



## 74<sup>TH</sup> AMENDMENT AND MUNICIPALITIES IN MAHARASHTRA *CONSTITUTING CIVIC BODIES ACCORDING TO NEW STATUTES*

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### Abstract

*The Constitution 74<sup>th</sup> Amendment Act has earned laurels by urban experts in India. It claims to have brought about positive changes in civic governance. It has developed the urban local institutions in the country. It has improved the political set up and the functional domain of the urban local governments. The State of Maharashtra has already implemented the law. We need to assess if the process of implementation has moved in the direction of achieving the objective. It was expected to streamline the financial status of these bodies and upgrade the urban planning norms in the country. It has surely accorded constitutional status and recognition to the urban local bodies. We need to see if it has brought about administrative uniformity in the realm of urban governance in the country. We also need to ensure that the legislation is implemented in its letter and spirit.*

**Keywords:** *74<sup>th</sup> Amendment, urban governance, Municipal Corporation, Central legislation, fiscal arrangements, urban local bodies, municipal corporation, urban planning, functional domain, District planning committee, civic governance, municipal council, Nagar Panchayats*



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With an objective to conform to the Article 243-Q of the Constitution (74<sup>th</sup> Amendment) Act, 1992, which provides for the 'Constitution of Municipalities' from Clause (1) to Clause (2), the State Legislature of Maharashtra enacted the Conformity Legislation formally known as 'Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994. This Act came into force in the state with effect from 31<sup>st</sup> May, 1994 which in fact was the deadline for all the states and union territories to conform to the constitutional amendment. The State Act itself identified the relevant provisions in the then existing four Municipal Laws and suitably amended them. The then existing municipal laws which were amended are as follows.

- a. 'The Bombay Municipal Corporation Act of 1888'

- b. 'The Bombay Provincial Municipal Corporation Act of 1949'
- c. 'The City of Nagpur Corporation Act of 1948'
- d. 'The Maharashtra Municipal Councils Act of 1965'

The Conformity Legislation provided for constituting three types of urban local bodies as required by the 74<sup>th</sup> CAA. It provided that, (a) a municipal corporation will be constituted in larger urban areas as specified by the State Government, (b) a municipal council is to be constituted in smaller urban areas again specified by the State Government, (c) a Nagar Panchayat, a new type of municipality, was to be constituted in those areas which were in transition from rural to urban. (Jha, 2018, pp.34-37)

The Bombay Municipal Corporation Act, 1888, which is one of the oldest Municipal Acts in the country, is an exclusive Act for Mumbai City. There are some justifiable historical and technical reasons for preserving this Act. It is applicable only to 'Brihan-Mumbai' whose boundaries have been identified and defined by the Bombay High Court from time to time. The BMC is 'deemed to have been constituted and governed according to the provisions of this Act.' The provisions of this Act were suitably amended in order to confirm to the provisions of the 74<sup>th</sup> CAA through the Conformity Legislation as mentioned above with effect from May 31<sup>st</sup>, 1994. However, this Act has undergone further amendments several times subsequent to the passage of conformity legislation. Currently, the Act is titled as 'Mumbai Municipal Corporation Act, 1888.'

The then Bombay Provincial Municipal Corporation, 1949, which once provided for the establishment of 'Municipal Corporations' in the State of Maharashtra except the City of Mumbai and Nagpur, was suitably amended to incorporate all the provisions as mentioned in the 74<sup>th</sup> CAA. The Act provides that every 'larger urban area specified by the state govt under sub-section-2' of the Act, will be a city and there will be a 'Municipal Corporation' for such 'larger urban areas.' Subsequently, however, this Act has further undergone several amendments. It is now titled as 'Maharashtra Municipal Corporation Act, 1949' and it is deemed to include all the provisions of the 'City of Nagpur Municipal Corporation Act, 1948' which stands repealed. (Notification, Dept of Urban Development)

The City of Nagpur Municipal Corporation Act, 1948, the then exclusive Act for the city of Nagpur for historical reasons, was suitably amended and all the relevant provisions of this Act were brought into congruence with that of the 74<sup>th</sup> CAA. This Act was later merged with the 'Maharashtra Municipal Corporation Act, 1949' for facilitating uniformity of constitution and governance in matters related to the 'municipal corporations' in Maharashtra. Currently, the

‘City of Nagpur Municipal Corporation’ is deemed to have been constituted and governed according to the provisions of the ‘Maharashtra Municipal Corporation Act, 1949.’ (Notification, Govt of Maharashtra)

Similarly, the then ‘The Maharashtra Municipal Councils Act, 1965’ was suitably amended to incorporate all the provisions pertaining to the Municipal Councils in the state of Maharashtra. The Act provided details in relation to constituting a municipal council for a smaller urban area as specified in sub-section -2 of Section-3 of this Act. However, the Act subsequently, underwent amended and further enlargement to accommodate other provisions of the 74<sup>th</sup> CAA. ‘After the required amendment’ the Act is currently known as ‘The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965’.

The ‘Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965’, now provides for ‘constituting a ‘Nagar Panchayat’ for a transitional area as notified ‘under section 341-A of this Act.’ An area which is changing from rural to urban, will be identified and duly notified as transitional area based on certain norms by the state government. (Janice, 2008, pp.43-44)

As of now, all the Municipalities in the State of Maharashtra are constituted and governed according to the following three laws. There is only one law which is common for the ‘Municipal Councils and the Nagar Panchayats’. The municipal laws which are currently enforced in the state are as follows.

- i. ‘The Mumbai Municipal Corporation Act of 1888’
- ii. ‘The Maharashtra Municipal Corporations Act of 1949’
- iii. ‘The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act of 1965’

‘The Article 243-Q of 74<sup>th</sup> CAA provides that a municipal corporation is to be constituted for a larger urban area.’ However, the 74<sup>th</sup> CAA did not specify the criteria for determining the ‘larger urban area’. It was left to the state for working out the details. The sub-section-2 of Section-3 of the Maharashtra Municipal Corporations Act, 1949, provides that ‘any urban area with a population of not less three lakhs’ will be specified as a larger urban area. ‘Section 2A provides that every larger urban area as specified by the state government under sub-section-2, will constitute a city’ and there will be a municipal corporation for such larger urban areas.’ However, ‘such larger urban areas will have to be first declared a ‘city’ by the state government.’ The conformity legislation also provides that a ‘municipal corporation will be constituted for a larger urban area known as city.’ (James, 1999, pp.22-25)

In order to further implement this particular provision, the Government of Maharashtra began to identify municipalities which had already fulfilled the criterion of population and still they were being governed by a Municipal Council. A closer look at the list of municipal corporations in Maharashtra indicates that there were only 12 municipal corporations prior to the process of implementation of the 74<sup>th</sup> CAA. There was an addition of 15 municipal corporations in the state as part of the process of implementation of the 74<sup>th</sup> CAA. The following table shows the list of municipal corporations constituted in the pre and post 74<sup>th</sup> amendment era. The process of the formation of these municipal corporations has been different in different places. There were some municipal corporations which were just upgraded from municipal council to the status of municipal corporations. There were some municipal councils which had to be created after combining two or more municipal councils together in order to qualify to reach to the status of municipal corporation in terms of fulfilling the population criteria.

**Impact of 74<sup>th</sup> CAA on the formation of Municipal Corporation in Maharashtra**

Sr. No.	Municipal Corporations constituted <i>before</i> 31 <sup>st</sup> May, 1994	Year of Establishment	Sr. No.	Municipal Corporations constituted <i>after</i> 31 <sup>st</sup> May, 1994	Year of Establishment
1.	Mumbai Municipal Corporation	1888	1.	Vasai-Virar Municipal Corporation	2009
2.	Pune Municipal Corporation	1950	2.	Mira-Bhayandar Municipal Corporation	2002
3.	Nagpur Municipal Corporation	1951	3.	Bhiwandi-Nizampur Municipal Corporation	2002
4.	Thane Municipal Corporation	1982	4.	Nanded-Waghala Municipal Corporation	1997
5.	Pimpri-Chinchwad Municipal Corporation	1982	5.	Akola Municipal Corporation	2001
6.	Nashik Municipal Corporation	1982	6.	Panvel Municipal Corporation	2016
7.	Kalyan-Dombivali Municipal Corporation	1982	7.	Ulhasnagar Municipal Corporation	1998
8.	Aurangabad Municipal Corporation	1982	8.	Sangli-Miraj-Kupward Municipal Corporation	1998
9.	Navi-Mumbai Municipal Corporation	1992	9.	Malegaon Municipal Corporation	2003
10.	Solapur Municipal Corporation	1964	10.	Jalgaon Municipal Corporation	2003
11.	Amravati Municipal Corporation	1983	11.	Latur Municipal Corporation	2011
12.	Kolhapur Municipal Corporation	1972	12.	Dhule Municipal Corporation	2003

-	-	-	13.	Ahmednagar Municipal Corporation	2003
-	-	-	14.	Chandrapur Municipal Corporation	2011
-	-	-	15.	Parbhani Municipal Corporation	2011

*Source: Official Websites of Dept of Urban Development, Govt of Maharashtra*

Similarly, in accordance with the provision Article 243-Q, Clause (1) and sub-clause (b), of Constitution (74<sup>th</sup> Amendment) Act, 1992, ‘there shall be constituted in every state, a Municipal Council for a smaller urban area.’ The conformity legislation of Maharashtra has confirmed this provision and the relevant state Act. ‘The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965’ in its ‘sub-section (2) of section (3)’, defines a municipal council as a municipality ‘constituted for a smaller urban area specified by the state government.’

The Chapter II of the State Act, ‘The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965’ in its Section-3, clause (1) says that that, ‘a council for every smaller urban area existing on the date of coming into force of ‘the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994’ mentioned as smaller urban area in the government notification mentioned in Article 243-Q of the Constitution, will be deemed to be a duly constituted Municipal Council.’ The Act provides that:

- The population of such area is not less than 25000’; and
- ‘The percentage of occupation in non-agricultural activities in such area is not less than 35 %’.

‘Section (4) clause (1) further provides that every smaller urban area will be classified by the state government as ‘A Class’, ‘B Class’, or ‘C Class’, on the basis of population’. Thus, small urban area, -

- ‘With population of more than 100,000 will be ‘A Class’ smaller urban area.’
- ‘With population of more than 40,000 but not more than 100,000 will be ‘B Class’ smaller urban area’
- ‘With population of 40,000 or less, will be a ‘C Class’ smaller urban area.’

In the process of implementing the relevant provisions of the State Act, the state government had to do a lot of ground work in terms of ascertaining the actual population of the area in order to specify the status of an urban area. ‘The entire process took quite some time.’ According to the sources of Department of Urban Development, Government of Maharashtra, in pre-74<sup>th</sup> amendment era, that is pre 31<sup>st</sup>, 1994 period, there were 228 Municipal Councils, out of which

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12 got upgraded as ‘Municipal Corporation’ as they exceeded their population beyond three lakhs and subsequently many more Municipal Councils were added after the upgradation and re-classification as per the norms of the State Act. Currently therefore there are 264 Municipal Councils which have been classified into A, B or C Classes depending upon their population. The total number of ‘Municipal Councils’ currently existing in the State of Maharashtra is shown district-wise in the Table given below.

**Total Number of Municipal Councils in Different Districts of Maharashtra**

Sr No.	Name of the Districts	Total No. of Municipal Councils	Sr. No.	Name of the Districts	Total No. of Municipal Councils
1.	Ahmednagar	15	18.	Nanded	12
2.	Akola	05	19.	Nandurbar	04
3.	Amravati	10	20.	Nashik	09
4.	Aurangabad	06	21.	Osmanabad	10
5.	Beed	06	22.	Palghar	03
6.	Bhandara	04	23.	Parbhani	07
7.	Buldana	12	24.	Pune	13
8.	Chandrapur	09	25.	Raigad	10
9.	Dhule	03	26.	Ratnagiri	09
10.	Gadchiroli	03	27.	Sangli	05
11.	Gondiya	02	28.	Satara	16
12.	Hingoli	03	29.	Sindhudurg	03
13.	Jalgaon	17	30.	Solapur	10
14.	Jalana	04	31.	Thane	05
15.	Kolhapur	09	32.	Wardha	06
16.	Latur	04	33.	Washim	04
17.	Nagpur	15	34.	Yavatmal	10

*Source: Official websites of Dept of Urban development, Govt of Maharashtra*

‘The Article 243-Q, Clause (1) and sub-clause (a) of 74<sup>th</sup> CAA provides that a Nagar Panchayat will be constituted for a transitional area which is in transition from a rural area to urban.’ The conformity legislation of Maharashtra has confirmed this provision and the relevant state Act. ‘The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act of 1965’ in its ‘sub-section (1) of Section-341-A, provides for a Nagar Panchayat’ and defines it as a municipality ‘constituted for a transitional area notified under Section-341-A of this Act and specified by the state government.’

Section 341-A of the ‘Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965’ provides that the State Government may specify an area in transition from a rural to urban area to be a transitional area, provided;

- a) Such an area has a population of at least ten thousand and not more than 25000’, and;

- b) 'Such an area is not more 20 km away from the territorial limits of any Municipal Corporation or 'A Class' Municipal Council and the percentage of employment in non-agricultural activities in such area is not less than 25 %'
- c) 'Such an area is more than 20 km away from the territorial limits of any Municipal Corporation or 'A Class' Municipal Council but the percentage of employment in non-agricultural activities in such area is not less 50 %.'

'The state government can declare an area which is a district or taluka headquarters to be a transitional area.' For every transitional area, 'a Nagar Panchayat will be formed as per Section 341-B of the State Act.'

- 'A Nagar Panchayat shall consist of 17 directly elected councillors.'
- 'For the purpose of election, a transitional area will be divided into a number of constituencies known as wards as there are councillors.'
- 'Each ward will elect a councillor.'
- 'Same provisions relating to reservation of seats for SCs, STs, BCC and women in a Council and of Section 51-A, relating to the reservation of office of President of a Council will apply to a Nagar Panchayat.'
- 'The state government has the power to extend provisions of this Act relating to Councils to a transitional area.'
- 'When a tax is imposed by a Nagar Panchayat in its local area, the proceeds of the tax will be spent in the similar manner and for the purposes for which the municipal fund may be spent by a council.'
- 'The state government can constitute a transitional area or a part thereof to be a smaller urban area.'
- 'The state government can include a transitional area or any part thereof within a smaller urban area.' (Maharashtra M. Council, NP and IT Act, 1965)

The provision of a Municipality in the 74<sup>th</sup> CAA for a transitional area was a new concept in urban governance. It was an idea which could initiate the process of nurturing of a potential urban centre much in advance with enough time and space to shape it up appropriately and give it a desirable direction. Being a fresh idea, the concept of transitional area was welcomed by the urban experts. However, being a new idea, the setting up of Nagar Panchayats in the State of Maharashtra took quite a lot of time. There was a need to identify such areas in accordance with the specific criteria mentioned above. 'The process of identification and notification took quite some time.' Initially, there were very few Nagar Panchayats which could be established in accordance with the norms and criteria specified by the state government. It is also very difficult to get the actual data in this regard. Moreover, the data quite often gets revised due to

dynamic nature of these bodies as the population changes so does the process of delimitation. Many Nagar Panchayats get upgraded to the status of Municipal Council within a few months of their formation. Sometimes the process of formation of Nagar Panchayats gets stalled due to court cases on one pretext or other. Sometimes there are deliberate obstructions which are created by the vested interests to derail the whole process. The state government has to deal with all these exigencies in order to finally achieve what they wish to. This was the reason why not a single Nagar Panchayat could be constituted till almost 1999 in the state of Maharashtra. However, the process of formation of Nagar Panchayat finally began and 'Devrook' in Ratnagiri district became the first duly constituted Nagar Panchayat. 'There are presently, 110 Nagar Panchayats according the website of the SEC.' (Areeba, 2004, pp.53-550)

Nagar Panchayats have been undergoing changes due to one reason or the other. When the process of formation of the transitional area had started and the Nagar panchayats were being formed, there was provision for an indirect election of the President of the Municipality. 'The President is elected by the councillors from amongst themselves. The Collector convenes a meeting of the councillors for this purpose.' The term of the President was two and half years. However, now there are changes again. According to Section 341B-1A of the State Act, the President of the Nagar Panchayats will be henceforth elected directly by the people. 'The number of Nagar Panchayats have been shown in the table given below.'

**Total Number of Nagar Panchayats in Different Districts of Maharashtra**

Sr No.	Name of the Districts	Total No. of Nagar Panchayats	Sr. No.	Name of the Districts	Total No. of Nagar Panchayats
1.	Ahmednagar	05	18.	Nanded	04
2.	Akola	01	19.	Nandurbar	01
3.	Amravati	04	20.	Nashik	06
4.	Aurangabad	03	21.	Osmanabad	02
5.	Beed	05	22.	Palghar	04
6.	Bhandara	03	23.	Parbhani	01
7.	Buldana	02	24.	Pune	01
8.	Chandrapur	06	25.	Raigad	05
9.	Dhule	02	26.	Ratnagiri	05
10.	Gadchiroli	11	27.	Sangli	05
11.	Gondiya	06	28.	Satara	09
12.	Hingoli	02	29.	Sindhudurg	05
13.	Jalgaon	01	30.	Solapur	02
14.	Jalana	04	31.	Thane	05
15.	Kolhapur	01	32.	Wardha	04
16.	Latur	05	33.	Washim	04
17.	Nagpur	07	34.	Yavatmal	06

*Source: Official Websites of Dept of Urban Development, Govt of Maharashtra*



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