

**Implementation of the 74th Constitutional
Amendment**

and

**Integration of City Planning and Delivery
Functions**

State Level Reform

A: Implementation of the 74th Constitutional Amendment

1. The Reform

Since the early 1990s Government of India (GoI) has undertaken several initiatives aimed at decentralizing urban governance. The 74th Constitution Amendment Act (CAA), 1992 was one such initiative, which gave constitutional recognition to the urban local bodies along with the constitutional right to exist. A new Twelfth Schedule to the Constitution provides recommended list of local functions. The 74th 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”. The Constitution (74th Amendment) Act, 1992 provides a basis for the State Legislatures to transfer various responsibilities to municipalities and to strengthen municipal-level governance. Accordingly, several state governments have amended their Municipal Laws by bringing them in conformity with the Constitutional provisions. Implementation of the 74th Constitutional Amendment is a mandatory reform to be carried out at State level under JNNURM. Article 243ZE of the Constitution required all state governments to review the existing municipal laws and either repeal or modify those which are inconsistent with the provisions of the 74th CAA within one year from the commencement of the Act.

While state governments ratified the 74th CAA, they have found it difficult to implement its provisions in totality. The main problem is that 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 enhancement in tax rates and user charges beyond the limits mentioned in municipal laws. Furthermore, ULBs have limited powers to institute new taxes. Therefore the thrust of the JNNURM reform is to ensure improvement in urban governance and service delivery so that ULBs become financially sound and sustainable.

2. Reform components

JNNURM reform have specified following provisions of the 74th CAA to be addressed through this reform:

- A. Municipal Elections**
- B. Constitution of District Planning Committee and Metropolitan Planning Committee**
- C. Constitution of State Finance Commission**
- D. Convergence of Urban Management Functions**

A. Municipal Elections

Under the Constitution, an election to Urban Local bodies every five years is mandatory. Article 243 U stipulates that each Municipality shall enjoy a term of 5 years and no more. If a Municipality is dissolved, subject to the conditions as specified, the election to constitute a new Municipality is required to be held “before the expiration of a period of six months” from the date of its dissolution.

Though elections have been held in most States, their regularity continues to be a problem. Time and again issues relating to reservation and delimitation and non-preparedness of electoral rolls have been cited as reasons for postponing local body elections by various States.

The JNNURM reform reinforces the existing provisions in the Constitution and requires the states to consider the following:

- It shall be the duty of a State to ensure the conduct of elections at five years intervals.
- Each state should make appropriate provisions in the Municipal Laws to constitute State Election Commission (SEC) and define its role and responsibilities as per Article 243-K of the constitution.
- Appropriate provisions should be made in the Municipal Acts to specify that the responsibility of conduct over elections, including all preparatory steps like the electoral roles, delimitation, reservation, and rotation. The responsibility for the same shall vest with the State Election Commission.
- SEC should be the single and common electoral authority in the State for all local body elections and elections to the State Legislatures.
- It should also be the duty of the State Election Commissioner to ensure timely elections and in the event of possible delay, make a report to the Governor of the State explaining the problems and suggesting remedial action to fulfill the requirements of the Commission.

Some Important Judgments on Municipal Elections:

In *Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad*, the court unanimously ruled that municipality has a fixed life of five years, and the elections of a new municipality must be held before the expiry of that period under Article 243U. The State Election Commission, whose powers in this regard are similar to the Election Commission of India, must take all necessary steps to hold elections as required in Article 243 U.

The Supreme Court in its judgment dated 12.08.1997 (W.P. Civil No.719 of 1995) clearly stated that Articles 243E and 243U on both Panchayat and Municipal elections, respectively, are mandatory and not discretionary. It ruled that “failure to hold elections except in case of genuine supervening difficulties amounts to flouting the Constitution. Supervening difficulties have been adequately described such as natural calamities like flood, earthquake or extremely urgent situation prevailing in the State for which election cannot be held within the time frame.”

B. Constitution of District Planning Committee and Metropolitan Planning Committee:

With increased urbanization, the need for integrated planning is becoming ever more important. Articles 243ZD and 243ZE specifies the creation of a Committee for District Planning in each district, and a Committee for Metropolitan Planning in every metropolitan area (defined to be an area at least ten lakhs populations across f two or more Municipalities or Panchayats or other contiguous areas as specified by the Governor).

The rationale for having these committees is to provide consistent and integrated planning for contiguous urban and/or geographic areas. These committees should provide new dimensions for the roles of citizens and their elected representatives in preparation of regional plans, including plans for infrastructure development. Participatory plans need to play important roles for deciding investment policies and project priorities.

ULBs within one district or contiguous geographic area have to share many physical and economic resources/infrastructure such as communications, water and market places. Allocation of water for irrigation, drinking and industry is already becoming a contentious issue in many districts. Dealing with each other's solid waste is another serious problem. Municipal solid waste- be they chemicals, plastics, hospital wastes or other debris- spill over into the countryside and find their

way into neighboring streams. Agricultural lands at the fringe of towns are increasingly prone to conversion. These are the challenges that need shared understanding and collaborative responses, not in a distant State headquarter but within the local areas. The district level needs a platform to resolve these issues. It was thus envisaged that District Planning committee will consolidate the plans prepared by individual panchayats and municipalities into one integrated district development plan.

Role of District Planning Committee:

District Planning Committees should be formed to: provide overall leadership to the district planning process;

- Lead the process for creating a vision for the district;
- Setting district priorities on the basis of consensus among local-governments, line departments, civil society, academia and other stakeholders in development;
- During the process of consolidation, review master plans of local governments and development departments, particularly to ensure that these address the district vision as a whole without overlap or duplication;
- Prepare the Potential Linked Credit Plan (PLCP) for the district, with the support of the National Bank for Agricultural and Rural Development (NABARD); and,
- Oversee the participative planning process of the district development plan, to ensure that timelines are followed.

Source: Manual for Integrated District Planning by National Planning Commission

State 'Town and Planning Acts'

provide the legal framework for integrated planning. However, almost all of these laws pre-date the 74th Constitution Amendment and do not provide a formal role for the District Planning Committee. This legislation needs to be modified on the basis of the Model Urban and Regional Planning and Development Law (revised) prepared by the Ministry of Urban Development as part of Urban Development Plans

Formulation and Implementation (UDPI) Guidelines. The model law includes provisions for constituting District Planning Committees. It also provides guidelines for preparing Development Plan for the district. West Bengal enacted a separate District Planning Committee Act in 1994 that created its structure, functional mandate, and rules of operation. In the case of Madhya Pradesh it has been claimed that the District Planning Committee

Possible Conflict of Jurisdiction: Some states have misconceptions about the possible conflict of jurisdiction between MPCs and DPCs. Since metropolitan areas are predominantly urban, the rural or the Panchayat component in the MPCs would be rather small. Where urban areas are co-terminus with revenue districts, such as Bangalore, Chennai or the Calcutta, the problem does not arise at all. And in such cases a DPC is not necessary. Where a part of a revenue district is included in a metropolitan area, State Governments can suitably redefine the boundaries of a DPC or MPC appropriately. Alternatively, a functional delineation is also possible. The Tamil Nadu Government defined the MPC for the Chennai metropolitan area to also be a DPC for those portions of the revenue districts which are included in the metropolitan area. Under the Constitution of India, it is up to the State Governments to determine the jurisdiction of the DPC and the MPC to avoid conflicts, if any.

is really a step forward towards the establishment of a district government. The DPC has been given the powers to supervise and monitor district level schemes undertaken by different departments of the Government. Amended in 1999, the DPC Act of 1995 has also given to it the powers of administrative approval and financial sanctions subject to some limits.

As focal points of economic growth and service delivery, metropolitan areas need quality transport, water supply, waste management, police, public health, etc. Much of this

infrastructure has to be designed with geographic and population considerations that do not always correspond with local government jurisdictions.

Because major infrastructure often serves multiple ULBs it is not possible for individual city corporations or municipalities to address all of them. Big cities are really agglomerations of several municipalities. Greater Mumbai is somewhat of a misnomer because it does not cover all of the Mumbai Metropolitan area; Thane, Bhiwandi, Ulhas Nagar or Navi Mumbai are all different Corporations. These multi-municipal urban agglomerations have reached their present size and configuration over time. Urban growth has overrun traditional boundaries, and there is often stiff resistance to annex/consolidate multiple jurisdictions. The Calcutta metropolitan area now comprises of three corporations, thirty-four municipalities and numerous non-municipal urban localities. It is envisaged that the Metropolitan Planning Committee shall prepare a draft development plan consolidating the plans of each municipality and panchayat in the Metropolitan Area.

DPCs and MPCs are similar in design, but serve different types of population centres. DPC have more rigorously defined jurisdictions consistent with India's district-based administrative structure. In contrast, MPC is based on actual urban growth, and therefore, its boundaries will be more amorphous over time. Hence, an MPC could theoretically cut across multiple districts. These committees formally recognize the emerging need of institutional arrangements for planning at the appropriate spatial level. They serve as a platform for coordination between local aspirations and common issues of development.

The JNNURM reform reinforces the existing provisions in the Constitution and requires the states to consider the following:

- Review existing Town Planning laws and appropriately modify them on the basis of the Model Urban and Regional Planning and Development Law (revised) prepared by the Ministry of Urban Development as part of Urban Development Plans Formulation and Implementation (UDPFI) Guidelines.
- Make appropriate enabling provisions in the state municipal legislations to constitute DPC/MPC as envisaged under Articles 243ZD and 243ZE. The Ministry of Urban Development has already issued an advisory for constituting MPCs (Annexure I). The National Planning Commission has also provided guidance on District Planning Committees through a Manual on Integrated District Planning available at http://planningcommission.nic.in/reports/genrep/mlp_idpe.pdf
- Where Metropolitan Planning Committees (MPCs) are required to be set up, State municipal laws and regulations should determine the functional and territorial jurisdiction of the DPCs as distinct from the MPCs. Where Metropolitan Planning Committees exist for predominantly urban districts, they should be deemed as DPCs, as no separate DPC is necessary.
- Define the composition, role and responsibilities of MPC/DPC as well as their jurisdictions as envisaged under the constitutional provisions including specifying the organisation which will function as the technical and administrative secretariat of the MPC/DPC.

C. State Finance Commission

Article 243Y of the Constitution provides that a Finance Commission should be constituted, as defined by article 243 I, to review the financial position of Municipalities and Panchayats. Based on its review, the State Finance Commission (SFC) should make recommendations to the Governor about the distribution of revenue between the State and Municipalities including proceeds of taxes, duties, tolls and fees. As part of this, the SFC can recommend the assignment of new fiscal authority to Municipalities and better designs of grants-in-aid from the state in order to improve the financial position of the Municipalities.

The Governor of every state is required to constitute a SFC every five years to review the financial position of all local bodies (panchayats and Municipalities). The Governor may also refer specific matters to the SFC for consideration. Even though the mandate for the SFCs is clearly stated in the Constitution, the manner of functioning is determined by the SFC and state government. The Governor is required to publish every recommendation made by the SFC along with a memorandum explaining the action taken thereon for the Legislature of the State.

India’s Thirteenth Finance Commission has issued various guidance notes to help link the centre and state finance commissions. The states can access these guidance notes from <http://fincomindia.nic.in>. The annex of this Primer also has the Advisory issued by MoUD on constitution of SFCs.

JNNURM requires the following steps to be taken by states for implementing this reform:

- Provision in the municipal laws to constitute State Finance Commissions at the expiration of every fifth year for the financial review of local bodies and to make recommendations to the Governor.

Rajasthan Municipalities Ordinance 2008
 The Rajasthan Government ratified the new municipal law on September 26, 2008. It is mainly based on Model Municipal Law. It has many enabling provisions to implement reforms under JNNURM like: (a) transferring various functions to ULBs, (b) introducing tax on land and buildings on unit area basis, (c) forming Area Sabha for community participation, (c) establishing MPCs and DPCs, (d) making Town Planning a municipal function, (e) introducing rainwater harvesting, (f) encouraging PPP, (g) introducing improved accounting, (h) introducing public disclosure, (i) setting up SFC and implementing its recommendations, etc. There are also some very innovative enabling provisions for issuing municipal bonds, comprehensive debt limitation policy, setting up a municipal service cadre, etc. The Ordinance divided municipal functions into core (ULB responsibility), government assigned (state responsibility) and other functions. As progressive as it is, water supply and sewerage are not identified as core functions but still remain state assigned.

- Define the composition of the State Finance Commission and the criteria for its membership
- Setup the timeframe for preparing SFCs recommendations
- Determine a timeframe to submit the report before the State Legislature and prepare an Action Taken Report by the Government on the recommendations of the SFC recommendations.

D. Convergence of Urban Management Functions

Article 243W of the Constitution requires State laws to endow the Municipalities “with such powers and authority as may be necessary to enable them to function as Institutions of self government”. A Twelfth Schedule to the Constitution provides recommended list of local functions which states may by law endow to to urban local bodies.

The JNNURM reform seeks to implement Article 243W of the Constitution by transferring some functions from the state to ULBs. These functions relate to local municipal services and therefore are best managed by the ULBs. This creates local accountability of the ULB to the electorate in those areas where citizens expect their local government to act. It also provides the ULB with tools to influence the development and management of its city, which are fundamental purposes of constituting a third level of democratic government. .

The Model Municipal Law (MML) circulated by Ministry of Urban Development provides sufficient guidance to states towards implementation of these provisions of 74th CAA. The MML acts as a resource from which states can tailor their own municipal acts. The MML classifies municipal functions into 3 categories, namely :-

- “Core municipal functions”, including water supply; drainage and sewerage, solid waste management; economic and social development plans; transportation systems including construction and maintenance of roads, bridges, ferries and other inland water transport systems;; community health and protection of environment; and markets and slaughterhouses..
- Additional “functions assigned by Government”, so long as there is appropriate underwriting of the costs, Such functions may include primary education, curative health, transport, supply

Transforming State of Orissa Public Health Engineering Organization into a Corporatized Entity for Bhubaneswar

Under the 74th Constitutional Amendment, the Government of Orissa (GOO) is transferring management of water supply and sewerage services (WSS) to ULBs. At present, the WSS services are provided by the State Public Health Engineering Organization (PHEO). PHEO has been functioning as an arm of State Government in providing WSS services to the public across 103 ULBs covering a population of 56 lakh. In case of Bhubaneswar, Government of Orissa has decided that the assets, liabilities, rights, claim, proceedings, etc. concerning that jurisdiction will be transferred to the Bhubaneswar Municipal Corporation (BMC). Then, PHEO would create a new Corporatized Entity (CE) that can manage WSS services in the city. This CE would be given a management contract by BMC to operate and maintain the newly transferred city assets. This contract with CE will be based on performance measurements include specific service standards, operations efficiency, coverage, and subsidy. Thus the CE will be able to provide efficient WSS services while the quality of the services is accountable to BMC.

- of energy, arrangements for fire prevention and fire safety, and urban poverty alleviation.
- “Other functions”, which have been further sub-classified into 6 categories, include town planning, urban development and development of commercial infrastructure; protection of environment; health and sanitation; education and culture; public welfare; and community relations.

In accordance with the 74th CAA, the Model Municipal Law allows Municipalities to directly provide or arrange through another agency any of the “core municipal services” so long as responsibility and accountability for the service remains with the municipality. This means that it possible to contract some services to outside agencies, either

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by the public sector enterprises, quasi-government agencies or the private sector. However, once functions is assigned to ULB, the staff and funds to carry out that function should also be made available to ULB to perform that function.

The process of assigning these various functions is as important as their substance. The Kerala Act clearly says that functions are to be assigned by law and once so assigned can be withdrawn or modified only by a similar law. This is an important aspect because in many States, the assignment of functions is done by individual State regulations or Government Orders, even if their initial assignment is through a state law. In effect, this means that the functions continue to be subject to the rules and regulations of the state government even though the responsibility has been (or is in process of) being transferred to the ULB. To avoid this problem, states should engage with urban local bodies in strategizing how to best transfer the functions rather than issue top down directives.

The reform also recognizes the existence of parastatal bodies at the state level as well as the limited internal capacities of urban local bodies, it allows parastatals or other agencies to operate, maintain, and own assets and collect user charges for delivery of these municipal services, so long as they are accountable to ULBs through appropriate arrangements. These arrangements can range from establishing a task force, formation of committee at ULB level, providing appropriate role to Mayor/Commissioner/Standing Committee within the parastatal agency, to appropriate contractual arrangements. However, ULBs should be responsible and accountable for delivery of services with defined service levels no matter what agency physically delivers the service.

JNNURM reform requires the following steps to be taken by states for implementing this reform:

- Decide on the functions to be treated as Core, Assigned, and Other Municipal Functions. Functions may include items which are not covered under the Twelfth Schedule, e.g. The Kerala Act is by far the most elaborate list of functions assigned to the Municipalities. Under Section 30 of the Kerala Municipality Act 1994, 165 functions into 29 groups of items have been transferred to the local bodies through the First Schedule to the Act.
- For Assigned Functions, State Government has to consider and decide when it is appropriate to transfer them, given municipal capacities, and what funding mechanism will underwrite the services.
- Constitute committees and task forces to ensure that accountability of parastatal agencies/Development authorities is transferred to ULBs. For example, provisions to make City/Mayors/Commissioner as members of the respective Development Authority/Parastatal.
- Consider how the planning, development, construction, operation and maintenance roles for services are best allocated among the State Government Departments, development authorities, parastatal agencies, and Municipalities to both improve delivery and promote local responsibility.
- The assignment of functions should be by substantive law rather than by rules and regulations, therefore based on the above, make appropriate provisions in the municipal laws for the same.
- Make provisions to transfer/assign funds, staff, and organization assets to the ULB agency that will be responsible for the particular function. Here again, Kerala has made an elaborate arrangements to transfer the Institutions, and staff along with functions.

3. Steps for Implementation a Reformed Municipal Act

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 as appropriate.

Following steps are required for implementing this reform at state level:

- Prepare and discuss the policy framework and promoting understanding of the Constitutional provisions as result of 74th Amendment and JNNURM through state level workshops.
- State governments should set a committee to review existing acts.
- Based on these consultations, the state and ULBs should agree on areas which require legislative changes
- Draft and amend the relevant changes to enable municipalities to function as institutions of self-government.
- Ensure that the legislative processes are completed for amending/framing new municipal acts within a rigid time frame.

Advisory on Metropolitan Committee by the Ministry of Urban Development

1. As you are aware, under the Constitution Seventy-Fourth Amendment Act, 1992 there is a mandatory provision for constitution of Metropolitan Planning Committee in all the metropolitan areas by the State Governments. As per Constitution Amendment Act, Metropolitan Area means an area having a population of ten lakh or more comprised in one or more districts and consisting of two or more municipalities or Panchayats or other contiguous areas specified and notified by the State Government to be a Metropolitan area for this purpose. According to 2001 Census there are 35 metropolitan cities having a population of ten lakh and above spread over in 15 States and Union Territories. Ministry of Urban Development is the nodal ministry to oversee the implementation of 74th Constitution Amendment Act in the States and Union Territories. Although seventeen years have passed since the above Act was enacted, only West Bengal and Maharashtra have constituted the Metropolitan Planning Committees in Kolkata and Mumbai respectively while 2 States namely Andhra Pradesh & Gujarat have enacted enabling legislation to constitute MPCs. Other States having metropolitan cities are yet to take any action in this regard.

2. Metropolitan areas having 38% of the urban population are the engines of economic growth in the country. They are generally composed of several local bodies comprising municipal corporation, municipalities, nagar panchayats and rural areas as well. Development Authorities created in these metropolitan areas are not in a position to bring all stakeholders on a single platform. As such Metropolitan Planning Committee for metropolitan areas will play an important role as an intergovernmental, inter-organizational, politically representative forum. MPC is required to prepare Development Plan indicating vision and strategy for integrated and coordinated development of metropolitan area. Under JNNURM also implementation of decentralization measures as envisaged in 74th Constitution Amendment Act is one of the mandatory reforms which among others include constitution and setting up of MPC in the metropolitan areas.

3. An analysis of the conformity legislation or enabling laws enacted by West Bengal, Maharashtra, Andhra Pradesh and Gujarat reveal that these enabling legislations have more or less reproduced the language of the 74th Constitution Amendment Act. However, for operationalising the MPCs, in letter and spirit, details are yet to be prescribed in many cases. Government of Maharashtra has enacted Maharashtra Metropolitan Planning Committee (Constitution and Function) (Continuance of Provisions) Act, 1999. It has specified constitution of MPC for every metropolitan area consisting of 45 members to prepare draft development plan for the metropolitan area as a whole. Two-thirds of the total members will be elected members from the elected members of Municipalities and chairpersons of the Panchayats in the Metropolitan areas in proportion of their ratio of population. In addition, it will have exofficio members; nominated members, special permanent invitees, representative of various other Government and Parastatal agencies.

Mumbai Metropolitan Region Development Authority shall assist MPC in preparation of development plan. As regards representatives of Government of India are concerned, it has indicated about Railways, Telephone or Port Trusts but Ministry of Urban Development being the nodal Ministry is missing. Chairperson and Vice Chairperson are to be nominated by the State Government. Details about the nomination /appointment of chairperson for smooth functioning of MPC are yet to be spelt out.

4. Government of West Bengal was the first to constitute Kolkata Metropolitan Planning Committee (KMPC), in the country under the West Bengal Metropolitan Planning Act, 1994. Chief Minister, West Bengal is the Chairperson of KMPC and Minister Incharge Municipal Administration and Urban Development Department is the Vice-Chairperson. KMPC has 60 members of whom 40 members are elected through general election and 20 members including Chairperson and Vice Chairperson are nominated by the Government of West Bengal. Secretary, Kolkata Metropolitan Development Authority (KMDA) is the Member Secretary of the KMPC and Office of the KMDA is the Secretariat of the KMPC. KMPC has also constituted an Executive Committee to finalize the sectoral plan and five sectoral sub-committees to prepare the perspective master plans of different sectors of development. Kolkata MPC is the pioneer model which is a good example to emulate.

5. Government of Andhra Pradesh has enacted Andhra Pradesh Metropolitan Planning Committee Act, 2007. Apart from two-thirds elected members, the Act includes representatives of the Government of India and the State Government and such other organisations and institution as may be deemed necessary for carrying out the function. In addition, Members of the House of the people and Members of the State Legislative Assembly / Legislative Council representing constituencies which are wholly or partly in the metropolitan area shall be permanent special invitees to the meetings of the Committee. It has not specified anything about the number of Members, Chairpersons and Vice-chairperson of the committee, Technical Secretariat, Secretary of the Committee and other details for smooth functioning of MPC

6. Government of Gujarat has vide its Resolution dated 27.03.2008 decided to constitute the Metropolitan Planning Committee for the metropolitan areas under Section – 22 (1) of the Gujarat Town Planning and Urban Development Act, 1976. MPCs are to be constituted in Ahmedabad, Surat, Vadodara and Rajkot. MPC will be chaired by Minister Incharge of the District. It will have ex-officio nominated members namely District Collector, Municipal Commissioner, Chairman of the concerned urban development authority and District Development Officer and Chief Executive Authority of the concerned Urban Development Authority, Two thirds members shall be elected from the members of the Municipalities and Chairpersons of Panchayats in the metropolitan area in proportion to the ratio population of the municipalities and panchayats in that area. In addition, MPC will have permanent invitees comprising MPs and MLAs, President District Panchayats, and Mayor of the concerned Municipal Corporation. Local office of the Urban Development Authority may function as the Technical Secretariat of the Metropolitan Committee. Other details about the functioning of MPC are to be specified.

7. Issue regarding Metropolitan Planning Committee has also been deliberated by the Technical Group on Urban Planning System of the Planning Commission, 1996. Technical Group emphasized that MPC should be constituted within the framework of State Town and Regional Planning Acts under which Development Authorities and Metropolitan Development Authorities are also in operation. These may be linked with the provisions of the 74th Constitution Amendment Act relating to the constitution of MPC. It suggested that the existing set up of the Metropolitan / Development Authorities may provide the necessary technical and secretarial assistance to MPC. Model Urban and Regional Planning and Development Law prepared by the Ministry of Urban Development as part of UDPFI Guidelines, 1996 has also suggested constitution of MPC under the provisions of State Town and Country Planning Acts. It suggested that MPC should consist of 30 members under the Chairmanship of Minister Incharge of Urban Development in the state.

8. Keeping in view the mandatory provisions of 74th Constitution Amendment Act, experiences of the 4 States which have enacted enabling legislation for constitution of MPCs, recommendations

of the Technical Group on Urban Planning System and Model Urban and Regional Planning and Development Law, it is suggested that Metropolitan Planning Committees may be constituted considering the following issues:

Enabling Legislation

9. The MPC is required to prepare a development plan for the entire metropolitan area as notified by the State Government. Development Plan will have to incorporate the plans of Municipalities and Panchayats falling in the metropolitan area. The 74th Constitution Amendment Act states that the legislature of a State may by law make provision with respect to the constitution, composition, membership and other details for operationalising the functioning of MPC. For this purpose, there could be two options. Either a separate enabling legislation, as has been enacted by the West Bengal, Maharashtra and Andhra Pradesh may be enacted or with some amendments in the existing Town and Country Planning Acts, provision for constitution of MPC may be made in the existing Act. Among the two options, it will be advisable to constitute Metropolitan Planning Committee by making necessary amendments in the State Town and Country Planning Acts which will also facilitate closer linkages with other provisions related to planning and development in the State Town and Country Planning Acts. Gujarat has invoked the related provisions regarding urban development agency in the Gujarat Town Planning and Urban Development Act, 1976 to constitute MPCs for the metropolitan area. Even in a separate MPC Act as enacted by Maharashtra; it has incorporated some provisions of the State Town and Regional Planning Act, 1966 and other related Acts for smooth functioning of MPCs.

Composition of MPCs

10. The 74th Constitution Amendment Act has provided that not less than two thirds of the members of MPC 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. It will have representation of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the assigned functions.

11. Accordingly, in order to have fair representation of elected and nominated members to handle the complex situation of metropolitan areas it may be suggested that total number of members of MPC may vary from 30 – 60 depending upon the size of the metropolitan city. For metropolitan city below 20 lakh population MPC may have 30 members while for metros having population between 20 – 40 lakh MPC may have 45 members and for other metros above 40 lakh population, MPC may have a maximum number of 60 members. The MPC for large metro of 40 lakh and above population may be chaired by the Chief Minister, while for other metros Minister Incharge Municipal Administration / Urban Development may be the Chairperson.

Categories of Members

12. In addition to the two-thirds of the elected members, MPC may have ex-officio Members comprising officers of the concerned Departments of State Governments at the Secretary level, experts, members from various organisations / agencies / para statals / corporations / NGOs working in the respective metropolitan areas. Besides, MPC may have permanent special invitees from the elected representatives namely Member of Parliament / Legislative Assembly / Legislative Council / Mayor of the Corporation concern with metropolitan area. MPC should also have representatives of Government of India particularly from Ministry of Urban Development, Ministry of Housing and Urban Poverty Alleviation, Ministry of Railways, Ministry of Surface Transport, Ministry of Telecommunication and others, as the case may be.

Interface between MPC and Development Authority

13. Metropolitan Development Authority / Urban Development Authority already created in the metropolitan areas may function as the Technical Secretariat of the MPC which will facilitate preparation of Development Plan. Plan prepared by Development Authorities, if any, shall be finalized only after approval of MPC. Most of the Metropolitan Planning Areas have Development Authorities which are multi-municipal. These MPC could come in place initially by making their jurisdiction co-terminus with that of the Metropolitan Development Authority. As has been done in Kolkata, where the Development Authority could start by being the Technical Secretariat of MPC; Geographical boundaries could change as and when required.

Functions of MPCs

14. As per 74th Constitution Amendment Act legislature of the State may, by Law, make provisions regarding functions relating to planning and coordination for the metropolitan area which may be assigned to MPC. Accordingly, it is suggested that the following functions may be assigned to MPCs:

1. Preparation of Draft Development Plan for Metropolitan Area
2. Coordination of plans prepared by the Municipalities and Panchayats in the Metro area including coordinated spatial planning of the area.
3. Co-ordination and sorting out of common issues involving Panchayats and Municipalities in the metro area including sharing of water and other physical and natural resources.
4. Allocation of resources made available by the state and central government to local level institutions.
5. Phasing and prioritization of development works or works involving number of Panchayats or urban area.
6. Advice and assistance to local bodies in preparation of development plans.
7. Serving as a link to disseminate development objectives, policies and priorities of Central and State Governments among various local bodies by formulating operational guidelines so that the same may be considered while preparing plans of the respective local bodies.
8. Resolution of conflicts and to avoid areas of overlap between different agencies operating in the metropolitan area.
9. Frequency of Meetings

15. The meeting of the MPC may be held atleast once in every quarter of the Financial Year. The Chairperson or in his absence Vice-Chairman or a Member elected by the members present may preside over the meetings of the committee. Among others, the committee may invite experts to attend its meeting. Constitution of MPC will go a long way to ensure the orderly, integrated and coordinated development of metropolitan area. I would, therefore, urge you to take immediate action to facilitate enactment of enabling legislation and constitution of MPC for all the metropolitan areas by the State Government.

Advisory on State Finance Commission by the Ministry of Urban Development

The 73rd and 74th Constitution Amendment Act, 1992 are the most significant milestones in so far as strengthening of local governance in rural and urban areas are concerned. Further, Article 280 (3) (c) attempts to streamline fiscal devolution system between the states and municipalities. Under the new fiscal devolution system/framework every state government is required to constitute, once in five years, a finance commission and entrust it with the task of reviewing the financial position of local governments and making recommendations as to the principles that should govern (a) the distribution between the state and the local governments of the net proceeds of the taxes, duties, tolls and fees leviable by the state; (b) the determination of the taxes, duties, tolls and fees that may be assigned to or appropriated by the local governments; and (c) the grants-in-aid to local governments from the consolidated fund of the state.

The constitutional amendments have placed crucial responsibilities on the new institution of the finance commission of states. Over and above recommending the principles that should govern state local fiscal relations, SFCs are expected to: (i) undertake a review of the finances of municipalities; (ii) estimate the future financial requirements of municipalities; and (iii) suggest measures for strengthening the finances of municipalities.

Experience so far shows that the spirit of 74th Amendment as well as Article 280 (3) c has not been fully realized. Therefore, reforms related to implementation of the 74th CAA including those related to State Finance Commissions were included under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) as part of Mandatory reforms to be implemented within the Mission period. All States have committed specific timelines for implementation of these reforms. In order to strengthen implementation of these reforms, I shall like to highlight some of the key issues relating to State Finance commissions which need to be attended to.

1. Composition of SFCs –Qualification of Members, Rotations and Transfers:

The importance of SFCs in terms of its potential to carry out the process of democratic decentralization and to evolve competencies by strengthening the ULBs needs to be fully recognized. The first step towards this is to constitute SFCs with people of eminence and competence. SFCs should not be viewed as mere a constitutional formality. Experience shows that in many cases, SFCs were constituted in phases and were subject to frequent reconstitution. Such eventualities need to be avoided.

2. Time Limit of SFCs and Synchronization of SFCs with CFCs

The timely submission of the SFCs reports is very important. The report should be available before the commencement of the award period to avoid the adhocism in financial devolution and it should be available to Central Finance Commission (CFC) to make recommendations as to measures needed to augment the consolidated fund of a state to supplement the resources to ULBs. This can be achieved if the issue is accorded priority.

3. Permanent SFC Cell in Each State

The need for supporting SFCs with a permanent secretariat cannot be over emphasized given the crucial role SFCs play in overall system of fiscal devolution. It is important to retain the

institutional memory and capacity to provide optimal level of support to SFC. Therefore, it is recommended that a permanent SFC cell may be created in each state and all members and chairman should be on full time basis which can look in details of functioning of the ULBs and their problems of sustainability. It should also maintain good databases (time series) of ULBs related to finances, functions and functionaries etc. It will also help in improving the credibility of information on the finances of ULBs.

4. Consistent Methodology of SFCs

There is a need for consistency in methodology used by various SFCs and each SFC should analyse the existing resource generation capacity of the ULBs, expenditure and resource gap. It should also look into the existing SFCs grants and compensatory grants and other state transfers. Moreover, the incorporation of the functions listed in the 12th Schedule of the 74th CAA have not been taken into account by the most of SFCs. Therefore, the estimated financial needs of ULBs are not appropriate. Clarity in respect of the functional jurisdiction of ULBs is an essential, first step in deciding upon the principles for tax assignment, revenuesharing and grant-in-aid. Only after their functions are known could any decision be taken with regard to how these could be financed. In fact, the structure of financing mechanism – the mix of taxes, user charges and transfers that is appropriate in a given context depends on the functions assigned to ULBs.

5. Defining Minimum Standards of Performance of ULBs

SFCs must lay down the minimum standards of resource generation by the ULBs. SFCs should make guidelines for the effective implementation of tax sources and user charges. SFCs should also suggest new tax devolutions to ULBs especially where the Octroi is abolished. On Expenditure side also, SFCs should come up with guidelines on how to achieve the cost cutting exercise especially on the cost cutting of establishment and salaries account.

6. Defining of Minimum Service Standards Norms

To see the resource gap of the ULBs there is a need to define minimum service standards norms. The SFCs and States should look at the National Benchmarks related to basic services pertaining to water supply, sewerage, solid waste management and storm water drainage. After giving suggestions on improving resource generation capacity, cost cutting by ULBs and arriving at the resource gap to meet out the minimum service standards; SFCs should explore the possibilities to fill this resource gap by means of public private partnerships, community participation, franchising and outsourcing of certain functions to reduce the resource gaps. The remaining resource gap may be advised to be filled by the state grants.

7. Proposed SFCs Grants to Link with Enhanced Levels of Services

SFCs should not merely follow a gap filling approach. After giving guidelines on cost cuttings and enhanced resource generation, the proposed formula of grants should be based on global sharing with state level tax and non-tax sources to capture the elasticity of these funds. SFCs must point what will be the impact on service standards after releasing these grants and should also point out linkages with grant-in-aid. Clarity in respect of the functional jurisdiction of ULBs is an essential, first step in deciding upon the principles for tax assignment, revenue sharing and grant-in-aid. Only after their functions are known could any decision be taken in regard to how these could be financed. At the very minimum, the SFCs must cater to the core functions adequately.

8. Analysis of State Finances

The SFC reports should contain an estimation and analysis of the finances of the State government as well as the urban local bodies at the pre and post transfer stages along with a

quantification of the revenues that could be generated additionally by the urban local bodies by adopting the measures recommended therein.

9. Focus of the Main Recommendations of SFCs

Poor resource generation by ULBs is a major problem to achieve self-sustainability. This problem is particularly acute in the traditional octroi levying states where property tax machinery is weak. The way to correct the situation is to link ULBs' tax and non-tax efforts with SFCs grant-in-aid entitlements for service upgradation and specific functions. Unless fiscal transfers to the ULBs have builtin compulsions to improve their tax and non-tax performance, this problem is likely to continue. For fiscal sustainability of ULBs, it is essential to introduce hard budget conditions on ULBs if a durable solution to their fiscal issues is to be found. Ensuring ULBs fiscal sustainability would need a number of actions, such as –controlling growth of expenditures, improving property tax assessment collections, enhancing user charge collections and linking revenue with improved service delivery etc.

There is a gradual shift from individual tax sharing to a 'global' sharing of state taxes with the ULBs. In absence of a minimum percentage of 'global' sharing, the rationale of such a shift seems to be States' administrative convenience. Adequacy and timely release of these grants is also not appropriate. SFCs generally find that the normative resource gap approach greatly exceed the states' capacity to compensate, given its own fiscal limitations. A 'pragmatic' adjustment then is made to bring revenue sharing costs into line with state financing constraints.

10. Response by State Government to SFCs Reports

The States should avoid delays in submission of SFC reports and tabling of the ATR in the legislature. The SFC reports should be readily available to the Central Finance Commission, when the latter is constituted so that an assessment of the state's need could be made by the Central Finance Commission on the basis of uniform principles.

Annex III

Draft Template for the Report of the State Finance Commission (As Prescribed by Thirteenth Finance Commission)

Chapter I. Introduction

- a. Constitution of the Commission
- b. Terms of Reference
- c. Design of the Report

Chapter II. Approach, Methodology and Issues

Chapter III. State Finances

- a. Structure of the Economy
- b. A Review of Growth and Development
- c. A critical Analysis of the State Finances

Chapter IV. A Review of the Status of Decentralised Governance and Devolution

- a. Functional Devolution
- b. Financial Devolution
- c. Administrative Devolution

Chapter V. Assessment Of Finances of PRIs (To be done for Zila Panchayats, Block Panchayats, and Gram Panchayats)

i. Tax Revenue

- a. Taxes on Buildings and Land
- b. Taxes on Non-motorized Vehicles
- c. Taxes on Advertisements and Hoardings
- d. Pilgrim tax
- e. Entertainment Tax
- f. Any Other Tax

ii. Non-Tax Revenue

- a. User Charges
- b. Fees
- c. Royalty on Minor Minerals
- d. Dividend
- e. Interest
- f. Other

B. Transfer from State Government

- a. Assigned Taxes
- b. Share in State taxes
- c. General Purpose Grants
- d. Special Purpose Grants
- e. Transfers for Agency Functions

C. Transfer from the Central Government

- a. Transfers by the Finance Commission
- b. Transfers for Agency Functions

D. Expenditure on Revenue Account

- a. Administration
 - b. Civic Functions
 - i. Water Supply
 - ii. Street Lighting
 - iii. Sanitation
 - iv. Solid Waste Disposal
 - c. Expenditure on Maintenance of Community Assets
 - d. Expenditure on Schemes Assigned by the State Government
 - e. Expenditure on Schemes Assigned by the Central Govt.
 - f. Expenditure on interest.
- E. Capital Expenditure
- F. Borrowings
- G. Net Budgetary Position
- H. A Review of Fiscal and Financial Management

Chapter VI. Urban Local Bodies and Fiscal Management (same as above)

- a. Trends in Urbanisation
- b. Assessment of the Finances of the ULBs
 - i. Nagar Panchayats
 - ii. Municipal Council
 - iii. Municipal Corporation

Chapter VII. Review of Debt Position and Management

Chapter VIII. Financial Performance of Three Rural and Urban Bodies

A. Rural Local Bodies

- a. Zila Panchayat
- b. Block Panchayat
- G. Gram panchayat

B. Urban Local Bodies

- a. Municipal Corporation
- b. Municipal Board
- c. Nagar Panchayat

Chapter VIII. Assessment of the Gap in Financial Resources and Scheme of Devolution

A. Assessment of the Gap

- a. Rural Local Bodies
 - i. Zila Panchayats
 - ii. Block Panchayats
 - iii. Gram Panchayats

b. Urban Local Bodies

- i. Nagar Panchayats
- ii. Municipal Council
- iii. Municipal Corporation

B. Scheme of Devolution

- a. Scheme of devolution recommended by the past SFCs

- b. Scheme of Devolution
 - i. Assigned Taxes
 - ii. Share in State Taxes.
- c. Share of the PRIs and Inter se distribution
- d. Share of the ULBs and Inter se distribution
- e. Grants-in-aid

Chapter IX. General Observations and Concluding Remarks

Chapter X Summary of Recommendations

Model Municipal Law and JNNURM

The Jawaharlal Nehru National Urban Renewal Mission (JNNURM), Gol's flagship program for urban development aims at effective implementation of decentralization initiatives as envisaged in the 74th CAA. The MML lays down the basic legislative framework which aims at empowering ULBs consistent with the provisions of the 74th CAA. The MML will help state governments amend their municipal laws to implement the following reforms at the state and ULB level. It is envisaged that the MML will provide an enabling legislative framework for state governments to achieve the laid out milestones to access the central government assistance.

JNNURM Reform Agenda	Provisions under MML
Implementing the provisions of the 74th CAA	<p><i>The MML makes enabling provisions for implementing the 74th CAA:</i></p> <ul style="list-style-type: none"> • <i>Executive powers vested with an empowered Standing Committee</i> • <i>Five-year term for Mayor/Chairman</i> • <i>Provision for wards and ward committees</i> • <i>Functions classified in terms of core, assigned by government, and others</i> • <i>Dissolution of elected council only after review by a committee</i> • <i>Re-election of dissolved council within six months</i> • <i>Representation to municipalities on District/Metropolitan Planning Committees</i> • <i>Reference to implementation of SFC's recommendations</i> • <i>MML enables accounting reforms</i>
City Planning	<p>The MML discusses the following aspects related to city planning:</p> <ul style="list-style-type: none"> • Provision for implementation of development plans by municipalities • Easy planning approvals for small-sized buildings designed by architects • Changes required in public health engineering, utility boards, TP/development authority laws
Property Tax	<p><i>MML gives various options for property tax assessment:</i></p> <ul style="list-style-type: none"> • <i>Property tax assessment system on area or capital value basis</i> • <i>Provision for self-assessment system for PT</i> • <i>Unique property numbering system</i> • <i>Private sector participation in advertisement tax collection</i>
User Charges	<ul style="list-style-type: none"> • Setting up of a regulatory commission • Annual subsidy report

B: Integration of City Planning and Delivery Functions

JNNURM in order to strengthen institutional convergence and associate and engage ULBs stresses on convergence of planning and delivery of urban infrastructure development and management functions. The main objective of this reform is to secure effective linkages between asset creation and asset management so that the infrastructural services created in the cities are not only maintained efficiently but also become self-sustaining over time. Therefore reform calls for effective cooperation between the Municipalities, Panchayats, Government Departments including Public Health Engineering, PWD, Fire, Police & others; parastatals, and others involved in service delivery.

However, the issue for consideration is as to 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, and the Municipalities.

The analysis of the provisions of several existing municipal laws as done during the preparation of MML 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.

Even though it is not mandatory to transfer all these functions to ULBs and 74th CAA leaves it for the legislature of a state to decide as to which powers and authority it may devolve on 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. The functional assignments to ULBs in many cases is influenced by the existing “institutional arrangements” as also the roles assigned to the “parastatal agencies” or the “development authorities”.

JNNURM recognizes that in many cases these functions are either performed by parastatal agencies or development authorities. Considering the fire-fighting nature of the operations of the municipalities in India, on the one hand, and their managerial, organizational and technical capacities on the other, JNNURM calls for meaningful association and engagement of urban local bodies in planning the function of parastatal agencies as well as the delivery of services to the citizens. It is therefore important that existing full time professionally competent authorities may have to continue for time being and provide technical and managerial and handholding support to ULBs to carry out these functions.

While duly recognizing the importance of the technical roles of development authorities or parastatals and their needs for autonomy, it is essential that, through legal reforms, the ULBs are assigned the prime responsibility of policy making; allocation of resources; and prioritization of activities. Keeping with the spirit of 74th CAA the political accountability for the municipal functions should vest with municipalities. The accountability for financial, technical and administrative levels may be shared with the implementing institutions, but with an overview by the municipalities. For example; If ULBs are not part of the planning process that defines landuse, but only agencies that are required to enforce the same, ULBs are likely to have very low ownership of the plans and regulations therein.

Therefore JNNURM reform reiterates that parastatals or other agencies may operate, maintain, own assets and collect user charges for delivery of these municipal services, so long as they are accountable to ULBs. Service levels should be fixed by ULBs. The ULBs should be empowered and capacitated to ensure delivery of services at the defined level by the service providers through the mechanisms of contractual arrangements. Therefore, the states are required to make enabling provisions in the existing municipal laws to clearly demarcate and differentiate the roles of the ULBs and other agencies as policy maker, service provider and regulator to ultimately bring out accountability towards citizens and improved service delivery.

The MML also 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”.

As a first steps towards to bring convergence of functions between State, parastatals and development authorities, some of following should be initiated:

- Enabling provisions for making development authorities and parastatals, as technical arms of ULBs e.g. Maharashtra Government passed a similar enabling law Mumbai Metropolitan Region Development Authority is in effect function as technical arm of MPC in keeping with the approach that technical resources of the development authorities can be utilized in a more effective and accountable manner by a politically representative body.
- Enabling provisions to ensure urban local bodies are responsible for policy making; resource allocation; prioritization; fixing tariffs and taxes, fixing user charges and service levels at city level. E.g. Designing city wide water supply/sewerage network; Extending networks in new areas; prioritization of slums for housing or slum upgradation purposes etc.

Implementation of the 74th Constitutional Amendment

- Provisions to make City/Mayors/Commissioner as member of the Development Authority/Parastatal at city level.
- Municipal commissioners should be made members of the committees with responsibility for granting city wide approvals e.g. for large-scale layouts and building constructions; development of new areas; integrating city plans with regional and state plans etc.
- Provisions may be made for obtaining the views of municipal council/corporation on development plans.
- Necessary changes may be made in the town planning acts and rules to ensure involvement of ULBs in the city wide planning.
- Constitution of DPC/MPC as envisaged under 74th CAA will bring the institutional coordination required to carry out functions.