

## 74<sup>TH</sup> AMENDMENT AND STATUTORY CHANGES IN MAHARASHTRA ANALYSING FEATURES OF THE CONFORMITY LEGISLATION

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### Abstract

*The 74<sup>th</sup> Amendment has been welcomed as an important central legislation in India. It has brought about changes in the urban local governments. It has sought to further develop the civic governance in the country. It has strengthened the political set up and the functional domain of the local governments. The State of Maharashtra has well implemented the law. We need to assess if the objective has been achieved. Has it really streamlined the financial arrangements and introduced urban planning norms 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 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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The Nagarpalika Act or more popularly the 74<sup>th</sup> Constitution Amendment was passed on 22<sup>nd</sup> and 23<sup>rd</sup> November, 1992 by Lok Sabha and Rajya Sabha respectively. The President gave his assent to the central legislation on April 20<sup>th</sup>, 1993 after it was confirmed and approved by at least half of the States as required by the Constitution. Thus, the much talked about bill became 74<sup>th</sup> CAA also known as 'The Nagarpalika Act' as it deals with the municipalities.

Although the process of the enactment was completed in April, 1993, it came into force in the country only on June 1<sup>st</sup>, 1993. As the urban local self-government along with that of rural is part of the 'state subjects' under the Constitution of India, all the states were asked to ratify the Act and bring all their existing and relevant state legislations pertaining to urban/civic affairs in conformity with the Constitutional provisions of the (74<sup>th</sup> Amendment) Act, 1992 by May 31<sup>st</sup>, 1994. (Shahid, 1997, pp.45-48)

In Maharashtra, too, the existing Municipal Laws in force in the State, were required to be amended by 31<sup>st</sup> May, 1994 to conform to the provisions of the Constitution of India as amended by the Constitution (74<sup>th</sup> Amendment) Act, 1992. However, as state legislature was not in session, the Governor took prompt action to amend the state laws. It included the 'Bombay Municipal Corporation act of 1888', the 'Bombay Provincial Municipal Corporation Act of 1949', the 'City of Nagpur Corporation Act of 1948', and the 'Maharashtra Municipal Councils Act of 1965. In order to conform to the 74<sup>th</sup> CAA he 'promulgated the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Ordinance, 1994 on the 31<sup>st</sup> May, 1994.'

The Maharashtra State Legislature re-assembled on 11<sup>th</sup> July, 1994. The amended Maharashtra Municipal Corporations and Municipal Councils, 1994, (L.A. Bill No. XXV of 1994) was introduced in the Assembly for converting the Ordinance into an Act by the State Legislature. It however, could not be passed and was referred to the Joint Select Committee of both Houses of the State Legislature. (Notification, Govt of Maharashtra, 1994)

The issues raised in the Assembly over the said Bill and the unresolved points which necessitated the discussion on the bill and referring of the Bill to the Select Committee were significant and needed analysis and proper response from the government. The details of the membership of the Select Committee and what did they discuss in relation to the 74<sup>th</sup> CAA are not known. As some members indicated, the main issue behind the objection was insecurities of some vested interests. Some influential representatives and officers in the state were not ready to transfer power and the resources to the civic bodies and the panchayats. There were some who did not have the confidence in the capacity of the municipalities. Some vested interests were deliberately delaying the elections to the municipalities on some lame excuses. Some had deep reservations over implementing the recommendations of the State level Finance Commission. As a result of apprehensions against the 74<sup>th</sup> CAA and certain misgivings on the part of some political parties and local vested interests, the members of the Select Committee took a lot of time in sending the Bill back to the Assembly. (Notification, Ministry of Urban Development)

Ordinances issued by the Governor become invalid and cannot operate after the lapse of six weeks from the date of re-assembly of the State Legislature. Technically they need to be recalled and issued again from the earlier date if it is required to have the operations of the provisions of the law by ordinance.

Hence, the said ordinance was to become invalid after the 21<sup>st</sup> August, 1994. It was the day the time period of six weeks from the date of re-assembly of the State Legislature was to expire. It was necessary however, to have the operations of the provisions of the Law by Ordinance. As the State Legislature was not in session, the Governor withdrew the said Ordinance and issued it again with retrospective effect, i.e., with effect from 31<sup>st</sup> May, 1994. The ordinance which was issued again on 20<sup>th</sup> August, 1994, is officially known as ‘the Maharashtra Municipal Corporations and Municipal Councils (Amendment and Continuance) Ordinance, 1994. (Notification, Govt of Maharashtra)

Subsequently, the Bill was re-introduced for converting the Ordinance into an Act of the State. It was discussed and passed by both the Houses of the State Legislature. The Governor gave his assent to the Bill on 6<sup>th</sup> December, 1994 and then it became an Act with retrospective effect finally. The Act is known the ‘Maharashtra Municipal Corporation and Municipal Council (Amendment) Act, 1994.’ It has technically come into force in the State on May 31<sup>st</sup>, 1994. The Act is also referred to as ‘Maharashtra State Conformity Legislation’. Thus, the technical and procedural exercise of conforming to the 74<sup>th</sup> Constitution Amendment Act was completed by all the states including Maharashtra by May 31<sup>st</sup>, 1994.

The Government of Maharashtra through State Conformity Legislation brought the then in force following four Acts in congruence with that of the provisions of the Constitution (74<sup>th</sup> Amendment) Act, 1992.

- i. The Bombay Municipal Corporation Act, 1888
- ii. The Bombay Provincial Corporation Act, of 1949
- iii. The City of Nagpur Corporation Act, 1948
- iv. The Maharashtra Municipal Councils Act, 1965

The mentioned laws were amended and brought into conformity with that of the provisions of the 74<sup>th</sup> CAA, which has prescribed a basic framework to ensure that the municipalities in India function effectively as democratic units of self-government. (Notification, Dept of Urban Development)

### **Salient Features of Maharashtra State Conformity Legislation**

#### **i. Implication of Constitutional Status to Municipalities**

The 74<sup>th</sup> Constitution Amendment to the Constitution of India has been recognised and upheld as an important legislation in the evolution of urban local governance. The amendment has given statutory status to urban local bodies in the country. The constitutional recognition of the Municipalities has given them the right to exist with an autonomous identity. It further

implies that the state government will have to treat them now with due care and respect. The apprehension of supersession and unrestrictive encroachment on their powers are hopefully over. The 74<sup>th</sup> CAA has also sought to bring about foundational change in the federal structure of the country. Now the municipalities as units of local governance have been included in the Constitution. A new chapter and a Schedule have been added to the Constitution. An effort has been made to decentralise democracy at the local level. It has also provided stability to the functional life of urban local institutions. A mechanism has been created in such a way that a larger section of the society has directly got involved in the local administration. Norms have been created to make local government more accountable to people. The opportunity to initiate planning process at the grassroots level has given the local people a greater sense of participation in urban governance. The higher levels of administration are now constitutionally required to devolve more and more functional and financial powers to the local units of governance. (Sharma, 2013, pp. 67-68)

## **ii. Formation of Municipalities**

In order to conform to the ‘Article 243-Q of the Constitution of India’, ‘Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994’, amended the relevant municipal laws in the State. It now provides for three types of urban local government in the state. They are ‘Nagar Panchayat’ to be formed in areas which are in ‘transition from rural to urban’, and ‘Municipal Councils’ for ‘smaller urban areas’ and ‘Municipal Corporation’ to be formed in ‘larger urban areas.’

‘The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965’ provides for formation of a ‘Nagar Panchayat’ for a ‘transitional area’ as notified under ‘section ‘341- A’ of this Act.

Similarly, ‘The Maharashtra Municipal Councils, Nagar Panchayat and Industrial Townships Act, 1965’ provides for forming a ‘Municipal Council’ for a ‘smaller urban area’ as specified in ‘sub-section (2) of Section – 3 of this Act’.

‘The Maharashtra Municipal Corporation Act, 1949’ provides for the formation of ‘Municipal Corporations’ for ‘larger urban areas’ in the entire state except that of Mumbai. The Act further says that every ‘larger urban area’ so specified by the state government under sub-section–2 will be called a ‘city’ and there will be a ‘Municipal Corporation’ for such ‘larger urban area’.

Further, ‘the Mumbai Municipal Corporation Act, 1888’ is an exclusive Act for the city of Mumbai for historical and technical reasons and extends only to ‘Brihanmumbai’ the extent

of which has been defined by the Bombay High Court. ‘The Municipal Corporation of Brihanmumbai’ is constituted or deemed to have been constituted and governed according to the provisions of this Act. As required, the provisions of this Act too were brought in congruence with that of the provisions of the 74<sup>th</sup> Amendment Act (CAA) through the Conformity Legislation known as ‘Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994 with effect from May 31, 1994. However, all the four Acts mentioned above have undergone further amendments from time to time subsequently.

Moreover, further classification of areas is specified by the Governor of the State on the basis of (a) population; (b) density; (c) the revenue generated; (d) the percentage of employment in non-agricultural activities; (e) the economic importance of the area or such other factors as he deems fit. (Jha, 1993, pp.44-48)

### iii. Composition of Municipalities

The provision with regard to the composition of municipalities as mentioned 243-R of the 74<sup>th</sup> CAA has been confirmed by the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994.

- i. The conformity legislation provides in the Section 5 of the ‘Mumbai Municipal Corporation Act, 1888’, that the corporation will have:
  - a. 227 councillors who will be directly elected at the ward elections;
  - b. nominated councillors having knowledge or experience in Municipal Administration.
- ii. Similarly, the conformity legislation provides in ‘Maharashtra Municipal Corporation Act, 1949’, that the corporation will have:
  - a. Councillors elected directly at ward elections, as mentioned in the table below:

| Sr. | Population                          | No. of Councillors  |
|-----|-------------------------------------|---|
| a.  | More than 300,000 and up to 600,000 | <ul style="list-style-type: none"> <li>• The minimum No. of elected councillors shall be 65</li> <li>• For every additional population of 15000 above (more than) 300,000, one more councillor will be there but the maximum no. of councillors will not be more than eighty-five.</li> </ul> |
| b.  | Above 600,000 and up to 1200,000    | <ul style="list-style-type: none"> <li>• The minimum number of councillors shall be 85</li> <li>• For every additional population of 20000 above 6 lakhs, one more councillor will be elected but the maximum number of councillors will not be more than one hundred and fifteen</li> </ul>  |

|    |  |  |
|----|--|--|
| c. | More than 1200,000 but not exceeding twenty-four lakhs | <ul style="list-style-type: none"> <li>• There will be at least 115 Municipal Councillors</li> <li>• For every additional population of forty thousand above the specified population of twelve lakhs one more councillor will be there but the maximum no of councillors will not be more than one hundred and forty-five.</li> </ul> |
| d. | Above 24 lakhs   | <ul style="list-style-type: none"> <li>• The least number of councillors will be 145</li> <li>• For additional population of 1 lakh above 24 lakhs, one additional councillor shall be provided, so however, that the maximum number of councillors will not exceed 221</li> </ul>   |

*Source: Maharashtra Municipal Corporation Act, 1949*

- b. Five nominated councillors having knowledge or experience in Municipal Administration
- iii. The conformity legislation provides in the ‘Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965’ that every Municipal Council will have:
- a. Councillors directly elected at ward election
  - b. Nominated councillors, not more than ten percent of the total councillors or five, whichever is less. They must have knowledge or experience in municipal administration.

The number of elected councillors is fixed by the Director for each municipal area in accordance with the following table.

| Sr. No. | Class of Municipality | Number of Councillors   |
|---------|-----------------------|---|
| i.      | ‘A’ Class             | The least number of councillors shall be 38, and for every 8000 of the population above 100,000, there will be one more councillor but the maximum municipal councillors will not be more than sixty-five.              |
| ii.     | ‘B’ Class             | The least number of councillors will be 23, and for every 5000 of the population above 40,000, there will be one more councillor but the number of councillor representatives will not be more than thirty-seven.       |
| iii.    | ‘C’ Class             | The least number of elected councillors shall be 17, and for every 3000 of the population above 25,000, there will be one more councillor, so however, that the total number of elected councillors shall not exceed 23 |

*Source: Maharashtra Municipal Corporation Act, 1949*

- iv. Furthermore, the Conformity Legislation has provided in the ‘Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965’ as mentioned in section 341-B, that every Nagar Panchayat shall consist of:

- a. 17 Councillors elected at ward election by direct elections
- b. In order to have elections, a transitional area will be divided into such territorial constituencies to be known as wards, as there are councillors.
- c. Each ward shall elect one councillor

iv. **Ward Committees – Constitution and Composition**

The provision regarding constitution and composition of Ward Committees as mentioned in Article 243-S of the 74<sup>th</sup> Constitution Amendment Act, 1992, has been confirmed by the conformity legislation of Maharashtra formally known as ‘Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994’. The following three laws as deemed to exist now after subsequent amendments, were amended to give effect to the above provision.

- i. The Mumbai Municipal Corporation Act, 1888
- ii. The Maharashtra Municipal Corporation Act, 1949
- iii. The 1965 Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Acts.

➤ The Mumbai Municipal Corporation Act, 1888 in Section 50-TT provides for constituting not more than 25 ward committees, each comprising such contiguous electoral wards as may be decided by the Corporation.

➤ Similarly, the Maharashtra Municipal Corporation Act, 1949 provides for constituting wards committees in every city which would comprise such contiguous electoral wards as may be decided by the Corporation. The minimum and maximum number of wards committees to be formed in different municipal corporation would depend on its population as indicated in following table. (Maharashtra M. C. Act, 1949)

| Sr. No. | Population                            | Minimum number of wards committees | Additional wards committees for additional population | Maximum number of wards committees |
|---------|---------------------------------------|------------------------------------|---|------------------------------------|
| 1.      | Above three lakhs and up to 4.5 lakhs | 3                                  | -   | 4                                  |
| 2.      | Above 4.5 lakhs and up to 12 lakhs    | 4                                  | 1,50,000  | 9                                  |
| 3.      | Above 12 lakhs and up to 24lakhs      | 9                                  | 300,000   | 13                                 |
| 4.      | Above 24 lakhs                        | 13                                 | 600,000   | 25                                 |

*Source: The Maharashtra Municipal Corporation Act, 1949*

- The ‘Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965’, provides that where the population of a municipal area is above three lakhs, there will be formed ‘three ward committees under Section 66-A’. Each ward committee can have contiguous electoral wards as finalised by the Municipal Council.
- The ‘Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965’, which applies to the ‘Nagar Panchayats’ as well, does not provide for constituting ward committees for the Nagar Panchayats as it does not fit into the population criteria.
- In regard to the ‘composition of the ward committees the three Acts mentioned earlier provide that each wards committee will have:
  - a. The councillors from the territorial area of the wards committee.
  - b. The officer in charge of the ward committee
  - c. ‘Such members not more than three, nominated by the councillors from amongst the members of recognised NGOs and CBOs engaged in social welfare working within the area of the wards committee’.
    - However, such persons must be registered as electors in the wards within the area of the wards committee.
    - Norms for recognition of NGOs, the qualification for nomination as members and the manner in which they are to be nominated will be decided by the state government.
    - The duration of the wards committee will run parallel to the duration of the corporation.
    - The elected councillors will elect from amongst themselves a chairperson who will hold the post till the 1st meeting in the next year.

**Functions of the ward committee:**

- Resolving the grievances of citizens regarding ‘municipal services like water-supply, drainage, sanitation and storm water disposal’.
- Recommending proposals regarding estimates of expenditure pertaining to the wards under different heads of accounts of the budget forwarded to the Commissioner.
- Approving and making financial sanction to the plans for municipal works to be implemented within the area of the wards committee costing up to Rs. Five lakhs.
- To make recommendations in regard to:
  - i. Water supply
  - ii. Solid waste management



- iii. Sewage disposal
  - iv. Drainage
  - v. Storm water management
  - vi. Sanitation works
  - vii. Development schemes, and
- To assess and ensure people's participation in the voluntary activities required for effective developmental activities within the municipalities.
  - To maintain parks in the ward and to recommend for appropriate budget allocation to each electoral ward within the area of ward committee.
  - The corporation can delegate to the wards committee other functions if required.
  - The wards committee is expected to meet at least once a month at its ward office (Jha, 2005, pp.32-25)
- v. **Reservation of Seats for SCs, STs, BCCs and Women**

The provision regarding 'Reservation of Seats for SCs, STs and Women' as mentioned in Article 243-T of the Constitution (74<sup>th</sup> Amendment) Act, 1992, has been confirmed by the Conformity Legislation of Maharashtra formally known as 'Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994'. The following three laws as deemed to exist now after subsequent amendments, were amended to give effect to the above provision.

- i. The Mumbai Municipal Corporation Act, 1888
- ii. The Maharashtra Municipal Corporation Act, 1949
- iii. The 1965 Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Acts,

It is important to consider that the Article 243-T of the Constitution (74<sup>th</sup> Amendment) Act, 1992 does not directly provide for reservation for backward class of citizens. However, it does mention that the state legislature can reserve seats in a municipality or offices of chairpersons in the municipalities in favour of BCCs. The conformity legislation of Maharashtra has considered it and has provided for 27 percent of reservation for members belonging to the BCCs. (Anirban, 2017, pp.43-46)

The 'Article 243-T of the Constitution (74<sup>th</sup> Amendment) act, 1992' provides for not less than 1/3rd of the number of seats to be reserved for women belonging to the SCs and the STs. The conformity legislation of Maharashtra has enhanced it to fifty percent. It has not only included

and provided for reservation for BCCs but has also provided fifty percent reservation for women in the quota reserved for the BCCs. (Purnima, 2014, pp.64-66)

The details regarding reservation of seats for members belonging to Scheduled Castes (SCs), Scheduled Tribes (STs), BCC and Women as provided in the three Acts as mentioned above are as follows:

- The seats will be filled in by direct election in a municipality. However, some seats will be reserved for persons belonging to the SCs, STs, BCCs, and Women. It details will be determined by the SEC.
- The seats reserved for the SCs will be in proportion to their population in the municipality
- One half of the number of seats reserved above shall be reserved for women belonging to the SCs.
- The seats reserved for the STs will be in proportion to their population in the area.
- One half of the seats reserved above shall be reserved for women belonging to the STs.
- Twenty-seven percent of the seats to be filled in by direct election will be reserved for the BCCs.
- One half of the seats reserved above will be reserved for women belonging to the BCCs.
- One half including the number of seats already reserved for women belonging to the SCs, STs and the BCC of the total number of seats will be reserved for women.
- The seats reserved as above shall be allotted by the SEC by rotation to different wards.
- A person willing to contest election to a seat reserved for the members belonging to the SCs, STs or BCC, is required to submit along with the nomination paper, caste certificate issued by the relevant authority and also the 'validity certificate issued by the scrutiny committee'. (Pungavkar, 2006, 47-49)

#### **vi. Duration of Municipalities**

The provision regarding the 'Duration of Municipalities and other details' as mentioned in Article 243-U has been confirmed by the Conformity Legislation of Maharashtra formally known as 'Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act,

1994'. The following three laws as deemed to exist now after subsequent amendments, were amended to give effect to the above provision.

- i. The Mumbai Municipal Corporation Act, 1888
- ii. The Maharashtra Municipal Corporation Act, 1949
- iii. The 1965 Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Acts

The details regarding the duration of municipalities and other details as confirmed by the above Acts are as follows.

- All civic bodies will function for five years from the date appointed for its first meeting.
  - Municipalities formed after dissolution of an ULB before the end of its tenure, will function only for the remaining period of the dissolved municipality.
  - The term of the councillors will have the same length of time as that of the council.
  - An election with a view to form a municipality will be completed, -
    - a. Prior to the end of its duration
    - b. Prior to the end of six months from the date of its dissolution
- However, if the remaining duration for which the dissolved civic body would have functioned, is less than six months, 'it will not be necessary to have any election for the municipality for such period'. (Maharashtra Municipal Corporation Act, 1949)

**vii. Offices of the Mayor/Chairpersons/President**

The provision regarding reservation of offices of Chairpersons in the Municipalities as mentioned in 'clause (4) of Article 243-T' has been included in the conformity legislation of Maharashtra. The following three legislations which are 'deemed to exist now after subsequent amendments', were amended to give effect to the above provision.

- i. 'The Mumbai Municipal Corporation Act of 1888'
- ii. 'The Maharashtra Municipal Corporation Act of 1949'
- iii. 'The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act of 1965'

The provisions regarding the offices of the Mayor/Chairperson/President of the Municipalities and other details in terms of reservation etc as confirmed by the above Acts are as follows.

- The 'Mumbai Municipal Corporation Act, 1888, in Section - 37 (1) provides that the Mayor of the Corporation will be elected by the elected councillors from amongst

themselves'. The Act also recognises the Mayor as one of the municipal authorities. The law also declares that every meeting will be presided by the Mayor. However, in 'absence of the mayor, the Deputy Mayor will preside the meetings of the Corporation'. The law also says that the duration of 'Mayor and Deputy Mayor will be of two and half years.' The office of the mayor will be reserved by rotation, for the SCs, STs, women and Backward Class of Citizens.

- The 'Maharashtra Municipal Corporation Act, 1949' says that the corporation will, at its first meeting after the election, elect from amongst the councillors, one member as the Mayor and another as the Deputy Mayor whose tenure will be of two and half years. Also, the office of the mayor will be reserved by rotation, for the SCs, STs, women and the BCCs.
- The 'Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Acts of 1965, under Section 51A-1A' says that every 'Municipal Council' will have a President elected by the persons listed in the municipal voters list. It also says that every person who is qualified to be elected as a councillor can be elected as President at an election. Election of President will be held simultaneously with the general elections of the Council. The office of the President will be reserved for women, STs, SCs, and the BCCs as per the procedure. The duration of office of the President will be of 2 ½ years.
- The 'Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act of 1965', in respect to the 'Nagar Panchayats' says that every 'Nagar Panchayat' will have a 'President' elected by the councillors from amongst themselves. The District Collector will convene a meeting of the councillors for election of the President. The term of President will be 2 ½ years. 'Section 341B-1A of the Act' however, 'provides for a direct election of President of Nagar Panchayat' in future. (Source: Maharashtra Municipal Council, Nagar Panchayat and Industrial Townships Act, 1965)

#### **viii. 'Election to Municipalities and the State Election Commission'**

The 'provisions regarding elections to the municipalities as mentioned in Article 243-ZA in Clause (1) and Clause (2) have been confirmed by the conformity legislation of Maharashtra'. The following three laws as they exist now after subsequent amendments, were amended to implement the above legal requirements.

- i. 'The Mumbai Municipal Corporation Act of 1888'
- ii. 'The Maharashtra Municipal Corporation Act of 1949'

iii. 'The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act of 1965'

The legal requirements regarding the elections to the municipalities and other details in relation to process of elections are as follows.

- The above laws provide that the supervisory role, the power to direct and control the actual preparation of electoral rolls for the use in all elections to the (a) Municipal Corporations; (b) Municipal Councils; and the (c) Nagar Panchayats will vest in the office of State Election Commission in accordance with the provisions of 'Clause (1) of Article 243-K of the Constitution of India'. (PRIYA, 2008, pp.54-59)
- The State Election Commissioner shall divide the areas of the Municipalities into wards and specify its boundaries so that all wards will be almost uniform in terms of number of residents in each electoral ward as per the latest figures of census. Each ward from the next election will elect only one councillor.
- The assembly roll already in force, will be divided by Election Commissioner into different sections corresponding to different wards in the municipalities. The printed section of the divided roll will be ward roll for each ward.
- Results of all municipal elections will be declared by the State Election Commissioner.

ix. '**Functional Domain**', '**12<sup>th</sup> Schedule**' and '**Powers, Authority and Responsibilities**' of Municipalities in India

The provisions regarding 'Powers, Authority and Responsibilities of Municipalities as mentioned in Article 243-W in Clause (a) and Clause (b) also known as 12<sup>th</sup> Schedule, come under discretionary provisions for the state. Hence, 12<sup>th</sup> Schedule contains the powers, authority and responsibilities of Municipalities. By fixing functional domain of Municipalities through 12<sup>th</sup> Schedule, the Constitution of India, has determined the powers, authority and responsibilities of the urban local governments in India. Although they have been confirmed by the Conformity Legislation of Maharashtra formally known as 'Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994' but the state has been selective in terms of choosing functions and responsibilities wherever the discretion to the state has been given. The following three laws which are deemed to exist now after subsequent amendments, were amended to give effect to the above provisions. (Rai, 2007, 67-69)

- i. 'The Mumbai Municipal Corporation Act of 1888'
- ii. 'The Maharashtra Municipal Corporation Act of 1949'

iii. 'The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act of 1965'

The provisions regarding the powers, authority and responsibilities of the Municipalities as confirmed by the above Acts are as follows.

- State legislature is expected to devolve powers and authority to the municipalities which are necessary for them to function as 'institutions of self-government'.
- State legislature is expected to enact necessary laws having provisions for the 'devolution of powers and responsibilities to municipalities.'
- Municipalities are expected to play an active role in preparing 'plans for economic development and social justice.'
- Municipalities are expected to undertake certain functions and schemes as listed in the 'Twelfth Schedule.'
- The 'listing of 18 functions in 12<sup>th</sup> Schedule' indicating as the 'domain of the municipalities' is crucial for the welfare of the local people.
- The laws have mentioned the following 'obligatory duties to the municipalities.'
  - 'Planning for socio-economic development'
  - 'Urban forestry, protection of environment and promotion of ecology'
- The laws have mentioned the following matters in the 'discretionary list of duties for the municipalities'
  - 'Slum improvement and upgradation'
  - 'Poverty alleviation programme'
  - 'Cattle care and prevention of cruelty to animals'
  - 'Regulation of tanneries'
- The 'Mumbai Municipal Corporation Act of 1888 and Maharashtra Municipal Corporation Act of 1949' provide that the Commissioner will present an environment status report for the city before 31<sup>st</sup> July each year. (Ramachandran R. 2010, pp.6-9)

x. **Municipal Finance and Financial Powers of Municipalities**

The issue of finance and funding for the local bodies has been a big challenge for a long time. The institutional capability of municipal authorities has declined largely due to weak fiscal arrangements. Although the Constitution (74<sup>th</sup> Amendment) Act, 1992 has provided several measures to strengthen municipal finance, the actual decision has been left to the

discretion of the State Governments. The 74<sup>th</sup> CAA in a way seems to have ignored this critical area of municipal governance. (Ramesh, 2017, pp.45-46)

The provisions regarding ‘power to impose taxes by, and funds of the municipalities’ as mentioned in Article 243-X of the Constitution (74<sup>th</sup> Amendment) Act, 1992 are in the nature of recommendation which makes it part of the discretionary powers of the state. ‘According to the 74<sup>th</sup> CAA, state legislature can authorise a civic body to impose, collect and appropriate taxes, duties, tolls and fees as per the procedure.’

State government can assign a civic body a share from ‘duties, tolls, taxes, and fees imposed and collected by them.’ It has further recommended the State Government to make a law providing for making grants to the urban local bodies from the Consolidated Fund of the State. State government can create ‘a statutory funds for crediting and withdrawing all moneys received on behalf of the municipalities as per the procedure.’ Now it is important to see as to how much incorporation of these recommendations have taken place in the State Acts which govern these municipalities. (Ravikant, 2019, pp.65-68)

According to the state statutes, civic bodies are entitled to enjoy certain taxation powers. The ‘article 243-X of the Constitution says that the states should devolve some additional taxation powers to urban local bodies.’ It will strengthen them financially and help them carry out additional responsibilities as mentioned in ‘article 243-W’. However, in Maharashtra, despite clear recommendations in this regard, no concrete steps were taken to really ensure devolution of taxation powers to the municipal governments. A definite decision in this respect was expected on the part of the state government as it would have been in conformity with the process of decentralisation. Ironically, the taxation powers of small civic bodies regarding octroi was withdrawn by the state in March, 1999. The taxation powers of the civic bodies continue to be limited and have not progressed beyond the existing provisions in the state laws. (Sachdeva, 2011, pp.32-35)

The Mumbai Municipal Corporation Act, 1888 in Section-139 provides that taxations shall be imposed as follows; (a) Property Tax, (b) a tax on dogs, (c) a theatre tax. ‘Section 139-A says that the property taxes can be imposed on rateable or capital value.’ Also, the ‘property tax leviable on buildings and lands in Brihanmumbai will include water tax, sewerage tax, water benefit tax, sewerage benefit tax, general tax, education cess, street tax and betterment charges.’ With a view to levy property taxes, the expression 'building' will include a ‘flat, a

gala, or a unit or a building'. Also, it would be 'legal for the corporation to continue to impose all property taxes on rateable value of buildings and lands.'

The Maharashtra Municipal Corporation Act, 1949, Section -127 provides for taxes to be imposed under this Act. It says that the corporation will 'impose property taxes, a tax on vehicles, boats and animals, tax on dogs, theatre tax, toll on animals and vehicles entering the city, any other tax as per law.' However, clause (4) of the section 127 further provides that despite this section state will have authority to impose any tax which is approved by the state legislature. (Singh, 2001, pp.56-59)

The 'Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act of 1965', which is a common Act for the municipal councils and the Nagar Panchayats, in its 'section – 108,' says that a council will impose the taxes listed below:

- 'An integrated property tax on lands or buildings or both situated within municipal area based on their rateable or capital value.'
- 'A tax on cinema, theatre, circuses, carnivals and other performances and shows.'
- The 'consolidated property tax will include a general tax, a general water tax, a lighting tax, a general sanitary tax, a special latrine tax, a fire tax, an environment tax, water benefit tax, sewerage benefit tax, street tax'.
- With a view to impose 'property taxes, the expression 'building' includes flat, a unit, a gala, or any building.'
- The council can resolve to 'impose a property tax on buildings and lands within the municipal area on their capital value.'
- The council can impose any of the following taxes like 'a tax on vehicle, a tax on boats or animals, a tax on vehicles and animals entering the municipal area, a tax on dogs kept within the municipal area, a special sanitary tax, a drainage tax, a special water tax, a tax on pilgrims, a special educational tax, any other tax' as per the procedure. (Sharma, 1988, pp.43-45)
- A council can impose different kinds of fees as well.

#### **xi. State Finance Commission**

The mandatory provision regarding Finance Commission as mentioned in Article 243-Y of the Constitution (74<sup>th</sup> Amendment), 1992 in Clause 1 and in Clause 2 and to be constituted in states under article 243-I of the Constitution of India, has been confirmed by the Conformity Legislation of Maharashtra, formally known as 'Maharashtra Municipal Corporations and



Municipal Councils (Amendment) Act, 1994' with effect from May 31, 1994. The SFC as mentioned in the 74th CAA, can assess the financial status of the civic bodies and make recommendations to the Governor. These suggestions would include 'principles governing the actual distribution between state and the civic bodies of the proceeds of taxes, duties, tolls and fees leviable by the State.' It could be thus, distributed between them under this part. In the second level, allocation of their shares of the proceeds between the different civic bodies can take place of their shares of such proceeds. These principles would also govern the details regarding determination of duties, taxes, fees, and tolls to be devolved to the municipalities. The recommendations to the Governor would also include the principles which could govern various grants to the Municipalities from the States' Consolidated Fund. These suggestions will have the measures needed to improve the financial position of the municipalities. These recommendations can include any other matter referred to the Finance Commission by Governor with an objective to improve the finance of the municipalities. In order to ensure its usefulness, the Governor can ensure the recommendations to be presented in the state legislature. (Singh, 2007, pp.67-69)

With an objective to confirm the 74<sup>th</sup> CAA, 1992, in respect to the constitution of State Finance Commission under Article 243-I and Article 243-Y, Maharashtra State Government has constituted Maharashtra Finance Commission in accordance with the provisions of Maharashtra Finance Commission (Miscellaneous Provision) Act, 1994. The first Maharashtra Finance Commission was constituted on 20<sup>th</sup> April, 1994. Subsequently, second, third, fourth and fifth Finance Commissions have been constituted from time to time.

#### **xii. District Planning Committee**

The mandatory provision regarding District Planning Committee (DPC) as mentioned in Article 243-ZD from Clause (1) to Clause (4) of the Constitution (74<sup>th</sup> Amendment) Act, 1992 requires the state governments to constitute a DPC at the district level, to integrate the plans prepared by the rural bodies and the urban local bodies in the district and to finalise a development plan for the entire district.

However, the 74<sup>th</sup> CAA further requires the State Legislature to enact a law in this regard to provide with respect to the composition of the District Planning Committee giving the State enough discretion to decide the details. The 74<sup>th</sup> CAA requires the state legislation to suggest the method by which the seats in DPC will be filled. It further says that not less than four fifths of the members of the committee will be elected by the members of rural local body at district level and that of urban local bodies in the district in proportion to ratio between the rural

population of the areas and of the urban areas in the district. Also, the law enacted by the state legislature can provide for district planning functions to be assigned to such Committees. Also, the law enacted by the state legislature can provide the process by which the chairpersons of such committees will be chosen. (Thakur, 2017, pp.43-47)

While giving functional guidelines, the 74<sup>th</sup> CAA provides that every District Planning Committee shall, while preparing the draft development plan, should consider matters of mutual interest between the rural local body and the urban local government including:

- ‘Space planning’
- ‘Sharing physical and natural resources and water resources’
- ‘The integrated development of infrastructure’
- ‘Environmental conservation’

Each DPC will prepare the draft plan. While doing so it must consider the available resources whether financial or otherwise. While preparing the plan, they should consult different institutions and organisations as specified by the Governor. (Vinod, 2019, pp.65-69)

Once the process of drafting the plan is over, the chairperson of the DPC is required to forward the ‘development plan’ to the State Govt.

In order to implement the mandatory provision regarding District Planning Committee (DPC) as mentioned in Article 243-ZD from Clause (1) to Clause (4) of the Constitution (74<sup>th</sup> Amendment) Act, 1992, the State Legislature of Maharashtra passed in 1998 ‘The Maharashtra District Planning Committees (Constitution and Functions) Act. This law received the assent of the Governor on the 7<sup>th</sup> October, 1998 and it is in force with effect from 15<sup>th</sup> March, 1999.

The above law was passed by the state legislature of Maharashtra to provide for the formation of DPC to integrate the plans prepared by the urban and rural local bodies in a district. Based on this the DPC would prepare ‘a draft development plan’ for the entire district. The law extends to whole of Maharashtra excluding the ‘Scheduled Areas as declared by the President.’ (Akode, 2016, pp.21-25)

### **xiii. ‘Metropolitan Planning Committee’**

The mandatory provision regarding MPC as mentioned in ‘Article 243-ZE from Clause (1) to Clause (4)’ of the 74<sup>th</sup> CAA requires the state governments to constitute an MPC in every metropolitan area to prepare ‘a draft development plan’ for the metropolitan area as a whole.

The 74<sup>th</sup> CAA requires the state legislature to enact a law in this regard to provide for the composition of the MPC giving the state enough discretion to decide the details. While giving further guidelines, the CAA requires the state to provide for the process in which the seats in

such committees will be filled. It further says that not less than 'two thirds of members of the committee will be elected from amongst the elected members of the urban local bodies and the chairpersons of the rural local bodies.' The law enacted by the state legislature can provide for 'representation in the committees of Govt of India and the Govt of the State and also of such organisations and institutions which may be necessary for implementing the functions assigned to such committees.' Also, the law passed by the state legislature can provide with regard to the functions relating to 'coordination and planning for the metropolitan area which could be given to such committees.' The law can also provide details regarding the 'manner in which the chairpersons of such Committees can be chosen.' (Anirban, 2017, pp.33-36)

The 74<sup>th</sup> CAA further, provides that every MPC, while preparing the 'draft development plan' must consider the plans prepared by the civic bodies and the Panchayats in the metropolitan area.

The 74<sup>th</sup> CAA further provides that every MPC while preparing the 'draft development plan' must consider 'matters of common interest between the municipalities and the Panchayats,' including;

- 'Coordinated sharing of water, space planning of the area'
- 'Physical and natural resources'
- 'The integrated development of infrastructure', and
- 'Environmental conservation'

The Constitution (74<sup>th</sup> Amendment) Act, 1992, further provides that every Metropolitan Planning Committee, while preparing the draft development plan must take into consideration the priorities and objectives set by Indian Government and the Government of the State. Also, each MPC, while preparing the draft development plan must consider, 'the nature and extent of investments to be made in metropolitan area' by different departments and other agencies of Indian origin, the Govt of India and of the Govt of the State and other 'available resources whether financial or otherwise.' The 74<sup>th</sup> CAA further provides that each MPC, while preparing the 'draft development plan' must 'consult such institutions and organisations as the Governor may specify.' Also, the 74<sup>th</sup> CAA provides that the chairpersons of every MPC will send the 'development plan' to the State Govt. (Birch, 2009, pp.49-54)

In order to confirm the provisions of the Metropolitan Planning Committee (MPC) as mentioned in Article 243-ZE from Clause (1) to Clause (4) of the Constitution (74<sup>th</sup> Amendment) Act, 1992, the State legislature of Maharashtra has passed an enabling legislation to further operationalise the MPCs in letter and spirit. The law is known as 'Maharashtra

Metropolitan Planning Committees (Constitution and Function) (Continuance of Provisions) Act of 1999.’ It has specified formation of MPC for every metropolitan area having 45 members to finalise the ‘draft development plan’ for the entire metropolitan area. Two third of the total members will be elected members from amongst the members of Municipalities and Chairpersons of the rural local bodies in the Metropolitan areas in proportion of their ratio of population. In addition, it will have ex-officio members; nominated members; special permanent invitees; representatives of various other Government and parastatal agencies. The MMRDA will assist the MPCs in ‘preparation of Development Plan.’ As regards the representatives of Govt of India, it has indicated about Railways, Telephone or Port Trust. The chairpersons and the vice chairpersons are to be nominated by the state government. (Chandhoke, 2003, pp.44-46)

#### **xiv. Inclusion of NGOs/CBOs in Ward Committees**

While confirming the mandatory provision ‘constitution and composition of wards committees’ as mentioned in Article 243-S of the Constitution (74<sup>th</sup> Amendment) Act, 1992, the State Conformity Legislation of Maharashtra formally known as 1994 Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, has interpreted the Clause (5) of the Article 243-S of the mentioned Act, in a very positive spirit. While fixing criteria for the formation and composition of the ward committee, the conformity legislation has provided for ‘nomination of three members of recognised NGOs/CBOs by the councillors.’ These three members from NGOs/CBOs must be ‘involved in social development and welfare activities working within the area of the wards committee.’ (Mohan Sudha, 2005, pp.54-58)

#### **xv. Significance of Inclusion of ‘Nominated Councillors’ in Municipalities**

The provision of including ‘persons having special knowledge or experience in Municipal Administration’ as mentioned in Clause (2) of the Article 243-R of the Constitution (74<sup>th</sup> Amendment) Act, 1992, while providing for ‘composition of municipalities’ deserves appreciation. The ‘section -5 (I) and Clause (b)’ of the conformity legislation of Maharashtra designates them as 'nominated councillors' and makes the following provisions:

- ‘five nominated councillors having knowledge or experience in municipal administration to be nominated by the corporation.’

However, the ‘nominated councillors will not have the right to vote at the meetings of the municipality and committees of the corporation’. They are also not entitled to ‘get elected as a mayor of the corporation or chairpersons of any of the committees of the corporation.’

The Urban Development Department of Government subsequently announced the detailed 'Rules' in 1996 regarding the 'Nominated Councillors' with respect to the 'qualification for nomination' which are as follows.

A person who meets any of the following criteria will qualify for being 'nominated as a candidate for the office of nominated councillor:'

- 'Has at least five years' experience as a medical practitioner in a municipal hospital.'
- 'Has an experience of at least five years, as a member of recognised NGO or CBO engaged in social welfare activities working within the area of the municipal corporation or municipal council.'
- 'Has an expertise in the field of municipal laws or labour laws in respect of municipal workers.'
- 'Has been a councillor for not less five years.'
- 'Has an experience of working for not less than two years as a municipal commissioner'
- 'Has an experience of working for at least five years as a chief officer of a municipal council or as Deputy or Assistant Municipal Commissioner in a corporation.'

(Mohanty, 1996, pp. 66-68)

The provision of 'Nominated Councillors' has been appreciated as a noble idea which will make the municipalities richer with different experiences and expertise. It has made 'space for persons having knowledge or experience in municipal administration in the municipalities.'

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