

CHAPTER III

Compliance to the provisions of the Constitution (Seventy-fourth) Amendment Act

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3.1 Comparison of State level legislation with Seventy-fourth CAA

The Constitution (Seventy-fourth) Amendment Act, 1992 (CAA) inserted Part IXA in the Constitution of India, specifically for municipalities. It contained Articles 243P to 243ZG. Accordingly, Government of Maharashtra had brought suitable amendments in all the three Acts viz; (i) The Mumbai Municipal Corporation Act, 1888 (MbMC Act); (ii) Maharashtra Municipal Corporation Act, 1949 (MMC Act) and (iii) Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (MMCNPIT Act) to comply with the provisions of the newly introduced Part IXA.

A comparison of the provision in CAA and the corresponding provisions in the three municipal legislations in Maharashtra is shown in **Table 3.1**.

Table 3.1: Comparison of State Legislations with the provisions of the Constitution (Seventy-fourth) Amendment Act, 1992

Sr. No.	Provisions of the Constitution of India	Requirements as per the provisions of the Constitution of India	Provisions in MbMC Act/MMC Act/MMCNPIT Act and other Acts complying with the provisions of the Constitution of India
1	Article 243Q	Constitution of Municipalities: It provides for constitution of three types of municipalities, namely, a Nagar Panchayat for transitional area, a Municipal Council for a smaller urban area and a Municipal Corporation for a larger urban area.	Section 5 of MbMC Act, Section 3 of MMC Act and Sections 3,4,5 and 341A of MMCNPIT Act
2	Article 243R	Composition of Municipalities: It provides for filling of all seats in a municipality by direct elections apart from nomination of persons with special knowledge or experience in municipal administration by the State Government. It also provides for representation to the Members of Lok Sabha and State Legislative Assembly whose constituencies lie within the municipal area and to Members of the Rajya Sabha and State Legislative Council who are registered as electors within the municipal area.	Section 5(1) of MbMC Act, Section 5 of MMC Act and Sections 9 and 341B of MMCNPIT Act
3	Article 243S	Constitution and composition of Wards Committee: It provides for constitution of Ward Committees in all municipalities with a population of three lakh or more.	Section 50TT of MbMC Act, Section 29A of MMC Act and Section 66A of MMCNPIT Act
4	Article 243T	Reservation of Seats: It provides for reservation of seats to Schedule Caste/Schedule Tribes and Women for direct election. It also provides for reservation of seats to backward classes by the State Legislature.	Section 5A of MbMC Act, Section 5A of MMC Act and Section 9(1A), 9(2) and 341B(4) of MMCNPIT Act

Report No. 3 (The Efficacy of Implementation of Seventy-fourth Constitutional Amendment Act in Maharashtra)

Sr. No.	Provisions of the Constitution of India	Requirements as per the provisions of the Constitution of India	Provisions in MbMC Act/MMC Act/MMCNPIT Act and other Acts complying with the provisions of the Constitution of India
5	Article 243U	Duration of Municipalities: It provides for a fixed tenure of five years to the municipality from the date of its first meeting.	Section 6 of MbMC Act, Section 6 of MMC Act and Section 40 of MMCNPIT Act
6	Article 243V	Disqualifications for Membership: It provides that a person stands disqualified for being a member of a municipality (i) If he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned (ii) If he is so disqualified by or under any law made by the Legislature of the State.	Section 16 of MbMC Act, Section 10 of MMC Act and Section 16 and 44 of MMCNPIT Act
7	Article 243W	Powers, Authority and Responsibilities of the Municipalities: It provides for endowing all municipalities, with such powers and authority by the State Government, as may be necessary to enable them to function as institutions of self-government. It also provides for endowing all municipalities with such powers and authority by State Government to enable them to carry out the responsibilities in relation to functions listed in Twelfth Schedule of the Constitution.	Chapter IX to XVI of MbMC Act, Section 63 of MMC Act and Chapter XI to XXI of MMCNPIT Act
8	Article 243X	Power to impose taxes by, and funds of the Municipalities: It provides for authorising the municipalities to levy and collect taxes, fees, duties <i>etc.</i> , by the State Legislature. It also provides for making grant-in-aid from the Consolidated Fund of the State and constitution of funds for crediting all money received by or on behalf of municipalities and withdrawal of money from such fund.	Section 139, Chapter VIII of MbMC Act, Section 82, 82A and 127 of MMC Act and Chapter IX and X of MMCNPIT Act
9	Article 243Y read with Article 243I	Finance Commission: It provides for review of the financial position of the municipalities by the State Finance Commission and make recommendations (i) to improve the financial position of the municipalities, (ii) principles governing the distribution of taxes, duties, tolls and fees between States and ULBs and (iii) grant-in-aid to be provided from the Consolidated Fund of the State <i>etc.</i>	Maharashtra Finance Commission (Miscellaneous) Act, 1994
10	Article 243Z	Audit of accounts of Municipalities: It provides for maintenance of accounts by the municipalities and audit of such accounts.	Section 135 and 138 of MbMC Act, Section 93 and 105 of MMC Act and Section 104 of MMCNPIT Act
11	Article 243ZA read with Article 243K	Elections to the Municipalities: It provides for superintendence, direction and control of electoral rolls and the conduct of all elections of the municipalities by the State Election Commission.	Section 18 A of MbMC Act, Section 14 of MMC Act and Section 10 A of MMCNPIT Act

Sr. No.	Provisions of the Constitution of India	Requirements as per the provisions of the Constitution of India	Provisions in MbMC Act/MMC Act/MMCNPIT Act and other Acts complying with the provisions of the Constitution of India
12	Article 243 ZD	Committee for District Planning: It provides for constitution of District Planning Committee at district level, its composition <i>etc.</i>	Maharashtra District Planning Committee (Constitution and Functions) Act, 1998
13	Article 243ZE	Committee for Metropolitan Planning: It provides for constitution of Metropolitan Planning Committee in every metropolitan area with a population of 10 lakh or more.	Maharashtra Metropolitan Planning Committee (Constitution and Function) (Continuance of Provisions) Act, 1999

Source: The Constitution (Seventy-fourth) Amendment Act, 1992 and State Acts

Audit observed that the State legislation complied with the provisions of the CAA. However, compliance to the constitutional provisions by law alone does not guarantee effective devolution unless ULBs have strong institutional arrangements, sufficient funds and functionaries to perform the functions devolved upon them and deliver services to the citizens effectively. These issues are discussed in the subsequent chapters.

