

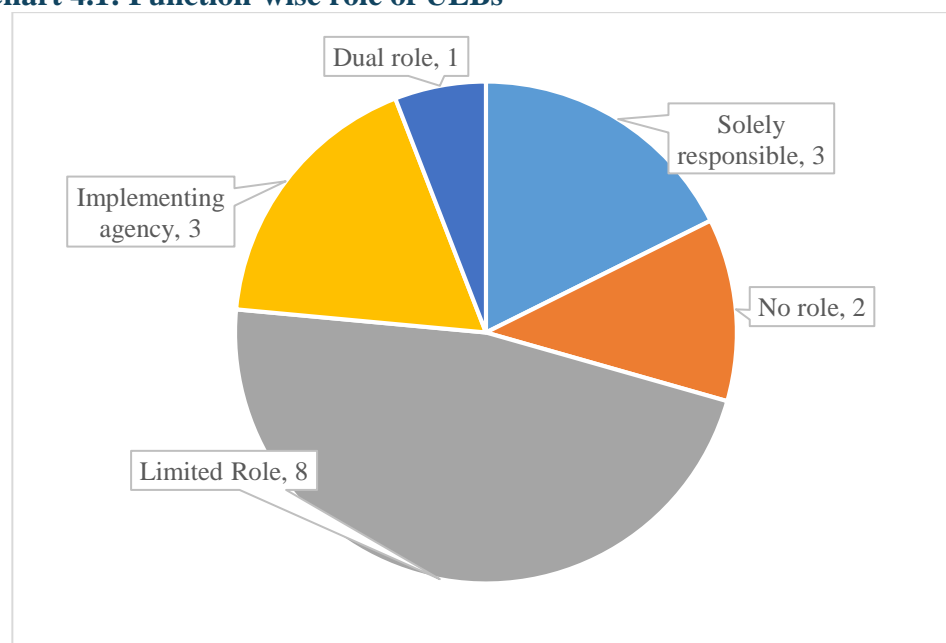
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Chapter IV

*Empowerment of Urban local bodies and their functioning***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 through amendments to KM / KMC Acts transferred 17 out of 18 functions to ULBs. The only function not covered was Fire Services. Out of the 17 functions, 12 were obligatory and 5 were discretionary for CCs, whereas it was 11 and 6 respectively for other category of ULBs as indicated in **Table 4.1**.

Audit observed several overlaps in discharge of the functions between ULBs and parastatals / government departments. Out of 17 functions, ULBs were solely responsible for three functions; had no role in two functions; had limited role in eight functions; were mere implementing agencies in three functions; and in respect of one function, while they were responsible for implementation within their jurisdiction, they also functioned as an implementing agency. The function-wise role of ULBs is depicted in **Chart 4.1**.

Chart 4.1: Function-wise role of ULBs

The actual implementation of the devolved functions by the various authorities and the overlap in discharge of the functions is detailed in **Table 4.1**.

Table 4.1: Statement showing the actual status of implementation of functions

Sl. No.	Functions Obligatory(O) / Discretionary (D)	Activities	Actual status of implementation
Functions where ULB has full jurisdiction			
1	Burials and burial grounds; cremations, cremation grounds (O)	Construction and O&M of crematoriums and burial grounds and electric crematoriums	ULBs were wholly responsible for discharging this function
2	Cattle pounds; prevention of cruelty to animals (O)	Catching and keeping strays	ULBs were wholly responsible for discharging this function
		Sterilisation and anti-rabies	
		Ensuring animal safety	
3	Regulation of slaughter houses and tanneries (O)	Ensuring quality of animals and meat	ULBs were wholly responsible for discharging this function
		Disposal of waste	
		O & M of slaughter houses	
Functions with no role for ULBs			
4	Urban planning including town planning (O)	Master Planning / Development Plans / Zonal Plans	Master plans prepared by UDAs/TPAs. Members of ULBs and Executive heads are nominated to the Planning authority.
		Enforcing master planning regulations	Enforcement is by UDA/TPA.
		Enforcing building bye-laws and licenses	ULBs role is limited to issue and renewal of building licenses
		Group Housing, Development of Industrial areas	ULBs role is to identify beneficiaries for group housing.
5	Slum improvement and upgradation (D)	Identifying beneficiaries	ULBs have no role in Slum improvement and upgradation
		Affordable Housing	
		Upgradation	
ULBs as mere implementing agencies			
6	Planning for economic and social development (O)	Program implementation for economic activities	<p><u>ULBs</u> - Implementation of Welfare schemes in sectors such as Housing, Employment, Health, Education and Basic necessities by reserving 34.35% of both the SFC untied grants and own revenue of the ULBs. The funds are allocated at 24.10% for SC/ST, 7.25% for OEWS (Other Economically Weaker Sections) and 3% for differently abled persons in the ratio of 40:60 between individual welfare activities and community development. The State Government issues the guidelines for implementation of these schemes.</p> <p><u>Social Welfare Department</u> - Safeguarding welfare of SC/ST and other weaker sections of the population, implementation of various programmes and schemes for the upliftment of SC/ST for their socio-economic and educational advancement, implementation of Special Component Plan and Tribal Sub Plan schemes, various scholarships and maintenance of hostels.</p>
		Policies for social development	

7	Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded (D)	Identifying beneficiaries	State departments such as Social welfare, Tribal welfare, Empowerment of Differently abled and senior citizens and parastatal such as Rajiv Gandhi Rural Housing Corporation were responsible for these functions. ULBs were only an implementing arm for central and state government schemes.
		Providing tools/benefits such as tricycles	
		Housing programs	
		Scholarships	
8	Urban poverty alleviation (D)	Identifying beneficiaries	<u>ULBs</u> – Welfare schemes through SFC and own funds <u>Department of Skill Development, Entrepreneurship and Livelihoods</u> - Central and State Government schemes
		Livelihood and employment	
		Street vendors	
Function with dual role			
9	Roads and bridges (O)	Construction and maintenance of roads	While ULBs played a significant role in the construction and maintenance of roads, bridges, drains, flyovers and footpaths within the jurisdiction of ULBs, they are required to implement projects under the State's Nagarothana scheme. ULBs lacked autonomy in execution of works under Nagarothana as the action plans approved under this scheme by the Council can be taken up only after the approval from District and State Committees. These works are monitored by the District Commissioner through District Urban Development Cell (DUDC).
		Construction and maintenance of bridges, drains, flyovers and footpaths	
Functions with minimal role and / or having overlapping jurisdictions with state departments and / or parastatals			
10	Regulation of land-use and construction of buildings (O)	Regulating land use	Regulation of land use was primarily vested with the Department of Revenue whereas construction of buildings was regulated by various bodies such as UDAs, BDA, Karnataka State Fire and Emergency Services and ULBs. The role of ULBs was limited to issue and renewal of building licenses and enforcement of building bye-laws.
		Approving building plans/high rises	
		Demolishing illegal buildings	
11	Water supply for domestic, industrial and commercial purposes (O)	Distribution of water	Parastatals were in charge of creation of assets. ULBs' role was restricted to operation and maintenance. KUWS&DB is involved in O&M for 10 ¹ ULBs, which was entrusted to it.
		Providing connections	
		Operation & Maintenance (O&M)	
		Collection of charges	
12	Public health, sanitation conservancy and solid waste management (O)	Maintaining hospitals, dispensaries	ULBs only had limited role in case of public health allied responsibilities, as Department of Health and Family Welfare played a significant role in maintaining hospitals and dispensaries. Only BBMP and HDMC had maternity homes. ULBs along with the state department undertook immunization / vaccination programs. ULBs were also
		Immunisation/Vaccination	
		Registration of births and deaths	
		Cleaning and disinfection of localities affected by infectious disease	

		Solid waste management	responsible for cleaning and disinfection of localities affected by infectious disease, solid waste management and control and supervision of public markets.
		Control and supervision of public markets	
13	Urban forestry, protection of the environment and promotion of ecological aspects (D)	Afforestation	Forest Department played a significant role in the discharge of this function. Only CCs undertook afforestation and awareness drives along with the Forest Department. Protection of the environment and promotion of ecological aspects was solely vested with the Forest Department
		Greenification	
		Awareness drives	
		Protection of the environment and promotion of ecological aspects	
		Maintenance of natural resources like water bodies etc.	
14	Provision of urban amenities and facilities such as parks, gardens, playgrounds (O) (D)	Creation of parks and gardens	This function was obligatory for CCs and discretionary for other ULBs. <u>ULBs</u> - O & M of parks, gardens, playgrounds, installation of play and gymnasium equipment in parks. <u>UDAs</u> - Reservation of not less than 15 <i>per cent</i> of the total area of the layout for public parks and play grounds and an additional area of not less than 10 <i>per cent</i> of the total area of the layout for civic amenities at the time of approval of residential layouts.
		Operation and Maintenance	
15	Promotion of cultural, educational and aesthetic aspects (D)	Schools and education	Schools and education were handled by Education Department. BBMP was the only ULB to run schools. ULBs along with the State Departments such as Kannada & Culture, Archeology and UDAs undertake activities allied with public space beautification, organizing fairs and festivals.
		Fairs and festivals	
		Cultural buildings / institutions	
		Heritage	
		Public space beautification	
16	Vital statistics including birth and death registration (O)	Coordinating with hospitals / crematoriums etc. for obtaining information	Both ULBs and the Department of Health and Family Welfare maintained database of births and deaths. ULBs register and issue certificates of birth and death.
		Maintaining and updating database	
17	Public amenities including street lighting, parking lots, bus stops and public conveniences (O)	Installation and maintenance of street lights	ULBs were in-charge of creation and maintenance of parking lots and public toilets and maintenance of street lighting. The State Road Transport Corporations share jurisdiction in respect of provision of bus shelters.
		Creation and maintenance of parking lots	
		Creation and maintenance of public toilets	
		Deciding and operating bus routes	
Function not devolved			
18	Fire Services	Establishing and maintaining fire brigades	This function was vested with Karnataka State Fire and Emergency Services Department.
		Providing fire NOC / approval certificate in respect of high rise buildings	

Source: KM and KMC Acts, respective Acts of parastatals

¹ CCs, Belagavi, Hubballi-Dharwad, Kalaburagi and Shivamogga; CMCs, Channapatna, Mandya, Ramanagara and Vijayapura; TMCs, Kushalanagara and Robertsonpet.

Recommendation 1: The State Government needs to take decisive action in order to translate the vision of achieving decentralisation into reality. Steps need to be taken to ensure that the ULBs enjoy an adequate degree of autonomy in respect of the functions assigned to them.

4.2 Institutional mechanisms for empowerment of urban local bodies

As already discussed above, the State Government 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 provided for establishment of such institutional mechanisms as can be seen from **Table 3.1**. This section discusses the effectiveness of such institutional mechanism.

4.2.1 State Election Commission

The powers of the State Election Commission (SEC) include superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to Panchayats and ULBs. However, the power of delimitation of wards, reservation of seats for the council and rotation policy of seats for the posts of Mayor/President, Deputy-Mayor/Vice-Presidents and wards were vested with the State Government. This was not in accordance with the recommendation of the 2nd Administrative Reforms Commission to entrust the task of delimitation and reservation of constituencies to SEC, which was accepted by the Government of India. Three States, Kerala, Maharashtra and West Bengal have empowered the SEC to delimit wards.

Further, the State delayed delimitation process, which in turn delayed council elections. This happened in 2009 and 2015 in the case of BBMP. Though the term of the current BBMP council would expire in September 2020, the State had not taken up the delimitation process as of January 2020. In response to a Public Interest Litigation filed by SEC, the High Court had cautioned (February 2020) the Government regarding imposition of penalty. Subsequent to this warning the State Government issued (March 2020) the preliminary notification and the final notification in June 2020.

Recommendation 2: In view of the fact that the delimitation has been delayed time and again by the State Government, the task of delimitation should be entrusted to the SEC in order to ensure timely elections.

4.2.1.1 Composition of Municipalities

Article 243R stipulates the composition of Municipalities. As per the KM and KMC Acts, the Corporations and Municipalities consist of elected Corporators/councilors, nominated Corporators/councilors, Member of Legislative Assembly, Member of Legislative Council, Member of Lok Sabha, Member of Rajya Sabha representing the constituencies which comprise wholly

or partly the Municipal area. The nominated members do not have voting power. The Mayor/President is elected from amongst the Councilors and is assisted by the Standing Committees. The CCs have four Standing Committees⁴ and other Municipalities have only one Standing Committee. The Commissioner/Chief Officer is the executive head of ULB.

4.2.1.2 Reservation of seats

Article 243T stipulated reservation of seats for SC/ST, Women and Backward classes for direct election. The KMC and KM Acts also provide for allotment of reserved seats to different constituencies as per the rotation policy adopted by the Government. As regards reservation for women, not more than 50 per cent of the seats reserved for each category of persons belonging to SC/ST and backward classes and those of the non-reserved seats to be filled by direct election in a corporation shall be reserved for women.

Audit observed that seats reserved for SC, ST, OBC and Women were as per prescribed norms and the State Government rotates the seats of Corporators / Councillors as per reservation policy for each election.

4.2.1.3 Status of elections and formation of councils

The election shall be conducted by SEC as stipulated in KMC (Election and Miscellaneous Provisions) Rules, 1977 and KM (Election of Councilors) Rules, 1977. Elections to ULBs shall be completed before the expiry of their duration. In case of dissolution, election shall be held within six months from that date. Further, Article 243 U(3)(a) of Constitution of India and provisions of the KMC and KM Acts, stipulate a fixed tenure of five years for the Corporators/Councilors of ULBs from the date of first meeting. The status of elections and formation of councils in the ULBs of the State is depicted in **Table 4.2.**

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

Total No. of ULBs			280
No. of NACs			4
Newly formed ULBs (TPs)			3
Elections held during 2015-16 to 2017-18 and councils formed			58
Elections due during 2019-20 but not held due to court cases regarding reservation policy in respect of wards			23
Elections held during August 2018 - January 2020			192
Elections held and Councils formed		5	
Elections held but Councils not formed due to court cases in respect of the procedures adopted by the Government for rotation in reservation for the offices of Mayor / Dy. Mayor and President / Vice-President	187		

Source: Information furnished by SEC/DMA

⁴ Taxation, finance and appeals; public health, education and social justice; town planning and improvement; and accounts

It can be seen from the above that there were no Councils in 210 (187 + 23) ULBs. In the absence of an elected council, the involvement of elected representatives in decision making and implementation which is an essential element of democracy is missing. Further, a ULB without a council cannot be held accountable by citizens. Audit noticed that the State Government appointed Administrators⁵ for these 210 ULBs. Though the Acts provided for constitution of an advisory committee⁶ through notification to assist the Administrator, this was not done in any of the ULBs. This affected the discharge of functions in matters of policy involving public interest such as identification of eligible beneficiaries for welfare schemes, prioritisation of development works *etc.*

4.2.2 Mayor/President

The Mayor/President is the first citizen of the city. The Mayor is elected from amongst the elected members of the Council, is empowered to preside over every meeting of the Municipality, enjoys the power of inspection, may give direction to the Commissioner/Chief Officer (Executive head) with regard to implementation of any resolution of the Corporation/Council and may call for any record of the Municipality from the Executive head. The Government shall appoint Commissioner/Chief Officer and Council Secretary, in consultation with the Mayor/President.

The Model Municipal Law 2003 circulated by the Ministry of Urban Development, Government of India prescribes that the term of office of the Mayor/President shall be coterminous with the duration of the Municipality. The office of the Mayor/President in the Municipality shall be reserved for the Scheduled Castes, the Scheduled Tribes, and Women to such extent, and in such manner, as may be prescribed.

In Karnataka, the term of office of Mayor and Deputy Mayor in the case of CCs is one year from the date of election while the term of the President and Vice President in the case of other ULBs is for a period of thirty months from the date of their election. The offices of Mayor and Deputy Mayor/President and Vice-President were reserved and rotated among different categories such as SC, ST, Backward Class, Women and General. Hence, a period of one year for a Mayor would be too little for carrying out effective reforms and there exists the possibility of change in priorities consequent on change in leadership. Most of the time, the Mayor may not even get to see the projects announced by him/her reaching their conclusion. Hence a longer term is essential.

A comparison of the tenure and powers of the Mayor in different cities across the country revealed the following:

⁵ Sections 99 and 100 of KMC Act and sections 315 and 316 of KM Act.

⁶ As per Section 99(6) of KMC Act, an advisory committee shall consist of not less than fifteen and not more than twenty-five persons who shall be qualified to become councilors under this Act. The provisions of KM Act do not specify any such condition.

Tenure of Mayor	At least 16 cities ⁷ in the country have a mayoral tenure of five years' coterminous with the Council.
Mode of election	6 ⁸ out of the above 16 cities have direct elections for Mayor.
Role of Mayor	The Mayor of Kolkata is the Executive Head. All projects have to be approved by the Mayor. The Mayor is also the exclusive sanctioning authority; has the authority to sign and approve bills; and can direct or authorise execution of services. Apart from Kolkata, the Mayors of Kochi and Jaipur also approve all the projects and have the authority to sign and approve bills.
Powers over staff	The Mayor of Kochi has the power to suspend any officer other than the secretary and other government officers in the gazetted rank, after receiving ratification from the Council.

Mayoral powers vary across cities as these provisions are left to State's discretion. In comparison with the above examples, Mayors of cities in Karnataka, seem to be on a weaker footing.

4.2.3 Wards Committee

The Constitution provides for Wards Committees in all Municipalities with a population of three lakh or more. As per section 13H of KMC Act, Wards Committee shall be constituted by all the Corporations. The term of these bodies will be co-terminus with the council. The Wards committees were to act as a bridge between the municipal government and citizens and function as institutions of neighbourhood governance and increase proximity between elected representatives and citizens and provide a space for citizen participation in local level planning. They were to perform duties such as preparation and submission of ward development schemes for allotment of funds, ensure proper utilisation of allotted funds, and maintenance of public utilities and safeguarding the assets of the corporation.

Audit observed that the Ward Committees were not constituted in any of the CCs except BBMP. This defeated the objective of facilitating community participation in local governance. The absence of community participation would adversely impact prioritisation of development works, non-monitoring of execution of works, utilisation and maintenance of assets created *etc.*

Recommendation 3: Ward Committees should be constituted as per the KMC Act and should be nurtured and encouraged to function effectively so that the priorities of citizens are factored into the decisions of the ULB.

⁷ Bhopal, Bhubaneswar, Chennai, Dehradun, Guwahati, Hyderabad, Jaipur, Kanpur, Kolkata, Lucknow, Ludhiana, Patna, Raipur, Ranchi, Thiruvananthapuram and Visakhapatnam.

⁸ Bhopal, Dehradun, Kanpur, Lucknow, Raipur and Ranchi.

4.2.4 District Planning Committee

Article 243ZD provides for the constitution of a District Planning Committee (DPC) for consolidation of plans prepared by the panchayats and the municipalities. The DPC was to prepare a comprehensive District Development Plan (DDP) with regard to 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 and extent and type of available resources, whether financial or otherwise. The DDP was to be forwarded to the State Government through the Decentralised Planning and Development Committee (DPDC)⁹ for integration into the State plan. Further, in accordance to the circular issued (April 2001) by the State Government, the DPC was to conduct meetings regularly. Funds for the DPCs were to be mobilised through annual contribution from the rural and urban local bodies.

The DPCs were constituted in all districts except Bagalkote and the DPDC was yet to be constituted. Audit observed that though DPCs were constituted, meetings were not held regularly and consolidated DDP for the district as a whole was not prepared in any of the 26 districts in which the 44 test-checked ULBs were located. None of the test-checked ULBs had prepared their development plans. Except TMC, Kundapura, none of the other test-checked ULBs had contributed funds to DPC. Non-preparation of comprehensive DDP by DPC taking into consideration the local needs and matters of common interest such as drinking water, roads and sewerage system, solid waste management *etc.*, affected the effective implementation of devolved functions by ULBs.

4.2.5 Metropolitan Planning Committee

Article 243ZE mandates that there shall be constituted in every Metropolitan area¹⁰, a Metropolitan Planning Committee (MPC) to prepare a draft development plan for the Metropolitan Region as a whole. Section 503B of the KMC Act, 1976 provides for constitution of MPC to prepare a draft development plan for Bengaluru Metropolitan Area. The Bengaluru Metropolitan Planning Committee Rules, 2013 were framed under Section 503 A and B of the KMC Act, 1976 and notified on 4 January 2014.

Audit observed that though MPC was constituted during 2014, it was not functioning as envisaged. Since its constitution, the MPC met only thrice (June 2016, December 2016 and January 2018) despite the stipulation that it 'shall meet at least once in three months'. Further, no significant issues regarding

⁹ As per Section 310 B of the Karnataka Gram Swaraj and Panchayat Raj Act, the Karnataka Decentralised Planning and Development Committee has to be constituted to review the development plan and annual economic plan of local bodies. The Chief Minister is the Chairman and Ministers of Rural Development and Panchayat Raj, Urban Development, Finance Department and Planning are the members.

¹⁰ A metropolitan area is defined as an area having a population of one million.

comprehensive development of metropolitan area and matters of common interest between the local authorities, including coordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation, were discussed. Consequently, a comprehensive development plan for Bengaluru Metropolitan area was not prepared so far.

Recommendation 4: The full potential of the DPC and MPC mechanism should be tapped by ensuring that they meet regularly to result in optimal decision making.

4.2.6 State Finance Commission

Article 243-I of the Constitution of India makes it mandatory for the State Government to constitute a Finance Commission within one year of the commencement of the CAA and thereafter on expiry of every five years. The mandate of the State Finance Commission (SFC) is to review the financial position of the local bodies and to make recommendations to the Governor for devolution of funds. State Government through amendments in KM and KMC Acts provided for constitution of SFC.

4.2.6.1 Delay in constitution of the State Finance Commission and implementation of recommendations

As per the constitutional provisions and the Acts, implementation of the recommendations of the 6th SFC was due from 2019-20. However, as on date, recommendations of the 4th SFC were being implemented with effect from 2018-19 to 2022-23 with a delay of nine years. This was on account of delays in constitution of SFC/implementation of SFC recommendations as detailed in **Table 4.3**.

Table 4.3: Statement showing the delay in constitution of SFC and implementation of recommendations

SFC	To be constituted as per constitution	To be constituted with reference to previous SFCs	Actually constituted	Delay in days	Date of submission	Date of acceptance	Delay in days	Period covered
First	By 31 May 1994	Not applicable	10.06.1994	10	05.08.1996	31.03.1997	238	1997-98 to 2001-02
Second	1999-2000	June 1999	25.10.2000	474	23.12.2002	29.06.2006	1,284	2006-07 to 2010-11
Third	2004-05	October 2005	28.08.2006	327	December 2009	31.10.2011	669	2011-12 to 2015-16
Fourth	2009-10	August 2011	21.12.2015	1,600	May 2018	07.12.2018	190	2018-19 to 2022-23

Source: SFC Reports and information furnished by UDD

The delay in constitution of SFCs and implementation of the SFC recommendations resulted in devolution of funds to the ULBs on the basis of recommendations of the earlier SFCs (2002-03, 2003-04, 2004-05 and 2005-06 – 1st SFC; 2016-17 and 2017-18 – 3rd SFC) affecting the financial position of the ULBs adversely. The impact thereof is discussed in **paragraph 5.1.1.1**. In

comparison, while Bihar and Tamil Nadu have constituted 6th SFC, Himachal Pradesh, Madhya Pradesh, Maharashtra, Punjab, Rajasthan and Uttar Pradesh have constituted 5th SFC and in Delhi and Kerala, SFCs have submitted the 5th report.

4.2.6.2 Response of the State Government to SFC recommendations

The State Government may accept the recommendations of the SFC in totality or with certain modifications. Audit observed that the State Government accepted few of the recommendations with modifications, and action was yet to be initiated on other recommendations. The SFC-wise important recommendations and their modifications with reference to transfer of funds are given in **Table 4.4**.

Table 4.4: SFC-wise important recommendations and their modifications

SFC	Recommendations	Modifications
First	Devolution of 5.4 per cent of the Non-Loan Gross Own Revenue Receipts (NLGORR) of the State Government to ULBs.	5.4 per cent of Non Loan Gross Own Revenue Receipts (NLGORR) to be passed on in a phased manner i.e. 3.6 per cent to 5.40 per cent over a period five years.
Second	Devolution of 8 per cent of the Non-Loan Gross Own Revenue Receipts (NLGORR) of the State Government to ULBs.	8 per cent of NLNORR to be passed on in a phased manner i.e. 6 per cent to 8 per cent over a period five years with increase of 0.5 per cent each year.
Third	Devolution of 10 per cent of the Net Own Revenue Receipts (NORR) of the State Government to ULBs.	10 per cent of NLNORR to be passed on in a phased manner i.e. 8.5 per cent to 10 per cent over a period five years with increase of 0.5 per cent each year.
Fourth	Devolution of 12 per cent of NLNORR of the State to be devolved to ULBs apart from BBMP.	12 per cent of NLNORR to be passed on in a phased manner i.e. 10.5 per cent to 12 per cent over a period five years with increase of 0.5 per cent each year.

Source: SFC Reports and Government orders

Besides recommendations relating to devolution, the SFCs have recommended several institutional measures that would strengthen ULBs in the long term. An illustrative list of recommendations where action was yet to be initiated are indicated below:

- Regular revision of rules pertaining to the power of expenditure of municipalities commensurate with their functional needs;
- Evolving a human resources management policy and this should include regular recruitment and training of personnel;
- Integration of urban civil service agencies with elected ULBs;
- The existing urban development authorities including BDA should be brought under the respective elected municipal bodies. Slum improvement should also be brought under these bodies;
- Town planning units, where existing, may be transferred to municipalities. Even functions like urban forestry should be entrusted to elected municipal bodies;

- All decisions relating to service conditions of municipal employees must be taken by the respective ULB;
- The practice of appointing unqualified persons as Chief Officers of TPs and TMCs should stop;
- Tapping of parking fees as a source of revenue;
- Full cost recovery for water supply and
- Constitution of an Institute to train city managers/urban specialities in management of cities in cooperation with IIMB, IISc, IIT and other leading institutions with core competence.

Implementation of the above recommendations would have contributed significantly to the realisation of the objectives of the 74th CAA. Non-implementation was a setback to the process of achieving genuine decentralisation.

The detailed list of recommendations and their compliance by the State Government is given in **Appendix 4.1**.

Recommendation 5: Delays in constitution and implementation of recommendations of the SFCs should be avoided. Further the recommendations of SFC relating to devolution as well as institutional matters should be implemented in toto to the extent possible, taking into account the final purpose of creating genuine institutions of local governance.

4.2.7 Property Tax Board

The 13th Finance Commission mandated constitution of a Property Tax Board (Board) on the lines of West Bengal Valuation Board, which was constituted in the year 1980. The Board was to assist all municipalities and municipal corporations in the State to put in place an independent and transparent procedure for assessing property tax. Sections 102A to 102Y under Chapter IX-A of the KMC Act, inserted vide amendment of March 2012, provide for establishment of the Karnataka Property Tax Board.

Audit observed that though the notification was issued (March 2013) for formation of the Property Tax Board, the members have not been appointed till date. Consequently, ULBs lacked technical guidance for assessment and revision of property tax. It was thus evident that the amendment to the KMC Act was only a cosmetic exercise to fulfil the conditions for obtaining performance grant as per the 13th CFC award. *Reference is invited to Para 6.1.26 of Report no.5 of year 2017, which discusses about the constitution of Property Tax Board in detail.*

Recommendation 6: The Property Tax Board needs to be made functional in order to provide technical expertise to ULBs.

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 constitutional amendment. A few provisions are indicated in **Table 4.5**.

Table 4.5: Statement showing the overriding powers of State Government over ULBs

Sl.no.	Subject	Provision
1	Power to frame Rules	The State Government may by notification in the Gazette, frame rules for the KMC/KM Acts after approval of the State Legislature (Section 421 of KMC Act and Section 323 of KM Act).
2	Power to cancel and suspend a resolution or decision taken by ULBs	The State Government may cancel a resolution or decision taken by ULBs, if the State Government is of the opinion that it is not legally passed or in excess of the power conferred by KMC and KM Acts, any other law or likely to endanger human life, health, public safety or communal harmony or in violation of directions issued by Government (Section 98 of KMC Act and Section 306 of KM Act).
3	Power to dissolve ULBs	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 both the Houses of State Legislature with a statement of reasons therefor. The State Government may appoint Administrators during the period of dissolution of ULBs. (Sections 99 and 100 of KMC Act and Sections 315 and 316 of KM Act).
4	Sanction of bye-laws by Government	Section 423 of KMC Act and Section 324(1) of KM Act empowers the ULBs to make bye-laws. However, the bye-laws made by ULBs are not valid unless and until sanctioned by the Government (Section 425 of KMC Act and Section 324(5) of KM Act).
5	Sanction to deposit and invest surplus funds	Section 166, 167 of KMC Act and Section 85 of KM Act allow municipal council to deposit and invest surplus funds but only after prior sanction from the Government.
6	Sanction to borrow money	Section 154 of KMC Act and Section 86 of KM Act allow municipal council and municipal corporations to borrow money, but only after prior sanction from the Government.
7	Lease/sale of property	Section 176 of KMC Act and 72 of KM 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.

Source: KM and KMC Acts

4.3.1 District Urban Development Cell

District Urban Development Cells (DUDC) under the control of Deputy Commissioner (DC) were formed (June 2003) to develop, formulate and implement Central and State Government schemes in the Municipality areas in co-ordination with ULBs.

The Project Director, DUDC was the main link between the ULBs and the district level government. The ULBs were preparing action plans for development works to be taken up under various funds including municipal funds. These action plans were placed before the respective Councils for approval. Subsequently, they were forwarded to the DCs for further approval. On approval from the DCs, ULBs invited tenders for execution of works. The system of seeking approval by DUDC after approval by the Council is against the intention of the 74th CAA to provide autonomy to ULBs in the democratic framework of the country.

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, functions such as urban/town planning, regulation of land use, water supply & sanitation and slum development continue to be delivered by parastatals as already indicated in **Table 4.1**. These parastatals were controlled by the Government and have their own governing bodies which do not include elected representatives of ULBs. They were directly accountable to the State Government rather than ULBs. Since most of the parastatals were established before the constitutional amendment through notifications and governed by the respective Acts, the Government should have amended these Acts to comply with the constitutional amendment, thereby making them accountable to ULBs. The system of assignment of functions to parastatals undermines the *raison d'être* of decentralisation *viz.*, accountability to the people.

The role of parastatals and their impact on the devolved functions in the test-checked ULBs is discussed in the subsequent paragraphs.

4.4.1 Urban Development Authorities - Urban planning and regulation of land use

(i) The functions of Urban planning and regulation of land use were discharged by the Urban Development Authorities (UDAs) and Town Planning Authorities (TPAs). The State Government established 31 UDAs for the planned development of major and important urban areas in the State (under the Karnataka Urban Development Authorities Act, 1987) and 52 TPAs under Section 4-C of the Karnataka Town and Country Planning (KTCP) Act, 1961 for the preparation of Master Plan for ULBs other than those covered under UDAs. TPAs were also responsible for zoning of land use for residential, commercial, industrial, agricultural, recreational, educational and other purposes together with zoning regulations.

In order to comply with the State level mandatory reforms under JnNURM, which stipulated implementation of decentralisation measures as envisaged in the 74th CAA, the following were to be complied with.

- a) the State should ensure meaningful association and engagement of ULBs in planning the function of parastatal agencies as well as the delivery of services to citizens and
- b) assigning or associating elected ULBs with ‘city planning function’.

Audit observed that the State Government issued (December 2009) orders for devolution of planning functions to ULBs wherein it was stated that UDAs/TPAs would continue to prepare master plans and the plans so prepared shall be sent to the respective ULBs both at the draft stage and final stage for vetting and comments. This was in itself not completely consistent with the spirit of devolution. However, even this procedure was not being followed. The UDAs/TPAs were submitting plans directly to Government without the comments of ULBs.

Further, Section 503-A of KMC Act and 302-A of KM Act stipulated preparation of development plan by CCs and Municipalities every year and submission thereof to the DPC constituted under Section 310 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993. As per Section 505 of KMC Act, the Corporation shall exercise such power or perform such functions or discharge such duties with regard to such land use or development plan with the concurrence of the Planning Authority. Thus, the matters relating to land use were mainly vested with UDA/TPA. Only the building licenses were issued by the CCs/Municipalities in respect of areas coming under the master plan approved by the TPAs, whereas in the case of UDAs, building licenses were also issued by the UDA, wherever layouts were not handed over to ULBs.

Audit also observed the following in the test-checked ULBs:

- UDAs and TPAs prepared the master plan and development plans in 7 and 37 ULBs respectively. No mechanism/protocols were established to ensure that these authorities report to the Councils.
- The Standing Committee on Town planning and reforms in CCs and the General Standing Committee in other ULBs merely review the issue of building licences but do not deliberate on planning related aspects.
- The amount collected towards sanction of layout plans and development charges by UDAs/TPAs was not remitted to ULBs. While the TPAs remitted the amount collected to Government, the UDAs retained the amounts. This deprived the ULBs for additional revenue. The State Government may consider sharing of revenue by the UDAs/TPAs with ULBs just as Jaipur Development Authority pays 15 *per cent* of the share of land sale revenues generated to Jaipur Municipal Corporation.
- Layouts under the control of these authorities were transferred to ULBs for maintenance after development. Only the roads and parks were handed over while Civic Amenity sites were retained by UDAs/TPAs.

Thus, the ULBs either had no role / or had limited role in discharging urban planning and regulation of land use functions. Hence, the transfer of these functions were only in letter and not in spirit. The 1st SFC had in fact recommended that the existing urban development authorities including BDA should be brought under the respective elected municipal bodies.

(ii) Karnataka Industrial Area Development Board (KIADB) was established in the year 1966 and was responsible for promoting rapid and orderly establishment and development of industries and for providing industrial infrastructural facilities and other amenities in Industrial areas in the State of Karnataka. KIADB notified its own zonal regulations, prepared bye-laws for construction of buildings in industrial areas and collects fees for approval of building plans *etc.* KIADB had established 153 industrial areas consisting of 18,865 units in the State as at the end of March 2018.

In compliance to the 74th CAA, the State Government through amendment to the KM Act introduced (August 2003) Chapter VIA having Sections 364A to 364Q with regard to development of Industrial Townships. In accordance with Section 364A, the Governor may by notification specify such area to be an Industrial Township and as per Section 364B, for every industrial township there shall be an Industrial Township Authority (ITA). Section 364J stipulates the ITA shall levy property tax on all buildings and lands situated with the township for which the provisions of sections 94 to 115 of KM Act shall *mutatis-mutandis* apply. Further, 30 percent of the property tax collected by ITA shall be remitted to local authority from which the area of Industrial township was carved out.

The State Government announced (October 2014) the Karnataka Industrial Policy 2014-19. As per para 5.1.7.1 of the Policy, it was proposed to declare large industrial areas and estates in Peenya, Mysuru, Bommasandra, Belagavi and Hubballi as Industrial Township Areas under Section 364A of the KM Act and establish authorities in respective townships as per Section 364B (2) and as per para 5.1.7.2, it was proposed to bring in amendments to the KM Act to delegate appropriate powers to KIADB to approve the building construction plan of the industrial units in the notified industrial areas/estates/townships. Further, as per paragraph 5.1.7.4, till the townships are declared, KIADB shall collect property tax, cess *etc.*, from all industries and pay it to the concerned local authorities with nominal service charge.

Audit observed that no industrial townships were declared so far though they were functional and KIADB was not remitting property tax to the respective ULBs. It is clear from the above that the powers of ULBs with regard to approval of building construction plans was being discharged by KIADB for industrial units without necessary statutory amendments. The non-remittance of property tax by KIADB deprived the ULBs of their rightful revenue. KIADB had property tax dues of ₹22.91 crore (including penalty) to be paid to HDMC as at the end of March 2020, as per the information furnished by the CC¹¹.

¹¹ Information from other test-checked ULBs is awaited.

4.4.2 Karnataka Slum Development Board - Slum improvement and upgradation

Slum improvement and upgradation was being carried out by Karnataka Slum Development Board (KSDB). The KSDB was constituted in 1975 under the provisions of the Karnataka Slum Areas (Improvement and Clearance) Act 1973. KSDB was responsible for development of notified slums, after which they were to be handed over to the ULBs for further upkeep and maintenance. The 1st SFC recommended bringing Slum improvement under the control of ULBs but this has not been complied with.

Consequent to the 74th CAA, the amended KM and KMC Acts stipulated that this function would be a discretionary function of ULBs. Hence, none of the test-checked ULBs undertook this function. However, they were providing services such as water supply, maintaining street lights and collecting garbage in non-notified slums till they were declared by KSDB as notified slums as part of their regular functions. The amendment of the Acts was, thus, merely a formality to comply with the constitutional amendment.

4.4.3 Karnataka Urban Water Supply and Drainage Board (KUWS&DB)– water supply and Under Ground Drainage works (UGD)

Water supply for domestic, commercial and industrial purposes was an obligatory function of ULBs. The Standing Committee on Town Planning and Improvement in CCs and General Standing Committee in other ULBs review this function.

The Government of Karnataka brought out an Urban Drinking Water and Sanitation policy (UDWSP), 2002. The main objectives of the policy were to ensure demand based universal coverage of water supply, commercial and economical sustainability of the operations and a minimum level of service to all citizens. The ULBs were responsible for water supply and sewerage services from water catchments to waste water treatment.

The State Government entrusted the work of bulk water supply and its maintenance to KUWS&DB (Board) (under the KUWS&DB Act, 1973). Accordingly, the KMC and KM Acts were also amended. The Board was responsible for capacity creation and augmentation of Water Supply Schemes (WSS) and Under Ground Drainage (UGD) schemes in all ULBs except Bruhat Bengaluru Mahanagara Palike. Since inception, the Board had commissioned 567 WSS and 88 UGD projects across the State incurring an expenditure of ₹8,357.17 crore up to the end of March 2019.

The Board prepares a feasibility report for every project taken up and forwards it to the local authorities concerned for examination. The local authorities pass a resolution, if the project is found financially viable. The Board borrows funds from financial institutions on government guarantee for execution of capital works along with ULB's contribution. The repayment of loan was being done through SFC funds at the time of allocation of SFC funds each year. The Board had received ₹2,858.42 crore during the period 2014-19 and had spent ₹2,528.03 crore. As of March 2019, an amount of ₹1,160.31 crore was outstanding as loan in the books of the Board.

The Board may take up O&M of the WSS and UGD projects on the directions of the Government. Currently the Board was entrusted with O&M of 10 WSS.

4.4.4 Karnataka Urban Infrastructure Development and Finance Corporation – Water supply, UGD and other infrastructure projects

The situation in ULBs was characterised by a mismatch between responsibilities and financing of services, weak capacity *etc.*, all of which led to growing gap between demand and supply of civic services. This situation had not encouraged investments and ULBs were not in a position to realise their economic potential. Karnataka Urban Infrastructure Development and Finance Corporation (KUIDFC), which was incorporated as a public limited company under the Companies Act, 1956 on 2 Nov 1993, undertook various projects with support from external sources such as Asian Development Bank (ADB), World Bank *etc.*, centrally sponsored schemes and State Government schemes for providing capacity building and investment support to ULBs. The repayments were made out of the funds released by the government out of the SFC grants.

ULBs approach KUIDFC with a loan/grant proposal to support its potential investment and capacity building program. Within this context ULBs enter into an agreement specifying the terms and conditions of loan and grant, with KUIDFC and ULB both being party to loan agreement. All the projects are monitored by Empowered Committee headed by Additional Chief Secretary to Government; Principal Secretaries of Urban Development, Planning and Finance departments; Director, Town Planning; Director, Municipal Administration; Chairman, BWSSB; Commissioner, BBMP; and Managing Director, KUIDFC, who is the Member Secretary.

The Project Monitoring Unit (PMU) at KUIDFC hand holds the Project Implementation Units functioning at project headquarters. Project Management Consultants (PMCs) are appointed for monitoring and quality assurance. PMCs and ULBs were jointly responsible for preparation of DPRs, checking measurement and passing of bills. The project assets upon completion were to be handed over to respective ULBs. KUIDFC had spent ₹2,573.27 crore out of available fund of ₹4,215.23 crore during the period 2014-2019 under various projects.

The composition of staff of KUIDFC contains both Board and project employees. Though KUIDFC was carrying out various infrastructure projects, the working strength was less than 50 *per cent*, both under the project and within the Board.

It is clear from the above two paragraphs that ULBs are wholly dependent on the above institutions for creation of necessary infrastructure despite the fact that Water supply and UGD were the primary functions of ULBs. Though ULBs were party to the loans raised by KUWS&DB/KUIDFC for asset creation within the jurisdiction of ULBs, neither the loans raised nor the assets created by the institutions were reflected in the books of accounts of ULBs.

The need to create another parastatal organisation despite the existence of KUWS&DB was not clear. All the ULBs, except 10 (as indicated in Table 4.1), were responsible for operation and maintenance of the assets created by the above institutions. The role of ULBs in discharging this function was, thus, restricted to operation and maintenance.

Recommendation 7: There is a need to fully involve the democratically elected ULBs in the Planning, Regulation, Slum development and Water supply and sanitation functions.