

Evaluating 74th constitutional amendment act



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Two sides of the same coin: Evaluating 74th Constitutional Amendment Act

Abstract:

To strengthen the position of urban governance in a more organized manner, the government of India took a pivotal initiative through the enactment of the 74th Constitution Amendment Act. In this paper I attempt to analyse the role of 74th constitutional amendment in increasing the functionality, authority and efficiency of the urban local bodies, in terms of the powers rendered to the urban local bodies under the 74th constitutional amendment. I attempt to analyse the effective and efficient implementation of the 74th constitutional amendment by including a small case study of urban governance in the city of Chandigarh, Punjab.

Introduction:

The system of local service delivery through the means of local government bodies began with a Budget Speech by a member of viceroy's council Samuel Laing, he proposed that local services should be based on local resources. Local governance bodies have been a part of Indian governance system since the British Era, the first Municipal Corporation was set up in Madras in 1688 followed by Bombay and Calcutta. In the beginning local governance bodies were mere implementation instrument of state government's activities but since the introduction of the 74th Constitutional Amendment Act, there has been a change in this status quo.

Since the early 1990s there has been a lot of initiative undertaken by the Government of India which were aimed at decentralisation of urban

governance, this was the part of adoption of neo-liberal policies adopted by the government after facing failure of the state-led development model, as for under this model the government kept its role secondary giving more importance to market oriented approaches. Under this step taken by the Government of India enactment of the 74th Constitutional Amendment Act, was one such initiative, this gave constitutional recognition to urban local bodies and a constitutional right to exist.

A new Twelfth Schedule to the Constitution provides recommended list of local functions.

Under the 74th Constitutional Amendment Act, it requires the state governments of all the states to amend their respective municipal laws so as to increase the powers and authority of the urban local bodies, as quoting the line for the 74th Constitutional Amendment Act “with such powers and authority as may be necessary to enable them to function as institutions of self-governance”.

The 74th Constitutional Amendment Act provides a base to the state the ability to transfer certain responsibility and authority to the urban local bodies i. e. municipalities in order to provide a strong base for municipal local governance in cities, in this regard several state government has amended their state legislature in the same regard. Under Jawaharlal Nehru National Urban Renewal Mission, it is mandatory to undertake the 74th Constitutional Amendment Act and implement in the respective state legislatures. It is under the article 243ZE of the constitution which requires all the state governments to review the existing municipal laws and either

repeal or modify those which are inconsistent with the provision of 74th Constitutional Amendment Act within one year from the commencement of the Act.[1]

74th Constitutional Amendment Act in a nutshell: Features and Issues

Features of 74th Constitutional Amendment Act

74th Constitutional Amendment has been constituted in congruence with the idea of new public management. Under this concept the major role the state play is of withdrawing itself from directly influencing the market activities and let demand and supply correct the course of market. One of the features of this concept is that the government breaks down the huge monolithic government bureaucracies, which refers to heavy decentralisation of responsibilities and authorities. According to my understanding the enactment of the 74th Constitutional Amendment Act is very much influenced by this characteristic of new public management. Before the enactment of 74th Constitutional Amendment Act the role of urban local bodies was merely of implementation of activities undertaken by state and national government.

Constitutional status has been granted to the urban local bodies under the 74th Constitutional Amendment Act, under which a three tier structure of the urban local bodies has been envisaged. Formation of Municipal Corporation for larger area with higher populations the example of this can be Ahmedabad Municipal Corporation, and creation of municipal councils for

smaller areas which includes towns like Upleta in Gujarat, and creation of village panchayats for villages that are in transitions to become towns.

Under this amendment the governing members of the municipal corporation are being elected by the people through an election in a similar way in which the members of the lok sabha are elected, the election is conducted, managed and regulated by the state election commission. This indicates that the democracy has established deep roots in the political system of the country.

Under article 243Y, it makes it mandatory for every state to establish a state finance commission as it is defined by article 243I. The function of the state finance commission is advising the Governor of the state regarding the distribution of funds between state and municipalities which also includes the revenue generated from tolls, taxes and duties. The state finance commission also acts as a auditing organisation which scrutinises the employment of the finances to the urban local bodies.

The 74th Constitutional Amendment Act in its article 243ZD and 243ZE makes it mandatory to form committee for district planning in each district and committee for metropolitan planning in every metropolitan area. These committees endeavour to provide newer dimension for the role of citizens and its elected representatives in preparation of plans for their respective regions, infrastructure plan being it most important component. It is sometimes that cities in the same districts share certain natural resources or problems like allocation of water, waste management which might create overlapping situations; it is the function of committee for district planning to

cater to such scenarios. Whereas committee for metropolitan planning caters to the increasing infrastructure and amenities demand in metropolitan cities due to expansion of its boundaries or population.

Under this act the urban local bodies are endowed with responsibilities for formulation and implementation of schemes for economic and social development, the subjects for the same have been specified under the 12th schedule i. e. article 243W.

Issues in the 74th Constitutional Amendment Act

The enactment of the 74th Constitutional Amendment Act marks a transformation in the role of urban local governing bodies in terms of the urban governing bodies being constitutionalised and substantial authorities being granted to them under the act regarding decision making to acquiring finance, but still certain questions remained unanswered.

The first issue in implementation of the act is the identification and demarcation rural and urban areas. In states like Gujarat, West Bengal, Kerala, approximately two third of towns are non-municipal towns.[2] Even though these towns in these states have higher prevalence of non-agricultural activities these town are not recognised as cities and are still under the status of villages, this is because under the status of villages the state government can sanction grant for implementation of projects for rural development like MNREGA, NREGA etc. while on the other hand if these area are classified as cites the states would not be able to sanction money for such developmental activities from the government and the state itself will be responsible to provide grants for further infrastructure development in

these newly formed cities. The implication of this is that the local bodies lose out on better sources of finance. Therefore due to the vested interest of the members of the political structure of the state barriers are created in the implementation of the 74th Constitutional Amendment Act.

The 74th Constitutional Amendment Act makes the urban local bodies responsible not only for mere implementation of the state directives, but also makes them responsible for carrying out activities for social and economic development under 18 subject mentioned under schedule 12 i. e. article 243W, but the act does not make it clear how the three tier bodies i. e. municipal corporations, municipal councils and nagar panchayats will work in synchrony in order to accomplish this tasks. The act leaves it to the discretion of the state to work out the arrangement in this regard.

One of the objectives of enacting 74th Constitutional Amendment Act was increasing people and private participation in urban planning, but due to public and private organisations being suspicious about the functioning of the urban local bodies, there has been no significant change in this regard.

Case Study: Implementation of 74th Constitutional Amendment Act in Chandigarh

I have adopted the following case study from an article by Deepak Sharma titled as: An Evaluation of 74th Constitutional Amendment Act: A Case Study of Chandigarh, India

Background

Chandigarh is a union territory and a joint capital of the state of Punjab and Haryana. With around 9, 00, 000 population it is one of the fastest growing <https://assignbuster.com/evaluating-74th-constitutional-amendment-act/>

city. The municipal corporation of Chandigarh was formed in 1994 and its jurisdictional area is around 79.34 kms. The municipal corporation of Chandigarh came into being after passing of Punjab Municipal Corporation Law ordinance, 1994 under the Punjab Municipal Corporation Act, 1976.

The functioning of the Chandigarh Municipal Corporation is done by formation of various committees that are allocated with different tasks for the governance of the city. The example committees under the Chandigarh municipal corporation are as follows:

1. Water Supply and Sewerage Committee
2. Roads Committee
3. Slum Development Committee
4. Fire Services Committee
5. Environment & City Beautification Committee
6. House Tax Committee
7. Finance Committee
8. Contract Committee

Report of findings

Under the 74th Constitutional Amendment Act, the urban local bodies are also charged with activities of social and economic development for the empowerment of the citizens of the particular cities, but in Chandigarh there has been incongruence with the mandates of the act, where the Chandigarh Municipal Corporation has been partially endowed with such responsibilities education and health and the Chandigarh administration maintains a monopoly, this leads to overlapping functions, and it is conceptually against what has been mandated in the 74th Constitutional Amendment Act.

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As per the 74th Constitutional Amendment Act, the members of the urban local bodies have to be elected by the people of the city, this what has been implemented in the Chandigarh Municipal Corporation as well, but as the members of the municipal board belong to different political parties, there has been difference of opinion regarding decision making and implementation of project, which in turn delays or either sabotages the developmental or infrastructural initiative by the Chandigarh municipal corporation at times, here there has not been a failure of the act, but this is because of different political parties acting as per their own vested interest.

The municipal corporation in Chandigarh faces issue of funds accumulation because of two reasons. The first being that the funding grants are in the hands of Chandigarh administration which at times end up either blocking or delaying transfer of funds to the Chandigarh municipal corporation and the second being the inefficient state finance commission. Even if the funds are being allocated only a small fraction is employed in implementation of project as due to the layer of political agents that end up utilising funds from their own purposes.

As mentioned above that the Chandigarh municipal corporation has been facing dearth of funds, one of the reason is that the municipal corporation has failed to recover tax arrears, majorly these tax arrears has been because there has been defaulters amongst liquor vendors and water tariffs. Thus this implies 1) there is an improper record system in the Chandigarh municipal corporation leading to arrears as large as \$112, 375, 000[3], 2) extensive corruption.

Conclusion:

From the information about the enactment, features, flaws of the 74th Constitutional Amendment Act, and by presenting the case study of Chandigarh Municipal Corporation, I finally conclude that the 74th Constitutional Amendment Act is apt in its spirit of empowerment and decentralisation of function and responsibilities to the urban local bodies, but there lies an issue with the effective implementation of the act. In this regard the blame can be given to the still existing beauracracic structure of governance in India leading to rent seeking and red-tapping, but along with this there has been lack of awareness and motivation amongst the public which are an equal part of the governance system.

Appendix:

References

[1]Article: Implementation of the 74th Constitutional Amendment and Integration of city planning and delivery functions.

[2]Adopted from article: Features of 73rd and 74th Constitutional Amendment

[3]Figure adopted from Article: Evaluation of 74th Constitutional Amendment Act: A Case Study of Chandigarh, India by Deepak Sharma