

Draft Final

IMPLEMENTATION OF THE  
74<sup>TH</sup> CONSTITUTIONAL  
AMENDMENT

State Level Reform under JNNURM

### 1. The Reform

Since the early 1990s Government of India<sup>1</sup> (GoI) has undertaken several initiatives aimed at decentralizing urban governance. The 74<sup>th</sup> Constitutional Amendment Act (CAA) was one such initiative, which recognized urban local bodies (ULBs) as the third tier of urban government by assigning them specific civic functions. The 74<sup>th</sup> 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”. One of the mandatory reforms under JNNURM is the implementation of the 74th Amendment in its letter and spirit.

### 2. Rationale for the reform

The Constitution (74th Amendment) Act, 1992 provisions, provides a basis for the State Legislatures to guide the State Governments in the assignment of various responsibilities to municipalities and to strengthen municipal governance. Accordingly, several State Governments have amended their Municipal Acts/Laws/Legislations so as to bring these in conformity with the Constitutional provisions. While state governments ratified the 74<sup>th</sup> CAA they have found it difficult to implement its provisions in totality. The 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 any revisions in tax rates and user charges and have limited powers to institute new taxes. The existing legal framework as defined by the state municipal acts was not conducive for implementing the provisions of the 74<sup>th</sup> CAA in its true spirit. Implementation of 74<sup>th</sup> CAA is required for following reasons:

- Urban Decentralisation needs to empower ULBs with many more powers and functions to operate as independent levels of government.
- Such increased autonomy also needs to be complemented by appropriate accountability. This accountability needs to be directly to the citizens themselves, rather than to another level of government. Hence, formal mechanisms for such citizen-centric accountability need to be created, along with reforms in urban decentralisation.
- From the citizens' perspective, there need to be more opportunities to participate in local governance at many levels: in budgeting, planning, land use and zoning issues, and so on. Creating this opportunity to participate also complements the accountability issue mentioned above.
- A consistent mechanism for participation, planning and decentralisation across urban local governments will enables easier coordination at the regional planning level, through the District Planning Committees (DPC) and Metropolitan Planning Committees (MPC) that have been envisaged in the Constitution.
- Strong accountability mechanisms are also required on financial and operational management of the ULBs: budgeting, audits, presentation of financial statements to the public, performance measurement indicators and so on. Here again, the primary focus of these instruments needs to be citizens and users of public services,

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<sup>1</sup> Through the Ministry of Urban Development and Poverty Alleviation (MoUD&PA).

rather than other levels of government: i.e. accountability outward to citizens, rather than inward within government.

In this context, the Ministry of Urban Development prepared and circulated ‘Model Municipal Law’ with an objective to facilitate implementation of the 74<sup>th</sup> CAA provisions. The MML aims at facilitating state governments to amend their municipal acts such that they can institutionalize reforms aimed at empowering ULBs and enabling them to function as institutions of local government consistent with the provisions of the Constitution (Seventy-fourth Amendment) Act, 1992. .

The MML serves as an illustrative example of how, state governments can orchestrate their legal framework guided by their own choices. The main objectives of MML are:

- Reflect the full spirit of the Constitution (seventy-fourth) Amendment Act;
- Empower local bodies administratively and financially such that they are equipped to perform their functions;
- Enable the introduction of reforms with particular reference to allowing and promoting private sector participation, innovative methods of revenue generation, resource mobilization and sound financial and environment management; and

### **Salient Features of MML are:**

#### **Constitution and Government**

- Executive powers vested with Empowered Standing Committee
- Five-year term for Mayor/Chairman
- Provision for wards and ward committees
- Functions classified in terms of core, assigned by government, and others
- Dissolution of elected council only after review by a committee
- Re-election of dissolved council within six months

#### **Financial Management**

- State government to prepare municipal accounting manual
- Municipalities to prepare annual balance sheets
- Provision for appointment of a Municipal Accounts Committee
- Provision for appointment of chartered accountants as auditors
- Capital and revenue heads to be separated out in municipal accounts
- Separate accounting heads proposed for water supply, roads, etc.
- Annual subsidy and environmental status reports
- Annual inventory of municipal properties
- Comprehensive debt limitation policy by state government
- Enabling access to capital markets and financial institutions for capital investments

#### **Municipal Revenue Generation**

- Property tax (PT) assessment system on area or capital value basis
- Provision for self-assessment system for PT
- Unique property numbering system
- Reference to implementation of SFC’s recommendations

#### **Urban Environmental Infrastructure and Services**

- Participation of private sector, NGOs, and CBOs in delivery of services
- Service charges to reflect O&M and capital costs
- Provision to meet the Hazardous and Bio-medical Waste Handling Rules of MEF, GOI
- Provision to meet the Solid Waste Handling Rules of MEF, GOI
- State-level regulatory commission on municipal services

#### **Others**

- Representation to municipalities on District/Metropolitan Planning Committees
- Provision for implementation of development plans by Municipalities
- Easy planning approvals to small-sized buildings designed by architects

- Incorporate tools such as transparency and accountability and wider civic participation that would strengthen good urban governance in municipal bodies of the country.

This Municipal Law can serve as an illustrative example as to how, based on a given set of policy postulates, with its various dimensions, and the consequent legislative scheme, the legal framework may be developed which may be adapted and adopted by any State Government based on its own choices from the several policy options and facilitate adoption of a State-specific policy agenda, which together with the “Municipal Law” may help any State Government in reinventing municipal government, to respond to the challenges of the decades ahead.

### 3. Reform components

The 74th Amendment envisaged that functions, funds and functionaries should be transferred to municipalities so as to make them units of self-government. That is the essence of the Amendment. State governments need to amend their municipal laws to make that happen. Moreover an attitudinal change is called for in the state governments to look at an urban local body as means to strengthen governance in their state and not as their adversary. Having emerged as the third tier of government in India, municipalities now must own “the political accountability” for the roles assigned to them under the 74th Amendment and JNNURM, and share the “technical, financial, and administrative accountability” with others to whom they may assign their techno-economic roles. The implementation of 74<sup>th</sup> CAA should include the following legal and institutional reforms:

- **Constitution and Government**, covering constitution (through State Election Commissions) and composition of Municipalities, Wards Committees, Ward Committees and/or Area Sabha
- **Functional Domain of Municipalities**, including transfer of functions and staff from other levels of government and other bodies,
- **Municipal Finances**, including inter-government transfers through State Finance Commissions, including enhancing the internal resource generating capacity of the municipalities to cover the revenue expenditures,
- **Provisions or Enabling Provisions for Supply of Civic and Urban Infrastructure**, enlarging the scope for delivery of civic and urban services not only by municipalities but also by state government departments, their agencies, parastatals and even through public-private partnerships and
- **Development Planning** including inclusive planning for the poor, and their access to urban and civic services.
- **Institutional structures**, provisions for creation of institutions like State Election Commission State Finance Commission; District Planning Committee; Metropolitan Planning Committee

### 4. Steps to implementing the reform

#### State Level

- Clear the ambiguities in appreciating the policy framework and promoting the understanding of the 74th Amendment and the JNNURM mandates through municipality-wise workshops,

- State governments should set committees to review existing acts and prepare a state-level agenda;
- Finalize state-level agenda;
- Make enabling provisions in the law for provision of civic and urban services so as to facilitate the participation of other government departments/agencies, NGOs and public-private partnerships, for assuming the responsibilities for performance of the assigned functions
- Ensure that the legislative processes are within a rigid time frame completed for amending/framing new municipal which must be within the laws, including those for reforms in accountancy
- Constitute the municipalities at the three levels having regard to the new criteria for municipalization as specified in the law
- Make provisions in the law for powers and authority necessary to be devolved to the Municipalities. The yardstick for devolution is to enable Municipalities to function as institutions of self-government.
- Devolution is also to include performance of functions and implementation of schemes in relation to the matters listed in the 12th Schedule. The 12th Schedule lists 18 subjects.
- Devolution has to include the preparation of plans for economic development and social justice.
- Delegate financial powers and functionaries to municipalities and also constitute State Finance Commissions
- Constitute the State Election Commission, State Finance Commission
- Ensure regular Municipal elections.

### **Municipal Level**

- Undertake and complete the delimitation of wards
- Conduct municipal elections at five yearly intervals, or for filling vacancies for the remainder term
- Provide for special interest groups, by nomination, as provided in the law
- Elect the Chief Councillors and the Deputy Chief Councillors for the three levels of municipalities and constitute the Political Executives, if so provided for in the law
- Constitute Wards Committee(s) if so provided for in the law.
- Constitute a Ward Committee and/or an Area Sabha in each ward depending upon the demographic profile of the city
- Constitute other committees, namely, the Standing Committee(s), Subject Committee(s), *Adhoc* Committee(s), Joint Committee(s) or Municipal Accounts Committee, if so provided for in the law

### **The Mandatory Reforms and The 74th Amendment and JNNURM**

- (1) **article 243Q of the 74th Amendment** whereby Municipalities shall be constituted at three levels all over India, namely, *Nagar Panchayats* in areas in transition from rural areas to urban areas; *Municipal Councils* in smaller urban areas, and, *Municipal Corporations* in larger urban areas
- (2) **article 243Q(2)** whereby the classification among the above mentioned categories shall be done having regard to -
- (i) population of the area
  - (ii) density of the population therein
  - (iii) the revenue generated for local administration
  - (iv) the percentage of employment in non-agricultural activities
  - (v) the economic importance, or
  - (vi) such other factors as the Governor may deem fit
- (3) **article 243R(1)** whereby all the seats in a Municipality shall be filled by persons chosen by direct election, conducted vide **article 243ZA** by the State Election Commission, constituted under **article 243K** both for Municipalities and Panchayats, from the wards into which each municipal area shall be divided

**article 243R(2)** provides an option to the State Legislature (i.e. the State Government) to provide representation in a Municipality of –

- |   |    |                       |
|---|----|-----------------------|
| (i) persons having special knowledge or experience in municipal administration  | .. | with no voting rights |
| (ii) MPs, MLAs & MLCs, and  | .. | with voting rights    |
| (iii) Chairpersons of Committees constituted under clause 5 of article 243S on “Constitution and composition of Wards Committees” or other Committees | .. | ”                     |

#### ***Community Participation Law***

Also, according to a JNNURM mandate, a Community Participation Law shall be enacted in each State to institutionalize citizen participation in all urban areas through *Area Sabhas*

- (4) **article 243T** provides that seats in each Municipality, and for Chairpersons thereof, shall be reserved for the Scheduled Castes, the Scheduled Tribes and women, and may be reserved in favour of backward classes of citizens, as per the norms specified therein
- (5) **article 243U** stipulates that each Municipality shall enjoy a term of 5 years and no more, provided that if a Municipality is dissolved, subject to the conditions as specified, the election to constitute a new Municipality shall be held “before the expiration of a period of six months” from the date of its dissolution
- (6) **article 243Y** provides that the Finance Commission constituted under **article 243-I** shall also review the financial position of the Municipalities besides that of the Panchayats, and make recommendations to the Governor for the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State as also the assignment of, or appropriation of taxes, duties, tolls and fees by the Municipalities, or of the grants-in-aid from the State and on the measures needed to improve the financial position of the Municipalities

**article 280**, as amended, further provides that the (Central) Finance Commission shall have the duty to make recommendations to the President on the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State

- (7) **articles 243ZD and 243ZE** provide that a *Committee for District Planning* in each District, and a *Committee for Metropolitan Planning* in every metropolitan area\*, shall be set up, subject to the conditions that :
  - (i) in the case of a *District Planning Committee* not less than *four-fifths* of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district
  - (ii) in the case of a *Committee for Metropolitan Planning*, not less than *two-thirds* of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area.

Thus, the people’s representatives would, henceforward, have a predominant say in all planning matters.

### ***City Planning Functions***

The mandatory reforms under JNNURM also endorse meaningful association and engagement of ULBs in city planning functions and planning functions of parastatal agencies.

\*defined to be an area having a population of ten lakhs or more comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas as specified by the Governor.