

## CHAPTER II

### EMPOWERMENT THROUGH INSTITUTIONAL MECHANISM

#### 2.1 Enactment of State Legislation

As the Kerala Municipalities Act, 1960 and the Kerala Municipal Corporations Act, 1961 were not in conformity with the provisions of Part IXA of the Constitution of India inserted by the Constitution (Seventy Fourth Amendment) Act, 1992 (74<sup>th</sup> CAA), they had to be replaced by a comprehensive enactment in line with the 74<sup>th</sup> CAA. The Kerala Municipality Act, 1994 (KM Act) was enacted with effect from 30 May 1994, for securing a greater measure of participation of the people in planned development and local Governmental affairs by constituting Municipal Councils and Municipal Corporations and through endowing the Urban Local Bodies (ULBs) with powers and authority to function as institutions of self-government.

##### 2.1.1 Best practices

Audit observed the following achievements of the State towards effective devolution:

- The People's Planning Campaign, initiated in 1996 in Kerala, sought to decentralise powers to local governments with focus on local planning, involving active participation of all sections of people for the formulation and implementation of programmes for the overall development of Local Self Government Institutions (LSGIs).
- Government has complied with the provisions<sup>4</sup> regarding constitution of Ward Committees and Standing Committees as well as reservation of seats for direct election in Municipal areas. The Secretaries of 21 selected ULBs confirmed to Audit that Ward Committees and Ward Sabhas were constituted during the five year period (2015-20), as envisaged under Section 20 of KM Act. The three test checked Municipal Corporations had eight Standing Committees<sup>5</sup> and 18 Municipalities had six Standing Committees<sup>6</sup> each. The Municipal Secretary acted as the executive officer of ULB.
- The State has taken a unique initiative to vest the District Planning Committee (DPC) with powers of vetting and approval of the Local Self Government plans, on account of the high extent of devolution to local governments. The DPC is also to ensure the compliance of these plans with State and Central Guidelines and priorities, including alignment with centrally sponsored schemes, sectoral and inter sectoral integration and convergence between local governments.

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<sup>4</sup> Article 243S, 243P of the Constitution; Section 42, 6 of KM Act.

<sup>5</sup> Standing Committees for Finance, Development, Welfare, Health, Works, Town planning, Appeal relating to tax and Education

<sup>6</sup> Standing Committees for Finance, Development, Welfare, Health, Works and Education, Arts and Sports

- The Act mentions that seats are reserved for Women, Scheduled Caste (SC) and Scheduled Tribe (ST), and women belonging to SC and ST, in every Panchayat/Municipality. The reservation for SC and ST is to be in proportion to their respective population in the Panchayat/Municipality. In Kerala, 50 *per cent* of the seats reserved for SC and ST is reserved for women belonging to SC and ST. Fifty *per cent* of the total seats (including SC/ST women) is reserved for women.
- Ever since the enactment of Kerala Municipality Act and Kerala Panchayat Raj Act, elections to the rural and urban local bodies in the State have been conducted every five years, in 1995, 2000, 2005, 2010, 2015 and 2020.
- The State has constituted six Finance Commissions from 1994 onwards till date. The State Finance Commissions have submitted their reports to Government and the Action Taken Reports on the recommendations in SFC reports have been submitted by the Government to the Legislature.

## **2.2 Comparison of State Level Legislations with provisions in 74<sup>th</sup> CAA**

In order to give a constitutional footing to the Municipalities as institutions of self-governance, Articles 243Q to 243ZG were introduced in the Constitution. Audit compared the extent to which the new State legislation conformed to the requirements of the 74<sup>th</sup> CAA. The results are indicated in **Appendix 2.1**.

The comparison revealed that the new statute was mostly in line with the 74<sup>th</sup> CAA in respect of inclusion of provisions of the Amendment Act. However, compliance to the constitutional provisions by law does not guarantee effective decentralisation on ground, unless followed by effective implementation. Audit observed that legal provisions were not supplemented by fruitful actions, thereby compromising the spirit of the Constitution amendment, as discussed in ensuing paragraphs.

## **2.3 Actual status of devolution of functions to Local Governments**

Government issued (September 1995) orders transferring functions, institutions and schemes to ULBs, in conformity with provisions in KM Act. Audit observed the following points in this connection;

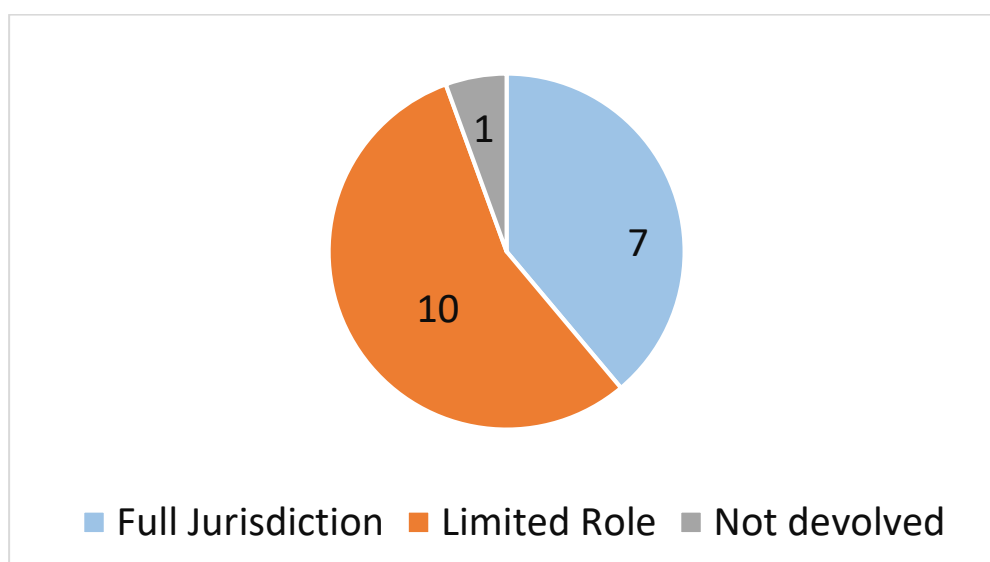
- Though the Government informed Audit that 17 of the 18 (except Fire Services) matters in the Twelfth Schedule of the Constitution have been transferred, there was no documented mapping correlating the items listed under General, Mandatory and Sector-wise functions in the First Schedule of KM Act, with the Twelfth Schedule of the Constitution.
- The entity in which each of the functions/ sub-functions was vested was not clearly indicated. Neither the KM Act nor the Government Order of September 1995 indicated whether powers, authorities and responsibilities continue to vest in the State and if so to what extent, in respect of each function/ sub-function transferred to Municipalities. No document showing activity wise mapping of functions with executing agency was made available to Audit. Activity wise mapping would enable clear demarcation of activities and the authority to which they

are entrusted. In the absence of such demarcation of roles, Government Departments and parastatals were involved in the execution of functions stated to have devolved to Municipalities. Audit observed overlapping of roles in execution and duplication of duties entrusted.

Audit attempted an Activity mapping of the role of ULBs with respect to execution of functions enumerated in the Twelfth Schedule of the Constitution, as included in the First Schedule of KM Act. Where the entire activities pertaining to a function were undertaken by ULBs, the role of ULBs was mapped as 'full jurisdiction', whereas if any of the related activities were undertaken by Government Departments/ parastatals/ other agencies along with ULBs, the role of ULBs was mapped as 'limited' (**Appendix 2.2**).

The exercise revealed that the ULBs were fully responsible for seven<sup>7</sup> out of 17 functions transferred, and had limited role as regards ten functions. The function-wise role of ULBs is depicted in **Chart 2.1**.

**Chart 2.1: Role of ULBs in execution of functions devolved**



(Source: KM Act, Government orders)

It was seen that the ULBs play a limited role in major share of activities pertaining to the devolved functions listed in the Twelfth Schedule. This situation facilitates involvement of more than one agency in execution of a function which adversely impacts upon the accountability in scheme implementation as seen from instances mentioned in paragraph 2.4.

Government replied (December 2021) that KM Act already has thorough separation of functions and listing of responsibilities and that a comprehensive in-built activity mapping was in place, Chapters XIII to XX and First Schedule of KM Act deal with specific functions and that detailed activity mapping has been undertaken within the framework of the Act itself.

<sup>7</sup> Roads and bridges, Slum improvement and upgradation, Urban poverty alleviation, Burials and burial grounds, cremations, cremation grounds and electric crematoriums, Vital statistics including registration of births and deaths, Public amenities including street lighting, parking lots, bus stops and public conveniences, Regulation of slaughter houses and tanneries.

The reply is not acceptable as the State Government and Urban Local Bodies would not be undertaking similar schemes in local bodies as discussed in paragraph 2.4.2, if proper activity mapping was in place.

Feasibility of presenting the functions devolved as two lists comprising (a) purely Municipality functions (Municipality List) and (b) Concurrent functions between State and Municipality (Concurrent List), with clear demarcation of boundaries, may be considered, along the lines of categorisation in the Seventh Schedule of the Constitution.

Government also assured (December 2021) that the suggestion on introducing a concurrent list separating the functions of the State from those of the Local Governments will be given due consideration.

## 2.4 Inadequacies in mode of devolution

### 2.4.1 Incomplete Transfer of Institutions and functionaries for functions transferred

Government transferred (September 1995) institutions under 10 departments to implement schemes for matters enumerated in Twelfth schedule of Constitution. Four functionaries, viz., Deputy Director Agriculture, Fisheries Sub Inspector, Industries Extension Officer and Senior Co-operative Inspector were also transferred to Municipalities/ Municipal Corporations. However, the transfer was not performed in a complete manner, as is evident from **Table 2.1**:

**Table 2.1: Inadequacies in transfer of functions**

| Sl. No. | Function stated as devolved in KM Act / Government Order (September 1995) | Actual status of transfer to ULBs  | Impact in test-checked ULBs   |
|---------|---|--|---|
| 1       | Dairy Development   | No transfer of institutions and functionaries  | Dairy sector schemes had to be implemented by other implementing officers such as Veterinary Surgeon, Secretary of ULB, etc. in 11 out of 21 test checked ULBs. |
| 2       | Co-operation  | A Senior Co-operative Inspector was posted as the implementing officer to the Municipality/ Corporation located in the district headquarters, who was to oversee implementation in all ULBs in the district. | The service of Co-operative Inspector not made available and no schemes/projects relating to Co-operative sector proposed or implemented in any of the 21 ULBs. |
| 3       | Industries  | Post of Industries Extension Officer transferred to every ULB.   | Service of Industries Extension officer not made available for implementing related schemes in eight out of 21 ULBs.  |
| 4       | Scheduled Caste(SC) Development   | SC department schemes transferred (February 1997) to ULBs. Taluk level Scheduled Caste Development Officer (SCDO) to offer technical   | Service of SCDO not provided in seven out of 21 ULBs. SC development schemes were being implemented by Secretary/Project Officer,                               |

| Sl. No. | Function stated as devolved in KM Act / Government Order (September 1995) | Actual status of transfer to ULBs                        | Impact in test-checked ULBs      |
|---------|---|--|----------------------------------|
|         |   | assistance and guidance to implement SC schemes in ULBs. | Poverty Alleviation Cell of ULB. |

Government stated in reply (December 2021) that the transfer of functions, institutions and functionaries in decentralised governance cannot be complete, as there are residual functions to be undertaken to further priorities at the level of departments. It was also stated that most of the centrally sponsored schemes envisage minor participation by Local governments, but definitive roles for the departmental/district administration. In view of the financial constraints, it has not been possible to create an independent cadre of related functionaries exclusively for local governments. This has necessitated dual control – by both the ULB and the department, with LSG priorities having to play second fiddle to departmental requirements.

The reply of the Government corroborates the Audit observation about incomplete transfer of functions to LSGIs and reflects the reality of Governmental control dominating the Municipalities, despite decentralisation initiatives taken so far.

#### 2.4.2 Parallel implementation of schemes transferred to ULBs by Government Departments

Audit observed that the schemes relating to the transferred functions which were included in the Annual Plans of ULBs, were implemented in a parallel manner by the Department concerned also. The following instances were noticed in this regard:

- Activities under the function Agriculture, *viz.*, running of Krishi Bhavans, promotion of horticulture and vegetable cultivation, development of seed production, etc., were transferred to ULBs. Audit observed that schemes taken up by ULBs were implemented in a parallel manner by Agriculture department also, through the same implementing officer handling activities of both the department and ULB. During 2019-20, promotion of group farming for augmenting rice production was implemented in the ULBs by the Department, whereas 11<sup>8</sup> test checked ULBs, additionally undertook the same scheme in the name 'Integrated rice production'.
- Schemes relating to development of the Scheduled Castes/ Scheduled Tribes taken up by ULBs were implemented in a parallel manner by Scheduled Caste Development Department with department funds. In 20 out of 21 test checked ULBs, Marriage assistance for SC women and Scheme for housing for SC/ST were seen implemented by ULBs, while

<sup>8</sup> Wadakkancherry, Thiruvalla, Pandalam, Nileshwar, Cherpulassery, Mattannur, Ottappalam, Kalpetta, Irinjalakkuda, Haripad Municipalities and Thiruvananthapuram Corporation.

the same schemes were implemented by SC/ST Development Department also.

- The Ward Committees/ Ward Sabhas are to identify and include eligible applicants from the respective ward area, based on the criterion prescribed in the beneficiary oriented scheme guidelines and submit the final list to the ULB. Parallel implementation of schemes by Government resulted in beneficiary selection by departmental officers for departmental schemes implemented in ULBs. These beneficiary lists prepared by departmental officers were not subject to scrutiny by Ward Committees/ Ward Sabhas and for that reason, such selection was vulnerable to the risk of inclusion of ineligible beneficiaries/duplication of beneficiaries. Eleven<sup>9</sup> test-checked ULBs confirmed that they had no role in selection of beneficiaries in schemes implemented by departmental officers with department funds.

The Fourth SFC observed that there was no clarity in the relationship between local Governments and State Government including parastatals performing functions assigned to local governments and this has to be laid down clearly. Though the recommendation was accepted by Government and State Finance Commission Cell was entrusted with pursuing further action, no action was taken in this regard.

Implementation of schemes of similar nature relating to the transferred functions by ULBs and Government in a parallel manner may result in lack of accountability of ULBs towards effective implementation of schemes. Further, Departments continuing to implement programmes on devolved functions goes against the spirit of decentralisation and reduces the autonomy of ULBs.

Accepting the audit observation, ACS LSGD stated in the Exit Conference (November 2021) that the departments with their technical knowhow should be supporting local bodies in their interventions on economic and social planning. Transfer is not complete and assets and personnel are still under the control of various Departments. The Administrative Departments need to monitor the functioning of respective personnel transferred to Local Governments and whether they involve actively in working groups and implementation of schemes, thereby furthering the development agenda through the Local Governments. ACS also remarked that had the supervision of departments been effective, audit observations regarding ineffective implementation would not have arisen.

## **2.5 Institutional mechanisms for empowerment of Urban Local Bodies**

The Constitution (74th Amendment Act), prescribed a common institutional framework for the efficient and effective delivery of municipal services comprising of mandatory institutions as mentioned in **Appendix 2.1**. The discharging of the functions transferred to the Municipalities can be performed in an effective manner only when appropriate institutions have been established,

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<sup>9</sup> Cherpulassery, Irinjalakkuda, Haripad, Thiruvalla, Wadakkencherry, Mattannur, Nedumangad, Kayamkulam Municipalities, Kozhikode Corporation, Kochi Corporation, Thiruvananthapuram Corporation.

which are adequately empowered to enable fulfilment of intended objectives. Audit undertook a review of the functioning of the institutional mechanism established in the State in the following paragraphs.

### 2.5.1 State Election Commission

In line with provisions laid down by Article 243K of the Constitution of India and Section 68 of KM Act 1994, the superintendence, direction and control of the preparation of electoral rolls, and the conduct of all elections to the Municipalities shall vest with the State Election Commission. In Kerala, the State Election Commissioner (SEC) or officer authorised by him was empowered for executing delimitation<sup>10</sup> vide Section 10(1) of KPR Act, 1994 and Section 69 of KM Act, 1994 upto 10 January 2005. With effect from 10 January 2005, the KM Act (Section 69) provided that the Delimitation Commission constituted by the Government shall be entrusted with the task of delimitation. The Delimitation Commission was set up in the State in 2005 with SEC as Chairperson and four officers not below the rank of Government Secretary as members. The number of seats for councillors in each ULB is determined on the basis of population of ULB. As per Article 243P (g) of the Constitution, 'population' means the population as ascertained in the last preceding census, of which relevant figures have been published.

Audit observed that though Government constituted Delimitation Commission in the State in 2015 and 2020 and issued Delimitation guidelines, delimitation was not conducted in the State. Consequently, the fixing of number of seats for councillors and number of wards for the elections to ULBs held in 2015 and 2020 was done on the basis of population figures of 2001 census, except for 29 Municipalities and two Municipal Corporations<sup>11</sup>.

As the number of seats for councillors was based on census figure of 2001, there was an overall shortage of 60 Councillors as on date in the State (Corporations: 01, Municipalities: 59) as shown in **Appendix 2.3**. In the test-checked ULBs, there was a shortage of nine Councillors.

Government stated (December 2021) that the shortage pointed out by Audit occurred due to the peculiar situation arising out of the restrictions of Covid which ruled out public consultations and compelled the Government to not undertake the delimitation exercise even though the Delimitation Commission had been constituted.

The reply of the Government did not justify the non-adoption of population figures of census 2011 in 2015 election.

In the absence of timely delimitation of wards on the basis of population of latest census, the elected representatives of ULBs in the State had to look after the interests of larger group of persons than they would have had to, had delimitation been effected with number of seats fixed as per the latest census.

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<sup>10</sup> Delimitation is the process of dividing Panchayats and Municipalities into as many constituencies or wards as there are seats (member/councillors) and fixing or re-fixing of the boundaries of the territorial constituencies for the purpose of general election.

<sup>11</sup> The more recently formed Municipalities and Corporations for which the 2011 census figures were adopted.

### **2.5.2 Ombudsman and Appellate Tribunal**

In accordance with Section 271G of the Kerala Panchayat Raj Act<sup>12</sup>, an Ombudsman was constituted to function as a state-level authority to conduct investigations and enquiries on charges of corruption, maladministration or irregularities in discharge of administrative functions by LSGIs, officials and elected representatives of the LSGIs. The State constituted (May 2000) an Ombudsman originally with seven members<sup>13</sup> which was later dissolved and the single Ombudsman system came into existence on 11 December 2001. Though the Fourth SFC (2011-12) recommended conversion of Ombudsman into a three-member body<sup>14</sup>, the recommendation was deferred for detailed examination by Finance Department and was not seen acted upon till date. Thus, the institution despite being entrusted with substantial responsibilities, continue to be a single member body for the last twenty years.

An Appellate Tribunal for LSGIs, as envisaged in Section 509 of KM Act was set up (February 2004)<sup>15</sup> at Thiruvananthapuram to consider appeals and revisions against decisions of LSGIs in exercise of their functions such as assessment, demand and collection of taxes or fees or cess, issue of licences, grants of permits, etc. Though the Fourth SFC recommended setting up of one more Appellate Tribunal in the northern region of the State, preferably in Kozhikode, this has not happened.

Timely implementation of the above recommendations of SFC would have contributed to enhanced effectiveness in discharge of duties by Ombudsman and Appellate Tribunal.

### **2.5.3 State Finance Commission**

Article 243Y envisages that the Finance Commission constituted to review the financial position of Panchayats shall also review the financial position of Municipalities. The first SFC was constituted on 23 April 1994, covering the period 1996-2001. Since then, six SFCs have been constituted in the State (September 2021). The details regarding the timeliness in constituting SFCs and submission of Action Taken Reports (ATRs) on the recommendations by Government are given in **Appendix 2.4**.

Though the respective SFCs submitted the Reports before commencement of award period, Audit observed significant delay in submission of ATR by Government on the recommendations of SFCs in the case of first, second and fifth SFC reports. Action Taken Reports on the recommendations of the Second and Fifth SFCs were submitted to State Legislature after a prolonged delay of over two years. The delay in placing the ATRs means that there is little effective time left for implementation of the recommendations. It was also seen that an effective mechanism was not ensured by Government for review of implementation of accepted recommendations. Absence of such a system may

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<sup>12</sup> read with Section 57, 64, 90, 229 (A) of KM Act.

<sup>13</sup> the Chairman who was holding the post of a High Court Judge and the other six members drawn from Judicial, Administrative sections as well as from eminent social activists.

<sup>14</sup> consisting of serving or retired High Court Judge, serving or retired Secretary to Government and an eminent public person.

<sup>15</sup> with a District Judge constituting the single member Tribunal.



have contributed to the lethargy in implementation of accepted SFC recommendations.

Audit compiled a status report of compliance of recommendations of previous SFCs by Government, from the Action Taken Reports, which is presented in **Table 2.2**.

**Table 2.2: Status of acceptance and implementation of recommendations of SFCs by Government**

| SFC           | Total no. of recommendations | Accepted by Government | Deferred  | Not accepted | Accepted but not implemented |
|---------------|------------------------------|------------------------|-----------|--------------|------------------------------|
| <b>First</b>  | 69                           | 59                     | 6         | 4            | 15                           |
| <b>Second</b> | 51                           | 46                     | 1         | 4            | 19                           |
| <b>Third</b>  | 32                           | 31                     | 1         | 0            | 17                           |
| <b>Fourth</b> | 151                          | 115                    | 35        | 1            | 113                          |
| <b>Fifth</b>  | 103                          | 74                     | 3         | 26           | 36                           |
| <b>Total</b>  | <b>406</b>                   | <b>325</b>             | <b>46</b> | <b>35</b>    | <b>200</b>                   |

(Source: Action Taken Reports on the Reports of State Finance Commissions and Part I of the Report of the Sixth SFC)

The substantial number of recommendations which have been accepted by Government but remain to be implemented, is a matter of concern as it reflects the low priority assigned by Government to the suggestions of the constitutional body set up for comprehensive analysis and betterment of the financial position of ULBs in the State.

The Additional Chief Secretary LSGD pointed out in the Exit Conference (November 2021) that compared to other States, SFCs have been constituted in a timely manner in Kerala and their recommendations have been duly considered by Government. Though there are plenty of recommendations on which action needs to be taken, many of them are complementary/ supplementary recommendations, and the critical ones related to devolution of funds have been consistently acted upon by GoK. As the SFCs were constituted for the specific purpose of appropriate devolution of funds to Local Governments, Audit is to consider whether this has been achieved in a substantial manner. Government also stated (December 2021) that some of the recommendations of earlier SFCs have become redundant in the context of new developments/ recommendations and that these specific recommendations are being reviewed to bring about compliance and closure.

The contention of ACS that the recommendations on devolution of funds have been acted upon is not acceptable as it was seen that the recommendations to be implemented included significant recommendations facilitating empowerment of Local bodies as listed in **Appendix 2.5**.

Further, though recommendations on devolution of funds made by the first four SFCs were accepted as such or with modifications, as regards the Fifth SFC, most of the core devolution recommendations, which were formulated on the basis of clear norms for general purpose, maintenance of assets and development, have been rejected. Though there is no obligation on the part of the Government to accept all or some of the recommendations of SFCs, rejection of all major recommendations, even though with detailed justification, would only subvert the fiscal decentralisation system.

The First SFC in its final report (February 1996) stated that implementation of the recommendations of SFC has to be closely watched to analyse the results achieved. Important basic economic indicators of Panchayats and Municipalities which would help the State Government to make accurate assessments of the financial and developmental needs of the Local Bodies (LBs) are now virtually lacking and can be collected and collated for future use only if a concerted attempt is started now itself. The Commission therefore recommended constitution of a special cell in Finance Department to

- prepare a reliable database on important basic economic indicators of the rural and urban LBs through appropriately drawn up formats and to preserve the same in floppy disc for future reference.
- conduct comprehensive case studies in selected LBs on upgradation of standards of civic administration at a desired level as well as special problems, assessment of gap between the existing resources and cost of civic services at satisfactory standards.

The State Finance Commission Cell was constituted in Finance Department, GoK in 1996. In reply to the audit enquiry on the above aspects, the SFC Cell stated (September 2021) that the above requirements have not been fulfilled. The reply is indicative of the lack of prudence towards effective compliance with the recommendations of SFCs.

#### ***2.5.3.1 Constitution of SFCs***

The State Finance Commission shall consist of members not exceeding three, including the Chairman. One member of SFC shall have special knowledge and experience in financial matters and economics and the other two shall be persons having experience in public administration or local administration or having special knowledge in financial matters and accounts of the Government and local bodies.

The Twelfth Central Finance Commission had remarked that since the SFCs are temporary bodies required to discharge their functions within the time limit, all members and Chairman should be full time. Further, routine transfers of Government officials if included in SFCs, may lead to frequent reconstitution of SFCs, which could be avoided if the SFC comprises of non-official experts. However, it was observed that all six SFCs formed in the State till date comprised of two Government Secretaries representing Finance and Local Self Government Departments as members, apart from the Chairman who was a non-official member. Government replied (December 2021) that the inclusion of Local Self Government and Finance Secretaries in SFCs has ensured that the most critical recommendations regarding the nature of devolution and transfers are seamlessly implemented by Government.

However, Audit observed that, despite these Secretaries playing key roles in formulating recommendations offered by SFCs and the Administrative Departments under them vested with the responsibility of implementing the accepted recommendations, 200 (61.50 *per cent*) out of 325 accepted recommendations were yet to be implemented.

## 2.6 Powers of the State Government over ULBs

The KM Act laid down provisions which enabled the State Government to have overriding powers on ULBs, which was against the spirit of the 74<sup>th</sup> CAA. Some of these provisions are listed in **Appendix 2.6**.

It was noticed that an amendment (w.e.f. 24 March 1999) to section 58 of the KM Act resulted in imparting very wide powers to the State Government to issue directions to Municipalities. Prior to the amendment, the section permitted the Government to issue directions to a Municipality only after giving the Municipality an opportunity to be heard. Also, such direction could be issued only if the Government was satisfied that any action taken/order issued/license or permission granted by the Municipal Authority was defective on specific grounds<sup>16</sup>. The amendment has bestowed upon the Government, the power to issue directions to the Municipality in matters of finance, maintenance of accounts, office management, selection of schemes, sites and beneficiaries, proper functioning of Ward Sabhas and Ward Committees, welfare programmes, environment control, etc., and the Municipality will have to comply with such directions.

On the other hand, as a positive step towards safeguarding the decision making powers of Municipalities, Section 57 which empowers the Government with powers to suspend and cancel resolutions of the Council was amended to include Section 57(2) w.e.f. 24 March 1999. Consequent upon the amendment, the Government has to refer any proposal for suspension/cancellation of a decision of the Municipal Council to the Ombudsman or to the Tribunal for Local Self-Government Institutions and the Government may cancel/amend/approve a resolution/decision of the Council only based on the Tribunal's Report, after giving the Municipality an opportunity of being heard.

Government replied (December 2021) that the principle behind devolution to Local Government, viz., the paramountcy of people and Grama/Ward Sabhas was the responsibility of the State while furthering local governance systems. However, whenever it was noticed that some local action tended to have negative ramifications on state and central policy and imperatives or when some areas of inaction were detrimental to the interests of citizens, particularly vulnerable communities, the State had to step in.

The Government's response is silent on the aspect of doing away with the Municipality's right to be heard. This right of the Municipality needs to be safeguarded even in the extreme situations where the State may have to step in. Functional autonomy to Local Governments, envisaged by the 74<sup>th</sup> CAA is compromised through such amendments.

## 2.7 District Planning Committee

Section 53 of KM Act provides for the constitution of a District Planning Committee (DPC) for consolidation of plans prepared by the Panchayats and the Municipalities. The DPC is also to prepare a draft development plan for the

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<sup>16</sup> (a) erroneous, improper etc., or (b) causes or is likely to cause injustice to any person etc., (c) causes or is likely to cause undue hardship etc., to any person or (d) omits to discharge a legal duty or fulfil an obligation cast upon it by law, or (e) is against public interest and better administration of the Municipality

district as a whole and matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, integrated development of infrastructure and environment conservation, etc. The ULBs upload the annual plans prepared and approved by Municipal Council in the software Sulekha, which are in turn approved by respective DPCs. The DPCs of 14 districts have approved the Annual Plans uploaded by the ULBs during the period from 2015-16 to 2019-20. However, Audit observed as follows:

- Though the DPC is to prepare the Draft Development Plan for the whole district for the next financial year before 30 September of every year, and the Chairman of the Committee is to forward the same to the Government for approval, District Plan was prepared only once in 2017-18 during the audit period.
- The Draft Development Plan did not cover matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation and the extent and type of available resources.
- As per para 15.2 of Plan formulation and Subsidy Guidelines 2016-17, District Development Vision document is to be prepared once in five years by each DPC. Audit observed that the District Development Vision document has not been prepared by DPCs.

The ACS, LSGD stated in the Exit Conference (November 2021) that preparation of District Plan was a very complicated process necessitating involvement of many technical institutions and experts which would not be easy to access in all districts in the State. As the process of formulation of District plan is not detailed by the Constitution, there is no clear instruction at any level. As far as the Vision Document is concerned, though the five year planning process is taking care of the objective, the State would work towards preparing the document. It was also informed that the Town and Country Planning Act was being amended to include the feature of spatial planning as well as risk informed planning.

The integration and consolidation of local level plans prepared by all Local Governments of the region into a District plan by DPC would have enabled streamlining of planning process by scientifically keeping track of the development status of the district.

## **2.8 Metropolitan Planning Committee**

Article 243ZE mandates constitution of a Metropolitan Planning Committee (MPC) in every Metropolitan area<sup>17</sup> to prepare a draft development plan for the area as a whole. Section 54 of the KM Act, 1994 provides for constitution of MPC to prepare a draft development plan for Metropolitan Areas. The Kerala

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<sup>17</sup> Metropolitan area denotes an area having a population of ten lakh or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be Metropolitan area.

Metropolitan Planning Committee (Election of Members and Proceedings of Meeting) Rules, 1995 were framed under Section 54 of the KM Act, 1994.

Despite formulation of Rules, no Metropolitan areas have been notified in Kerala and MPCs have not been constituted in the State so far. Constitution of MPCs would have enabled formation of sub-committees consisting of experts nominated from the respective fields by the Committee, for submitting reports after studying about the development requirements of that Metropolitan area.

The ACS, LSGD stated (November 2021) in response that there was no ULB in Kerala which qualifies for Metropolitan area with a population above 10 lakh and that Kochi Corporation would achieve it if the Urban agglomeration also is taken into account. ACS added that the next Five Year Plan of the State would consider whether the Greater Kochi Area could be notified as a Metropolitan Area.