

## ***CHAPTER IV***

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



## Chapter IV

# Empowerment of Urban Local Bodies and their functioning

The Constitution (Seventy-fourth) Amendment Act, 1992 (CAA) enjoined upon the State Government to enact laws to endow the municipalities with powers and authority to enable them to function as institutions of self-government. The CAA also required the State Government to devolve powers and responsibilities to the municipalities, to perform functions and implement schemes as entrusted for the 18 functions listed in the Twelfth Schedule.

### 4.1 Devolution of functions in the State

The State Government by law has devolved all the 18 functions listed in the Twelfth Schedule of the Constitution to ULBs which have been categorised into obligatory and discretionary functions. Out of the 18 functions, 14 functions were obligatory and four were discretionary in Municipal Corporations while in Municipal Councils and Nagar Panchayats, 13 functions were obligatory and five functions were discretionary. The devolution of functions in the three State Acts are indicated in **Table 4.1**.

**Table 4.1: Devolution of functions under the three Acts in the State**

Sr. No.	Functions in Twelfth Schedule	Functions delegated under the provisions of		
		MbMC Act, 1888	MMC Act, 1949	MMCNPIT, 1965
1	<b>Urban planning including town planning</b>	As per section 2(19) of the Maharashtra Regional Town Planning Act, 1966 (MRTP), Planning Authority means a local authority, which as per Section 2(15) means MCGM or any Corporation constituted under MMC Act, 1949 and a Council and a Nagar Panchayat constituted under MMCNPIT Act, 1965. Such a local authority is permitted by the State Government for any area under its jurisdiction to exercise the powers of a Planning Authority under this Act. <b>Obligatory</b>		
2	<b>Regulation of land use and construction of buildings</b>	Chapter XII- Building Regulation and Chapter XIIA- City Improvement <b>Obligatory</b>	Chapter XV- Building Regulation and Chapter XVI- Improvement Scheme <b>Obligatory</b>	Chapter XII- Control of Building <b>Obligatory</b>
3	<b>Planning for economic and social development</b>	Section 61(aa) of Chapter III (Duties and Powers of Municipal Authorities) <b>Obligatory</b>	Section 63(1a) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) <b>Obligatory</b>	Section 49(2)(aa) of Chapter III (Duties and functions of the Council and Municipal Executive) <b>Obligatory</b>

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Sr. No.	Functions in Twelfth Schedule	Functions delegated under the provisions of		
		MbMC Act, 1888	MMC Act, 1949	MMCNPIT, 1965
4	<b>Roads and Bridges</b>	Section 61(m) to 61(p) of Chapter III (Duties and Powers of Municipal Authorities) and Chapter XI (Regulation of streets) <b>Obligatory</b>	Section 63(18) and 63(19) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) <b>Obligatory</b>	Section 49(2)(i) of Chapter III (Duties and functions of the Council and Municipal Executive) <b>Obligatory</b>
5	<b>Water supply for domestic, industrial and commercial purposes</b>	Section 61(b) of Chapter III (Duties and Powers of Municipal Authorities) and Chapter X (Water Supply) <b>Obligatory</b>	Section 63(20) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) and Chapter XIII (Water Supply) <b>Obligatory</b>	Section 49(2)(j) of Chapter III (Duties and functions of the Council and Municipal Executive) and Chapter XIV (Water Supply) <b>Obligatory</b>
6	<b>Public health, sanitation, conservancy and solid waste management</b>	Section 61(c), 61(d), 61(e), 61(ff), 61(g) and 61(gg) of Chapter III (Duties and Powers of Municipal Authorities) and Section 365-389 and Sec 421 – 433 of Chapter XV (Sanitary Provision) <b>Obligatory</b>	Section 63(2), 63(3), 63(4), 63(6), 63(14) and 63(21) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) and Chapter XII (Drain & Drainage) Chapter XVIII (Sanitary Provisions) <b>Obligatory</b>	Section 49(2)(m), 49(2)(o), 49(2)(s) of Chapter III (Duties and functions of the Council and Municipal Executive), Chapter XIII (Drainage) and Chapter XVII (Prevention and control of dangerous diseases) <b>Obligatory</b>
7	<b>Fire services</b>	Section 61(k) of Chapter III (Duties and Powers of Municipal Authorities) and Chapter XIV (Municipal Fire-Brigade) <b>Obligatory</b>	Section 63(5) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) and Chapter XVII (Municipal Fire-Brigade) <b>Obligatory</b>	Section 49(2)(d) of Chapter III (Duties and functions of the Council and Municipal Executive) <b>Obligatory</b>
8	<b>Urban forestry, protection of the environment and promotion of ecological aspects</b>	Section 61(ab) of Chapter III (Duties and Powers of Municipal Authorities) <b>Obligatory</b>	Section 63(1b) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) <b>Obligatory</b>	Section 49(2)(ab) of Chapter III (Duties and functions of the Council and Municipal Executive) <b>Obligatory</b>

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Sr. No.	Functions in Twelfth Schedule	Functions delegated under the provisions of		
		MbMC Act, 1888	MMC Act, 1949	MMCNPIT, 1965
9	<b>Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded</b>	Section 63(jje) of Chapter III (Duties and Powers of Municipal Authorities) <b>Discretionary</b>	Section 65 and 66(1) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) <b>Discretionary</b>	Section 49(2) (s-1a), 49(2)(sa), 49(2)(sb) of Chapter III (Duties and functions of the Council and Municipal Executive) <b>Obligatory</b>
10	<b>Slum improvement and up-gradation</b>	Section 63(a) of Chapter III (Duties and Powers of Municipal Authorities) <b>Discretionary</b>	Section 66(1A) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) <b>Discretionary</b>	Section 49(3)(aa) of Chapter III (Duties and functions of the Council and Municipal Executive) <b>Discretionary</b>
11	<b>Urban poverty alleviation</b>	Section 63(aa) of Chapter III (Duties and Powers of Municipal Authorities) <b>Discretionary</b>	Section 66(1B) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) <b>Discretionary</b>	Section 49(3)(ab) of Chapter III (Duties and functions of the Council and Municipal Executive) <b>Discretionary</b>
12	<b>Provision of urban amenities and facilities such as parks, gardens, playgrounds</b>	Section 63(d) of Chapter III (Duties and Powers of Municipal Authorities) <b>Discretionary</b>	Section 66(10) and 66(11) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) <b>Discretionary</b>	Section 49(3)(c) of Chapter III (Duties and functions of the Council and Municipal Executive) <b>Discretionary</b>
13	<b>Promotion of cultural, educational and aesthetic aspects</b>	Section 61 (q), 63(b), 63(c) of Chapter III (Duties and Powers of Municipal Authorities) Primary education is <b>Obligatory</b> and other education is <b>discretionary</b> . The general improvement of Brihan Mumbai is an <b>obligatory function</b> under Section 61(t) of Chapter III (Duties and Powers of Municipal Authorities)	Section 63(15), 66(21), 66(22) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) Primary education is <b>Obligatory</b> and other education is <b>discretionary</b> . Certain functions related to cultural and aesthetic development is <b>discretionary</b> .	Section 49(2)(p), 49(3)(c), 49(3)(d), 49(3)(t), 49(3)(w) of Chapter III (Duties and functions of the Council and Municipal Executive) Primary education is <b>Obligatory</b> and secondary education is <b>discretionary</b>

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Sr. No.	Functions in Twelfth Schedule	Functions delegated under the provisions of		
		MbMC Act, 1888	MMC Act, 1949	MMCNPIT, 1965
14	<b>Burials and burial grounds; cremations, cremation grounds; and electric crematoriums</b>	Section 61(e) of Chapter III (Duties and Powers of Municipal Authorities), Section 435-441 of Chapter XV (Sanitary Provisions) <b>Obligatory</b>	Section 63(11) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) and Section 320-326 of Chapter XVIII (Sanitary Provisions) <b>Obligatory</b>	Section 49(2)(h) of Chapter III (Duties and functions of the Council and Municipal Executive) and Section 252-255 of Chapter XVIII (Disposal of dead bodies and carcasses of animals) <b>Obligatory</b>
15	<b>Cattle pounds; prevention of cruelty to animals</b>	Chapter XV-A (Pounds and Prevention of Cattle Trespass) <b>Obligatory</b>	Section 66(1C) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) <b>Discretionary</b>	Section 49(3)(ac) of Chapter III (Duties and functions of the Council and Municipal Executive) and Chapter XXI (Cattle-Pounds and other provisions relating to animals) <b>Discretionary</b>
16	<b>Vital statistics including registration of births and deaths</b>	Section 61(f) of Chapter III (Duties and Powers of Municipal Authorities) and Chapter XVI (Vital Statistics) <b>Obligatory</b>	Section 63(17), 66(27), 66(28) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) and Chapter XXI (Vital Statistics) <b>Obligatory</b>	Section 49(2)(l) of Chapter III (Duties and functions of the Council and Municipal Executive) and Chapter XIX (Vital Statistics) <b>Obligatory</b>
17	<b>Public amenities including street lighting, parking lots, bus stops and public conveniences</b>	Section 61(m), 61(n), 61(t) of Chapter III (Duties and Powers of Municipal Authorities) and Section 330-335 of Chapter XI (Regulation of Streets) <b>Obligatory</b>	Section 63(7), 63(8) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) and Chapter XIV (Streets) <b>Obligatory</b>	Section 49(2)(a), 49(2)(b), 49(2)(c) and 49(2)(f) of Chapter III (Duties and functions of the Council and Municipal Executive) and Chapter XI (Streets and open spaces) <b>Obligatory</b>
18	<b>Regulation of slaughterhouses and tanneries</b>	Section 61 (h) of Chapter III (Duties and Powers of Municipal Authorities) and Section 398-409 of Chapter XV	Section 63(12), 66(1D) of Chapter VI (Duties and Powers of the Municipal Authorities and Officers) and	Section 49(2)(e), 49(2)(i), 49(3)(ad) of Chapter III (Duties and functions of the Council and Municipal

Sr. No.	Functions in Twelfth Schedule	Functions delegated under the provisions of		
		MbMC Act, 1888 (Sanitary Provisions) <b>Obligatory</b>	MMC Act, 1949 Chapter XIX (Markets and Slaughterhouses) <b>Obligatory</b>	MMCNPT, 1965 Executive) and Chapter XX (Markets, slaughter-houses, trades and occupations) <b>Obligatory</b>
19	<b>Obligatory</b>	14	13	13
20	<b>Discretionary</b>	4	5	5

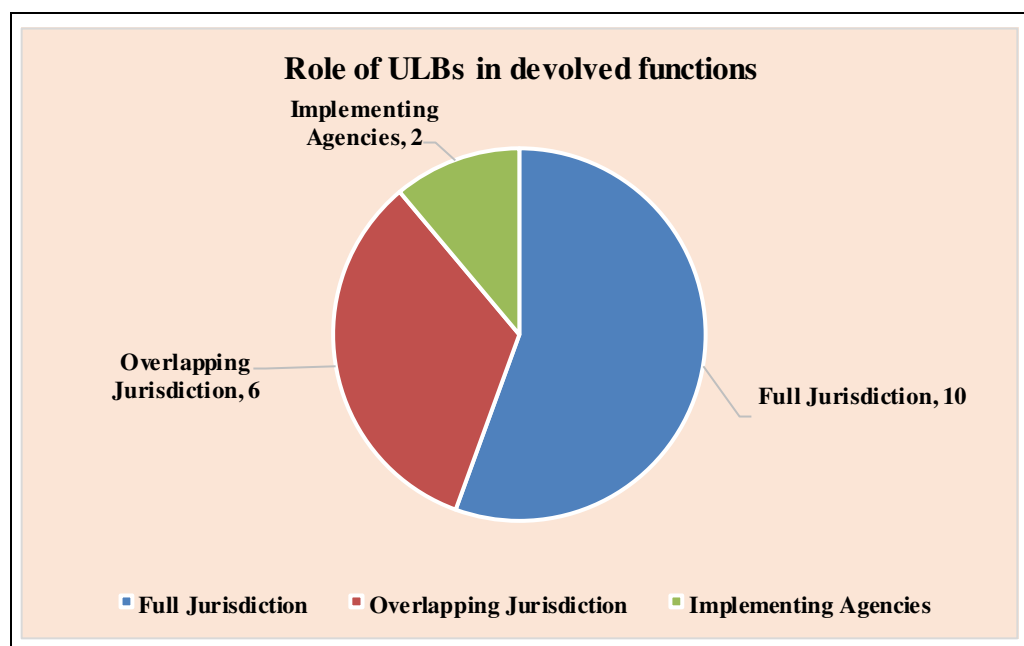
*Source: Twelfth schedule of Constitution of India and three Acts*

Thus, all the 18 functions of the Twelfth Schedule have been devolved as either obligatory or discretionary functions in the State.

#### 4.2 Actual status of devolution of functions

Audit observed that though all the 18 functions were discharged by ULBs, it had full jurisdiction in respect of 10 functions; it was an implementing agency in two functions; it had overlapping jurisdiction with other State Government Departments and parastatal in six functions. The function-wise role of ULBs is depicted in **Chart 4.1**.

**Chart 4.1: Role of ULBs in devolved functions**



Status showing the extent of autonomy over the discharge of functions by the ULBs is given in **Table 4.2**.

**Table 4.2: Statement showing the actual status of implementation of functions**

Sr. No.	Functions	Activities	Actual status of implementation
<b>Functions where ULBs have full jurisdiction</b>			
1	Burial and burial grounds; cremation and cremation grounds	Construction and O&M of crematoriums, burial grounds	ULBs were wholly responsible for the construction and maintenance of burial, burial grounds, cremation and cremation grounds.
2	Cattle pounds; prevention of cruelty to animals	Catching and keeping strays	ULBs were wholly responsible for this function.
		Sterilisation and anti-rabies	
		Ensuring animal safety	
3	Regulation of slaughterhouses and tanneries	Ensuring quality animals and meat	ULBs were wholly responsible for this function.
		Disposal of waste	
		O&M of slaughterhouse	
4	Vital statistics including registration of births and deaths	Coordinating with hospitals/ crematoriums <i>etc.</i> , for obtaining information	ULBs were wholly responsible for the registration of birth and death and maintained the data base
		Maintaining and updating database	
5	Fire Service	Establishing and maintaining fire brigades	This function was wholly performed by ULBs.
		Providing fire NOC /approval certificate in respect of high-rise buildings	
6	Promotion of cultural, educational and aesthetic aspects	Schools and education	Schools and buildings for primary education were provided by the ULBs. ULBs organise cultural activities and maintain structures having heritage value. ULBs also develop and beautify parks, traffic islands.
		Fairs and festivals	
		Cultural buildings/institutions	
		Heritage	
7	Public amenities including street lighting, parking lots, bus stops and public conveniences	Installation and maintenance of streetlights	ULBs provide streetlights, public toilets and parking lots. Bus routes are also provided by the ULBs where transport services are provided by ULBs for intra-city movement. Parastatal agencies were also involved in these activities, instances of which are as follows (i) MMRDA constructs parking lots within its jurisdiction in the area of MCGM, (ii) Maharashtra Slum Improvement Board, a unit of Maharashtra Housing and Area Development Authority (MHADA) constructs toilets in the area of MCGM (iii) City bus routes are operated by Maharashtra State Road Transport Corporation in Nashik city under Nashik ULB.
		Creation and maintenance of parking lots	
		Creation and maintenance of public toilets	
		Deciding and operating bus routes	
8	Provision of urban amenities and facilities such as parks, gardens, playgrounds	Creation of parks and garden	Parks, gardens and playgrounds were provided by the ULBs. Parks, gardens and playgrounds were also provided by Special Planning Authority such as Mumbai Metropolitan Authority in its jurisdiction within the area of MCGM.
9	Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded	Identifying beneficiaries and providing assistance to them	The ULBs run scheme for women and divyang (handicapped) people by earmarking 5 per cent of their income. ULBs were also implementing housing scheme under PM Awas Yojna.
		Housing	
		Financial Assistance	



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Sr. No.	Functions	Activities	Actual status of implementation
10	Urban forestry, protection of the environment and promotion of ecological aspects	Afforestation and Greenification	Urban Forestry was the function of the ULBs in the municipal area. ULBs administer the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975. ULBs also collect Tree cess for the purpose of this function.
		Awareness drive	
		Protection of the environment and promotion of ecological aspect and conservation of water bodies	
<b>Functions which are also provided by other Government Departments and parastatals in the municipal areas</b>			
11	Urban planning including town planning	Development Plans	ULBs are the planning authority under the MRTP Act and prepare the draft development plan for its municipal area. Development Control Regulation (DCR) are enforced by ULBs.  Apart from ULBs, there are Special Planning Authorities like MMRDA, Nagpur Improvement Trust (NIT), MHADA and CIDCO, which prepare development plans for their respective areas.  Maharashtra Industrial Development Corporation was a Special Planning Authority for the development of Industrial Areas in the State.
		Enforcing Development Control Regulations	
		Development of Industrial areas	
12	Regulation of land-use and construction of buildings	Regulating land use	Building permission, commencement and occupation certificate of the buildings, regulation of building use, enforcement of development control rule are the functions of ULBs.  In the case of Special Planning Authority existing within the municipal area, the function of granting building permission and regulation of building use was discharged by the Special Planning Authority.
		Enforcing building bye-laws	
		Approving building plans/high rises	
		Demolishing illegal buildings	
13	Slum improvement and Upgradation	Slum Improvement	Basic services in slums like water supply, roads, public toilets <i>etc.</i> , were provided by the ULBs.  This function was also performed by parastatal agencies like MHADA through its regional board <i>viz.</i> , Mumbai Slum Improvement Board. For slum rehabilitation, there was a separate special planning authority <i>viz.</i> , Slum Rehabilitation Authority (SRA) for Greater Mumbai, Thane, Pune and Pimpri-Chinchwad which carried out <i>in-situ</i> rehabilitation of slum dwellers.  Various other agencies were also appointed for implementing slum improvement schemes through DPDC fund, MPLAD and MLALAD funds.
		Slum Rehabilitation	
14	Water supply for domestic, industrial and commercial purposes	Distribution of water	Water supply was an obligatory function under all the three Acts. However, parastatal agencies such as MJP, CIDCO and MIDC were also involved in supply of water.
		Providing connections	
		Operation & Maintenance (O&M)	
		Collection of charges	

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Sr. No.	Functions	Activities	Actual status of implementation
15	Public health, sanitation conservancy and solid waste management	Maintaining dispensaries	Establishing and maintaining public dispensaries and providing public medical relief was an obligatory function under all the three Acts but this function was not performed in 16 <sup>1</sup> out of 44 test-checked ULBs. These services were provided either by Public Health Departments or Primary Health Centers run by Zilla Parishad. ULBs provided anti-rabies vaccines, tetanus and also provided important support to national programs like Pulse Polio, Universal Immunization Program. Sanitation and solid waste management in the urban area were performed by ULBs.
		Immunization/Vaccination	
		Registration of births and deaths	
		Cleaning and disinfection of localities affected by infectious disease	
16	Road and bridges	Construction and maintenance of roads	ULBs constructed and maintained roads, bridges, culverts, causeway, sub-way, foot-way <i>etc.</i> , in their jurisdiction. ULBs also implemented projects under various Government Schemes like Swarnjayanti Nagarothan Yojna. For construction/ maintenance of roads in the municipal areas under Special Road Grant released by the State Government. The State Government was empowered to appoint any agency other than the concerned ULB for executing the work.
		Construction and maintenance of bridges, drains, flyovers and footpaths	
<b>Functions performed as implementing agency</b>			
17	Planning for economic and social development	Program implementation for economic activities	The ULBs prepare and forward the plan for social and economic development which are integrated into District Plan. ULBs implement the District Plan as approved by the Government in their municipal area.
		Policies for social development	
18	Urban poverty alleviation	Identifying beneficiaries	ULBs implement Government schemes like National Urban Livelihood Mission-Dindayal Antyodaya Yojna. ULBs also earmark their own funds for welfare of women and divyaang (handicapped) persons.
		Livelihood and employment	

As seen from **Table 4.2**, six functions related to urban planning, regulation of land-use and construction of buildings, slum improvement and upgradation, water supply, public health and roads and bridges were also performed by the parastatal agencies, thereby diluting the envisaged devolvement and empowerment to the ULBs. Further, the creation of multiple parastatal agencies as planning authorities does not result in true devolution of functions envisaged, besides resulting in lopsided development within the jurisdiction of ULBs.

<sup>1</sup> (i) Dhamangaon, (ii) Hinganghat, (iii) Lakhani, (iv) Malkapur, (v) Medha, (vi) Mohadi, (vii) Motala, (viii) Talegaon-Dabhade, (ix) Nandurbar, (x) Nilanga, (xi) Renapur, (xii) Sakri, (xiii) Sillod, (xiv) Shirala, (xv) Shirur-Anantpal and (xvi) Tala

During the exit conference, the Principal Secretary stated (February 2022) that MJP, SRA, MHADA, MMRDA, NIT are State-level parastatal agencies not created for specific urban areas and there are historical as well as region-specific reasons for their creation. The Principal Secretary further stated that MJP catered to both urban and rural areas and which was continued as a matter of convenience. As regards, SRA and MHADA, the Principal Secretary mentioned that functions discharged by these agencies require specialised agencies for expediting the work. Further, the Principal Secretary added that these agencies are not working for the entire urban area but have limited jurisdiction within the municipal area.

***Recommendation 1: The Government needs to take time-bound action to achieve complete devolution of powers and responsibilities to the ULBs as per the Constitution and provide adequate autonomy in discharging these functions within their area.***

### **4.3 Institutional mechanism for empowerment of Urban Local Bodies**

Local bodies would be able to discharge the devolved functions effectively only when appropriate institutions are established and adequately empowered. This section discusses the effectiveness of such institutional mechanism.

#### **4.3.1 State Election Commission**

Article 243ZA of the Constitution of India provided that the superintendence, direction and control of electoral rolls for, and the conduct of, all elections to the municipalities should be vested in the State Election Commission. In Maharashtra, the State Election Commission established in April 1994 was vested with all powers envisaged in Article 243ZA of the Constitution of India.

##### **4.3.1.1 Status of election in Urban Local Bodies**

Article 243R of the Constitution of India provided that all the seats in the municipality should be filled by persons chosen by direct election from the territorial constituency in the municipal area, known as “Ward”. All the three Acts in the State provided for election after every five years.

Audit noticed that out of the 44 test-checked ULBs, in 34 ULBs, elections were held on time while in remaining 10 ULBs<sup>2</sup>, elections could not be held in the year 2020-21 due to COVID pandemic.

##### **4.3.1.2 Status of reservation**

Article 243T of the Constitution of India stipulated that reservation of seats by rotation should be provided for Schedule Castes (SC), Schedule Tribes (ST) and Women in different constituencies in a municipality for direct election. The reservation of seats for SC/ST was required to be in the same proportion as their population bears to the entire population of the municipal area. Further, not less than one-third of the total number of seats including seats

<sup>2</sup> (i) Bhatkuli, (ii) Kulgaon-Badlapur, (iii) Lakhani, (iv) Mohadi, (v) Motala, (vi) Murbad, (vii) Sakri, (viii) Shirur-Anantpal, (ix) Tala and (x) Vasai-Virar

reserved for SC/ST, was required to be reserved for women. It also provided for reservation of seats to backward classes by the State Legislature.

All the three Acts in Maharashtra provided for reservation of seats for SC/ST in the same proportion as their population bears to the entire population of municipal area on rotation basis. It also provided for reservation of 27 per cent of seats for Backward Classes (BCs) and 50 per cent of all seats including seats of SC, ST and OBCs for women on rotation basis.

Audit observed that seats were reserved for SC, ST, OBC and Women in all the 44 test-checked ULBs, as per the provisions contained in the Acts.

#### **4.3.2 Role and Responsibility of Mayor/President**

Article 243R(2)(b) of the Constitution of India stipulated that the State Legislature may by law provide the manner of election of the Chairperson of the Municipality. The Constitution has not defined the role, function and manner of election of the Chairperson of the Municipality and has left it to the laws framed by the State Legislature.

In Maharashtra, the Chairperson of a Municipal Corporation is named as Mayor while the Chairperson of Municipal Council/Nagar Panchayat is named as President.

The Model Municipal Law, 2003 circulated by the Ministry of Urban Development, Government of India prescribed that the term of office of the Mayor/President should be conterminous with the duration of the municipality. The office of the Mayor/President in the municipality was also required to be reserved for SC, ST and Women to such extent, and in such manner, as may be prescribed. The Second Administrative Reform Commission had also recommended (October 2007) that the Mayor/President should be the chief executive of the municipal body and be elected directly by the people.

The status of mode of election, tenure and powers of the post of Mayor and President in the ULBs in the State is depicted in **Table 4.3**.

**Table 4.3: Status of election, tenure and powers of Mayor and President in ULBs**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Mayor</b>	<b>President</b>
1	<b>Term of office</b>	Two and half years. Term not conterminous with the duration of the Municipal Corporation.	Two and half years. Term not conterminous with the duration of the Municipal Councils/Nagar Panchayats.
2	<b>Election</b>	Not elected directly by people but from among the Councillors. The post of Mayor was reserved and rotated among SC, ST, backward class, women and general.	Not elected directly by people but from among the Councillors. The post of President was reserved and rotated among SC, ST, backward class, women and general.
3	<b>Important functions and executive powers of Mayor and President</b>	Presides over the meetings. Convenes the first meeting of the Improvement Committee, Education Committee <i>etc.</i>	Presides over the meetings. Chairman of the Standing Committee.

Sr. No.	Particulars	Mayor	President
		No executive powers. Commissioner appointed by the State Government was the Chief Executive.	Watch over the financial and executive administration of the Council. Supervision and control over the acts and proceedings of the Chief Officer of the Council in matters of executive administration, accounts and records of the Council.
			Empowered to spend on any work in emergency situation necessary for the safety of the public.
			Chief Officer requires the sanction of the President for delegating any functions under the Act to other officers of the Council.
<i>Source: Respective Acts</i>			

As seen from **Table 4.3**, that the President of a Council had more executive powers *vis-à-vis* the Mayor of a Corporation. In May 2016, an amendment was made in the MMCNPIT Act for direct election of the President of the Municipal Councils. However, the amendment was revoked in February 2020 and erstwhile system of indirect election by the Councillors among themselves was restored.

A comparison of the tenure and powers of the Mayor in different cities across the country revealed that at least in 15 cities<sup>3</sup> in the country, tenure of five years of Mayor was conterminous with the tenure of the Corporation. Six<sup>4</sup> out of the above 15 cities had direct elections for Mayor. The Mayor of Kolkata was the executive head and empowered to approve all projects. Mayors of Kochi and Jaipur were empowered to approve all the projects and had the authority to sign and approve bills.

In contrast, the Mayor and President of the ULBs in the State of Maharashtra were not elected directly by the people and their tenure was not conterminous with the tenure of ULBs. Further, the Mayor did not have wide executive powers.

During the exit conference, the Principal Secretary stated (February 2022) that two and half year’s tenure was found to be more suitable in the State after experimenting with one-year and five-year tenure in the past. He further added that a Committee has been formed to look into the executive powers of the Mayor and its report is expected soon.

***Recommendation 2: The State Government should consider the recommendations of the Administrative Reforms Commission for entrusting executive powers to the Mayor and direct election of Mayor/President by the people.***

<sup>3</sup> Bhopal, Chennai, Dehradun, Guwahati, Hyderabad, Jaipur, Kanpur, Kolkata, Lucknow, Ludhiana, Patna, Raipur, Ranchi, Thiruvananthapuram and Vishakhapatnam

<sup>4</sup> Bhopal, Dehradun, Kanpur, Lucknow, Raipur and Ranchi

#### **4.4 District Planning Committee**

Article 243ZD of the Constitution of India, stipulated the constitution of the District Planning Committee (DPC) for consolidation of plans prepared by the Panchayats and the Municipalities in a district and to prepare a draft development plan for the district as a whole.

Accordingly, the State Government enacted the Maharashtra District Planning Committee (Constitution and Functions) Act, 1998 and the Maharashtra District Planning Committee (Conduct of Meeting) Rules, 1999.

District Planning Committee consists of *ex-officio* members, nominated members and elected members. Minister-in-charge of the concerned district, President of the Zilla Parishad and Collector of the concerned district are the *ex-officio* members. Nominated members are from amongst the members of the parastatals in the region, Member of Parliament (MP) and Member of Legislative Assembly (MLA) representing the concerned district and persons having the knowledge related to district planning. At least 80 *per cent* members are elected from the elected members of Panchayats and Municipalities in the district in the proportion of ratio between the population of rural and urban area of the district.

The main function of the DPC was to consolidate the annual, five-year and perspective development plans of Panchayats/ULBs in the district and prepare draft annual, five year and perspective development plans for the approval of the Government.

Audit noticed that DPCs were constituted in all the 36 districts of the State and annual district plans prepared by DPCs were duly approved by the State Government during the period 2015-16 to 2020-21. However, five-year plan and perspective development plans were not prepared in any of the districts.

#### **4.5 Metropolitan Planning Committee**

Article 243 ZE of the Constitution of India provides for constitution of a Metropolitan Planning Committee (MPC) to prepare the draft development plan for the metropolitan area<sup>5</sup> having regard to plans prepared by Panchayats and Municipalities in the metropolitan area. Accordingly, the State Government passed the Metropolitan Planning Committees (Constitution and Functions) (Continuance of Provisions) Act, 1999.

Metropolitan Planning Committee consists of *ex-officio* members, nominated members and elected members. Principal Secretary, UDD and Divisional Commissioner of the revenue division concerned are the *ex-officio* members. Nominated members are from amongst the Municipal Commissioners, Chief Officers of Municipal Councils, Chief Executive Officers of the Special Planning Authorities operating in metropolitan area, MPs and MLAs representing the metropolitan area concerned and persons having experience and expertise in urban development, urban infrastructure, finance, transport, environment, industry and trade and urban community development. At least two-third of all the members are elected from the elected members of

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<sup>5</sup> An area having population of ten lakh or more covering one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous area specified by the Governor by public notification

Panchayats and Municipalities in the metropolitan area in the proportion of, ratio between the population of rural and urban area of the metropolitan area.

Audit observed that five metropolitan areas were notified by UDD viz., Mumbai (July 1999), Nagpur (July 1999), Pune (July 1999), Aurangabad (September 2008) and Nashik (August 2008). Accordingly, the MPCs have been constituted for these areas.

The development plan for the metropolitan area of Mumbai and Nagpur were approved by the State Government in April 2021 and January 2018 respectively while the draft development plan of Pune Metropolitan area was published in the Gazette in July 2021 for inviting objections/suggestions from the public. The draft development plan for Nashik and Aurangabad was not prepared (October 2021). Audit observed that the Nashik MPC held a meeting only once in July 2016 since its formation in June 2016 while the Aurangabad MPC did not hold any meeting since its formation in February 2015.

During the exit conference, the Joint Secretary, (UDD-I) stated (February 2022) that the Metropolitan Planning Committees of Nashik has ceased to be in existence after the election while the draft development plan of Aurangabad was under finalisation. It was further added that though metropolitan plan was not prepared there existed regional plans.

***Recommendation 3: The State Government should ensure effective functioning of Metropolitan Planning Committee for integrated development of the metropolitan area.***

#### **4.6 Ward Committee**

Article 243S of the Constitution of India stipulated the establishment of Ward Committee consisting of one or more wards, within a territorial area of municipality, having a population of three lakh or more.

The Ward Committee comprises of elected members of the municipality, Ward Officer of the respective ward and three nominated members from recognised Non-Government Organisations (NGOs) and Community-based Organisations working in the field of social welfare within the area of the Ward Committee. The functions of the Ward Committee included local level planning, redressal of common grievances of citizens connected with local and essential municipal services like water supply, drainage, sanitation and storm water disposal and to make recommendations on the proposals regarding the estimates of expenditure pertaining to the Wards under different activities. In the State, since only Municipal Corporation had a population of more than three lakh, Ward Committees were constituted only in Municipal Corporations.

Section 50 TT of the MbMC Act,1888 provided for the constitution of not more than 25 Ward Committees. Section 29A of the MMC Act, 1949 prescribed the number of Ward Committees to be constituted based on population. Both the Acts stipulated that the Ward Committee should meet at least once every month. The status of Ward Committees constituted in the eight test-checked Municipal Corporations and the meetings held during 2015-16 to 2019-20 are indicated in **Table 4.4**.

**Table 4.4: Shortfall in the constitution of Ward Committees and holding of meetings**

Name of Municipal Corporation	No. of Ward Committees to be constituted as per the Act	No. of Ward Committees constituted	Shortfall in percentage	No. of meeting to be held during 2015-20	No. of meetings held	Shortfall in percentage
Amravati	5	5	--	300	293	2
Latur	4	4	--	240	4	98
Greater Mumbai	Not more than 25	17	--	1020	1327	--
Nagpur	13	10	23	600	247	59
Nashik	10	6	40	360	292	19
Pimpri Chinchwad	11	8	27	480	434	10
Thane	11	9	18	540	362	33
Vasai-Virar	9	9	--	540	402	25

*Source: Information furnished by respective ULBs*

As seen from **Table 4.4**, there was 40 *per cent* shortfall in the constitution of Ward Committees in Nashik Municipal Corporation. The shortfall in holding meetings was also significant in Latur and Nagpur Municipal Corporation. Latur Municipal Corporation replied (September 2021) that the Chairman of the Ward Committees was busy with election and drought condition and thereafter due to court case challenging the procedure for appointment of Chairman, the meetings were not convened. Nagpur Municipal Corporation replied (September 2021) that instruction has been issued to convey meeting once every month.

During the exit conference, the Principal Secretary stated (February 2022) that necessary instructions would be issued in this regard.

#### **4.7 Area Sabha**

Ministry of Urban Development, Government of India in Draft Model Nagar Raj Bill recommended (October 2003) the creation of Area Sabha for each ward. This was to institutionalise citizens' participation in municipal functions like setting priorities for schemes and development programmes to be implemented, identifying the most eligible persons for beneficiary-oriented schemes, suggesting location for public convenience facilities *etc.*

The State Government had passed Maharashtra Municipal Corporations and Councils (Amendment) Act, 2009 for constitution of Area Sabha in all the ULBs. However, notification for enforcement date was not issued despite lapse of 12 years from the passing of the Act. As a result, Area Sabha was not constituted in any of the wards. Thus, an important mechanism to institutionalise citizens' participation in municipal functions did not materialise despite the enabling Act.

During the exit conference, the Principal Secretary stated (February 2022) that the notification was not issued because the practicability of Area Sabha in urban areas was being examined.

**Recommendation 4: The Government should take steps to constitute Ward Committees and Area Sabha and ensure its effective functioning.**



## 4.8 State Finance Commission

Article 243Y read with Article 243I of the Constitution of India stipulated that the State Finance Commission (SFC) should be constituted within one year of the commencement of CAA and thereafter at the expiration of every fifth year, to review the financial position of Municipalities.

The State Government had enacted Maharashtra Finance Commission (Miscellaneous Act), 1994 for the constitution of State Finance Commission in the State.

### 4.8.1 Delay in constitution of State Finance Commission and acceptance of State Finance Commission recommendations

The SFC was required to be constituted at expiration of every fifth year. The Thirteenth Central Finance Commission (CFC) recommended that the period covered by SFC should be synchronised with the period covered by CFC. The Thirteenth CFC also recommended that, since the mandate of the CFC was also to recommend measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations of the State Finance Commission, the report of the SFC should be available well before that of CFC.

Audit observed that out of five SFCs constituted in the State, there was delay in constitution of four SFCs as shown in **Table 4.5**. The sixth SFC which was to be constituted in 2019 was yet to be constituted.

**Table 4.5: Statement showing the delay in constitution of SFC**

Number of SFC	To be constituted as per constitution	When to be constituted with reference to previous SFC	Date on which SFC constituted	Delay in constitution of SFC (in months)
<b>First</b>	By 31 May 1994	Not applicable	23-04-1994	No delay
<b>Second</b>	1999	April 1999	22-06-1999	2
<b>Third</b>	2004	June 2004	15-01-2005	7.5
<b>Fourth</b>	2009	January 2010	10-02-2011	12
<b>Fifth</b>	2014	February 2016	28-03-2018	25
<b>Sixth</b>	2019	March 2023	Not constituted	-

*Source: Constitutional provisions, notification for the SFCs and Action Taken Report of the State Government*

As seen from **Table 4.5**, because of delay in constituting the SFC, only five SFCs were constituted in the State as against six SFCs which should have been constituted as per the provisions in the Constitution.

Audit also observed delays in submission of SFC report and acceptance of recommendations by the State Government as shown in **Table 4.6**.

**Table 4.6: Delay in acceptance of recommendation of SFC**

Number of SFC	Date on which SFC constituted	Period covered	Date of submission of SFC Report	Date of acceptance of recommendations by UDD	Time taken by Government for acceptance of recommendations
<b>First</b>	23-04-1994	1996-97 to 2000-01	31-01-1997	05-03-1999	2 years 1 month
<b>Second</b>	22-06-1999	2001-02 to 2005-06	30-03-2002	29-03-2006	4 years 1 month
<b>Third</b>	15-01-2005	2006-07 to 2010-11	30-06-2006	20-12-2013	7 years 5 months
<b>Fourth</b>	10-02-2011	2011-12 to 2015-16	16-07-2015	23-03-2018	2 years 8 months
<b>Fifth</b>	28-03-2018	2019-20 to 2023-24	20-08-2019	15-12-2020	1 year 4 months

*Source: SFC Reports and Action Taken Report of Government on SFC Reports*

As seen from **Table 4.6**, the SFC did not cover the period 2016-17 to 2018-19. The fourth SFC submitted its report at the fag end of its recommendation period. Further, though the fifth SFC was for the period 2019-20 to 2023-24, while accepting the recommendations, the same was treated as covering the period 2020-21 to 2024-25.

There were delays in acceptance/rejection of the recommendations by the State Government which resulted in devolution of funds to the ULBs based on recommendations of the earlier SFCs.

During the exit conference, the Under Secretary, Finance Department stated (February 2022) that the delay in the constitution of SFC was due to delay in submission of the previous SFC report. The delay in submission of the SFC report was due to the time taken in Marathi translation of the report before placing in the State Legislature. The Under Secretary, however, added that the delay in acceptance of the recommendations has been brought down in the case of the fifth SFC recommendations.

#### **4.8.2 Action taken by State Government on the recommendations of the State Finance Commission**

The recommendations made by the SFC could be broadly categorised into two categories *viz.*, (i) recommendations having financial burden on the State exchequer and (ii) other recommendations, which mainly constitute initiating municipal administrative and legal reforms.

The five SFCs, constituted in the State had made 270 recommendations relating to ULBs to the State Government. The status of recommendations made by SFC and accepted by the State Government is shown in **Table 4.7**.

**Table 4.7: Recommendations made by SFC and accepted by State Government**

Number of SFC	Total number of recommendations made by SFCs	Recommendations having financial implications				Other Recommendations			
		Fully accepted	Partly accepted	Rejected	Total	Fully accepted	Partly accepted	Rejected	Total
First	61	6	3	2	11	50	-	-	50
Second	50	-	-	-	-	45	4	1	50
Third	35	2	1	1	4	20	7	4	31
Fourth	48	1	1	26	28	-	1	19	20
Fifth	76	8	4	9	21	38	9	8	55
<b>Grand Total</b>	<b>270</b>	<b>17</b>	<b>9</b>	<b>38</b>	<b>64</b>	<b>153</b>	<b>21</b>	<b>32</b>	<b>206</b>

*Source: Action Taken Report of the Government on SFC Reports*

As seen from **Table 4.7**, out of the 270 recommendations made by SFCs, 64 recommendations had financial implications. Few important financial recommendations made by SFC and accepted fully/partially by the State

Government but in which financial devolution was not done by the State Government is shown in **Table 4.8**.

**Table 4.8: Recommendations made by SFC in which financial devolution was not done by State Government**

<b>Number of SFC</b>	<b>SFC recommendation</b>	<b>Audit findings</b>
First	Devolve 25 <i>per cent</i> of the net income received by way of vehicle tax as road grant for construction and maintenance of roads in the municipal areas.	Government accepted to devolve 17.75 <i>per cent</i> from the net collection under Motor Vehicle Tax as road grant to all ULBs. However, the road grant continued to be devolved at 10 <i>per cent</i> of net income received by way of Motor Vehicle Tax.
Third	Devolve 17.75 <i>per cent</i> of the net income received by way of vehicle tax as road grant for construction and maintenance of roads in the municipal areas.	Government continued to devolve road grant at 10 <i>per cent</i> of net income received by way of Motor Vehicle Tax.
Fourth	Share 50 <i>per cent</i> of the professional tax collected from a municipal area with the ULB concerned.	Though the recommendation was accepted by the Government in March 2018, however, actual devolution was still not done since the data of professional tax collected in urban areas was not available separately with the State Government. Total receipt of the State Government towards professional tax during the period 2018-19 to 2020-21 was ₹ 7,481.99 crore.
<i>Source: SFC Reports and Action Taken Report of GoM</i>		

Thus, there were not only delays in the constitution of SFC, which was an important mechanism to review the financial position of the municipalities in the State but also delays in the submission of SFC reports. This was further aggravated by the delays in consideration of the recommendations by the State Government and non-implementation of accepted recommendations thereby depriving the ULBs of significant revenue on account of professional tax and road grant.

During the exit conference, the Under Secretary, Finance Department stated (February 2022) that instructions have been issued in January 2022 to the State Tax Department to devise a mechanism for devolution of Professional Tax to the ULBs.

***Recommendation 5: The State Government should constitute the SFC within the stipulated time frame and ensure that the report of SFC is submitted to Government expeditiously. The State Government should also ensure that the recommendations are considered within a defined time frame and accepted recommendations are implemented promptly.***

***Recommendation 6: The State Government may set up a mechanism for collecting data of professional tax collection in urban areas and ensure 50 per cent of it is devolved to ULBs in a timely manner.***

