

74th CONSTITUTIONAL AMENDMENT ACT

an amendment to the Constitution of India that changed the face of urban India.



**Indo-Global
Social Service Society**
Celebrating the Spirit of Humanity



CREDITS

Author:

Adrian Decruz

Concept and Inputs:

Aravind Unni, Praja Foundation

Graphic Design:

Debasish, Dorothy, We Draw Conversation

Creative Director & Illustrations:

Indrajit, We Are Young Foundation

Copy left:

Any part of this training module may be cited, used and reproduced with due acknowledgments

Published by:

Indo Global Social Service Society (IGSSS)
28, Lodhi Road, Institutional Area,
New Delhi - 110003 India

Email - info@igsss.net

Tele - 011-45705000

Website - www.igsss.org

Facebook - www.facebook.com/igsss

Twitter - [@igsss](https://www.twitter.com/@igsss)

CONTENTS

- 01 What is the 74th CAA?
- 02 Types of ULBs
- 03 Objectives of the ULBs
- 08 What changes did the 74th CAA bring?
- 09 Duties of ULB
- 09 ULB Officials and their Autonomy -
- 12 Exercise
- 13 Functioning of Urban Local Bodies
- 15 How can ULBs be More Empowered?
- 17 Annexure





WHAT IS THE 74TH CAA?

The 74th Constitutional Amendment Act is an amendment to the Constitution of India that officially gave rise to Urban Local Bodies to be elected to govern urban areas and their affairs. It was enacted in 1993 to constitutionally recognise municipal governments. It made municipal governments a formal part of the three-tier governing system, along with the Union Government and the State Governments. While this Act mandated the setting up of municipal governments in urban areas, it left the details of their constitution to the state governments through their respective Municipal Acts.

TYPES OF ULBs UNDER 74th CAA

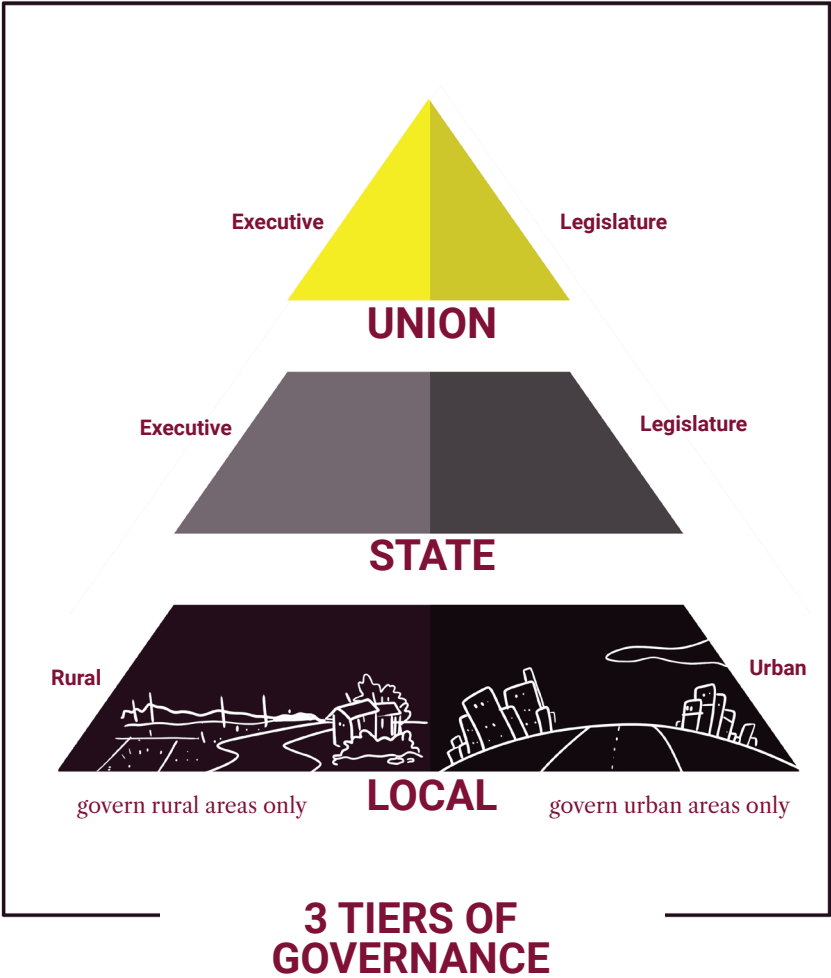
According to the 74th CAA, urban areas would be governed by one of the three mentioned types of urban local governments namely the Nagar Panchayat, Municipal Council and Municipal Corporation based on the size of the area.



OBJECTIVE OF 74th CAA

1. The primary objective of the 74th amendment was to strengthen democracy at the grass-root level through Urban Local Governments. In a democracy, every person has the right to express their opinions on issues related to the development of their area.
2. The secondary aim of the amendment was to increase the participation of public representatives in the development work of the cities.





3 TIERS OF GOVERNANCE

Union - This is the highest level of Government. The Union Government is made up of 2 parts

- **Legislature** - The legislative wing is responsible for making laws for the whole nation and supervise the expenditure and income of the government. It includes the Lok Sabha and Rajya Sabha.
- **Executive** - The executive wing of the government is responsible for running the central government and carrying out the decisions made in the legislature, in the entire country. The President, Prime Minister and the Council of Ministers form the Executive

State - This the second level of government. The State Government is also made up of 2 parts

- **Legislature** - The legislative wing is responsible for making laws for the whole state and supervise the expenditure and income of the state government. It includes the Vidhan Sabha and Vidhan Parishad. Some bigger states have both of these and some smaller states only have the Vidhan Sabha.
- **Executive** - The executive wing is responsible for running the state government and carrying out the decisions made in the state legislature (Vidhan Sabha & Vidhan Parishad), in the entire state. The Governor, Chief Minister and the State Council of Ministers form the executive.

Local - There are two types of local governance bodies - Urban and Rural.

- **Rural local** bodies are Panchayati Raj Institutions under the 73rd Constitutional Amendment Act. Panchayati Raj Institutions are divided into more levels and govern rural areas only.
- The **urban local bodies** (ULBs) are elected bodies that have to govern urban areas. The urban local bodies are recognised by the constitution of

India under the 74th Constitutional Amendment Act. There are different ULBs for different urban areas.

- **Municipal Corporation:** The Municipal Corporation administers urban areas with a population of more than 10 lakh. It is responsible for providing necessary community services like health care, educational institution, housing, transport etc by collecting property tax and getting a fixed monetary grant from the State Government.
- **Municipalities:** An urban local body that administers a city of minimum population of 100,000 but less than 1,000,000 and is responsible for the same issues as an MC.
- **Nagar Panchayats:** Local governance bodies that administer areas in transition from rural to urban areas in towns which has a population between 5000 and 99,000. Nagar Panchayats can also be know as Town Councils and the local bodies in special zones such as tribal lands and protected lands are known as Notified Area Councils.
- **Cantonment Board:** This is a civic administration body in India under control of the Ministry of Defence and which administers Defence Cantonment areas. The cantonment board takes care of mandatory duties such as provision of public health, water supply, sanitation, primary education, and street lighting etc and it can't levy any tax.




Nagar Panchayats:
Population: 5000 to 99,000



Municipalities:
Population: less than
1,000,000



Municipal Corporation:
Population: more than 10 lakh.



Article 243-W of the Indian Constitution talks about powers, authority and responsibilities of Municipalities.

Article 243-W

WHAT CHANGES DID THE 74th CAA BRING?

The Local Government

The Constitution of India ensures protection of democracy in Parliament and in the state legislatures. However, local self-government in urban areas was not a clear constitutional obligation. The State List places the responsibility of local self-governments on the States. In order to provide for a common framework for urban local bodies and help to strengthen the functioning of the bodies as effective democratic units of self-government, in 1992, the Parliament enacted the Constitution (74th Amendment) Act, 1992 relating to municipalities.

Since then, political democracy has been strengthened by Municipal Bodies in urban areas. Some of the functions under Municipal bodies have been listed in the table below.

Article 243-W of the Indian Constitution talks about powers, authority and responsibilities of Municipalities etc Accordingly, the legislature of the state enables the local municipal bodies to function as governing bodies and

1. Prepare plans for economic development and social justice
2. Function and implement schemes entrusted to them

DUTIES OF THE ULB:

The Act has added Twelfth Schedule to the Constitution. It contains 18 items of municipalities listed under Article 243-W. They are:

	Functions	Activities
1	Urban planning, including town planning.	<ul style="list-style-type: none"> • Master Planning/Development Plans/Zonal Plans. • Enforcing master planning regulations. • Enforcing building codes.
2	Regulation of land- use and construction of buildings.	<ul style="list-style-type: none"> • Regulating land use • Approving building plans/high rises • Demolishing illegal buildings.
3	Planning for economic and social development	<ul style="list-style-type: none"> • Promotion of economic activities • Ensuring social justice and social welfare.
4	Roads and bridges.	<ul style="list-style-type: none"> • Construction and maintenance of roads • Construction and maintenance of bridges and flyovers • Parking and street lights.
5	Water supply for domestic, industrial and commercial purposes	<ul style="list-style-type: none"> • Storage of water • Providing connections • Collection of charges • Operation & Maintenance (O&M)
6	Public health, sanitation conservancy and solid waste management.	<ul style="list-style-type: none"> • Maintaining hospitals, dispensaries, medical colleges • Immunisation • Prevention of vector-borne diseases • Quality of water, food
7	Fire services	<ul style="list-style-type: none"> • Establishing and maintaining fire brigades • Maintenance of water reservoirs • Providing Fire NOC/approval certificate

	Functions	Activities
8	Urban forestry, protection of the environment and promotion of ecological aspects.	<ul style="list-style-type: none"> • Afforestation • Greenification • Awareness drives • Maintenance of natural resources
9	Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded	<ul style="list-style-type: none"> • Identifying beneficiaries • Social Pensions (old age, widow, specially-abled) • Providing tools/benefits such as tricycles • Housing programs • Scholarships
10	Slum improvement and upgrading	<ul style="list-style-type: none"> • Identifying beneficiaries • Affordable Housing • Upgradation
11	Urban poverty alleviation	<ul style="list-style-type: none"> • Identifying beneficiaries • Livelihood and employment • Street vendors
12	Provision of urban amenities and facilities such as parks, gardens, playgrounds	<ul style="list-style-type: none"> • Creation of parks and gardens • O&M
13	Promotion of cultural, educational and aesthetic aspects.	<ul style="list-style-type: none"> • Schools and education • Fairs and festivals • Cultural buildings/institutions • Heritage • Public space beautification
14	Burials and burial grounds; cremations, cremation grounds	<ul style="list-style-type: none"> • Crematoriums and burial grounds (different religions) • Construction and O&M

	Functions	Activities
15	Cattle pounds; prevention of cruelty to animals	<ul style="list-style-type: none"> • Catching and keeping strays • Sterilisation and anti-rabies • Ensuring animal safety
16	Vital statistics including birth and death registration	<ul style="list-style-type: none"> • Coordinating with hospitals/ crematoriums etc. for obtaining information • Maintaining and updating database
17	Public amenities including street lighting, parking lots, bus stops and public conveniences.	<ul style="list-style-type: none"> • Installation and maintenance of streetlights • Deciding and operating bus routes • Creation and maintenance of parking lots • Creation and maintenance of public toilets
18	Regulation of slaughterhouses and tanneries	<ul style="list-style-type: none"> • Ensuring the quality of animals and meat • Disposal of waste

EXERCISE:

Which of these functions seen below are the responsibility of the Local Government of the city?



FUNCTIONING OF URBAN LOCAL BODIES

ELECTIONS TO THE ULBs

Elections for Urban Local Body (Nagar Palika) are held every five years for the elected member representatives. The towns get divided into wards according to population from where the representatives are elected, who are known as councillors or corporators. The Mayor is the head of the municipal corporation and the tenure of the mayor and deputy mayor is five years.

But still in many states, the state government has not given any legal powers to the Municipal Corporations to conduct elections every five years automatically. Some states do not have any power to elect their mayors directly.

EMPOWERING OF ELECTED ULB OFFICIALS

Empowered and Accountable elected representatives are essential to empower city government. The mayor and councillors need to be empowered and be given ownership and held accountable for the development of the city. For this, it is to be ensured that

- The term of the elected representatives is fixed for 5 years
- The elected mayor should also receive a fixed salary and should have powers to appoint committees and to conduct normal business.
- The council should also have the power to remove the mayor by passing a 'no confidence motion
- The urban local body therefore should be comprised of empowered mayor, empowered councillor, empowered council and constitution of deliberative committees.

FINANCIAL AUTONOMY OF ULBs

Fiscal decentralization or giving the responsibility to decide where and how to spend local funds is one of the most important powers to ensure an empowered city government. Devolution of financial power, systemic fiscal transfers and financial accountability are very important. The local government gets its funds from the state government and the taxes collected by the local government, for example property tax, entertainment tax, parking charges etc.

It is crucial that the city government

- Hold independent authority to introduce new taxes/charges
- Hold independent authority to revise tax rates/charges
- Council has independent authority to approve the budget according to the State Municipal Act

However, even though the 74th Constitutional Amendment Act has recommended that the State Finance Commissions provide funds and recommend practices to the ULBs to promote more fiscal autonomy, the recommendations of these bodies are not legally binding on the State Governments. Therefore, many state governments have not provided financial power directly to the municipal corporations as directed in the Constitution.

SOME TAX LEVIED BY CENTRE STATE AND LOCAL BODIES



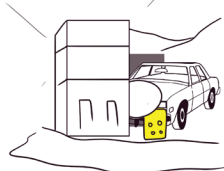
UNION TAXES:

Income Tax, Corporation Tax, Central GST, Customs



STATE TAXES:

State GST, Tax on Electricity, Excise Duty on Alcohol, Stamp Duty



LOCAL TAXES:

Tax on Land Building, Toll, Vehicle Tax, Entertainment Tax

HOW CAN ULBs BE MORE EMPOWERED?

People representation is the most important part of the local bodies. The reason behind the 74th Constitutional Amendment Act is the furthering of public participation in the important governance decisions that affect citizen's everyday lives. While citizen involvement in rural bodies is extremely direct, the same in urban areas is still very indirect.

Appointing Functionaries: City officials should be empowered enough to hire functionaries such as engineers, architects, and health inspectors to function without the influence of the state government. These city officials carry out responsibilities and activities of the city government.

Ensuring Financial Autonomy: The Act created State Finance Commissions and made them responsible for monitoring the finances of municipal governments. They were not under the control of state governments and made recommendations to the respective state governors regarding the distribution of taxes. It should be ensured that the city governments should have the freedom to decide, impose and revoke taxes, and be allowed to decide how to spend or save

the grants awarded to them by the Central or State Governments.

Ensuring Representation of Weaker Sections: The 74th CAA was responsible for ensuring the representation of women and persons belonging to Scheduled Caste (SC) and Scheduled Tribe (ST) categories by reserving seats for them in the elections under Article 243T. For candidates from SC and ST categories, the number of seats to be reserved would be proportional to their population in the local area. For example, if SC and ST groups represented 10% and 20% of an area's population, then they would get 10% and 20% reservation for councillors' seats respectively. At least 33% of the seats reserved for SC and ST persons were further reserved for women.

Ensuring Regular Elections: State Election Commissions are required to conduct regular, free and fair elections to the municipal bodies. This is written in the 74th CAA. State Election Commissions have been made in almost every state but this does not mean that regular elections are being conducted. Elections will ensure accountability and regular public participation. The procedures for ward sabha and area sabha elections should be clearly understood and conducted regularly so that community members can advocate their concerns to the area sabhas and ward representatives.

People

representation

Appointing Functionaries

Ensure regular election

Ensure financial Autonomy

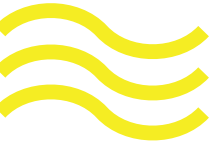
Ensure representation of weaker section

ANNEXURE

ELECTIONS IN THE ULBs (Findings from States)

In the states of Assam, Karnataka and West Bengal there is no provision for conducting municipal elections before the council is dissolved. In some of the states like Andhra Pradesh, Arunachal Pradesh, Bihar, Delhi, Chhattisgarh, and all the states in the study except Assam, Karnataka, West Bengal, have this provision. There is a provision in the Municipal Act of Gujarat by which the heads of the agencies of the cities can form a committee together for solving issues that are overlapping.

The states of West Bengal, Tripura, Telangana, Tamil Nadu, Sikkim, Rajasthan, Punjab, Odisha, Nagaland, Mizoram, Meghalaya, Manipur, Maharashtra, Madhya Pradesh, Kerala, Karnataka, Himachal Pradesh, Gujarat, Goa, Delhi, Bihar, Assam, Arunachal Pradesh, Andhra Pradesh do not have the provision of directly electing the mayors.



ARE THE ELECTED OFFICIALS IN ULBs EMPOWERED? (Findings from States)

Most mayors from big cities like Delhi, Mumbai do not have a 5 years term; in Delhi we have mayors changing every year, in Mumbai every two years which decreases power and accountability. Moreover, in most of the cities annual confidential report (ARC) cannot be written by the mayor, for instance in cities like Bhopal, Patna, Gurugram, Mumbai, Ahmedabad, Amritsar, Delhi.

Kerala is the only state where mayors can prepare ARC and have a tenure of 5 years term. Chhattisgarh has scored the most in terms of empowered mayor and empowered councilor sub-themes.

The states of Arunachal Pradesh, Delhi, Goa, Gujarat, Himachal Pradesh, Karnataka and Maharashtra do not have term of mayor coterminous with the city government. Arunachal Pradesh scored the lowest in the themes of Empowered Mayor, Empowered Councilor and Financial Accountability.

The top 5 states in terms of empowerment of city elected representatives and legislative structure are Kerala, Chhattisgarh, Odisha, Tripura and Madhya Pradesh while the bottom 5 are Haryana, Andhra Pradesh, Goa, Nagaland and Meghalaya.

In case of councillors, in the cities of Delhi, Bhubaneshwar, Lucknow, Dehradun, Coimbatore they do not get honorarium. Only the Mumbai councillors are getting an honorarium of Rs. 25,000 which is the highest among all the 21 cities. This is followed by Amritsar councillors who receive an honorarium of Rs. 17,000. If they do not get any honorarium, there is a chance that they may not take their jobs seriously. None of the councillors have privileges and immunity against all statements made or acts done during the period of their duty. Only in 11 states the Council has the authority to pass no confidence motion against Mayor and no state has the provision for regular training of councillors.

DO ULBs ENJOY FINANCIAL AUTONOMY? (Findings from States)

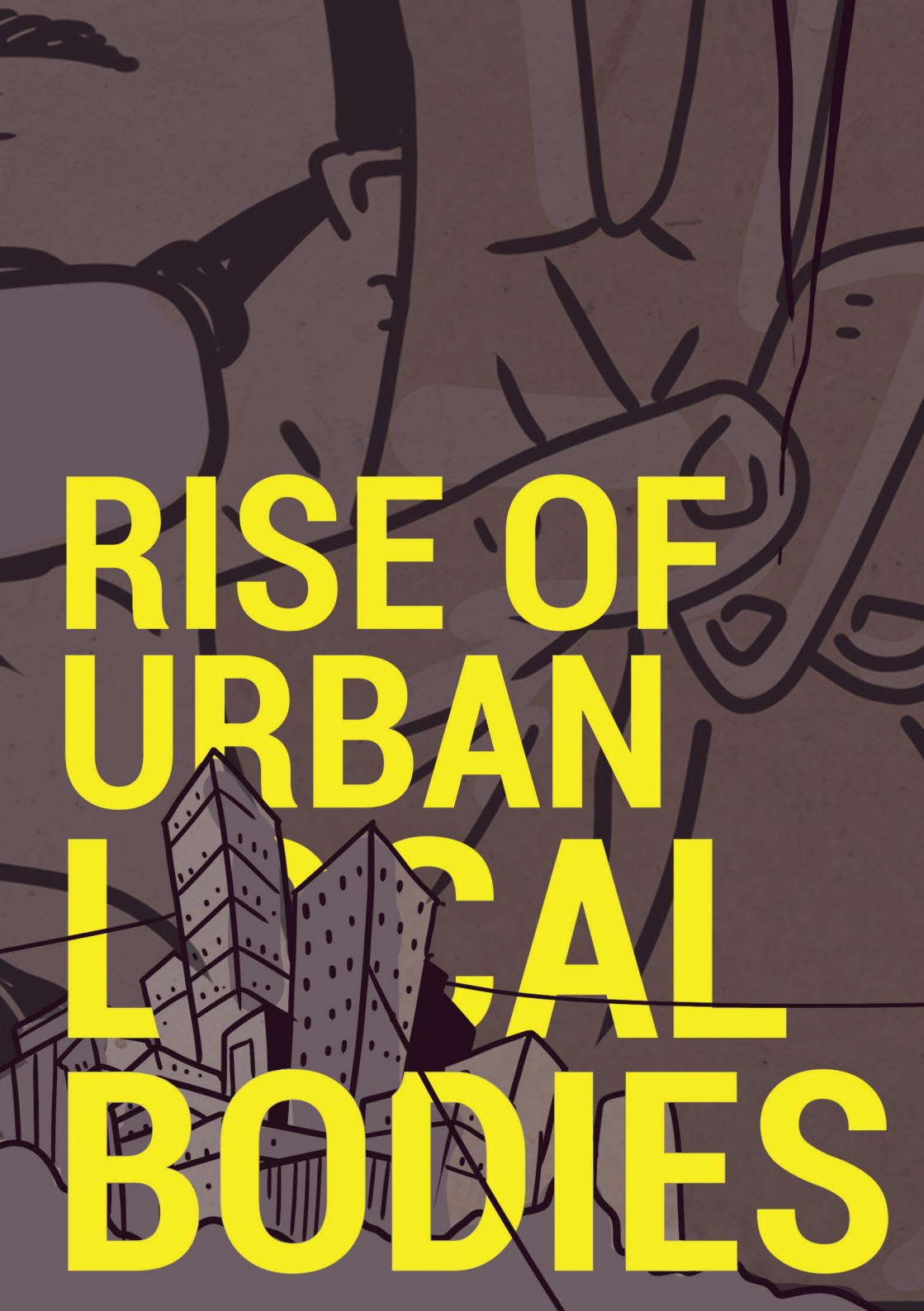
According to the study no city across all the 21 states have the power to introduce new taxes, they have to take the permission of the state government. The states of Chhattisgarh and West Bengal have some power in the sense that they have the authority to revise tax rates.

In more than 50% of the cities that were taken for study have less than 50% of the total revenue is through own revenue. Gurugram, Amritsar and Mumbai has the highest percentages of own sources of revenue, Gurugram and Amritsar do not include grants in their budgets and therefore the numbers are showing high. Moreover, only 12 out of 21 states have the authority to approve their budget.

In terms of fiscal empowerment on the basis of devolution of financial power, systemic fiscal transfers and financial accountability, the top 5 states are Kerala, Maharashtra, Madhya Pradesh, Tamil Nadu and Gujarat. The bottom 5 for the same are Jharkhand, Meghalaya, Arunachal Pradesh, Nagaland, Manipur. It was found that 17 states do not have independent authority to introduce new taxes and do not have independent authority to revise the taxes rates and 14 of them do not have the authority to approve budget.

Kerala ranked highest in terms of fiscal empowerment. The city government in Maharashtra and also the Coimbatore City Municipal Corporation Act in Tamil Nadu also has fiscal empowerment as it has independent authority to introduce and revise tax rates and approve budget.

**All these findings are from the Urban Governance Report 2019 by PRAJA*



RISE OF URBAN LOCAL BODIES



UNION LIST

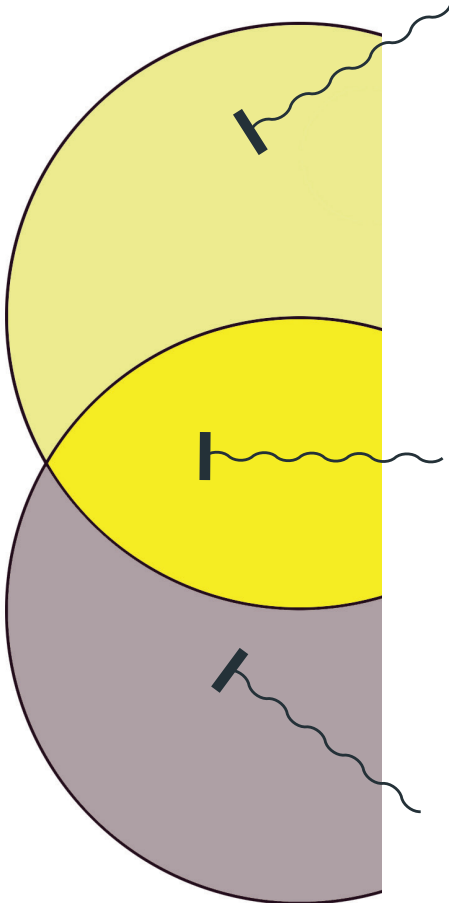
It contains the list of items that are under the authority of the central government (100 items). Examples are defense and its extensions, foreign affairs, citizenship, census, union taxes, war and peace, Reserve Bank of India, currency, foreign exchange stock market, communication, railways, airways, roadways (National Highways), waterways (ports and international).

CONCURRENT LIST

It contains the list of items that are under the authority of both state and central governments (52 items). Examples are marriage, divorce, adoption, criminal law including IPC, social security and social insurance (employment and unemployment), entertainment, electricity, education, forest including protection of wild animals and birds, administration of justice.

STATE LIST

It contains the list of items that are under the authority of the state government (61 items). Examples are agriculture, industries, local governments (constitution and powers), taxes, forests, policing (law and order and investigation), land and property, culture, religion, state highways, inland waterways.





ABOUT IGSSS

Indo-Global Social Service Society is a non-profit organisation working with the mandate for humane social order based on truth, justice, freedom and equity. Established in 1960, IGSSS works for development, capacity building and enlightenment of vulnerable communities across the country for the effective participation in development.

With its presence all over India, IGSSS has set its thematic focus on promoting sustainable livelihoods, energising the youth as change makers, protecting lives, livelihood and assets from the impact of hazards, advocating for the rights of CityMakers (Urban Poor Residents) and developing a cadre of leaders from the community and civil society organisations. Gender and Youth are underlying themes across all its interventions.

Indo Global Social Service Society
28, Institutional Area, Lodhi Road,
New Delhi - 110003

Email - info@igsss.net

Tele - 011-45705000

Website - www.igsss.org

Facebook - www.facebook.com/igsss

Twitter - [@igsss](https://www.twitter.com/@igsss)