

Chapter II: Compliance to provisions of 74th Constitutional Amendment Act

2.1 Compliance of State laws with 74th Constitutional Amendment Act

Provisions relating to municipalities were incorporated in the Constitution by the 74th Constitutional Amendment Act, *vide* Articles 243Q to 243ZG. Accordingly, the State Government amended The Goa Municipalities Act, 1968 (GMA) in 1994 and enacted The City of Panaji Corporation Act (CCP Act), 2002. A comparison of the provisions of the GMA and CCP with the requirements of the 74th Constitutional Amendment Act is given in **Table 2.1**.

Table 2.1: Comparison of provisions of the 74th Constitutional Amendment Act with State ULB Acts

Provision of constitution	Provisions of Constitution incorporated by the 74 th Amendment Act	CCP Act	GMA
Article 243Q	Constitution of three types of municipalities is prescribed.	Section 7	Sections 3 and 4
Article 243R	Composition of ULBs will be from elected members, nominated members and representation of Members of Parliament and Legislative Assembly.	Section 9	Section 9
Article 243S	Constitution of Ward committees in ULBs with prescribed composition.	Section 41	No provision
Article 243T	Reservation of seats for Scheduled Caste (SC)/Scheduled Tribe (ST), Women and Backward classes in direct elections.	Section 10	Section 10
Article 243U	Duration of the municipalities shall be five years from its first meeting.	Section 17	Section 42
Article 243V	Disqualifications of a person for being a member and under any other law.	Sections 15, 21 and 23	Section 16
Article 243W read with Twelfth Schedule	Empowerment of municipalities with such powers and authority to enable their effective functioning as institutions of self-government and to carry out the responsibilities in relation to the 18 subjects in Twelfth Schedule.	Sections 59 and 60	Sections 51 and 322A read with Schedule X
Article 243X	Municipalities would be empowered to levy and collect taxes, fees, duties, <i>etc.</i>	Section 104	Sections 101 and 104
	Grants-in-aid would be given to municipalities from the State.	Section 81	Section 142A
	Constitution of funds for crediting and withdrawal of moneys by municipalities.	Section 80	Section 86

Provision of constitution	Provisions of Constitution incorporated by the 74th Amendment Act	CCP Act	GMA
Article 243-I read with Article 243Y	Constitution of State Finance Commission to review the financial position of municipalities, recommend the distribution of revenues between the State and municipalities and allotting the funds from the Consolidated Fund of the State.	Section 5(23) – definition	Section 143A
Article 243Z	Maintenance of accounts by municipalities.	Section 98	Section 98
	Audit of accounts maintained by municipalities.	Section 102	Section 100
Article 243ZA	Constitution of State Election Commission for preparation of electoral rolls for, and the conduct of, elections to municipalities.	Section 11	Section 10 A
Article 243ZD	Constitution of District Planning Committee to prepare a draft development plan for the district.	No provision	Section 184F

(Source: The Constitution of India, CCP Act, 2002 and GMA, 1968)

Article 243Q provided for the constitution of three types of municipalities depending upon the size and area viz. (i) Nagar Panchayat for an area in transition from rural to urban area; (ii) Municipal Council for smaller urban area; and (iii) Municipal Corporation for larger urban area. One municipal corporation and 13 municipal councils were constituted under the CCP Act 2002 and GMA 1968, (amended in 1994) respectively. There was no provision for Nagar Panchayats in Goa.

Article 243S provided for the constitution of Ward Committees in all municipalities with a population of more than three lakh. Though none of the ULBs in Goa have a population exceeding three lakh, the CCP Act provided for the constitution of Ward Committees while GMA did not.

Hence the State legislations are in compliance with the provisions of the 74th Constitutional Amendment Act. However, the State legislations also provide for overriding powers to the State Government over the ULBs in the State.

2.2 Powers of the State Government over Urban Local Bodies

The CCP Act and the GMA provided for the control of the State Government over the functioning of ULBs through the provisions as mentioned in **Table 2.2**.

Table 2.2: Powers of State Government over ULBs

Sl. No.	Subject	Provision in CCP Act	Provision in GMA
1	Power to make rules	Government may frame rules under CCP Act/GMA (Section 391 of CCP Act and Section 306 of GMA)	
2	Composition/ Removal of Councillor	Five Councillors shall be nominated by the State Government (Section 9).	Government may on its own motion remove any Councillor for misconduct, disgraceful conduct or being incapable (Section 44).
3	Appointment of Officers and Servants of ULBs	Government shall approve the appointment, salary, allowances and conditions of service of the City Engineer, Health Officer and Municipal Secretary and certain other officers and servants (Section 52).	Government shall sanction the creation of posts and prescribe the rules for qualifications, pay, conditions of service and the method of recruitment of the officers of ULBs (Section 72 and 73). (Ref: Paragraph no. 6.1.3)
4	Conduct of meetings of Corporation/ Councils	Not Available (NA)	Residual powers rests with Government to make rules regarding conduct of business at meetings of the Councils (Section 78). (Ref: Paragraph no. 3.3.2)
5	Transfer of municipal property	Contract for acquisition and disposal of immovable property involving an expenditure exceeding ₹ three lakh, shall be approved by the Government (Section 68).	Sanction of Government is required for transfer of immovable property (Section 88).
6	Institution of suit against Councillors for liability	NA	Suit may be instituted against Councillors, officers and servants for loss, damage or pending liability (Section 92).
7	Execution of resolutions or decisions by ULBs	Government/DUD has powers to suspend execution of orders and resolutions of CCP or MCs respectively (Section 378 of CCP Act and Section 293 of GMA).	
8	Reduction of establishment	Government/DUD may reduce the number of excess persons or reduce the remuneration of such person or persons (Section 377 of CCP Act and Section 295 of GMA).	

Sl. No.	Subject	Provision in CCP Act	Provision in GMA
9	Inquiry/inspection into municipal matters	Government may make an inspection, enquiry or examination of any department, office, officer, service, work or thing under the control of any Corporation authority and require CCP to initiate an action (Sections 373, 374 375 and 376).	Government may order an inquiry into any matters concerning the municipal administration or any matters with respect to which sanction, approval or consent of the Government is required (Section 296).
10	Sanction of bye-laws by Government	State Government may modify, vary, amend, delete or add to draft bye-laws of CCP and shall approve it (Section 389).	DUD and the Government (in case of any tax) are empowered to sanction the bye-laws for the MCs and prepare model bye-laws (Section 307).
11	Power to dissolve ULBs	Government may dissolve CCP in case of incompetency or default or excess or abuse of power (Section 379).	Dissolution of the Council after review of Municipal Administrator's work (Section 300).
12	Appointment of a Recovery Officer	NA	Director may appoint a Recovery Officer, in certain cases, without reference to Council (Section 163).
13	Provisions regarding revenues	Government may exempt or suspend levy of tax if the public interest is involved (Section 134).	Approval of Director is necessary to write off irrecoverable tax, fee or other amount beyond ₹ 5,000 (Section 162).

(Source: The Constitution of India, CCP Act, 2002 and GMA, 1968)

Hence, the Government had far reaching powers over the composition and functioning of ULBs in the State. Specifically, powers for removal of Councillors (GMA), appointment, salary and allowances of CCP functionaries, notification of residual powers for conduct of business of MCs (GMA), transfer of municipal properties, institution of suits against councillors (GMA), suspension of execution of resolutions/orders passed by the ULBs, reduction of establishment, inquiry into municipal matters, sanction of bye-laws, appointment of Recovery Officer (GMA) and certain provisions regarding revenues, reduced the autonomy of ULBs significantly.

Given the legislative framework as detailed above, the actual powers enjoyed by ULBs and their functioning *vis-à-vis* the provisions of the 74th Constitutional Amendment Act are detailed in the subsequent chapters.