Chapter IX

Critical Appraisal

Mahatma Gandhi, a great visionary of 20th century, reiterated the involvement of people in every act of government. He had a clear proposition that Indian masses were capable of solving their own problems. But framers of Indian Constitution belied his hopes by neglecting structural arrangements for local bodies. It is solely due to him that the framers could give birth to rural local bodies in the Directive Principles of State Policy in the Constitution of India. Democratic governance of forty-five years, inspite of several changes in the rubric of policy, society and economy has not succeeded in delivering the fruits of development to the target population.

The concept of Gandhiji was that Independence must begin at the bottom. He also expected that life would not be a pyramid with apex sustained by the bottom, but it would be oceanic circle whose centre would be the individual always ready to perish for the village, the latter ready to perish for the circle of villages and so on. Finally, the outermost circumference would not wield power to crush the inner circle but will give strength to all within and derive its strength from it.¹

The Urban sector which lacked importance in Indian Constitution in comparison to the panchayats of rural sector has gained rightful legislative support.

The 74th Amendment for Urban Self-Government along with the process of devolution of planning process for urban self-governments is virtually similar as regards to legal provisions made to bifurcate into separate department. This amendment aim at systematic constitution of urban local bodies, proper representation of all sections of people in the councils, regularity in election, well-differentiated financial allocations and above all devolution of planning down to grass root level. This legislation streamline the structural configuration of urban local bodies
in general throughout the country. The Constitution of India has annexed 12th Schedule for municipalities (Article 243w) just as Union List and State List, which are included in the constitution since the inception of the Constitution of India. Dissolution of a municipal council can only be taken up provided that a municipality shall be given a reasonable opportunity of being heard before such dissolution. Election to the dissolved municipality must be completed within six months from the date of its dissolution and such municipality shall have duration for remainder of its term.

The superintendence, direction and control of the preparation of elected rolls for and conducts of elections in the municipalities shall be vested in the State Election Commission. The State Election Commissioner shall not be removed from his office except in a like manner as a Judge of a High Court. The Governor of a State, on request of State Election Commission shall provide staff as per his requirement.

74th Amendment review the financial yardsticks for the urban local self-government in general, and provide grant-in-aid from the consolidate fund of the state. The Governor of State constitute a Finance Commission to review the financial position of municipalities and recommend in principle that should govern the distribution between state and municipalities of the net proceeds so that the local governments avail their shares. The Commission shall determine the taxes to be appropriated by municipalities and the extent of the grant-in-aid to be allotted them.

One of the salient features of the 74th constitution Amendment is decentralisation of planning by committees at district level. The work of District planning committee is to consolidate the plans prepared by the panchayats and the municipalities in the district and to prepare a draft development plan for the district as a whole. Such committee will deal with matters of common interests between the panchayats and
municipalities, sharing of water and natural resources, the integrated
development of infrastructure and environmental conservation, the extent
and type of financial resources. The 74th constitution Amendment have
been attempt of providing independence to the municipalities,
encouraging popular participation and is consistent in decentralisation.
Keeping in view the present conditioning of the municipalities these
reforms can resuscitate them.

In furtherance to the 74th Amendment to the Constitution of India
the state Government have enacted the following Acts:

2. Himachal Pradesh Municipal Services Act, 1994
3. Himachal Pradesh Municipal Act, 1994

Section 48 of Himachal Pradesh Municipal Act, 1994 empowers the
State Government to issue a notification to determine the various
functions of Municipalities earlier Municipal Committees, functions under
section 51(2) of Himachal Pradesh municipal Act, 1968.

Similarly section 43 and 44 of Himachal Pradesh Municipal
Corporation Act, 1994 give the obligatory and discretionary function to be
performed by Municipal Corporation, Shimla respectively. These functions
are identical reproduction of section 43 and 44 of Himachal Pradesh
Municipal Corporation Act, 1994 empowers the state government to issue
notification to determine the various additional functions of the
Corporation on the subject itself indicated in the section 42(1) (a) & (b) and
further heads (i) to (xviii) and the twelfth schedule of the constitution
corresponding to article 243w. In view of the spirit of the 74th
Constitution Amendment, the sphere of functions of the Municipal
Corporation, Shimla have been enlarged to a greater extent as to achieve
greater democratic decentralisation at the grass roof level. These
functions are notified by the state Government under section 42 of
As per the norms fixed by the Himachal Pradesh Municipal Corporation Act, 1994, section 4(i) stipulates the constitution of the Corporation and section 10(i) to section 10(8) stipulates the reservation of seats for councillors in accordance with 74th Constitution Amendment. The Municipal Corporation, Shimla have to elect 25 members after state government extended the geographical limits of the Municipal Corporation, Shimla. This is the permanent establishment on the legislative side because the elections have been made mandatory by the 74th Amendment of the Constitution. To carry out all the functions as envisaged in the Act and some additional function which are bestowed on the Municipal Corporation, Shimla as per the 74th Constitution Amendment, there shall be a minimum requirement of additional staff. The State Finance Commission in its report, recommended “under no circumstances, the revenue expenditure on staff should be increased. In fact, the existing centralised cadre control of urban local bodies staff by the Department of urban Development should come very handy in not allowing a single additional post to be created in any urban local body”

Sufficient Staff to Cope with Additional Responsibilities:

The Finance Commission, by not allowing additional staff to the Municipal Corporation, Shimla has diluted the spirit of Constitution Amendment. The whole process of delegation of administrative and legislative powers will turn out to be a farce, if the requirement of additional staff is not met, it is, therefore, imperative that adequate staff/resources must be made available to the Municipal Corporation, Shimla and allowed to perform their administrative and legislative function in their areas in order to satisfy the local aspirations and needs. It should be appreciated that the civic authorities for the first time in India, have been assigned the role of third tier/organ of the Government without earmarking additional resources, in the absence of a functional decentralisation will lead to a worsening of municipal problem.
In order to authenticate the above, a questionnaire was administered on fifty respondents, which includes the Mayor, the Deputy Mayor, the councillors and head of departments of various functional wings of the Municipal Corporation, Shimla, to ascertain the factual position.

**Table No.9.1**

Table showing Sufficient Staff

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
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</table>

The above Table No. 9.1 shows that all the respondents were of the view that the present staff is not sufficient to cope with the responsibilities bestowed on the Municipal Corporation, Shimla after implementation of 74th Constitution Amendment.

**Additional Staff:**

**Table No 9.2**

Table showing Appointment of Additional Staff

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
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</tbody>
</table>

In order to cope with additional responsibilities being bestowed on Municipal Corporation, Shimla as per the provision in the Himachal Pradesh Municipal Corporation Act, 1994, all the respondents agree that due to lack of administrative approvals, the Corporation has not appointed any additional staff.
Ward Committee:

**Table No. 9.3**

Table showing Constitution of Ward Committees

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
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<td>50</td>
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</tbody>
</table>

One of the salient feature of the 74th Constitution Amendment is decentralisation of planning by committees at wards level and district level. All the respondents revealed that there is no provision of ward committees in the Himachal Pradesh Municipal Corporation Act, 1994.

**Inspection Committees:**

**Table No. 9.4**

Table showing Constitution of Inspection Committees

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>---</td>
<td>50</td>
</tr>
</tbody>
</table>

Keeping in view the spirit of the 74th constitution Amendment for functional decentralisation, there is no provision for ward inspection committees in the Himachal Pradesh Municipal Corporation Act, 1994 as revealed by all the fifty respondents.

**Structural Changes:**

**Table No 9.5**

Table showing Structural Change

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>---</td>
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</tbody>
</table>
With the implementation the Himachal Pradesh Municipal Corporation Act, 1994 there is no structural changes in the Municipal Corporation , Shimla as per the responses of all the respondents shown in Table No. 9.5

**Planning Mechanism :**

**Table No. 9.6**

Table showing Planning Mechanism

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
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</tbody>
</table>

The question pertaining to planning mechanism in the Municipal Corporation, Shimla all the respondent viewed that no such mechanism exists in the Corporation. There exists only one committee i.e. Finance, Contracts and Planning Committee. This committee finalises Budget estimates, and various project proposal being initiated by the various functional department at the instance of the councillors. The General House of the Corporation has final authority for the approval of various projects and estimates.

**Political, Administrative and Social Pressure :**

There exist political, social and administrative pressures in day to decision making in the corporation.

**Table No.9.7**

Table showing Political, Administrative and Social Pressures

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Political</th>
<th>Administrative</th>
<th>Social</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>50</td>
<td>38</td>
<td>12</td>
<td>34</td>
</tr>
</tbody>
</table>
Out fifty respondents thirty-eight, thirty-four and forty respondents were of the view that there exist political, administrative and social pressures respectively in the day to day decision-making in the Corporation. As per the informal discussion with these respondents, it is pointed out that there also exists judicial pressure in changing the decisions of the corporation in some cases pertaining to un-authorised construction, revision of lease money, monthly rent on municipal property, etc.

The executive role of the Mayor, Municipal corporation, Shimla has been affected with introduction of centralised municipal cadre. The executive functions have been completely transferred to the Municipal Commissioner. This results in a conflict situation, which creates hurdle in the internal decision-making of the Corporation, and there has been serious inroads into municipal autonomy. Even the municipal legislation “are intended not to confer more powers on the Municipal Corporation, Shimla, but to extend the radius of state control.”

The formal powers of the Mayor are minimal, and his actual powers seldom much greater, except in those cases where an individual who become the Mayor has additional offices of authority, or political or organisational support ‘out side’ the Corporation. As the executive powers are largely preempted by the Commissioner, and the legislative power rest largely in the Standing Committees, and because the Mayor is indirectly elected, the position bears virtually no inherent power. The Mayor empowered to fix the dates of ordinary meetings and call special meetings and exercise a casting vote in case of a tie.’

The only exception, and it is partial one, is that under section 45(3)(a) which states as under: “The Government shall recall the Commissioner if at a special meeting of the Corporation called for the purpose, a resolution for such recall has been passed by a majority of not less than two-third of the total number of member; and under section
45(3) (b) which states that government may in the public interest recall the commissioner at any time during the term of his/her appointment”.

The Mayor’s role in the Municipal Corporation, Shimla, then, is circumscribed to minor executive functions and to presiding over the meetings. An active Mayor’s key asset is probably fairly comprehensive information about municipal administrative actions and proceedings in the committees and the corporation, for such information can be used to bargain with bureaucrats, wherever question of legality and exposure arise. But unless the Mayor, by virtue of strong organizational support or external political assets, has special access to key functionaries, his main role is that of a master of ceremonies at municipal functions held for visiting dignitaries and at sport tournaments, dedication of construction works, and so on. This role gives him some public status and viability, but is by no means a measure of political influence.

The Commissioner is responsible for everything that the Corporation does because he/she is the final authority and without his/her approval nothing can be done. Under section 48 of Himachal Pradesh Municipal Corporation Act, 1994, which states “on the recommendation of the Mayor leave (except casual leave) may be granted, to the Commissioner by the government and the casual leave shall be granted by the Mayor” Even the Departmental heads like Municipal Engineer, Executive Engineers, Architect Planners and engineering staff are appointed by the state government from various functional departments on deputation basis.

**Final Authority:**

In response to question regarding ‘who is the final authority to take decisions in the Corporation’. All the respondents were of the view that in major decisions the final authority is General House of the Corporation. But in day to day decisions the final authority is the Commissioner, according to forty respondents and ten were of the view that Mayor, is the final authority. Every decision taken by the
commissioner, has to be brought to the notice of either Finance, Contract and Planning Committee in case pertaining to award of contracts or to the general house in case of administrative/financial approval.

Table No.9.8

Table showing Final Authority in Decision Making.

<table>
<thead>
<tr>
<th>Authority</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporation</td>
<td>#</td>
</tr>
<tr>
<td>Mayor</td>
<td>10</td>
</tr>
<tr>
<td>Standing Committee</td>
<td></td>
</tr>
<tr>
<td>Secretary (LSG)</td>
<td></td>
</tr>
<tr>
<td>Commissioner</td>
<td>40</td>
</tr>
<tr>
<td>Asstt. Commissioner</td>
<td></td>
</tr>
<tr>
<td>Head of Department</td>
<td></td>
</tr>
</tbody>
</table>

*All the respondents in case Major Decision*

The punitive role is usually a negative approach of the state government to the Municipal Corporation. The punitive role stems from one of the two positions;

(a) When the Corporation surpasses its permissible limit and justification provided is not satisfactory.

(b) When the state government and local government develop differences specially with different political parties being in power. The government may penalise the corporation at the earliest opportunity.

While first is legitimate intervention of the government, the record speaks of political expediency.

Cancellation of the decision of the Corporation, serving notice on dissolution and suppression to the Corporation is also punitive action by the State Government. This has provided major outlines of the legal settings for politics in the Municipal Corporation, showing the subordination of the municipal institutional nexus to overriding state
government power, is against the spirit of 74th Constitutional Amendment which provides for total autonomy.

Argal has gone to the extent of saying that “they must have the power to make mistakes and to learn by making mistakes but they must also receive guidance which will help them to avoid making mistakes. In the ultimate analysis the local institutions must be an instrument of the local peoples will in regard to the local government. To achieve a balanced state-local relationship it is necessary for the state government to provide the right quantum as well as the right type of assistance to local authorities in order to invigorate and strengthen them. If the degree of control is too little, the control becomes ineffective, and if it is too much, becomes oppressive. The golden mean between these two extreme suggests the ideal position.

The question of local autonomy has been made alive and dynamic by almost continuous debate to that effect. Local government is creature of state, and constitutes a convenient sub-division of the same. R.B. Das, while rejecting these two extreme views held that both state and local government are partners for the welfare of the citizens. Ursula Hicks too observed that, the relationship between the urban local government should be one of the optional partnership between the two active and cooperative members. The state government all the same being definite the senior partner.

According to H. Maddick, the ultimate object of such partnership should be establish an equal partnership:

The system should begin with tutor pupil relationship, should slip into a system of senior and junior partners and finally the system should evolve into one of equal partnership under the overall objectives and policies.
However, while controlling the urban local bodies, the following factors have to be strictly adhered to:

(i) Municipal Corporation, is a democratic institution consisting of representatives elected by the local community/residents. In controlling them, this democratic process should not be subjected to the autocratic whim of the state government; and

(ii) the autonomy of the Municipal Corporation should not be tempered with. Too much interference will affect their autonomy and frustrate the basic purpose of having a system of local self-government.

Hence, the State Government’s control and supervision should be oriented towards building a healthy and sound administration of Municipal Corporation. Only, then control can turn out to be a constructive and useful factor in providing necessary stability and efficiency in the Municipal Corporation, Shimla.

**State Control:**

In order to authenticate the question of state control over the working of the corporation, all the fifty respondents were of view that the state exercise control over the working of the corporation. As shown in Table No. 9.9

<table>
<thead>
<tr>
<th>Table No 9.9</th>
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<tbody>
<tr>
<td>Table showing State Control</td>
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</table>

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
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</table>

These control are administrative, legislative and financial control. As all respondents were of the view that there is no functional and financial autonomy in the Municipal Corporation, Shimla.
Devolution of Functional Power:

The 74th Amendment of Constitution provides for a total autonomy to the urban local Bodies. The 12th Schedule and Article 243(w) provides for the functions to be discharged by the urban local Bodies. These functions need to be devolved upon the local bodies in uniformity throughout the country.

It is suggested that developmental activities in the urban areas should be exclusively entrusted to the urban local bodies along with necessary infrastructure to avoid overlapping of functions with other functional department. The obligatory functions as provided in the 12th Schedule need to be devolved upon along with the existing budgetary provisions and the staff engaged to look after these functions.

Municipal Corporation, Shimla is required to be teethed with powers of appointments and disciplinary authority over the staff to discharge these functions more efficiently and effectively. As till now unanswered question is often asked, “Hen came before eggs or eggs came before the hen”? This dilemma persists even in case of function and financial powers of the Corporation because unless functions are devolved, the financial powers cannot be contemplated. But at the same time, if the finances are not made available, the function cannot be carried out. It is true that for making a real three tier system, functions bestowed to the Corporation after the implementation of the 74th Constitution Amendment must be transferred because the interaction of the people at the local level can be more educative, better informed and highly favourable to the people at large. The transfer of half bites cannot achieve the purpose for which the 74th Amendment was made in the constitution.

The responsibilities of local bodies have tremendously increased as a result of the rapid increase in urbanisation and adoption of welfare state as the ultimate goal of our polity. In any multilevel pattern of government the effectiveness with which the lower units would operate,
is determined to a large extent on how their finances are organised in relation to their functional responsibilities. 7

**Additional Financial Resources:**

Keeping in view, the spirit of the 74th Constitution Amendment the sphere of functions of Municipal Corporation Shimla, have been enlarged. But the Himachal Pradesh Municipal Corporation Act, 1994 has not earmarked any additional financial resources.

**Table No. 9.10**

Table showing Additional Financial Resources

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
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</table>

All the respondents were of the view that there is no provision of additional funds to cope with additional responsibilities bestowed on the Municipal Corporation, Shimla after the implementation of 74th Constitution Amendment.

To achieve the additional functions, it is absolutely essential that sufficient financial resources are placed at the disposal of the corporation. These resources can be, firstly, committed resources for which devolution of funds should be made statutory through the Constitution of India on sharing basis between the Centre, State and Municipal Corporation, Shimla. Secondly, the resources which may be shared by the state and the corporation out of the Consolidated Fund of the State.

The third type of resources may be function based which should be re-allocated from different departments to the Municipal Corporation, Shimla as a sequel to the transfer of functions. The Corporation may be
allowed to raise income by imposing taxes, levies tolls, as provided in the Himachal Pradesh Municipal Corporation Act, 1994. The Corporation may also be given special grants from centre, state governments.

The State Finance Commission in its report in the year 1996 observed and recommended "However, section 43 of the Himachal Pradesh Municipal Corporation Act, 1994 defines the obligatory functions of the Municipal Corporation, Shimla. These functions are being performed by the corporation from out of its own resources or with the help of general grants it receive in lieu of abolition of octroi, The Commission will NOT like to make any specific or additional provision of resources for this purpose. Discretionary function of Municipal Corporation have been defined in section 44 of Himachal Pradesh Municipal Corporation Act, 1994. Taking cognizance of the overall resources scenario, the Commission would like to state that the Municipal Corporation, Shimla could delve into the territory of discretionary functions in case it could mobilise resources for doing so at its own level.

Since there is a considerable overlap in the statutory function required to be performed by Municipal Corporation, Shimla and delegated functions, the Commission assessed the availability of resources with in the sanctioned and non plan allocations for the year from 1993-94 to the year 1995-96. It is felt that the resources for performing functions relating to civic amenities are inadequate. The average annual out go from plan for this purpose has been in the range of Rs. 60 lakh to Rs. 80 lakh per annum. The non-plan actuals of grants for upkeep and maintenance of civic amenities have ranged between Rs. 53 lakh to Rs. 66 lakh. This gives per capita expenditure of about Rs. 29 which is inadequate and explains the situation that Municipal Corporation, Shimla is not effectively performing the function which they should statutorily perform. The commission therefore recommends that a per capita provision of Rs. 300 per annum should be provided for this purpose. This
is based on the adjusted median value of the level of assistance under the scheme of environmental Improvement urban slums.

**Overlapping of Functions:**

Even the mayor, deputy mayor, deputy mayor, and councillors along with the head of the department of various functional wings agrees to a question that there is overlapping of functions of Municipal Corporation, Shimla and other government department. Table No. 9.11 is self explanatory to this notion.

**Table No. 9.11**

Table showing Overlapping of Functions.

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
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<tbody>
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</table>

Betterment benefits are denied to the corporation as separate development authorities are established for this purpose. After the development work is completed the maintenance task is entrusted to the Municipal Corporation, Shimla e.g. New Shimla protect.

The Taxation Enquiry Commission (1953-54) observed:

Although constitutional amendment may not be a feasible proposition, the earmarking of an area of taxes for exclusive utilization by local government would keep it unaffected by the changing mood of the state government and ensure it definite and elastic sources of revenue. This requires specific provisions in the Municipal Legislation.

Municipalities are required to submit the budget for approval to the government before the 25th February every year. It is not feasible for the authorities to scrutinise the budget in a short span of one month and is, therefore, approved in a hurry. As a matter of fact the budget,
are treated as routine communications and are examined mostly at clerical levels and passed with certain routine remarks. In most cases, the approval is accorded even without properly examining the document. Detailed examination is conducted only in case the state government has received complaints about serious irregularities.9

There is no denying the fact that when the state government themselves are frantically searching for additional resources of revenue it is but natural that they would pay scant attention to the needs of local authorities. They have in fact, been not only reluctant to part such resources which are patently local but have even been tempted to encroach upon municipal tax resources by levying identical and parallel taxes.10

The state government are constantly looking to the centre for their resources and as a result of the recommendations of the Central Finance Commissions, their share and allocation in the revenues of the Union Government have been increasing from time to time. It would not be much, therefore, to stress that the government should be prepared to devote at least a proportionate share from the increased allocations to the urban areas. After all, the local and state government are partners in the endeavor of promoting welfare of the people and their financial relationship should also be based on this principle.11

There has been no improvement in the position of levy of house tax as non-levy of such taxes by majority of municipalities in Uttar Pradesh, Punjab, Haryana, Himachal Pradesh and Madhya Pradesh has also been reported by the task force on Planning and Development of Small and Medium Towns and Cities.12

Not much improvement is visible in the finances of urban local bodies nor in their financial administration. It is worthwhile to point out the observation of the Committee on Augmentation of Financial
Resources of Urban Local Bodies in this regard. The Committee points out: "Our local Government system has not been very effective mainly because of weak financial administration of our local authorities, particularly the manner in which they have often failed to meet their obligation and not having taken care to maintain soundness which is so essential to any financial structure. Discrimination in the assessment of taxes and inefficiency in their collections, complete disregard for their budgetary principles, diversion of government grants for specific purposes, corruption and embezzlement, are unfortunately common features of several of our local bodies. Any attempt to augment their financial resources will, therefore, be criticised unless they show definite improvement in their functioning and are freed from the evils of corruption, laxity and mismanagement.\(^{14}\)

To augment the finances of Municipal Corporation, Shimla following steps should be considered by State Government.

1. **Statutory Devolution of Funds Between Centre, State and Municipal Corporation, Shimla**:

   It was one of the terms of references of the State Finance Commission. By way of this reference it is pointed out that devolution of additional functions without matching resources transfer turn out to be meaningless. The State Finance Commission in its first report in the year 1996 has not considered this issue of strengthening the financial position of the Municipal Corporation, Shimla.

   In order to strengthen the financial position of the Urban Local Bodies, there are Centrally Sponsored Schemes i.e. (a) Integrated Development of Small and Medium Towns (IDSMT), (b) Urban Basic Services for Poor (UBSP), (c) Nehru Rojgar Yojna, (NRY), (d) Prime Ministers Integrated Urban Poverty Eradication Programme (PMIUPEP)

   Only NRY scheme has been implemented in Municipal Corporation, Shimla. The scheme of Housing shelter under NRY has not coming up
as subsidy component is very low and the rate of interest from HUDCO is very high.

CATEGORY -1

The following taxes under the Excise Act and other Acts may be considered to be exclusively collected by the Municipal Corporation, Shimla in its jurisdiction

(i) Luxury Tax on Hotels under the Himachal Pradesh Entertainment Duty Act, 1968.
(iii) Token Tax on vehicles under the Motor Vehicles Act, 1968.
(iv) Tax on vehicles under the Himachal Pradesh Motor Vehicles Taxation Act, 1972.
(v) Stamp Duty and Duty on Transfer of Property i.e. registration fee under the Stamp Act, 1899.
(vi) Fire Tax.
(vii) Tax on professions, trades, callings and Employment.
(viii) Licence fee under L-1, L-2 etc. licences granted in jurisdiction of the corporation (including Hotels, Guest House, Restaurants, etc.)

CATEGORY-2

(i) Any tax duty under category -1 from (i) to (iv) which for administrative reasons could not be assigned to the municipal corporation, Shimla, The State Finance Commission recommended that for the implementation of the Centrally sponsored schemes, the allocation will be governed by the countlay's sanctioned under central Sector and state Plan for delegated functions on a year to year basis.
2. Taxes to be shared between the State and Municipal Corporation, Shimla out of the Consolidated Funds of the State;

There are various types of taxes which are levied and collected by the Government of Himachal Pradesh through various departments. Currently, Excise and Taxation Department is collecting taxes under the following Acts:

1. The Punjab Excise Act, 1914 (1 of 1914) as applied to Himachal Pradesh.
4. The Indian Power Alcohol Act, 1948.

The other Acts under which other departments are collecting taxes which can be assigned to Municipal Corporation, Shimla, are as follows:

1. The Indian Stamp Act, 1899.
There can be three propositions for sharing of taxes under Government of Himachal Pradesh.

**CATEGORY-I**

The taxes, tolls, duties and fees which may be exclusively exploited by the Corporation.

**CATEGORY-II**

Levied and collected by the State Government but may be completely assigned to the Corporation.

**CATEGORY-III**

(i) Levied and collected at the State level but shared between the State Government and the Corporation.

According to section 84(2) of Himachal Pradesh Municipal Corporation Act, 1994. The Corporation shall, levy the above taxes subject to prior approval of the Government.

(ii) Electricity Duty under the Himachal Pradesh Electricity Duty Act, 1975.

(iii) Pollution Cess under the Water (Prevention and Control of Pollution) Cess Act, 1977.

(iv) Licence fee under the Air (Prevention & Control of Pollution) Act, 1981.

**CATEGORY-3**


Table No. 9.12 is also added which reflects the growth of revenue collection by Excise of Taxation Department:
Table No.9.12

Table showing Growth of Revenue Receipts Head-Wise

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Year</th>
<th>Total Excise on Liquor</th>
<th>General Sales Tax</th>
<th>Tax on Certain Goods carried by Roads</th>
<th>Entertainment etc.</th>
<th>Other Taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1991-92</td>
<td>66,24,76,725</td>
<td>66,90,15,133</td>
<td>26,98,30,116</td>
<td>12,37,68,092</td>
<td>1,72,50,90,111</td>
</tr>
<tr>
<td>2</td>
<td>1992-93</td>
<td>75,77,68,166</td>
<td>75,19,89,819</td>
<td>28,63,29,291</td>
<td>15,80,21,824</td>
<td>1,95,41,09,800</td>
</tr>
<tr>
<td>3</td>
<td>1993-94</td>
<td>83,52,79,726</td>
<td>93,88,01,924</td>
<td>35,21,92,928</td>
<td>18,24,77,255</td>
<td>2,30,87,51,103</td>
</tr>
<tr>
<td>4</td>
<td>1994-95</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>265 crores</td>
</tr>
<tr>
<td>5</td>
<td>1995-96</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>300 crores</td>
</tr>
</tbody>
</table>

(Source; Directorate of Urban Local Bodies, Memorandum to the State Finance Commission dated 22.6.95)

Criteria for sharing for Category -3

(i) As more than 80% of the taxes indicated above are collected in the Municipal areas so the share of these taxes to the tune of their collection or as determined by State Government may be passed on to the Municipal Corporation, Shimla annually.

(ii) The infrastructure created by the Municipal Corporation, Shimla is shared by the rural areas. Therefore more weightage be given while allocating the funds to the Municipal Corporation, Shimla.

Functions based Resources:

There are various activities/function which have been transferred to the Municipal Corporation, Shimla. These activities were performed by various departments earlier. These function which have been assigned to the Corporation by virtue of the 74th Amendment to the Constitution. It is not possible for the corporation to perform such functions in its jurisdiction, if adequate funds/resources are not made available to the Corporation. Such functions are the prerogatives of the corporation by virtue of 74th Amendment as no other development authority now can
perform such parallel functions. Performance of these functions by any other body may not be constitutionally permissible. Therefore, the functions as assigned to the corporation by the state government notification under section 42 of Himachal Pradesh Municipal Corporation Act, 1994. The following sharing of funds may be essential between conventional departments and Municipal Corporation, Shimla.

**Sharing of Plan and Non Plan Funds:**

i) The functions which are transferred to the Corporation, traditionally, these functions are performed by the line departments. The funds are in built in the annual budget of these departments. The quantum of funds which shall be required will be proportionate to the function which are given to the Municipal Corporation, Shimla.

**Criteria of Funding:**

i) The functions which are to be performed by the line department and existing funds available to the line departments.

ii) Functions transferred to the corporation proportionate funds earmarked for the corporation.

iii) While determining the funding pattern, the inflationary factor and the rising population may also be neutralized by the State Government.

iv) The corporation may be transferred the plan and Non-plan budget of the line departments on the basis of actual expenditure booked by these departments in these areas in the last five years.

**Other Sources of Funding:**

**Octroi:**

Octroi was the main source of income of the corporation where a terminal tax was levied on the goods being consumed by local population for funding the various developmental activities. The Government of Himachal Pradesh have abolished octroi in the year 1982, and substituted the same for special grants given to the corporation on the basis of actual realization at the time of
abolition of Octroi plus percentage increase. The average percentage increase in the grant comes out to be 5.7 percent, which even does not neutralise the effect of inflation. But as a result of faster rate of industrialization of consumer goods and modernization of urban economy the volume of trade has increased tremendously the percentage increases in the Octroi Grants have not kept pace with the increased Volume of trade in the state by 332 percent. The Octroi grant commulatively increased about sixty percent from the year 1982 to 1993 but the average increase since 1982 to 1995 is only 6.42 percent. Moreover, the population in the town have increased manifold. This has resulted in on one hand an increased demand of various basic infrastructure by local population and on the other, sharp decline in the resources at the disposal of the Corporation. Keeping in view above explanation, there is a strong case that either octroi tax may be considered and re-introduced or octroi grants may be increased according to the volume of trade and sales tax realisation registered year by year in Shimla City. Incidentally, the affluent States like Punjab and Haryana are having Octroi as a very formidable base for financing the local bodies.

Criteria to Fix Grant in Lieu of Octroi

The criteria so far fixed for compensating the corporation for the loss of octroi is not adequate. It is static and not progressive. Had there been Octroi, the income of the corporation should have had the dynamic upward movement. This must be correlated to the realisation of sales tax by the Excise and Taxation Department in the state and increase in volume of trade over all these years. Keeping in view the increase in population consumption pattern, price rise and volume of trade and average increase of sales tax. It is suggested that twenty percent of total collection of sales tax be passed on to Municipal Corporation Shimla in lieu of octroi.
A Committee of Chief Ministers was appointed on 14.7.93 by the Government of India under the Chairmanship of the Chief Minister of west Bengal to consider the question of abolition of octroi following the demands of truckers. The said committee made following recommendation in its report:

(a) Octroi cannot be abolished under the constitution and state governments within their constitutional rights are free to specifically streamline the system of levy, assessment and collection of octroi and entry taxes. As octroi is covered by Entry 52 of the constitution and its replacement by others are not feasible as one entry cannot replace the other.

(b) There is no logic in the transporters demand for the abolition of octroi as octroi is not a tax on transporters but on goods, and in turn, on consumers.

(c) Revenue for octroi goes to local bodies and at some place it accounts for 40 percent of the total revenue and it is up to the state governments as to how to implement it to its convenience. That octroi is one of the sources of revenue allocated to the civic bodies in actual practice. The other being Property tax, profession tax, tax on animals and vehicles , tax on advertisements, theatre tax and toll tax.

Octroi is one of the oldest in India and is considered as a traditional source of local revenue. (Zakaria Committee, 1952). It is a source of daily income to the local bodies and enables them to meet their day to day expenses. Even the All India Council of Mayors has been demanding “that octroi should not be abolished and be reintroduced in states of Himachal Pradesh, Madhya Pradesh, Karnataka and Delhi, where it was abolished from time to time”.

Octroi Abolition Surcharge:

If it is not possible to re impose octroi, then octroi surcharge at a rate of twenty percent on general sales tax be levied and passed on to the
corporation. Such surcharge will not cause any establishment or other expenditure in the Excise and Taxation Department, and there will be hardly any cost of collection of this surcharge.

Difference Between cost of Inputs and Income:

It is unfortunate that the corporation is to provide such basic services such as 'water supply', etc. at much cheaper rates than they have to pay for the cost of its purchase from the supplying agencies like Irrigation and Public Health. This department is taking the cost water at a much higher rate from the corporation. It is suggested that the Corporation must be allowed to charge the rates of supplying water and other urban basic services to the residents on cost price basis and administrative charges so that they may not incur losses otherwise any deficiency on this account must be fully met by the State Government.

**Taxation by the Municipal Corporation, Shimla:**

There are various sources of raising Municipal Revenues. A few have been categorised below on which the Corporation may be allowed to legislate and collect taxes without the approval of the Government if minimum and maximum rates of taxation fixed by the state government.

**Land Based Taxes**

1. Property Tax
2. Street Tax

**Taxes Related in Services**

1. Water benefit tax
2. Sewerage Tax
3. Sewerage benefit tax
4. Conservancy / Scavenging tax
5. Fire Tax

**Taxes on Government Properties**

1. Provision as made in Himachal Pradesh Municipal Corporation Act, 1994 (section - 89)
Taxes on Goods and Services
1. Taxes on Entry or Exit of Passengers Goods and Services.

Taxes on Business, Profession and Entertainment
1. Advertisement Tax
2. Theatre Tax or Taxes on Cinemas, Circusses, Carnivals, etc.

Development Levies:
1. Betterment Charges

Municipal Corporation, Shimla must be allowed to determine the rate of taxation at its own level so that it financial position through a valid legal authority bestowed in the Corporation by the State Legislature. For imposing various taxes, as envisaged by section 84 of the Himachal Pradesh Municipal Corporation Act, 1994 the Corporation be directed to levy these taxes to improve its financial position. This will go a long way in broadening the tax base to raise their own resources from these taxation.

**Infrastructural Capital Fund:**

Municipal Corporation, Shimla must also collect and built on infrastructural Capital Fund on the total cost of any residential/commercial/building as charge for social infrastructure. This charge can be levied at rate of twenty percent on commercial establishment and ten percent on residential buildings. This money should be credited to a separate account fund and this should be invested to avail institutional fund/loan.

**Special Grant by Central and State Government:**

Municipal Corporation, Shimla may also be given special grants and loans by the Planning Commission additionally, over and above the State plan budget. The additionally be given, both as grants as well as very soft loans. Similarly, the State Government may also fix a percentage of its total non-plan outlay earmarked for Municipal Corporation. Apart from it, the State Government may grant additional
matching grant for additional resource mobilization on the principle of 1:1.

**Taxation on Government Properties:**

The tax on properties is one of the potential contributors towards the Corporation's financial resources. Presently, Government properties are exempted from the payment of such taxes. The Central Government properties are exempted due Constitutional provisions as indicated in article 285 of the Constitution of India. In view of the 74th Constitutional Amendment, the purpose of amendment shall be squarely defeated if the political, administrative and functional devolution is not met by proportionate financial devolution.

It is, therefore, proposed that the Central Government may be requested to suitably amend article 285(1) of the Constitution so as to make it more in conformity with the 74th Amendment of the Constitution. Having regard to this demand of All India Council of Mayors, The Ministry of Urban Affairs and Employment Constituted a working group in November, 1995, under the Chairmanship Shri D.M. Sukthankar, former Secretary (Urban Development). The group has submitted its report and on the basis of the said report the ministry is developing guidelines for Property Tax Reforms, which are yet to be finalised.

Similarly, the State Government may withdraw its exemption and may allow the Municipal Corporation, Shimla to tax its properties.

In the alternative, the tax may be calculated over the Central and State properties situated in the jurisdiction of the Corporation to the extent of actual calculation of the tax which might have accrued to the Corporation had such a tax been imposed by it on such properties.

If the above is also not possible then, a 'Service Charges' should be levied on all the Centre government and State government buildings. The service charge is quite essential as lots of infrastructure and
facilities are provided by the Corporation to the government department buildings.

To match the increased functionary domain of the Corporation an attempt has been made so that adequate financial help could be given to the Corporation by way of statutory provisions and also by way of discretionary provisions and to recommend to the government to delegate substantial financial powers to Municipal Corporation, Shimla to carry out its Constitutional responsibilities as the third organ of the Government.

Table No. 9.13

Table Showing Political Inference in the Allocation of Funds

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>50</td>
<td>---</td>
</tr>
</tbody>
</table>

All the respondents were of the view that there exists political inference in allocation of funds to the Municipal Corporation, Shimla ever since the opposition political party has taken over the power in the State.

The public representation to the organisation (since its conversion into a Corporation) came only after 25 years following a struggle waged by certain public spirited residents who filed a writ petition in the public interest. Various courts including Supreme Court directed to hold elections within a time schedule. The first elections to the Municipal Corporation, Shimla was held in the year 1986.

Change in the Style of Working:

In order to ascertain performance and efficiency of the Municipal Corporation, Shimla, we have administered a questionnaire to fifty prominent residents of Shimla town. The following table provides us a picture of working style under the changed scenario. Out of five hundred
respondents, three hundred twenty were of the view that the working style of employees of corporation has changed after the elected body has taken over. Only one hundred eighty seen no change.

**Table No. 9.14**

Table showing Change in Style of Working.

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>500</td>
<td>320</td>
<td>180</td>
</tr>
</tbody>
</table>

**Providing Civic Amenities:**

It is pointed out by most of the respondents that chronic shortage of water during summers, lack of sanitation and frequent traffic jams are some of the most pressing problems of the present day- Shimla town. The natural drains and nullahs which the British had so scrupulously tried to keep, have clogged and have become a favourite dumping ground. Sanitary conditions in the town are worse than ever. The following table indicates that the Corporation is not providing civic amenities adequately to the residents of Shimla town.

**Table No. 9.15**

Table showing Providing Civic Amenities.

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>500</td>
<td>160</td>
<td>340</td>
</tr>
</tbody>
</table>

**Difference in Working Post 74th Constitutions Amendment:**

Most of the respondents find no difference in working of corporation ever since the implementation of new Himachal Pradesh Municipal Corporation Act, 1994. Only eighty respondents find change in working.
Table No. 9.16
Table showing Difference in Working Post 74th Constitution Amendment

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>500</td>
<td>80</td>
<td>420</td>
</tr>
</tbody>
</table>

Performance of Elected Representatives:

Regarding the performance of elected representatives of Municipal Corporation, Shimla the views of most of respondents were not in high spirit. They were critical of their working, non-availability in the office. The main area of criticism was non issuance of no objection certificates for newly constructed buildings. Inaction of corporation officials in taking decisions in Completion of building plans (Compounding) delay in payment for contact works, delays in sanctioning water meters and sewerage connections, etc, and above all worsening sanitation conditions of their respective localities. The following table provides a glimpse of performance of the councillors:

Table No. 9.17
Table showing Performance of Elected Representatives.

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>500</td>
<td>210</td>
<td>290</td>
</tr>
</tbody>
</table>

Performing Functions Properly:

In response to the performing the functions property, the views of most of the respondents were same as that in case of performance of elected representatives of the Municipal Corporation, Shimla. The enlightened citizens pointed out slum development, unauthorised construction and felling of trees, which has threatened the environment.
of this once known as ‘Queen of Hills – Shimla’. Table No. 9.18 shows the real picture of functioning of the Municipal Corporation, Shimla.

**Table No. 9.18**

Table showing Cumbersome Administrative Procedures

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>500</td>
<td>380</td>
<td>120</td>
</tr>
</tbody>
</table>

**Cumbersome Administrative Procedures:**

Pertaining to the question of cumbersome administrative procedures, most of the respondents responded positively. In getting new water connection and sewerage connection the procedures are cumbersome because the issuance of no-objection certificate, even for new construction and incomplete building. The following table provides other face of the Corporation.

**Table No.9.19**

Table showing Cumbersome Administrative Procedures.

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>500</td>
<td>380</td>
<td>120</td>
</tr>
</tbody>
</table>

**Unwanted Delays:**

In response to the unwanted delays, most of the respondents were of the view that the residents are facing unnecessary delays in processing plans, getting building plans compounded, etc. The above table shows the working style of the Municipal Corporation, Shimla. The main reasons of for these delays are centralized administrative structure, as the Commissioner, hears and finalizes the cases pertaining to permission / rejection of building plans. Since the Commissioner is from
I.A.S cadre can be replaced in between the hearing/finalisation of any case. Table No. 9.20 is self explanatory.

**Table No. 9.20**

Table shows Unwanted Delays.

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>500</td>
<td>400</td>
<td>100</td>
</tr>
</tbody>
</table>

**Consulting Residents in Plan Formulation:**

In case of decentralised planning, the Corporation has not consulting the local residents. Out of five hundred respondents only sixty responded positively. As there is no provision for Ward committees/ward Inspection Committee in the Himachal Pradesh Municipal Corporation Act, 1994.

**Table No. 9.21**

Table showing Consulting Residents in Plan Formulation.

<table>
<thead>
<tr>
<th>No. of Respondents</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>500</td>
<td>60</td>
<td>440</td>
</tr>
</tbody>
</table>

**Raising of Problems:**

The respondents are raising problems of the area of raising problems of the area of their residence/Commercial complex. Out of five hundred respondents only sixty respondent negatively. The Corporation response to their problems was luke warm. In their view only lack of financial resources hampers the working of the Municipal Corporation, Shimla.
The Municipal Corporation, Shimla enjoys tax powers and functional competence to levy taxes (tax-revenue and non-tax revenue) and state government also provides (specific and purpose) grant-in-aid. Corporation has a long list of taxes but levy only few them. These are mainly house tax, water tax, and, fines and fee on certain professions and carrying trades, etc. The Corporation gets grant in lieu of octroi abolition, which is on lesser side. As it is essential to provide financial to provide financial autonomy to the Corporation in order to perform function efficiently and effectively.

Unfortunately, with the increase in population and additional geographical jurisdiction, for three year in case of merger of additional rural areas, the income of the Corporation has not increased in that proportion. The main reason being non exploitation of new taxes, the rate of recovery of arrears is very low i.e. 23 percent, which shows that lack of determination on the part of collecting agency "Tax Department." The average growth of expenditure on establishment is 14.97 percent and in the year 1998-99 the increase was 33.39 percent, the reason being release of arrears to the employees on account of recommendation of new pay scales under 5th Pay Commission.

For a democracy to be successful at national level, the grass root organisation have to be strong. The Himachal Pradesh Municipal Corporation Act, 1994 has provided a list of functions as per 74th Constitution Amendment. These functions has yet to be transferred. It is
observed that the performance of Municipal Corporation, Shimla has been disappointing in carrying out even obligation functions, and more so in regard to discretionary functions.

There is hardly any well throughout policy to stimulate the growth as viable administrative organizations. Poverty of financial resources has been the characteristics feature of administration of Municipal Corporation Shimla. This restricted the scope of the activities of the Corporation and stood in the way of recruiting competent personnel to manage different departments. Due to this trend the Corporation has come to develop an in build bias against management development. Organizationally, Shimla town has thus grown up in absence of a comprehensive institution embracing both maintenance and developmental functions.

"If Municipal Corporation, Shimla is to be effective, it must, therefore be able to provide innovative and competent leadership, skill in the formulation of research and policy, as well as purposive attitudes on the part of public officials in dealing with problems, which face them". The success would ultimately depend on the spontaneous appreciation of their services by the citizenary. It can be achieved only with the committed political will and honest municipal executives.

Notes and References:


