

## **III SEMESTER**

### **LOCAL GOVERNMENT AND POLITICS IN INDIA..**

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### **73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amenedment Acts.**

The 73rd and the 74th Constitutional Amendment Acts, 1992 enjoin upon the states to establish a three-tier system of Panchayats at the village, intermediate and district levels and Municipalities in the urban areas respectively. States are expected to devolve adequate powers, responsibilities and finances upon these bodies so as to enable them to prepare plans and implement schemes for economic development and social justice. These Acts provide a basic framework of decentralisation of powers and authorities to the Panchayati Raj/Municipal bodies at different levels. However, responsibility for giving it a practical shape rests with the States. States are expected to act in accordance with the spirit of the Acts for establishing a strong and viable system of Local Self-Government. The 73rd and 74th Amendments to the Constitution of India constitute a new chapter in the process of democratic decentralisation in India. In terms of these Amendments, the

responsibility for taking decisions regarding activities at the grass-root level which affect people's lives directly would rest upon the elected members of the people themselves. By making regular elections to Panchayati Raj/Municipal bodies mandatory, these institutions have been given their due place in the democratic setup of our country. Local Self- Governments in India, both Rural and Urban, has seen many ups and downs. But after the 73rd and 74th Constitutional Amendments, 1992, Local Self Government in India got a new life, as it is enshrined in the Constitution of India like the two upper levels of governments i.e., Central and State Governments.

Local Self-Government is the third stratum of Government, the first two being the Central and the State Governments.<sup>15</sup> Presently, Rural Self Government i.e., Panchayati Raj system is working in accordance with the 73<sup>rd</sup> Constitutional Amendment Act and Urban Self Government i.e., Municipal Bodies is working in accordance with the 74th Constitutional Amendment Act. Following the enactment of the 73rd Amendment Act, 1992, almost all the States in India passed legislation in conformity with the provisions of the 73<sup>rd</sup> Amendment Act. There are some States which have two tier Panchayats – one at the village level and second at the district level. And there are also other States where Panchayati Raj Institution is a three tier system- Gram/ Gaon Panchayat as first level, Samiti, Mandal or Anchalik or Taluk or Block or Janapad or Union or Kshetra as second level and Zilla or District as the third level. At the rural level the *Gaon Sabha* constitutes the foundation of the Panchayati Raj system. *Gaon Sabha* performs the functions and powers entrusted to it by the state legislatures.

The 73rd Amendment Act aims to provide three tier system in the Local Self Government constituted through elections held regularly every five years. The Act also provides reservation of seats for Scheduled Castes, Scheduled Tribes and Women. Moreover, the Act provides for a State Finance Commission to

make recommendations regarding the financial powers of the Panchayats and to constitute District Planning Committee to prepare draft development plan for the district. Provision has also been made to constitute a State Election Commission in every state to supervise, direct and control the regular and smooth elections to Panchayat bodies. The 74th Constitutional Amendment Act, 1992, proposes to constitute a uniform structure of Municipal Corporations, Municipal Councils and Nagar Panchayats in transitional areas. This Act granted the Urban Local Government a constitutional status. Presently, the Urban Local Government has three categories-(a) Nagar Panchayat for a transitional area, i.e., an area in transition from a rural to an urban area, (b) Municipal Council for smaller urban area and (c) Municipal Corporation for a large urban area. An area is designated as 'a transitional area' or a smaller urban area' or 'a larger urban area' on the basis of size and density of population of that area, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors. The Governor of a state can provide, by a notification that a Municipality may not be created in an industrial township if the municipal services are provided by an industrial establishment. Another type of town which does not come within the scope of above categories is the army cantonment. If any towns have come up around the army stations, the management boards for these towns are established and these are controlled by the Defence Department. These are known as Cantonment Boards. The seats in the Municipalities are filled by persons who are elected directly by the people from the territorial constituencies within the municipal area. These territorial constituencies are known as wards.

Though the Panchayati Raj Institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersession, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources. 2. Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of selfgovernment. In the light of the experience in the last forty years and in view of the short-comings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj Institutions to impart certainty, continuity and strength to them. 3. Accordingly, it is proposed to add a new Part relating to Panchayats in the Constitution to provide for among other things, Gram Sabha in a village or group of villages; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village and intermediate level, if any, and to the offices of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of Panchayats and office of Chairpersons in Panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of 5 years for Panchayats and holding elections within a period of 6 months in the event of supersession of any Panchayat; disqualifications for membership of Panchayats; devolution by the State Legislature of powers and responsibilities upon the

Panchayats with respect to the preparation of plans for economic developments and social justice and for the implementation of development schemes; sound finance of the Panchayats by securing authorisation from State Legislatures for grants-in-aid to the Panchayats from the Consolidated Fund of the State, as also assignment to, or appropriation by, the Panchayats of the revenues of designated taxes, duties, tolls and fees; setting up of a Finance Commission within one year of the proposed amendment and thereafter every 5 years to review the financial position of Panchayats; auditing of accounts of the Panchayats; powers of State Legislatures to make provisions with respect to elections to Panchayats under the superintendence, direction and control of the chief electoral officer of the State; application of the provisions of the said Part to Union territories; excluding certain States and areas from the application of the provisions of the said Part; continuance of existing laws and Panchayats until one year from the commencement of the proposed amendment and barring interference by courts in electoral matters relating to Panchayats.

### **Salient Features**

The Salient features of the Seventy-Third Constitution Amendment Act are given below:

The Amendment stipulates for certain compulsory provisions which are obligatory on the part of the State Governments to incorporate in their respective Acts. Some aspects have, however, been left at the discretion of State legislatures to make suitable provisions in their Act.

The mandatory provisions are:

- (A) Establishment of 'Gram Sabha' at the village level comprising of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat(Article 243(b)). The State, where Gram Sabha does not exist, will have to make such provision.
- (B) Establishment of a three-tier system of Panchayat, at the village, intermediate and district levels, in all the States and Union Territories (UTs) except in those having a population of less than twenty lakhs where Panchayats at intermediate level need not be constituted. The States which will fall under this category as per 1991 census are Goa, Sikkim, all the North Eastern States and UTs.
- (C) All levels of Panchayats will consist of persons elected directly from the territorial constituencies in the Panchayat area. The territorial constituencies shall be carved out in such manner that the ratio between the population of each constituency and the number of seats allotted to it should be uniform throughout the Panchayat area as far as practicable.
- (D) All members of the Panchayat whether or not directly elected shall have the right to vote in the meetings of the Panchayats.
- (E) The chairperson of a Panchayat at the intermediate and district level shall be elected from among the directly elected members representing the territorial constituencies.
- (F) Reservation of seats for SCs/STs in proportion to their population in the Panchayat area and seats may be allotted by rotation.
- (G) One-third of the total number of seats, both in reserved and unreserved categories shall be apart for women in every Panchayat and seats may be allotted by rotation.
- (H) The chairperson of each level of Panchayats shall be reserved for SCs/STs in proportion to their population on rotation basis. Similarly, one-third post

of chairpersons of each level of Panchayats shall be reserved for women on rotation basis.

- (I) A fixed tenure of five years for Panchayats from the date appointed for its first meeting and the tenure cannot be extended. However, if a Panchayat is dissolved before the expiry of its term, election is to be conducted within a period of six months of the dissolution to reconstitute the Panchayat for the remainder of the term provided the remainder of the period is not less than six months. The Panchayats shall be constituted before the expiry of its tenure of five years.
- (J) Amendment of law to dissolve the Panchayats at any level is also prohibited.
- (K) A person who has attained twenty one years of age is eligible for a membership of a Panchayat.
- (L) Constitution of a Finance Commission in the State within one year from the commencement of the Constitution Amendment Act initially and thereafter every five years to review the finances of the Panchayats and recommend the principles on the basis of which the taxes to be appropriated by, or assigned to the Panchayats as also grant-in-aid to the Panchayats from the consolidated fund of the State. The action taken on the recommendation of the Commission shall be laid before the Legislature of the State.
- (M) Audit of the accounts of the Panchayats to be done.
- (N) A State Election Commission has to be constituted for the superintendence, direction and control of the Panchayats at all levels. The State Election Commissioner, however, shall be removed in the manner and on the like grounds as a Judge of a High Court.
- (O) The Act is applicable to all States and Union Territories. Exemption is being granted to certain states and tribal areas and other territories from the

application of the provisions of part IX of the Constitution and powers to the President and the Governor to modify the provisions of the IX in their application to Union Territories and Scheduled areas, respectively.

(P) The existing laws relating to Panchyats which are inconsistent with the provision of the Act shall continue to be enforced until it is amended or repealed within one year. The existing Panchayats shall continue till the expiration of their terms unless they are dissolved by the competent authority.

(Q) Courts are not to interface in the electoral matters such as delimitation of constituencies, allotment of seats and election to any Panchayat. Petition challenging the election of any Panchayat can be presented to

Besides these mandatory provisions the State Legislature has been empowered to have legislation in respect of a wide range of subjects, including on such matters as functions of the Panchayats and so on.

## **74TH AMENDMENT ACT 1992 IN INDIA.**

The constitution 74th Amendment Act 1992, relating to Municipalities (Urban local Government) was passed by the parliament in 1992.

It received the assent of the president of India on 20th April 1993. The Act seeks to provide a common framework for the structure and mandate of urban local bodies to enable them to function as effective democratic units of local Self Government.



Government of India notified 1st June 1993 as the date from which the 74th Amendment Act came into force. The Act provided for a period of one year from the date of its commencement, within which the then existing municipal laws (which were in force at that time in states/union territories) were required to be changed/amended/modified in order to bring them in conformity with the provisions of the constitution (74th Amendment) Act—1992.

**The Salient Features of the Constitution (74th Amendment) Act, 1992:**

- (a) Constitution of Municipalities.
- (b) Composition of Municipalities.
- (c) Constitution of wards committees.
- (d) Reservation of seats.
- (e) Fixed duration of Municipalities.
- (f) Power, Authority and responsibilities of Municipalities.
- (g) Appointment of State Election Commission.
- (h) Appointment of State Finance Commission.
- (i) Constitution of Metropolitan and District Planning Committees.

Action has been taken by the State/Union Territory Governments to set up State Finance Commission/State Election Commissions. All

states set up their Finance Commissions. Most of the State Finance Commissions submitted their report to the concerned State Government.

The concerned states accepted nearly all the recommendations made by their respective finance commissions. All State Governments/Union Territories set up their Election Commissions for conducting elections to urban Local Bodies.

### **Extension of Provisions of the Constitution (74th Amendment) Act 1992 to Scheduled Areas:**

Part IX A of the constitution (i.e. the constitution (74th Amendment) Act 1992) is not applicable to Scheduled Areas referred to in clause (I) of Article 244 of the constitution. However in terms of Article 'JA3 Z,Q, (3), the parliament may, by law extend the provisions of this part to those areas with such exceptions and modifications as may be specified in such law.

In order that the constitution (74th Amendment Act) is also extended to Scheduled Areas, a committee of MPs and experts was constituted by the ministry of Urban Development to examine the Issues and to make recommendations on the salient features of the law for this purpose.

Based on the recommendations of the above committee and after consulting the concerned central ministries and also the State Governments having Scheduled Areas, the ministry of Urban

Development and poverty Alleviation has introduced a Bill namely provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001: in the Rajya Sabha on 30th August 2001.

In many states local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged super-sessions and inadequate devolution of powers and functions. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government.

**Having regard to these inadequacies, it is considered necessary that provisions relating to urban local bodies are incorporated in the constitution particularly for:**

**(i) Putting on a firmer footing the relationship between the state Government and the Urban Local Bodies with respect to:**

(a) The function and taxation powers.

(b) Arrangements for revenue sharing.

(c) Ensuring regular conduct of elections.

(d) Ensuring timely elections in the case of supersession.

(e) Providing adequate representation for the weaker sections like scheduled castes, Scheduled Tribes and women.

By 74th Amendment Act 1992, Part IX A was Inserted in the constitution. After defining the municipal area and the municipality, The Amendment Act lays down rules regarding the organisation powers, functions and finances of the institutions of Urban Local Government.

**These can be described as follows:**

**1. Constitution of Municipalities:**

**1. There shall be constituted in every state:**

(a) A Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area.

(b) A municipal council for a smaller urban area.

(c) A municipal corporation for a larger urban area in accordance with the provisions of this part.

**2. Composition of Municipalities:**

(i) As provided in clause (2) all the seats in a municipality shall be filled by persons chosen by direct election from the territorial constituencies in the municipal areas and for this purpose each municipal area shall be divided into territorial constituencies to be known as wards.

(ii) The Legislature of a state may, by law provide

**(a) For the representation in a Municipality of:**

(A) Persons having special knowledge or experience in municipal administration.

(B) The members of the House of people and the members of the Legislative Assembly of the state representing constituencies which comprise wholly or partly the municipal area:

(C) The members of the council of states and the members of the Legislative Council of the state registered as electors within the municipal area.

(D) The chairpersons of the committees constituted under clause (5) of Article 243S: provided that the persons referred to in paragraph (A) shall not have the right to vote in the meetings of the municipality.

(b) The manner of election of the chairperson of a municipality.

### **Constitution and Composition of Wards Committees:**

**1.** There shall be constituted wards committees consisting of one or more wards, within the territorial area of a municipality having a population of three lakhs or more.

**2. The legislature of a state may, by law, make provision with respect to:**

(a) The composition and the territorial area of a ward committee.

(b) The manner in which the seats in a wards committee shall be filled.

**3.** A member of a municipality representing a ward within the territorial area of the wards committee shall be a member of that committee.

**4. Where a wards committee consists of:**

(a) One ward, the member representing that ward in the municipality, or two or more wards, one of the members representing such wards in the municipality elected by the members of the wards committee shall be the chairperson of that committee.

**5.** Nothing in the article shall be deemed to prevent the Legislative of a state from making any provision for the constitution of committees in addition to the wards committees.

**Reservation of Seats:**

Seats shall be reserved for the scheduled castes and scheduled tribes in every municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that municipality as the population of the scheduled castes in the municipal area or of the scheduled tribes in the municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a municipality.

**Duration of Municipalities:**

Every Municipality unless sooner dissolved under any law for (lie time being in force, shall continue for five years from the date appointed for

its first meeting and no longer provided that a municipality shall be given a reasonable opportunity of being heard before its dissolution.

**Disqualification for Membership:**

**1. A person shall be disqualified for being chosen as and for being, a member of a municipality:**

(a) If he is 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 year.

(b) If he is so disqualified by or under any law made by the legislature of the state.

2. If any question arises as to whether a member of a municipality has become subject to any of the disqualification mentioned in clause (i) the question shall be referred for the decision of such authority and in such manner as the legislature of a state may by law provide.

**Powers, Authority and Responsibilities of Municipalities:**

**Subject to the provisions of the constitution, the legislature of state may by law, endow:**

(a) The municipalities with such power and authority as may be necessary to enable them to function as Institutions of self-government and such law may contain provision for the devolution of

powers and responsibilities upon municipalities, subject to such conditions as may be specified therein, with respect to

(i) The preparation of plans for economic development and social justice.

(ii) The performance of functions and the Implementation of schemes as may be entrusted to them including those in relation to the matter listed in the twelfth schedule.

(b) The committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth schedule.

**Power to Impose Taxes by, and Funds of the Municipalities:  
The legislature of a state may, by law:**

(a) Authorize a municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits.

(b) Assign to a municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits,

(c) Provide for making such grants-in-aid to the municipalities from the consolidated fund of the state and



(d) Provide for constitution of such funds for crediting all money received, respectively, by or on behalf of the municipalities and also for the withdrawal of such money therefrom, as may be specified in the law.

**Finance Commission:**

1. The Finance Commission constituted under Article 243-1 shall also review the financial position of the municipalities and make recommendations to the Governor.

2. The Governor shall cause every recommendation made by the commission under this Article together with an explanatory memorandum as to the action taken thereon to be laid before the legislature of the state.

**Committee for District Planning:**

There shall be constituted in every state at the district level a District Planning Committee to consolidate the plans prepared by the panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

**Committee for Metropolitan Planning:**

There shall be constituted in every metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the metropolitan area as a whole.

**Every metropolitan planning committee shall, in preparing the draft development plan:**

**(a) Have regarded to:**

(i) The plans prepared by the municipalities and the panchayats, in the metropolitan area.

(ii) Matters of common interest between the municipalities and the panchayats.

(iii) The overall objectives and priorities set by the Government of India and the State Government.

(iv) The extent and nature of investments likely to be made in metropolitan area by agencies of the Government of India and the Government of state and other available resources whether financial or otherwise.

**(b)** Consult such institutions and organizations as the Governor may by order, specify.

**(c)** The chairperson of every metropolitan planning committee shall forward the development plan, as recommended by such committee, to the Government of the State.

**Twelfth Schedule (Article 243 W):**

1. Urban planning including town planning.
2. Regulation of land use and construction of buildings.
3. Planning for economic and social development.

4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health sanitation, conservancy and solid waste management.
7. Fire services.
8. Urban forestry protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds, cremations, cremation grounds and electric crematoriums.
15. Cattle pounds, prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.

17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries.

### **Salient Features of the Municipalities after passing the 74th Amendment Act:**

1. Constitution of three types of municipalities:

#### **Constitution of three types of municipalities:**

1. Nagar Panchayat

2. Municipal Council

3. Municipal Corporation

Nagar Panchayats are created for a transitional areas (the area which is fast changing from rural to urban area) or for a very small urban areas.

Its tenure is five years.

Municipal councils are created for smaller urban areas.

Its tenure is five years.

Municipal corporations are created for larger urban areas.

Its tenure is 5 years.

2. Fixed five year term and continuity of operation for municipalities.
3. Appointment for an election commission in each state for conducting local elections to the institutions of local government.
4. Constitution of metropolitan and district planning committees in each state.
5. Constitution of finance commission for local governments.
6. Provisions for reservation of seats for SCs, STs, OBCs and women.
7. Provision for reservation of seats of public offices for SCs and STs and women.

After the passing of the 74th Amendment Act, all the states of union were to enact/amend their respective municipal acts. This work was accomplished by 1994. The urban local Government institutions in all states were organised in their new forms with effect from 1994.

Although, 74th Amendment of the constitution has granted sufficient autonomy to urban local government and those have been accorded constitutional status, these are not completely free from governmental control. The urban local government institutions work within the limits prescribed by the state Municipal Act which creates and governs them.

**Further the state government exercises its control over these bodies in several other ways:**

1. Legislative control
2. Financial control
3. Control through Government Officials.
4. Power to dismiss the urban local institutions.
5. Administrative control etc.

The constitution 73rd and 74th Amendment Acts have made a hold attempt to ensure their continuity, stability, representativeness and autonomy to function as valuable systems of self governance.