

IV. Composition of Municipalities

4. *Having regard to the provisions of clause (1) of article 243R that all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each municipal area shall be divided into territorial constituencies to be known as wards, the question is how the number of wards would be determined.*

- (1) From the existing practices across India, it is noted that there are some municipal laws where -
 - (a) the law specifies a fixed number of Councillors who may be elected, or
 - (b) the law specifies the maximum number of Councillors, or
 - (c) the law specifies the minimum and maximum numbers of Councillors for various classes of Municipalities, together with the increments in population, for various ranges of population.
- (2) In specifying the numbers or ranges, the principle needs to be borne in mind that for any municipal area, within a given category, in any given State, the number of seats allotted thereto should, so far as is possible, be on a uniform basis.

This is best illustrated by the amendments made pursuant to the 1994 amendment in the Bombay Provincial Municipal Corporations Act, 1949, which specify the number of Councillors on the following basis, each ward being a single Councillor constituency :

<u>Population Range</u>	<u>Number of Elected Councillors</u>		
	<u>Minimum Number</u>	<u>One Additional Councillor for</u>	<u>Maximum Number</u>
- Above 3 lakhs and upto 6 lakhs	65	every 15,000 above 3 lakhs	85
- Above 6 lakhs and upto 12 lakhs	85	every 20,000 above 6 lakhs	115
- Above 12 lakhs and upto 24 lakhs	115	every 40,000 above 12 lakhs	145
- Above 24 lakhs	145	every 1 lakh above 24 lakhs	221

- (3) Thus, for specifying the number of wards in various municipal areas in any State, the State Governments would have to carefully consider both, the “population size” and the “underlying principles for representation” as stated above. *This is important as the political implications involved are serious and judicial interventions may also not be ruled out altogether.*
- (4) Considering the diverse demographic characteristics of the Indian States ranging from the sparsely populated North Eastern States, on the one hand, to the densely populated States of Uttar Pradesh and Bihar, on the other, standardization in this regard across the country may not be justifiable. However, the basic principles as enunciated above as also the characteristics of the 3-tier set up of the Municipalities in India need to be kept in view for the purpose of delimitation and specification of maximum and minimum levels for different population ranges as is done by the Delimitation Commissions in the case of delimitation of constituencies for Parliament and State Legislatures, by grouping the States in different categories.
- (5) Another issue arises with regard to the definition of “population” which is consistent with the definition in clause (g) of article 243P on Definitions according to which “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

The issue in this regard is that, if strictly followed, the determination of number of Councillors or the size of the electorate whom they would represent would have to vary according to the data published after every Census and the municipal maps may have to be redrawn frequently which is not only a politically sensitive issue but would be cumbersome administratively.

In this regard, it is noteworthy that for the Parliamentary and State elections, while the population as defined was pegged to the data of 1971 Census and was to be revised on the basis of the first Census after 2000, vide *article 81 on the Composition of House of People and article 170 on the Composition of Legislative Assemblies*, the National Democratic Alliance Government has decided that the numbers of members as specified under the relevant articles shall continue for another 25 years.

However, maintaining the same number of seats for the two houses, the Parliament has, during 2001, constituted a Delimitation Commission to demarcate the new ward boundaries across the country.

Provisions Made in the Municipal Law

6. *The Municipal Law has, in clause 13, separately specified for the Municipal Corporations, the Municipal Councils and the Nagar Panchayats, the minimum and maximum ranges together with the incremental numbers of Councillors for different population ranges.*

5. *Another question relates as to who should be responsible for delimitation of wards.*

(1) In this regard, it is to be noted that in Maharashtra and West Bengal, the State Election Commissioners have been assigned the powers for delimitation of wards whereas in Tamil Nadu and Punjab, the State Governments have been empowered to do so.

(2) For delimitation into territorial constituencies for Parliament, article 82 of the Constitution on *Readjustment after each census* provides as follows :

“Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine :

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House:

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies under this article.”

(3) *No provisions as such have been made in the Municipal Law to cover this situation as, ultimately, a remedy may lie in amending the Constitution itself on the lines of the provisions in article 82.*

6. *Regarding the provisions of clause (2) of article 243R which provides that the Legislature of a State may, by law, provide for the representation of (i) persons having special knowledge or experience in*

municipal administration, (ii) the members of the House of the People and the members of the Legislative Assembly of the State representing the constituencies which comprise wholly or partly the municipal area, (iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the municipal area and the (iv) Chairpersons of the Committees constituted under clause (5) of article 243S, the question is as to what should be the provisions made in any State law.

- (1) Each State Government would have to consider several policy issues and their implications with regard to the above constitutional provision as analyzed hereinafter.
- (2) As regards, *representation of persons having knowledge or experience in municipal administration*, since such members would not enjoy any voting rights, the only political implication which the State Governments may like to keep in view while incorporating any provisions in the municipal law for this purpose is to reduce, if not to fully eliminate, the scope for extending political patronage under this provision by specifying appropriate qualifications in the law for such nominees.
- (3) Regarding *representation of MPs, MLAs and MLCs*, it is noteworthy that there is a lack of uniformity in the provisions made by different State Governments through the conformity legislation.

Thus, in Madhya Pradesh, Haryana and Tamil Nadu, MPs and MLAs have been given representation in the Municipalities, *with either no voting rights, or restricted voting rights, which appears to be unconstitutional.*

However, in Andhra Pradesh, Assam, Karnataka, Rajasthan and Uttar Pradesh, representation has been provided *with voting rights.*

Gujarat, Kerala, Maharashtra, Orissa and West Bengal *have not provided* for such representation at all.

- (4) For the *representation of Chairpersons under item (iv) of sub-clause (a) of clause (2) of article 243R*, this aspect must be examined together with the provisions of clause (5) of article 243S which states that nothing in this article shall be deemed to prevent the Legislature of a State from making any provision for the constitution of Committees in addition to the Wards Committee as no limit has been specified in the Constitution as to the number of such committees.

Thus, if any number of such committees may be constituted and since under item (iv) of sub-clause (a) of clause (2) of article 243R, voting rights are provided for Chairpersons of such Committees, there is a likelihood of the political balance of a Municipality being disturbed *if the municipal law does not provide that such persons shall be from among the elected Councillors only.*

No Provisions Made in the Municipal Law

7. *The provisions of clause (2) of article 243R not being mandatory, no provisions have been made in the Municipal Law relating to the same.*