

Is it time to reimagine the 74th Constitutional Amendment Act?

By [VR Vachana](#)

Jun 01, 2024 08:00 AM IST

Election 2024

An assessment of the implementation of the 74th Constitutional Amendment Act (CAA) reveals a glass less than half full.

It has been 31 years since the 74th Constitutional Amendment Act (CAA) came into force, which sought to create an institutional framework for ushering in democracy at the grassroots level through self-governing local bodies in urban areas of the country. An independent analysis of the Comptroller and Auditor General (CAG)'s audit reports of 18 states on the 74th CAA's implementation finds that 1,693 cities in India did not have an elected council at the time of the audits.



The Act also does not factor in the new urban realities and aspirations of twenty-first century India (Getty Images/iStockphoto)

Further, on average, only five of the 18 functions in the twelfth schedule of the Constitution have been effectively devolved to Urban Local Bodies (ULBs). Of these, more than seven functions are performed by parastatals or state departments. This includes key functions such as urban and land use planning, water supply, public health, and fire services. Further, only four states have constituted ward committees in all ULBs. On average, only 11 out of the 18 states have constituted State Finance Commissions (SFCs) as per the timeline set by the Constitution, with an average delay of 413 days in setting up SFCs across states.

According to Janaagraha's Annual Survey of India's City-Systems (ASICS) 2023, on average, only 42% of the 74th CAA has been implemented by states.

The 74th CAA does not reflect India's new urban realities

While state municipal legislations play an important role in ensuring devolution of powers to city governments (based on the principles of the 74th CAA given that local governments in India are a state subject), some provisions in the 74th CAA are inherently limiting.

For example, many of the key provisions of the 74th CAA are not binding on states as the word 'may' has been used instead of 'shall', leaving space for the discretion of state governments. Article 243W mandates the devolution of functions with a 'may' provision instead of 'shall', thereby giving states the leeway to not comply with the devolution of functions as per the twelfth schedule of the Constitution. According to ASICS 2023, states such as Haryana, Jammu and Kashmir, Manipur, Punjab, Tamil Nadu, and West Bengal (Howrah) have emulated the 74th CAA and devolved all 18 functions under the twelfth schedule as a 'may' provision in their respective municipal acts, instead of a 'shall' provision.

Similarly, Article 243S(1) provides for the constitution of a 'wards' committee (i.e. a single committee of citizens for multiple wards) for citizen participation. This has resulted in 10 states having a 'wards' committee structure which takes away the spirit of a ward committee (one committee for one ward) in bringing governance closer to people.

The Act also does not factor in the new urban realities and aspirations of twenty-first century India such as an empowered mayor with a five-year tenure for the city as a single point of executive authority, a metropolitan governance framework for larger cities going beyond just a Metropolitan Planning Committee, devolution of contemporary functions such as climate, public transport and digital infrastructure to ULBs, and obviating the need and possibility of independent city parastatals, that reports to the ULBs. The 74th CAA also does not recognise 'city governments' as a distinct tier of government but as a sub-tier of state governments.

A constitutional amendment that could catalyse urban transformation in India

The need of the hour is a Constitutional amendment that can effect a metamorphosis of 'urban local bodies' into 'urban local self-governments'. Some of the key amendments to this effect can be as follows:

- A fixed mayoral tenure of five years.
- Effective devolution of all functions in the twelfth schedule of the Constitution, in addition to devolution of climate change governance in cities, gender equality, public transport and traffic management, promotion of information technology and broadband internet, and primary healthcare.
- Constitution of ward committees in every ward with a maximum population of 30,000 citizens.
- Empowerment of the state election commission to conduct municipal elections with control over electoral rolls, delimitation, reservation, and rotation.

The state governments hold the lever to effective implementation of the reimagined 74th CAA, through the creation of enabling institutional mechanisms for empowered ULBs. In due course, a separate local government list in the seventh schedule of the Constitution needs to be actively explored.

VR Vachana is Head, Municipal Law and Policy, Janaagraha and is the lead author of the Annual Survey of India's City-Systems (ASICS) 2023 report. The views expressed are personal