



**URBAN LOCAL GOVERNANCE IN INDIA *EXPLORING RELEVANCE OF 74<sup>TH</sup>*  
*AMENDMENT IN PRESENT CONTEXT***

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**Abstract**

*The Constitution 74<sup>th</sup> Amendment was passed by the Parliament of India in 1992 with lot of enthusiasm and great expectation. The experts were hopeful that it would bring about tremendous changes in the urban local governance and a new era of empowerment would set in the processes of local governance. The strengthening of grassroots democracy will have an impact on the national ethos towards governance mechanism. However, the time has come to assess the Act afresh and suggest changes if needed. If the success has not come our way, we need to introspect and explore relevance for a legislation in the contemporary period.*

**Keywords:** *State Election Commission, 74<sup>th</sup> Constitution Amendment, NGOs and CBOs, Other Backward Classes, Schedule Castes, Schedule Tribes*



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The 74<sup>th</sup> Constitution Amendment Act, 1992 continues to be a reference legislation and a significant landmark in the evolution of municipal governance and in empowering civic bodies not only in the State of Maharashtra but in the whole country. The CAA was declared to be the harbinger of a new era of empowered and vibrant system of urban local government. The constitutional recognition to the urban local bodies has given the municipalities in India, the right to survive and exist with autonomous identity. The state governments are now legally required to treat them with due care and respect. In this context, it was of academic interest to explore and find out the actual status of urban local bodies in India in the post 74<sup>th</sup> Amendment era and the impact it had on their performance in the last two decades.

The objective of the paper therefore, is to find out and assess in general the structural and functional status of local governments in the states which are below the jurisdiction of the state government and have been set up in 'towns', 'cities' and 'transitional areas' in accordance with the provisions of 74<sup>th</sup> Constitution Amendment Act in the post May 31<sup>st</sup>, 1994 period. (Jha, 2018, pp. 55-58)

While rationalizing the enactment of the legislation, it can be stated that the 74<sup>th</sup> Constitution Amendment Act, 1992 was expected to strengthen the urban local government and make them more effective. It was meant to empower people's representatives who were to manage the civic affairs according to the new constitutional norms. It was to ensure free and fair elections conducted by the State Election Commission. It was to strengthen democracy at the grassroot level and encourage social justice through reservation of seats for Scheduled Caste, Scheduled Tribes and Other Backward Classes. It was to empower women through reservation of one third of the seats in the municipalities for them initially which the Government of Maharashtra later decided to further enhance the quota for female representatives to one half of the total seats in the municipalities. After the lapse of more than two decades, it was therefore, desirable to explore and find out the actual position at the ground level. (Jha, 2005, pp. 22-26)

The 74<sup>th</sup> CAA was welcomed as a revolutionary legislation which would bring about qualitative transformation in the working of the urban local bodies. It was expected to introduce democratic decentralization in the functioning and decision-making process of the municipalities. The State government was supposed to devolve certain functions to the urban local bodies as recommended in the 12<sup>th</sup> Schedule. There was a need to find out the extent of functional decentralisation process actually taking place in different municipalities of Maharashtra. The wards committees as provided for in the 74<sup>th</sup> CAA were to be set up in the cities having a population of three lakhs or more with three NGO and CBO representatives as mentioned in the conformity legislation of the State of Maharashtra. It was academically interesting to find out the broader picture in this regard in Maharashtra which was a guiding example for a long time for most of the municipalities in different states in India.

Significantly, the 74<sup>th</sup> CAA was to pay attention to the financial health of the urban local governments and made special provisions to strengthen their fiscal arrangements with a view to help them deal with financial issues. The State Finance Commission (SFC) was to enhance the revenue capacity of the municipalities and suggest ways for better financial management of these bodies. The SFC was expected to determine the taxes and other sources of revenue for the local governments based on certain norms and criteria. It was significant in this regard to find out what all has happened in this field and what is the exact fiscal status of urban local bodies in the state. (Manish, 2019, pp. 43-46)

Additionally, the other important objective of 74<sup>th</sup> CAA was to evolve and strengthen a statutory framework of urban planning in the designated areas of the municipalities. It was expected to set up District Planning Committees (DPCs) and Metropolitan Planning Committees (MPCs) with a view to prepare physical plans of development and integrate them

within a specified area keeping in mind diverse socio-economic aspects. Moreover, the development plans were expected to bring about integration of physical plans with housing infrastructure giving due consideration to the environmental issues. It was academically significant to assess its present status in Maharashtra. (Nagal, 1996, pp. 66-68)

### **Emphasizing the Significance of the Amendment**

Since the time of its enactment in Parliament in 1992, the 74<sup>th</sup> CAA came to be recognised as a landmark legislation for a number of reasons. The 74<sup>th</sup> CAA conferred constitutional status to the urban local bodies in India. Prior to the CAA, the Constitution recognised only states as subnational entities. The primary objective of the 74<sup>th</sup> CAA was to strengthen democracy at the grassroot level through urban local governments. In a democracy, however, each citizen has the right to express his/her opinion on issues related to the development of their area. This was possible only through decentralization of power. The 74<sup>th</sup> CAA made an attempt to achieve this objective by providing for wards committees in specific municipalities. This legislation also made efforts to increase the participation of public representatives in the development work of cities. It was therefore obvious that much significance had been attached to the 74<sup>th</sup> CAA from the very beginning. In spite of its urban significance in a special way, no systematic attempts were made to assess the implementation of the Act in the State of Maharashtra which included the newly formed municipalities as well. A number of piecemeal studies were certainly undertaken on the subject after the enactment of the national legislation. However, a study of this kind involving one of the newly formed corporations in the proximity of the Mumbai city had not been undertaken so far. It was therefore, academically enriching to undertake a study of this nature especially when municipalities still continue to grapple with diverse issues despite the amendments in the State Municipal Acts as required by the 74<sup>th</sup> CAA. In Maharashtra, for instance, there existed a problem of ineffective participation in the decision-making process, adoption of the policy of reservation, delays in the transfer of funds to the municipalities despite a functional State Finance Commission, poor recovery from various tax and non-tax sources despite adequate devolution of powers, etc. There was influence of various socio-economic and political factors on the functioning of the municipalities of the state as well. In view of these emerging ground level issues of governance as relevant, it was important to examine the extent of implementation of 74<sup>th</sup> CAA in the State of Maharashtra especially in relation to some specific areas at the state level and its impact on the functioning and performance of Mira-Bhayandar Municipal Corporation in regard to some identified special municipal services. (Singh, 2007, pp.54-58)

### **Exploring further relevance**

In the light of the above narration, one can safely agree that the 74<sup>th</sup> CAA had immense potential to bring about transformation in the working of the urban local bodies. Has it really managed to achieve this objective? If yes, to what extent? It was enacted at a time when urban local bodies, in most of the states, had become weak and quite unimpressive in terms of performance. There were a variety of reasons and enough indicators of it being ineffective. The urban local bodies were not able hold regular elections and were being kept in prolonged supersession mode by respective state government. There were no attempts at devolving powers and functions to the local bodies. Obviously, they were not able to perform effectively as vibrant democratic units of self-government. How have things changed at the ground level after the elapse of more than two decades? (Jha, 2018, pp. 21-24)

There were glaring inadequacies in the system of urban local governance in most of the states. One of the lacunae and weaknesses was their non-constitutional status. They did not enjoy any protection from the Constitution. They were at the mercy of the state government. Hence, the provisions relating to urban local bodies were incorporated in the Constitution itself. How has this transformation in the status of urban local body worked? Has it really brought about any qualitative difference in the functioning of these bodies? In this study attempts are being made to explore these questions.

The 74<sup>th</sup> CAA was expected to put on firmer footing the relationship between the state government and urban local bodies in relation to their functional jurisdiction and taxation powers. Similarly, suitable arrangements were expected to be made between the two tiers of the government for revenue sharing. Has it really been made in all the states? If yes, which are those states and to what extent they have been successful? Can others learn from them and their success stories? If not, what went wrong and why? What can be done to correct the anomalies? The 74<sup>th</sup> CAA was expected to ensure the survival of the urban local bodies as vibrant units of grassroot democracy. The first step in this direction was to ensure the conduct of regular elections every five years as required by the law. Even in case of supersession under unavoidable circumstances, the law was to make sure that elections are held within six months from the date of dissolution of the local government. Has it really managed to do it? If yes, where are those instances and examples which can cited as evidences in the favour of 74<sup>th</sup> CAA. If not, who do we blame and why? (Joseph, 2007, 23-26)

The Constitution Amendment was also expected to provide adequate representation to the weaker sections like Scheduled Caste, Scheduled Tribes, Other Backward Classes and Women in the Council of these bodies and also in the power structures. Has it really been done and if

yes, has the policy of reservation become right tool and source of empowerment for these sections? If no, how do we explain the deficiency and the failure?

In the process of according constitutional status to the urban local bodies, a new part was especially added in regard to the urban local government in the Constitution. The new part provided for the constitution of three types of municipalities; Nagar Panchayat, Municipal Council and Municipal Corporation. These municipalities were to be constituted in three different types of areas. The criteria for specifying the said areas were mentioned in the Constitution itself. Have all the state governments constituted these municipalities as desired by the Constitution? If yes, to what extent and the details in this regard need to be analysed as success stories for others to emulate. If no, what were the causes for non-compliance? (Kumar, 2019, pp.33-36)

The state legislature was authorised to work on the composition of these municipalities with some specific features to guide them. The persons who would sit in the Council as representatives of the people should be chosen by direct election only. They will be the grassroot leaders who understand the needs of their electorate and truly represent them in the council. In order to make the local bodies as the vibrant units of grassroots democracy, the registered political parties will have to promote and encourage such leaders. Chairpersons of various committees need to be represented at ward or at municipalities level. Has it been done and if yes in what manner? In some cases, some municipalities have been facing problems of practical nature. If the issues are genuine, they need to be addressed without wasting much time. (Krishnakumar, 2000, pp. 22-24)

Similarly, the provision to have persons in the municipality having special knowledge or experience of municipal administration has been critically viewed as in most cases this has been treated as an additional door to push some more political cronies who would have nothing to contribute to the process of municipal administration. The provisions of the 74<sup>th</sup> CAA have enough potential to bring a qualitative in the local governance but has the spirit of the act been understood properly?

In relation to the election of chairpersons of a municipality, the legislature of a state has been given discretion to specify the criteria and duration which has led to non-uniformity in this regard in several states. Some states have preferred the Mayor-in-Council system while others want a ceremonial mayor with no real powers at all. Will any effort to bring about uniformity in this regard, be fruitful? The provision to constitute wards committees at an administrative ward level or other levels has been appreciated by most urban experts. This has been viewed as the right step in the direction of decentralisation which is a desirable trait at the local level.

Many states have already provided for these committees and they have been functioning there quite adequately. The provision of wards committees needs to be analysed afresh and assessed. (Kundu, 1999, pp. 21-24)

The provision to reserve seats in every municipality for SCs and STs in proportion to their population which has an adequate share for women as well has been appreciated and generally regarded as an enabling provision which would encourage social justice in the society. However, the policy of reservation must not be reduced to tokenism and should be monitored whether it is really helpful in bringing about change in the life of the people belonging to weaker section. If the result is found to be negative and not so progressive, then it needs to reassessed and further strengthened. In this study an effort has been to understand how this provision has benefited the people whom it was supposed to benefit. Similarly, the provision to reserve one third seats for women has also been quite progressive for a country where women have been traditionally side-lined and marginalised and in general not considered for the processes of empowerment. However, the tendency of the male folks to dominate on behalf of their women often retards the capacity building of women and empowerment. An attempt has been to understand how women join politics and how their status changes qualitatively over a period of time. (Ghosh, 2005, pp. 43-45)

The provision to reserve seats for Other Backward Classes (OBCs) has been made conditional to the discretion of the state legislature mainly to allow the states to assess the percentage and the extent of the population in their states and do the need assessment in this regard locally and then take an appropriate decision. This again gives enough room to the states to be flexible but reinforces the opinion of those who accuse the legislation of promoting non-uniformity in several areas. However, it was important to study this aspect of the CAA too as it is important to find out as to the nature and extent of benefits to the OBC population in those states where the provision regarding OBC reservation has been made.

With a view to empowering the weaker sections of the society, the 74<sup>th</sup> CAA has provided for the reservation in the posts of Chairpersons of the Municipalities for the members belonging to the SCs, STs and women. This provision has also been appreciated and the states have adopted them without any controversy. However, in order to accommodate all sections in this category, the rotational system has been adopted in most states so as to satisfy all the categories for whom the reservation has been provided for by the 74<sup>th</sup> CAA. (Golandaz, 1993, pp.24-27)

The provisions to fix the tenure of municipalities to five years is a positive step towards ensuring security of tenure to the local bodies and respecting their right to exist as the unit of self-government. This also puts a curb on the tendency of the state government to enhance the

political interests at the expense of the survival of the local bodies. At the end of the tenure, it is mandatory for the State Election Commission to conduct the election within a stipulated period of six months. If the municipality is dissolved before the expiration of its duration on some reasonable ground, fresh elections must be held within a period of six months from the date of its dissolution. These are the positive provisions which have to be matched with the ground realities and analysed. There are states who have not adhered to these norms and elections have not been conducted for months together. How do we deal with this kind of violation of the constitutional norms? Is there any punitive action which could be taken against such states? (Gupta, 2001, pp. 44-47)

According to the 74<sup>th</sup> CAA, the State Legislature was expected to devolve powers and responsibilities to the municipalities as recommended in 12<sup>th</sup> Schedule of the Constitution. One of the requirements was in respect to the preparation of plans for economic development and social justice. How the municipalities have responded to these kinds of expectations as these areas are quite ambitious in terms of realising the objectives? It was important to look at the criteria of schemes and programmes through which they would at least begin to address those issues. In addition to this, the CAA expects the municipalities to implement the development schemes so as to enable them to function as institutions of self-government. We need to find out as what exactly has happened in these areas? If municipalities have managed to do something in this regard it needs to be publicised so that others can learn from good initiative. The Constitutional Amendment Act has also provided for financial health of the municipalities. Urban local bodies have been encouraged to have their own sources of income. These bodies must have the right to levy taxes and specified duties for meeting their own expenses. The State Governments were expected to identify such taxes and duties and assign them to the municipalities so that they can gradually become financially independent. However, in addition to this, they were supposed to ascertain the exact financial needs of the municipalities and accordingly make grants-in-aid to these bodies. What kind of steps have been taken in this regard? Is it really bearing fruits and resolving the financial issues of urban local bodies or things have worsened? (Mahala, 2011, pp. 28-32)

A very important provision of the 74<sup>th</sup> CAA was the constitution of State Finance Commission to review the status of financial position of the municipalities. The SFC after due consultation and assessment was expected to recommend the principles for determining the taxes which may be assigned to the municipalities. How many states have constituted the SFCs and how they have been functioning with the stated objectives and to what extent they have been successful? This is an important area which needs to be studied and right conclusion can be made. The SFC

was also expected to suggest the principles of sharing taxes between the State and the municipalities. What are those principles and which taxes and how they can be shared? It would be interesting to find out the details in this regard? In addition to this, there is a provision for grants-in-aid to the municipalities from the Consolidated Fund of the State. It was mainly to balance revenue position and the expenditure conditionalities. Is it really being done adequately by the state government? Are some functions and schemes and programmes of the municipalities are not happening or not being implemented only because of the paucity of funds? (Matthew, 2001, pp. 33-36)

The 74<sup>th</sup> CAA has provided for the auditing of the accounts of the Municipal Corporations by the Comptroller and Auditor General of India (CAG) and laying of reports before the Legislature of the State and the municipal Corporation concerned. Has the state government conformed to this constitutional provision or alternative suggestion has been made in this regard? If yes, how is it working? If no, then why and how the auditing is taking place and is it being monitored by the independent agencies?

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