

**Policy Options for Framing
New Municipal Laws in India for
Implementation in Totality of the Provisions of
the Constitution (Seventy-fourth Amendment) Act, 1992 and
the New Compulsions for Urban Management Reforms**

Executive Summary

From Manipur to Maharashtra

1. It is well known that the municipal laws cover a very wide canvas. Also, unlike many other laws, the municipal laws in India are greatly influenced by the Statewise politico-socio-economic and cultural environments as well as the local level perceptions and traditions. These laws, often, are voluminous and may run into five hundred sections or even more.

2. It is also well known that the starting point for any legislation is to define the legislative intentions which, in turn, are governed by the policy prescriptions as formulated by the respective State Governments. The policy prescriptions are influenced by the “political thoughts” of the governments for the time being and represent their appreciation of the needed reforms.

3. The policy agenda at State-specific levels has to be considered having regard to the constitutional, political, legal, demographic, economic, fiscal and administrative parameters, all considered together. Principles underlying participation, decentralization, autonomy and accountability of representative urban local governments have to be kept in view in this regard.

4. Governance, organizational design, functions, powers and power hierarchy, mobilization of financial resources for self-sufficiency of Municipalities and management thereof, provision of urban environmental services and financing thereof, besides development planning and development controls and the roles of higher levels of government and the parastatal agencies, if any, relating to all above define the areas for in-depth analysis of the policy issues.

5. *The fundamental point to be underlined is that in different State-specific situations, varying from Manipur to Maharashtra, the policy agenda would be based on consideration of different policy options altogether, and the policy analysis would highlight the attendant issues relevant to each option. Thus, the policy agenda is bound to vary from State to State.*

Framework for Policy Analysis

6. Duly appreciating this point, it was felt that the real assistance which any State Government may appreciate is in the listing of the policy issues and options and presentation of an analysis of their implications so that it may select its own policy options for consideration and approval, both at the political and administrative levels.

7. Consequently, under an assignment from the Financial Institutions Reform and Expansion (FIRE-D) Project sponsored by the Office of Economic Growth of the United States Agency for International Development (USAID), The Times Research Foundation (TRF) had prepared 4 papers on *Policy Issues, Options and Legislative Intentions* on the following themes:

- (1) Governance of Municipalities,
- (2) Municipal Finance and Financial Management of Municipalities,
- (3) Supply of Urban Environmental Infrastructure and Financing Thereof, and
- (4) Development Planning, Local Agenda for Urban Environment Management, Community Health and Residual Parts of the Municipal Laws.

These Policy Options Papers are separately available from the FIRE-D Project authorities.

8. The USAID-FIRE-D Project authorities, subsequently, desired that a *Policy Options for Framing New Municipal Laws in India* may be prepared on the Policy Issues, Options and Legislative Intentions, its objective being to present before the State Governments, in a user-friendly manner, the policy options for consideration and the policy implications thereof so that each State Government may choose its own options on the basis of which Cabinet approval may be obtained of the State-specific Policy Agenda and, subsequently, legislative intentions may be specified for the Law Department to undertake the legislative drafting exercise.

Model Municipal Law

9. Furthermore, appreciating the urgency for carrying forward the legislative reform process beyond the stage of the conformity legislation passed by all the State Governments by 31st May, 1994, and having regard to the need for *implementation in totality of the provisions of the Constitution (Seventy-fourth Amendment) Act, 1992*, at the instance of the Ministry of Urban Development, Government of India, the FIRE-D Project authorities commissioned TRF for one more exercise during mid-August 2001 – that of preparing the legislative draft of a *Model Municipal Law*, hereinafter referred as the Municipal Law, based on a legislative scheme having regard to one set of policy parameters with the largest possible common denominator and relevant for good urban governance.

TRF responded to this need by putting together a competent legislative drafting team led by a former Chief Secretary to Government of West Bengal and a legislative draftsman whose services were availed of by the State Government for eleven years even after his superannuation.

The Municipal Law thus prepared was reviewed at an Interface Meeting by a Panel of Experts which included a former Secretary to the Government of India, Ministry of Urban Development and a former Joint Secretary in the same Ministry.

This Municipal Law, at best, 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.

Part wise Organization of the Municipal Law

10. The Municipal Law has been organized under the following 8 Parts :

Part I .. Preliminary

Part II .. Constitution and Government

Part III .. Financial Management of Municipalities

Part IV .. Municipal Revenue

Part V .. Urban Environmental Infrastructure and Services

Part VI .. Urban Environmental Management, Community Health and Public Safety

Part VII .. Regulatory Jurisdiction

Part VIII .. Powers, Procedures, Offences and Penalties

Some Distinctive Features of The Municipal Law

11. From the Partwise coverage of the subject matter dealt with in the Municipal Law, it may be noticed that a departure has been made from the conventional legislative schemes of such laws some of which were drafted more than a century ago.

Thus, in Parts II to VII as listed above, a selected few of the innovations made, both in terms of the new features provided for in the Municipal Law and the new scheme of presentation thereof, based on the new compulsions from the provisions of the 74th Constitution Amendment Act, 1992, and the new concerns for urban management reforms in the context of the new millennium, have been highlighted hereinafter.

12. For instance, in ***Part II on Constitution and Government*** -

- (1) having regard to the provisions of clause (1) of article 243Q of the 74th Amendment, a new chapter has been incorporated on “Constitution of Municipal Areas and Classification of Municipalities”
- (2) to give substance to the constitutional mandate in article 243W that “the Legislature of a State may, by law, endow the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government”, a role of a “political executive” has been created in the style of an Empowered Standing Committee
- (3) for the purpose of “democratic decentralization” of the local governments, and for spreading local democracy far and wide, on the basis of the provisions of clause (1) of article 243S, “Wards Committees” have been proposed. Also, for promoting

citizen-civic body interface and for ensuring “citizen participation” at the grass-root levels, “a Ward Committee in each Ward” has been proposed in accordance with the provisions of clause (5) of article 243S

- (4) the chapter on “Organizational Structure of Municipality” creates scope for appointment of “statutory officers” and for constitution of “Cadres of Common Municipal Services” and for setting up of a “Municipal Service Commission for Municipal Corporation” and a “State Municipal Service Commission for Municipal Councils and Nagar Panchayats” as also for the appointment of a “State Municipal Vigilance Authority”.

An innovation has been introduced by providing for the constitution of a “Municipal Establishment Audit Commission” which shall, at five yearly intervals, review the status of the Establishment Schedules of various Municipalities in the State

- (5) having regard to the managerial, technical and financial capacities of the Municipalities at various levels, a new scheme has been adopted to manage the mismatch between functions and finances by listing under the “Functional Domain of Municipalities”, “Core municipal functions”, “Functions assigned by Government” and “Other functions”.

13. In ***Part III on Financial Management of Municipalities***, besides a new name for this *Part* which, in the conventional municipal laws, is entitled as “Accounts and Audit”, the Municipal Law introduces the following innovations :

- (1) to ensure that salaries do not eat into the entire “Municipal Fund”, the Municipal Law includes an enabling provision whereby keeping in view the classification of municipal areas, the receipts and expenditures of any Municipality may be kept under various heads of accounts including those for “water supply, drainage and sewerage”, “solid waste management”, “road development and maintenance”, “slum services”, “commercial projects” and the “general account”.

Also, provisions have been made that under all the accounting heads, the “revenue account” and the “capital account” would be maintained separately

- (2) for the purpose of “Accounts and Audit”, enabling provisions have been made for introduction of the latest system of accounting on the basis of a “Municipal Accounting Manual” to be prepared by the State Government, and for preparation of a “financial statement containing an Income and Expenditure Account and Receipts and Payments account” as also of a “Balance sheet” of the Assets and Liabilities of any Municipality.
- (3) in order to ensure “accountability”, provisions have been made for constitution of a “Municipal Accounts Committee” on the lines of the Public Accounts Committees in the Parliament and the State Legislatures
- (4) enabling provisions have been made for “Credit Rating of Municipal Bonds” by credit rating agencies
- (5) on the lines of the 1994 amendment of the Bombay Municipal Corporation Act, 1888, “a Report on Services Provided in a Subsidized Manner” which would have to be prepared and presented along with the budget estimates has been proposed for indicating the “extent of subsidy”, the “source from which the subsidy was met” and the “beneficiaries” thereof, for water supply, disposal of sewage and solid wastes
- (6) in order to focus attention on the exploitation of municipal properties as a revenue resource, a chapter on “*Municipal Property*” provides for preparation and submission along with the budget estimates of an inventory of immovable municipal properties along with a statement on their optimum exploitation.

14. In ***Part IV on Municipal Revenue*** -

- (1) while maintaining the correct focus on the “taxation domain of the Municipalities”, a chapter on “*Sources of Internal Revenue*” has been included so as to emphasize on the need for “*enhancing the internal resource generation capacities*” of the Municipalities from other sources too

- (2) as desired by the Union Ministry of Urban Development, the draft legislation does not feature the legislative scheme for property tax on lands and buildings, assessment and incidence of property tax.

On the other hand, this policy options paper presents the complete legislative schemes, as framed under the Patna Municipal Corporation Act, 1951 (*Annex 7*); the Bombay Provincial Municipal Corporations Act, 1949, as amended in 1999, for Gujarat (*Annex 8*); the Madhya Pradesh Municipal Corporation Act, 1956, as amended in 1997 (*Annex 9*); the Tamil Nadu Urban Local Bodies Act, 1998 (*Annex 10*), and the Karnataka Municipal Corporations (Amendment) Ordinance, 2000 (*Annex 11*).

Also included in *Annex 12* is a constitutionally and legally valid “area-linked system designed by TRF for determination of annual values”, a progressive rate structure based on the “straight line system” introduced in the Calcutta Municipal Corporation Act, 1980 and in the much lauded Bengal Municipal Act, 1993, a surcharge on properties used for “non-residential” purposes and an additional surcharge on “rented properties” for the levy of property tax by the Municipalities.

Besides, a separate rate structure has been specified for any land, *hut* or building in any slum. Provisions have also been made for self-assessment of land and buildings by its owner or any person liable to pay the property tax or by the occupier.

In addition, a water tax and a fire tax have also been proposed in the draft legislation. A new tax has been proposed in the Municipal Law on “deficits of parking spaces in non-residential buildings” by certain Municipalities

- (3) as regards the tax on advertisements, besides requiring that a licence may be obtained from the Municipality for the use of any site for the purpose of advertisement having regard to traffic, safety, and aesthetic considerations, it has been proposed that an advertisement tax would be levied depending upon the location, size and medium of advertisement including the advertisements in the transportation terminals. A role has been created for the advertising agencies in respect of the bulk advertising spaces and they have been charged with the responsibility for collection of taxes subject to deduction of collection charges. A surcharge has been proposed for advertisements on display in any temporary congregation of whatever nature

- (4) surcharges have also been proposed on the taxes levied on entertainments under the relevant State laws and on consumption of electricity
- (5) besides the tolls on roads, bridges and ferries, a toll has been proposed on heavy trucks and buses plying in any municipal area on the model of the provisions of the West Bengal Municipal Act, 1993, and
- (6) a chapter on “*Commercial Projects*” has been included in order to tap revenues from this potent source

15. ***Part V on “Urban Environmental Infrastructure and Services”*** which was earlier known as Part on Civic Services provides, in the first place that the Municipality may on its own or on the basis of a private sector participation agreement promote the undertaking of any project involving a company, a firm, a society, a trust or any body corporate or any institutional, statutory or government agency in financing, construction, maintenance and operation of projects for supply of urban environmental infrastructure or services.

16. This Part includes chapters on “Water-supply, Drainage and Sewerage (including trade effluents), Solid Wastes (including bio-medical wastes and hazardous wastes), Communication Systems including streets, street furniture, street lighting, traffic engineering schemes, parking lots and bus stops, and for provision of Markets, Commercial Infrastructure and Slaughter houses”.

17. Enabling provisions have also been made in the law so that the Municipalities may provide these services on their own, or arrange to have the same provided by other agencies under various types of private sector participation agreements.

18. In the Water Supply, Drainage and Sewerage chapters, provisions have been made for –

- (a) levy of sewerage charges and sewerage cess,
- (b) maintenance of complete survey maps, drawings and description of underground water mains, supply pipes, drains, sewers, etc.
- (c) prohibitions have been made regarding construction of building, wall, fence or other structure or any railway, or private street on any municipal drain on any watermain, as also for sanction of building plans unless such plans conform to the requirements

under the rules and regulations for water supply, drainage and sewerage, and availability of privy and urinal accommodation within the premises as may be made in this behalf.

19. A new chapter has been introduced on the constitution of and functions of a State Municipal Regulatory Commission.

20. **Part VI on Urban Environmental Management, Community Health and Public Safety** presents, in its first chapter, the “*Local Agenda for Urban Environmental Management*” and separate chapters have been devoted to “*Environmental Sanitation and Community Health*”, “*Restraint of Infection*”, “*Disposal of the Dead*”, and “*Urban Forestry, Parks, Gardens, Trees and Playgrounds*”.

21. Provisions have been made for “preparation and submission of an Annual Report on the Environmental Status” of the municipal area at the time of submission of the budget estimates.

22. **Part VII on Regulatory Jurisdiction** covers the regulatory functions of any Municipality and it includes chapters on “*Development Plans*”, “*Improvement*”, “*Public Streets*”, “*Buildings*”, “*Municipal Licences*”, “*Vital Statistics*”, “*Disaster Management*” and “*Industrial Townships*”.

23. In the chapter on “*Development Plans*”, a clause has been included to provide for representation of the Municipality in the District Planning Committee(s) or the Metropolitan Planning Committee(s), as the case may be.

24. **Part VIII on Powers, Procedures, Offences and Penalties** deals with the conventional provisions under this Part.

Guidelines for Drafting State-Specific Laws

25. A “synthesis of the policy options and implications” thereof based on the Policy Issues, Options and Legislative Intentions Papers referred to in para 7 above is being presented in the following pages, in a sequence which may 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.