

The Constitution (74th Amendment) Act, 1992

Background

Towns and cities contribute substantially to the economic development of the country. These urban centres also play an important support role in the development of rural hinterland. To keep this economic transformation in line with needs and realities at the grassroot level, it is necessary that the people and their representatives are fully involved in the planning and implementation of the programmes at local level. If democracy in Parliament and State Legislatures is to remain strong and stable, its roots must reach towns and villages and the cities where the people live.

2. The Constitution of India has made detailed provisions for ensuring protection of democracy in Parliament and in State Legislatures. Hence, democracy in these institutions has survived and flourished. However, the Constitution did not make Local Self Government in urban areas a clear-cut Constitutional obligation. While the Directive Principles of State Policy refer to Village Panchayats, there is no specific reference to municipalities except implicitly in Entry-5 of the State List, which places the subject t of Local Self Government as a responsibility of the State. Entry-5 reads as under:-

“Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-Government or village administration.”

As a consequence of inadequate Constitutional provision for Local Self Government, democracy in municipal governance was not stable. Though the respective municipal acts of the States provided for regular elections to municipal bodies, they were frequently suspended and superseded for indefinite periods of time. Frequent and indefinite suspensions or supersessions eroded the very basis of local self-government and had a negative effect on democracy at the grassroot level. The general position with regard to financial resources of the municipal bodies was also not satisfactory. Over the years, there was a steady encroachment on the assigned functions and revenues of Urban Local Bodies by specialized agencies of the State Governments. As a result, many urban local bodies became weak and were not able to perform effectively. The weakened status of Urban Local Bodies crystallized public opinion in favour of need for a Constitutional guarantee to safeguard the interests of urban local bodies in order to provide for

- Regular and fair conduct of elections to these bodies
- Holding of elections within a specified time limit in case of supersession
- Adequate representation of SC/ST and women in the elected bodies

- Placing on firm footing the relationship between the State Governments and the urban local bodies with respect to:
 - functions and taxation powers of the urban local bodies
 - arrangement for revenue sharing between the State Government and the urban local bodies.
- Involvement of elected representatives at grassroot level in planning at the district and metropolitan levels.

3. Accordingly, the Constitution (73rd Amendment) Bill was introduced in the Parliament in 1991, which was referred to the Joint Parliamentary Committee with Members from both Lok Sabha and Rajya Sabha for consideration. The Committee held several sittings and also took oral evidence and written comments from various organisations and individuals. The Committee had the opportunity of visiting various municipalities and held detailed discussions with their officers and elected representatives as well as with several State Governments. This was probably the first time that the Parliamentary Committee had deliberated so extensively on a legislation concerning local self-government.

4. The Bill as reported by the Joint Parliamentary Committee was taken up for consideration and passed by the Lok Sabha on 22nd December, 1992 and by the Rajya Sabha on 23rd December, 1992 and it received the assent of President on 20th April, 1993. It was published in the Government Gazette on 20th April, 1993 as the “Constitution (Seventy Forth Amendment) Act, 1992”.

5. The above Constitution Amendment Act came into force on 1st June, 1993,

6. The Constitution (Seventy Forth Amendment) Act, 1992 has introduced a new part namely, Part IXA in the Constitution, which deals with the issues relating to municipalities. The main provisions introduced by the above Act are as under:-

- (i) **Constitution of Municipalities-** It provides for constitution of 3 types of municipalities depending upon the size and area namely (i) Nagar Panchayat for an area in transition from rural to urban area; (ii) Municipal Council for smaller urban area; and (iii) Municipal Corporation for larger urban area. Demographic and other conditions, which are determining factors for constituting a particular type of municipality differ a great deal from one State to another. It has, therefore, been left to the State Legislatures to decide which specific type of municipality will be constituted for particular urban area.
- (ii) **Composition of Municipalities-** The seats shall be filled by direct elections. Besides the seats filled by direct elections, some seats may be filled by nomination of persons having special knowledge and experience in municipal administration. Persons so nominated shall not have the right

to vote in the meetings of the municipality. The Legislature of a State may, by law, also provide for the representation in a municipality of members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area and also the Members of the Council of States and the members of the Legislative Council of the State registered as electors within the municipal area. The manner of election of Chairpersons of municipalities has been left to be specified by the State Legislature.

- (iii) **Constitution of Wards Committees**- This provides for constitution of Ward Committees in all municipalities with a population of 3 lakhs or more.
- (iv) **Reservation of seats**- In order to provide for adequate representation of SC/ST and of women in the municipal bodies, provisions have been made for reservation of seats. The proportion of seats to be reserved for SC/ST to the total number of seats shall be same as the proportion of the population of SC/ST in the municipal area. The reservation would be made in respect of seats to be filled by direct elections only. Not less than one-third of the total number of seats reserved for SC/ST shall be reserved for women belonging to SC/ST. This is a mandatory provision. In respect of women, the seats shall be reserved to the extent of not less than one-third of the total number of seats. This includes seats reserved for women belonging to SC/ST. These reservations will apply for direct elections only. This is also a mandatory provision. There will be no bar on State Legislatures from making provisions for reservation of seats in any municipality or office of Chairperson in the municipalities in favour of backward class of citizens. This is an optional provision.
- (v) **Duration of Municipalities**- The municipality has a fixed term of 5 years from the date appointed for its first meeting. Elections to constitute a municipality are required to be completed before the expiration of the duration of the municipality. If the municipality is dissolved before the expiry of 5 years, the elections for constituting a new municipality are required to be completed within a period of 6 months from the date of its dissolution.
- (vi) **Powers and Functions of the Municipalities**- All municipalities would be empowered with such powers and responsibilities as may be necessary to enable them to function as effective institutions of self-government. The State Legislature may, by law, specify what powers and responsibilities would be given to the municipalities in respect of preparation of plans for economic development and social justice and for implementation of schemes as may be entrusted to them. An illustrative list of functions that may be entrusted to the municipalities has been incorporated as the Twelfth Schedule of the Constitution.

(vii) **Finances of Municipalities-** It has been left to the Legislature of a State to specify by law matters relating to imposition of taxes. Such law may specify:

- Taxes, duties, fees, etc. which could be levied and collected by the Municipalities, as per the procedure to be laid down in the State law
- Taxes, duties, fees, etc. which would be levied and collected by the State Government and a share passed on to the Municipalities
- Grant-in-aid that would be given to the Municipalities from the State
- Constitution of funds for crediting and withdrawal of moneys by the Municipality.

(viii) **Finance Commission-** The Finance Commission constituted under Article 243-I to review the financial positions of Panchayati Raj Institutions shall also review the financial position of the municipalities and will make recommendations to the Governor.

The recommendations of the Finance Commission will cover the following:

- Distribution between the State Government and Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State
- Allocation of share of such proceeds between the Municipalities at all levels in the State
- Determination of taxes, duties, tolls and fees to be assigned or appropriated by the Municipalities
- Grants-in-aid to Municipalities from the Consolidated Fund of the State
- Measures needed to improve the financial position of the Municipalities.

(ix) **Elections to Municipalities-** The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to the panchayats and municipalities shall be vested in the State Election Commissions.

(x) **Audit and Accounts-** The maintenance of the accounts of the municipalities and other audit shall be done in accordance with the provisions in the State law. The State Legislatures will be free to make appropriate provisions in this regard depending upon the local needs and institutional framework available for this purpose.

(xi) **Committee for District Planning-** Planning and allocation of resources at the district level for the Panchayati Raj institutions are normally to be done by the Zilla Parishad. With regard to urban areas, municipal bodies discharge these functions within their respective jurisdictions. However, some important questions may arise, which would concern the urban-rural

interface, and it may be necessary to take an overall view with regard to development of the district as a whole and decide on allocation of investments between the rural and urban institutions.

Provision has, therefore, been made for the constitution of a Planning Committee at the district level with a view to consolidating the plans prepared by the Panchayats and the Municipalities and preparing a development plan for the district as a whole.

The District Planning Committee in preparing the Draft Development Plan shall have regard to:

- Matter of common interest between the Panchayats and the Municipalities including spatial planning
- Sharing of water and other physical and natural resources
- Integrated development of infrastructure and environment conservation
- Extent and type of available resources, whether financial or otherwise.

The Draft District Development Plan so prepared and recommended by the District Planning Committee shall be forwarded by the Chairperson of the Committee to the State Government.

(xii) Metropolitan Planning Committees- It is provided in the Act that in every Metropolitan area (with a population of 10 lakhs or more), a Metropolitan Planning Committee shall be constituted for preparing a draft development plan for the metropolitan area as a whole.

The Metropolitan Planning Committee shall take into account the following for preparation of the Draft Development Plan:

- Plan prepared by the Municipalities and the Panchayats in the metropolitan area
- Matter of common interest between the Municipalities and Panchayats including coordinated spatial plans of the area
- Sharing of water and other physical and natural resources
- Integrated development of infrastructure and environmental conservation
- Overall objectives and priorities set by the Government of India and the State Government
- Extent and nature of investments likely to be made in the metropolitan area by agencies of the Government
- Other available resources, financial and otherwise.

7. In terms of Article 243ZC of the Constitution, nothing in Part IXA shall apply to Scheduled areas and Tribal areas as referred to in Article 244 of the Constitution. However, Parliament may by law, extend the provisions of Part IXA

to these areas subject to such exceptions and modifications as may be specified in that law.

Implementation of Part IXA

8. In order to provide time to allow changes to be made in the then existing laws which were inconsistent with the provisions of the Constitution (74th Amendment) Act, a transition period of one year was provided for. Immediately after the Constitution (74th Amendment) Act came into force on 1st June, 1993, the Ministry of Urban Development took necessary steps to ensure that the provisions of the State Municipal Laws are brought in conformity with the provisions of the above Act. As a result of various steps taken up by the Ministry of Urban Development through correspondence and also organising meetings of the State level Secretaries, the State Governments brought in place the conformity legislations by target date i.e. 31st May, 1994.

9. The amended State municipal laws provide for detailed provisions for constitution and composition of municipalities, reservation of seats for SC/ST and women, fixed term of 5 years and re-election of municipalities within a period of 6 months in case of dissolution, functions and financial powers of municipalities, setting up of State Finance Commission etc.
