provisions made under article 243-I of the Constitution of India, Government of Maharashtra constituted the first Maharashtra Finance Commission consisting of a chairman along with three members and a government servant as its Member Secretary on April 23, 1994. The commission was asked to make recommendations related to the matters mentioned in article 243-Y. The Commission submitted its report to the Governor on 31st January, 1997. Later, a cabinet sub-committee was constituted to study the recommendations of the commission.

With a view to implement the provisions regarding duties and functions of the State Election Commission as mentioned in article 243-ZA of the 74th Constitution Amendment, the state government enacted a legislation entitled, 'The State Election Commissioner (Qualification

and Appointment) Act, 1994, to decide the qualifications for and the appointment of the State Election Commissioner. The first State Election Commissioner, under this Act was appointed on 26th April, 1994. According to Act, the term of office of the State Election Commissioner will be five years from the date of his joining the office. (Areeba, 2004, pp. 24-28)

With an objective to comply the provisions regarding District Planning Committee as mentioned in article 243-ZD, the Government of Maharashtra enacted an Act, 'Maharashtra District Planning Committee (constitution and functions) Act, 1998' to constitute at district level a District Planning Committee (DPC) to consolidate the plans prepared by the municipalities in the district and to prepare a draft development plan for the district as a whole. In order to comply the provisions regarding Metropolitan Planning Committee (MPC) as mentioned in article 243-ZE of 74th Constitution Amendment Act, Government of Maharashtra has enacted Maharashtra Metropolitan Planning Committee (constitution and functions) (continuance of provision) Act, 1999. It has specified constitution of Metropolitan Planning Committee for every metropolitan area consisting of 45 members to prepare draft development plan for the metropolitan area as a whole. There are three metropolitan regions in Maharashtra, i.e., Mumbai, Nagpur and Pune and there should be one each Metropolitan Planning Committee for each region.

The above description along with its status of the various provisions of 74th CAA indicates that the act has been viewed quite positively and well received in the state of Maharashtra. It has extended an assurance for a better people's participation in the processes of democracy at the grassroots level. It has potential to realise social and gender justice in the society. It has enough mechanism to effectively decentralise the municipal administration. It has provided enough enabling mechanism along with legal support to the urban local bodies to play an effective role in the planning and development at the local and regional level. (Arvind, 2021, pp. 23-25)

The Government of Maharashtra while initiating the process of implementation of the 74th CAA, has focussed on two kinds of measures to revitalise the municipal governments in the state. These two measures are; (a) corrective (b) preparatory. Hence, the government has taken steps at two levels to realise a proper compliance of the 74th CAA. First, it has brought about changes in the existing municipal laws by amending the relevant part by inserting new clauses and the sections and/or deleting the unnecessary and irrelevant portions of the legislations. In addition to this, a new act has been enacted which contains all these relevant changes as required. As part of the preparatory measures the government has enacted new legislations to provide for constitutional sanctions which technically allowed the government to constitute

and create institutions like the State Election Commission, State Finance Commission, District Planning Committee and the Metropolitan Planning Committee, etc. (Baud, 2004, pp.22-25)

The process of constituting the three-tier system of municipalities as required by the 74th CAA took quite a lot of time. It was not an easy task. In few areas few technicalities have not yet been completed. The government had to initiate delimitation exercises to carefully assess and ascertain 'larger urban area', 'smaller urban area', and 'transitional area' with due regard to the existence of various classes and sizes of the urban settlements. The government had to consider a number of factors which were prescribed for the constitution of the three types of municipalities. These factors include; a. the percentage of employment in non-agricultural activities, b. density of population, and c. the quantum of revenue generated for the local administration. Similarly, many challenges were faced while constituting the Nagar Panchayats whose lower limit of the population size is 10,000.

The 74th CAA certainly has enough potential to strengthen and empower the urban local bodies. The constitution amendment, in a broader sense, has specific objective to prepare the municipal governments to face and deal with future challenges of growth and development. The problems of unemployment, poverty, sprawling of slums in the urban pockets, issues of migrant labour, homelessness and the environmental degradation at local and regional level will have to be addressed sooner or later. The state government will have to assign and define the responsibilities and functions of the municipal governments and initially the focus can be on the municipal corporations and the bigger municipal councils. The government will also have to undertake capacity building exercises to enable them to really perform as desired and achieve the stated goals. The constitution and functioning of the District Planning Committee and Metropolitan Planning Committee will certainly create an enabling environment and make an attempt to review the locally available resources, and make suitable plans and strategies to ensure their maximum utilisation. They can also explore and find out the areas and priority sectors for further investment. It will help them achieve a better planning and development environment at the local level. (Deepak, 2019, pp. 26-29). Despite an initial success in Maharashtra, however, the larger objective of the Constitution 74th Amendment has yet to be achieved. With newer schemes and norms being introduced by the successive governments, the spirit of the Constitution Amendment is being diluted and made less effective.

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