

Local Urban Governance in India: Analysing the Institutional Impact of 74th Constitutional Amendment Act

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Abstract

The 74th Constitutional Amendment Act envisaged decentralized governance in municipal administration by ensuring the legal provisions of basic amenities, local accountability, sustainability, social audit, and vision of civic culture. However, the decentralized governance in the urban administration of India has a cheered career, because Indian democracy is often failed to provide a firm institutional base to urban and rural LSGs. Even the Constitutional provisions are often failed to ensure the meaningful devolution of power or local democracy. The frequent institutional encroachment on the assigned powers and resources of LSGs by specialized agencies of the Central and State Governments, especially in the urban sector still hindering the process of democratic decentralization in governance. In this context, the present study analyzes the institutional framework of urban local governance proposed by the 74th Constitutional Amendment Act.

Key Words: Local Governance, Urban Governance, Constitutional Amendment, and Institutional Impact.

Introduction

"Local governance or democratic governance is both a means and an end". Democratic governance is a means to realize the aims of human development, and it's an end in itself – as policies, values, programs, and institutions that are guided by humanitarian principles of equality, democracy, accountability, participation, etc. Therefore, the local governance combines a set of institutions and institutional mechanisms and programs through which local citizens and their community associations can articulate their socio-economic and political interests and demands, reflect their dissents and exercise their rights and responsibilities at the local level. Community participation, partnerships among the institutional actors at the local lair, institutional efficiency of local actors in all administrative sectors, multiple flows of information, and the institutions of transparency, accountability, and equality are the vital building blocks of good local governance (UNDP, 2004).

Urban local governance covers a wide range of socio-economic and political issues affecting local communities in urban areas such as cities and towns. It is governing at the urban centers viewed broadly to include not only the local units of government but also the urban community at large and its interactions with local government institutions. Urban governance by urban local bodies leads to urban development through local policies and programs for institutional efficiency in service delivery and easy flow of goods, capital, and human resource at the urban limits. Therefore, such urban local self-governments are in the real sense a miniature form of government itself, undertaking distinct institutional authorities and services for the community welfare across all the sectors of life (UNDP, 2004).

Background of the Demand for Constitutional Status

Urban centers in the country contribute significantly to the socio-economic and political development of India. Such urban centers also play a vital support role in the socio-economic

development in the rural hinterland. To maintain such socio-economic and political transition in accordance with the realities at grass-root level, the local urban communities and their representatives must be directly involved in the processes of planning and execution of developmental and welfare programmes at the urban areas. If democratic governance by Legislative Assemblies and Parliament is to exist strong and stable, its roots must touch rural and urban areas where the people live actually. As a result of the Constitutional concern, such higher parliamentary bodies have flourished in India. However, the original Constitution of India did not make local government bodies in urban centers a clear-cut constitutional responsibility.

While the Directive Principles of State Policy in the original Constitution of India refer to the Panchayat raj system, there is no special reference to institutional profile of municipal bodies except in Entry – 5 of the State List (Govt. Of India,1950). As a result, the democratic governance and institutional set-up of local municipal institutions was not stable and strong. In addition, respective municipal laws and weak institutional frameworks in the states frequently weakened or subverted the original base of local governance and democratic decentralization, especially in urban governance at grass-root level. Such weakened condition of local governance, especially urban governance resulted strong public demand for the Constitutionalizing of institutional status of urban and rural governing bodies at local level. Naturally, it led to the commencement of 73rd and 74th Constitutional Amendments of Indian Constitution.

First Legislative Initiative for Constitutional Status

The weakened condition of urban local governance mobilized strong public opinion in favour the Constitutionalizing of the local governments in order to guarantee the institutional stability and accountability in local governance. As a result, Mr. Rajiv Gandhi, the then Prime Minister of India started legislative efforts to strengthen the local governance by constitutional means. The introduction of the 64th Constitution Amendment Bill represented the first legislative effort to confer Constitutional status for local self-governments in India. Therefore, the legislative origin of the 73rd and 74th Amendments in Indian Constitution dates back to the 64th Constitutional Amendment Bill in July 1989. It was introduced in the parliament due to distinct reasons, such as weak institutional set-up and ineffective functioning of local government institutions owing to a variety of factors, including inadequate representation of vulnerable social sections, institutional failure to conduct regular local body elections, prolonged institutional suppression, inadequate devolution of authorities and responsibilities and lack of own financial resources (K.C. Sivaramakrishnan, 2000).

Having regard to those institutional limitations and maintaining in view the directives to the state policy mentioned in Article 40, to empower the institutional profile of local bodies to act as the institutional body of self-government, the aforesaid Constitutional Amendment was proposed. Though the general aim of the Bill was welcomed and greeted favourably, some of the provisions in the Bill were criticized and opposed and the Bill was ultimately rejected by the Rajya Sabha. The major criticism raised against the 64th Constitutional Amendment Bill was that it provided the state governments little discretionary powers in the formulation of local self-government reforms. However, the same Constitutional Amendment Bill was again introduced in Parliament during the reign of V. P. Singh (K.C. Sivaramakrishnan, 2000).

The 74th Constitutional Amendment Act

The Constitutional Amendment Bill was introduced in the Indian Parliament in 1991, which was transferred to the JPC (Joint Parliamentary Committee) with members from both houses (Lok Sabha and Rajya Sabha) of the Parliament for consideration. The JPC held many meetings and also collected oral evidence and written comments from many institutions and communities concerned. The JPC visited several municipal institutions and held discussions with their institutional and political executives as well as with various governments at the state level. The Constitutional Amendment Bill as reported by the JPC was taken up for the legislative procedure and passed by the Lok Sabha on 22nd December 1992 and by the Rajya Sabha on 23rd December 1992 and the Bill got the assent of the President of India on 20th April 1993. The Act was published in the Government Gazette on 20th April 1993 as the "Constitution (Seventy Fourth Amendment) Act, 1992". It came into effect on 1st June 1993. It incorporated a new part namely, Part IX-A in the Constitution, which deals with the institutional profile of the urban local bodies in India.

With local governance being a subject in State List of Seventh Schedule of the Constitution, any legislation reforming the structure of local self-government system has to; ultimately, be enacted at the Legislative Assemblies of states. The primary responsibility of the state governments was therefore to pass conformity acts, which either introduced new legislation or amended prevailing legislations, to bring the state level laws into line with the conditions of the amendment. Under the amendments, state governments had a year, from the date of Constitutional Amendment came into force, to do so. Because of the Constitutional Amendments having both mandatory and discretionary provisions, the volume of flexibility afforded the state governments in this constitutional task varied with the provision in question. The mandatory provisions of the 74th Constitutional Amendment Act formulated to strengthen the institutional structure of the urban local governance in India. Thus, the Act established a nationwide institutional framework for urban local governance in India.

Institutional Reforms by 74th Constitutional Amendment Act on Urban Governance

Constitution of Urban Local Bodies: 74th Constitutional Amendment Act provides for the formulation of three types of municipal institutions based on the size and area namely (1) Municipal Corporations for larger urban regions; (2) Municipal Councils for smaller urban regions; and (3) Nagar Panchayats for regions in transition from rural to urban regions. Demographic and other components, which are determining elements for formulating a specific variant of the municipal body, may differ from one state to another. It has, therefore, been left to the governments of the states concerned to opt which particular form of urban government will be formulated for a specific urban center (K.C. Sivaramakrishnan, 2006).

Composition of Urban Local Governments: The seats in the urban local bodies shall be filled by direct election. In addition to the seats filled by direct election, some seats may be filled by nomination of individuals having expertise and experience in urban governance. The person so nominated shall not have the right to vote in the municipality meeting. The State Legislature may, by law, also offer for the representation in a municipal body of Member of the House of the People and Member of the Legislative Assembly representing constituencies which consist of the municipal center and also the Member of the Council of States and the Member of the Legislative Council of the State registered as electors within the municipal limits. The mode of election of Chairperson of municipal institution has been left to be decided by the Legislature of the State. Besides, it provides for the formulation of Ward Committees in all urban local governments with a population of three lakhs or more (Govt. of India, 1993).

Seat Reservations in Urban Local Bodies: The 74th Constitutional Amendment Act provides for proper representation of Scheduled Caste, Scheduled Tribe, and women in the positions of municipal institutions. The proportion of seats to be reserved for SC/ST is determined in proportion to their population in the urban limits. No less than 1/3 of the total seats reserved for SC/ST sections shall be reserved for women from SC/ST sections. No less than one-third of the total number of seats in municipalities shall be reserved for women. These reservations are applicable for direct elections only (Govt. of India, 1993).

Election and Duration of Urban Local Bodies: As per the provisions of 74th Constitutional Amendment Act, the urban bodies have fixed period of five years from the date of appointment. The regular election to formulate a municipal body is required to be completed before the expiry of the fixed term of five years. If any municipal body is dissolved before the expiry of the regular fixed term, the next election for constituting a new body is required to be finished within a period of six months from the date of its official dissolution. In addition, as per the Act, the electoral authorities and responsibilities such as the superintendence and direction of the preparation of the electoral roll for, and the conduct of, all elections to the municipal institutions shall be vested in the State Election Commission (Govt. of India, 1993).

Authorities and Responsibilities of Urban Local Bodies: All Urban local governments would be enabled with such authorities and responsibilities as may be essential to empowering them to act as effective local bodies of urban governance. The Legislature of the State may, by law, specify what institutional powers and duties would be given to the urban local governments regarding the formulation of plans for economic development and social justice and for the execution of such welfare projects as may be authorized to them. A list of institutional functions that may be transferred to the municipal institutions has been incorporated as the 12th Schedule of the Indian Constitution (Govt. of India, 1993).

Finance Commission & Audit and Accounts: Finance Commission appointed to review financial conditions of rural local bodies shall also review the financial condition of the municipal institutions and will do recommendations to the Governor of the State regarding the financial sources of municipalities, especially the matters like Grants-in-aid, taxes, duties, tolls, fees, etc.

The maintenance of the institutional accounts of the municipal institutions and other audits shall be conducted as per the provisions of statutory laws of the State. The Legislature of the State Government will be free to make necessary changes in this regard based on the local interests and institutional framework available (Govt. of India, 1993).

Committee for District Planning: The 74th Constitutional Amendment Act provides for the constitution of a District Planning Committee with a view to consolidating the development plans formulated by the urban and rural local self-governments and formulating a master development plan of the district as a whole. Therefore, the district planning committee prepares the draft development plans regarding the matters of common interest between the urban and rural local bodies, sharing of physical and natural resources, and the integration of infrastructural facilities for development (Govt. of India, 1993).

Metropolitan Planning Committee:

The Act provides for the constitution of Metropolitan Committees at every metropolitan centre (with a population of ten lakhs or more) for preparing draft development plans for the metropolitan region as a whole. Such committees are preparing draft development plans by considering the factors such as plans prepared by the rural and urban local bodies in the metropolitan region, matter of common interests among such rural and urban bodies, overall developmental aims and priorities set by the Central and State Governments, integrated development of infrastructure facilities and sharing of physical and natural resources (Govt. Of India, 1993).

In order to allow time to make changes to be made in the then prevailing legal framework which were inconsistent with the conditions of the 74th Constitutional Amendment Act, a transformation term of one year was allotted. After the commencement of the 74th Constitutional Amendment Act on 1st June 1993, the Ministry of Urban Development took immediate measures to ensure that the municipal laws of state governments are brought in conformity with the legal framework of the aforesaid Act. As a result of several institutional measures taken by the Ministry of Urban Development by correspondence and also conducting joint sessions of delegates and officials from both Central and State Governments, the State Legislatures brought in place the conformity legislative enactments by the target date. Thus, the 74th Constitutional Amendment Act resulted in the constitutional establishment of a stable and powerful institutional framework at the state level for urban local governance in India (Areeba, Hamid, 2004).

Conclusion

As an institutional impact of the 74th Constitutional Amendment of India, the urban local governance in India empowered with more statutory authorities and functions. Such statutory functions include developmental functions, regulatory functions, and community functions. By developmental functions, the urban local bodies exercise many activities like sanitation, water supply, housing programmes, street lighting, etc. By regulatory functions, the municipal institutions are carrying out the administration of taxes, fees, and tolls for raising urban governance. By community functions, the urban governments at the local level implement many community-oriented activities such as social welfare programs, poverty eradication programs, urban crime reduction, etc. Besides, since the 74th Constitution Amendment Act, the municipal institutions have been executing many institutional functions by their statutory subcommittees in order to maintain the local civic administration of the urban centers. However, it is important to analyze whether these institutional reforms in urban local governance are actually touching the desired urban life of local communities, because even the Constitutional provisions are often failed to ensure the meaningful devolution of power or local democracy in India. Therefore, the frequent institutional encroachment on the assigned powers and resources of local governing bodies by specialized agencies of the Central and State Governments, especially in the urban sector still hindering the process of democratic local governance.

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