

74th Amendment: An Overview

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Urban areas and their governance have always been a subject of interest and have traversed various territories, sometimes slippery, sometimes firm, but always a matter of discussion and a favorite of policy making. Efforts have been made by the government repeatedly to create smooth and efficient ways of managing urban affairs. Another leap in this direction was the 74th Amendment Act of the Constitution in 1992. At that time it was considered a path breaking amendment because it aimed at the creation of local governments and dissolution of powers to them in the respective states. It outlined a broad framework of institutions that would act as the local governments and would ultimately bridge the gap between the government and the governed. The 73rd Amendment Act, which is known as the sister amendment aimed at the creation of stronger, active bodies at the local level in the rural areas.

The people would take part in the issues that affected them directly thereby having a say in the decision-making. These amendments, which came after considerable debate in the country, were quite revolutionary, especially in several States that still relied on a large measure of centralisation. People were to be given say in how their communities would develop: their elected representatives at the local level were to be empowered to act in the common interest.

This implied that there would be a structure of local bodies in place, which would be classified, based on population. Therefore, the smaller areas would have municipal councils while the bigger areas will have a corporation.¹ The areas in the transitional phase—neither urban, nor rural, will have Nagar Panchayats. These would be the first tier of local government, zonal committees would come in next, further dividing the area. The last and the most important level would be the Ward committees, which would comprise of two or more wards. A two-tier system of Wards committees and a Municipal council for smaller urban areas and a three-tier system of wards committees, zonal committees and corporation for larger urban areas. The delimitation of a ward was left to the state governments to decide.

Apart from these, the 74th amendment also provided for the creation of state finance commissions and state election commissions. These bodies have been created both for the Urban and the Rural areas. They figure both in the 73rd and the 74th amendment and one would think of them as essential parts of local governance. The SFCs were to review the financial position of the states and make recommendations to the central finance commissions to improve the same. The SECs on the other hand were to look after the procedure of elections to the municipalities.

The municipalities were to be made responsible of the subjects mentioned in the XII schedule, which included urban planning, land use, water supply, roads, bridges, health sanitation slum improvement etc. in addition to these the XI schedule concerning irrigation, libraries, cultural activities etc have also been added to the local government's share of responsibilities.² The authority to take decisions on these subjects was to be transferred by the state governments to the municipalities.

¹ The 74th CAA does not quantify comparative phrases such as "larger" or "smaller". It lists five criteria like population, area, revenue generated, percentage of employment in non-agricultural activities, economic importance. However, 65th amendment to the constitution was used as a precursor to 74th amendment. 10,000-20,000 for a Nagar Panchayat, 20,000-30,000 for a Municipal Council, 3 lac or above for Municipal Corporation.

² The 74th CAA leaves it to the states to work out the functions in details of the Ward Committees, as well as the territorial area composition and the manner in which their seats shall be filled.

It has been more than a decade since the amendment came into force. Most of the states had ratified it by 1994. At this juncture therefore, it is interesting to ask how has this initiative, once touted as the boldest one, fared so far.

A cursory look at the status of implementation will reveal that most of the states exhibited promptness in accepting the act. In fact majority of the states have a municipal law in place, elections to municipal bodies have taken place twice already in some of the states like Andhra Pradesh, Assam, Haryana, Kerala, Madhya Pradesh, Orissa, Rajasthan, Uttar Pradesh and West Bengal.

While this might look like a reason to celebrate, a closer inspection does not present such a happy picture after all. In fact the studies ones undertaken by All India Institute of Local Self-Government, National Commission to Review the Working of the Constitution, Planning Commission of India, UNDP, National Institute of Urban Affairs and a host of others, so far have pointed towards the plain under implementation of the act. The election commissions have been formed but surprisingly, in certain states, they have not taken an active part in the municipal elections. To illustrate, in states like Assam, Madhya Pradesh, Maharashtra, Andhra Pradesh and Gujarat the SECs issues the notification of elections on its own. But in Uttar Pradesh, Rajasthan, West Bengal, Kerala and Orissa the State Government issues the notification of elections on the recommendations of the SECs. In Andhra Pradesh, Haryana, Karnataka, Punjab, Rajasthan, Madhya Pradesh the task of delimitation of the constituencies lies with the State Governments. The SECs use the electoral rolls prepared for the Assembly Elections and sometimes when they prepare their own, there are two electoral rolls that differ. The processes for preparing the rolls as also its periodical revision is not uniform among states.

The state finance commissions have remained only advisory bodies, which churn out advice that is never followed. The SFCs of Karnataka, Uttar Pradesh have not only estimated for their funds they have also made evaluation of the loans and advances extended by the government to the local bodies. Almost all the SFCs have asked for own tax sources like stamp duty, motor vehicles, electricity, entertainment, profession etc. but they continue to remain with the state governments. The strings of the purse are still controlled by the State governments. The imbalance of revenue and expenditure that are the share of the municipalities make them run short of money and inevitably depend on the transfers of funds by the state governments. As state government is dependent on centre for funds, so is local government dependent on state government's support. According to one-estimate municipalities get only 0.6% of the National Gross Domestic product (NGDP) in spite of the fact that cities contribute 90% of the government revenue and 60% of the NGDP.

The metropolitan planning committees that were to be responsible for coordinating the development plans for growing urban areas are at best, non-existent. Although, the provisions have been made by the states they have not actualized into functioning bodies as developers or planners. Karnataka, Tamil Nadu, Punjab, Rajasthan, have provided for the constitution of MPC in their respective acts, but not constituted it, even though it is a constitutional requirement. Andhra Pradesh, Gujarat, Haryana have not provided for any provisions for the constitution of MPCs in their respective acts.³

³ All India Institute of Local Self Government, Database on Municipal Governance in Some Major States, October 2002, New Delhi

The story so far is that of a slow paced, hesitant kind of devolution of powers to the urban local bodies. States like Bihar does not have DPC or an MPC. Gujarat, Himachal Pradesh and Haryana follow the suit. Bihar and Pondicherry had not even tasted the fruit of municipal elections until 2001. A number of studies have been done on the process and even greater numbers of recommendations have been suggested, but none really has seen the light of the day. The reasons for this tardy implementation have been identified mainly as the lack of adequate finances, states not devolving powers fully to the urban local bodies and, the free hand that most of the states have been given in deciding the fate of these bodies. The crux of the matter is that most of the states have created institutions that have been made mandatory in the 74th CAA. However, the ambiguity in the Act pertaining to the creation of these ULBs has been made use fully. The act for example does not make it mandatory for the state governments to devolve all the functions to the local bodies, does not define the sources of finance for them. Consequently, these institutions have just remained superficial in most of the states.

Urban Local Bodies Elections held after 1994
(Number of ULBs and Year of Election)

State/UT	Municipal Corporations		Municipal Councils		Nagar Panchayats		Total
	No.	Year	No.	Year	No.	Year	
Andhra Pradesh	07	1995&2000	94	1995&2000	15	1995&2000	116
Assam	01	1995	25	1996-1997	42	1997&2000	68
Bihar*	06	-	70	-	93	-	169
Goa	-	-	13	1995	-	-	13
Gujarat	06	1994&2000	86	1994-	60	-	152
Haryana	01	1994&2000	20	95&2000	32	1994&2000	53
Himachal Pradesh	01	1995	19	1994&2000	29	1995	49
	06	1996-97	122	1995	89	1996	214
Karnataka	05	1995&2000	53	1996	-	1995&2000	58
Kerala	20	1994&1999	106	1995&2000	283	1994&1999	409
Madhya Pradesh	15	1997-98	228	1994&1999	-	1997-98	243
Maharashtra	-	-	07	1997-98	20	1995	27
Manipur	02	1995&2000	29	1995	72	1995&2000	103
Orissa	03	1998	97	1995&2000	34	1998	134
Punjab	03	1994&1999	11	1998	169	1994&1999	183
Rajasthan	06	1996	102	1994&1999	611	1996	719
Tamil Nadu	-	-	01	1996	12	-	13
Tripura	11	1995&2000	226	-	444	1995&2000	681
Uttar Pradesh	06	1994&1999	112	1995&2000	4	1994&1999	122
West Bengal	-	-	01	1994&1999	-	-	01
A&N Islands	01	1996	-	1995&2000	-	-	01
Chandigarh	01	1997	01	-	-	-	02
Delhi	-	-	05	*	-	-	05
Pondicherry*	-	-	02	-	-	-	02
Daman & Diu				1996			
Total No of ULBs	101		1430		2009		3540

* Elections not held due to court cases.

Note: 1. There is no Municipality in Arunachal Pradesh and Nagaland. No Municipality has been constituted in Meghalaya. There is also no urban local body In Dadar & Nagar Haveli and Lakshadweep. Jammu & Kashmir has recently adopted the 74th CAA. In Mizoram, Municipal Act under the 74th CAA is under consideration of State Government. In Sikkim, the Municipal Act has been recently enacted.

2. Total No. of elected ULB representatives are 68554

Source: Nagarpalika Network Newsletter, Various Issues

Measuring Decentralisation

The eleventh finance commission made certain observations regarding the extent of decentralization and suggested an index of decentralization to measure the same. These were:

- a) Enactment of state municipal legislation in conformity with the 74th amendment.
- b) Intervention in the functioning of the ULBs this has been measured in terms of the provisions relating to three kinds of interventions-power to suspend/dissolve local bodies. Power to remove elected officials.
- c) Assignment of functions to ULBs in the state municipal legislation vis-à-vis the XII schedule.
- d) Transfer of functions to the ULBs by way of rules/notifications/orders of the state government.
- e) Assignment of taxation powers to ULBs as per state municipal acts.
- f) Levy of taxes by the ULBs
- g) Constitution of state finance commissions.
- h) Action taken on the major recommendations of the SFCs.
- i) Elections to the ULBs.
- j) Constitution of district planning committees.

Status of Implementation in various States

States	Legislation	Municipal Corporation	Municipal Councils	Nagar Panchayats	Wards Committees	Finance Commissions	Election Commissions	DPCs	MPCs
Andhra Pradesh	1994	√	√	√	√	√		X	X
Gujarat	1993	√	√	√	X	√	√	X	X
Haryana	1994	√	√	√	X	√	√	√	X
Karnataka	1994	√	√	√	√	√	√	√	√
Kerala	1994	√	√	√	√	√	√	√	√
Madhya Pradesh	1994	√	√	√	√	√	√	√	X
Maharashtra	1994	√	√	√	√	√	√	√	√
Punjab	1994	√	determined by the state government	X	X	√	√	X	X
Rajasthan	1994	√	√	√	X	√	√	√	√
Tamil Nadu	1994	√	√	√	√	√	√	X	√
Uttar Pradesh	1994	√	√	√	√	√	√	√	√
west Bengal	1994	√	√	√	√	√	√	√	√
Jammu & Kashmir	2001								
Mizoram		X							
Nagaland		X							

States	Legislation	Municipal Corporation	Municipal Councils	Nagar Panchayats	Wards Committees	Finance Commissions	Election Commissions	DPCs	MPCs
Meghalaya		X							
Arunachal Pradesh		X							
Lakshwadeep		X							
Dadra and Nagar		X							
Assam							√		
Bihar						√		X	X
Goa	1994		√						
Manipur									
Andaman & Nicobar									
Himachal Pradesh						√	√	X	X
Orissa			√	√		√	√	X	X

State Wise Status

Kerala

The urban sector in Kerala comprise of five Municipal Corporations and 53 Municipalities. 25.97% of the population live in urban areas. This is a little less than the National average of 27.8%. However unlike the other parts of the country the Urbanisation in Kerala is not limited to the designated cities and towns. Barring a few Panchayats in the hilly tracts and a few isolated areas here and there, the entire state depicts the picture of an urban rural continuum. The Kerala society by and large can be termed as urbanized.

With the enactment of the Constitution amendment Acts, the Kerala Panchayat Raj Act, 1994 and the Kerala Municipalities Act, 1994 came into being incorporating the provisions of the respective Constitution Amendment Acts. The significant feature was the provision that the Government shall, after the commencement of the Act, transfer to the Local Bodies, all institutions, schemes, buildings, and other properties connected with the subjects listed in the respective schedules dealing with these functions.

The first elections to the three tier Panchayat Raj set up including Urban Local Bodies in Kerala were held and the Local Bodies came into being in October 1995. Subsequently a comprehensive Government Order was issued, transferring various institutions and staff to the Local Bodies. Another noteworthy event was the inclusion of a separate document known as Annexure IV in the Budget of 1996, which detailed out the Grants-in- Aid and the schemes transferred to the Local Bodies. Thus the allocation to the Local Bodies was seen as an independent subject of the State Budget giving it the stamp of legislative approval. Also about 35 percent of the State's Plan Funds became the share of Local Government.

The people's campaign in Kerala was spearheaded in 1996 at the local level. The thrust was on bottom up planning than the hitherto top down approach to planning. It witnessed the participation of local people, neighbourhood groups with the adequate funds at their disposal and the mandate of the people, it was indeed set to decentralise in the truest sense of the term. The campaign taken ahead by the- Kerala Sastra Sahitya Parishad (KSSP) took off well initially, rendering impressive results, inclusive of construction of roads, schools, public amenities etc. The Kerala way of decentralisation, in fact became so popular that it was called the 'Kerala model'.

It is indeed unfortunate that the campaign had to be abandoned because of lack of adequate infrastructure at the local level. This basically implies that in the last stage of the campaign, when the money was released to the local bodies, they could not plan the expenditure appropriately. This was largely because they were inexperienced and this was the first exercise of the kind. Another reason was the political bickering between political parties the one in power and the one in the opposition.

Nevertheless, it does present a rough sketch of sorts that can perhaps serve as a stepping stone towards greater decentralisation. A major achievement of the current programme, it must be recognised, is that the agenda of decentralisation has been forced into the public discourse on development. This alone should ensure that future governments are not tempted to walk away from this challenge.

Karnataka

Initially Karnataka opted for a two tier system of governance in the urban areas than the three-tier, taking advantages of the ambiguity in the act. It did formation of the ward committees in the wards, but did not really delimit- its financial and functional domain. The members of these ward committees were to be nominated and not elected by the people⁴. This process of nomination was found to be non-transparent and consequently the party in power was blamed for packing all these committees with its own party members. There was no democratic process of calling for nominations, scrutinizing them, calling for objectives to the nominations or the objective criteria for selecting the eventual nominees.

Considerable pressure has been put on the Bangalore Mahanagar Palike (BMC) to provide for a system of ward committees that is fair and assures proximity to the people. Many civil society organizations like the CIVIC have argued for stronger ward committees and have filed writ petitions for the same. The Karnataka government has paid heed at last to these efforts and in 1998 Ward committees were given the administrative and financial powers. For example budgetary allocation has to be made ward wise now and the wards also have the power to give administrative approval to the activities within their wards for a stipulated amount. Elections were made regular and the meetings of the ward committees were made open to the citizens.

The yawning gap still remains between the expectations and the decision making powers of the Urban Local Bodies, specially the ward committees. They are only entrusted with maintenance functions and like numbering of streets and garbage disposal. One would argue that more teeth be given to them. Also, adequate training can be given to the citizens to make themselves well-versed with the dynamics of planning their everyday issues.

West Bengal

In west Bengal decentralization has increasingly come to imply the authority of the Mayor over the Municipal Commissioner who is otherwise the executive head of a municipality. The municipal Act of West Bengal says that the 'Municipal Commissioner shall be the principal executive officer of the corporation *under the supervision and control of the Mayor*' (emphasis added). He exercises the powers and performs the functions specifically conferred or imposed upon him by or under the Act.

⁴ The act authorizes the respective state governments to prescribe the way of filling up the seats in the Ward Committees.

The mayor can choose his Council, just like a minister can choose his Cabinet. He allocates the functions among the members of the Council too. Generally the Mayor has the power to access to record of the corporation and issue directions to the Commissioner or call for reports. The mayor has a term of five years unlike the 1 year in Delhi or 2 and a half years in Maharashtra.

Delhi

The national capital of the country also passed a legislation in 1994 ratifying the Municipal Act. Consequently the Municipal Corporation of Delhi, New Delhi Municipal Council and the Delhi Cantonment Board were made responsible for different areas within Delhi. This makes Delhi, like many other areas, a multi municipality city.⁵ This invariably means that a Metropolitan Planning Committee has to be constituted which is actively consulted when it comes to town planning and use of public space.

But since power is never shared easily, Delhi Development Authority continues to have a greater position. Though it has been addressed at various occasions, celebrated as the ultimate in decentralisation, the proposed MPC is still to be constituted. The tussle between the MCD and the DDA on the Master plan of Delhi is well known. The MCD claims that it has more experience in ground realities because it has the councilors which are elected from among the people. But the counter-argument is that MCD has failed to make use of the opportunities endowed on it by the 74th amendment. Its slum policy and that dealing with hawkers is criticised for being totally devoid of the people's perception of this situation. It is blamed for eating up the land meant for the resettlement of slum dwellers for profitable purposes and not using its influence for demarcating separate spaces for the hawkers in the Master Plan. (Verma, D, Geeta, 2002-9-17, <http://www.architexturez.net>)

Delhi performs dismally when it comes to the constitution of ward committees. They mainly consist of the councilors and not the representatives of RWAs and civil society as it was imagined to, is barely existent. A saving grace is the Bhagidari Scheme started by the Delhi Government for the involvement of the citizens in issues like water, electricity, garbage. But the irony of the matter is that it is a state run scheme and outlines the functions of the MCD itself!

Theoretical Issues

Centralised decentralisation

The paradox of the 74th amendment act, 1992 is that though aimed at the decentralisation it is an act promulgated by the central government, made mandatory for the state governments. It is to be implemented through the same hierarchy that it aims to do away with. Though the state governments are left to work out the details of the act in their states themselves, the rigidity of the authority has not let that to materialize either. An argument worth noting here is that when it comes to understanding the basics of decentralisation is that the very word implies the centralized authority in place. "International comparative research has recently shown, indeed, that the outcomes of decentralisation are crucially influenced by the political relationships between 'centre' and 'locality', and by configurations of local power, which mean that very similar decentralisation schemes can have different purposes and outcomes - sometimes serving to extend central power downwards through patronage, or to break potential sources of opposition... There is in fact an 'ironic paradox of decentralisation': strengthening the capacity of local government may actually mean that the

⁵ Mumbai has 4 - Thane, Bhiwandi, Navi Mumbai and Greater Mumbai. Kolkata has three.

government at the centre has to play a stronger role in certain critical respects.” (Harris, John,2000, The Dialectics of Decentralisation, *Frontline*, 17:13).

This is exemplified by the fact that though the Kerala government devolved funds to the local bodies, the local power has been contained in the entire set-up. In Karnataka too, the devolution of powers has not really meant the government’s responsibility to the people. It has only worked to enhance the coteries of the local power. To put it in a nutshell, Harris actually is arguing that the entire magic of decentralisation is used to reinforce the centralised authority. Not only have the regional local authorities have become accountable to the centre than before, their domain of authority is also demarcated strictly by the centre.

Another not-so-bright side of this amendment act, when applied to ground realities is that it has somehow intended relatively greater profits for the rural areas- and not so much returns for the urban areas as argued by Sivaramakrishnan (2000). In fact there are examples where the states have chosen to notify certain areas as ‘rural’ though they qualify to be ‘urban’ towns. This is because the rural development ministry gets a lion’s share of funds that makes that of urban development ministry look paltry. To top it all the rural areas have a lower amount of taxes and greater subsidies. The free provision of basic services such as healthcare and education also comes in handy. So although these areas are urban as far as the population and other criteria of the Census go, they *choose* to stay rural. This is another paradox that has haunted the fate of this legislation.

The Way Ahead...

Numerous studies and researches have been prepared on the Act and its implementation and every study has suggested its own set of recommendations for an improved case. The most popular ones range from greater financial autonomy to the local bodies to greater devolution of powers. Setting up of the DPCs and MPCs being made mandatory to handing them over the actual functions of planning the city. From adopting the mayor-in-Council system to giving the people the right to recall the Mayor.

But in the light of the above theoretical underpinnings, one has to understand primarily that urbanization is a trend that is not reversible. With a decadal growth rate of 13 per cent, the urban areas and their management are going to occupy more significance than ever before. Decentralisation and decentralized decision-making are the answers, but certainly not the centralised variety.

The seeds of the solution can be found in the problem itself, there exists already a provision of ward level committees in the act and if one is hopeful of modern cities where citizens are engaged in planning, ward level management is the answer.

References

National Commission to Review the Working of the Constitution, 2001, *Decentralisation and Municipalities*, New Delhi

Dossier of Background Documents on the 74th Constitution Amendment Act, 2002, Bangalore: CIVIC Bangalore

A Compendium of Municipal Legislations in Conformity with the Constitution 74th Amendment Act, 1992, National Institute of Urban Affairs, 1998. New Delhi

Harris, John, 2000, The Dialectics of Decentralisation, *Frontline*, 17:13

Reinventing Rural Governance, Introduction to the report of the Government of Karnataka's Working Group on Decentralization in the rural sector. Accessed online at www.indiatogether.org on 5/8/2004

Krishnakumar, R 2000, Democratic Decentralisation, A People's Movement, *Frontline*, 17:12

Joshi, Rita Bahuguna, 2000, Allahabad, India, Role of the State in Decentralized Governance: Macro, Meso and Micro Levels, *Asian Review of Public Administration*, January-June

Country Profile: India, The Commonwealth Local Government Handbook, 2004

Pimple Minar and Lysa John, 2001, Decentralization Does Not Always Lead to Democratic Participation Lessons Learned in India, *Habitat Debate*, March, 7:1

Innovative Practices and Reforms in Commonwealth Local Government: Commonwealth Local Government Forum

A Progressive Law for Local Planning, Accessed online at <http://www.indiatogether.org/2003/oct/gov-karfisres.htm>

Department of Public Relations, Government of Kerala, 2004, *Urban Policy and Action Plan for Kerala*

Local Government in Asia and the Pacific: A Comparative Study: UNESCAP, Accessed online at <http://www.unescap.org/index.htm> on 1 June 2004

Matthew, George, Decentralized Governance through Panchayati Raj: A Review of Indian Experience, World Bank, 2002

Singh, Kulwant, Trends and Issues in Decentralisation and Urban Governance in India, Accessed online at http://www.bcasnet.org/other_articles.htm

Recommendations for National Action Plan for Good urban Governance, Accessed online at http://www.un.org.in/unnew/iawg/Decntz/onactivity/Recmmdtn-GUGC.doc_on 9 June 2004

Decentralization and Municipalities. Accessed online at <http://fincomindia.nic.in/links.htm> on 7 June 2004

Sivaramakrishnan, KC 2000, Turning Urban, Staying Rural, *The Hindu*, Wednesday, 27 February

Decentralisation in India: Challenges & Opportunities. UNDP, 2000, New Delhi

Express News Service, 1998, Ward-level committees fail to take shape. *Indian Express*, Friday, 23 October

From Decentralization of Planning to People's Planning: Experiences of the Indian States of West Bengal and Kerala, 2000, Center for Development Studies, Thiruvananthapuram

XI Schedule

1. Urban planning including town planning
2. Regulation of land-use and construction of buildings
3. Planning for economic and social development
4. Roads and bridges
5. Water supply for domestic, industrial and commercial purposes
6. Public health, sanitation conservancy and solid waste management
7. Fire services
8. Urban forestry, protection of the environment and promotion of ecological aspects
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded
10. Slum improvement and upgradation
11. Urban poverty alleviation
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds
13. Promotion of cultural, educational and aesthetic aspects
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums
15. Cattle pounds; prevention of cruelty to animals
16. Vital statistics including registration of births and deaths
17. Public amenities including street lighting, parking lots, bus stops and public conveniences
18. Regulation of slaughter houses and tanneries.