

Chapter-II

Compliance to provisions of 74th Constitutional Amendment Act

2.1 Comparison of State level legislations with 74th Constitutional Amendment Act

The 74th Constitutional Amendment Act introduced certain provisions relating to municipalities vide Articles 243Q to 243ZG. The provisions existing in the Chhattisgarh Municipal Corporation/Chhattisgarh Municipalities Acts and Chhattisgarh *Zila Yojana Samiti Adhinyam*, 1995 corresponding to the Constitutional Amendment Act provisions are as indicated in **Table 2.1** below.

Table 2.1: Comparison of State level legislations with the provisions of 74th Constitutional Amendment Act

Provision of the Constitution of India	Requirement as per provision of the 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 5 of Chhattisgarh Municipalities Act, 1961 Section 7 of Chhattisgarh Municipal Corporation Act, 1956
Article 243R	Composition of Municipalities: All the seats in a Municipality shall be filled by direct elections and also 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 19 of Chhattisgarh Municipalities Act, 1961 Section 9 of Chhattisgarh Municipal Corporation Act, 1956
Article 243S	Constitution and composition of Wards Committee: This provides for constitution of Wards Committees in all municipalities with a population of 3 lakh or more.	Section 48 (A) of Chhattisgarh Municipal Corporation Act 1956 Section 72 (A) of Chhattisgarh Municipalities Act 1961
Article 243T	Reservation of seats: The seats to be reserved for Scheduled Caste/Scheduled Tribe, women and Backward Classes for direct election.	Section 29(A) of Chhattisgarh Municipalities Act, 1961 Section 11(A) of Chhattisgarh Municipal Corporation Act, 1956
Article 243U	Duration of Municipalities: The municipality has a fixed tenure of 5 years from the date of its first meeting and re-election is to be held within six months of end of tenure.	Section 36 of Chhattisgarh Municipalities Act, 1961 Section 20 of Chhattisgarh Municipal Corporation Act, 1956
Article 243V	Disqualifications for membership: A person shall be disqualified from being a member of a Municipality:	Section 35 of Chhattisgarh Municipalities Act, 1961

	<ul style="list-style-type: none"> • If he is so disqualified by or under any law for the time being in force for the purposes of elections of the Legislature of the State concerned, and • If he is so disqualified by or under any law made by the Legislature of the State. 	Section 17 of Chhattisgarh Municipal Corporation Act, 1956
Article 243W	<p>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 them with such powers and authority as to enable them to carry out the responsibilities in relation to the 12th Schedule.</p>	<p>Section 124 of Chhattisgarh Municipalities Act, 1961</p> <p>Section 69 of Chhattisgarh Municipal Corporation Act, 1956</p>
Article 243X	<p>Power to impose taxes by the Municipalities and their funding:</p> <ul style="list-style-type: none"> • Municipalities would be empowered to levy and collect the taxes, fees, duties, etc. • Grant-in-Aid would be given to the Municipalities from the State. • Constitution of funds for crediting and withdrawal of moneys by the Municipality. 	<p>Section 129 of Chhattisgarh Municipalities Act, 1961</p> <p>Section 133 of Chhattisgarh Municipal Corporation Act, 1956</p>
Article 243Y read with Article 243I	<p>Finance Commission: State Government shall constitute a Finance Commission for:</p> <ul style="list-style-type: none"> • Reviewing 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 3 of Chhattisgarh State Finance Commission Act, 1994
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>	<p>Section 121 of Chhattisgarh Municipalities Act, 1961</p> <p>Section 125 to 131 of Chhattisgarh Municipal Corporation Act, 1956</p>
Article 243ZA read with Article 243K	<p>Elections to the Municipalities: The superintendence, direction and control of all procedures of election of the Municipalities shall be vested in the State Election Commission (SEC).</p>	<p>Section 32 of Chhattisgarh Municipalities Act, 1961</p> <p>Section 14 of Chhattisgarh Municipal Corporation Act, 1956</p>
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 forwarding to the Government. 	Section 3 of Chhattisgarh Zila Yojana Samiti Adhiniyam, 1995

Article 243ZE of Constitution of India	Committee for Metropolitan Planning: Provision for constitution of Metropolitan Planning Committee in every Metropolitan area with a population of 10 lakhs or more.	No provision has been made by State Government.
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(Source: Chhattisgarh Municipal Corporation/ Chhattisgarh Municipalities Acts and Chhattisgarh Zila Yojana Samiti Adhiniyam, 1995)

As seen from Table 2.1 above, barring the constitution of the committee for the Metropolitan Planning, the State Acts/Rules have complied with all requirements as envisaged in the 74th Constitutional Amendment Act regarding inclusion of codal provisions in the State Acts/Rules. However, compliance to the constitutional provisions by law does not guarantee effective decentralisation on ground unless followed by effective implementation. We observed that the legal provisions were not backed by decisive actions, which goes against the spirit of the 74th Constitutional Amendment Act. These shortages relate to institutional mechanisms for empowerment of Urban Local Bodies, devolution of financial powers of Urban Local Bodies, manpower management, etc., as discussed in the subsequent chapters.

2.2 Powers of the State Government over Urban Local Bodies

We observed that the State Government had overriding powers over Urban Local Bodies, which was against the spirit of the Constitutional Amendment. A few provisions are indicated in **Table 2.2** below:

Table 2.2: Statement showing the overriding powers of State Government over Urban Local Bodies

Sl. No.	Subject	Provision
1	Power to frame Rules	The State Government may by notification in the Gazette, frame rules for the Chhattisgarh Municipal Corporation/ Chhattisgarh Municipalities Acts after approval of the State Legislature (Section 433 of Chhattisgarh Municipal Corporation Act and Section 355 of Chhattisgarh Municipalities Act).
2	Power to cancel and suspend a resolution or decision taken by Urban Local Bodies	The State Government may cancel a resolution or decision taken by Urban Local Bodies, if the State Government is of the opinion that it is not legally passed or in excess of the power conferred by Chhattisgarh Municipal Corporation and Chhattisgarh Municipalities Acts, any other law or likely to lead to a breach of the peace or to cause injury or annoyance to the public or to any class or body or persons or is likely to cause waste of or damage to Municipal funds in violation of directions issued by Government (Section 421 of Chhattisgarh Municipal Corporation Act and Section 323 of Chhattisgarh Municipalities Act).
3	Power to dissolve Urban Local Bodies	The State Government shall, by notification in the Gazette, dissolve the Urban Local Bodies, if Urban Local Bodies fail to perform or default in the performance of any of the duties imposed on them, after giving reasonable opportunity. The State Government may appoint Administrators during the period of dissolution of Urban Local Bodies. (Sections 422 and 423 of Chhattisgarh Municipal Corporation Act and Sections 328 of Chhattisgarh Municipalities Act).
4	Sanction of laws by Government	Section 427 of Chhattisgarh Municipal Corporation Act and Section 355 of Chhattisgarh Municipalities Act empowers the Urban Local Bodies to make by-laws. However, the by-laws made by Urban Local Bodies are

Sl. No.	Subject	Provision
		not valid unless and until sanctioned by the Government (Section 430 of Chhattisgarh Municipal Corporation Act and Section 357 of Chhattisgarh Municipalities Act).
5	Sanction to deposit and invest surplus funds	Section 108 (3) of Chhattisgarh Municipalities Act allow Municipal Council to deposit and invest surplus funds but only after prior sanction from the Government.
6	Sanction to borrow money	Section 102 of Chhattisgarh Municipal Corporation Act and Section 115 of Chhattisgarh Municipalities Act allow Municipal Council and Municipal Corporations to borrow money, but only after prior sanction from the Government.
7	Lease/sale of property	Section 80 of Chhattisgarh Municipal Corporation Act and 109 of Chhattisgarh Municipalities Act allow the Municipal Councils and Municipal Corporations to lease or sell movable and immovable property belonging to them but with certain restrictions and prior sanction of the Government.
8	Withdrawal from Reserved Fund	According to the Government instruction (April 2016) five <i>per cent</i> of income of the Urban Local Bodies should be credited in Reserved fund but prior permission has to be obtained from Urban Administration and Development Directorate for withdrawal from it.

Overriding powers by the State Government creates obstacles in the democratic decentralisation process and delays creation of an institutional framework for ushering in democracy at the grass root level of the State.