

XIII. Functional Domain of the Municipalities

15. *With reference to the provisions under clause (a) and clause (b) of article 243W of the 74th Constitution Amendment Act, 1992 regarding the (i) “preparation of plans for economic development and social justice; (ii) the performance of functions and the implementation of schemes as may be entrusted to them in relation to matter listed in the Twelfth Schedule,” the question is as to what should be the functional domain of the Municipalities ?*

- (1) To begin with, it is to be noted that the provisions of this article are not mandatory. It is for the Legislature of a State to decide as to which powers and authority it may devolve on any Municipality.

It may also be pointed out that the functional assignments may include items which are not only covered by this article and the Twelfth Schedule, but, may include other items too.

It may further be noted that conspicuous by their absence in this Schedule are matters relating to provision of transport infrastructure by any Municipality.

Each State Government has, therefore, to consider and decide about the functions which may be assigned by it, considering the managerial, technical and financial capacities of the Municipalities at various levels.

- (2) The erstwhile practice in most of the municipal laws is to list the functions in terms of “obligatory functions” and “discretionary functions”.
- (3) The existing scenario of the functional assignments is influenced by the existing “institutional arrangements” as also the roles assigned to the “parastatal agencies” or the “private sector”. The performance by the Municipalities of functions on behalf of other levels of governments, which hereinafter are referred to as “functions assigned by Government” is also among the matters for serious consideration.

(4) An analysis of the provisions of several existing municipal laws shows that the following items as referred to in the Twelfth Schedule are covered in most of the Acts :

- regulation of land use and construction of buildings (item 2 of the Twelfth Schedule);
- roads and bridges (item 4);
- water supply for domestic, industrial and commercial purposes (item 5);
- public health, sanitation, conservancy and solid waste management (item 6);
- fire services (item 7);
- provision of urban amenities and facilities such as parks, gardens and playgrounds (item 12);
- promotion of cultural, educational and aesthetic aspects (item 13);
- burials and burial grounds, cremation grounds and electric crematoriums (item 14);
- cattle pounds, prevention of cruelty to animals (item 15);
- vital statistics including registration of births and deaths (item 16);
- public amenities including street lighting, parking lots, bus stops and public conveniences (item 17); and
- regulation of slaughter houses (item 18).

However, urban planning including town planning (item 1), planning for economic and social development (item 3), urban forestry, protection of environment and promotion of ecological aspects (item 8), safeguarding the interests of weaker sections of society, including the handicapped and the mentally retarded (item 9), slum improvement and upgradation (item 10), urban poverty alleviation (item 11) and regulation of tanneries (item 18) are not dealt with in most of the Acts.

- (5) The issues for consideration are :
- (a) how to manage the mismatch between the revenue authority and expenditure responsibilities of the Municipalities,
 - (b) how should the planning, development, construction, operation and maintenance roles for delivery of civic services be assigned among the State Government Departments, the development authorities, the parastatal agencies, the private sector and the Municipalities,
 - (c) whether the costs of performing the “functions assigned by Government” may be under- written by the concerned levels of government, and
 - (d) how should Municipalities at different levels respond to their managerial, technical and financial capacities.

Strangely enough, neither the post 74th Constitution amendments of the existing municipal laws nor the new laws have addressed these issues so far to the extent desired, and the State Governments need to pay due attention to the same

Provisions Made in the Municipal Law

18. *The Municipal Law has classified the functions into 3 categories, namely :-*

- (1) *“Core municipal functions”, vide clause 47, including water supply, drainage and sewerage, solid waste management, roads, bridges, ferries and inland water transport systems,*
- (2) *“Functions assigned by Government”, vide clause 48, and*
- (3) *“Other functions” vide clause 49, which have been further sub-classified into 6 categories, namely, “town planning, urban development and development of commercial infrastructure”, “protection of environment”, “health and sanitation”, “education and culture”, “public welfare” and “community relations”.*

The law further provides that the Municipalities at all levels may provide or arrange to provide through any agency any of the “core municipal services” or may, subject to the satisfactory performance of its core functions as also its managerial, technical and financial capacity perform or promote the performance of the “other functions”. The “functions assigned by Government”

may be undertaken subject to the underwriting of the costs by the concerned levels of government or other agencies, and, subject to its managerial, technical and financial capabilities, the Municipalities may undertake or perform the “other functions”.