

PART VII

REGULATORY JURISDICTION

XXV. Development Plans, Improvement, Public Streets, Buildings, Municipal Licences and Vital Statistics

27. *With reference to entry 1 on Urban planning including town planning, entry 2 on Regulation of land use and construction of buildings, entry 3 on Planning for economic and social development, entry 9 on Safeguarding interests of weaker sections of society, including the handicapped and mentally retarded, entry 10 on Slum improvement and upgradation, entry 11 on Urban poverty alleviation, and entry 16 on Vital Statistics including registration of births and deaths, of the Twelfth Schedule, the issue is as to how would the subject matter under these entries be dealt with in the municipal laws.*

- (1) To begin with, it may be pointed out that while the conventional municipal laws dealt with several aspects relating to the above mentioned entries in Parts of the municipal laws entitled *Town Planning, Land and Land Use Controls* and in the Part on *Community Health* as related to *Vital Statistics*, this Part VII now entitled *Regulatory Jurisdiction* covers all these topics together.

A new Chapter has also been added in this Part on *Disaster Management*, covering both the natural and technological disasters, and another Chapter has been included on *Industrial Townships*.

- (2) As regards entries 1, 3, 9, 10 and 11 as mentioned above, it may be noted that, under the new concepts, they fall in the realm of *Development Planning* and not *Town Planning* as provided for in the conventional laws.

Considering the fire-fighting nature of the operations of the Municipalities in India, on the one hand, and the managerial, organizational and technical capacities of Municipal Councils of certain classes as well as the Nagar Panchayats, on the other, it is important to remember that the Municipalities, at best, can carry out only such functions as are delegated to them by other full time professionally competent authorities who may have to continue dealing with the detailed planning functions in the new context, including planning for socio-economic development, poverty alleviation, slum improvement, etc.

- (3) As regards the *planning practices*, besides the traditional system of planning with their roots in ancient civilizations and influence of cultural and architectural styles of the cities involved, governmental interventions have been made from time to time. These interventions have marginally changed over the years as both circumstances and ideas evolved.

The post-colonial British town planning legacy revolved around the Town and Country Planning Act, 1947, which is generally seen as a watershed in the development of town planning in Britain. Under this Act, *development plans* were to be prepared for all urban areas and an effective system of development controls was expected to be established. For better or worse, this legacy was passed on to many developing countries, including India.

This traditional planning practice, often referred to as *master planning* has been criticized on several grounds, namely :

- (a) it results in plans which are too time consuming to prepare and are difficult to implement,
- (b) the plans have a strong bias towards physical planning and negative aspects of development controls but do not cover the social and economic planning aspects, and
- (c) the plans have no correlation with the investment requirements and the resources available therefor.

In spite of the very obvious weaknesses of master planning, this approach still appears to dominate urban planning in India.

From a critical analysis of the provisions of the various Acts, it would be obvious that, in the present laws, there is a built-in bias towards *land use planning and preparation of land use-oriented Master Plans*.

- (4) Now, dissatisfaction with traditional, rigid and inappropriate master plans has led to the use of the *structure planning* approach in some cities.

Structure plans are intended to provide a broader strategic framework for subsequent local plans and take into consideration the regional context, the transportation linkages and the issues related to shelter and environment.

- (5) Concerns relating to the national patterns of *urban development*, the evolving economic structures of cities, the role of informal sector in cities and the political compulsions to manage the ever growing housing deficits have further complicated the agendas of the urban planners. Of late, the extremely valid political concerns for the urban poor and the new imperatives for management of urban environment have lent new dimensions to the tasks before the urban planners.

Furthermore, there being no interface between *economic planning* and *urban planning* in the master planning approach, investments in infrastructure commensurate with the needs generated by economic development plans have lagged behind. Also, due to the capital intensive nature of the industrialization processes, few new jobs have been created and a large portion of the urban work force has had to depend on the “informal sector” for which the master plans have no scope.

The consequent increasing levels of urban poverty, with important political implications, have added an additional dimension to the urban planners’ agenda. Their attention, therefore, has had to be diverted to tackle the burning questions of the access of the urban poor to jobs, shelter and affordable urban services.

The new urban environment management imperatives pose extremely difficult challenges so far as the urban poor are concerned because they are the worst sufferers even though they contribute least to the pollution problems. Thus, the pavement dwellers have the largest exposure to pollution from vehicles, industries and accumulated garbage dumps. For most of the urban poor, highly polluting domestic energy sources pose serious health hazards but others are beyond their purchasing powers. Unprotected water supply and inadequate sanitation facilities further affect their living environments.

Given these complexities, most governments have resorted to *ad hoc*, piecemeal approaches, more akin to fire fighting measures and the urban planning responses have lagged way behind the new compulsions for ensuring healthy living and work environments.

- (6) Furthermore, it is noteworthy that the urban sector has remained isolated from the main stream of development programmes in the country. This is due to the fact that

urban planning has remained largely an exercise of physical or spatial planning, without significant socio-economic and fiscal linkages. Thus, while industry, trade and agriculture have received substantial fiscal breaks during the several Five Year Plans since independence, the urban sector has continued to enjoy a low priority status in the national development programmes.

The critical task for the urban planners now is to integrate urban planning with the other sectors of the national economy so that there is larger resource allocation from the national and State levels for urban development.

- (7) As regards the *institutional framework* for urban planning, the evolution of urban planning institutions in India can be traced to the establishment of municipal institutions by the colonial rulers in the later half of the 19th century. Thereafter, with the setting up of the first Improvement Trust in Bombay, in 1898, such trusts were created in many other cities.

By 1920s, foundations were laid for setting up of State level town planning departments. Bombay established a town planning and valuation department in 1914. By the late 1960s, for several metro cities, the State Governments enacted Acts in the style of the Metropolitan and Regional Planning Acts. The Maharashtra Regional and Town Planning Act was enacted in 1966 and the Bombay Metropolitan Regional Planning Board was constituted in 1967.

Similarly, the Calcutta Metropolitan Development Authority was set up in the year 1970, the Bangalore Development Authority Act was passed in 1976 and the Bangalore Metropolitan Region Development Authority Act was placed on the statute book in 1985.

The Government of India enacted the National Capital Region Board Act in 1985 and constituted the National Capital Region Planning Board during the same year.

The Delhi Development Authority was the first such authority created in India in the year 1957. Later on, similar development authorities were set up in more than hundred cities and towns across the country.

Thus, it may be seen that the institutional scene covers, besides the local agencies, regional agencies, intra-state and inter-state agencies dealing with the planning issues.

- (8) The 74th Constitution Amendment has defined new institutional roles by way of the roles assigned to the *District Planning Committees* and the *Metropolitan Planning Committees*. However, inasmuch as the municipal areas in any State would always be less than the areas of the districts as well as of the metropolitan areas, separate enactments would have to deal with the development planning issues and the institutional roles therefor. The Municipalities' roles would revolve around the membership of the *District Planning Committees* and the *Metropolitan Planning Committees*.
- (9) *As such, no provisions have been proposed in the Municipal Law as all these aspects would have to be covered under newly conceived Development Planning Laws.*

Provisions Made in the Municipal Law

- 51.** Under Chapter XXXIV, on “Development Plans”, clause 303 provides for the representation of Municipalities in the District Planning Committees or the Metropolitan Planning Committees, as the case may be, having regard to the provisions of article 243ZD and article 243ZE of the Indian Constitution on “Development Plans”.

Clause 304 empowers the Municipality to implement development plans as assigned to them in this behalf, and, without generality of this provision, also requires that Municipality shall undertake preparation of plans for improvement schemes, area improvement schemes and slum improvement schemes as also prepare plans for infrastructure development including water supply, drainage and sewerage, solid waste management, roads and transport system accessories.

- 52.** *The other provisions made in the Municipal Law relate to several aspects of improvement as covered in clauses 305 to 318, under Chapter XXXV, as listed below :*

<i>Clause 305</i>	..	<i>Removal of congested buildings</i>
<i>Clause 306</i>	..	<i>Power to require improvement of building unfit for human habitation</i>
<i>Clause 307</i>	..	<i>Power to order demolition of building unfit for human habitation</i>
<i>Clause 308</i>	..	<i>Area improvement scheme</i>
<i>Clause 309</i>	..	<i>Matters to be provided in area improvement scheme</i>

Clause 310	..	<i>Submission of area improvement scheme to Municipality and State Government</i>
Clause 311	..	<i>Re-housing scheme</i>
Clause 312	..	<i>Area improvement scheme and re-housing scheme to comply with structure plan</i>
Clause 313	..	<i>Execution of area improvement scheme</i>
Clause 314	..	<i>Power to acquire land and building for area improvement scheme</i>
Clause 315	..	<i>Power of Municipality to define and to alter limits of slum</i>
Clause 316	..	<i>Slum improvement scheme</i>
Clause 317	..	<i>Acquisition of right of user</i>
Clause 318	..	<i>Work to be executed in slum</i>

- 53.** *In relation to public streets, covered under Chapter XXXVI, besides the regulatory provisions regarding definition of regular lines of streets and enforcement thereof, the innovations introduced include constitution of Municipal Streets Technical Committee, under clause 319, classification of public streets under clause 320, compulsory provision of footpaths along the specified categories of streets, under clause 321, and assignment of unique premises number, under clause 323.*
- 54.** *Provisions have also been made for the first time for specifying the rights of way for underground utilities, under clause 324, and for preparation of maps of underground utilities, under clause 325.*
- 55.** *Clauses 327 to 333 deals with matters relating to definition of the “regular lines of streets” and the related provisions.*
- 56.** *A new provision under clause 338 has been made for restoration of municipal properties by public utilities.*
- 57.** *In Chapter XXXVII on Buildings, besides specifying under sub-clause (2) of clause 339 the “occupancy” or “use groups” in terms of residential buildings, educational buildings, institutional buildings, assembly buildings, business buildings, mercantile buildings, industrial buildings, storage buildings and hazardous buildings, detailed provisions have been made regarding the procedure for sanction of building plans. The general powers of the Municipality related to Buildings, and*

regulation of building uses have also been covered by various clauses as listed in the following page :

- Clause 340 .. Prohibition of erection without sanction*
- Clause 341 .. Erection of building*
- Clause 342 .. Application for addition to, or repair of, building*
- Clause 343 .. Purpose for which building to be used and conditions of validity of notice*
- Clause 344 .. Sanction or provisional sanction or refusal of building or work*

The noteworthy feature is that erection of a residential building upto a height of three storeys, or with a height of eleven metres or less, may be commenced and may be proceeded with if the building plan has been prepared by an architect registered under the Architects Act, 1972 and authenticated by him certifying that the building plan for such erection conforms to the provisions of the Act and has been submitted to the Chief Municipal Officer before commencement of work.*

With a view to promote transparency in sanctioning of building plans in case of buildings with a height of above eleven metres, it has also been provided that the Municipal Commissioner shall, at the cost of the person in whose favour such sanction has been given, cause publication of the fact of such sanction.

The other innovation relates to constitution of a Municipal Building Committee for Municipal Corporations, Class 'A' Municipal Councils and Class 'B' Municipal Councils, under clause 345, with representatives of the Planning and Development Authorities, the Traffic Police and the Fire Services. Scope has been provided for co-option of one member, to be nominated by the concerned department of the State Government, while dealing with any case regarding any educational building, or institutional building, or assembly building, or industrial building, or hazardous building.

Clause 346 provides for constitution of a Committee or Committees by the State Government to deal with the sanction of building plans in case of Class 'C' Municipal Councils and Nagar Panchayats.

The regulatory powers to manage the illegal construction activities include the following :

<i>Clause 350</i>	<i>..</i>	<i>Order of demolition and stoppage of buildings or works in certain cases and appeal</i>
<i>Clause 351</i>	<i>..</i>	<i>Order of stoppage of building or work in certain cases</i>
<i>Clause 352</i>	<i>..</i>	<i>Construction of building in contravention of the provisions of the Act or the rules made thereunder</i>
<i>Clause 353</i>	<i>..</i>	<i>Power of Chief Municipal Officer to require alteration of work</i>

Provisions have also been made under clause 356 for setting up of a Municipal Building Tribunal.

- 58.** *Chapter XXXVIII, in one place, consolidates all the provisions relating to Municipal Licenses as may be issued by the Municipality under clauses 369 to 375.*
- 59.** *Chapter XXXIX deals with vital statistics, including registration of births and deaths, and appointment of Registrars. The allied matters are dealt with under clauses 376 to 387.*
- 60.** *A new Chapter XL entitled Disaster Management, under clause 388, deals with the management of natural or technological disasters.*
- 61.** *Chapter XLI, under clause 389, provides that Industrial Townships as defined under the proviso to clause (1) of article 243Q of the Constitution would be excluded from municipal jurisdictions. It is expected that a separate State enactment would deal with the same.*

* Each State Government may, having regard to the local conditions and practices, decide the number of storeys or height of buildings and the plot area on which erection of a residential building may be commenced if the plans for such buildings are prepared by a duly registered architect.