

NAGRIKAL

CITIZENS VOICES
FOR AND FROM
SMALL CITIES

MAY 2020

THE CONSTITUTION OF



WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a **SOVEREIGN DEMOCRATIC REPUBLIC** and to secure to all its citizens:

JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship ;
EQUALITY of status and of opportunity;
and to promote among them all
FRATERNITY assuring the dignity of the individual and the unity of the Nation ;
IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

74th CAA: An Explainer



NAGRIKA

ABOUT THE SERIES

Cities are important. They are at the forefront of our economy, they provide education and employment opportunities, and they act as hubs of new ideas. The lives of urban Indians are enmeshed with the cities they live in, and yet, we are so under-informed when it comes to the governing structures that ensure their smooth functioning.

The Nagrika Governance Series looks at how our cities are managed through the lens of city governments. They are part of the three-tier system of governance and form the tier closest to the citizens. They are accessible enough to listen to citizens' complaints and suggestions and are hopefully empowered enough to take action based on them.

In this article, we look at the 74th Constitutional Amendment Act. This act has been instrumental in providing constitutional recognition to our municipal governments. Before the Act, the municipalities lacked safeguards and mechanism to ensure their smooth functioning. The Act has addressed some of the problems, while some of the problems still remain.

74TH CAA: AN EXPLAINER

SUMMARY OF THE ARTICLE

- Constitutional amendments keep the Constitution in tandem with changing times.
- The 74th CAA was a landmark legislation that gave constitutional recognition to municipal governments and introduced important changes.

In our last article ('Cities and City Government'), we looked at how cities are defined both nationally and internationally. In the Indian context, each state has its own definition for urban areas and municipal governments are set up on the basis of this. We also looked at what city governments are, what constitutes them and why they are important.

In this article, we look at an important legislation that governs urban local governance in India; the 74th Constitutional Amendment Act, 1992. We first look at the historical context in which the Act was introduced and the need for doing so. We then look at the changes introduced in more detail and the motivation behind them.

The Constitution and 74th CAA

The Constitution

The Constitution of India, the guiding principle for all legislations in the country, became effective in 1950.

Being the longest national constitution in the world, its ambit is expansive and covers a lot of ground, from laws regarding marriage to inheritance, taxes, fundamental rights and local self governance. All legislations in the country, including those created by state governments, must align with the framework presented by the Constitution.

Constitutional Amendments

For the Constitution to guide the country, it must be reflective of the contemporary realities of the time. In the 70 years since the Constitution came into being, the country has gone through vast socio-economic changes that have necessitated amendments in the Constitution. These amendments are necessary to keep the Constitution in tandem with the present demands.

Amendments are literally defined as 'the process of altering or amending a law or document (such as a constitution) by parliamentary or constitutional procedure' or 'an alteration proposed or effected by this process'. Hence, amendments are both the process of changing parts of a legislation and the changes themselves.

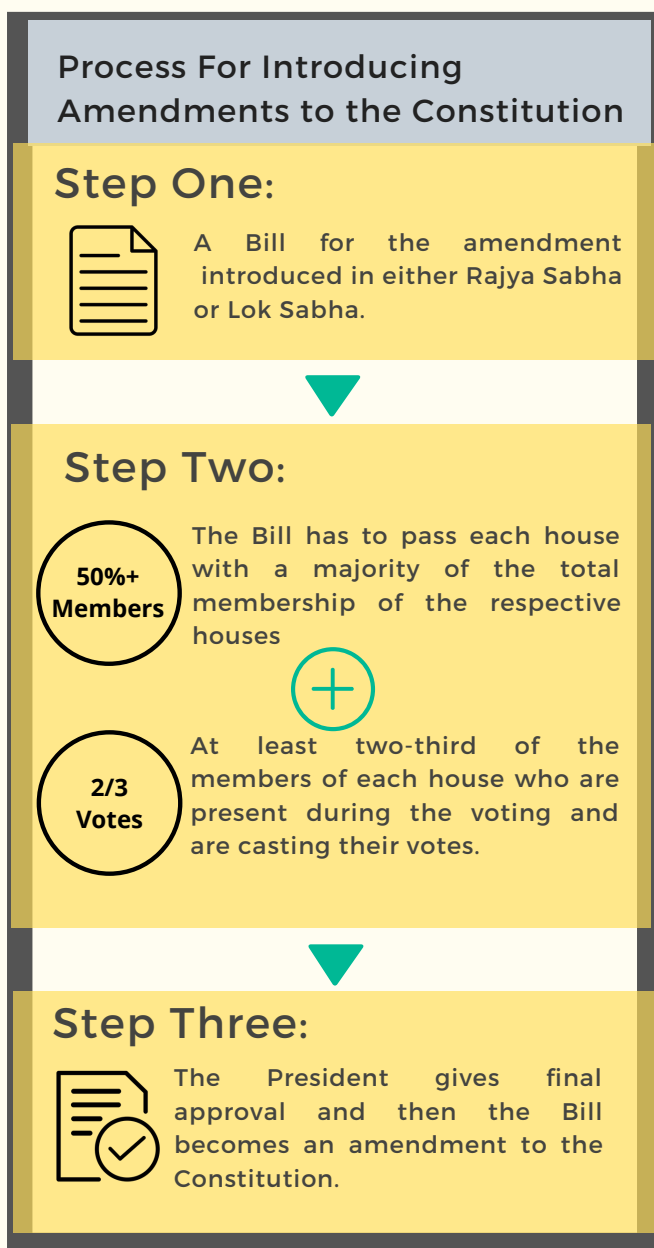
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The Constitution thus can be thought of as a document that is forever in the process of being changed while still maintaining the basic principles as mentioned in the preamble.

In the Indian context, the Constitution itself allows provisions for amending it through Article 368. Article 368 lays down the process for introducing changes in the constitution:

In case of amendments to some parts of the Constitution, approval of at least half of the state legislations is needed before the Bill is presented to the President. The Union, State and Concurrent Lists of the Seventh Schedule is also one such part

What is the 74th Constitutional Amendment Act?



Through the 74th Constitutional Amendment Act (CAA), 1992 the Parliament added Part IXA to the Constitution. It was enacted in 1993 to constitutionally recognise municipal governments.

It made municipal governments a formal part of the three-tier governing system, along with the Union Government and the State Governments. While this Act mandated the setting up of municipal governments in urban areas, it left the details of their constitution to the state governments through their respective Municipal Acts.

According to the 74th CAA, urban areas would be governed by one of the three mentioned types of urban local governments namely the Nagar Panchayat, Municipal Council and Municipal Corporation based on the size of the area. Nagar Panchayats were to administer areas in transition from rural to urban areas, municipal councils to administer small urban areas and municipal corporations for larger urban areas.

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The Act mentioned that the areas to be defined as ‘transitional’, ‘smaller urban areas’, and ‘larger urban areas’ were to be specified by the State Governors by looking at the following criteria:

“...the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors...”

What was the need for the 74th CAA?

Lack of focus on the Urban

Decentralisation was an aspect that national policy makers adopted since India’s independence, but focussed significantly more on rural self governing bodies than urban ones. While devolution of powers to panchayats was an aspect of the Directive Principles of State Policy, the same was not mentioned for urban areas, i.e. urban local bodies. Urban local bodies are referred to in the State List under Schedule 7 which implies that state governments have control over local governments. In the first five decades of independence, urban governance was not a priority. State governments maintained control of cities as local governance remained a state subject. Urban areas ended up getting less importance than rural areas in national policies regarding governance.

In 1951, the urban areas constituted 17.3% of the total population of India, which grew to 25.7% in 1991. This increase in urban population underlined the need for more empowered urban local governments.

No Constitutional Recognition of Urban Self Governance

Prior to the 74th CAA, the municipal governments lacked any constitutional recognition and depended on the state governments for their establishment, as well as administrative and fiscal decisions. The concept of a municipal government as an autonomous body did not exist before the introduction of the 74th CAA. This lack of recognition meant that the states were not mandated to set up city governments while there existed the mandate to constitute panchayats. This resulted in erratic or no elections in the cities for municipal governments.

While there were attempts to give constitutional recognition to urban local governing bodies prior to this they didn’t convert to an Act. The 65th Constitutional Amendment Bill in 1989 was passed in the Lok Sabha, but did not get passed in the Rajya Sabha. The 74th CAA built on the provisions suggested by the Bill, with some modifications.

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Lack of Fiscal Autonomy

There was no mechanism like the State Finance Commission (SFCs) in place for local governments. Without SFCs, the municipal governments were entirely dependent on the discretion of state governments for financial aid.

The need for constitutional safeguards to ensure regular elections and increased fiscal autonomy for municipalities was felt. With disproportionate discretionary powers in the hands of State Governments, the local level of democracy in urban areas suffered.

What changes did the 74th CAA introduce?

The 74th CAA introduced important changes for municipal governments. These changes are wide ranging and include provisions for reservations of seats, constitution of ward level committees, and SFCs amongst others. In the discussion below, we look at some of the most significant changes that the 74th CAA introduced.

It Improved the Relationship Between State and Municipal Governments

The 74th CAA established clear structures in the relationship between state and municipal governments.

Before the Amendment, there was no formal recognition of how the two would operate with respect to each other. The state governments had their municipal acts but there was no constitutional mandate to actually follow them. Further, without the amendment, there was no way of ensuring that the state municipal acts would give at least some minimal autonomy to the municipal governments.

The Act defined the relationship by recommending clear division of functions and increased fiscal autonomy for municipalities. This was to make sure that there was minimal or no overlapping roles of the two governments, and that the dependency of the municipal government on the state government could be reduced.

Functions: The 74th CAA provided 18 broad categories of functions, listed in Schedule 12 (annex 1), to be devolved to the municipal governments by the state governments. However, it was the discretion of the respective state governments to devolve functions as they deemed fit. In fact, in a pan-India study conducted by Nagrika, it was found that none of the states had devolved all 18 functions, while most municipal governments also undertook additional functions which were not part of the 18 functions.

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These 18 functions cover a large area of service and infrastructure provision, including roads and bridges, sanitation, matters related to cultural and educational matters, and registration of vital statistics.

The broad categories cover many more functions within themselves. For example, one of the functions is 'Water supply for domestic, industrial and commercial purposes'. But it can be broken down to multiple functions such as infrastructure creation, maintenance, generation of water, storing of water, distribution of water, etc. This depends on how individual states define each broad function and the functions they want to devolve to their municipal governments. For e.g. only in some states fire services are entrusted with city governments. Find the complete list of functions according to the 12th Schedule in the annex.

Funds: The Act mandated the establishment of SFCs and made them responsible for monitoring the finances of municipal governments. They were autonomous of state governments and made recommendations to the respective state governors regarding the distribution of 'taxes, duties, tolls and fees' between the state and municipal governments, the grants-in-aid for municipalities from the Consolidated Funds of

the State, and other measures to improve municipal finances.

The creation of SFCs did not solve the problem of fiscal autonomy of the municipalities as the act did not make the recommendations made by the Commission binding for the state governments. Apart from this, the Act left it to the discretion of the state governments to make bylaws regarding imposition of taxes and sharing of funds with municipal governments through taxes, grant-in-aid etc.

Functionaries: While the Act itself does not mention this aspect, the conversation regarding the 74th CAA is incomplete without the functionaries. The city officials carry out responsibilities and activities of the city government. By recommending the devolution of funds and functions, the Act made the presence of adequate functionaries at municipal governments an inherent provision as well. Functionaries are important in distancing the municipal governments from the state governments by providing a localised workforce to carry out functions at the city level themselves, thereby reducing the technical dependency on the state government. Some such functionaries include engineers, architects, health inspectors, tax collectors among others.

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Ensuring Regular Elections

The 74th CAA extended the responsibility for the preparation of electoral rolls and undertaking of municipal elections to State Election Commissions (SECs). They not only conducted elections but also ensured that the rules laid out in the respective state's municipal elections laws were followed. This provided for a body that was not under the direct control of the state governments to conduct municipal elections to guard against political interference. At present, SECs have been established for all states and union territories in India, except for J&K and Ladakh.

The presence of SECs has secured the institutionalisation of municipal elections through constitutional mandates. But it does not mean that elections at the local level are taking place regularly, without disruption. We will talk about them in our future articles of the Governance Series.

Ensuring Representation of Weaker Sections and Localised Concerns

The 74th CAA was responsible for ensuring the representation of women and persons belonging to Scheduled Caste (SC) and Scheduled Tribe (ST) categories by reserving seats for them in the elections under Article 243T. The Act leaves further powers with the state governments to reserve more seats as per their discretion.

For candidates from SC and ST categories, the number of seats to be reserved would be proportional to their population in the local area. For example, if SC and ST groups represented 10% and 20% of an area's population, then they would get 10% and 20% reservation for councillors' seats respectively. At least 33% of the seats reserved for SC and ST persons were further reserved for women, as well as 33% of the total seats, including the seats reserved for women from SC and ST categories, would be reserved for women.

These reservations have helped to increase the number of local representatives in the municipal governments who come from disadvantaged backgrounds. This in turn helped bring up concerns and issues that are particular to these groups and were not represented earlier.

Apart from the reservations, the 74th CAA mandates the establishment of ward committees (WCs) for municipalities having a population of three lakhs or more under Article 243S. WCs provide for continued people's participation even after the elections. The state government has the power to decide upon the composition of the WCs and the territorial jurisdiction, as well as the manner in which the WC seats are to be filled, but the local councillors are mandated members of the Committees.

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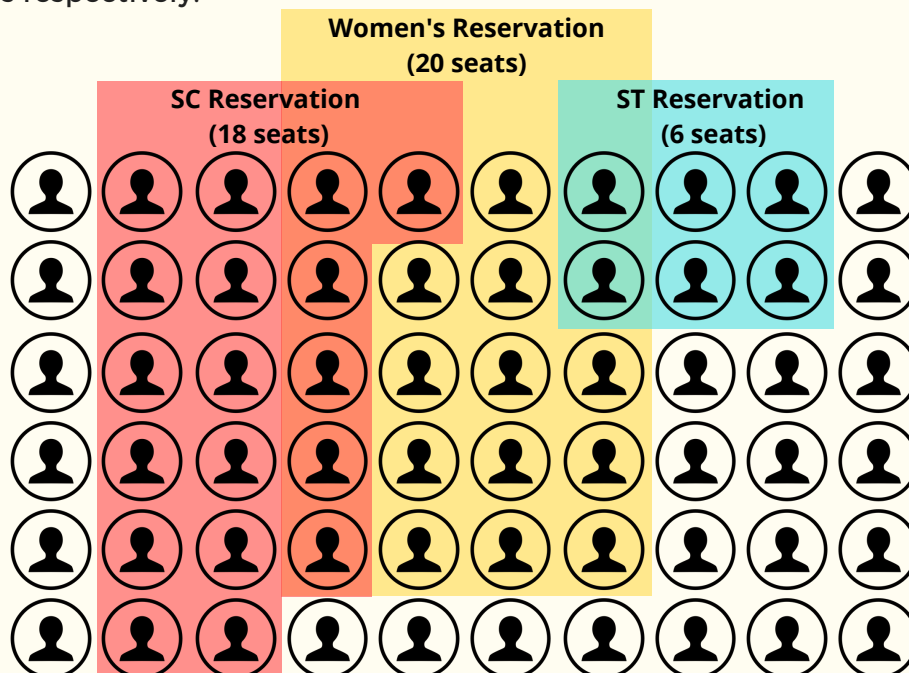
As the WC was constitutionally mandated, it was a formal institution and thus, the municipality was to aid in the functioning of the Committee. WCs helped in taking the concerns of the people at the ward level to their councillors. These Committees also provided space for the people to debate the immediate needs of the area and hold the councillors accountable. Thus, they became ways of incorporating people's participation into government decision-making from bottom up.

While states have amended their own municipal acts to reflect the changes suggested, not all changes have been adopted. This is largely because the Act explicitly mentions state legislators as the main deciding bodies for the adoption of elements of the amendment, leaving the provisions of the 74th Amendment Act and devolution of powers to city governments still a distant dream for many states.

Reservation of Seats for Municipal Elections

74th CAA reserves seats for persons belonging to SC and ST categories proportional to their population share in the local area i.e. no fixed number. The Act has mandatory 33% reservation for women, including 33% each from the SC and ST reserved seats.

For the purpose of representation, this is how the reservation of seats will look for a municipality with 60 seats and population shares of 30% and 10% for SC and ST categories respectively.



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Annex: 18 Functions as Given in Schedule 12

- Urban planning including town planning.
- Regulation of land use and construction of buildings.
- Planning for economic and social development.
- Roads and bridges.
- Water supply for domestic, industrial and commercial purposes.
- Public health, sanitation conservancy and solid waste management,
- Fire services.
- Urban forestry, protection of the environment and promotion of ecological aspects.
- Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- Slum improvement and upgradation.
- Urban poverty alleviation.
- Provision of urban amenities and facilities such as parks, gardens, playgrounds.
- Promotion of cultural, educational and aesthetic aspects.
- Burials and burial grounds, cremations, cremation grounds and electric crematoriums,
- Cattle ponds; prevention of cruelty to animals.
- Vital statistics including registration of births and deaths.
- Public amenities including street lighting, parking lots, bus stops and public conveniences.
- Regulation of slaughterhouses and tanneries.

ABOUT NAGRIKA

KNOWLEDGE ENABLING CITIZENS: FOR AND FROM SMALL CITIES

Nagrika uses knowledge to enable better governance and citizen-led transformation in small cities.

Nagrika helps narrow the information and knowledge gap in the perceived understanding of small cities. We aim to bring small cities to the mainstream of the urban development discourse, contextualise the problems that small cities face and develop context specific solutions for them. To develop pragmatic and feasible solutions we identify the two-way relationship between citizens and their cities using a blend of local and global knowledge.

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