
Chapter-II
Compliance to provisions of 74th Constitutional
Amendment Act

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Provisions of the 74th Constitutional Amendment Act were incorporated by the State Government in various Municipal Acts. However, we observed that provision was not made for their enforcement. Thus, the spirit of the Amendment Act was not fructified.

2. Compliance to provisions of 74th CAA

2.1 Comparison of State level legislations with 74th CAA

The 74th CAA introduced certain provisions relating to Municipal Bodies as incorporated in Articles 243Q to 243ZG. Provisions corresponding to the 74th CAA were incorporated by the State Government in Andhra Pradesh Municipal Acts as indicated in *Table 2.1*.

Table 2.1: Comparison of State level legislations with 74th CAA

| Provision of Constitution of India | Requirement as per provision of Constitution of India | Provision of State Act/Acts |
|------------------------------------|--|--|
| 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 3 of Andhra Pradesh Municipal Corporations (APMC) Act and Section 2A and 3 of Andhra Pradesh Municipalities (APM) Act. |
| Article 243R | Composition of Municipalities: All the seats in a Municipality shall be filled by direct elections and by persons with special knowledge in municipal administration nominated by Government. The Legislature of a State may by law, provide for representation to the Municipality Members of Parliament and Legislative Assembly whose constituencies lie within the municipal area and Members of the council of State and State Legislative Council who are registered as electors within the city. | Section 5 of APMC Act, and Section 5 of APM Act |
| Article 243S | Constitution and composition of Wards Committee: This provides for constitution of Wards Committees in all municipalities with a population of three lakh or more | Section 8 of APMC Act and Section 5B of APM Act |

| Provision of Constitution of India | Requirement as per provision of Constitution of India | Provision of State Act/Acts |
|------------------------------------|---|--|
| Article 243T | Reservation of seats: The seats are to be reserved for SC/ST, women and Backward classes for direct election. | Section 6 of APMC Act and Section 8 of APM Act. |
| Article 243U | Duration of Municipalities: The municipality has a fixed tenure of five years from the date of its first meeting and re-election to be held within the six months of end of tenure | Section 7 of APMC Act and Section 20 of APM Act |
| Article 243V | Disqualifications for membership: (1) A person shall be disqualified for being chosen as, and for being, a member of a Municipality- (a) 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: Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years; (b) if he is so disqualified by or under any law made by the Legislature of the State. | Section 20 to 23 of APMC Act and Section 16 of APM Act |
| Article 243W | Powers, authority and responsibilities of the Municipalities: All municipalities would be empowered with such powers as may be necessary to enable them to function as effective institutions of self-government. The State Government shall entrust with such powers and authority to enable them to carry out the responsibilities in relation to the 12 th Schedule. | Chapter III (sections from 112 to 129) of APMC Act and Chapter III (sections 30 to 58) of APM Act. |
| Article 243X | Power to impose taxes by and funds of the Municipalities: <ul style="list-style-type: none"> • Municipalities would be empowered to levy and collect the taxes, fees, duties <i>etc.</i>, • Grant-in-aid would be given to the Municipalities from the State • Constitution of funds for crediting and withdrawal of money by the Municipality | Chapter VIII (Sections 197 to 281) of APMC Act and Part 4 – Chapter-1 (Sections 81 to 85) of APM Act |

| Provision of Constitution of India | Requirement as per provision of Constitution of India | Provision of State Act/Acts |
|--|---|--|
| Article 243Y read with Article 243I | <p>Finance Commission: State Government shall constitute Finance Commission for</p> <ul style="list-style-type: none"> Review the financial position of the Municipalities and taking such steps that help in boosting the financial condition of the Municipal bodies Distributing between the state and the Municipalities of the net proceeds of the taxes, fees, tolls and duties that are charged by the State Government. Allotting the funds to the municipal bodies in the state from the consolidated fund of the State. | Section 196A of APMC Act and 132A of APM Act |
| Article 243Z | <p>Audit of accounts of Municipalities: This provides provision for maintenance of accounts by the Municipalities and the auditing of such accounts.</p> | Section 196 of APMC Act and 127A & 128 of APM Act |
| Article 243ZA read with Article 243K | <p>Elections to the Municipalities: The Superintendence, direction and control of all procedure of election of the Municipalities shall be vested in the State Election Commission (SEC)</p> | Section 9 of APMC Act and Section 10A of Municipalities Act 1965 |
| Article 243ZD | <p>Committee for District Planning:</p> <ul style="list-style-type: none"> Constitution of District Planning Committee at district level. Composition of District Planning Committee. Preparation of draft development plan and forward to the Government. | The State Government has formulated Andhra Pradesh District Planning Committees Act 2005 separately. |
| Article 243ZE of Constitution of India | <p>Committee for Metropolitan Planning: Provision for constitution of Metropolitan Planning Committee (MPC) in every Metropolitan area with a population of 10 lakhs or more.</p> | The State Government formulated Andhra Pradesh Metropolitan Planning Committee Act 2007 separately. |

Source: Andhra Pradesh Municipal Corporation Act and Andhra Pradesh Municipalities Act

The above table shows that the statutes complied with the provisions of the 74th CAA. However, compliance to the constitutional provisions by Law does not guarantee effective decentralization on ground unless followed by effective implementation. Audit observed that the legal provisions were not backed by decisive actions resulting in a situation in which the spirit of the 74th CAA was not fructified as discussed in Chapter III of this Report. This was especially true in case of provisions pertaining to the devolution of functions and creation of appropriate institutional mechanisms for effective decentralization, which are discussed in the subsequent chapters.

Conclusion:

The State Government, wherever mandated by the CoI, has created appropriate legal framework through the AP Municipal Acts without provision for enforcement.

Recommendation:

Government should endeavor to create institutional mechanism appropriately for effective decentralization of functions with powers.