

Chapter-III

Compliance with provisions of Seventy-fourth Constitutional Amendment Act

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3.1 Comparison of provisions under 74th CAA with State legislations

The Constitution (Seventy-fourth Amendment) Act, 1992 (74th CAA) introduced (June 1993) certain provisions relating to Municipalities vide Articles 243P to 243ZG. Accordingly, the State Government also adopted those provisions vide amendments (1994) to their existing Acts *viz.* the Punjab Municipal Corporation Act, 1976 (PMC Act) and the Punjab Municipal Act, 1911 (PM Act), as depicted in **Table 3.1**.

Table 3.1: Comparison of provisions under 74th CAA with State legislations

Provision under 74 th CAA	Requirement as per provisions under 74 th CAA	Provisions under PMC Act, PM Act, as amended in 1994 and PFCPM Act ¹
Article 243P	Definitions: It defines various terms such as Committee, District Metropolitan Area, Municipal Area, Municipality, Panchayat and Population.	Necessary terms/definitions had been incorporated in Section 2 of PMC Act and Section 3 of PM Act.
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 PMC Act and Section 4 of PM 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 PMC Act and Section 12 of PM Act provide for all provisions of Article 243R, except for provision for filling up any seat in a Municipality by persons with special knowledge in Municipal administration, nominated by the Government.
Article 243S	Constitution and composition of Wards Committees, etc.: It provides for constitution of Wards Committees in all municipalities with a population of three lakh or more.	Sections 42 and 42-A of PMC Act and Section 34 of PM Act.

¹ Punjab Finance Commission for Panchayats and Municipalities Act, 1994 (PFCPM Act).

Provision under 74 th CAA	Requirement as per provisions under 74 th CAA	Provisions under PMC Act, PM Act, as amended in 1994 and PFCPM Act ¹
Article 243T	Reservation of seats: It provides for reservation of seats for Scheduled Castes (SC)/ Scheduled Tribes (ST) and Women for direct election.	Sections 6 & 6-A of PMC Act and Section 8 of PM Act.
Article 243U	Duration of Municipalities, etc.: 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 PMC Act and Section 13 of the PM Act.
Article 243V	Disqualifications for membership: A person shall be disqualified for being chosen as a member of a Municipality - <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. • If he is so disqualified by or under any law made by the Legislature of the State. 	Section 13 of PMC Act and Section 16 of the PM Act.
Article 243W	Powers, authority and responsibilities of the Municipalities, etc.: 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.	Section 7 of PMC Act and Sections 50A and 50B of PM 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 taxes, fees, duties, etc. • Assignment to Municipalities such taxes, duties, tolls and fees levied and collected by the State Government. • Grants-in-aid would be given to the Municipalities from the State. • Constitution of funds for crediting and withdrawal of moneys by the Municipalities. 	Sections 76 & 90 of the PMC Act and Sections 52 & 61 of PM Act.

Provision under 74 th CAA	Requirement as per provisions under 74 th CAA	Provisions under PMC Act, PM Act, as amended in 1994 and PFCPM Act ¹
Article 243Y read with Article 243-I	<p>Finance Commission: The Finance Commission constituted under Article 243-I shall review -</p> <ul style="list-style-type: none"> • The financial position of the Municipalities and taking such steps that help in boosting the financial condition of the Municipal bodies. • Distribution between the State and the Municipalities of the net proceeds of the taxes, fees, tolls and duties that are charged by the State Government. • Allotment of funds to the Municipal bodies in the State from the Consolidated Fund of the State. 	Sections 3(i) and 9 of Punjab Finance Commission for Panchayats and Municipalities (PFCPM) Act, 1994.
Article 243Z	<p>Audit of accounts of Municipalities: Provision for maintenance of accounts by the Municipalities and the auditing of such accounts.</p>	Section 176 to 180 of the PMC Act and Section 240 of the PM Act. The accounts of the ULBs are being audited by the Examiner, Local Fund Accounts, Punjab (ELFA) (Statutory Auditor). Besides, the CAG of India has also been giving Technical Guidance and Support over the audit of ELFA.
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.</p>	Section 10 of the PMC Act and Section 240-A of the PM Act.
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. 	Section 42-B of the PMC Act.
Article 243ZE	<p>Committee for Metropolitan Planning: Provision for constitution of Metropolitan Planning Committee in every metropolitan area.</p>	Section 42-C of the PMC Act.

Source: 74th CAA; PMC Act; PM Act; and PFCPM Act.

Table 3.1 shows that the State statutes largely complied with the provisions under 74th CAA. However, compliance with the Constitutional provisions by law does not guarantee effective decentralisation on ground, unless the same is

also followed by effective implementation of functions enlisted in Twelfth Schedule of the Constitution.

Audit observed that the legal provisions were not backed by decisive actions with regard to the actual implementation, resulting in a situation in which the spirit of 74th CAA was not completely upheld. This was especially true in case of provisions pertaining to the devolution of the functions and creation of appropriate institutional mechanism for effective decentralisation, which have been discussed in subsequent Chapters.

The Department stated (August 2021) that the ULBs were more or less performing the same functions as they used to perform prior to implementation of 74th CAA.