

Chapter-IV
Devolution of Functions &
Empowerment of Urban Local Bodies

4.1 Actual status of devolution of Functions

The 74th CAA sought to empower ULBs to perform functions and implement schemes in relation to 18 subjects specified in the 12th Schedule. Each State was expected to enact a legislation to implement the amendment.

The State Government vide notification (August 1994) transferred 16 out of 18 functions to ULBs. Subsequently, power to implement the function of 'Regulation of Land Use and Construction of Buildings' were delegated to various ULBs by the Town & Country Planning Department vide notifications issued from time to time. Fire Services was the only function that was not transferred.

The Fourth SFC also made recommendations for full transfer of funds, functions and functionaries to ULBs, as per the notification (August 1994). However, several overlaps in discharge of the functions between ULBs and parastatals / government departments were observed.

Out of 18 functions:

1. ULBs were solely responsible for five functions;
2. ULBs had no role in two functions;
3. ULBs were mere implementing agencies for four functions;
4. ULBs had limited role with overlapping jurisdiction of state departments/parastatals for six functions;
5. One function not devolved to ULBs.

The function-wise role of ULBs is depicted in **Chart 4.1**:

Chart-4.1: Function wise role of ULBs

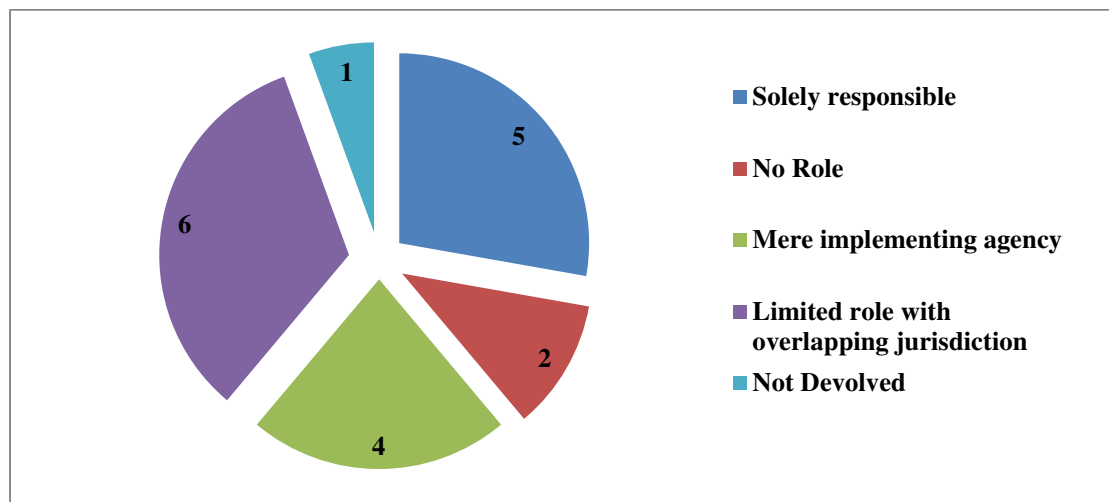


Table-4.1: Detail showing actual status of implementation of functions by the ULBs

Sl. No.	Functions Obligatory/ Discretionary	Activities	Actual status of implementation	Authorities discharging functions
Functions where ULBs were solely responsible				
1.	Slum improvement and up-gradation	Identifying beneficiaries	ULBs were wholly responsible for discharging this function through schemes like Integrated Housing & Slum Development Programme (IHSDP), Pradhan Mantri Awas Yojana- (Urban) (PMAY-U) etc.	ULBs
		Affordable Housing		
		Upgradation		
2.	Urban poverty alleviation	Identifying beneficiaries	ULBs were wholly responsible for discharging this function through schemes like DAY-National Urban Livelihood Mission (NULM) and Street vendor scheme etc.	ULBs
		Livelihood and employment		
		Street vendors		
3.	Cattle pounds; prevention of cruelty to animals	Catching and keeping strays	ULBs were wholly responsible for discharging this function.	ULBs
		Sterilisation and anti-rabies		
		Ensuring animal safety		
4.	Burials and burial grounds; cremations, cremation grounds	Construction and O&M of crematoriums and burial grounds and electric crematoriums	ULBs were wholly responsible for discharging this function.	ULBs
5.	Regulation of slaughterhouses and tanneries	Ensuring quality of animals and meat	ULBs were wholly responsible for discharging this function.	ULBs
		Disposal of waste		
		O & M of slaughterhouse		
Functions with no role for ULBs				
6.	Water supply for domestic, industrial and commercial purposes	Distribution of water	Jal Shakti Vibhag was responsible for this function in 51 out of 54 ULBs. In three ULBs namely Palampur, Solan and Shimla (Shimla Jal Prabhandhan Nigam Limited) this function was performed by the ULBs/Parastatal. (The details are given in Para 5.5)	Jal Shakti Vibhag
		Providing connections		
		Operation & Maintenance (O&M)		
		Collection of charges		
7.	Urban forestry, protection of the environment and promotion of ecological aspects	Afforestation	Forest Department executes all the functions of urban forestry.	Forest Department
		Greenification		
		Awareness drives		
		Protection of the environment and promotion of ecological aspects		
		Maintenance of natural resources like water bodies etc.		

Functions where ULBs were mere implementing agencies				
8.	Urban planning including town planning	Master Planning/Development Plans/Zonal Plans	The Town & Country Planning Department is primarily responsible for preparing Development plan and Sectoral plans, (HPTCP Rules 2016)	TCP Department
		Enforcing master planning regulations	No Master Plans were prepared, and ULBs are only enforcing the regulations of the Development Plan, Sectoral Plan.	ULBs
		Enforcing building bye-laws and licenses	No building bye-laws were prepared by the ULBs except MC Shimla (1998). However, the Director, UDD (August 2015) had directed the MC Shimla to adopt / follow the TCP Rules, 2014.	ULBs
		Group Housing, Development of Industrial areas	Himachal Pradesh Housing and Urban Development Authority (HIMUDA) is responsible for planning & developing group housing schemes. (Discussed in detail in Para 4.4.2) Himachal Pradesh State Industrial Development Corporation (HPSIDC) is responsible for development of industrial areas / estates. (Discussed in detail in Para 4.4.3)	HIMUDA, HPSIDC
9.	Regulation of land-use and construction of buildings	Regulating land use	ULBs were responsible for regulation of construction and subdivision of land up to 2500 sqm and the Director Town & Country Planning Department is responsible for areas more than 2500 sqm.	ULBs
		Approving building plans/high rises	ULBs were only responsible for ensuring compliance to regulations prescribed in the Development Plans wrt construction of buildings/high rise buildings, except for Dalhousie & Manali where it was being executed by the field units of the TCP department under supervision of Deputy Commissioner of District. Further, checking of fire safety measures in high rise buildings was vested with Fire Department .	

		Demolishing illegal buildings	Section 253 of HPMC Act and section 211 of HPM Act 1994 provides power to ULBs in respect of demolishing illegal building. This function was vested with ULBs.	
10.	Planning for economic and social development	Program implementation for economic activities	ULBs: Implementation of various welfare schemes in sectors such as Housing, Employment etc. as per scheme guidelines. Social Justice and Empowerment Department: Safeguarding welfare of SC/STs and other weaker sections.	ULBs
		Policies for social development		Social Justice and Empowerment Department
11.	Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded	Identifying beneficiaries	By ULBs	ULBs
		Providing tools/benefits such as tricycles	By Social Justice & Empowerment Department (SJ&ED)	SJ&ED
		Housing programs	ULBs through Centrally sponsored schemes– PMAY(U).	ULBs
		Scholarships	Various Centrally Sponsored scholarships schemes, State Government sponsored scholarships programs and Technical Education sponsored schemes were run by HP Education Department & Tribal Development Department of HP and Technical Education Department of the State. ULBs had no role in this regard.	Education & Tribal Development Department
Functions with limited role of ULBs with overlapping jurisdiction				
12.	Roads and bridges	Construction and maintenance of roads	ULBs: Construction and maintenance of Municipal roads along with bridges, drains, flyovers, and footpaths within the jurisdiction of ULBs. Himachal Pradesh Public Works Department (HPPWD): was responsible for road works including maintenance of Major District Roads, State Highways and National Highways within ULBs.	ULBs and HPPWD
		Construction and maintenance of bridges, drains, flyovers and footpaths		
13.	Vital statistics including birth and death registration	Coordinating with hospitals / crematoriums etc. for obtaining information	No coordination of ULBs with hospitals as Hospitals were under control of Department of Health and Family Welfare. Crematoriums were under control of ULBs.	ULBs & Health Department
		Maintaining and updating database	ULBs were responsible for maintaining and updating the data	

			of death and birth and issuance of certificate. Hospitals were also maintaining the data of death and birth and issuance of certificate. However, the birth and death reports are uploaded by the ULBs and Hospitals in the Civil Registration System which is a portal of Registrar General & Census Commissioner of India.	
14.	Provision of urban amenities and facilities such as parks, gardens, playgrounds	Creation of parks and gardens	The State Government provides funds to ULBs for construction of parks. Further, playgrounds were also being constructed by Youth & Sports Department of State.	ULBs & Youth & Sports Department of State
		Operation and Maintenance	By ULBs	ULBs
15.	Public amenities including street lighting, parking lots, bus stops and public conveniences	Installation and maintenance of streetlights	Installation of street lights was being done by HP State Electricity Board Ltd. (HPSEBL) and maintenance of the streetlights was the responsibility of the ULBs.	HPSEBL
		Deciding and operating bus routes	The decisions regarding operating bus routes were taken by the Regional Transport Office, Transport Department.	Transport Department
		Creation and maintenance of parking lots	ULBs were responsible for creation and maintenance of parking within its jurisdiction.	ULBs
		Creation and maintenance of public toilets	By ULBs.	ULBs
16.	Public health, sanitation conservancy and solid waste management	Maintaining hospitals, dispensaries	Maintenance of hospital and dispensaries in all the ULBs were being done by Health & Family Welfare Department (H&FWD)	H&FWD
		Immunisation/Vaccination	The activity was being performed by H&FWD	H&FWD
		Registration of births and deaths	The activity was being performed by both H&FWD and ULBs	H&FWD & ULBs
		Cleaning and disinfection of localities affected by infectious disease	By ULBs	ULBs
		Sewerage Management	By Jal Shakti Vibhag in the State except for MC Shimla where Shimla Jal Prabhandhan Nigam Limited (SJPNL) is executing the function as discussed in para 5.7.1.	JSV & SJPNL
	Solid-waste management	By ULBs as discussed in para 5.8	ULBs	

17.	Promotion of cultural, educational and aesthetic aspects	Schools and education	This function was being performed by Education Department.	Education Department
		Fairs and festivals	Fairs and festivals were under the administrative control of District Administration. Further, various parts of functions have been devolved to various departments such as Department of Language, Art & Culture, ULBs, Jal Shakti Vibhag etc.	Department of Language, Art & Culture, ULBs, Jal Shakti Vibhag etc.
		Cultural buildings / institutions	Being performed by Department of Language, Art & Culture.	Department of Language, Art & Culture
		Heritage	Being performed by Department of Language, Art & Culture.	
		Public space beautification	By ULBs	ULBs
Function not devolved				
18.	Fire Services	Establishing and maintaining fire brigades	This function was vested with Fire Department.	Fire Department
		Providing fire NOC / approval certificate in respect of high-rise buildings		

It can be seen from the **Tables 4.1** that out of 18 functions, one function was not devolved to ULBs. In case of remaining 17 functions, ULBs were solely responsible for five functions; were mere implementing agencies for four functions; had limited role with overlapping jurisdiction of state departments / parastatals for six functions; and had no role for two functions.

The State Government should cause to transfer the functions from the departments along with funds and functionaries to the ULBs. The objectives of the 74th Constitution amendment could be achieved only by transferring functions, funds and functionaries in letter and spirit.

During the exit conference, the Government stated that five functions had been fully devolved and remaining functions were either partially devolved or un-devolved to ULBs. Further, the Government assured that the remaining functions would be devolved fully in a phased manner.

4.1.1 Activity Mapping of Functions

Second Administrative Reforms Committee (ARC) in its Sixth Report (Para 3.3.1.7) relating to Local Governance has recommended that there should be a clear-cut delineation of functions at each level of local governance. This should not be a onetime exercise and should be done continuously while working out locally relevant socio-economic programmes, restructuring organisations and framing subject matter laws.

It was observed that mapping of the 18 functions listed in 12th Schedule into specific activities and assigning the responsibility for each activity was not done by the Government/ UDD. This had resulted in lack of clarity on roles and responsibilities of the ULBs.

Director UDD admitted (June 2021) the facts but did not furnish reasons for not mapping the activities.

During the exit conference, the State Government stated that the action to map 18 functions into specific activities and assigning the responsibility for each activity would be initiated.

4.2 Institutional mechanisms for empowerment of Urban Local Bodies

As already discussed above, the State Government had transferred 17 functions to ULBs. The discharge of these functions can be effective only when appropriate institutions are established and adequately empowered. The 74th CAA provides for establishment of such institutional mechanisms as discussed in **Table-3.1**.

This section discusses the effectiveness of such institutional mechanisms.

4.2.1 State Election Commission

After the enactment of 74th amendment to the Constitution of India, the State Election Commission (SEC) was to be constituted under Article 243K and 243ZA for the superintendence, direction, and control of preparation of the electoral rolls and conduct of elections of Panchayats and Municipalities in the State. The SEC of Himachal Pradesh came into existence on 23rd April 1994.

It was noticed that SEC directs, under the provisions of Section 09 and 281 of HPMC and HPM Act, Deputy Commissioner of the District to make proposals for delimitation of wards and publish the Draft Proposals for delimitation. If objections or suggestions are received the same are disposed of by the Dy. Commissioner within 10 days from the receipt of objections. After removal of objection and suggestion, if any, final delimitation orders are issued and process for reservation and rotation of Wards are started. After finalization of orders of delimitation and reservation of wards, orders of this effect is submitted by the Dy. Commissioner to Government for further submission to SEC.

4.2.1.1 Composition of Municipalities

Article 243R prescribes criteria for composition of Municipalities. As per the HPMC and HPM Acts, the Corporations and Municipalities consist of following:

- Elected Councillors/members,
- Nominated Councillors/members (No voting power),
- Member of State Legislative Assembly representing the constituencies which comprise wholly or partly the Municipal area.

The Mayor/President is elected amongst the Councillors and is assisted by three Standing Committees¹. The Commissioner/Executive Officer/Secretary is the executive head of ULBs.

¹ General Standing Committee, Finance, Audit and Planning Committee and Social Justice Committee.

4.2.1.2 Reservation of seats

Article 243T stipulates reservation of seats and section 10 & 11 of HPMC and HPM Acts also provide for reservation to SCs and STs, in every municipal constituency/constituencies in proportion to their population. If total population of SCs or STs in a municipal area is less than five *per cent* then no constituency shall be reserved. Fifty *per cent* of seats shall be reserved for women out of total number of wards and within the seats reserved for SCs and STs. These reserved constituencies shall be rotated after every five years from the date of first election, based on percentage of population.

It was observed that reservation of seats for SC, ST and Women were as per prescribed norms (Notification of reservation of ward 2015 and 2020) and rotation of the seats of Councillors/Members was being done as per reservation policy.

4.2.1.3 Status of elections and formation of councils

The election shall be conducted by SEC as per Section 09 of HPMC Act, 1994 and section 281 of HPM Act, 1994. Further, for implementation of the above provision, the State Government enacted HP Municipal Corporation Election Rules, 2012 and Himachal Pradesh Municipalities Election Rules, 2015.

Elections shall be completed before expiry of ULB's tenure. In case of dissolution, election shall be held within six months. Further, Article 243U of Constitution of India and provisions of the HPMC and HPM Acts, stipulate a fixed tenure of five years for the Councillors/Members of ULBs from the date of its first meeting.

It was observed that elections in all the ULBs were held, and councils were formed within stipulated time except in MC Shimla where election was held after a minor delay of 12 days which was due on 4 June 2017, but conducted on 16 June 2017.

Status of elections held in the ULBs of the State is depicted in **Table 4.2**.

Table-4.2: Status of elections and formation of councils in ULBs

Category of Municipality	Election due	Election Held on	Delay/remarks if any
Municipal Corporation Shimla	04.06.2017	16.06.2017	12 days delay
Municipal Corporation Dharamshala	Not applicable as Dharamshala was upgraded from Council to Corporation on date 05.10.2015.	27.03.2016	Nil
Municipal Councils	10.01.2016	10.01.2016	31 Municipal Councils formed
Nagar Panchayats	10.01.2016	10.01.2016	21 Nagar Panchayats formed

4.2.1.4 Election of Mayor, Deputy Mayor and their term

The Model Municipal Law 2003 circulated by the Ministry of Urban Development, GoI prescribes that the term of office of the Mayor/President shall be coterminous with the duration of the Municipality.

However, it was noticed that Section 36 of HPMC Act provides that the Corporation shall at its first meeting and thereafter at the expiration of every two and half years, elect one of its Councillors to be the Chairperson, to be known as the Mayor and another Councillor to be the Deputy Mayor of the Corporation. In Himachal Pradesh the tenure of the corporation is five years.

It was observed that in 2010 vide an amendment in HPMC Act, Mayor and Deputy Mayor were to be elected directly for a tenure of five years, which was re-amended in 2013 for two and half years and Mayor and Deputy Mayor were to be elected from amongst the elected Councillors of the Corporation. Thus, the terms of municipality and Mayor/Deputy Mayor were not coterminous and the section 36 of HPMC Act, was not in consonance with Model Municipal Law, 2003 of GoI.

4.2.1.5 Election of President and Deputy President of Councils

Section 22 of HPM Act provides that every Municipal Council or Nagar Panchayat shall elect President and Vice-President from amongst elected members. Section 23 of HPM Act provides for a fixed tenure of five years or the residue of the term, whichever is less for President/Vice President.

In test-checked ULBs it was observed that the elections of President and Deputy President were held as per norms, and tenure of five years was followed which was in consonance with the directions of Municipal Model Law 2003 of GoI.

4.2.1.6 Frequency of meetings of ULBs

Section 53 & 28 of the HPMC and HPM Act respectively provides that municipalities shall ordinarily hold at least one meeting in every month for the transaction of its business.

It was observed that in all the 14 test-checked ULBs, meetings of ULBs were not held regularly. The percentage of number of meetings of ULBs held, ranged between 35 per cent and 95 per cent during 2015-20 (as detailed in **Appendix 4.1**).

During the exit conference, the Government stated that instructions would be issued to the ULBs to ensure conduct of requisite meetings and the matter will be taken up at the Govt. level for amendment of the Act to provide penal provision/feasible measures for not adhering the prescribed schedule of meetings by the ULBs.

4.2.2 Standing Committees in ULBs

Section 40 and section 49 of the HPMC and HPM Act provide for constitution of the standing committees along with their functions, which are detailed in **Table 4.3**:

Table-4.3: Functions of Standing Committees in ULBs

Name of committee	Functions
General Standing Committee	Functions relating to establishment matters, communications, buildings, urban housing, relief against natural calamities, water supply etc.
Finance, Audit and Planning Committee	Functions relating to the finance of the municipality, framing of budgets, scrutinizing proposals for increase of revenue, examination of receipts and expenditure statements, consideration of all proposals affecting the finances of the municipality etc.
Social Justice Committee	Functions relating to promotion of education, economic, social, cultural interest of weaker sections

It was observed that all the three Standing Committees were constituted in the test-checked ULBs. However, against prescribed² 3640 meetings (260 x 14), only 173 meetings were held in three ULBs (MC Solan: 44, MC Nahan: 83 and NP Sunni: 46). No meetings were held in remaining 11 selected ULBs.

Thus, in 11 ULBs the standing committees remained almost non-functional during 2015-20 and the requisite number of meetings were not conducted.

4.2.3 Formation of Ward Committees in ULBs

Section 51-C of HPM Act and Section 44-C of HPMC Act, 1994 provide that there shall be a Ward Committee (WC) for each ward in the Corporation / municipality to be constituted³ within six months of the constitution of Corporation / municipality. It shall be duty of the President to conduct meetings of the WC at least once in two months for discussing developmental issues and plans of the ward concerned. The WCs were to act as a bridge between the municipal government and citizens. They were to perform duties such as preparation and submission of ward development schemes for allotment of funds, ensure proper utilisation of allotted funds, maintenance of public utilities and safeguarding the assets of the corporation.

It was noticed that WCs were not constituted in any of the test-checked ULBs except in MC Shimla (SMC), where WCs were constituted in 30 out of 34 Wards as on date of audit. It was further noticed that against the required 505 meetings (July 2017 to November 2020) only one meeting was held in each WC.

The Commissioners/Executive officers/Secretaries of municipalities stated (October 2020-March 2021) that due to lack of knowledge, less population of wards and unavailability of list of community personnel, the Ward Committees could not be constituted.

² As per HP Municipal Business Bye Laws, 2006 every standing committee shall meet once a week on day as initially determined by the Standing Committee.

³ Each WC shall consist of a President (elected member of the ward) and not more than nine eminent members, to be nominated by the Ward Sabha.

During the exit conference, the Government stated that instructions would be issued to the ULBs to ensure constitution of ward committees for discharge of assigned functions smoothly.

4.2.4 Formation of District Planning Committee

Article 243ZD of the Constitution and Section 421 & 261 of HPMC and HPM Acts, 1994 mandated for constitution of a District Planning Committee (DPC) for consolidation of plans prepared by panchayats and municipalities. The fourth SFC had also recommended the formation of DPC in the State. The DPC was to prepare a comprehensive District Development Plan (DDP) about matters of common interest⁴ between panchayats and municipalities. The Chairman of DPC, as approved by the committee was to forward the DDP to the State Government for integration into the State plan.

It was noticed that the DPCs were constituted in all the Districts. Further, the test-checked ULBs had not prepared and submitted respective development plans to DPC as they were not aware about existence of DPC. In the absence of which the DPCs could not consolidate DDPs of the districts for further integration with State plan.

Non-preparation of development plans by ULBs had resulted in non-preparation of comprehensive plans of districts as a whole and integrated development plan of the State. This had also resulted in lack of effective implementation of devolved functions.

The Commissioners /Executive Officers /Secretaries stated (September 2020 to March 2021) that ULBs had not prepared and submitted any DDP. However, specific reasons for non-preparation of development plans were not furnished.

During the exit conference, the State Government assured to strengthen the District Planning Committee and prepare Development Plans by ULBs.

4.2.5 State Finance Commission

Article 243-I of the Constitution of India makes it mandatory for the State Government to constitute a Finance Commission (FC) within one year of the commencement of the CAA and reconstitution after every five years. State Finance Commission (SFC) is to review financial position of the local bodies and to make recommendations for devolution of funds. Provision for constitution of SFC was also made in the HPMC and HPM Acts.

4.2.5.1 Constitution of SFCs and implementation of recommendations

Details regarding constitution and status of recommendations of the five SFCs constituted in the State are given in **Table-4.4**.

⁴ Spatial planning; sharing of water and other physical and natural resources; integrated development of infrastructure and environment conservation and extent and type of available resources, whether financial or otherwise.

Table-4.4: Statement showing the delay in constitution of SFC and implementation of recommendations

SFC	To be constituted as per Constitution	To be re-constituted after every five years	Actually constituted	Delay in months (4-3)	Date of submission of SFC Report	Date of submission of Report as per TOR	Date of acceptance of the Report by Govt.	Delay in months (6-7)	Period covered
1	2	3	4	5	6	7	8	9	10
First	By 31 May 1994	--	April 1994	--	Nov 1996	Timeline not fixed	April 1997	-	1996-97 to 2000-01
Second	1999-2000	May1999	25.05.1998	--	Oct 2002	Timeline not fixed	March 2003	-	2002-03 to 2006-07
Third	2004-05	May 2004	26.05.2005	12	Nov 2007	July 2006	April 2008	17	2007-08 to 2011-12
Fourth	2009-10	May 2009	20.05.2011	24	Jan 2014	Dec 2011	Feb 2014	25	2012-13 to 2016-17
Fifth	2014-15	May 2014	19.11.2014	06	Jan 2018	April 2016	Aug 2018	21	2017-18 to 2021-22

Recommendations of the fourth and fifth FCs were applicable during the period covered under Audit. It can be seen from the table above that:

- There was delay in constitution of three SFCs (third, fourth & fifth) by 12, 24 and 06 months from scheduled date, and there was further delay in submission of reports to the State Government by 17, 25 and 21 months.
- Delay of 24 months in constitution of 4th SFC was due to delay in granting approval for engagement of secretarial and supporting technical staff for Commission. As a result the Commission had to submit Interim Reports (IR) for the years 2012-13 and 2013-14.
- Fifth SFC was to submit its report by April 2016. However, delay of 21 months in submitting report was due to non-receiving of primary data from ULBs. As a result, the SFC submitted IRs for the year 2017-18 and 2018-19 based on trend analysis of 4th FC by recommending 10 *per cent* enhancement.

Thus, there were delays in constitution of SFCs, submission of reports to the State Government and interim report of one SFC was given on the basis of previous SFC reports instead of recommendation of funds on the basis of actual analysis.

During the exit conference, the State Government assured that matter regarding timely release of mandated shares of the ULBs would be taken up with the Additional Chief Secretary (Finance), Government of Himachal Pradesh.

4.2.5.2 Response of the State Government to SFC recommendations

The State Government may accept the recommendations of the SFC in totality or with certain modifications. It was observed that the State Government had accepted some recommendations with few modifications, and action had not been initiated on other recommendations.

- **Financial Recommendations of SFCs:**

The SFC-wise recommendations regarding transfer of funds and the amounts released by the State Government are given in **Table-4.5**.

Table-4.5: SFC-wise recommended devolution of financial resources

Tenure of State Finance Commission	Amount recommended by SFC	Amount released by the State Govt.	Excess(+)/ Short (-)
First State Finance Commission (1996-2001)	74.55	83.97	+9.42
Second State Finance Commission (2002-2007)	159.46	133.66	-25.80
Third State Finance Commission (2007-2012)	223.02	212.05	-10.97
Fourth State Finance Commission (2012-17)	382.44	382.51	+0.07
Fifth State Finance Commission (2017-22)	680.76	365.00 against recommended ₹ 369.10 (2017-2020)	-4.10

Source: Report of 5th State Finance Commission

It could be seen from the table above that there were variations in funds actually allocated and as recommended by the SFCs.

- **Other recommendations:**

Besides recommendations on financial devolution, the SFCs have also recommended several institutional measures for strengthening of ULBs in long term (**Appendix 4.2**). Some of the recommendations where action is yet to be taken are detailed below.

- 1. Recommendations of SFCs on revenue enhancements:**

- First SFC recommended that ULBs should mandatorily raise statutory resources by levying rates and taxes within their purview, as some of the ULBs were not levying statutory⁵ rates and taxes.

It was observed in 14 test-checked ULBs, two ULBs (Nerchowk and Solan) were not levying the statutory property tax as discussed in detail in the **Para 5.4.1**.

- Third SFC recommended for differential taxation for urban properties according to their geographical location.

It was observed that the recommendation has been partially implemented as only 17 out of 54 ULBs were levying property tax as per Unit Area Method, which is differential taxation of property based on geographical location. (Detail in the **Para 5.4.1**.)

- 2. Recommendation of SFC on creation of institutional mechanism:**

- Third SFC as well as 13th FC recommended for setting up of permanent institutional arrangement for collection and compilation of financial data of Local Bodies on regular basis and to track implementation of the recommendation of SFCs and CFCs.

⁵ The HPMC and HPM Act, Section 84 and 65 mandatorily provide for levy of property tax on land and building, other taxes, user charges and fees are optional for the ULBs.

It was observed that the recommendation has not been implemented. Non setting up of permanent institutional arrangement has resulted in delayed constitution of the State Finance Commission and implementation of recommendations as discussed in **Para 4.2.5**.

- Fifth SFC recommended for creation of a Centralized Pension Fund to meet out pensionary liabilities of ULBs' employees.

It was noticed that Centralized Pension Fund was not constituted.

3. General recommendation:

- The first SFC recommended for resorting to negotiated loans from the national funding agencies by the ULBs.

It was noticed in Audit that HPM Act 1994 was not amended to provide for raising of loans from the national funding agencies. Thus, the Municipal Councils and Nagar Panchayats are not in position to raise loans from the national funding agencies.

Implementation of the above recommendations would have contributed significantly in realisation of objectives of the 74th CAA and decentralization in real sense.

4.2.6 Property Tax Board

The 13th Finance Commission mandated constitution of a Property Tax Board (Board) for availing Performance Grant, on the lines of West Bengal Valuation Board constituted in 1980. The State Level Property Tax Board⁶ (Board) was constituted (March 2011) by the State Government to assist the ULBs to put in place an independent and transparent mechanism for assessing property tax. Further, the Board was to make suitable recommendations on Property Tax for at least 25 *per cent* of the aggregate number of estimated properties across all Municipal Corporations and municipalities in the State by 31 March, 2015 and to make a work plan indicating how the targets would be covered.

The following were observed during audit:

- The board was initially constituted for a period of five years, however, it was observed that the Board was not reconstituted till date.
- Property Tax Board had prepared and notified work plan (March 2011) in which timelines were fixed for putting in place an independent and transparent mechanism for assessing Property Tax. Four meetings were held till 2013. No meeting was held after 2013. Neither the recommendations nor the records relating to recommendations provided by the Board to the ULBs were produced to Audit.

⁶ (1) Principal Secretary (UD) to the Govt. of HP: Chairman, (2) Director, Land Record: Member, (3) Director, UD H.P: Member Secretary (4) Any other Consultant/Expert/Special invitee to be co-opted as per need.

Therefore, in the absence of assistance and recommendations by the Board, ULBs lacked technical guidance for assessment and revision of property tax. It was noted that a uniform system for assessment of property tax has not been implemented across all the ULBs. Findings regarding the lack of uniformity in assessing property tax in the various test-checked ULBs are discussed in **Para 5.4.1**.

In the absence of the Board, the Urban Development Department decided to prepare Request for Proposal (RFP) documents for inviting proposals from eligible consultancy firms for preparation of GIS based Property Tax Management System. This RFP document was circulated (2015) to all the ULBs to invite the tenders for preparation of GIS based Property Tax Management System for their municipality.

Director, UDD stated (April 2021) that at present 17 ULBs have implemented unit area method for collection of property tax and in the remaining ULBs process of inviting tender is in progress.

During the exit conference, the State Government assured that the efforts would be made to reconstitute the Property Tax Board, to give recommendations for improvement in the Property Tax Management System.

4.3 Powers of the State Government over ULBs

Audit observed that the State Government had overriding powers over ULBs, which was against the spirit of the 74th Constitutional Amendment. A few provisions are indicated in **Table-4.6**.

Table-4.6: Statement showing overriding powers of the State Government over ULBs

Sl. No.	Subject	Provisions
1.	Power to frame Rules	The State Government may by notification in the Gazette, frame rules for the HPMC/HPM after approval of the State Legislature (Section 393(2) of HPMC Act and Section 279 of HPM Act).
2.	Power to cancel and suspend a resolution or decision taken by ULBs	Section 418 of HPMC Act provides that the State Government may cancel a resolution or decision taken by ULBs, if the State Government is of the opinion that it is in contravention of or in excess of powers conferred by the Act or of any other law for the time being in force or is likely to lead to breach of peace or cause injury and/or annoyance to the public or any class or body of persons. The Government or the Director under intimation to the Government, may, suspend execution of such resolution or order, or prohibit the doing of any such act. Section 263 of HPM Act also provides for the same.
3.	Power to dissolve ULBs	Section 404 of the HPMC Act and section 271 of HPM Act provide that the State Government shall, by notification in the Gazette, dissolve the ULBs, if ULBs fail to perform or default in the performance of any of the duties imposed on them, after giving reasonable opportunity. The order of dissolution of ULBs shall be laid before the House of State Legislature with a statement of reasons thereof.
4.	Cancellation of bye laws by Government	Section 397 of HPMC Act and section 217 of HPM Act provide that any power to make bye-laws conferred by this Act is conferred, after having been published in Official Gazette for inviting public objections

Sl. No.	Subject	Provisions
		provided that State Government may cancel any such bye-law if found contrary to the provisions of the Act or the rules made there under and thereupon the bye-law shall cease to have effect.
5.	Sanction to borrow money	Section 144 of HPMC Act allowed municipal corporations to borrow money, but only after prior sanction from the Government. No corresponding provision available in HPM Act.
6.	Sanction of Regulations by Government	Section 394 of HPMC Act provides that any regulation which the Corporation under this Act, may make with the approval of Government, may be altered, or rescinded by the Corporation with the approval of the Government in the exercise of its powers under this Act. No regulation made by the Corporation under this Act shall have effect until it has been published in the Official Gazette by the Government. No corresponding provision available in HPM Act.
7.	Power of State Government to give directions for compounding deviations from sanctioned plan	The Government may, from time to time, give such special or general directions in the matters of policy in relation to the compounding of the cases involving deviations from the sanctioned plans as in its opinion are required to be followed by the Commissioner for compounding such cases (Section 255 of HPMC Act & Sec 211 (3) of HPM Act).
8.	Budget Estimates	The Budget estimates received by the Govt. under sub-section (2) of Section 80 of HPMC Act are to be returned to the Corporation before 31 st March after approval without any modification or with such modification as the government may deem fit. Further, every increase in a budget grant and every additional budget grant made in any year under sub-section (1) of Section 81 of HPMC Act shall be made with the prior approval of the Government and after such approval shall be deemed to be included in the budget estimate finally adopted for that year. In the case of Municipal Councils and Nagar Panchayats the budget as passed by the municipality is sent, through the Deputy Commissioner to the Director UDD, beside such may be fixed by the Director UDD. The Director shall approve the budget with or without any modification (Section 249(2) & (5) of HPM Act).
9.	Taxes etc. to be imposed by Corporation / Municipality under this Act and arrangement of certain taxes collected by Government	The Corporation / Municipality shall, for the purposes of this Act, levy the following taxes:- (a) taxes on buildings and lands; (b) such other taxes, at such rates as the State Government may, by notification, in each case direct: (Section 84(1) of HPMC and section 65 of HPM Act)
10.	Power of Government in regard to taxes	The Government may by order exempt in whole or in part from the payment of any tax any person or class of persons or any property or description of property. (Section 143 of HPMC Act & section 80 of HPM Act)

From the above it is clear that the State Government had overriding powers over ULBs.

4.4 Parastatals, their functions and impact on Urban Local Bodies

The objective of the 74th CAA was to entrust delivery of major civic functions to ULBs. However, services such as water supply & sanitation and development of housing colonies, continue to be delivered by parastatals as indicated in **Table 4.1**.

These parastatals were controlled by the State Government and have their own governing bodies which do not include adequate elected representatives of ULBs. These parastatals are directly accountable to the State Government rather than ULBs. The role of parastatals and their impact on the devolved functions is discussed in the subsequent paragraphs.

4.4.1 Shimla Jal Prabandhan Nigam Limited

Shimla Jal Prabandhan Nigam Limited (SJPNL) was constituted in Shimla for management of water supply and sewerage system for Greater Shimla Planning Area only, whereas in the State these functions were performed by the Jal Shakti Vibhag of State Government.

Shimla Jal Prabandhan Nigam Limited (SJPNL) has been incorporated as public limited company on 19 June 2018. The shareholding of the company is distributed between the Municipal Corporation, Shimla (SMC) and the State Government in the ratio of 51:49 respectively. The objective of the company is to carry out water and wastewater management in Greater Shimla Planning Area.

The company has been set up by the SMC and State Government to work as a single nodal agency for undertaking all water and sewerage activities in Shimla, from the funds to be provided by the State Government.

The function of 'Water Supply and Sewage Management' was stated to be devolved to ULBs. However, it was noticed that:

- In 14 test-checked ULBs the function of Water Supply and Sewage Management was vested with Jal Shakti Vibhag except Shimla MC where SJPNL was responsible for execution of Water Supply and Sewage Management and MC Solan where the function of distribution of water is being performed by the MC.
- The SMC had 51 *per cent* share in the company, however out of 09 Board of Directors (BoD) the SMC had only three representatives.
- As per the notification (June 2018) issued by the SMC, SJPNL was to submit quarterly reports with regard to works/steps taken by the Company. However, it was noted that the company is not submitting its status/progress report of working to the SMC.
- Control over MD-cum-CEO of the company had been kept out of the purview of the SMC by the BoD.

From the above, it is evident that the SMC had limited control over the functioning of the SJPNL thereby defeating the purpose of devolution of functions.

During the exit conference, the State Government stated that SJPNL is created to avail the World Bank loan for water and sewerage system amounting to ₹ 1,100 crore. Due to limited capacity of the MC Shimla to handle large projects, and involvement of multiple agencies, the separate company was created for timely completion of the project. However, proper representation in the BoD and accountability towards MC Shimla will be ensured by directing officials of SJPNL to attend House meetings and address the concerns of the councilors. Further accountability regarding quality control and distribution of water issues will be strengthened.

4.4.2 Himachal Pradesh Housing and Urban Development Authority (HIMUDA)

HIMUDA was established under HP Housing and Urban Development Authority Act, 2004 to plan and develop land and create infrastructure, to meet with the housing needs of different income groups. The HIMUDA had notified its own regulations, after the approval of State Government, and have prepared bye-laws for construction of buildings and collects development fee, license fees to undertake a scheme etc. HIMUDA creates the infrastructure such as development of plots and construction of colonies for lease and sale to the public. It was noticed that the power regarding approval of building construction plan was being discharged by HIMUDA for development of housing colonies without any involvement of ULBs except seeking NOC for use of land. Further, there is no representation of ULBs in the Governing Body of HIMUDA. This is indicative of the fact that the transfer of function was only in letter and not in spirit.

Senior Architect, HIMUDA stated (June 2021) that before implementing any Housing Scheme, HIMUDA obtained approval of the Town and Country Planning Department and Municipality concerned. It was further stated that elected representatives were not involved during the construction/improvement/creating infrastructure.

During the exit conference, the State Government stated that NOC is obtained by these Authorities for the development of housing colonies and industrial units and thereafter these areas are developed by these authorities at their own. The reply is not tenable as the ULBs have no other role except to issue NOC, impacting the autonomy of ULBs as this is a devolved function.

4.4.3 Himachal Pradesh State Industrial Development Corporation Limited (HPSIDC)

The function of ‘Urban planning including town planning’ and ‘Regulation of land-use and construction of buildings’ within industrial areas is being performed by HPSIDC. It is the major agency in the State to promote setting up of small, medium and large-scale industrial units. It is also a major State level financial institution and provides long terms loans for industrial projects.

It was observed that even after devolution of the function to ULBs vide notification of State Government in August 1994, the same is being executed by HPSIDC within the

industrial area falling within jurisdiction of the ULBs. Hence, the transfer of the function was only in letter and not in spirit.

The Corporation stated (July 2021) that ULBs had no role in the development of Industrial area (IA) and further stated after development of IA, the Industrial Area Development Agency looks after the O&M of civic amenities.

4.4.4 Smart City Mission

The Ministry of Urban Development (MoUD), GoI launched (June 2015) Smart Cities Mission (SCM) with aim to cover 100 cities during the period of five years i.e., up to June 2020. The objective of the Mission is to promote cities that provide core infrastructure and give a decent quality of life to its citizens, a clean and sustainable environment and application of 'Smart' Solutions. The focus is on sustainable and inclusive development and the idea is to look at compact areas, create a replicable model, which will act like a light house to other aspiring cities. The implementation of Mission at city level would be done by Special Purpose Vehicle (SPV) promoted by the State Government.

The SPV will be a limited Company incorporated under Company Act 2013. The resolution will be passed by casting votes in the Board of Directors.

Section 03 of Annexure-5 of Mission Statement & Guidelines of Smart City provides that the Board of Directors will have representatives of Central Government, State Government, ULB and Independent Directors, in addition to the Chief Executive Officer (CEO) and Functional Directors. Additional Directors (such as representative of parastatal) may be taken on the Board, as considered necessary. The Company and shareholders will voluntarily comply with the provision of the Companies Act 2013 with respect to induction of independent directors. Below, are given the broad terms of appointment and role of the SPV Board:

1. The Chairperson of the SPV will be the Divisional Commissioner/Collector/Municipal Commissioner/Chief Executive of the Urban Development Authority as decided by the State Government.
2. The representative of the Central Government will be a Director on the Board of the SPV and will be appointed by the MoUD.
3. The CEO of the SPV will be appointed with the approval of the MoUD.
4. The Independent Directors will be selected from the data bank(s) maintained by the Ministry of Corporate Affairs and preference will be given to those who have served as independent directors in the Board of Companies fulfilling Clause 49 of the listing agreement of Securities and Exchange Board of India (SEBI).

In Himachal Pradesh, two cities viz., Dharamshala and Shimla were selected to be covered under the Mission and two companies (SPVs) were constituted under Company Act 2013 for Smart City Dharamshala and Shimla.

However, it was noticed that in Dharamshala Smart City Limited (DSCL), 03 out of 12 members of BoD were from MC Dharamshala and in Shimla Smart City Limited

(SSCL), 02 out of 12 members of BoD were from MC Shimla. Thus, representation of Municipal Corporations in the BoDs of these two SPVs varied between 25 per cent (DSCL) and 17 per cent (SSCL), however, the stake holding power was 50:50 between State Government and ULB (share given by GoI).

The Status of projects under the Smart City Mission as of March 2021 is given below:

(₹ in crore)

Status of Project	DSCL		SSCL		Total	
	Projects	Cost	Projects	Cost	Project	Cost
Total Projects sanctioned	68	561.38	137	542.50	205	1103.88
Completed	19	115.64	07	8.84	26	124.48
Under progress	32	200.23	56	198.31	88	398.54
Yet to be started	07	39.95	25	54.69	32	94.64
Projects at planning stage	10	205.56	49	280.66	59	486.22

In Smart City Mission, the Special Purpose Vehicle (**Dharamshala Smart City Limited (DSCL) & Shimla Smart City Limited (SSCL)**) was preparing the plans for retrofitting, redevelopment, Greenfield Development and Pan City initiative, which were being either executed by themselves or through the line departments of the State Government / agencies. In this process, some of the devolved functions/works such as upgradations and maintenance of roads, streets, Skill Development Centre, underground bins, e-toilets of the Municipal Corporations were being executed by the line departments or other agencies instead of Municipal Corporations.

These SPVs were directly accountable to State Government than to ULBs, and the representatives of ULBs had only 25 per cent (DSCL) and 17 per cent (SSCL) representation in the Board of Director. Further, the functions devolved to ULB were being executed by other agencies on direction of SPV.

During the exit conference, the State Government stated that projects under Smart City Mission in Dharamshala and Shimla were entrusted to Special Purpose Vehicles created under the Chairmanship of Chief Secretary for proper coordination with various Departments to complete projects in mission mode. The execution by the ULBs is not possible due to involvement of multiple agencies and the limited capacity of the ULB. The reply is not tenable because the capacity building of ULBs had to be done by transferring funds and functionaries in order to execute the functions devolved to them with complete autonomy. Moreover, some of the work devolved to ULB was also being executed by the Special Purpose vehicles.

4.5 Summary of Audit Findings

- Tenure of Mayor/Deputy Mayor in the MCs was 2 and ½ years which was not coterminous with the term of the Corporation affecting long term planning.
- Ward Committees were not constituted in any of the ULBs except SMC. Even in SMC required meetings were not held leading to lack of participation of the public in development works.

- District Planning Committees (DPC) were constituted in all the Districts of test-checked ULBs, however envisaged functions were not carried out by them in the absence of receipt of DDPs from the ULBs concerned. This had resulted in non-preparation of district plans and non-integration of the same in the State plan.
- Delay in constitution of SFCs and subsequent delay in submission of final reports to the State Government had led to submission of interim reports based on trend of previous reports.
- Existence of parastatals had significantly eroded autonomy of the ULBs in implementation of functions such as urban planning and regulation of land use and water supply and sanitation.

4.6 Recommendations

In light of the audit findings, the State Government may like to consider:

- (i) taking decisive action in order to translate the vision of decentralisation into reality, besides providing adequate degree of autonomy to ULBs in respect of functions assigned to them in line with the Constitutional provisions;
- (ii) constituting requisite committees for effective planning and better execution at ULBs' level; and
- (iii) involving greater participation of ULBs in the functioning of various parastatals in the State.

