

## *Chapter IV*

### *Empowerment of Urban Local Bodies and their functioning*

#### *4.1 Devolution of Functions under Rajasthan Municipalities Act, 2009*

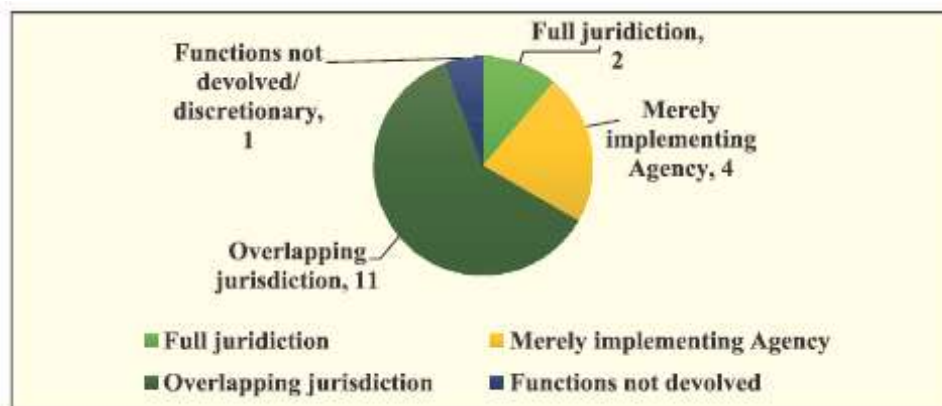
The 74<sup>th</sup> CAA intends to enable and empower ULBs to perform functions and implement schemes in relation to 18 subjects specified in the 12<sup>th</sup> Schedule and mandated each State to enact a legislation to devolve these functions to ULBs. The State Government made provisions in RMA and through a Gazette notification (2013), 16 out of 18 functions were to be transferred to ULBs. Two functions i.e. Slum Improvement & Upgradation and Urban Poverty alleviation were not transferred to ULBs in the RMA. However, these two functions were carried out by ULBs under various schemes as an implementing agency. Two functions i.e. Urban forestry, protection of the environment & promotion of ecological aspects and safeguarding the interest of weaker sections of society were not notified as core functions. However, the RMA provided that these functions may be performed by the ULBs subject to their managerial, technical and financial capacity.

#### *4.1.1 Actual status of Devolution of Functions*

Audit observed several overlaps in discharge of the functions between ULBs and parastatals or the State Government departments. Out of the 18 functions, ULBs had full jurisdiction only in respect of two functions; it was merely an implementing agency in four functions; it had minimal role/overlapping jurisdiction along with other State Government Departments and parastatals in eleven functions and one function has not been devolved to ULB by the State Government yet.

The function-wise role of ULBs is depicted in **Chart 1**.

**Chart 1: Role of Urban Local Bodies in devolved functions**



Status showing the extent of autonomy over discharge of functions by the ULBs (Table 4.1):

**Table 4.1: Status of autonomy over discharge of function by ULBs**

Sl. No	Functions (Obligatory(O)/ Discretionary(D))	Activities	Actual status of implementation
<b>Functions where ULB has full jurisdiction</b>			
1	Fire Services(O)	Establishing and maintaining fire brigades Providing fire NOC/ approval certificate in respect of high-rise buildings	This function had been fully devolved and the ULBs are responsible for establishing and maintaining fire brigades and issuance of fire NOC to multistoried buildings across the State.
2	Regulation of slaughter houses and tanneries(O)	Ensuring quality of animals and meat	ULBs were wholly responsible for discharging this function. However, they actually perform this function only in metro cities while in other places they only issue trade license to meat shops.
		Disposal of waste	
		O&M of slaughter houses	
<b>ULBs as mere implementing agencies</b>			
3	Slum improvement and upgradation	Identifying beneficiaries	This function was not devolved by the Government in RMA but ULBs are performing the function under the specific schemes such as Slum Development Scheme, CM Urban BPL Awas Yojana etc.
		Affordable Housing	
		Upgradation	
4	Urban poverty alleviation	Identifying beneficiaries	The function was not devolved through RMA but ULBs are only entrusted with the work of identification of beneficiaries and act merely as implementing agency in Centrally/State Sponsored schemes such as National Urban Livelihood Mission (NULM)
		Livelihood and employment	
		Street vendors	
5	Planning for economic and social development (O)	Program implementation for economic activities	ULBs are merely implementing agencies under various centrally sponsored scheme such as NULM, etc. Social welfare Department is another entity which has been entrusted with implementation of various schemes e.g. distribution of scholarships to weaker sections of the Students, family pension, etc. DLB in its reply also admitted that this function has still not been devolved.
		Policies for social development	
6	Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded (D)	Identifying beneficiaries	This function was categorized by the RMA as other function with certain conditions. 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 performing these functions. ULBs were only an implementing arm for central and state government schemes.
		Providing tools/benefits such as tricycles	
		Housing programs	
		Scholarships	

Sl. No	Functions (Obligatory(O)/ Discretionary(D))	Activities	Actual status of implementation
<b>Functions with minimal role or having overlapping jurisdictions with state departments and /or parastatals</b>			
7.	Cattle pounds; prevention of cruelty to animals(O)	Catching and keeping strays	ULBs were merely catching and keeping stray animals. Sterilization and anti-rabies vaccination are being done by the Animal Husbandry Department.
		Sterilization and anti-rabies	
		Ensuring animal safety	
8	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	
9	Water supply for domestic industrial and commercial purposes(O)	Distribution of water	In Rajasthan, only 8 <sup>1</sup> of 196 ULBs have been entrusted with the work of distributing water, providing connection, O&M and collection of revenue. In the rest of the State, Public Health and Engineering Department is handling the function.
		Providing connections	
		Operation and Maintenance (O&M)	
		Collection of charges	
10	Urban planning including town planning (O)	Master Planning/ Development plans/Zonal plans	Master plans are prepared by UDAs/TPD. ULBs has no role in preparation of these master plans.
		Enforcing master planning regulations	After preparation of Master Plan ULBs/UDAs/UITs enforced it in their jurisdiction.
		Enforcing building bye-laws and licenses	Prior to September 2017, ULBs except Jaipur were preparing their own building bye laws. However, from September 2017 onwards, the State Government issued Unified building bye laws for the whole State.  ULBs are issuing permission in their jurisdiction while other parastatals such as UDAs/UITs/ RIICO are doing this in their jurisdiction
		Group Housing	Group housing was being done by the respective UDAs/UITs and where such parastatals do not exist, some ULBs were engaged in Group Housing under Chief Minister Jan Awas Yojana.
		Development of Industrial areas	The work of development of Industrial areas is solely entrusted to RIICO.
11	Burials and burial grounds; cremations, cremation grounds (O)	Construction and O&M of crematoriums, burial grounds and electric crematoriums	ULBs were merely undertaking construction of shed, boundaries etc. in their jurisdiction and UITs/UDAs were also executing construction works in their areas.

<sup>1</sup> Bundi, Chomu, Ganganagar, Jaisalmer, Karauli, Nagaur, Nathdwara and Nokha.

Sl. No	Functions (Obligatory(O)/ Discretionary(D))	Activities	Actual status of implementation
12	Roads and bridges (O)	Construction and maintenance of roads	ULBs were mainly engaged in construction of roads and drains in their jurisdiction while UDAs/UITs/HBs/RIICO were executing roads works in their areas/colonies. PWD/RSRDC were two other parastatals which perform construction works relating to National Highways/State Highways/ Bridges/ROBs under various schemes.
		Construction and maintenance of bridges, drains, flyovers and footpaths	
13	Regulation of land-use and construction of buildings (O)	Regulating land use	ULBs along with other parastatal agencies were implementing the function in their respective jurisdictions. In smaller towns, where no other parastatals exist, ULBs were performing these functions.
		Approving building plans/high rises	
		Demolishing illegal buildings	
14	Public health, sanitation conservancy and solid waste management (O)	Maintaining hospitals, dispensaries	Department of Health and Family Welfare played a significant role in maintaining hospitals & dispensaries and immunization/ vaccination programs. ULBs were also responsible for cleaning and disinfection of localities affected by infectious disease. ULBs were solely responsible for solid waste management and control and supervision of public markets.
		Immunization/ vaccination	
		Registration of births and deaths	
		Cleaning and disinfection of localities affected by infectious disease	
		Solid waste management	
		Control and supervision of public markets	
15	Provision of urban amenities and facilities such as parks, gardens, playgrounds (O)	Creation of parks and gardens	ULBs were creating/ maintaining /developing parks and gardens and also operating and maintaining these gardens/parks/ play grounds in their jurisdiction while other parastatal agencies were maintaining parks and gardens in their respective colonies which were still not handed over to ULBs.
16	Promotion of cultural, educational and aesthetic aspects (O)	Schools and education	Schools and education were handled by Education Department. ULBs were organizing fairs and festivals. Some of ULBs have been allotted funds for maintenance and safeguarding of Heritage buildings under Heritage Conservation Scheme. The UDAs/UITs undertook activities allied with public space beautification, organizing fairs and festivals. However, DLB in its reply stated that this function has still not been devolved.
		Fairs and festivals	
		Cultural buildings/ institutions	
		Heritage	
		Public space beautification	
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 in their wards. Other parastatals such as RIICO, HB, UDAs, UITs were maintaining these amenities in their jurisdiction. Bus Route were decided by City Transport
		Creation and maintenance of parking lots	

Sl. No	Functions (Obligatory(O)/ Discretionary(D))	Activities	Actual status of implementation
		Creation and maintenance of public toilets	Service Companies/Regional Transport Offices.
		Deciding and operating bus routes	
<b>Function not devolved as Core functions</b>			
18	Urban forestry, protection of the environment and promotion of ecological aspects(D)	Afforestation Greenification Awareness drives Protection of the environment and promotion of ecological aspects Maintenance of natural resources like water bodies etc.	The RMA had categorized this function as other function subject to certain conditions such as availability of managerial, technical and financial capacities. The DLB has also accepted that the function is not devolved as yet. The Forest Department was executing these functions.

*Source: RMA, Information provided by the DLB*

The State Government stated (July 2021) that 16 out of 18 functions have been devolved. Rest of the functions were being carried out partially by the ULBs because of lack of technical expertise and financial resources with the ULBs. The State Government departments implement and execute schemes as per suggestions and in coordination with ULBs. The fact, however, remains that the functions have not been devolved in accordance with the 74<sup>th</sup> CAA.

***Recommendation 1: The State Government should initiate action to devolve all functions with full jurisdiction to ULBs in accordance with the 74<sup>th</sup> CAA and endeavour to minimise overlapping jurisdictions for devolution in true spirit.***

## ***4.2 Institutional mechanism for empowerment of urban local bodies***

As already discussed above, the State Government transferred 16 functions to ULBs. The discharge of these functions can be effective only when appropriate institutions are established and adequately empowered. The 74<sup>th</sup> CAA provided for establishment of such institutional mechanisms as can be seen from **Table 3.1** (refer para 3.1).

This section discusses the effectiveness of such institutional mechanism.

### ***4.2.1 State Election Commission***

As per Section 11 of RMA, the State Election Commission (SEC) was entrusted with supervision, direction and control of the preparation of electoral rolls, and the conduct of all elections to ULBs. However, under Section 3 of RMA, the power of delimitation of wards, reservation of seats for the councilors and rotation policy for the posts of Mayor/President, Deputy-Mayor/Vice-Presidents and wards were vested with the State Government.

This was not in consonance with the recommendation (October 2007) of the 2<sup>nd</sup> Administrative Reforms Commission, accepted by the Government of India, which required entrustment of the task of delimitation and reservation of constituencies to the SEC.

The State Government accepted (July 2021) that division/delimitation of wards, and reservation of seats were being done as per provisions of RMA.

***Recommendation 2: The State Government should consider the recommendations of Administrative Reforms Commission and entrust the work of ward delimitations and reservations of the constituencies to SEC.***

#### ***4.2.2 Composition of Municipalities***

Article 243R stipulates the composition of Municipalities. Accordingly, RMA (Section 6) stipulates the composition of municipalities. The Corporations and Municipalities consist of elected Corporates/councilors, nominated Corporates/councilors, Member of Legislative Assembly and Member of Parliament representing the constituencies which comprise wholly or partly the Municipal area. The nominated members do not have voting power.

The Mayor/President/Chairman is elected from amongst the Corporates/Councilors and is assisted by seven Standing Committees viz. Executive Committee, Finance Committee, Health and Sanitation Committee, Building Works and Construction Committee, Slum Improvement Committee, Rules and Byelaws Committee and Compounding and Compromise of Offences Committee. These Committees may exercise, perform and discharge such powers as may be prescribed.

#### ***4.2.3 Reservation of seats***

Article 243T stipulated reservation of seats for SC/ST, Women and Backward classes in direct election. The RMA 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 percent of the seats reserved for each category of persons belonging to SC/ST and backward classes and those of the non-reserved seats shall be reserved for women.

LSG Department order (25 February 2015) prescribed seats reserved for SC, ST, OBC and Women as 17.65, 2.27, 19.92 and 31.66 *per cent* respectively. Subsequently, the order dated 29 July 2019 prescribed seats reserved for SC, ST, OBC and Women as 16.64, 3.17, 20.04, and 33 *per cent* respectively. As per prescribed norms, the State Government rotates the seats of Corporates/Councilors as per reservation policy for each election.

The State Government accepted (July 2021) the facts.

#### 4.2.4 Status of Elections and Formation of Councils

As per section 11 of RMA, the State Election Commission had to supervise, control and prepare the electoral rolls and conduct elections for municipalities. Further, as per Section 7, election should be held within six months from the date of dissolution. Article 243 U(3)(a) of Constitution of India and provisions of the RMA 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 as on March 2021 is depicted in **Table 4.2.**

**Table 4.2: Status of Elections**

Total No. of ULBs	196
No. of Municipal Corporations	10 <sup>2</sup>
Newly formed ULBs	06 <sup>3</sup>
Elections held during 2014-15 and councils formed	46
Elections held during 2015-16 and councils formed	141
Elections held during 2019-20 and councils formed	49
Elections held during 2020-21 and councils formed	147 <sup>4</sup>

*Source: Information gathered from DLB, State Election Commission*

As per Section 320 of RMA, when a new municipality is created, general election should be held within six months of its establishment, as in absence of elected body, no authority shall impose tax and approve bye laws.

It was observed that out of 196 ULBs, six ULBs (Nasirabad, Pratapgarhi, Mahuwa, Thanagaji, Khatushyamji and Rupwas) were formed between 12 August 2014 and 14 September 2018 and their elections were due between 12 February 2015 and 13 March 2019 but the elections of these ULBs were actually held in November 2019 resulting in delay of eight months to 56 months. In the absence of elected governing body, no essential functions could be performed during the intervening period.

The State Government stated (July 2021) that the elections were normally conducted in time and delayed election did not affect the developmental work adversely as the functions of ULBs were carried out effectively by the Administrator. The delay was due to inclusion of panchayat area and its jurisdiction into municipal area and circumstances arising due to COVID 19. The reply is not acceptable because the elections were held in November 2019, before onset of the COVID. The fact remains that public participation in the effective implementation of the developmental works could not be ensured during the period when no elected representatives were in place.

<sup>2</sup> Jaipur, Jodhpur and Kota Municipal Corporations were bifurcated in two Corporations with effect from 18 October 2019 and elections could only be held only during 2020-21 due to COVID pandemic related delays.

<sup>3</sup> MBoard Mahuwa (May 2018), Thanagaji (September 2018), Rupwas (August 2014), Pratap Garhi (May 2018), Nasirabad (November 2016), and Khatushyamji (May 2018).

<sup>4</sup> As per information posted at website of SEC, the election of Vidhyavihar MBoard was not held. However, the MBoard, Vidhyavihar informed that the election was held on 20 February 2021.

#### 4.2.5 Mayor/President/Chairman

The Mayor/President/Chairman (Chairperson) is the first citizen of the city. As per Section 43 of the RMA, there shall be a Mayor for every Municipal Corporation, a President for every Municipal Council and a Chairman for every Municipal Board who shall be elected in a prescribed manner. As per Section 78 of Rajasthan Municipalities (Election) Rules 1994, the office of the Chairperson shall be filled by a person chosen by the elected members of the Municipality. The Chairperson is empowered to convene meetings of the Board, preside over every meeting of the Board. Chairperson also regulates the conduct of business of such meetings, watch over the financial and executive administration of the municipality.

The term of office of Chairperson and Vice Chairperson is five years from the date appointed for first meeting. This is in line with the provision of the Constitution.

#### 4.2.6 Statutory Committees

(i) As per Section 55 of RMA, there should be an Executive Committee under the Chairmanship of the Mayor/President and include the Vice Chairman, Leader of the Opposition and seven other members including two women members. In addition, the ULBs have six other Committees. These committees are to be constituted within 90 days from the constitution of the Municipalities failing which the State Government had to form these committees.

Scrutiny of records of test checked 14 ULBs revealed that 11 ULBs<sup>5</sup> did not form these statutory committees (March 2021). In respect of the remaining ULBs, following was noticed:

- The M Council Sikar, Board was constituted in February 2015 and as per provision, the Board was to constitute the committees by May 2015. However, the Board passed (September 2015) a resolution for formation of statutory committees after a delay of almost four months. Directorate of Local Bodies (DLB) approved (July 2016) the formation of these committees after lapse of almost 10 months. Thus, these committees could be constituted with a delay of 14 months, due to delayed submission of proposals to DLB and inordinate time taken by DLB in approval.
- In Municipal Board, Chomu, Board was constituted in August 2015 and as per provision, the Board was to constitute the committees by November 2015, but these committees were approved (January 2017) by the DLB, resulting in delay of over 13 months in constitution of committees.

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<sup>5</sup> M Corp Ajmer, M Council Kishangarh M Board Chaksu, Niwai, Jobner, Thanagaji, Shahpura, Phulera, Lalsot, Bagru, Nawalgarh.



- The board of MCorp, Jaipur was constituted on November 2014 and as per provision, the Board was to constitute the committees by February 2015, but formation of these committees were approved by DLB in June 2015. Thus, committees were constituted with a delay of four months.

Thus, in these ULBs, the statutory committees were formed with a delay ranging between four months and 14 months, which deprived the elected corporators from effectively participating in the development, sanitation, building construction and other allied function of these ULBs.

In order to assess participation of these committees in working of ULBs where formed, minutes of the meeting were called. Only MCorp, Jaipur made available minutes of two committees i.e., Executive and Building & Construction Committee. In absence of minutes of meeting, it could not be verified in audit as to whether these committees were holding regular meeting and assisted in effective implementation and monitoring of various schemes and functions of the concerned ULBs.

The State Government accepted (July 2021) the facts and stated that the ULBs are instructed to form these committees within stipulated time.

**(ii)** The Constitution provides for Wards committees in all Municipalities with a population of three lakh or more. Further, section 54 of the RMA also provided constitution of Wards Committees comprising of ward members of terrestrial areas of the committee and not exceeding five other members, who have special knowledge or experience of the municipal administration, to be nominated by the State Government. The term of these committees was to be co-terminus with the Municipal Corporation. The Ward committees were to act as a bridge between the municipal government and citizens and function as institutions of neighborhood 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 utilization of allotted funds, and maintenance of public utilities and safeguarding the assets of the Corporation.

Scrutiny of test checked ULBs revealed that M Corp Jaipur and Ajmer had not constituted the Ward Committees, which defeated the very purpose of facilitating active public participation in local governance in prioritization of development works, monitoring of execution of works, effective utilization and maintenance of assets created etc.

***Recommendation 3: The State Government should ensure timely constitution of the Statutory Committees and Ward Committees. The Government should also ensure that regular meetings of Statutory Committees are held for effective monitoring of functions of ULBs.***

#### 4.2.7 District Planning Committee

As per Article 243ZD of the Constitution, a District Planning Committee (DPC) at the district level was to be constituted. 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 the extent and type of available resources financial or otherwise. The DPCs should prepare the draft development plan for onward submission to the State Government. The Committee would meet once in a quarter for review of allotted works and thus a minimum four times a year.

All the districts in Rajasthan constituted the DPC, but these committees did not meet regularly as:

- Meetings of the DPC in seven<sup>6</sup> districts covering the test checked 14 ULBs, were not held regularly. There was a shortfall ranging from one to four numbers of meetings every year.
- It was also noticed in five out of seven test checked districts that even when DPCs did meet, they did not take up matters of common interests between Panchayats and Municipalities like spatial planning, integrated development of infrastructure based on available resource etc.
- DPCs did not prepare the draft development plans in accordance with the codal provisions in respect of ULBs in five out of seven test checked districts and merely included the data from the allotment under various Centrally/State sponsored schemes. In the remaining two districts minutes were not made available to audit.

The State Government stated (July 2021) that DPCs were formed at district level and were functional. The reply is not acceptable as DPCs were neither meeting regularly nor functioning as per prescribed norms.

Thus, irregular meetings and non-preparation of draft development plan in accordance with the codal provisions defeated the very purpose of the integrated development of the area through these DPCs.

#### 4.2.8 Metropolitan Planning Committee

Article 243ZE mandates that a Metropolitan Planning Committee (MPC) shall be constituted in every Metropolitan area<sup>7</sup>. The chairperson of the Committee was to be nominated by the State Government. Section 157 of RMA also required the formation of a Metropolitan Committee for preparing a draft

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<sup>6</sup> Ajmer, Alwar, Dausa, Jaipur, Jhunjhunu, Sikar and Tonk.

<sup>7</sup> Metropolitan city having a population of 10 lakh and above.

development plan, which was to be known as Metropolitan Region Development Plan. The Committee was to consist of such number of members as may be fixed by the State Government from time to time by notification in Official gazette. The State Government was also to specify the numbers of elected and nominated members. At least two thirds of members shall be elected by, and from amongst the elected members of municipality and chairperson of panchayats.

As per statute, Metropolitan Committee shall consider the plan prepared by the ULBs and Panchayats, matter of common interest between the ULBs and the Panchayats, overall objectives and priorities set by Government of India and Government of Rajasthan and sharing of water, physical & natural resources in preparing Draft Metro Regional Development Plan. The Chairperson of the committee had to send the plan to the Government.

Audit observed that as per definition of the metropolitan area, MPC was to be constituted in Jaipur, Jodhpur and Kota but was not constituted (March 2021). MPCs are envisioned to ensure integrated planning for the entire metropolitan area, and are responsible for the preparation of draft development plans and synthesising priorities set by local authorities, State and Central Governments. The development works were examined on the recommendations of the Executive Committee of the ULB concerned. Thus, in absence of MPCs the people of the metropolitan cities were deprived of the benefits of integrated development of the area.

The State Government accepted (July 2021) that the committees were yet to be constituted as per constitutional provisions.

***Recommendations 4: The State Government should ensure constitution and effective functioning of MPCs for integrated development of the area.***

#### ***4.2.9 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 74<sup>th</sup> 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 RMA provided for constitution of SFC.

##### ***4.2.9.1 Delay in Constitution of the SFC and Implementation of Recommendations***

Audit noticed delays in constitution of SFCs ranging between 365 and 723 days and recommendations of the 5<sup>th</sup> SFC were implemented with a delay upto 237 days as detailed in **Table 4.3**.

Table 4.3: Details of constitution of SFC

SFC	To be constituted as per constitution	Date of actual constitution	Delay in days	Submission date of recommendations	Date of acceptance by Government	Delay on the part of Government (days)	Period covered
First	31.5.1994	23.04.1994	0	30.12.1995	16.03.1996	77	1995-2000
Second	30.5.1999	07.05.1999	0	30.08.2001	26.03.2002	208	2000-2005
Third	30.5.2004	15.09.2005	472	27.02.2008	17.03.2008	19	2005-2010
Fourth	30.5.2009	13.04.2011	723	26.09.2013	20.02.2014	147	2010-2015
Fifth	30.5.2014	30.05.2015	365	28.11.2018	23.07.2019	237	2015-2020
Sixth	30.5.2019	Formation of VI <sup>th</sup> SFC is under consideration of State Government					

*Source: Information provided by the Finance Department (SFC and Economic Affairs)*

The delays resulted in transfer of funds to the ULBs with delay putting further stress on their fund availability.

The State Government stated (July 2021) that the formation of SFC is being done by the State Government. The Commission presents interim reports, if constitution of SFC is delayed due to unavoidable reasons. The reply is not convincing as the delays resulted in transfer of grants to ULBs with delays. Audit noticed that even the interim reports were delayed<sup>8</sup>. The Commission submitted only one interim report during 2015-20 and State Government submitted (July 2019) Action Taken Report (ATR) after eight months from its final report.

#### 4.2.9.2 Transfer of SFC Grants to agencies other than ULBs

According to Section 76 of RMA, the State Finance Commission shall review the financial position of the municipalities and make recommendations for distribution of the net proceeds of the tax, duties, toll and fees leviable by the State.

The V<sup>th</sup> SFC in its recommendations fixed 75 per cent amount of grant for basic and development functions, 20 per cent for National/State priority schemes and 5 per cent incentive grants for performance. The State Government issued (December 2016) circular endorsing the said formula but earmarked overall 20 per cent for only State sponsored schemes such as Mukhyamantri Jal Swavlamban Abhiyan and Annapurna Rasoi. The matching share for Central sponsored schemes such as Atal Mission for Rejuvenation and Urban Transformation (AMRUT) and Smart City was met out from the SFC grant for development functions. This resulted in transfer of 37 per cent of the total grant to various agencies/schemes during the period 2017 to 2020, which was against the spirit of recommendations of the SFC.

It was observed in audit that the State Government deducted an amount of ₹ 726.74 crore during 2017-20 on this account from the Grants to be given to ULBs and this amount was transferred to various other agencies/parastatals against various projects<sup>9</sup> as per the details given in **Table 4.4**.

<sup>8</sup> Provisional report, interim report and final report were submitted in September 2015, September 2016 and November 2018 respectively by the V<sup>th</sup> SFC.

<sup>9</sup> RUDF/RUDSICO contribution/loan; IHSDP/UIDSMMT/Sewerage project/ CMAR etc.

**Table 4.4: Details showing deduction from grants of ULBs and transferred to parastatals**

(₹ in crore)			
Year	Sanctioned amount	Amount transferred to ULBs	Deduction
2017-18	795.50	554.83	240.67
2018-19	737.37	430.49	306.88
2019-20	430.70	251.51	179.19
<b>Total</b>			<b>726.74</b>

Source: Information provided by DLB

Thus, due to deduction of ₹ 726.74 crore from grants of ULBs, these ULBs were deprived of the amount to that extent.

The State Government stated (July 2021) that these agencies utilised the amount for developmental works and basic infrastructure projects, for repayment of loans and implementation of Indira Rasoi (erstwhile Annapurna Rasoi). The reply is not convincing as the State Government diverted the money earmarked for ULBs.

#### 4.2.9.3 Response of the State Government to SFC Recommendations

As per Section 77 of RMA, after taking into consideration the recommendations of the SFC, the State Government shall determine (a) devolution of net proceeds of the taxes, duties, tolls and fees to the Municipalities, (b) the assignment of taxes, duties, tolls and fees to the Municipalities, (c) the sanction of the Grants-in-aids to the Municipalities from the Consolidated Fund of the State; (d) the other measures required to improve the financial position of the Municipalities. Audit observed that the State Government accepted some of the recommendations with modifications, and action was yet to be initiated on some recommendations. The SFC-wise important recommendations and their modification with reference to transfer of funds are given in **Table 4.5**.

**Table 4.5 details of Action Taken by the GoR on recommendations of SFC**

SFC	Recommendations	Modifications	Risk /Impact
First	The amount due against matching share of ULBs under different schemes should be made available by the State Government.	The State Government would make available the matching share to only those ULBs which are unable to generate matching share from their own revenue.	ULBs had to bear an additional financial burden which impacted other developmental works.
Second	It was recommended that after expiry of award period of incentive fund, the unspent balance was to be disbursed to the ULBs.	The unspent balance would be deposited in the Consolidated Fund of the State Government.	ULBs were deprived of the incentive fund.
Third	Grant for general purpose may be disbursed on the basis of census 2001 instead of 1991.	The State Government did not accept this.	This would have increased resources of ULBs.
Fourth	(i) SFC recommended levy of 2 per cent cess on country made liquor to be	The State Government did not accept the recommendation.	This would have increased resources of ULBs.

SFC	Recommendations	Modifications	Risk /Impact
	distributed between ULBs and PRIs  (ii) The amount of difference between the interim recommendations and final recommendations for the period 2013-15 should be disbursed to ULBs  (iii) the SFC recommended grant of ₹ 586.76 crore under Untied Grant to ULBs which were to be utilized for developmental works not covered under any State/Central Scheme  (iv) The Commission recommended grant of 10 <i>per cent</i> share from State Renewal Fund for repairs of urban road.	The State Government did not accept the recommendation;  The State Government did not accept the recommendation.  The State Government did not accept the recommendation.	This would have increased resources of ULBs.  Untied grants give flexibility to meet local requirements.  This would have increased resources with ULBs.
Fifth	The Commission recommended transfer of 8.5 <i>per cent</i> of net proceeds of the Own tax of the State to the ULBs	The State Government accepted the interim recommendation for transfer of 7.182 <i>per cent</i> .	This would have increased resources with ULBs.

*Source: Complied form Action Take Note prepared by the GoR*

In addition to recommendations regarding transfer of funds, the SFCs had also recommended several measures to strengthen and empower the ULBs. Some of recommendations on which action was yet to be taken by the State Government are given below:

- (i) Impose liability to pay license fee for using rights to the ULBs in respect of land under and along the pavements, streets and roads;
- (ii) Widen the tax base of Urban Development (UD) tax by including those that are not covered at present;
- (iii) Review the properties that are currently exempted from UD Tax and reduce the number of exemptions to bare minimum.
- (iv) Development Authorities and UITs should enhance the share of ULBs in the sale proceeds of land from 15 per cent to 20 per cent.
- (v) Amnesty should not be granted to defaulters as these schemes discourage the bona fide tax payers
- (vi) A tax under Section 103 of RMA on vehicle plying in municipal area should be levied.

The State Government did not accept the aforesaid recommendations, which could have enhanced the revenue of the ULBs. Thus, not accepting these

recommendations resulted in setback to the process of decentralization and empowerment of ULBs to discharge their duties as envisaged under 74<sup>th</sup> CAA.

The State Government stated (July 2021) that SFCs recommendations were accepted to the extent possible keeping in view the financial position of the state and the objective of integrated development of the State. Government had also issued instructions for strengthening of fiscal position of the ULBs. However, the fact remains that action on some key recommendations such as widening of tax base, reduction in UD tax exemptions, review of properties etc. was yet to be taken by the State Government.

***Recommendations 5: The State Government should constitute the SFC within stipulated time frame and implement the recommendations made by the SFC expeditiously. This would enable the ULBs to get grants in time. Further, the State Government should consider the recommendations made by the SFC for strengthening the ULBs favourably to ensure implementation of 74<sup>th</sup> CAA in true spirit.***

#### **4.2.10 Property Tax Board**

The 13<sup>th</sup> Finance Commission stipulated constitution of a Property Tax Board (Board) to assist all ULBs in the State to put in place an independent and transparent procedure for assessing property tax. Rajasthan was eligible for a performance grant of ₹ 413 crore in respect of ULBs for four years commencing from 2011-12 on constitution of such Board. Government of Rajasthan constituted (February 2011) the Board comprising of Secretary, LSGD as Chairperson, and the Chief Executive Officers/Municipal Corporations, Jaipur and Jodhpur as Members. The Board was entrusted, inter-alia following functions:

- (i)** Preparation of data base of property tax on all lands and buildings situated in the ULBs.
- (ii)** Assessment books should be completely revised once in five years.
- (iii)** Audit of the property tax assessments done by the ULBs and give advisories to the State Government.
- (iv)** Assessment of property tax in respect of newly constructed/improved buildings within thirty days from the date of completion of the buildings.
- (v)** Assessment/revision of property tax relating to at least 25 *per cent* of the aggregate number of estimated properties across all ULBs by 31<sup>st</sup> March 2015.
- (vi)** Training of Officers and staff of the ULBs in the assessment and revision of property tax, directly or through institutions.

Audit observed that the State Government constituted the Board in February 2011. However, only one meeting of the Board was conducted in April 2011 and thereafter no meeting was held till completion of its tenure in April 2017. Thereafter, the State Government did not reconstitute the Board. Thus, due to non-functioning of board during its tenure up to April 2017 and non-constituting new Board thereafter, ULBs, particularly small ULBs, were deprived of technical guidance for assessment and revision of property tax (UD Tax). State Government could also not effectively monitor the assessment, demand and collection of Tax. Consequently, huge amount in respect of property tax remained outstanding as elaborated in paragraph 5.3.1.

Audit is of the view that the State Government issued orders for constitution of the Board merely to fulfill the condition for getting the performance grant of ₹ 413 crore as envisaged by the XIII Finance Commission. In essence the goal of establishing independent, transparent and strong system for assessment of property tax by ULBs remains unaccomplished.

The State Government stated (July 2021) that Administrative Department have issued instructions, technical information and guidance through circulars in respect of UD Tax. The reply is not convincing as the State Government constituted the Board merely for getting performance grants of Central Finance Commission (CFC) and in absence of the Board, assessment, collection and revision of Property Tax was affected adversely, thereby depriving additional revenues to ULBs.

**Recommendations 6: The State Government should reconstitute Property Tax Board and make it functional to enable the ULBs to collect property tax efficiently.**

**4.3 Powers of the State Government over ULBs**

Audit observed that the State Government had over-riding powers over ULBs. A few illustrative provisions are indicated in **Table 4.6**.

**Table 4.6 Details showing power of GoR over ULBs**

S. No.	Subject	Provision
1	Power to frame Rules	The State Government may make rules and regulations and to have them placed before the House of State Legislature (Section 338 and 339 of RMA).
2	Power to cancel and suspend a resolution or decision taken by ULBs	As per Section 111 of RMA, if the State Government finds any tax levied by the ULBs contrary, obnoxious to the interest of general public, it may suspend levy and collection of tax until the defect/objection is removed. It can also abolish or reduce the tax.
3	Power to dissolve ULBs	In case the State Government is satisfied that any municipality is not competent to perform the duties, exceeds/abuses the power, it may by notification in the Gazette, dissolve the ULB. An order of dissolution made by the Government together with the reasons thereof should be laid down before the State Legislature. (Section 322 of RMA)
4	Power to amend provisions of bye-laws by Government	The State Government may, at any time, by notification in official gazette, repeal wholly or in part and modify any rule or bye laws made by any municipality. Section 340 of RMA empowers the ULBs to make bye-laws. Further, prior to August 2017, the ULBs were



S. No.	Subject	Provision
		<p>framing building bye laws according to local conditions, but the State Government framed Unified Building Bye Laws 2017 for the whole state which affected the revenue of Corporations and Councils adversely as the provisions of the Unified Bye Laws were not based on a particular geographical area and were applicable for metro cities and small towns in same way.</p> <p>Besides, the UDH Department also amended the provision of Mobile Towers Bye Laws made by the ULBs vide notification dated 06 February, 2017 which also reflects overriding powers.</p> <p>The UDH Department also amended (June 2017) the provision of building byelaws regarding betterment levy which was to be recovered in lump sum before granting construction permission. The Addl. Chief Secretary issued instruction for recovery of betterment levy in four equal instalments.</p>
5	Sanction to deposit and invest surplus funds	Section 86 of RMA permits ULBs to deposit and invest surplus funds but only after prior sanction from the Government.

*Source: Information compiled from RMA and orders/circular issued by UDH/GoR*

The State Government stated (July 2021) that the administrative decisions were being taken by the State Government and the State Government issued sanctions promptly and there were no delays on part of the Government.

#### **4.4 Parastatals, their Functions and Impact on ULBs**

The objective of the 74<sup>th</sup> CAA was to entrust delivery of major civic functions to ULBs. However, functions such as urban/town planning, regulation of land use, water supply and sanitation, and slum development continued to be delivered by parastatals also as already indicated in **Table 4.1**.

These parastatals were controlled by the State Government and they have their own governing bodies which do not include elected representatives of ULBs. However, the Government continued to form parastatals even after 74<sup>th</sup> CAA. Instead of amending the Acts to comply with the constitutional amendment, the State Government formed (April 2013) five Urban Improvement Trusts (UITs) namely Sikar, Pali, Sawai Madhopur, Barmer and Chittorgarh and entrusted them with the functions which ought to have been devolved to ULBs. This action shows that the Government was not keen to comply with the provision of the 74<sup>th</sup> CAA in true spirit. SFC in its recommendations, had also emphasized on bringing all the parastatals under the umbrella of elected local bodies. The Government instead of accepting the recommendations of the SFC formed new UITs.

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 Improvement Trusts- Urban Planning and Regulation of Land Use**

**(A)** The functions of urban planning and regulation of land use including conversion of agriculture land into non-agricultural use were discharged by the

Urban Development Authorities (UDAs), UITs and Town Planning Department (TPD). The State Government established three UDAs<sup>10</sup> for planned development of major and important urban areas in the State under the respective Acts and 14 UITs under Section 8-10 of the Rajasthan Urban Improvement Trust Act, 1962 for preparation of Master Plan for cities not covered under UDAs. TPD was also responsible for zoning of land use for residential, commercial, industrial, agricultural, recreational, educational and other purposes together with zoning regulations.

It was provided in section 159 of RMA that ULB shall carry out a detailed survey of the city and prepare a Master Development Plan for 20-year period. Further, as per Section 160 the Municipality should prepare a draft plan and publish it by making a copy thereof available for inspection and publishing a notice inviting objection and suggestions from any person with respect to the draft plan.

Further, as per section 3 of the Rajasthan Urban Improvement Trust (General) Rules 1962, the Authority appointed under this section was to finalise the master plan in consultation with the Advisory Council and submit it to the State Government. The plans so prepared shall be sent to the respective ULBs both at the draft stage and final stage for vetting and comments.

The UDAs/UITs/RIICO are regulating the land use and approving the lay out plan in their respective areas, while the ULBs are regulating the land use in the area in its jurisdiction. In accordance with the State level mandatory reforms under Jawahar Lal Nehru Urban Renewal Mission (JnNURM), which stipulated implementation of decentralization measures as envisaged in the 74<sup>th</sup> CAA, the following were to be complied with:

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

At the same time, UDAs/UITs/TPD were allowed to continue to prepare master plans and other functions which were exclusively devolved to the ULBs. For example, Jaipur Development Authority prepared master plan for Jaipur. However, it is being implemented by M Corp Jaipur in its jurisdiction, which was against the provision of RMA and the spirit of 74<sup>th</sup> Amendment. Further, finalisation of the master plan by the Authority in consultation with the Advisory Council and onward submission to the State Government was not consistent with the spirit of devolution.

Thus, the ULBs either had no role/or had limited role in discharging urban planning and regulation of land use functions. The 4<sup>th</sup> SFC had in fact recommended (September 2013) that the existing UDAs should be brought

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<sup>10</sup> Jaipur Development Authority, Ajmer Development Authority and the Jodhpur Development Authority.

under the respective elected municipal bodies, but the recommendation was not implemented.

**(B)** In respect of public amenities including street lighting, the ULBs and Parastatals have overlapping role. It was found in audit that in Bikaner city the UIT Bikaner installed street lights in the areas under jurisdiction of MCorp, Bikaner where the MCorp had already installed LED lights under power saving scheme. When the UIT approached the MCorp, Bikaner for taking over the lights installed by them for maintenance, the MCorp refused to accept the same as the area was in their jurisdiction and they had already installed LED lights. The matter is now disputed and the public had to bear the consequences of non-maintenance of lights installed by the UIT.

The State Government stated (July 2021) that UIT had representative from ULB. However, the fact remains that despite having representative of ULB in UIT, the matter could not be resolved.

#### ***4.4.1.2 Retention of Fire cess by Parastatals***

Fire service is one of the functions which is fully devolved to ULBs. ULBs are responsible for establishing and maintaining fire brigades and issuance of fire NOCs to high rise buildings. The service requires a huge fund for establishment, maintenance and upkeep of the fleet of vehicles, manpower and other ancillary expenditure.

It was observed that the parastatal agencies while sanctioning lay out plan for high rise buildings, collected fire cess but did not pass the same to the concerned ULB despite the fact that the concerned ULB was maintaining the firefighting services in the area. The State Government issued (October, 2013) orders to retain the fire cess by the respective parastatal agencies. Thus, the inconsistent order of the State Government deprived the ULBs from getting the Fire Cess collected by the other parastatal agencies. In addition, the Addl. Chief Secretary, UDH Department, Government of Rajasthan exempted (June 2017) levy of fire cess under CM Jan Awas Yojana.

The State Government stated (July 2021) that amount of fire cess were recovered by the concerned department/agencies and used for firefighting system. It was stated during exit conference that now an escrow account has also been opened and all departments would be bound to deposit the amount in the said account. However, the details of funds deposited by various agencies were not furnished.

#### ***4.4.2 Rajasthan State Industrial Development and Investment Corporation: Land Use and Development of Industrial Area***

As per provision of the 74<sup>th</sup> CAA, development of industrial area was to be transferred to ULBs but the State Government did not devolve the function to the respective ULBs. Rajasthan State Industrial Development and Investment Corporation (RIICO) was entrusted with setting up of industrial areas and developing other infrastructure such as roads, street lights and drainage etc. RIICO had notified its own zonal regulations, prepared byelaws for

construction of industrial buildings in its areas. RIICO had established 347 industrial areas in the State. RIICO also sanctioned building site plans, land use changes in its area.

#### **4.4.3 Public Health and Engineering Department (PHED): Urban Water Supply**

As per 12<sup>th</sup> Schedule, Water supply for domestic, industrial and commercial purposes was one of the functions to be devolved to ULBs. This should have included distribution of water, providing connections, operation and maintenance (O&M) and collection of water charges.

However, Public Health and Engineering Department (PHED) is entrusted with the work to provide potable water to all citizen of Rajasthan. The PHED is also responsible for collecting water charges, distribution of water, providing water connection and operation & maintenance of water supply schemes. Though water supply for domestic, commercial and industrial purpose was an obligatory function of ULBs, this function has been devolved to only eight ULBs<sup>11</sup> with effect from February 2013 with following conditions:

- All dedicated plants and machineries would be transferred to these eight ULBs and the ownership would be of State Government and these ULBs would act as licensee for these properties;
- All staff engaged for these water supply schemes would be transferred to these ULBs on deputation basis;
- Financial assistance would be provided for at least five years from devolution of the function;
- Technical knowhow would be made available through Rajasthan Water Supply and Sewerage Management Board/PHED;

Audit observed that the water supply function was not devolved by the State Government and PHED was executing the function. Issues related to water charges have also been discussed in detail in paragraph 5.3.3.

#### **4.4.4 Rajasthan State Road Development and Construction Corporation Limited (RSRDC)**

Rajasthan State Road Development and Construction Corporation Limited (RSRDC) was incorporated for promotion of specialized construction agencies for construction of roads, bridges and other important projects to save cost and time. The main function of RSRDC was to construct highways, bridges. It also acts as nodal agency in large infrastructure projects such as buildings, bridges, ROBs, roads and infrastructure project financed by institutions.

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<sup>11</sup> Bundi, Chomu, Ganganagar, Jaisalmer, Karauli, Nagaur, Nathdwara and Nokha.

The 12<sup>th</sup> Schedule of Constitution enumerates 18 specific functions to be devolved to ULBs and according to which, construction of roads and bridges were to be carried out by ULBs. However, LSGD sanctioned the work (2015-19) of construction of 10 ROB and two roads with an estimated cost of ₹ 446.22 crore to RSRDC.

#### ***4.4.5 Rajasthan Housing Board (RHB)***

Rajasthan Housing Board (RHB) was constituted in 1970 for solution of housing problem due to increasing industrialization and urbanization. RHB develops colonies and provides housing for all sections of the community. After developing their housing projects/colonies, the same are to be handed over to ULB concerned and after the transfer of the colonies, all public amenities such as street lights, parks, garden and roads are to be maintained by the respective ULBs.

During 2015-20, RHB constructed 14,980 houses in 67 cities, out of which 10,005 houses have been allotted and 4,975 houses are yet to be allotted. Audit noticed that Mansarovar scheme in Jaipur has not been handed over to MCorp, Jaipur. However, MCorp, Jaipur is providing all municipal services.

#### ***4.4.6 Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation (RUDSICO)***

RUDSICO was incorporated in December 2004 with the objective of giving financial assistance, subsidy and aid to ULBs/Government agencies/NGOs; to provide consultancy services to ULBs; and to distribute on behalf of Government grants-in-aid and financial assistance to ULBs/ parastatals; etc.

Audit observed that while releasing SFC grants to ULBs, the State Government deducted a sum of ₹ 33.35 crore during 2017-20 for payment of interest towards HUDCO loan taken by RUDSICO for road repairing/development works. Further, 2.5 *per cent* agency charges payable to RUDSICO was also deducted from the SFC grant payable to ULBs as discussed in **paragraph number 4.2.9.2**. It was further noticed that 20 ULBs did not submit their proposal to RUDSICO and RUDSICO allowed them to execute the work on their own. Thus, the ULBs have minimal role or overlapping jurisdiction with State departments or parastatals.

#### ***4.4.7 Rajasthan State Pollution Control Board (RSPCB)***

Rajasthan State Pollution Control Board (RSPCB) was established under Section 4 of Water (Prevention and Control of Pollution) Act, 1974. It enforces, inter alia, prevention and control of water/air pollution, Municipal Solid Waste Management Rules, Plastic Waste (Management & Handling) Rules 2011 and Bio Medical Waste (Management and Handling) Rules.

The State Government stated (July 2021) that the parastatals were constituted for technical expertise in infrastructure projects for financing and execution. All these projects, schemes were implemented in ULBs. Further, provisions for representation of ULBs in these parastatals were also ensured. The reply is factually incorrect as in most of these parastatals (except UITs/UDAs), there is no provision for representation of ULBs.

***Recommendations 7: State Government should ensure involvement of ULBs in planning, regulation, development of industrial area and water supply and all the parastatals should be brought under one umbrella as intended in 74<sup>th</sup> CAA.***