



## 74<sup>TH</sup> AMENDMENT AND THE RESPONSE IN MAHARASHTRA *NEED, SIGNIFICANCE AND BASIC FRAMEWORK*

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### Abstract

*74<sup>th</sup> Amendment is recognised as an important legislation. It has initiated mechanism to empower municipal bodies in the country. Its history, need and significance need to be understood properly. Elaborate state control on the functioning of these bodies affected their growth for a long time. The financial dependence on the state government did not allow them to take decisions. However, the enactment of the 74<sup>th</sup> Amendment has sought to bring about lot of changes. Its implementation in Maharashtra needs to be monitored and assessed from time to time. The lacunae at various levels need to be identified and addressed. The people need to come forward and participate in the functioning of the local bodies. The response of the state of Maharashtra has so far been very encouraging.*

**Keywords:** *74<sup>th</sup> Amendment, urbanisation, state control, financial autonomy, people's participation, municipal governance, District Planning Committee, Empowerment, Women's empowerment,*



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The 74<sup>th</sup> Constitution Amendment Act (CAA) is an important landmark legislation in the evolution of urban local governance in India. The CAA is perceived to be an initiator of a new era of active and empowered system of municipal governance in the country. The constitutional recognition to the urban local bodies through the amendment has given them the right to exist with functional distinction as well as an autonomous identity within the administrative framework of India. The state governments are now required legally to treat them with due care and respect. The amendment has also been acknowledged as a mechanism to reinvent the federal structure of the country in a significant way. For the first time in independent India, municipalities as essential tools for local governance were incorporated in the Constitution. A new chapter was exclusively added. New Schedule was annexed to underline the significance of the amendment. Efforts were finally made to decentralise Democracy. A sense of stability was infused in municipal governance. A mechanism was created to involve and associate all

sections of society with the local administration. Planning which was the exclusive domain of the central government was initiated at the grassroots level. Reforms were initiated in the administrative hierarchy which forced them to devolve more and more functional and financial powers to the local units of governance. The 74<sup>th</sup> CAA was regarded as significant because it prescribes a uniform system of urban local government in the country. It facilitates the democratic decentralisation at the grassroots level and provides functional stability through the mandatory election within a stipulated period of five years. All sections of the society including women are given due representation in the local governance. It talks about setting up a Finance Commission every five years to review, reserve the resources and help the urban as well as rural local bodies to strengthen financially. There is a DPC to integrate the plans finalised by the 'Panchayats' and urban local bodies in a district. Based on this, it prepares a draft plan for development of the entire district. Metropolitan areas will have metropolitan planning committee to finalise a development plan for such areas. In addition, a new schedule enumerating a number of functions is also annexed. The 74<sup>th</sup> CAA therefore, became a guiding factor for any discussion and debate in relation to municipal governance and initiating any reform process in this regard. The euphoria with which it has been welcomed all over the country suggests that it has much in store for urban local bodies which might revitalise them and strengthen them as vibrant democratic units of self-government. (Jha, 2018, pp. 12-24)

### **History, Need and Significance**

In order to clearly understand the need for the CAA and appreciate its significance, it is desirable to trace its justification in various policy changes occurring during British period and in the times after their departure. Lord Ripon, the much-lauded founding father of municipal authorities in British India, although, implanted the concept of municipal governance as the units of self-government, it substantially declined over the years. It was mainly due to among other things, (a) an undefined role that led to systematic erosion in the municipal functional domain; (b) inadequate resource base; (c) a weak executive system; and (d) pervasive state control.

The unclear and unspecified role of municipal authorities resulted in considerable erosion in the functional domain of the municipal government. This manifested in state encroachment into municipal functions and coming into existence of para-statal bodies and specific purpose organisations in the sphere of water supply, sewage and drainage, slum improvements, urban planning and development. These excessive interferences were thought be right as the earlier

municipal bodies did not have adequate resources to carry out the difficult and cumbersome challenging activities. (Janice, 2008, pp. 34-38)

In regard to resources, it is important to mention that despite an increase in demand for services due to rapid urbanization and tremendous growth, the local resource base has not increased satisfactorily rather in some areas it has been shrinking. The share of municipal governments in the entire public sector expenditure has been diminishing in the country after independence. This has limited the services and their operational expenses. A sizeable percentage of the municipal authorities spent an amount on various municipal services. It was much below the norm suggested by Zakaria Committee. The system in the municipal corporations is quite fragmented. It is based on separation of executive powers and functions. Although, the executive powers are given to the council and its committees, the executive functions are performed by an appointed commissioner. As the executive powers is enjoyed by an appointed executive rather than an elected representative, it has led to bureaucratic control which has affected the ethos of democracy at the local level. This contradicted the objective of the institution of self-government. (Kamaldeo, 1995, pp. 65-68)

Moreover, an elaborate state control on the functioning of municipal authorities crippled them in the long run. These state powers were exercised through inspection, verification of records and issuing of directions for performing civic functions. The state government is known for controlling and supervising appointments, approving contracts and even the municipal budgets. It also enjoys the authority to sanction new posts, and formulating of by-laws and other rules, etc. In fiscal matters, control was exercised in relation to rates and expenditure incurred. Earlier the municipal authorities did not have powers to sanction their own budgets and decide the tax rates. Municipal corporations were expected to seek state approval of expenditure beyond certain limits. With such enormous controls, the municipal govts could hardly be regarded as examples of self-governments.

The most drastic method of control was the act of supersession without reconstituting the council for years together. As it gradually became a norm, a large number of municipal councils were under prolonged supersession. Even the Madras Municipal Corporation which was the first municipal body to be formed in this country, had to face this ignominy. It was the first municipal government which remained under supersession mode for the longest duration of time. (Mohanty, 2012, pp.55-57)

These factors had gone a long way in weakening the institutional capability of municipal authorities. The discussion and debate to re-energise and empower them has continued since

independence. The 74<sup>th</sup> Constitution Amendment (CAA) can be described as the culmination of this prolonged debate and sustained efforts. It was pushed through for strengthening of municipal governance system so that they further acquire the institutional capability to deal with the problems caused by urbanization and urban growth. Thus, in order to deal with such issues, it had become imperative for the central government to initiate and enact a legislation which could trigger a process of reform in the system of municipal governance all over India. (Pinto, 1998, pp. 64-67)

After gaining an insight into the historical justification for 74<sup>th</sup> CAA, it would be imperative to analyse the need for such an amendment. It is widely acknowledged that towns and cities are significant contributory factors to the processes of economic development of the country. The urban centres play a positive role in promoting the development of rural areas. Local governments in urban areas influence the well-being of the people through the provision of 'civic services and socio-economic and infrastructure facilities. It is important to sustain this economic transformation in line with the actual realities and necessities at the ground position. The Councillors along with the residents should be encouraged to get involved and participate in the proper planning and implementation of the different programs and activities at the local level. If democracy in Parliament and state legislatures has to remain strengthened, stable and vibrant, it has to be rooted in villages, towns, and cities where people actually reside. The municipalities are, therefore, established to maintain the civic services and undertake planned development of the urban areas and those who reside within them. The purpose is to ensure the provision of suitable infrastructure and services to the citizens. However, in many urban areas in India, the quality of life continues to be miserable and citizens being forced to live a difficult life. (Prasad, 2017, pp. 44-47)

The other set of needs for such an amendment finds its roots in the Constitution itself. The Constitution of India has enough provisions to protect and promote democracy in Parliament and in state legislatures. Democracy has well survived and flourished in India at this level. India is rightly lauded as the largest democracy in the world. The Constitution did not make local government in urban areas a constitutional obligation in clear terms. While the DPSP makes reference to village panchayats, there was no specific provision in respect to the municipalities except as an implicit mention in Entry-5 of the State List which makes the local government a responsibility of the state. (Rai, 2007, pp. 52-54)

Due to inadequate space and non-clarity of urban local government in the constitution, democratic vigour in municipal governance did not remain stable. Many issues confronting

local governments began to emerge. Civic bodies began to suffer from excessive control, restricted electoral space, inadequate resources, lack of education and training, shortage of capable and efficient workers and lack of control of local bodies over provision of services. Although, the different acts of the States pertaining to the municipalities provided for elections on a regular basis to municipal governments, they were suspended very frequently and superseded for indefinite periods of time. Long period of suspensions or supersessions adversely affected the local government. It had a negative effect on the functioning of democracy at the grassroots level. The municipal bodies also faced financial inadequacy. Also, there was a constant encroachment on the designated functions and revenue of urban local bodies by specialised agencies of the state governments. As a consequence, most of the urban local bodies became weak and were not able to function efficiently. The weak status of urban local bodies forced the urban experts to mobilise the public opinion in favour of a constitutional guarantee to safeguard the interests of the urban local bodies. (Raghunandan, 2012, pp. 25-28) It became highly imperative to initiate reforms at this level. The local governments were expected to look after the routine civic affairs efficiently. Hence, in order to present a concrete measure and really strengthen democracy at the grassroots level and make urban local bodies truly functioning and vibrant units of self-government, Constitutional guarantees were emphatically suggested in the following area.

- ‘Fair and regular holding of elections in civic bodies’
- ‘Ensuring elections within the time frame in case of supersession’
- ‘Ensuring representation of women and SC/ST in the elected bodies’
- ‘Ensuring working relationship between the state governments and the urban local govts with respect to:
  - Functions and taxations powers of the urban local bodies
  - Revenue sharing between the state government and urban local bodies’
- ‘Ensuring participation of elected representatives at grassroots level in planning at the district and metropolitan levels’

The 74<sup>th</sup> CAA and its implementation was regarded as a mechanism having a special significance as it directly affected governance in towns and cities. A mandatory constitutional approach was evolved for the first time to ensure three tiers of governance; centre, state and local body. It clearly included the system of rural bodies as well, as the provisions of 73<sup>rd</sup> amendment needed to be jointly understood to have an integrated perspective on local bodies. The constitutional provision was therefore, expected to initiate timely election of the city

governments. It was also expected to empower them both politically and financially. (Ramanathan, 2004, pp. 23-27)

Various steps were initiated earlier to reform the local government. Efforts were made to introduce decentralisation of authority, powers, functions and even funds in the civic bodies. Measures were taken to democratise the local bodies and give them greater autonomy. Efforts were also taken to grant them constitutional status through suitable amendments in municipal acts, etc. Hence, the 74<sup>th</sup> CAA could be considered as a culmination point of all these efforts already taken by the government to better manage the urban affairs. Hence, the 74<sup>th</sup> CAA could be termed as a leap in this direction. It was a path-breaking amendment as it aimed at the creation of local governments and devolving them adequate functional powers. It provided and mentioned a framework of locally administered institutions that would function as the local governments and would address the issues between the people and the government. It was a major achievement of the Indian Government in their endeavour to strengthen urban local governments. The enactment of 74<sup>th</sup> CAA in 1992 was therefore, a unique phenomenon in the area of urban local reform. (Ramachandran, 2009, pp. 43-45)

It was regarded as significant because it would create such a mechanism which would enable people to take part in the issues that affected them directly. It provided space for people to participate in the decision-making process. These amendments enacted after much discussion and debate, were quite revolutionary in nature. Especially the states that still relied on a large measure of centralisation in administration found it difficult to adjust with radical changes. The 74<sup>th</sup> CAA took steps to really empower people at the grassroots level and gave them authority and power so that their areas and communities would be better administered and developed. The elected representatives were expected to act in the interest of the people. Thus, the 74<sup>th</sup> CAA initiates reforms in the constitution, composition and functioning of civic bodies and gives power to the state governments to suitably amend their municipal acts. (Ravikant, 2006, pp. 43-49)

The 74<sup>th</sup> CAA and its implementation was considered as important because it suggested that there will be a suitable structure of governing mechanism better known as local bodies which would be classified on the basis of population. The 'smaller urban area' will have municipal councils and 'larger urban areas' will be entitled to have a corporation. However, 'the areas in transition from rural to urban will have Nagar Panchayats'. These would be considered as the first tier of local government. Zonal committee would further divide the area. The other level of decentralisation would be introduced through the ward committees which may include two

or more electoral wards. The process to initiate the process of delimitation however, was given to the state government. (Singh, 2002, pp. 33-37)

### **Basic Framework**

The 74<sup>th</sup> CAA, 1992 was passed by the National Legislature in December, 1992. The President of India gave his approval to the Bill on April 20, 1993 and it began to be referred as an Act since then. It came to be enforced nationally on June 1, 1993. The Act has been universally lauded and has been termed as historic. It has sought to strengthen the federal structure of the country. It has given constitutional recognition and protection to the urban local bodies for the first time in independent India. The Constitution of India now recognises the local government as the third level of the structure of government in the country. However, after the elapse of more than two decades it is imperative to find out as to what were those factors which pushed the enactment of this bill. There were strong reasons and rationale behind the whole process of enactment of the legislations. There were formidable objectives of the legislation as mentioned below. (Baud, 2004, pp. 33-38)

Prior to the passage of the bill, urban local bodies, in most states, had become weak and ineffective. They were not able to work efficiently due to several reasons. The main reasons were the failure to hold elections, supersessions of civic bodies and insufficient devolution of powers and functions. Urban local bodies therefore, were not in a position to perform as active democratic units of self-government.

In view of these issues and inadequacies, it was considered necessary that following provisions in relation to urban local bodies are included and incorporated in the Constitution of India itself. The objective of 74<sup>th</sup> CAA was to strengthen the relationship between the State Government and the civic bodies in respect to the following areas.

- Municipal Functions and taxation powers, and
- Suitable institutional arrangement for revenue sharing

The other objective was to conduct regular elections. The third objective was to ensure timely elections in case of supersession. The fourth objective was to institutionalise representation of the weaker sections like SC, ST, and women. (Khalilur, 2004, pp.45-49)

It added a new part in the Constitution relating to the urban local bodies which provided for formation of three types of municipalities as part of the governmental structure.

- ‘Nagar Panchayat for areas in transition from a rural area to urban area’
- ‘Municipal Council for smaller urban areas’
- ‘Municipal Corporation for larger urban areas’

The composition of municipalities to be finalised by state legislature had the following features.

- i. Persons to be chosen by direct election
- ii. Chairpersons of committees at ward or other levels in the municipalities
- iii. Persons having expertise and knowledge or experience of Municipal
- iv. Administration (without voting rights).

The chairpersons of a municipality would be elected as per the specified norms.

The formation of the ward committees or such other committees within the territorial area of a municipality was to be institutionalised.

Reservation of seats in every municipality was to be provided:

- For SCs and STs in proportion to their population in the area. However, one third of the seats from this quota will be reserved for women belonging to the same category.
- For women which was not to be less than one-third of the total number of seats
- Favouring BCC was to be finalised by the state legislature
- Office of the chairpersons to be reserved for SCs, STs and women

A tenure of five years was provided to the municipality and holding of re-election within a period of six months was ensured. If a municipality is dissolved before the end of its specified duration, elections to be held within six months from the date of its dissolution. (Krishnakumar, 2000, pp. 54-58)

The transfer of powers and responsibilities by the state legislature to the urban local bodies in relation to the preparation of plans for economic progress and development at the grassroots level was administratively quite significant. Even the plans and activities of social justice and other schemes of development were to be encouraged to enable them to function as institutions of self-government.

State law was to provide for imposition of taxes and duties by municipalities. Assigning of such taxes and duties to municipalities was to be finalised by the State Governments. The details regarding the payment of grants to the municipalities was to be provided in the state law.

The other objective was to have a Finance Commission in every state to review the finances of the Municipalities and to recommend principles for:

- Determining the taxes to be assigned to the municipalities
- Sharing the taxes between the state and municipalities
- State grants to the municipalities from the CFS



The other objective was to have the audit of accounts of the municipal corporations by the CAG and laying of reports before the state legislature and the corporation concerned. (G. Narendra, 2006, pp. 32-36)

A law was to be made by the state legislature to conduct elections to the civic bodies. Hence, all civic elections were to be conducted under the superintendence, direction and control of State Election Commission as referred to in Article 243-K.

The applicability of the provisions of the law to any union territory or any part of it with suitable modification was to be specified by the President.

The other aspect of the law was the exemption of scheduled areas mentioned in clause (1) and Tribal Areas mentioned in clause (2) of Article 244 from the application of the provisions of the law. However, provisions of the law could be extended to such areas through law by Parliament.

The other aspect of the law was to ensure some disqualification for membership of a Municipality.

The other important aspect of the law was to restrict the jurisdiction of Courts in issues and matters relating to elections of the Municipalities.

The 74<sup>th</sup> CAA therefore, sought to achieve the stated objectives through the national historic legislation. (Goel, 2011, pp. 64-67)

### **References:**

- Abhijit Datta, (2016), Institutional Aspects of Urban Governance, published in The Challenge of Urban Governance, Concept Publishing, New Delhi*
- Akode K. S. (2011), Urban Planning Scenario in Maharashtra, Town Planning, Government of Maharashtra*
- Anirban Pal (2017), Planning from the Bottom Up – Democratic Decentralisation in Action. Published by Concept Publishing, New Delhi.*
- Areeba Hamid, (2004), 74<sup>th</sup> Amendment: An Overview, Published by Centre for Civil Society, New Delhi*
- Birch, Eugene L., (2009), The Urban & Regional Planning, Routledge Press, Bangalore*
- Baud, I.S.A. & Dewit J., New Forms of Urban Government in India, Sage Publications, New Delhi*
- Chandhoke, Neera, (2003), Governance and Pluralisation of State: Implications for Democratic Citizenship, Economic and Political Weekly, Vol XXXVIII, No. 28. 12-18 July, 2003.*