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**A STUDY ON IMPLEMENTATION IN EDUCATION  
& 74TH AMENDMENT THROUGH MUNICIPAL  
CORPORATION: A CASE STUDY OF MCD**

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# A Study on Implementation in Education & 74th Amendment through Municipal Corporation: A Case Study of MCD

Mohinder Singh

Research Scholar Ph.D in Public Administration

**Abstract –** *There exist many actors within the realm of education policy planning and implementation, namely: the policy makers; the national, local and regional institutions engaged in the dissemination and interpretation of these policies; and the educational institutions that implement these policies at the ground level (schools). While schools are largely perceived to be at the receiving end of these policies, they are also held most accountable for any failures in effective implementation. The systemic factors, including: differences in local and regional institutions; the organizations that make decisions around functions, accountability and resource allocation; and the immediate environments surrounding the schools, are often ignored.*

*Urbanization and its allied processes have made a profound impact on the environment of the metropolitan cities of India. In order to mitigate the adverse effects of urbanization on environment in cities and to strengthen their governance, applying the local approach became essential. An important initiative of the Government of India to strengthen municipal governance is the enactment of the Constitutional (74th Amendment) Act (CAA) in 1992.*

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## INTRODUCTION

Urban areas and their governance have always been a subject of interest and have traversed various territories, sometimes slippery, sometimes firm, but always a matter of discussion and a favorite of policy making. Efforts have been made by the government repeatedly to create smooth and efficient ways of managing urban affairs. Another leap in this direction was the 74th Amendment Act of the Constitution in 1992. At that time it was considered a path breaking amendment because it aimed at the creation of local governments and dissolution of powers to them in the respective states. It outlined a broad framework of institutions that would act as the local governments and would ultimately bridge the gap between the government and the governed. The 73rd Amendment Act, which is known as the sister amendment aimed at the creation of stronger, active bodies at the local level in the rural areas.

The people would take part in the issues that affected them directly thereby having a say in the decision-making. These amendments, which came after considerable debate in the country, were quite revolutionary, especially in several States that still relied on a large measure of centralisation. People were to be given say in how their communities would

develop: their elected representatives at the local level were to be empowered to act in the common interest.

This implied that there would be a structure of local bodies in place, which would be classified, based on population. Therefore, the smaller areas would have municipal councils while the bigger areas will have a corporation.<sup>1</sup> The areas in the transitional phase—neither urban, nor rural, will have Nagar Panchayats. These would be the first tier of local government, zonal committees would come in next, further dividing the area. The last and the most important level would be the Ward committees, which would comprise of two or more wards. A two-tier system of Wards committees and a Municipal council for smaller urban areas and a three-tier system of wards committees, zonal committees and corporation for larger urban areas. The delimitation of a ward was left to the state governments to decide.

Apart from these, the 74th amendment also provided for the creation of state finance commissions and state election commissions. These bodies have been created both for the Urban and the Rural areas. They figure both in the 73rd and the 74th amendment and one would think of them as essential parts of local governance. The SFCs were to review the financial position of the states and make recommendations to

the central finance commissions to improve the same. The SECs on the other hand were to look after the procedure of elections to the municipalities.

The municipalities were to be made responsible of the subjects mentioned in the XII schedule, which included urban planning, land use, water supply, roads, bridges, health sanitation slum improvement etc. in addition to these the XI schedule concerning irrigation, libraries, cultural activities etc have also been added to the local government's share of responsibilities. 2 The authority to take decisions on these subjects was to be transferred by the state governments to the municipalities.

The national capital of the country also passed legislation in 1994 ratifying the Municipal Act. Consequently the Municipal Corporation of Delhi, New Delhi Municipal Council and the Delhi Cantonment Board were made responsible for different areas within Delhi. This makes Delhi, like many other areas, a multi municipality city.<sup>5</sup> This invariably means that a Metropolitan Planning Committee has to be constituted which is actively consulted when it comes to town planning and use of public space.

But since power is never shared easily, Delhi Development Authority continues to have a greater position. Though it has been addressed at various occasions, celebrated as the ultimate in decentralization, the proposed MPC is still to be constituted. The tussle between the MCD and the DDA on the Master plan of Delhi is well known. The MCD claims that it has more experience in ground realities because it has the councilors which are elected from among the people. But the counter-argument is that MCD has failed to make use of the opportunities endowed on it by the 74th amendment. Its slum policy and that dealing with hawkers is criticized for being totally devoid of the people's perception of this situation. It is blamed for eating up the land meant for the resettlement of slum dwellers for profitable purposes and not using its influence for demarcating separate spaces for the hawkers in the Master Plan.

Delhi performs dismally when it comes to the constitution of ward committees. They mainly consist of the councilors and not the representatives of RWAs and civil society as it was imagined to, is barely existent. A saving grace is the Bhagidari Scheme started by the Delhi Government for the involvement of the citizens in issues like water, electricity, garbage. But the irony of the matter is that it is a state run scheme and outlines the functions of the MCD itself!

## **74TH CONSTITUTIONAL AMENDMENT ACT 1992**

In order to provide the common framework for urban local bodies and help to strengthen the functioning of the local bodies as effective democratic units of self-government, Parliament amended the constitution (74th Amendment Act 1992) and provided

constitutional status to "municipalities" which are of 3 types:

- a. Nagar Panchayat-for transitional area (an area which is being transformed from rural to urban area),
- b. Municipal Council for a smaller urban area,
- c. Municipal Corporation for a larger urban area.

Through this amendment Part IX A has been added to the constitution along with a schedule (12th schedule). This means that now constitution of India sets out clear guidelines on the following:

- Composition of municipalities
- Composition and constitution of Ward Committees, District planning committees and Metropolitan Planning committee.
- Reservation of seats for SCs/ST and Women,
- Power, authority, duration, dissolution and elections of the municipalities,
- Constitution of State Finance Commission

Besides, Schedule 12 lists down 18 subjects on which it can formulate its policies and execute it. However, as mentioned earlier Local government is the "State Subject" therefore based on these constitutional guidelines states were required to make a law for the functioning of the municipalities in their respective states. All the states (except the 4 North East states where the act does not apply- Arunachal Pradesh, Meghalaya, Mizoram and Nagaland) have constituted Municipalities in their states and they conduct regular elections.

## **EDUCATION AND MUNICIPALITIES**

Unlike the 11th Schedule which lists Education including Primary and secondary schools for the Panchayat, the 12th schedule does not mention Education as the subject under municipalities. It mentions vaguely "Promotion of cultural, educational and aesthetic aspects" (Entry 13, Schedule XII). Thus, Municipalities like Municipal Corporation of Delhi (MCD) and Bombay Municipal Corporation (BMC) continue to be engaged in the delivery of Primary Education in their respective cities by virtue of their respective Acts, eg in case of Delhi, it is Delhi Municipal Corporation Act 1957 and its amendment in 1993. Hence, 74th amendment Act 1992 per se cannot give any thrust to the delivery of Primary and secondary education at the city level.

The Municipal Corporation of Delhi is among the largest municipal bodies in the world providing civic services to about 14 million citizens in the capital city. It is next only to Tokyo in terms of area. Within its

jurisdiction are some of the most densely populated areas in the world. It has also the unique distinction of providing civic services to rural and urban villages, Resettlement Colonies, regularized unauthorized colonies, JJ Squatter Settlements, slum 'Bastis, private 'katras' etc. As mentioned, Delhi Municipal Corporation Act 1957 was amended in 1993 to bring the act in sync with the principals of 74th constitutional amendment Act. The revised Act, Delhi Municipal Corporation (Amendment) Act, 1993, came into existence in October 1993. The Amendment in the Act brought about fundamental changes in composition, functions, governance and administration of the Corporation.

#### **a. Structure of MCD**

**Political-** The geographical area of MCD is divided into 12 zones. These Zones are further sub-divided into 268 Wards. Thus ward is the basic administrative unit of the corporation and is the electoral constituency of the councilor. The Councilors are elected directly by the people for a period of 5 years, who in turn elect the Mayor for one year from amongst themselves. There is one constitutional committee- Ward Committee which is 12 in number i.e. a committee for each zone. Also there are two statutory committees- Standing Committee and Subject Committee (eg Education committee).

Standing committee is the most powerful body because it is this committee which recommends policy action and plan involving finance to the House. Because of its composition and nature of party politics, the recommendation of standing committee often gets approved by the house.

**Permanent-** The commissioner is the Executive Head of the Corporation. Various Departmental Heads known as Director form the core team of permanent executives. The commissioner is appointed by the state government and is a senior IAS officer. There are 3 additional commissioners who are also senior civil servants to share the work with commissioner.

#### **b. Education Department -**

**Permanent-** MCD runs about 1750 Primary Schools (Std I-V) enrolling about 900,000 children. This is almost 50% of the total children in Primary school age group. The functioning of the schools in Delhi including Private recognized and government aided schools is governed by Delhi School Education Act 1973. The Director Primary Education is the Head of the Education Department of MCD and functions under the administrative supervision of the Commissioner (effectively under Additional Municipal Commissioner). For better distribution of work there are three Additional Directors. At the zonal level, the department is headed by Deputy Education Officer (DEO) supported by 1-3 Assistant Education Officer (AEO).

For the regular monitoring of Schools, there are School Inspectors having on an average 30-40 school. There are four categories of School inspectors-General, Nursery, Physical Education and Science. As the name suggests they are either for the general or for special purpose. At present there are 60 school inspectors. They report to the AEO or the DEO as the case may be. School is headed by the Head Master. There are about 22000 sanctioned post of Primary School teachers in MCD Schools.

**Political-** A Statutory Education Committee comprising of 7 counselors and headed by the chairman is formed for a period of one year. The Director Primary Education is the ex-officio Secretary of the Education Committee and all policy matters have to be cleared by this committee and placed before standing committee. Any decision which has financial component has to be approved by the House.

In pursuance with the 74th Constitutional Amendment 1992, there are 12 Ward committees constituted in Delhi-one for each ward. From the Education Department, the DEO is the member of its respective ward committee. On matters of civil works in schools, this committee plays a very important role.

**Appointment and control of Academic and Administrative staff-** Permanent teachers in MCD School are appointed on the recommendation of Delhi Subordinate Service Selection Board (DSSSB). The board which is an autonomous body under the Government of NCT Delhi conducts the written exams for teachers' selection on the basis of requirements sent to it by the MCD. The board is also required to conduct exam for the direct appointment of 50% of the School Inspectors and 25% of the Head Masters.

Appointments of 50% of AEO & DEO are through a direct recruitment by Union Public Service Commission and the rest through promotions where seniority is one of the most important criteria. The direct recruitment of Head Masters has not yet commenced due to procedural reasons. The Director is appointed by the MCD either by way of promotion of the senior most Additional Director or any civil servant from generalist cadre as the post is not considered as specialist. The 3 senior most DEOs are promoted to the post of Additional director to share the burden of work from Director.

The conduct and performance of the administrative and academic Staff of the Education Department is governed by Central Civil Services Conduct Rule. However, the politically active committees have immense power with respect to transfer and posting of teachers and other education officers.

**Training-** The Pre-service training of MCD teachers are conducted by DIETs (District Institute of Education Training) and after recruitment the in-service teacher training is conducted by MCD's own teacher training institute. However, above the teacher i.e. Head Masters onwards there is no structured mechanism for imparting training on education administration.

### c. Issues in Education management in Delhi

As mentioned, the MCD derives its authority by virtue of central legislation in terms of DMC Act 1957. The Act makes MCD an autonomous body. MCD's mandate of Primary education in Delhi is also by the same act. Delhi is not a full-fledged State and derives a special status i.e. National Capital territory by Article 239AA inserted through 69th Constitutional Amendment Act 1991. Thus, MCD does not come under the direct control of the Government of Delhi and the two bodies share the similar space. The Primary Schools are run by MCD while Upper Primary and Secondary by Delhi government therefore movement from one set of school to another often results in children dropping out.

The creation of several committees and multiple structures has further complicated the situation as there are many to share the spoils but not the responsibility. Further, the process of democratic representation has created a situation where the permanent executive either willfully or compelled by the circumstances have yielded the administrative space to the political leaders whose constituency is teachers (who vote and create opinion) and contractors (who build the school buildings and can offer good commission which is essential to contest and win elections in order to become public representative) and not children.

### d. Implication of Structural deficiency on the academic outcome of schools

With the acceptance of the fact that children only from poor background would be the client of Municipal schools, the focus of government too is more on the populist measures and creating physical targets only. Thus, the reports of Municipal corporation will mention about money spend on Mid-Day meals, constructions of new rooms in schools, appointment of teachers, etc as if they are both necessary and sufficient condition for learning. Academic monitoring or tracking the progress of children is therefore not very high on the agenda of the system. Accordingly, the focus of teachers and other academic staff is more to fulfill their obligations just like any other government servants.

### Implementation of the 74th Constitutional Amendment

#### 1. The Reform

Since the early 1990s Government of India (Gol) has undertaken several initiatives aimed at decentralizing

urban governance. The 74th Constitution Amendment Act (CAA), 1992 was one such initiative, which gave constitutional recognition to the urban local bodies along with the constitutional right to exist. A new Twelfth Schedule to the Constitution provides recommended list of local functions. The 74th CAA requires the state governments to amend their municipal laws in order to empower ULBs "with such powers and authority as may be necessary to enable them to function as institutions of self-governance". The Constitution (74th Amendment) Act, 1992 provides a basis for the State Legislatures to transfer various responsibilities to municipalities and to strengthen municipal-level governance. Accordingly, several state governments have amended their Municipal Laws by bringing them in conformity with the Constitutional provisions.

Implementation of the 74th Constitutional Amendment is a mandatory reform to be carried out at State level under JNNURM. Article 243ZE of the Constitution required all state governments to review the existing municipal laws and either repeal or modify those which are inconsistent with the provisions of the 74th CAA within one year from the commencement of the Act. While state governments ratified the 74th CAA, they have found it difficult to implement its provisions in totality. The main problem is that functional devolution to ULBs hasn't been supported by adequate transfer of revenue sources. Further, the financial autonomy of ULBs has been undermined as they have to seek state government approval for enhancement in tax rates and user charges beyond the limits mentioned in municipal laws. Furthermore, ULBs have limited powers to institute new taxes. Therefore the thrust of the JNNURM reform is to ensure improvement in urban governance and service delivery so that ULBs become financially sound and sustainable.

#### 2. Reform components

JNNURM reform have specified following provisions of the 74th CAA to be addressed through this reform:

**Municipal Elections** - Under the Constitution, an election to Urban Local bodies every five years is mandatory. Article 243 U stipulates that each Municipality shall enjoy a term of 5 years and no more. If a Municipality is dissolved, subject to the conditions as specified, the election to constitute a new Municipality is required to be held "before the expiration of a period of six months" from the date of its dissolution.

Though elections have been held in most States, their regularity continues to be a problem. Time and again issues relating to reservation and delimitation and non-preparedness of electoral rolls have been cited as reasons for postponing local body elections by various States.

**Constitution of District Planning Committee and Metropolitan Planning Committee** - With increased



urbanization, the need for integrated planning is becoming ever more important. Articles 243ZD and 243ZE specifies the creation of a Committee for District Planning in each district, and a Committee for Metropolitan Planning in every metropolitan area (defined to be an area at least ten lakhs populations across f two or more Municipalities or Panchayats or other contiguous areas as specified by the Governor).

The rationale for having these committees is to provide consistent and integrated planning for contiguous urban and/or geographic areas. These committees should provide new dimensions for the roles of citizens and their elected representatives in preparation of regional plans, including plans for infrastructure development. Participatory plans need to play important roles for deciding investment policies and project priorities.

**State Finance Commission** - Article 243Y of the Constitution provides that a Finance Commission should be constituted, as defined by article 243 I, to review the financial position of Municipalities and Panchayats. Based on its review, the State Finance Commission (SFC) should make recommendations to the Governor about the distribution of revenue between the State and Municipalities including proceeds of taxes, duties, tolls and fees. As part of this, the SFC can recommend the assignment of new fiscal authority to Municipalities and better designs of grants-in-aid from the state in order to improve the financial position of the Municipalities.

The Governor of every state is required to constitute a SFC every five years to review the financial position of all local bodies (panchayats and Municipalities). The Governor may also refer specific matters to the SFC for consideration. Even though the mandate for the SFCs is clearly stated in the Constitution, the manner of functioning is determined by the SFC and state government. The Governor is required to publish every recommendation made by the SFC along with a memorandum explaining the action taken thereon for the Legislature of the State.

**Convergence of Urban Management Functions** - Article 243W of the Constitution requires State laws to endow the Municipalities "with such powers and authority as may be necessary to enable them to function as Institutions of self-government". A Twelfth Schedule to the Constitution provides recommended list of local functions which states may by law endow to urban local bodies.

The JNNURM reform seeks to implement Article 243W of the Constitution by transferring some functions from the state to ULBs. These functions relate to local municipal services and therefore are best managed by the ULBs. This creates local accountability of the ULB to the electorate in those areas where citizens expect

their local government to act. It also provides the ULB with tools to influence the development and management of its city, which are fundamental purposes of constituting a third level of democratic government.

## **PRIMARY EDUCATION UNDER MUNICIPAL CORPORATION OF DELHI**

Under the Delhi Municipal Corporation Act, 1957, primary education is an obligatory function of the Municipal Corporation. The Corporation provides educational facilities up to the primary classes for children in the age group of 5 to 11 years. The National Policy on Education emphasises that the thrust in elementary education should be on (i) universal enrolment and retention of children up to 14 years of age; and (ii) substantial improvement in the quality of education. With a view to achieving these objectives, the Corporation implements various schemes, involving capital expenditure, including those relating to the expansion of primary education, provision of various amenities in schools, welfare of children, etc.

The Director, Primary Education, is responsible for the overall planning and implementation of various schemes undertaken by the Corporation in the Education Sector. He is assisted by an Additional Director, Deputy Education Officers and Assistant Education Officers. Construction activities are entrusted to the Corporation's Engineering Wing headed by the Engineer-in-Chief, who is assisted by Chief Engineers, Superintending Engineers and Executive Engineers. The Director, Primary Education, and the Engineer-in-Chief work in close co-ordination under the overall control of the Commissioner, who is the Chief Executive Officer of the Corporation.

## **REFORMS INTRODUCED BY THE 74TH CONSTITUTIONAL AMENDMENT**

The recommendations and suggestions of several commissions and committees appointed by the Central Government, from time to time, to improve the urban bodies resulted in the enactment of the Constitution (Seventy-fourth Amendment) Act, 1992. Earlier, State Governments were free to manage their local bodies as they wished. The Amendment made statutory provisions for the establishment, empowerment and functioning of urban local self-governing institutions. The main provisions of this Act can be grouped under two categories—compulsory and voluntary. Some of the compulsory provisions which are binding on all States are:

- (i) Constitution of nagar panchayats, municipal councils and municipal corporations in small, big and very big urban areas respectively;
- (ii) Reservation of seats in urban local bodies for Scheduled Castes / Scheduled Tribes roughly in proportion to their population;
- (iii) Reservation of seats for women up to one-third seats;
- (iv) The State Election Commission, constituted in order to conduct elections in the panchayati raj bodies (see 73rd Amendment) will also conduct elections to the urban local self-governing bodies;
- (v) The State Finance Commission, constituted to deal with financial affairs of the panchayati raj bodies also looks into the financial affairs of the local urban selfgoverning bodies;
- (vi) Tenure of urban local self-governing bodies is fixed at five years and in case of earlier dissolution fresh elections are held within six months;

In accordance with the 74th Amendment, municipal corporations and municipalities (municipal boards or municipal committees) are now regulated in a fairly uniform manner in all the States. However you must remember that local self-government continues to be a subject in the State List. Thus, the 73rd and 74th amendments provide framework for the States in respect of local government. Thus, each State has its own Election Commission which conducts elections to all local bodies after regular intervals of five years. Each State has its Finance Commission to regulate finances of the local bodies. Seats are reserved in the corporations and municipalities for Scheduled Castes and Tribes. One-third seats are reserved for women in all local bodies – urban and rural.

## CONCLUSION

The 74<sup>th</sup> Amendment is a democratic decentralization of power which creates a framework of adequate representation to even the weaker sections of the society to formulate the plans and manage local civic affairs. The omission of school education from the list of subjects on which the Corporation or other municipal body can have jurisdiction is another manifestation of the urban complexity. Perhaps the corporations by the very nature of its existence are ill-equipped to handle issue like education. With the purpose of achieving these three objectives, the union government introduced in the year 1992, the 74th Constitutional Amendment Bill. Its aim was to provide a common framework for urban local bodies and to help strengthen the functioning of urban local bodies as effective democratic units of self-government.

The Indian Parliament passed the 74th CAA in December 1992, and the Act received the assent of the president on 20th April, 1993 and it came into force from June 1, 1993. A new Part IX-A relating to municipalities has been incorporated in the constitution. It ensures adequate constitutional obligation so that democracy in the municipal government is stabilised. The CAA 1992, devolves a constitutional status on the local self-governments for the first time in the history of India.

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