



## IMPLEMENTING 74<sup>TH</sup> AMENDMENT IN MAHARASHTRA MUNICIPALITIES ACCORDED CONSTITUTIONAL STATUS

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### Abstract

*The Constitution 74<sup>th</sup> Amendment has brought about a number of positive changes in the domain of urban local governance. It has developed systems in the civic governance of the country. It has strengthened the political set up and the functional domain of the local governments. The State of Maharashtra was the among the first to implement the law. All the municipal bodies in the country now enjoy the constitutional status. However, we need to monitor if the purpose of passing the legislation has been achieved. Has it really streamlined the fiscal system in relation to these bodies. Are the urban planning norms introduced due to 74<sup>th</sup> amendment being followed in the country? It has surely accorded constitutional status and recognition to the urban local bodies. We need to see if it has brought about administrative uniformity in the realm of urban governance in the country. However, it is important to ensure that the legislation is implemented in its letter and spirit.*

**Keywords:** *urban local bodies, 74<sup>th</sup> amendment urban governance, municipal corporation, Central legislation, fiscal arrangements, urban local bodies, municipal corporation, urban planning, functional domain, District planning committee, civic governance, municipal council, Nagar Panchayats*



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Urban areas in developing nations are under constant demographic transition due to irreversible urbanization, fast economic growth and rapid development. In India too, the mega cities are constantly rising with the increasing rate of intra and inter-state migration. Maharashtra, according to the 2011 census, with 'a population of 5.08 crore, is now home to the highest number of people living in urban areas.' With an urban population of 45.23%, Maharashtra is the third most urbanised among major states after Tamil Nadu (48.45%) and Kerala (47.72%). The cities and towns of such states, as a result, are facing immense global pressures due to forces of economic liberalisation. They need to be more 'competitive and well governed.' There is a need to introduce 'structural and functional changes to strengthen civic bodies' and enable them to function as 'vibrant democratic units of local governance'. (Mattoo, 2010, pp.46-48)

The Govt of India has taken several initiatives to decentralise urban local governance since 1990s. The 74<sup>th</sup> CAA is one such initiative which has given constitutional recognition to urban local bodies. It has given the civic bodies much needed ‘functional stability and constitutional right to exist.’ The ‘12<sup>th</sup> Schedule to the Constitution provides the list of functions’ for the civic bodies. The 74<sup>th</sup> CAA requires the state governments to amend their municipal laws to give effect to the various provisions of the CAA. The implementation of the 74<sup>th</sup> CAA is necessary to empower the ULBs with much needed ‘authority and powers’ which would enable them to function as ‘institutions of self-governance.’ The 74<sup>th</sup> CAA provides a basis for the state legislatures ‘to transfer various responsibilities to municipalities and to strengthen municipal governance.’ Most of the states including Maharashtra have already amended their municipal laws to bring them in conformity with the CAA. As the implementation of the 74<sup>th</sup> CAA is a mandatory reform process, all state govts were required to assess their municipal laws and bring them into ‘conformity with the provisions of the 74<sup>th</sup> CAA.’ They were required to either ‘repeal or modify those municipal laws which are inconsistent with the provisions of the 74<sup>th</sup> CAA within one year from the commencement of the Act.’ (Mohanty, 1996, pp.56-58)

In Maharashtra the relevant municipal laws which were already enforced in the state were required to be amended ‘by May 31, 1994 to conform to the provisions of the 74<sup>th</sup> CAA.’ However, as the state legislature was not in session, the ‘Governor of Maharashtra promulgated the ‘Maharashtra Municipal Corporations and Municipal Councils (Amendment) Ordinance, 1994 on May 31<sup>st</sup> 1994 with an objective to amend the following the then state municipal laws.

- a. ‘The Bombay Municipal Corporation Act of 1888’
- b. ‘The Bombay Provincial Municipal Corporation Act of 1949’
- c. ‘The City of Nagpur Corporation Act of 1948’
- d. ‘The Maharashtra Municipal Councils Act of 1965’

As per the legislative procedure, the ‘Maharashtra Municipal Corporations and Municipal Councils (Amendment) Bill, 1994’ was introduced in the Assembly for converting the Ordinance into a law after state legislature re-assembled in July, 1994. However, due to some unresolved points, the Bill could not be passed and was sent back to the ‘Joint Select Committee’ of ‘both Houses of the state legislature for further discussion.’ As the bill got stuck in the select committee for a long time, it had to be withdrawn for technical reasons and was ‘re-issued as an Ordinance with retrospective effect, i.e., with effect from May 31<sup>st</sup>, 1994’, as

the state legislature was not in session again. It was 'to take immediate action to continue the operations of the provisions of the particular Ordinance.' (Shahid, 1997, pp.44-47)

As technical required, the Bill was re-introduced subsequently, for 'converting the Ordinance into an Act of the state.' After the 'Bill was passed by both the Houses of the state legislature, the Governor gave his assent to the Bill on December 6<sup>th</sup>, 1994' and finally it became an Act with retrospective effect. The Act which is formally known as 'Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994, is deemed to have come into force in the state on May 31<sup>st</sup>, 1994.' The Act which is also popularly known as 'Maharashtra State Conformity Legislation', thus, completed the technical and procedural exercise of conforming to the 74<sup>th</sup> CAA. In order to further implement the CAA, the relevant provisions of 'the then enforced' four Acts as mentioned above were amended and brought into conformity with that of the provisions of the 74<sup>th</sup> CAA.

The conformity legislation has laid down a basic framework to enable the municipalities in the state to function effectively as democratic units of urban local governance. However, subsequent to the passage of conformity legislation a number of policy changes were initiated in field of urban local governance. These changes made it necessary to amend and even review different Acts related to urban local governance. In the post 74<sup>th</sup> amendment era, now there are only three laws in the State of Maharashtra which constitute and govern urban local governments. They are as follows.

- i. 'The Mumbai Municipal Corporation Act of 1888'
- ii. 'The Maharashtra Municipal Corporations Act of 1949'
- iii. 'The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act of 1965' (Notification, Govt of Maharashtra)

### **Constitutional Status to Municipalities**

The Constitution (74<sup>th</sup> Amendment) Act, 1992 is regarded as a landmark Parliamentary legislation in the history of local governance in India. This 'Act' accords constitutional status to municipal governments in India in order to initiate a process of 'democratic decentralisation' in urban local governance. 'The 74<sup>th</sup> CAA has recognised urban local bodies as the third level of governmental structure in India.' The Constitution Amendment seeks to improve the functioning of municipalities through decentralisation accompanied by accountability, responsiveness and transparency. (Ajit, 2018, pp.54-56)

Prior to the 74<sup>th</sup> CAA, the status of urban local government system in the Constitution of India was not clear rather ambiguous. Article 40 of the Constitution recognises the

significance of local governance in the rural areas and directs the states to organise Panchayats and empower them adequately. The provision further clarifies that these institutions must be encouraged to function independently so that they become viable units of self-government in rural India. However, the glaring silence in regard to the similar constitutional encouragement regarding urban local government was notable. The only implicit mention of urban local government in the Constitution is found in 'Entry 5' of 'List II-State List' of Schedule 7. It states:

*'Local government, which means, the constitution and authority and powers of city governments, even the districts boards, improvement trusts, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.'* (from Constitution of India by D. D. Basu)

The above-mentioned inclusion in the Constitution places local government, including urban local government, within the legislative competence of the States. Prior to the 74<sup>th</sup> CAA, the 'Constitution recognised only states as sub-national entities.' 'There were only three lists that identified and fixed the domain of governance, policy making and legislation.' These were respectively, (a) Union List; (b) State List; (c) Concurrent List. 'Thus, defence, foreign policy, currency and income tax are exclusively the domain of the Central Government. Land revenue, agriculture, and police are in the State List. Labour and education policy are in the Concurrent List.' (Annapurna, 2018, pp.22-25)

The two amendments formally known as 73<sup>rd</sup> and 74<sup>th</sup> CAA led to the creation of two new Schedules; (a) 11<sup>th</sup> Schedule; (b) 12<sup>th</sup> Schedule. 'These two new schedules have identified areas that would become the domain of the rural and urban local bodies.' However, 'the Acts have not made them mandatory for the state to devolve these functions to the local bodies. They are more recommendatory in nature. Nevertheless, the Acts are aimed at empowering local self-governments with well demarcated powers and responsibilities.'

According constitutional status to municipalities has far reaching implications for the states' behaviour towards these institutions. 'Until the passage of the 74<sup>th</sup> CAA, the respective state governments decided how much autonomy they would delegate to lower levels of government. That discretion has been taken away. The key mandatory provisions of the 74<sup>th</sup> CAA are as follows:

- 'Regular direct elections to all local bodies'
- 'Setting up state level election commission'
- 'Constituting State Finance Commission'

- ‘Reserving seats for SCs and STs in local bodies in proportion to their population’
- ‘One third reservation for women in the municipalities’
- ‘Constituting DPC that integrates plans of rural and urban bodies’ (Areeba, 2004, pp.43-46)

The 74<sup>th</sup> CAA recommends the ‘devolution of funds, functions and functionaries to the third tier of government.’ The actual status of devolution in the mentioned areas is far from satisfactory. There are many institutional excuses as well intentional obstructions to block the real empowerment of the urban local bodies. In some cases, the representatives and officers at the state level ‘are unwilling to transfer power and resources to municipalities. There are some who do not exhibit enough ‘confidence in the capacity of the third level of the govt.’ In some cases, ‘the state had been dragging its feet even on holding the mandatory elections to the local bodies.’ In some instances, it showed hesitations in ‘implementing the recommendations of the SFC.’ Thus, there are many instances where local govts have been ‘deprived of both the funds and functionaries.’ (Arvind, 2021, pp.14-18)

While reviewing the status of the historic amendment, it needs to be acknowledged that there is no other option but to admit that much work remains to be done. Despite the shortcomings in the process of implementation of the Act, there has been substantial progress. Theoretically, there seems to be consensus over the notional acceptance that the 74<sup>th</sup> constitution Amendment to the Constitution of India needs to be recognised and upheld as a significant legislation in the evolution of urban local governance. Apart from conferring constitutional status to local self-government in urban areas, the constitutional recognition of the Municipalities has given them the right to exist with an autonomous identity. These local institutions have now acquired institutional dignity. It further suggests that the State government will have to display right treatment towards them and interact with them with due care and respect. The fear of supersession and undesirable restriction and encroachment on their powers are a matter of past.

Constitutional status to Municipalities also suggests that the 74<sup>th</sup> CAA has brought about foundational change in the federal relations between the Union Government and that of the States. The Municipalities, as a mechanism of local governance, have been incorporated in the Constitution for the first time in the post independent India. There is a new ‘Chapter IX-A’ which has been inserted in the Constitution to formally accord the constitutional status to the city governments. There is a new Schedule 12<sup>th</sup> which has been added to the Constitution to

especially recommend a list of functions for Municipalities and determine a functional domain for them in the state. (Ash Narayan, 2015, pp.44-49)

The idea of nurturing democracy at the national and regional level has its significance and a broad qualitative impact on the functioning of the government. However, this is for the first time an effort has been made to decentralise democracy at the local level. The constitutional status to municipalities has transformed them from a situation of uncertainty to a situation where they are expected to enjoy functional stability. A legal mechanism has been especially created to ensure involvement of a larger section of the society in the local administration. There are enough statutory norms which have made the local government more accountable to people at the ground level. The decision to introduce planning at the grassroots level has given people new opportunities to participate in the process of urban governance. The State Government and the administration at higher level are expected to devolve the recommended functions to the urban local governments and make them more vibrant and effective.

Maharashtra is one of the states which was quite prompt in conforming and carrying out the provisions of the Act. The state already has relevant municipal laws in place. Elections to municipal bodies have also taken place more than four times in succession almost on a regular basis except in those places where the court cases were the issue. However, a closer inspection to the whole process does point out glaring lacunae at several places which perhaps have been ignored. In some areas researchers have pointed towards plain under implementation of the Act. (Sivaramakrishnan, 2018, pp.44-46)

Despite the formation of the SEC, they did not take an active part in the several processes of the municipal elections. In some cases, the SEC decided to issue the notification of elections on its own, but in some other cases, the state government initiates the notification of elections on the suggestion of the SEC. There are areas where the task of delimitation of the constituencies lies with the state government. It has been observed that the SEC often makes use of the 'electoral rolls prepared for the Assembly Elections'. Sometimes it prepares its own list. One also finds that the two rolls being used are different. The manner of preparing the rolls and its periodical revision as well, is not transparent. (Sivaramakrishnan, 2011, pp.65-66)

The SFC has remained only an advisory and recommendatory body. It is known for sending out advices that is often not followed. The SFC has not only estimated for their funds, they have also evaluated the loans and advances extended by the govt to the local bodies. The SFC has often asked for their own tax sources like stamp duty, motor vehicles, electricity,

entertainment, profession, etc. However, they ‘continue to remain with the state government.’ ‘The strings of purse are still controlled by the state government.’ The ‘imbalance in revenue and expenditure makes the municipalities financially deficient and dependent on transfer of funds by state government.’ As ‘state government is dependent on the Centre for funds, so is the local government dependent on the state government's support.’ According to one estimate, ‘municipalities receive 0.6 % of NGDP despite the fact that urban areas contribute almost 90 % of the government revenue and 60 % of the NGDP.’ (Singh Pankaj, 2013, pp.24-27)

The MPCs that were expected to coordinate development plans for the growing urban areas are non-existent in several places. Although, provisions have been made by the state, it has not been actualised into functioning bodies as developers and planners in true sense of the term. There are states which have provided for formation of the MPCs in their respective Acts, but actually not formed it, even though it is a constitutional requirement. However, ‘some states have not even provided for any provisions for constitution of MPCs in their respective Acts.’ The State of Maharashtra, at least has an enabling legislation and a lot of ground work has already been done in this direction.

In terms of implementation, therefore, the whole process in the state has been quite slow in respect to the devolution of powers to the urban local bodies. ‘Some states have still not constituted DPCs or an MPC.’ Some states seem to have not paid enough attention to the whole process. It is observed that some units like Bihar and Puducherry had not even tasted the fruits of municipal elections until 2001. The reasons for the slow implementation have been identified as the lack of adequate finances. The other reason is ‘non-devolution of powers fully by the state to the urban local bodies.’ The third reason is the free hand given to the states in deciding the fate of urban local bodies. Maharashtra is one of the states that has created institutions that are mandatory in 74<sup>th</sup> CAA. However, ‘ambiguity in the Act, pertaining to the creation of civic bodies has been mis-utilised.’ The law actually does not make it mandatory for the state governments to devolve all the functions to the local bodies. It also does not define the sources for finance for them. As a consequence, these institutions despite acquiring constitutional status, have remained superficial in the practical sense of the term in most of the states. (Soma, 2018, pp.44-46)

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