

MODERN URBAN GOVERNANCE BILL, 2016 – EXPLANATORY NOTES

POLITICAL

The Municipality, as of now, is not seen as a unit of self-governance, but as an administrative body which works under the overall superintendence of the State Government.

Now, with the new Bill, the Municipality will be an independent and accountable unit of self-governance, which is empowered and responsible to the citizens of the city without interference from the State Government.

Political Accountability

Mayors in many municipalities currently do not have a full tenure of five years. Some have a tenure of as much as a year, resulting in the Municipality having 5 Mayors in one term. Now, a Mayor will have a tenure of five years.

The post of the Mayor is currently reserved in rotation for various groups. This leads to lack of meritocracy and a lack of incentive for doing good work to get re-elected. Now, there will be no reservation for the position of the Mayor or MCA (Member of City Assembly i.e. Councillor) or ASR (Area Sabha Representative).

The Mayor does not have real powers over the administrative head of the Municipality i.e. the Commissioner. This creates a democratic deficit in so far as the highest elected representative does not have executive powers, while the unelected Commissioner appointed by the State Government has the executive powers but is not accountable to the city. Now, the Mayor would have full executive powers. The Chief Executive Officer (the CEO, i.e. the Commissioner) will report to the Mayor. The CEO will be appointed by and serve at the pleasure of the Mayor.

The Municipality does not have complete authority and requires the permission of the State Government on many vital issues. Now, the Municipality is completely independent of the State government and the State Government can give directions to the Municipality only under certain circumstances such as natural calamity etc.

The Municipality does not have the power to legislate and is dependent on the State government to make laws. Now, the Municipality has the powers to make laws. The City Assembly, comprising of the MCAs, will pass the laws.

The Mayor is indirectly elected by the elected councillors. This creates weak Mayor who does not have the direct mandate of the people. Now, there will be a directly elected Mayor.

The Mayor does not have much control over the appointment of the senior bureaucrats under him/her. Now, the Mayor will appoint the CEO, subject to the approval of the City Assembly. The CEO will in turn appoint the department heads, subject to the approval of the Mayor.

Decentralization

Most Municipalities have not devolved powers beyond the level of the Corporation. Given the large size of many Municipalities, there is excessive centralisation leading to a lack of responsiveness

towards the citizens. Now, powers and funds will be devolved to two levels below the Corporation – Ward Committees and ASRs.

Although many Municipalities have Ward Committees, they have no real powers. Ward Committees will not only have funds allocated to them and powers of planning but will also engage in participatory budgeting and supervision of works in the wards.

No democratically elected representatives exist below the level of the Councillors. Now, an ASR is elected from every Area Sabha in a ward. A Ward Committee comprises of the MCA elected from the ward along with the ASRs elected from that ward.

Currently, no proper channel for the flow of information exists from the citizens to the Municipality. Now, the ASRs are in contact with the citizens and they, along with the MCA from the Ward Committee, communicate with the Mayor. This creates a channel for to-and-fro flow of information between the Mayor and the citizens. This will facilitate the communication of the grievances and requirements of the citizens to the Mayor, and will assist in the execution of the required works by the Municipality under the supervision of the Ward Committee.

Transparency

The meetings of the Municipality are held behind closed doors and the deliberations are not available to the public. Now, meetings of the City Assembly will be generally open to the public, and the minutes of the meeting will be made available to the public. The City Assembly meetings will be made accessible to the public via electronic and digital media.

There is no forum for the public to raise questions to the Municipality. Now, the public can raise questions at an allocated time at every ordinary meeting of the City Assembly and at other meetings. The public can also ask questions to the Mayor at special electors' meeting.

In many Municipalities, the Vigilance Committee is not independent but is a part of the Municipality. Now, the members of the Vigilance Committee will be appointed by the Leader of the House of City Assembly, the Leader of the Opposition, the Speaker and two senior-most District judges, and it will be independent of the Municipality.

PLANNING AND SERVICE PROVISION

Urban Planning

A systematic planning mechanism is necessary for sustainable growth of a city. This should involve design of coherent short term, medium term and long term growth plans, taking into account the current and future needs of the city. Such plans should be inclusive in nature and must be developed on the basis of inputs from stakeholders, including the ward committees and Area Sabha Representatives. The planning should consider the plans and visions for the development of districts, states and the country.

Identification of public services

An efficient planning process should result in the identification of public services required to be delivered for achievement of targets set under such plans. These public services could differ from city to city and vary across time lines. For instance, one city could require water transport, while other

could require surface transport through rail. In the long term, the plan could be to provide metro service or develop an industrial corridor.

Procurement of public service providers

The corporation should produce but also provide for the delivery of public services through expert private players. Consequently, identification of public service should be followed by the procurement of relevant public service provider for delivery. The procurement process needs to be transparent and objective to inspire confidence. It should ensure a level playing field with equal access to information for all the relevant parties. Competitive bidding process should usually be followed for procurement.

Selection of public service provider

Transparency will also be the key in selection of public service provider. No public service provider should be differently treated only on account of difference in governance structure, and consortium bidding should be allowed. The selection criteria must be determined in advance and the decision, along with reasons thereof must be disseminated in public domain.

The corporation could develop transparent and objective mechanisms to promote and attract private sector participation in public procurement. These include providing viability gap funding, allowing or entering into public private partnership etc. However, the corporation would be guided by the principles of transparency and objectivity and equitable treatment while designing such terms and conditions of service delivery.

Procurement in exceptional circumstances

The corporation could do away with the prescribed process of public procurement only in emergency situations, which could be different for different cities and hence prescribed separately. However, the corporation must publish the reasons in public domain before invoking such provisions.

Similarly, in exceptional circumstances when the private sector is unable to bid for the public service required, the corporation could engage in delivery of public services. This can be facilitated only through incorporation of an independently managed company under the applicable commercial laws. This requirement prevents conflict of interests and ensures separation of regulator and regulated entities. Such conflict exists in several sectors at present, resulting in sub-optimal regulation and service delivery.

Clean subsidy

The delivery of public services should not happen below the market price. Any subsidy to be provided should not influence the market price but empower the disadvantaged sections of the consumers to pay the market price of the public services.

Transparency and disclosure are key to check the subsidy which the corporation provides. Hence, the justification, terms and mode of subsidy must be released as soon as the decision in this regard is taken.

Urban Utility Regulator

A professional and independent monitoring and supervisory mechanism is necessary to ensure compliance with the conditions of public service delivery by public service providers. Consequently,

Urban Utility Regulator will be established, to be manned by professionals, to monitor the compliance of terms of contract entered into between the service provider and corporation, and address grievances of consumers in a time bound manner.

Urban Utility Tribunal

A dedicated and time bound dispute resolution mechanism is integral to the regulatory architecture of public service delivery. Consequently, an Urban Utility Tribunal will be constituted to resolve disputes in the delivery of public services. It will also act as an appellate mechanism over the Urban Utility Regulator with respect to resolution of consumer grievances.

REGULATION, LICENSING AND FINANCIAL MANAGEMENT

Regulatory Impact Assessment

Translating the guiding principles of deregulation and de-licensing into legal provisions, Chapter 5 provides for a mandatory regulatory impact assessment mechanism for all legislative instruments passed by the Corporation. This would essentially make it compulsory on the urban local body to a) list the objects and reasons behind the proposed legislative instrument, b) identify the alternatives, c) compare the merits and demerits of all the alternatives, by way of a cost-benefit analysis, d) solicit comments from the public on the proposal, and e) justify the final decision in response to the comments and the cost-benefit analysis.

The idea behind introducing regulatory impact assessment is to impose a cost on making laws, i.e. to introduce negative incentives for the Government to making regulation, so as to minimise regulation. Second, this will ensure that all laws and policies are now based on quantifiable benefits. Third, the exercise of considering alternatives and quantifying their merits and demerits will decrease the influence of interest groups in the framing of laws and policies. Another important aspect is the introduction of an avenue for public participation in the framing of laws. This will ensure greater transparency and will be a method of converting constructive public feedback into enforceable laws.

System of licenses

The City Assembly, while providing for a new system of licenses, will have to conduct the process of cost benefit analysis in accordance with the provisions laid down. The law requires that the system of licenses designed by the City Assembly must follow the principles of simplicity, transparency, accessibility, and timeliness. The City Assembly is also required to ensure that the number of licenses required for a person are minimised under the new system. To add to that, the law has introduced adequate checks and balances at every stage ensuring compliance with the principles of natural justice.

Financial Management & Fiscally responsible Government

The Municipal Government has been endowed with complete financial autonomy in running the city. This chapter provides for the development of a comprehensive financial program, allowing maximum flexibility within the boundaries of sound fiscal practices. The Mayor is tasked with presenting a balanced budget which has to be passed by the City Assembly. A balanced budget requires the government spending to be equal to the revenue generated. This ensures that the taxation is



proportional to the current needs of the city. Any law providing for taxation will have to go through the process of cost benefit analysis by virtue of being a legislative instrument. Additionally, while determining and collecting any taxes, the law makes it mandatory for the Corporation to have clarity about the specific purpose and objective behind any new taxation it wishes to introduce. This requires the Corporation to show and ensure that the determination and collection of taxes is proportional to the cost of meeting the needs of the city. Further, taxation must be clear, fair and proportional.

To meet the needs of capital investment for the objectives laid down in the vision documents, the Corporation has been given the power to raise funds through public issue or private placement. These funds to be raised are conditional on the Corporation ensuring utilisation of existing funds and identifying the specific purpose and amount of funds to be raised. A Corporation Fiscal Manager and a panel of auditors, have been provided for introducing efficiency and transparency in the financial management of the city.