

**AN ANALYSIS INTO THE EVOLUTION AND DETAILS OF 74TH
AMENDMENT ACT**

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Abstract

74th amendment act of 1992 was framed so as to constitutionally recognize the municipalities and also thereby encouraging participatory democracy. Before this amendment there were certain other landmarks which proved to help this amendment to be framed. The paper analyses the evolution of the idea of urban local government which dates back to the ancient and medieval period and how the landmarks like Lord Rippon resolution and the commission of urbanization gave way to the idea of the 74th amendment act which dealt with municipalities. The ancient and the medieval period which entrusted with the duties and powers of municipalities are similar to the modern-day powers and duties of municipalities. The details of the 74th amendment act has also been provided in brief. The paper finally makes a few observations. The 74th amendment has failed to enforce its objectives. The amendment also does not speak about the procedures to be followed in case of disputes between two panchayats

74th amendment act

74th amendment act mainly discussed about Municipalities. Before the constitution's 74th amendment act there was no constitutional status for the local government. By the enactment of the 74th amendment act, the local government achieved the constitutional status. Prior to the amendment, the local government was exclusively a state subject and the laws with regard to the local government was framed by the respective state¹. The 74th amendment act is considered as a crucial turning point as the creation of local governments and the distribution of powers to the respective states. It put forth the vivid framework of institutions that would act as local

¹ Pardeep Sachdeva, local government in india 74(2011)

governments and would eventually fill the space between the government and the subjects of the government. The amendment that was proposed indicated that there would be a structure of local bodies, classified on the basis of population. Accordingly, the smaller urban areas would have municipal councils and the larger urban areas would have a municipal corporation and the transitional areas which are neither urban nor rural would have a Nagar panchayat. The terms like municipal council, municipal corporation and Nagar panchayat forms what is called as institutions of self-government or municipality². The system of urban government was made as a provision to the constitution by way of the 74th amendment act 1992.

Municipality in the ancient and medieval period

The massive building advancements were well known to have been developed during the Harappa and Mohenjodaro of the Indus valley civilization. These massive buildings were the visible proof of the urban life which was prevalent during the 3000 BC period. The structures included wide streets, market places, public offices, community baths, drainage and sewerage systems. All this historical remains of the civilization is indicative of the municipal government. In the epics, Upanishads and Vedas contain the idea of urban local government. Kautilya's Arthashastra also has the mentioning of urban local government. Kautilya formulated a regular plan of town administration that was basically designed to deal with issues concerned with the urban area. The mayor of the city was called nagaraka. He was in charge of performing the necessary functions in connection with the daily administration of the city. Similar to the nagaraka of the Kautilyan period, during the post Mauryan period there was chief executive officer in the city administration. One of the primary important duty included the prompt arrangement of the city's sanitation that included drainage system and cleanliness of the roads. Town administration was firmly devised during the Gupta period. During the period the towns were administered by a council called the parishad and the city administration was carried out effectively by the elected administrative officers.

Many of the cities like Delhi, Agra, Lucknow, Hyderabad, etc. bear the imprint of Muslim influence. The civil administration of the city was vested in a Muhtasib. He had various functions including looking after public utilities such as water supply and wells, provision of amenities for travellers, maintenance of public buildings, demolition of houses likely to collapse,

² Dr.S.R Myneni, *local self government* 377, 4th edition (2021)

supervising the markets, inspection of weights, and measures and prevention of adulteration of food, which are the modern functions of municipalities. During the Mughal times municipal administration was entrusted in the 'Kotwal'.⁷ In his classic Aaini Akbari, Abul Fazal has mentioned his functions in minute details. He was the city governor, combining in him official powers and duties of the chief of the city police, magistrate and prefect of the municipal administration

Lord Rippon's Resolution 1882

Lord Rippon's resolution played a pivotal role in the development of the concept of municipal government in India which dated back to 1882. This resolution which regarded as the landmark in the development of the municipal government is often regarded as the Magna Carta of the local government. Lord Rippon is often regarded as the father of local self-government in India. The resolution met with the needs for the self-government encompassed the local bodies as an instrument of political and public education. The resolution also provided for establishment of a network of local self-government institutions the reduction of the official element to not more than a third of the total membership, exercise of control from without and not from within, a large measure of financial decentralization, and the adoption of election as a means of constituting local bodies. By giving effect to Lord Rippon's recommendations were accepted and various municipal acts were passed. The suggested reforms put forward by Lord Rippon met considerable success. But this long term success was prevented by paternalistic administration. Various other reasons for the declined success rate of the resolution was the hostile attitude of the successor of Lord Rippon (Lord Curzon), adoption of obstructive tactics of bureaucracy etc. The people also were another reason as they did not have the civic consciousness and their religious and caste sentiments stood stronger and hence there was communal electorate.

Post-independence period

The constitution in the article 40 directs the state to organize panchayats. On the other hand there is no mentioning of urban local bodies. The only mentioning is found in entry 5 of eleventh schedule (the state list) and entry 20 of the list III (concurrent list). The constitution places the urban local government within legislative competence of states. It was expected that after independence the urban local bodies would be used more as instruments of national policy. In 1986, a national commission on urbanization was appointed by the government under

the direct chairmanship of Shri C M Correa and various other members. The major task of the committee was to make a comprehensive and detailed way of a study into the different process of urbanization and the issues arising due to the urbanization. The other tasks of the committee to suggest strategies for policy formulation their implementation with a view in order to meet the challenges that arise by the process of increased urbanization on an unprecedented scale by making amendments in the constitution, enacting necessary legislations, adequately providing the necessary infrastructure, and bringing about other reforms to streamline the apparatus and mechanism to ensure planned development of urban settlements and the provision of necessary facilities to make the lives of citizens healthier and richer³The national commission on urbanization is the first commission ever to have made a comprehensive and in depth study on urbanization. The observation made by the commission on various fields and areas of the subject of urbanization assume the highest degree of credibility for the reason that the members of the committee are experts in their respective fields. The government of india appreciated the recommendations of the commission and regarded them to be practicable ,positive and effective recommendations and incorporated these recommendations in the 74th amendment act of 1992 which is claimed to be the most uplifting the urban local governments by according the constitutional status by guaranteeing regular elections ,decentralization, devolution of powers and financial viability. The government has accepted the recommendations of the commission for the formulation of urban policy, urban poverty alleviation ,finance ,housing etc.

Recommendations of the commission on urbanization

1. Dimension of urbanization: the commission pin pointed the urban centres that could generate economic momentum and require priority in development. They include national priority cities ,state priority cities, spatial priority urbanization regions and the small towns which serve the rural hinterland. The commission stated that from the eighth Plan onwards fullest support must be given to the development of the identified growth centres; the process of urbanization can and must be used to improve agricultural performance and create localized employment opportunities; and population control measures must be made really effective in both urban and rural areas in order to stabilize the urban situation.

³ *Ibid* at 53

2. Proper Land Use: For the reason the most disastrous feature of Indian urbanization has been the failure to anticipate the rising demand for urbanized land—a key resource of urban planning—the supply of such land should be given the utmost priority; a Settlement Survey of India should be formed at the national level and a directorate of urban land in each state. At the city level there should be an Urban Land Manager under the control of the District Collector, the urban land tenure system must be changed to ensure security of tenure; future land requirements, especially for housing the poor, should be anticipated and provided for; squatting on public land may be regularized where possible, but land required for public and social purposes must be protected and selective relocation of squatters from ecologically sensitive land must be undertaken; the state must intervene to provide equitable access to land; to bring increasing quantities of land to the market, the Urban Land (Ceiling and Regulation) Act, 1976, should be drastically amended, and supplemented by taxation measures that would discourage landowners from keeping their land vacant and encourage proper utilization; various forms of land assembly, through land exchange scheme, layout approval, and other similar measures should be encouraged; the Land Acquisition Act should be amended to eliminate delay and ensure timely payment to the affected citizens; and all laws which inhibit or restrict the recycling of land should be suitably modified.⁴

3. Urban Poverty: The amelioration of urban poverty should be accorded the same priority as is given to rural poverty; four lakh urban youths should be selected from poor households every year and trained in skills for which there is a demand; self-employment of the urban poor should be encouraged by appropriate credit-support programmes; production and market support should be given to the self-employed urban poor; city planning should be geared to providing shelter and sites for employment generation programmes; local bodies should be supported in their efforts to create special employment facilities, including worksheds for tiny manufacturers; the shelter programme should be used to provide employment to the urban poor; wage employment for the urban poor should be provided through a programme for creation of such urban assets as water supply, drainage systems, and land development; the public distribution system should be strengthened to meet consumption requirements; community development should be the strategy

⁴ *Ibid* at 54

for the improvement of the living conditions of the poor; and an urban community agency should be set up at national level.⁵

Constitutional provisions of the amendment

Municipality

Article 243-P(e) of constitution states that municipality means an institution of self-government constituted under Article 243-Q. According to article 243 P (d),municipal area means the territorial area of a municipality as is notified by the governor. As per Article 243-P(c) metropolitan area means an area having a population of ten lakhs or more ,comprised in one or more districts and consisting of two or more municipalities or panchayats or other contiguous areas ,specified by the governor by public notification to be a metropolitan area for the purposes of this part. As per Article 243-P(g),population means the population as ascertained at the last preceding census of which the relevant figures have been published.

Constitution of municipalities

Article 243-Q of the constitution of India provides that :

1. There shall be constituted in every state –

- a. A Nagar panchayat for transitional area .that is to say ,an area in transition from rural area to an urban area;
- b. a municipal area for a smaller urban area and
- c. a municipal council for a larger urban area,

in accordance with the provisions in this part :

provided that a municipality under this clause may not be constituted in such urban area or part thereof as the government may ,having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit ,by public notification ,specify to be an industrial township.

⁵ *Ibid* at 55

2. In this article 'a transitional area', 'a smaller urban area' or a 'larger urban area' means such areas as the governor may, having regard to the population of this area, the density of population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this part.

Composition of municipalities

Article 243 -R of the constitution provides that :

1. Save as provided in clause 2 all the seats in a municipality shall be filled by persons chosen by direct election from the territorial constituencies in the municipal area and for this purpose each municipal area shall be divided into territorial constituencies to be called as wards.

2. The legislature of the state may by law, provide –

a. for the representation in the municipality of-

- i) persons having special knowledge or experience in municipal administration
- ii) members of the house of people and the members of the legislative assembly of the state representing constituencies which comprise wholly or partly the municipal area;
- iii) the members of the council of states and the members of the legislative council of the state registered as electors within the municipal area;
- iv) the chairpersons of the committees constituted under clause 5 of article 243-S:

provided that the persons referred to in paragraph (i) shall not have the right to vote in meetings of the municipality ;

b. the manner of election of the chairperson of a municipality

Constitution and composition of ward committees etc

Article 243-S of the constitution of india provides that:

1) there shall be constituted wards committee, consisting of one or more wards, within the territorial area of a municipality having a population of three lakhs or more

2)the legislature of a state may ,by law ,make provision with respect to –

a)the composition and territorial area of the wards committee

b)the manner in which the seats in a ward committee shall be filled

3)A member of municipality representing a ward within the territorial area of the wards committee shall be a member of that committee.

4)where a wards committee comprises of

a)one ward ,the member representing that ward in the municipality or

b)two or more wards ,one of the members representing such ward in the municipality elected by the members of the wards committee

shall be the chairperson of that committee

Reservation of seats

Article 243-T of the constitution of India provides that –

1.seats shall be reserved for the scheduled castes and scheduled tribes in every municipality and the number of seats so reserved shall bear as nearly as may be ,the same proportion to the total number of seats to be filled by direct election in that municipality as the population of scheduled castes in the municipal area or of the scheduled tribes in the municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a municipality.

2.Not less than one third of the total number of seats reserved under clause 1 shall be reserved for women belonging to the scheduled castes or as the case may be ,the scheduled tribes .

3.Not less than one third of the total number of seats to be filled by direct election in every municipality shall be reserved for women and such seats may be allowed by rotation to different constituencies in a municipality.

4.The offices of the chairpersons in the municipalities ,shall be reserved for the scheduled castes ,the scheduled tribes and women in such manner as the state legislature ,may ,by law, provide.

5. The reservation of seats under clause 1 and 2 and the reservation of offices of the chairperson under clause 4 shall cease to have effect on the expiration of the period specified in article 334.

Duration- the duration of municipality is generally for a period of 5 years.

Disqualification for membership

Article 243-V of the constitution of India provides that-A person may be disqualified for membership only on the grounds of two reasons-

If he is disqualified by any laws relating to election or disqualified if the person is less than the prescribed age.

Powers and responsibilities of the municipalities

The major two function or powers of the municipalities are preparation of plans for economic development and social justice ,

Performance of functions and implementation of schemes entrusted to them with regard to the matters contained in the 12th schedule. The 12th schedule matters include, urban planning including town planning, regulation of land use and construction of buildings ,planning for economic and social development, roads and bridges ,water supply for domestic and other purposes, public health ,sanitation, solid waste management ,fire services, urban forestry etc.

Power to impose taxes by funds of municipalities –the legislature may authorise the a municipality to levy, collect and appropriate taxes ,duties, tolls, and fees in accordance with such procedure and limits

Election to municipalities -the superintendence ,direction and control of the election procedures shall be by the state election commission

Conclusion

The 74th amendment was inserted into the constitution so as to recognize and provide a constitutional status to the municipalities. The various recommendations of the national committee for urbanization and based on Lord Rippon's Resolution, the framework of

municipalities was dropped out. But it failed to achieve the purpose of democracy and people's participation in the grass root level. The Reservation for women in municipalities was proved to be not of much use as the forms of patriarchy seems to take force in those regions. There is a fair chance for the funds allocated by the central and state governments to be misappropriated . This put up the need for a supreme authority to check whether the municipal authorities are making effective use of the funds given to them by the central and state governments. The amendment does not speak about what needs to be done when there is a dispute between two or more panchayats and how the issue can be resolved. Even though the amendment provides in detail about the various provisions with regard to the municipalities, it failed in serving its purpose of enforcement in certain areas like reservation

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