

EMPOWERING MUNICIPAL GOVERNANCE IN INDIA 74TH AMENDMENT: OBJECTIVES, FEATURES AND THE PROVISIONS

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Abstract

The 74th Amendment as an important central legislation has been well recognised in India. It has played an important role in the development of civic governance in the country. It was brought in to strengthen the political set up and the functional domain of the local governments in the urban areas. It was passed with an objective to streamline the financial arrangements and ensure proper urban planning norms in the country. It has accorded constitutional status and recognition to the urban local bodies. It has also attempted to bring 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: *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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It is almost a unanimity among the scholars that the 74th Constitution Amendment Act (CAA) is an important landmark legislation in the development of urban local governance in India. The CAA is generally considered an initiator of a new era of active and empowered system of municipal governance in the country. The recognition to the urban local bodies through the amendment has given them the right to exist with dignity and functional distinction. They now supposedly enjoy an autonomous identity within the administrative framework of India. The state governments are now expected to treat them with due care and respect. The amendment has also been acknowledged as a tool to reinvent the federal structure of the country in a special way. In independent India, for the first time, 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 74th 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 74th 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)

Based on the above guidelines, the objectives of the Constitution (74th Amendment) Act, 1992, broadly relate to the following four areas.

Objectives:

i. To Strengthen the Political Set up

To strengthen local governments and make them more effective, state governments were required to hold elections once in five years. No local body could remain superseded for more than six months. It meant the empowerment of people's representatives who would remain at the helm of civic affairs.

To hold free and fair elections, a provision was made to set up State Election Commission. To strengthen the democratic process, certain number of seats were reserved for SCs, STs and BCCs. In addition to this, one third of the seats in municipalities were reserved for women with a view to empowering them.

To bring about decentralisation in urban governance and of municipal functions, wards committees were set up in the cities having a population of three lakhs or more. (Abhijit, 2016, pp. 31-33)

ii. **To Strengthen the Functional Domain**

One of the objectives of the 74th CAA was to strengthen the functional domain of the local government. Through the Amendment Act efforts have been made to make the functions of the local government more comprehensive in nature. By enlisting 18 types of functions of the urban local governments in 12th Schedule of the Constitution of India, an effort has been made to provide for the devolution of powers to the people at the grassroots level. It is required, at the same time, to mention that the provisions of Article 243 (W) are not mandatory. The state legislature therefore, can discriminate as to which power and authority may be devolved on a local government and in which category. (Areeba, 2004, pp. 22-24)

iii. **To Strengthen Fiscal Arrangements**

The third main objective of the 74th Constitution Amendment was to strengthen fiscal arrangements of the urban local governments. Most local governments were facing financial crisis. It was adversely affecting their managerial capacity. In view of the inadequate finances, local governments were not able to build infrastructure in cities and towns. In some cities, even if they existed, they were not enough to sustain the increasing population pressure.

The 74th CAA also provided for enhancing revenue capacity and financial management of local governments. The State Finance Commission was especially set up to determine taxes and other sources of income for the local governments based on certain norms and criteria. (Evita, 2019, pp. 34-37)

iv. **To Provide for Urban Planning**

The fourth objective of 74th CAA was to gradually evolve a framework for urban planning. The Act provides for having DPCs and MPCs, and preparing for physical plans and to integrate them with socio-economic aspects of urban life. The development plans which are likely outcome of the planning committees would integrate physical plans with housing, infrastructure with due consideration to environmental and aesthetic aspects. An analytical framework of urban planning in the light of 74th CAA has been developed by the technical group on urban planning system constituted by the Planning Commission, Government of India in June, 1995. (George Jose, 2003, pp.33-36)

Salient Features

Salient Features of 74th Constitution Amendment Act, 1992 are as follows.

i. **Constitutional Status and Recognition to Urban Local Bodies**

Prior to the 74th CAA, the status of urban local self-government in Indian Constitution was quite ambiguous. Article 40 of the Constitution directs the states to organise Panchayats and

empower them adequately so that they become viable units of self-government. There was no provision for the urban local bodies except a mention in Entry 5 of List II placing urban local bodies within the legislative domain of the states. This made municipal bodies dependent on state for funds and decision making. As a consequence, democracy could not remain stable at the grassroots level.

Accordingly, constitutional status of urban local bodies began to be discussed in several countries, both unitary and federal, developed as well as developing. The need for giving an independent status to urban local government in India was considered after assessing the experiences of other federal countries. The consistent demand from Central Council of State Ministers and the All-India Council of Mayors put additional pressure on policy makers to accord constitutional recognition to the urban local bodies. The recommendations of the National Commission on Urbanisation further strengthened the case in favour of the Urban Local Government. (Girish, 2006, pp.56-58)

Taking into consideration the growing importance of urban local governments, the Union Government 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. Another bill with almost the same content was introduced in 1991 as Constitution 74th Amendment which was passed in December, 1992 by the Central Legislature. After it was ratified by majority of the States, the President of India gave the bill his assent and thus the 74th CAA became an act and came to be enforced nationally on June 1st, 1993. This is how urban local bodies were constitutionally recognised and got a constitutional status through Part IX-A. (Gurnam, 2011, pp. 22-27)

ii. Uniformity in Urban Local Governance at National Level

The 74th CAA gives a uniform system of urban local government in the country. It facilitates democratic decentralisation at the grassroots level and provides existential stability through the mandatory election within a fixed period of five years. All sections of society are guaranteed representation in the urban local government. Special provision is made to empower women by reserving one third seats for them in the municipality and in case of Maharashtra it is one half apart from reserving offices of Chairpersons in the city government. The Act provides for setting up a Finance Commission every five year to review, reserve the resources and help the urban and rural local governments to strengthen financially. It provides for DPC to integrate the plans prepared by the Panchayats and urban local bodies in the district. It also talks about MPC for the metropolitan region. A new 12th Schedule enumerating 18 types of functions was

included in the Constitution to be followed by all the states. In addition to these, there were mandatory provisions which would be discussed separately. (Kumar, 1986, pp. 32-36)

iii. Formation of Municipalities

The 74th CAA prescribes to constitute three types of civic bodies, 'Nagar Panchayat' for a 'transitional area', 'Municipal Council' for a 'smaller urban area', and a 'Municipal Corporation' for a 'larger urban area'. The criteria for classification of areas would be specified by the Governor of a State based on the following factors:

- Population
- Density
- The revenue generated
- The ratio of employment in areas other than agriculture
- The economic viability of the region
- Such other factors

The initiative to re-classify the civic bodies has led to reforms in the structure of these bodies in most of the states having multiple institutions. The restructuring of urban local bodies and their amalgamation into three may lead to uniformity in many other areas. (MMC Act, 1949)

iv. 'Composition of Municipalities'

According to 74th CAA, all seats in a municipality have to be filled by persons chosen by direct election. For this, an urban area is divided into electoral wards. To give a civic body, a representative image, persons with knowledge or experience in municipal administration would be nominated but without voting rights. Similarly, Members of Lok Sabha and State Legislative Assembly whose constituencies comprise wholly or partly the concerned municipal area, could be part of the Municipality. However, many state governments have chosen to exclude this provision from the conformity legislation. Members of the upper house in the Parliament and the State Legislative Council who are electors within the municipal area, could also be part of the municipality. However, this provision has not been included by several states in their conformity legislation. Similarly, the Chairpersons of different parliamentary and state committees can also be included in the Council. (MMC Act, 1949)

v. Democratic Decentralisation Through Ward Committees

One of the primary concerns with regard to the structure of municipal bodies in the country relates to the accessibility and responsiveness of the urban local government. It has been generally a common complaint that general citizens in a city do not have easy access to the

municipal administration and those who are elected as people's representatives. It was in this context that the National Commission on Urbanisation recommended a multi-tier system for bigger corporation and metropolitan areas in order to enhance the chances of accessibility to these bodies and their officers. It was therefore suggested to bring about decentralisation in the process of urban governance.

In an effort to address this particular issue, the Act provides for the creation of Ward Committees in the cities having population of three lakhs or more. One member from the ward is elected as the chairperson of the committee. The representation of other members, the functions and responsibilities of the Committee are determined by certain norms set by the Government. (Kumar, 2006, pp. 45-47)

vi. Direct Election to Municipalities and its Duration

The 74th CAA makes it very clear that all the seats of the municipalities have to be filled by direct election conducted in a free and fair manner by the State Election Commission strictly according to rules and pre-determined norms set by the State Legislature. It was a major deficiency which needed to be urgently addressed because the elections were generally postponed on one pretext or the other. Most States did not show any concern for holding regular elections and preferred to supersede the local bodies for a long time. It seemed they were allergic to the democratic ethos and practices at the local level.

The regular conduct of free and fair elections in civic bodies therefore, needed urgent attention. The central legislation hence, makes it mandatory to complete the election before the expiry of normal duration, i.e., five years. In a dissolved municipality, the elections must be conducted within six months. The Act provides elections to be held by State Election Commission. The 74th CAA thus, gave the municipalities a stable life and this provision came as a boon to the urban local bodies against the uncalled for and politically motivated frequent supersession. Even if it has to be dissolved, the Municipality cannot be dismissed without giving it an opportunity of being heard. (Jha, 2019, pp.57-59)

vii. People's Participation and the Provision of Reservation

The Indian Constitution accepts and promotes the representative parliamentary democracy in the country. The 74th Amendment attempts to ensure participation of people at the grassroots level itself. It reserves seats for SCs, STs and BCCs in proportion to their population in the area. The law provides for one third reservation for women to enhance their representation in the civic bodies. Even the seats of chairpersons, Mayors are reserved for these categories of population. It was a revolutionary decision which has brought about a social change in the

country. This indicates the commitment of the country to open up opportunities to all sections irrespective of caste, creed, sex, religion, etc. It has certainly made a beginning towards empowering and strengthening the vulnerable classes of society and especially women. (Evita, 2014, pp. 32-35)

viii. Powers, Authority and Responsibilities of Municipalities

Despite in existence for more than five decades, municipalities have not been allowed to function in accordance with the spirit of local self-government. They have not been encouraged to play the role they should have been playing as units of urban local self-government. Efforts were made to progressively undermine their role and authority. Decisions taken by the authorities weakened the civic bodies and made them financially dependent on the state government. Many functions which were traditionally performed by them were taken away and given to other agencies. A number of functional and specialised agencies were especially created to undertake the municipal functions. Several functions were given away to the parastatal bodies on the plea that the urban local bodies do not possess the required expertise to handle such functions. The urban local bodies suffer from both financial constraints as well as professional deficiencies. In recent years even some of the obligatory functions were taken away and given to other institutions in the name of specialization. Such injustices to urban local bodies have happened at all levels of cities and towns.

The 74th CAA attempts to re-consolidate and re-strengthen the urban local bodies. It gives power to the municipalities to plan for economic development and social justice in their jurisdiction. The 74th amendment expects the urban local bodies to perform and undertake all the functions recommended by the Constitution in XII Schedule. The urban local government now has the power and authority to implement the schemes and projects entrusted to them in an effective manner. All the 18 types of functions appended in the Constitution as part of the 12th Schedule are now the responsibility of the municipal government. Most of the listed functions are already in the existing Municipal Acts but have been transferred temporarily to other institutions. Now the urban local government will have to reclaim their functional autonomy and perform and fulfil the aspirations of those whom they serve at the local level. (Kumar, 2017, pp.56-58)

ix. Financial Powers to Municipalities and State Finance Commission

Based on the findings of various committees, it has been discovered that the urban local bodies in India have not had adequate financial powers for decades and as a consequence they have been facing resource crunch. A large number of municipalities in many states have been

suffering financially so much so that they have not been in a position to pay salary to their staff regularly. In such a situation what do we talk about development work or even maintaining minimum level of civic services.

Although, municipalities have been empowered to levy, collect and appropriate the local taxes, yet the local bodies cannot do it without a proper clearance from the state government. Even the local councillors do not bother much about such issues and political issues often get priority while dealing with local taxation.

In order to improve and strengthen financial base of urban local bodies, 74th CAA prescribes for constituting a Finance Commission every five years. Its purpose is to assess the financial status of the municipalities and suggest to the Governor measures regarding the distribution of taxes between the state and the civic bodies. It would also suggest measures to improve the financial position of urban local bodies apart from other issues needed to be addressed to positively change the financial condition of the urban local government. What is disheartening is the fact that the recommendations made by the State Finance Commission is not binding on the state government which may or may not accept them or alter them or set them aside for reasons better known to them. (Chandhoke, 2017, pp. 66-68)

x. Integrated Planning Through District and Metropolitan Planning Committees

The idea of planning and its associated system in India has always been regarded as distinct and sectoral in nature. However, 74th CAA has initiated a very different and a historic approach to local planning. It provides for formation of DPC to integrate the plans prepared by the rural and urban local bodies in the district. Based on the consolidated plan it would have a draft developmental plan for entire district. In terms of its composition, not less 4/5th of its members would be chosen by election. They will be elected by and from amongst the elected members of both the local governments in proportion to their ratio of population in the district.

The 74th CAA also provides for forming an MPC in every metropolitan area having a population of ten lakhs or more. An MPC will finalise a draft development plan for the whole metropolitan area. In terms of composition of the MPC, not less than 2/3rd of the members of the MPC will be from amongst the elected members of the municipalities and chairpersons of the rural local bodies in the metropolitan area in proportion to their population. However, many states have either not constituted them or they are not functional yet. (Singh, 2018, pp. 44-47)

xi. Inclusion of 12th Schedule in the Constitution Recommending Devolution of Municipal Functions

The 74th CAA has made efforts to re-invent the federal structure of the country. Municipalities have been recognised and given Constitutional status through Part IX-A. The inclusion of a new Schedule in the Constitution which recommends devolution of 18 types of functions to the municipalities is highly significant. The 12th Schedule in the Constitution has identified areas that would be recognised as the domain of the urban local body. The 74th CAA, however, does not make it compulsory to transfer these functions. The new Schedule is highly significant but only recommendatory in nature. The purpose of these recommendatory functions is to empower urban local bodies with additional executive powers and responsibilities. Many functions mentioned in the 12th Schedule are already listed in the state municipal acts. However, several of them have been taken over by the state government. There are some functions in the 12th Schedule which are quite challenging in nature. It would be necessary for the municipalities to prepare themselves adequately to deal with the new challenges and build capacity and infrastructure to adequately respond to such issues. (Morphet, 2016, pp. 65-67).

Provisions of 74th Amendment

In especially inserted 'Part IX-A' in the Constitution of India, adequate provisions from Article 243-P to Article 243-ZG have been made by the 74th Constitution Amendment. The important inclusion is a new '12th Schedule' which recommends 18 types of functional domain for the municipalities. The important provisions are follows.

i. Structure

Through the 74th CAA, the Constitution of India now provides for constituting of three types of institutions of urban local self-government. These are (a) Nagar Panchayat constituted in areas which are in transition from rural to urban; (b) Municipal Council for smaller urban areas; and (c) Municipal Corporation in larger urban areas.

It provides for decentralisation in municipal governance through ward committees in civic bodies having a population of at least three lakhs.

ii. Composition

The civic bodies will consist of elected representatives from the wards and chairpersons of the committees in the municipality. It will also consist of nominated councillors having knowledge or experience in municipal administration. However, they will not have the right to vote in the meetings of the council.

Empowering weaker sections of society and women happens to be one of the substantive provisions of the 74th Constitution Amendment Act (CAA). To empower the SCs and STs, BCCs and women, seats have been reserved for them in the council in proportion to their population in the municipality. However, one third of these seats has been reserved for women belonging to these castes. One third of the total seats in the council has been reserved for women. However, this will be inclusive of seats reserved under different reserved categories. The chairpersons in the civic bodies must belong to either SC or ST categories or women. The governments of the states have been given discretion to have such reservation even for members belonging to Backward Class of Citizens as it is the case in Maharashtra.

iii. 'Powers and Functions'

The 74th CAA devolves to the civic bodies some special functions. It includes 'plans for economic development and social justice'. They are also required to implement 'various development schemes.' It has appended a new Twelfth Schedule to the Constitution which lists out functions to be performed by the municipalities. It lists out in all 18 functions, many of which have traditionally been local functions though some of them are quite unconventional and even ambitious in nature for the municipal authorities. The 12th Schedule includes 'urban planning, land use regulation, building construction, roads, bridges, water supply, slum improvement, etc'.

iv. Municipal Finance

The decision to devolve functions to the municipalities without devolution of funds and adequate sources of revenue will be unrealistic and meaningless. The decline in the institutional capability of municipal authorities has been largely due to weak fiscal capabilities. The 74th Constitution Amendment however, seems to have ignored this critical area of municipal governance. The state government will decide about the 'taxes, duties, tolls and fees' to be imposed by the civic bodies. The state government will also decide which of the taxes, duties, etc. should be assigned to them and how much grant should be given to them.

The formation of the Finance Commission by the State government once in five years is an important provision of 74th CAA. The Finance Commission after considering all fiscal matters, recommends principles of sharing of 'taxes, duties, tolls and fees' between the state government and the municipalities. The Finance Commission also suggests the principles for the determining taxes, duties and tolls and fees to be assigned to the civic bodies and the grants to be given to them from the CFS. It also suggests measures to improve the fiscal status of civic

bodies. The details of these recommendation are laid before the state legislature with an action taken report.

Another provision of 74th CAA is the amendment of article 280 of the Constitution by amending the terms and conditions of the Central Finance Commission (CFC). The new provision now requires the Central Finance Commission (CFC) to suggest mechanism required to enhance the states' consolidated fund to supplement the resource of municipalities in the state based on the recommendations made by the Finance Commission.

v. Urban Planning

The 74th Amendment provides for setting up of DPC to consolidate the plans finalised by the municipalities and the panchayats within the districts. It prepares a draft plan for the entire district with civic bodies being represented on it. The plan is prepared with respect to the areas of mutual interest between the panchayats and the civic bodies. This includes 'space planning, water sharing and other natural and physical resources. It also includes 'integrated infrastructure development and the environment conservation plan'. The chairperson of the DPC forwards the draft plan to the state government. Similarly, MPCs are formed in the metropolitan areas with representation from the civic bodies. The MPC does the similar planning exercise for the metropolitan areas as it is done by the District Planning Committee.

vi. Ward Committees

The provision regarding constitution and composition of ward committees is mentioned in Article 243-S of the Constitution. The ward committees consisting of one or more electoral wards will be formed within the civic bodies having a population of at least three lakhs. The objective behind the idea of having ward committees was essentially to decentralise the decision-making process. The other objective was to make the municipal authorities more accessible and responsive to the people of the area and their needs. The decision to have wards committees in Municipal Corporations and 'A' category Municipal Councils has initiated the process of democratic decentralisation in urban governance. It has in a way fulfilled the need of the municipalities and its residents who wanted a quick decision to their issues and demands. However, municipal councils having population less than three lakhs were excluded from having this kind of committee. (74th CAA, 1992)

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