



## **An Evaluation of 74th Constitutional Amendment Act: A Case Study of Chandigarh, India**

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### **Abstract**

To strengthen the position of urban governance in a more organized manner, the government of India took a pivotal initiative through the enactment of the 74<sup>th</sup> Constitution Amendment Act. This attempt aspires to augment the efficiency and effectiveness of municipalities in the discharge of their duties and functions with the participation of the populace. Despite the amendment, the municipalities are facing wide ranging problems, which in turn is hampering the spirit of democracy. The study analyzes and evaluates the governance of the city (Chandigarh) in context with the compliance of the 74<sup>th</sup> Constitutional Amendment Act. The study finds that although this endeavour has shown benefits, there are serious issues of maladministration, corruption, and conflict among governing institutions of urban governance. These issues need to be addressed on an immediate basis to strengthen the governance and empowerment of the people at the grassroots level.

**Keywords:** Seventy-fourth constitutional amendment, governance, public services, India.

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## Introduction

I purpose that the word empowerment and local governance are interchangeable. The literal meaning of empowerment signifies the enabling of people at local level, “Empowerment refers to the expansion in people’s ability to make strategic life choices in a context where this ability was previously denied to them” (International Conference, Kabeer1999 pp.2,). Local governance signifies an organized, legitimized way of authority through which planning, decision making, rule enforcement and accountability processes. Local governance is not only confined to governance, rather it includes variety of community and civil society steps by which people organize to act collectively, which in turn is real empowerment. True empowerment enhances the opportunities and capabilities to make and express choices into desired actions and outcomes. The immediate representation of people in governance makes the process and empowerment fruitful (Stigler, 1957). Democracy on national scale can function in a healthy manner only if it is supported and nourished by democratic local government (Robsons, 1954). The empowerment of local governments through constitutional means is a significant tool for making democracy a success through grass root participation (Datta, 1996). Governance at the local level is decentralized because it understands the concern of local residents, eliminates the confusion of jurisdiction and makes the decision making responsive to people for whom services are intended (Oates, 1972). The mobilization of local revenues to finance local development is an important foundation for sustainable empowerment and governance as well as for service provision (Helling, Serreno and Warren, 2005).

Thus, the governments at local level are important tool of governance and empowerment. It is in this backdrop, the present study analyzes and evaluates the governance of an urban body in India –the Municipal Corporation Chandigarh. This is specifically done in the light of a significant constitutional amendment aiming to enhance people’s empowerment – the 74<sup>th</sup> Constitutional Amendment.

## Research Methodology

The present study examines the various facets of governance in Chandigarh, which in addition to being a Union Territory (i.e. directly administered by the Union Government) is the capital of two states - Punjab and Haryana. The study analyzes the various institutions of governance and the work assigned to them. It focuses on the working of urban local government and examines the level of empowerment of local bodies. To accomplish these objectives, both primary and secondary sources of information have been used. The secondary data has been collected from office records, consultation papers, and reports of urban local bodies and commissions; books; journals; dissertations; internet; and newspapers. For various aspects of governance of the Municipal Corporation and other departments of Chandigarh administration, the study relied primarily on their websites. The sources of primary data were interviews with the officers and councilors (i.e. elected as well as nominated representatives) of the municipal corporation. The selection of officials includes a Medical Officer of Health, executive engineers of Building and Roads, Electrical and Horticulture and Superintendent of Establishment. Individuals were contacted to corroborate the information available in reports, documents and website.

The study has been divided into three areas. The first provides detailed information about the functions of the Municipal Corporation Chandigarh. The findings of the study are discussed in the ‘Results’ section. Finally, the paper provides an interpretation and suggestions for revamping the governance process.

## Case Background



## Case Study

Sharma, D. (2011). An Evaluation of the 74<sup>th</sup> Constitutional Amendment Act: A Case Study of Chandigarh, India. *JOAAG*, Vol. 6. No. 1

The city Chandigarh is one the most planned and clean city of India (popularly known as ‘City Beautiful’) with population of around 900,000. Chandigarh is one the fastest growing cities in India. Chandigarh became a union territory in 1966 and is the joint capital of two states; Punjab and Haryana. The jurisdiction of the Chandigarh Administration is around 114 square kilometers which also includes approximately 25 villages. Since its inception as union territory civic functions such as water supply, sewerage and storm water drainage, city roads, and solid waste management, are broadly performed by the Chandigarh Administration. With the formation of the Municipal Corporation Chandigarh in 1994 (with 20 wards) with a jurisdictional area of 79.34 sq. out of 114 square kilometers local bodies were developed and some civic functions were transferred to them (Chandigarh Development Plan, 2006).

The growth of the general population and an increase in the slum areas make the problem of governance increasingly difficult. Basically, urban governance refers to the management of civic affairs in an efficient and effective manner to enhance the quality of life up to a mark. Good urban governance refers to the simple, moral, accountable, responsive and transparent working of institutions in order to ensure equity for the inhabitants of the city (Minocha, 1998). Thus, urban local bodies play an imperative role in the planning and development of urban areas. In India the point can be made that the performance of municipalities in the discharge of their duties has continued to deteriorate. It is noted that municipalities in India are confronted with a number of problems which affect their performance adversely. These include: inefficiency in the conduct of business, ineffective participation by the weaker sections of the population in local governance, a weak financial condition, lack of transparency in the planning and implementation of projects, etc. (NIUA, 2005).

An important initiative of the Government of India designed to strengthen municipal governance is the enactment of the 74<sup>th</sup> Constitutional Amendment Act (CAA) implemented in 1992. The 74<sup>th</sup> CAA was a landmark in the history of India. The act aimed at the empowerment of the people in the discharge of functions and duties in their locality as it was deemed that they are the best judges of their needs. Until the 74<sup>th</sup> amendment, local governments in India were organized on the basis of the ‘*ultra vires*’ principle [beyond the powers or authority granted by law]. State governments were at liberty to extend or control the powers through executive decisions without an amendment to the legislative provisions. Through the 74<sup>th</sup> amendment initiative, an attempt is being made to revamp the performance ability of municipalities, so that they are able to discharge their duties efficiently.

The 74<sup>th</sup> CAA 1992 introduced Part IX-A in the Constitution which comprise of Articles 243P to 243ZG. It provides a new way for the organization and process of urban local governments specially pertaining to classification (Article 243Q), composition (Article 243R), ward committees (Article 243S), reservation (Article 243T), and tenure to powers and functions (Article 243W). Soon after the 74<sup>th</sup> CAA, an ordinance, namely the Punjab Municipal Corporation Act, 1976 as extended to Union Territory Chandigarh by the Punjab Municipal Corporation Law (Extension to Chandigarh) Ordinance, 1994, was signed by the President of the India taking effect from the 24th day of May 1994 and the Municipal Corporation of Chandigarh came into being.

### *Role, Powers and Functions of the Municipal Corporation Chandigarh*

The working of the Municipal Corporation Chandigarh is based on a foundation of the committee system under which various committees are formed to carry out the work. For example, Water Supply and Sewerage, Roads, Slum Development, Fire Services, Environment & City Beautification, House Tax committees have been constituted. Each of these sub committees is headed by a Chairman whereas the Finance and Contract Committee is headed by the Mayor (Municipal Corporation Chandigarh).



The functions which were transferred to municipalities under Article 243W, 74<sup>th</sup> CAA are urban planning including town planning, regulation of land use and construction of building, planning for economic and social development, roads and bridges, water supply ,public health, sanitation, fire services, urban forestry, protection of environment and ecology, safeguarding the interest of weaker sections society including the handicapped and mentally retarded children, slum improvement and upgradation ,urban poverty alleviation, provision of urban amenities and facilities which include parks, gardens and playgrounds, promotion of cultural , educational and aesthetic aspects, burials and burial grounds , cattle pounds ,vital statistics including registration of births and deaths ,public amenities including street lighting, parking lots ,bus stops and public conveniences and regulation of slaughter houses.

## Results

The functions in the 74<sup>th</sup> Constitutional Amendment are partly incorporated. There are multiple agencies which are functioning in Chandigarh. The following table depicts the numerous agencies and their functions.

**Table 1.** Agency and Functions

Name	Area of operation
Municipal Corporation, Chandigarh	Water supply, Sewerage, drainage, roads, sanitation, fire wing, property tax
Chandigarh Housing Board	Construction of urban housing for the city.
Chandigarh Industrial & Tourism Corporation	Tourism and Industries
Chandigarh Transport Undertaking	Transportation

Source: Report of the Finance Secretary, Chandigarh Administration

### *Poor Empowerment*

Table 1 depicts the role of the Municipal Corporation Chandigarh and it is clearly visible that there is very little of the city which is governed by local institutions. So the spirit of compliance with the 74<sup>th</sup> CAA is very poor. The functions which are assigned to local bodies are fractional and express little empowerment.

The portion allotted to the Municipal Corporation is clearly very daunting as are the allotments in the city management process to the Chandigarh Administration, Transport Department and Chandigarh Housing Board. Again the size of portion of the management process to these entities signifies the poor empowerment to local bodies.

The institutional responsibility of the city is only partially owned by the Municipal Corporation, which clearly shows that the governance aspect is against the spirit of 74<sup>th</sup> CAA. Further, the various agencies are very poor at coordinating with each other. The rift between the Chandigarh Administration and the Municipal Corporation is very evident as the administration is reluctant in assigning the functions and grants enshrined in CAA. The functions are divided in such a manner that the Municipal Corporation holds a very minute place in the governing sphere of the city. This can be seen in Table 2.



To further compound the issue the agencies have their own precedence, administrative dealings, lines of liability, and financing model, which often may not be in compliance with those of the Municipal Corporation Chandigarh and Urban Local Bodies. The transfer of primary health care and education is latest development for the Municipal Corporation. There are eighteen dispensaries and seven government schools which are being transferred by the Chandigarh administration. There are several problems ranging from finance to personnel in context to the newly transferred departments. It would not be easy for the Municipal Corporation to handle them efficiently until they design comprehensive policies to overcome present problems (Barnia, 2010).

**Table 2.** Services Rendered by Various Public Institutions

S.No.	Department	Chandigarh Administration	Municipal Corporation	Chandigarh Housing Board	Chandigarh Industrial Tourism Corporation
1.	Education	Yes	Partly	-	-
2.	Health	Yes	Partly	-	-
3.	Transport	Yes	-	-	-
4.	Estate Office	Yes	-	-	-
5.	Water supply, sewerage, drainage	New sectors & 18 villages	All developed sectors and city area and Manimajra	-	-
6.	Construction of Houses.	For govt. Employees	-	For public on sale/purchase	-
7.	Tourism	-	-	-	Yes
8.	Industries	Yes	-	-	Yes
9.	Sanitation	-	Yes	-	-

Source: City Development Plan, Finance Secretary Chandigarh Administration

The serious issues that emerge from the existence of multiple agencies comprise of overlapping responsibilities resulting in a tug of war between the Municipal Corporation and the Chandigarh Administration. The role of mayor is very weak and is constrained by the obligation to and dependence on the Chandigarh Administration, which clearly personifies a lack of empowerment to the people. The Chandigarh Administration is reluctant to part with power. This is against the spirit of constitutional amendment. It has been found and municipal officials complained often about the interference of Chandigarh Administration in their work domain.

### *Lack of unity among Ward Committees and Councilors*

It has been reported by members of elected body and nominated councilors, that blaming each other is the best practice among councilors as they hail from different political parties and ideologies. This affects the smooth working of the Municipal Corporation and makes the day-to-day transactions difficult (Express News Service, 2010). The members of ward committees are selected on basis of political affiliations of councilors which is against the spirit of Article 243S of 74<sup>th</sup> CAA.

### *Poor Authority for Levying Taxes*



The problem of finances always prevails over the Municipal Corporation like a sword hanging on a very thin thread. The poor financial resources and dependence on grants is major concern which is a hurdle in carrying out effective developmental programs. The financial issue is considered as the biggest enemy of a smooth functioning corporation. There are few powers in hands of Municipal Corporation to impose taxes which are against the spirit of Article 243X of 74<sup>th</sup> CAA.

### *Poor Devolution of Funds*

The problem of finances is reverts to the origin of the Municipal Corporation. The funding grant is in the hands of the Chandigarh Administration. The Municipal Corporation has to look for such grants and this process is the biggest hurdle in the developmental tasks and programs. The role of the State Finance Commission (Article 243Y, 74<sup>th</sup> CAA) is under scrutiny for its poor work in demarcating and allocating the funds. The inadequate collection of revenue and meager sources of revenue is another reason for pitiable finances (Sandhu, 2010)

### *Ineffective Decentralization*

The attitude of the Chandigarh Administration is negative towards empowering the local bodies when considering the transfer of major functions. This is due to a lack of faith and a conservative outlook of sharing the power. Such an approach makes the organization weak and challenges the spirit of democracy (Open House Response, 2010).

**Table 3.** Outstanding Arrears

	No. of Notices	Outstanding Arrears (Computed at the Rate of 1\$= Rs. 50)
Commercial Property Tax	18556	\$ 85,000,000
Water tariffs, liquor stores, second hand book shops	541	\$ 27,375,000
Total Notices	19097	\$ <b>112,375,000</b>

Adapted from Kapur, A. (2010). 'MC dallies on recouping mounting arrears' *India Tribune*, August 22<sup>nd</sup>

### *Failure to recover tax*

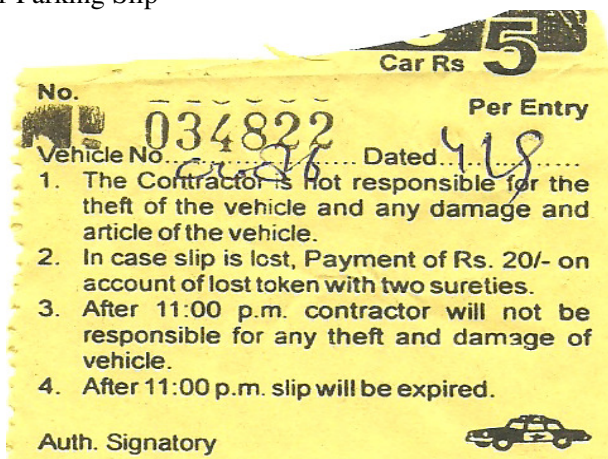
It has been found that the Municipal Corporation failed miserably to collect rising arrears due to the lack of records, which makes the situation even worse. The records of Municipal Corporation depict that major defaulters include liquor vendors and water tariffs. The failure to recover taxes is due to maladministration which makes the condition of finance even poorer. Table 3 shows the number of notices and outstanding amount which is yet to be recovered by Municipal Corporation (Kapur, 2010).

### *Contracting out Public Services and Public Interest*

Chandigarh has highest number of vehicles per capita. The parking lots are managed in a poor manner by private contractors. The system of paid parking was introduced to streamline the parking lots. The private contractors are overcharging the inhabitants. Numerous cases of malpractice within the parking lots are often reported. All of this adds up to being against the spirit of public welfare. There is little interaction on part of municipal officials with the contractors over the issues. Which promotes private contractors as

sole owners and lessens the accountability (HT live Debate , 2010).The following picture of a paid parking slip depicts the terms and conditions laid out by the contractor (See Figure 1). It clearly demonstrates how public interest is being sacrificed at the cost of privatization. The clauses laid down are unclear, the point one says that contractor is not responsible for any damage yet the third point states after 11pm the contractor is not responsible leaving the impression that the contractor is responsible prior to that time – it is contrary to first point.

Figure 1 Parking Slip



Source: Purchased at the Time of Parking of the Vehicle by the Owner (Researcher)

### *Poor Display of Right to Information Act Front*

Various inhabitants seeking information expressed anger to the Municipal Corporation for supplying imprecise and belated information on filing information. It has been found that seeking information from a public office is difficult and time consuming. The information supplied is often incomplete and misleading, in addition to that the website of Municipal Corporation is not up-to-date. (Sharma, 2010)

### *Misuse of Public Money*

The elected representatives chosen by people often misuse money collected through taxes. It has been found that councilors flagrantly ignored the rules. The latest visit of councilors to Gangtok depicts their attitude and sense of feeling towards the people. The visit was purposeless. There can be no or little comparison and learning points gained by visiting a small city whose population is just 30,000. Earlier councilors proved to be a tax burden as they visited places like Singapore, Bangkok and Malaysia. They did not even bother to submit a report about these expensive visits (Sharma, 2010). The Municipal Corporation is not new to such practices as there are reports of major irregularities in the purchase of imported machines for sweeping and equipment for the installation of electric poles and pipelines. Such practices challenge the faith on which democracy is built.

### **Recommendations**

The above cited problems of the Municipal Corporation of Chandigarh highlight the problems and wide ranging negative tendencies found within the institution. The application of the 74<sup>th</sup> Constitutional



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Amendment Act lacks spirit. The concept of governance in Chandigarh is divided among multiple agencies thus, the empowerment of local bodies is null. Rather the local bodies are proving to be a burden due to the number of problems like conflict among agencies, poor revenue resources and paucity of personnel to carry out the civic functions. The functions carried out by the Municipal Corporation are not effective and satisfactory. There are so many flaws and careless attitude in its work. The process of contracting out is adopted by almost all of the agencies, but the process of contracting out has various problems like poor contract design, enforcement, monitoring, and supervision. It gives way to corruption and private contractors abuse public interest which is the ultimate responsibility of the facilitator, in this case the Municipal Corporation. There is a dire need to curb these negative tendencies and employ tools like social audit, RTI and effective grievance handling.

The focus of all public policies should be on efficiency, economy, effectiveness and efficacy to improve the concept of governance. Role of state should be that of a facilitator and must remove all restricted access which hinders the process of functioning effectively. Various successful states should be studied in order to understand the various techniques of effectiveness. The role of information technology must be implemented in local bodies to make the system transparent and accountable. The redress system must be very effective to overcome various problems. Social audits should be enforced in order to introduce openness. Introduction of a report card system should be implemented to measure public opinion. Public-private partnership must be promoted with effective monitoring and control. Establishing clear lines of accountability of all service delivery agencies, and constituting autonomous service delivery agencies in different sectors like water and sanitation, transport, roads, solid waste management, performance based memorandum of understanding between the corporation and various service delivery agencies focusing on targets and outcomes.

The empowerment of ward committees should be done and given more financial discretion. Devolution of autonomy and funds is of utmost importance to raise the position of finance. Capacity building of personnel should be done on a regular interval to attain the desired objective, which is making certain the high standard in quality of services is achieved. Neo-localism should be enforced in effective manner. Spatial integration of the Municipal Corporation Chandigarh and the Chandigarh Housing Board, and Engineering Department for better planning and delivery of services is needed. Grants and aid must be increased and there is great need of strict state finance commissions working to strengthen the condition of funds to carry out developmental tasks as desired by inhabitants. The enlightenment of citizens by initiating effective public relations campaigns holds a significant place for the success and empowerment of masses.

## Conclusion

There is a need to address these institutional and other challenges to provide good governance to the city. Unless the roadblocks are removed, economic development is hampered and efficient service delivery becomes difficult. This unfavorably impacts the society, particularly the poor. There is need, therefore, to reorganize the governance structure, eradicate the roadblocks and make efficient the lines of liability.

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