

EXECUTIVE SUMMARY

Urban local bodies/municipalities play an important role in the planning and development of urban areas. However, most studies undertaken to assess the functioning of municipalities in India point out that the performance of municipalities in the discharge of their duties has continued to deteriorate over time. It is noted that municipalities in India are confronted with a number of problems, such as inefficiency in the conduct of business, ineffective participation by the weaker sections of the population in local governance, weak financial condition, lack of transparency in the planning and implementation of projects, etc., which affect their performance adversely.

An important initiative of the Government of India to strengthen municipal governance is the enactment of the Constitution (74th Amendment) Act (CAA) in 1992. Until the recent amendment, local governments in India were organised on the basis of the '*ultra vires*' principle [beyond the powers or authority granted by law] and the state governments were free to extend or control the functional sphere through executive decisions without an amendment to the legislative provisions. Through this initiative, an attempt is being made to improve the performance ability of municipalities, so that they are able to discharge their duties efficiently.

The important provisions specified in the Act include constitution of three types of municipalities, devolution of greater functional responsibilities and financial powers to municipalities, adequate representation of weaker sections and women in municipalities, regular and fair conduct of municipal elections, and constitution of Wards Committees, District Planning Committees, Metropolitan Planning Committees and State Finance Commissions.

The Constitution (74th Amendment) Act, 1992 provisions, thus, provide a basis for the State Legislatures to guide the State Governments in the assignment of

various responsibilities to municipalities and to strengthen municipal governance. Accordingly, several State Governments have amended their Municipal Acts/Laws/Legislations so as to bring these in conformity with the Constitutional Provisions.

Interestingly, a review of literature reveals that till date a systematic attempt to assess the impact of the 74th Amendment Act provisions on the working of municipalities has not been undertaken at the all-India level. The literature review further shows that piece-meal studies have been undertaken on the subject after the enactment of the Act. It is also learnt that the municipalities are confronted with a number of problems, despite the amendments in the State Municipal Acts and the implementation of the 74th CAA provisions. For instance, in several States, there exists a problem of ineffective participation in the decision-making process despite adoption of the policy of reservation, delays in the transfer of funds to the municipalities despite constitution of State Finance Commissions, poor recovery from various tax and non-tax sources despite devolution of powers, etc. It is further learnt that there is an influence of various social, economic and political factors on the functioning of municipalities in India. Considering these local-level issues of governance as relevant, it is essential to examine the impact of the Constitution (74th Amendment) Act in different states of India.

In this study, the impact of the 74th CAA is assessed for a total of twenty-seven States and one Union Territory (UT) of India. The state of Jammu and Kashmir was not included in the study. The National Capital Territory of Delhi, which is classified as a Union Territory by the 2001 Census of India, has been covered in this study.

The main problem faced in assessing the impact of the 74th Amendment Act was the non-availability of data on some aspects of the 74th Amendment Act provisions. This problem was noted especially in the case of most north-eastern

states and the newly created states of Chhatisgarh, Jharkhand and Uttaranchal. There are a number of states where desegregated data on the number of male and female councilors/chairpersons belonging to SC, ST, BC and general category are not maintained properly. Similarly, adequate information is not maintained on the devolution of functional responsibilities and financial powers to ULBs.

The analysis of the data collected throws light on the performance of different state governments on the compliance/implementation of the Act provisions.

Table 1 given below tabulates the state-wise compliance of the 74th Amendment Act provisions. It may be noted that some important provisions of the Act have been included in the table. These are: constitution of ULBs; reservation of seats in ULBs, regular conduct of elections, constitution of WCs, DPCs, MPCs and SFCs. Some other important provisions, such as devolution of powers and functions to ULBs, have not been included in the table due to a lack of adequate information. The information provided in the Table shows that some states have performed better than others. An important observation is that while there has been full compliance in respect of provisions, such as constitution of three types of ULBs, reservation of seats, and constitution of SFCs, the same cannot be said for other provisions, namely constitution of Wards Committees, District Planning Committees and Metropolitan Planning Committees. It may be stated that the state of West Bengal has shown full commitment and a high compliance of the provisions.

Furthermore, urban local governments now comprise of persons with diverse backgrounds, namely the elected members (such as the Mayor, President and Councillors, who are representatives of citizens), the nominated members (who are selected by the state government from amongst persons having special knowledge or experience in municipal administration) and the ex-officio members (such as the MPs and the MLAs, who are responsible for spending funds

received from the government on various development works within their constituency). Moreover, seats in urban local governments have been reserved (for the posts of Mayor, President and Councillors) for persons belonging to the scheduled caste, scheduled tribe, backward class and women categories. By introducing these changes in the composition of urban local governments, the main objective of the government is to create a representative government at the local level, which is capable of addressing the needs of all sections of the society.

Table 1: State-wise Compliance of the 74th Amendment Act Provisions

S. No.	State/UT	Constitution of ULBs	Reservation of Seats	Regular Conduct of Elections	Constitution of WCs	Constitution of DPCs	Constitution of MPCs	Constitution of SFCs
1	Andhra Pradesh	✓	✓	✓	✓			✓
2	Arunachal Pradesh#					✓		✓
3	Assam	✓	✓	✓		✓		✓
4	Bihar	✓	✓	✓		✓		✓
5	Chhatisgarh	✓	✓		✓	✓		✓
6	Delhi	✓	✓	✓	✓			✓
7	Goa	✓	✓	✓				✓
8	Gujarat	✓	✓	✓				✓
9	Haryana	✓	✓	✓		✓		✓
10	Himachal Pradesh	✓	✓	✓				✓
11	Jharkhand	✓	✓					✓
12	Karnataka	✓	✓	✓	✓	✓		✓
13	Kerala	✓	✓	✓	✓	✓		✓
14	Madhya Pradesh	✓	✓	✓	✓	✓		✓
15	Maharashtra	✓	✓	✓	✓			✓
16	Manipur	✓	✓	✓				✓
17	Meghalaya @							
18	Mizoram @ #							
19	Nagaland @							
20	Orissa	✓	✓	✓		✓		✓
21	Punjab	✓	✓	✓				✓
22	Rajasthan	✓	✓	✓		✓		✓
23	Sikkim #							✓
24	Tamil Nadu	✓	✓	✓	✓	✓		✓
25	Tripura	✓	✓	✓				✓
26	Uttaranchal	✓	✓	✓				✓
27	Uttar Pradesh	✓	✓	✓				✓
28	West Bengal	✓	✓	✓	✓	✓	✓	✓

Notes:

1. # - There are no municipalities in the state.
2. @ - The 74th Amendment Act provisions have not been applied to certain Scheduled Areas and the Tribal Areas of India.
3. Status of information provided in the table is based on data collected over a period of time (i.e., during the year 2004 and up to August 2005 and may therefore not tally with the latest position in the different states of the country.

Empowerment of municipalities through functional devolution is an important objective of the 74th CAA. The Twelfth Schedule of the 74th CAA, which consists of a list of 18 functions, has been inserted to guide state governments in the assignment of various functional responsibilities to municipalities. In response, most state governments have included the 18 functions in the list of duties to be performed by municipalities. Activity mapping of the 18 functions among the three tiers of municipalities is currently underway (i.e., a number of activities have been identified within each function and actions are being taken for implementation). This analysis shows that some functions have been transferred to the municipalities and are being performed by them in consultation with the respective state government departments. In a few states (for example, Uttar Pradesh and West Bengal), some functions listed in the Twelfth Schedule (such as town planning, urban poverty alleviation, provision of urban amenities, vital statistics, etc.) were already being performed by the municipalities before the enactment of the 74th CAA.

The analysis on the functioning of State Finance Commissions in different states of the country reveals that although the major thrust is given on strengthening the financial condition of municipalities, there is also an emphasis on improving their overall management capabilities. Further, the action taken reports prepared to assess the status of SFC recommendations show that the proportion of recommendations accepted (either fully, partly or in a modified form) is much higher than those which have not been accepted. Decisions to accept or reject a recommendation lies with the state government and is based on a number of factors, such as the financial condition of the state/local government, priority areas of concern, etc.

The major findings of the study are listed below:

- The total number of ULBs in 27 states and one UT of India is 3013. Uttar Pradesh has the highest number of ULBs, i.e., 628, followed by Madhya Pradesh (334), Maharashtra (247), Karnataka (222), etc. Among the states,

the total number of ULBs is the lowest in Tripura, i.e., 13. Municipal corporations exist in all states except in Manipur and Tripura (see Table 2.1). The total number of Municipal Corporations, Municipal Councils and Nagar Panchayats in the states/UT under study is 111, 1537 and 1365 respectively. Maharashtra has the highest number of corporations, i.e., 22, which is followed by Madhya Pradesh (14) and Uttar Pradesh (12). Data on municipal councils show that their numbers are high in Maharashtra, Uttar Pradesh, Tamil Nadu, Gujarat, Karnataka, West Bengal and Andhra Pradesh. The number of nagar panchayats is high in Uttar Pradesh, Madhya Pradesh and Rajasthan.

- It is obvious that the number of councilors in the three types of ULBs is high in the larger states of the country. The data confirm the fact that seats have been reserved for some sections of the society (i.e. SC, ST, BC, women) in municipalities throughout India. State-wise data on councilors show that: in municipal corporations, total number is high in Maharashtra, Uttar Pradesh, and Madhya Pradesh; in municipal councils, total number is high in Maharashtra, Uttar Pradesh and Tamil Nadu; and in nagar panchayats, the total number is high in Uttar Pradesh, Madhya Pradesh, Bihar and Karnataka (see Table 2.2).
- The state governments have amended their municipal Acts as per guidelines given in Article 243 – T of the 74th Amendment Act and provided for reservation for the scheduled castes, scheduled tribes, and women in ULBs. In the states of Assam, Bihar, Jharkhand, Uttaranchal and Uttar Pradesh, seats have also been reserved for the backward classes.
- The elected heads (Mayor in Corporations and Chairman in Councils) are chosen in two ways – (a) elected from amongst the councilors (i.e., indirect election); and (b) elected from amongst eligible voters in the urban area (i.e., direct election). In the Corporations of Bihar and West Bengal, Mayor is elected from amongst the councillors. In Jharkhand, Uttaranchal, and Uttar Pradesh, the Mayor is chosen by direct election. Similarly, in municipal councils of Assam, Bihar, Manipur, Sikkim, Tripura and West Bengal, the

chairman is elected from amongst the councillors. The chairman is chosen by direct election in Uttaranchal and Uttar Pradesh. Councillors in the two types of ULBs are chosen by direct election (see Table 2.4).

- Except the states of Chhatisgarh and Jharkhand, elections to municipalities in the other states are being conducted regularly. In the large states (such as Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, etc.), elections are held in stages due to a large number of ULBs. Elections are also conducted as and when a local body is constituted. For example in Bihar, elections were conducted in three newly constituted Nagar Panchayats during the year 2005 (see Table 2.5).
- A review of relevant sections pertaining to the duties of Municipal Corporations and Municipal Councils given in the Municipal Acts of states under study shows that the 18 functions given in the twelfth schedule have been included in the list of duties of ULBs. Furthermore, activity mapping of the 18 functions among the three tiers of ULBs is currently underway, i.e., a number of activities have been identified within each function and actions are being taken for implementation. Some functions have been transferred to the ULBs and are being performed by them in consultation with the respective state government departments. Some other functions are being performed exclusively by the concerned state department (see Table 2.6). It is also learnt that in some states (for example Uttar Pradesh and West Bengal), some functions listed in the twelfth schedule (such as town planning, urban poverty alleviation, provision of urban amenities, vital statistics, etc.) were already being performed by the ULBs before the enactment of the 74th Amendment Act.
- A review of Municipal Acts of the states under study shows that the ULBs were already empowered to levy various taxes, fees and tolls before the enactment of the 74th Amendment Act (see Table 2.7 and 2.8).
- The Municipal Acts of the states under study show that provisions related to the constitution of WCs have been incorporated. It is also learnt that rules for the constitution, composition and functioning of wards committees have been

formed by the state legislatures of Uttar Pradesh and West Bengal. Available data show that WCs have been constituted in a total of 8 states and one UT of India. These include Andhra Pradesh, Chhatisgarh, Delhi, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Tamil Nadu and West Bengal. Generally, members of WCs comprise the elected ward representatives (i.e., councillors) and nominated members. In the states of Karnataka, Kerala, and Maharashtra, a higher level of participation is observed, where members of NGOs, CBOs, neighbourhood groups, heads of educational institutions, persons from agriculture, industry, health, trade unions, etc., have also been associated. On the other hand, the deputy commissioner is the head of the executive wing of the WCs. WCs have been assigned several responsibilities, such as maintenance of civic services, revenue collection/assistance in tax collection, drafting of annual budget, slum improvement, public grievances, formulation and execution of development schemes, monitoring the implementation of development programmes, recommendations on proposals regarding estimates of expenditure, granting approval and financial sanction to plans and municipal works, scrutiny of monthly progress report, etc. Some information is available on the functioning of wards committees in different states of India. It is learnt that in the southern states, they are functional in Tamil Nadu and in Kerala. In Andhra Pradesh and Karnataka, they are practically not functional except in Hyderabad and in Bangalore municipal corporations. In the case of Bangalore, it is further learnt that they are neither meeting regularly, nor working effectively. It may be stated that Kerala is a unique example, where WCs have been constituted in every ward and in towns with a population of more than a lakh. In the case of Chhatisgarh, it is learnt that although WCs have been constituted in Raipur Municipal Corporation, no responsibilities have been assigned to them and no budgetary allocation is being given. In fact, they are completely non-functional.

- In response to the 74th Amendment Act provisions, SFCs have been constituted in all states under study except the three north-eastern states of

Meghalaya, Mizoram and Nagaland (see Table 2.10). This is due to the reason that Article 243 – ZC of the 74th Amendment Act and Article 243 – M (2) of the 73rd Amendment Act do not allow state governments to apply Part IX (The Panchayats) and Part IX – A (The Municipalities) to certain scheduled areas and the tribal areas of the country. It may be stated that although the major thrust is given by SFCs on strengthening the financial condition of ULBs, there is also an emphasis on improving their overall management capabilities. It is observed from a review of both the first and the second ATRs that the proportion of recommendations accepted (either fully, partly or in a modified form) is much higher than those which have not been accepted (see Table 2.12). It may be mentioned here that the decision to accept or reject a recommendation lies with the state government and is based on a number of factors, such as the financial condition of the state/local government, priority areas of concern, etc. The data given in Table 2.12 show that acceptance of first SFC recommendations is between 80 to 100 per cent in Tripura, Uttaranchal, Uttar Pradesh and West Bengal and less than 50 per cent in Assam and Orissa.

- DPCs have been constituted in a total of 12 states of India (Table 2.14). These include Arunachal Pradesh, Assam, Bihar, Chhatisgarh, Haryana, Karnataka, Kerala, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and West Bengal. The members of DPCs vary among the states. They generally comprise the minister-in-charge of district, mayor of corporation, chairperson of council, chairperson of zilla parishad/panchayat, elected members of local bodies (both rural and urban), special invitee members (i.e., MPs, MLAs, MLCs), nominated members, divisional commissioner, deputy commissioner, additional deputy commissioner, district collector, district planning officer, district statistical officer, etc. Insofar as the functioning of DPCs is concerned, it is understood that in Karnataka, Kerala and Tamil Nadu, DPCs have been constituted and technically they are functioning. However, it is learnt that in Karnataka they have not been functioning as expected. In fact, Kerala is the only state in the south where DPCs are active and functional. In the case of

Madhya Pradesh, it is learnt that the DPC has no executive powers. In Chhatisgarh, the DPCs are not functioning at all and no meetings of DPCs are being held.

- MPC has been constituted only in the state of West Bengal (Table 2.15). The Kolkata metropolitan planning committee (KMPC) comprises 60 members, including the chief minister of state, minister-in-charge of municipal affairs and urban development, elected members of local bodies and nominated members. Of the 60 members, 2/3 members are elected and 1/3 are nominated. Chief Minister of the state is the Chairman of KMC and the Minister-in-charge of Municipal Affairs and Urban Development Department of the state is the Vice-Chairman. Kolkata Metropolitan Development Authority (KMDA) is the technical secretariat of KMPC and Secretary, KMDA is the Secretary of KMPC.
- In most states reforms have been suggested to overcome the problems faced by ULBs. These include financial reforms (including property tax, accounting – double entry, issuance of bonds, rationalisation of stamp duty, levy of reasonable user charges); private sector participation in service delivery, contracting of services, computerisation of municipal records, training and capacity building, etc. (see Table 2.16).