

**LOK SABHA**

**THE CONSTITUTION (SEVENTY-THIRD  
AMENDMENT) BILL, 1991 (INSERTION OF  
NEW PART IXA AND ADDITION OF  
TWELFTH SCHEDULE)**

**REPORT OF THE JOINT COMMITTEE**

*(Presented on 14 July, 1992)*



सत्यमेव जयते

**LOK SABHA SECRETARIAT  
NEW DELHI**

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BILL, 1991 (INSERTION OF NEW PART IXA AND  
ADDITION OF TWELFTH SCHEDULE)**

**CORRIGENDA TO THE REPORT OF THE  
JOINT COMMITTEE (PRESENTED ON 14 JULY, 1992)**

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**JOINT COMMITTEE ON THE CONSTITUTION (SEVENTY-THIRD AMENDMENT) BILL, 1991  
(INSERTION OF NEW PART IXA AND ADDITION OF TWELFTH SCHEDULE)**

**COMPOSITION OF THE COMMITTEE**

**Shri K.P. Singh Deo — Chairman**

**MEMBERS  
Lok Sabha**

2. Shri Pawan Kumar Bansal
3. Shri Chitta Basu
4. Shri Girdhari Lal Bhargava
5. Prof. Malini Bhattacharya
6. Shri Probin Deka
7. Prof. Ashokrao Anandrao Deshmukh
8. Shri Dau Dayal Joshi
9. Shri Shankarrao D. Kale
10. Shri Tarachand Khandelwal
11. Kum. Padmasree Kudumula
12. Smt. Sumitra Mahajan
13. Shri Suraj Mandal
14. Shri Yelliah Nandi
15. Dr. Debi Prosad Pal
16. Shri Hari Kewal Prasad
17. Shri Ebrahim Sulaiman Sait
18. Kumari Selja
19. Shri Hari Kishore Singh
20. Shri P.C. Thomas

**Rajya Sabha**

21. Shri Mohammed Afzal *Alias* Meem Afzal
22. Shri N.E. Balaram
23. Shri Radhakishan Malaviya
- \*24. Shri Bhaskar Annaji Masodkar
- \*\*25. Shri Ghulam Rasool Matto
26. Shri S.K.T. Ramachandran
27. Shri Santosh Kumar Sahu
28. Shri Digvijay Singh
29. Shri K.N. Singh
30. Shri S. Viduthalai Virumbi

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\*Ceased to be member on his retirement from Rajya Sabha *w.e.f.* 4.7.1992.

\*\*Nominated *w.e.f.* 13.5.1992 *Vice* Smt. Bijoya Chakravarty ceased to be member on her retirement from Rajya Sabha.

**SECRETARIAT**

1. Shri G.L. Batra —*Additional Secretary*
2. Shri S.C. Gupta —*Joint Secretary*
3. Shri R.K. Chatterjee —*Deputy Secretary*
4. Shri Ram Kumar —*Assistant Director*

**LEGISLATIVE COUNSELS**

1. Shri K.L. Mohanpuria —*Secretary*
2. Shri B.S. Saluja —*Joint Secretary and Legislative Counsel*
3. Shri K.N. Chaturvedi —*Deputy Legislative Counsel*

**REPRESENTATIVES OF THE MINISTRY OF URBAN DEVELOPMENT**

1. Shri R.V. Pillai —*Additional Secretary*
2. Shri K. Dharamarajan —*Joint Secretary*
3. Shri R.P.S. Pawar —*Deputy Director*
4. Dr. (Mrs.) Kiran Chadha —*Deputy Director*

REPORT OF THE JOINT COMMITTEE ON THE CONSTITUTION (SEVENTY-THIRD AMENDMENT) BILL, 1991 (INSERTION OF NEW PART IXA AND ADDITION OF TWELFTH SCHEDULE)

CHAPTER I

1.1 I, the Chairman of the Joint Committee to which the Bill\* further to amend the Constitution of India viz. the Constitution (Seventy-third Amendment) Bill, 1991 (Insertion of new Part IXA and addition of XII Schedule) was referred, having been authorised to submit the Report on their behalf, present this Report.

1.2 The Bill was introduced in the Lok Sabha on 16 September, 1991. The motion for reference of the Bill to a Joint Committee of both Houses of Parliament was moved in Lok Sabha by Smt. Sheila Kaul, Cabinet Minister in the Ministry of Urban Development on 20 December, 1991 and was adopted (Appendix-I).

1.3 The Rajya Sabha concurred in the said motion on 21 December, 1991 (Appendix-II).

1.4 The message from Rajya Sabha was published in Lok Sabha Bulletin Part II on 24 December, 1991.

1.5 The Committee held 13 sittings in all. The first sitting was held on 27 January, 1992. At this sitting, the Committee considered their future programme of work and decided to invite memoranda containing comments / suggestions on the provisions of the Constitution (Seventy-third Amendment) Bill, 1991 by 24 February, 1992, from the State Governments / Union Territory Administrations, Bar Councils / Bar Associations, Chambers of Commerce and other Organisations, individuals etc. interested in the subject matter of the Bill for their consideration.

The Committee further decided that a detailed questionnaire on the subject might be prepared by the Ministry of Urban Development which could be forwarded to these organisations, bodies, individuals etc. to enable them to submit their Memoranda to the Committee.

The Committee further decided to hear oral evidence on the provisions of the Bill from interested parties and authorised the Chairman to select parties / individuals etc. for the purpose after receipt of memoranda / questionnaire.

Accordingly, a Press Communique inviting memoranda and requests for oral evidence was issued on 28 January, 1992. The Director-General, All India Radio and the Director-General, Doordarshan, New Delhi were also requested to broadcast the contents of the Press Communique from all stations of All India Radio / telecast it from all Doordarshan Kendras on three successive days in English and Hindi and in regional languages.

1.6 As per decision taken by the Committee, a circular letter inviting memoranda containing comments / suggestions on the provisions of the Bill and request for oral evidence was also issued to the Chief Secretaries of all the State Governments / Union Territory Administrations, Bar Councils / Bar Associations / Municipal Corporations / Municipal Committees and individuals etc.

1.7 At their sitting held on 13 February, 1992, the Committee felt that as the Press Communique did not receive wide publicity as anticipated, an advertisement in the national and regional languages dailies besides Hindi and English might be issued. Accordingly, an advertisement inviting memoranda was given in National dailies by the Ministry of Urban Development.

The Committee also considered request received from various Associations / Organisations, individuals etc. for extension of time for submission of memoranda on the provisions of the Bill. The Committee, accordingly extended the time for submission of memoranda upto 31 March, 1992.

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\* Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 16 September, 1991.

1.8 40 Memoranda and 36 replies to questionnaire containing comments / suggestions on the provisions of the Bill were received by the Committee from various Associations / Organisations, Chambers of Commerce and individuals etc. (*vide* list at Appendix III & IV).

1.9 At their sittings held on 31 March, 8 and 22 April and 6 May, 1992 at Delhi the Committee took oral evidence of 10 local organisations and individuals, a list of persons who gave evidence before the Committee is at Appendix V.

1.10 The following three Sub-Committees formed by the Committee at their sitting held on 22.4.92, visited different places in the country from 25 May to 2 June, 1992 and held discussions with the officials of the State Governments, representatives of various organisations and individuals:

Sub-Committee	I	:	Calcutta, Guwahati, Shillong, Patna, Lucknow and Shimla.
Sub-Committee	II	:	Bhubaneswar, Hyderabad, Madras, Pondicherry, Trivandrum, Cochin and Goa.
Sub-Committee	III	:	Jaipur, Ahmedabad, Bhopal, Indore, Bombay and Bangalore.

The Committee also held discussion on 14 June, 1992 at Port Blair with the representatives of the Administration of Andaman and Nicobar.

1.11 At their sitting held on 19 June, 1992, the Committee decided to constitute a Sub-Committee of six members to consider the Chapter in the Report of the Committee on Municipal Finance. The Sub-Committee held their sitting on 25 June, 1992 and approved the draft Chapter with slight modifications.

1.12 The Report of the Committee was to be presented to the House by the last day of the first week of the Budget Session, 1992 *i.e.* 28 February, 1992. The Committee were granted one extension for presentation of the Report on 28 February, 1992 upto the last day of the first week of the Monsoon Session, 1992 *i.e.*, 10 July, 1992.

1.13 The Committee considered the Bill Clause-by-Clause at their sittings held on 17, 18 and 19 June, 1992.

1.14 The Committee decided at their sitting held on 3 July, 1992 that evidence tendered before them might be printed and laid on the Tables of both the Houses of Parliament.

The Committee further decided that two sets of memoranda containing comments/suggestions on the provisions of the Bill, received by the Committee might be placed in the Parliament Library, after the report had been presented, for reference by the Members of Parliament.

1.15 The Committee considered and adopted the Report at their sitting held on 3 July, 1992.

1.16 The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

#### *Article 243P—Definitions*

1.17 The Committee have included in the Bill new articles 243ZD and 243ZE relating to District Planning Committee and Metropolitan Planning Committee respectively in which terms "District, Metropolitan area" and 'Panchayat' have been used. The definitions of "District, Metropolitan area" and 'Panchayat' have therefore, been included in this article as clauses (b), (c) and (d) respectively. Further, the definition of "Municipal area" as given in clause (c) has been slightly modified to link it with article 243Q whereunder the Municipal area for a Nagar Panchayat, a Municipal Council or a Municipal Corporation will be notified by the Government of a State. Other clauses in this article have been re-lettered accordingly.

#### *Article 243R—Composition of Municipalities*

1.18 The Committee feel that the language of this article should be brought in line with the language of article 243S and the representation of various persons in a Municipality should be

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included in one clause. This article has been amended accordingly.\* The existing clause (1) has been omitted and existing clause (2) has been renumbered as clause (1). Existing clauses (3) to (5) have been clubbed in the new clause (2).

1.19 The Committee are of the opinion that there should be representation of Members of Parliament and of the State Legislature in municipalities. Sub-clauses (ii) and (iii) have, therefore, been added to new clause (2) to provide for representation of Members of Parliament and of the State Legislature:

*Article 243S—Constitution and Composition of Committees at Ward level or other levels*

1.20 There is a growing feeling that in the larger municipal bodies the citizens do not have easy access to the elected representatives since the ward-sizes become very large. The Committee therefore is of the view that within the territorial area of Municipalities having a population of three lakhs or more Wards Committees should be constituted. The details relating to the composition and the territorial area of the Wards Committee and the manner of filling seats in such Committees can be left to the State Legislatures. Further, the Committee feel that a member representing a ward in a Municipality, should be a member of the Wards Committee. The Committee are also of the opinion that where a Wards Committee consists of one ward, the member representing that ward in the Municipality should be the Chairperson of the Wards Committee. However, where a Wards Committee consists of two or more wards, one of the members representing such wards in the Municipality should be elected by the members of the Wards Committee to be its Chairperson. The article 243S has been amended accordingly.

1.21 The Committee also feel that nothing contained in the provisions of this article should prevent the Legislature of a State from making any provision for the constitution of committees in addition to the Wards Committees. A provision has been made in article 243S accordingly.

*Article 243T—Application of certain articles of part IX to Municipalities*

1.22 The Committee feel that all the provisions of Part IX relating to Panchayats, which have been made applicable to Part IXA proposed to be inserted by this Bill should be reproduced in full with suitable modifications. Accordingly, article 243D [except the provisos to clause (4)] of Part IX has been incorporated here as article 243T.

1.23 The Committee are of the view that the rotation of reserved seats should not be made mandatory and it should be left to the State Governments to rotate such seats. Clauses (1) and (3) of this article have been amended accordingly.

*Article 243U—Duration of Municipalities etc.*

1.24 The Committee feel that an election to constitute a Municipality should be completed before the expiry of its duration of five years and if dissolved earlier within six months of its dissolution. However, if the Legislature of a State passes a resolution that due to drought, flood, earth-quake or any other natural calamity or emergency, the election cannot be held within the said period of six months, the election can be postponed but must be held within a period of one year from the date of dissolution of the Municipality. The Committee also feel that an enabling provision may be made for the State Legislatures to provide by law for suspension or dissolution of a Municipality and where a Municipality is suspended or dissolved, it shall be given a reasonable opportunity of being heard by an authority to be constituted by such law. In case a Municipality is suspended, such suspension should not affect the continuation of the Wards and other Committees constituted under article 243S. Article 243E of Part IX has accordingly been incorporated as article 243U with suitable amendments to cover the above aspects.



*Article 243V—Disqualifications for membership*

1.25 The Committee feel that existing sub-clauses (a) to (d) of clause (1) are covered by the provisions of sub-clause (e) which relates to disqualifications for elections to the Legislature of the State. Further, the Committee feel that with the advent of education, the level of awareness amongst people in small towns and cities has gone up and a person of the age of twenty-one years is responsible enough to hold a public office. The Committee are, therefore, of the opinion that all persons who have therefore, of the opinion that all persons who have attained the age of twenty-one years should be eligible for election to the Municipalities. The Committee are also of the view that the disputes relating to disqualification should be referred for the decision of such authority and in such manner as the Legislature of State may, by law, provide. Article 243F of Part IX has accordingly been incorporated as article 243V after omitting sub-clauses (a) to (d) of clause (1) and relatterng the existing clauses (e) and (f) as sub-clauses (a) and (b). Other modifications have also been made to cover the above-mentioned aspects.

*Article 243W—Powers, authority and responsibilities of Municipalities, etc.*

1.26 The existing article 243V has been renumbered as article 243W without any other changes.

*Article 243X—Power to impose taxes by, and Funds of, the Municipalities*

1.27 Article 243H of Part IX has been incorporated as article 243X with slight modifications so as to substitute the expression "Panchayat" by the expression "Municipality".

*Article 243Y—Constitution of Finance Commission to review financial position*

1.28 Article 243I of Part IX has been incorporated as article 243Y. The changes made in this article have been dealt with in Chapter II of this report.

*Article 243Z—Form of accounts of Municipal Corporations and audit of accounts of such Corporations*

1.29 Existing article 243J has been renumbered as article 243Z without any other changes.

*Article 243ZA—Powers of Legislature of a State to make provisions with respect to election to Municipalities*

1.30 The Bill provides that elections to Municipalities are to be conducted under the supervision direction and control of the Chief Electoral Officer of the State who is accountable to and a functionary of the Chief Election Commissioner so far as conduct of elections is concerned. The Committee feel that it should be left to the Legislature of a State to make provisions with respect to all matters relating to the elections to the Municipalities. Article 243K of Part IX has accordingly been modified and incorporated as article 243ZA.

*Article 243ZB—Application to Union Territories*

1.31 The Committee feel that the provisions of Part IXA proposed to be inserted by this Bill, should apply to all Union territories and that the enabling power of the President, not to apply the said provisions to any Union territory, should be omitted. The President should only have the power to apply the said provisions to any Union territory or part thereof subject to such exceptions and modifications as he may specify by public notification. Article 243L of Part IX has accordingly been modified and incorporated as article 243ZB.

*Article 243ZC—Part not to apply to certain areas.*

1.32 The existing article 243W has been renumbered as article 243ZC. The Committee feel that the power of Parliament to extend the provisions of Part IXA proposed to be inserted by this Bill to the Scheduled Areas and the tribal areas should be exercised only if the Legislature of the concerned State passed a resolution to that effect. Clause (2) of this article has been amended accordingly.

*Article 243ZD—Committee for district planning.*

1.33 The planning and allocation of resources at the district level for the Panchayati Raj institutions are normally to be decided at the Zila Parishad. In regard to urban areas, the municipal bodies discharge certain defined functions within their respective areas. However some important questions may arise which concern the urban-rural interface. There is need to take an overall view in regard to development of the district as a whole and decide on allocation of investment between rural and urban institutions. The Committee therefore feel that there should be a provision for Constitution of a District Planning Committee in every State at the district level with a view to consolidating the plans prepared by the Panchayats and the Municipalities in the district as a whole. In order to impart a democratic character to such Committees, not less than four-fifth of the total number of members of these Committees should be elected members of the Panchayat at the District level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district. The other details relating to composition of the said Committees the manner of filling the seats therein, the functions relating to district planning to be assigned to such Committees and the manner in which the chairpersons of such Committees shall be chosen may be left to the State Legislatures keeping in view the local conditions. The District Planning Committee, in preparing the draft development plan, should have regard to matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and physical and natural resources, the integrated development of infrastructure and environmental conservation; the extent and type of available resources whether financial or otherwise, while preparing such the draft development plan, the said Committee should also consult such institutions and organisations as the State Governments may specify. The Draft development plan so prepared shall be forwarded to the State Government concerned by the Chairperson of the Committee. Article 243 ZD has been inserted accordingly.

*Article 243 ZE: Committee for Metropolitan Planning.*

1.34 There are 23 metropolitan cities in the country where the metropolitan area would encompass not only the main city corporation but also a number of other local bodies, both urban and rural surrounding the main city corporation. By the end of the century, this number may be about 45. These metropolitan areas influence the life and economy of the surrounding areas in several ways. To ensure that there is an orderly development of the fringe areas, proper plans for these areas need to be drawn up in association with the plan of the main city. Considerable investments in these cities are also undertaken by Central and State Government agencies. It is necessary to coordinate these investment plans with the developmental plans and requirements of the metropolitan city.

1.35 There is, therefore, a need for a suitable planning mechanism which would take care of the interaction between the various local bodies, both rural and urban in such metropolitan areas. At present, the system that is adopted in many metropolises is the creation of a metropolitan development authority. The functions assigned to the metropolitan development authority differ from case to case. In some cases, they are only planning bodies while in some cases they take on executive functions, particularly of major schemes. Further, at present, these bodies are not democratic institutions. They are nominated by the Government. While care is taken that there are some representatives on the body from different urban local bodies in the area, the forum is still not a democratic one wherein the opinions of the local bodies in the region can be articulated.

1.36 The Committee therefore feel that there should be a provision for constitution of a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a

(x)

whole. In order to impart democratic character to the said Committees not less than two-thirds of the members of such Committees should 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. The other details relating to composition of the said Committees, the manner of filling the seats therein, the representation in such Committees of Government of India and the Government of the State and other organisations and institutions, the functions relating to planning and coordination for the Metropolitan area to be assigned to such Committees and the manner in which the Chairpersons of such Committees shall be chosen may be left to the State Legislatures. The Metropolitan Planning Committee should, in preparing the draft development plan, have regard to the plans prepared by the Municipalities and the Panchayats in the Metropolitan area, matters of common interest between the Municipalities and the Panchayats including coordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation, overall objectives and priorities set by the Government of India and the Government of the State; the extent and nature of investment likely to be made in the Metropolitan area by agencies of the Government and other available resources whether financial or otherwise. The said Committee should also consult such institutions and organisations as the State Government may specify. The draft development plan so prepared shall be forwarded to the State Government concerned by the Chairperson of the said Committee. Article 243ZE has been inserted accordingly.

*Article 243ZF: Continuance of existing laws and Municipalities.*

1.37 Article 243N of Part IX has been incorporated here as article 243ZF with slight modifications so as to change the reference to the "Constitution (Seventy-second Amendment) Act, 1992" to "Constitution (Seventy-third Amendment) Act, 1992."

*Article 243ZG: Bar to interference by courts in electoral matters.*

1.38 Article 243-O of Part IX has been incorporated here as article 243ZG with slight modification to change the reference to article "243K" to article "243ZA".

*Clause 3*

1.39 The Committee feel that amendment should be made in article 280 relating to constitution of Central Finance Commission so that the said Commission should make recommendations to the President as to the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State. Clause 3 has accordingly been inserted in the Bill. The need for this amendment has been explained further in detail in chapter II of this Report.

*Clause 4*

1.40 The existing clause 3 has been renumbered as clause 4. The Committee feel that the Twelfth Schedule proposed to be inserted by clause 4 should also cover subjects relating to protection of the environment; public amenities including street lighting, parking lots, bus stops and public conveniences; regulation of slaughter houses and tanneries. Item 8 of the Twelfth Schedule has been amended accordingly and new items 17 and 18 have been inserted in the said Schedule.

*Clause 1 and Enacting Formula:*

1.41 The amendments made are of formal character.

## CHAPTER II

### ARTICLE 243Y AND CLAUSE 3—MUNICIPAL FINANCE

2.1 With the increasing pace of urbanisation, the municipal bodies responsible for providing a range of services to ensure a healthy environment have been unable to provide these services adequately resulting in growth and proliferation of slums, unplanned colonies, deteriorating civic services virtually culminating in a total urban chaos. It is now almost universally acknowledged that this is primarily on account of the woefully inadequate resources at the disposal of the municipal bodies/corporations.

2.2 Having regard to this inadequacy, the Bill had made provisions for putting on a firmer footing the relationship between the State Governments and the Urban Local Bodies in regard to functions and taxation powers and the arrangement for revenue sharing. Specifically Article 243T read with 243H of the Constitution (Seventy-second Amendment) Bill (incorporated as article 243X in the present Bill), make provisions for the legislatures of a State to provide by law the power to various municipalities to levy, collect and appropriate such taxes and duties, tolls and fees in accordance with the procedures and such limits as prescribed. It also provides for assignment of taxes etc. collected by the State Government to the municipalities and for making grants-in-aid by the State to the municipalities. Article 243T read with Article 243I of the Constitution (Seventy-second Amendment) Bill (incorporated as article 243Y in this Bill) provides for the constitution of a Finance Commission to review the financial position of the municipalities and to make recommendations in regard to the principles for the distribution of revenues between the States and the municipalities, for the determination of the taxes, duties etc. which may be assigned to the municipalities, and for grants-in-aid to be given by the State to the municipalities. The Committee, however, feel that these provisions in the Bill are not adequate as discussed in the following paragraphs.

#### *Structure of Municipal Revenue :*

2.3 Municipal revenue comprises basically internal and external sources of revenue. Among the internal sources tax and non-tax revenue constitute the two components. Tax revenue consists of revenue accruing from property tax,\* octroi/entry duty and other taxes such as tax on professions, trade and commerce, pilgrim tax, advertisement tax etc. while non-tax revenue is made up of user charges, fees and fines, rents and prices from created assets etc. Among the external sources of revenue are shared revenue and grants-in-aid from the State and the Centre.

2.4 Municipal taxes continue to be the principal source of municipal revenues. As per the samples study of 1986-87 conducted by the National Institute of Urban Affairs, more than 54 per cent of the revenue accrues from municipal taxes and 13.5 per cent from non-tax sources. State-wise comparison, however, reveal lack of uniformity regarding tax revenue being the major source. Further, revenues from such taxes are gradually declining and not responding to the increasing needs as desired presumably due to these sources being increasing inelastic to the changes in the economy. The shares of tax revenue decreased from 63.6 per cent of total municipal revenue in 1974-75 to 54.3 per cent in 1986-87. Information gathered by the Committee during evidence shows that the position may have worsened. Financial transfers from States thus constitute an extremely important source of municipal revenues after tax-revenue. As per the study of 1986-87 of the external sources, grants constitute 16.7 per cent and shared revenue 5.8 per cent. The study has further highlighted that revenue taxes and grants-in-aid vary with the size of the urban centres in a majority of cases. In the States of Jammu & Kashmir (59%), Meghalaya (53%) and Tripura (79%) grants-in-aid are a major source of municipal income.

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\* Includes service taxes such as water tax, sanitation cess, lighting tax, health cess etc.

**Resource Gap :**

2.5 A number of studies conducted at the request of the Finance Commissions and by other Commissions/Committees have tried to estimate the revenue-expenditure gap that exists. Some of the major studies on municipal bodies which give a fairly vivid picture of the dismal plight of the municipal finances and requirement of resources to discharge even their obligatory functions, are mentioned below.

2.6 The Zakaria Committee (1963) estimated that even to maintain civic services at absolute minimum levels the gap between needs and resources was nearly Rs. 9 crores annually (minimum levels being defined in terms of *per capita* expenditure norms at 1960-61 prices). Similarly, the National Institute of Urban Affairs (1983) pointed out that at the level of services existing in 1979-80, municipal bodies need an additional Rs. 833 crores per annum for maintenance alone excluding the massive capital investment required for enhancing the quality of services.

2.7 The Task Force on Financing of Urban Development (1983) set up by Planning Commission taking into account the depreciation of existing and new infrastructure, backlog of existing population and expected increment to urban population has estimated the level of investment required for the period 1986-91 to be in the range of Rs. 6000-10,000 crores and Rs. 8000 crores (at 1980 prices) to be realistic and necessary for meeting urban infrastructure requirement in the country.

2.8 The estimates prepared by National Institute of Urban Affairs (1989) for the Ninth Finance Commission also pointed out that the 159 municipal bodies\* covered in the sample above will alone require an amount of approximately Rs. 2681.4 crores over a period of 5 years corresponding to the period 1990-95, in order to be able to operate and maintain the core services at levels proposed by the Zakaria Committee. This amount is over and above the financial resources that the municipal bodies will mobilise during this period through their own efforts and resources transfers from States at existing levels of taxation and efficiency. The financial needs will, however, increase to Rs. 6992.6 crores if the municipal bodies choose to raise their spending levels to the levels being maintained by the "better off" municipal bodies.

2.9 While there has been continuous growth in the requirements of municipal bodies, there has not been commensurate growth of revenues. According to the Task Force on Financing of Urban Development (1983), the growth of municipal revenue in the past decade was 15 per cent per annum as compared to 17.5 per cent for the Central and State Governments. Further, there appeared to be a clear decline in the share of tax revenue and growing dependence on grants-in-aid from Government.

2.10 The analysis made by the National Institute of Urban Affairs regarding the transfer of funds from the States to municipal bodies has revealed that the transfer of funds in the form of shared taxes has been playing a much smaller role than grants-in-aid in the overall finance of municipal bodies. Whereas the grant component of municipal income contributed 16% of their income in 1986-87, the State contribution by way of share of taxes was only 6% in the same year.

2.11 The share of municipal governments in total tax revenue of the country have decreased from 8 per cent in 1960-61 to 4.5 per cent in 1980-81 while urban population has increased from 16 per cent of the total to 24 per cent during the same period. The share slumped to 3.4 per cent in 1986-87 as estimated by the National Institute of Urban Affairs based on the analysis of 157 sampled municipal bodies.

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\* Estimates based on a respondent sample of 159 cities which in terms of numbers constitute about 73% of the total number of cities and in terms of population approximately 63% of the total population of cities (excluding the 12 metropolises) in the 1 lakh population category (1981).

\*\* Average of the expenditure levels of the 15 sampled "better off" municipal bodies.

*Augmentation of Resources:*

2.12 The estimates of resource gap is a clear pointer to the absolute need for augmenting the financial resource position of the municipal bodies to enable them to discharge their basic responsibilities. Efforts to bridge the gap requires an assessment of tax efforts, tax potential and efficiency of fiscal management in the local bodies. While every effort should be made to increase the taxation efforts at the municipality level with a view to tap the full potential, the responsibility for resources for financing urban services cannot be left only to the urban local bodies. Since the urban cities constitute in a big way to the State and the national economy it should also be the responsibility of the Centre as well as the States to dovetail creation and maintenance of urban economic infrastructure with the overall economic development and to share in the financial burden for the creation and maintenance of the urban infrastructure needed to increase urban productivity, provide greater employment opportunities and for improving the quality of life of its citizens. Towards this end, devolution of resources from Centre to States and States to municipalities is a necessary requirement. The mobilisation effort may be three-fold: (a) strengthening of the financial position through better tax collection and management; (b) restructuring the mechanism-of-funds from Central/State Governments to local bodies; and (c) mobilisation of additional resources through introduction of new taxes and innovative resource raising mechanism by the municipal bodies.

2.13 Tax and non-tax revenues constitute almost two-third of municipal incomes and this is a sphere where greater efforts could yield additional revenue. Though not much variation exists between States in the matter of tax powers entrusted to municipal governments, significant variation exists in the application of tax powers, rate structure of taxes and exemptions granted. While the need for strengthening the tax structure to enable the municipalities to retain their fiscal autonomy is unavoidable, the municipalities will have to provide certain basic civic amenities to citizens who belong economically to different groups irrespective of the per capita tax that is borne. A graded tax structure, therefore, needs to be adopted so that those who are 'better off' are taxed at a higher rate and the poorer section of society can at least get the basic civic amenities at rates they can afford.

2.14 The major taxes collected by the municipal bodies include octroi and property tax. Revenue realised from property tax is affected by unrealistic progression of rates, varying exemptions and poor levels of collection. The realisation also remains static as almost one-third of the properties located in the cities are exempted from tax. This includes the Central Government properties in view of the provision in Article 285 of the Constitution. Revenue collection can be maximised by periodically monitoring and rationalising the rates and structure of property taxes and enhancing the service charges being paid in respect of Government properties. The instructions on the subject of service charges to be levied in respect of Central Government properties need to be reviewed and Government may consider reimbursement of an amount equal to the taxes payable on any other property as service charges. The existing instructions also provide for freezing of 'capital value' at levels at the time of construction/acquisition and also protects earlier agreements with some Departments like Railways. This has led to a lack of buoyancy in the service charges. These instructions need to be reviewed and necessary amendments introduced to put this on a basis which is fair to both Government of India and the urban local bodies.

2.15 Also the procedure for valuation of property would require to be based on composite area indices taking into account location, use, building quality and size. Apart from these, improvement in tax collection and phased liquidation of arrears locked up in legal disputes would result in additional revenue.

2.16 Octroi has been a major source of revenue though of late, several States have abolished octroi as imposition of this tax has resulted in undue harassment and leakage of revenue. According to the Task Force on financing of Urban Development, octroi revenue tends to grow by 16% per annum as against slightly under 10% in the case of property tax. Wherever octroi has been abolished the same has been compensated by grants-in-aid. However, the increase in grants-in-aid made to the municipalities has not been adequate to cover the loss due to abolition of octroi. This has somewhat

reduced the flexibility of municipal revenue and created dependence on the State. In this context, it may be recalled that the National Institute of Urban Affairs has also observed that the level of services are generally poor in those States where octroi is not being levied. The urban local bodies are generally against any proposal for abolition of octroi since it gives them a substantial and regular (daily) source of income. But at the same time, the irritants in the present procedure for assessment and collection of this tax need to be removed. No attempt seems to have been made legally or administratively to simplify the methods of assessment and collection of octroi. The Committee feel that serious and sustained efforts should be made to improve, streamline and modernise the methods of assessment and collection of octroi with a view to plug leakage and reduce harassment. If the balance of advantage is considered to lie in abolishing octroi, suitable compensatory mechanism, capable of generating resources for the municipalities of the same buoyancy as octroi, should be evolved.

2.17 Revenue collection from other taxes is fairly insignificant and apparently the municipal bodies have not been interested in levying certain taxes despite the provisions in their Municipal Laws. These if levied would definitely generate some additional revenue.

2.18 New sources of revenue could be through levy of special conservancy tax on factories and large business establishments and tax on vacant land. Community participation particularly business participating in the creation and maintenance of social assets, pricing of land being given to industries in backward areas (to cover cost of acquisition, infrastructural development and cost of township development) all need to be explored and tapped to strengthen the existing weak resource base of the municipal bodies. To protect environment in municipalities and towns from the adverse affects of pollution, a growing menace with increasing urbanisation, imposition of a pollution tax can be considered.

2.19 Non-tax revenue basically takes the form of fees/duties, rent, user charges etc. Streamlining and simplification of procedure with respect to fees/duties, betterment levy, levy of adequate user charges by the local bodies, proper pricing of existing infrastructure may augment the resource base.

2.20 Besides the above, municipal bodies have to economise on administrative spending and establishment.

2.21 Municipal bodies have not been receiving adequate revenues in respect of taxes having a local base like entertainment tax, motor vehicle tax, real estate registration etc.

2.22 The system of grants-in-aid prevalent in most States is on an *ad-hoc* basis and the National Commission on Urbanisation has gone on record to say that if the Seventh and Eighth Finance Commissions had laid down principles relating to grants-in-aid to the States out of the Consolidated Fund of India and stated what portion of this should be passed on to urban local bodies and on what basis, the problem would perhaps have been overcome. The National Institute of Urban Affairs has suggested that every State should constitute a Finance Board to laydown the mechanism for devolution of funds to municipal bodies from the Consolidated Fund of the State; periodic review to take into account inflation, population growth and other factors, linking of grants to the resource mobilisation efforts of the municipal body, regular flow of grant and equalisation on the expenditure side. Also some State Commissions have suggested assigning due weightage to the special problems of each municipal body and bridging of gap between service standards by extending capital funds for implementing projects and recurring nature grants for operational and maintenance purposes.

2.23 Generally plan funds for urban development are spent through State agencies and once the assets are created, the responsibility for their maintenance rests with the municipal bodies. This neither envisages non-plan assistance for State agencies nor assures resources to the municipal authorities creating a gap in resources required for maintenance. Further, non-integration of municipal plans with district and State plans also result in no regular devolution of resources.

2.24 Lack of a mechanism for regular assessment of the fiscal resources gap that arise on account of increasing urbanisation also do not ensure sufficient devolution of funds to the local bodies.

Additionally, apart from HUDCO, there is no apex financial institution for urban development. The result has been that there is no access to the capital market which is a great handicap.

2.25 The Eighth and Ninth Finance Commissions deliberating on the magnitude of the problem have come to the conclusion that local bodies need support to discharge their ever expanding multifarious responsibilities. The Eighth Finance Commission did not recommend any grants-in-aid for raising the service levels of urban local bodies or make any provisions for dealing with the urban congestion problems of Bombay, Calcutta and Madras as in their view, the Planning Commission was the "appropriate body to deal with these problems". Making a significant departure, the Ninth Finance Commission, however, recommended a one-time grant of Rs. 50 crores each to the Governments of Maharashtra and West Bengal for environmental improvement of slums and provision of basic amenities in the cities of Bombay and Calcutta.

2.26 Planning Commission commenting on urban services in their Seventh Five Year Plan document have stated, "The urban conglomerations by their very nature, need a minimum of basic services for their healthy existence. However, the state of most of our urban areas in this respect is far from satisfactory, in fact in general the picture is extremely bad. Apart from the fact that many of the municipal bodies are moribund...have undeveloped or eroded tax systems and suffer from lack of capital funds for development." A comprehensive plan for urban development including *inter-alia* revitalisation of civic bodies and through going reforms of municipal tax system and administration in general has been recommended by the Planning Commission. The plan document further states, "As the problems created by rapid urbanisation are stupendous and have wide-ranging social and political ramifications, there is national concern for checking the deterioration of conditions in our cities and towns. In this context, Central participation and assistance in this vital area is justified."

2.27 While the Eighth Plan has recognised the need for rationalisation of existing tax and non-tax resources of metropolitan cities and the need for devolution of funds from States to the local government, it is unfortunate that there has been no specific recommendation (except for the scheme of IDSMT) in regard to the sharing by Government of India of the responsibility in meeting the financial requirements of urban local bodies.

2.28 It is clear from the foregoing that both the Planning Commission and the Finance Commission have been seized of the problem of deteriorating urban civic services and the imperative need to strengthen the municipal bodies politically, administratively and financially. Municipal bodies to discharge their obligatory functions will require augmentation of funds. Availability of resources should be both commensurate and elastic keeping pace with their growing needs. Apart from augmenting internal sources, methods need to be devised for enlarging the area of assured devolution and the quantum of assistance that will flow from the Centre to States and from States to the Municipalities.

2.29 The Centre-State fiscal relations are governed by constitutional provisions. Unfortunately there is no such constitutional mechanism at present which provides for a regular assessment of the fiscal resources gap that exists in municipalities on account of the increasing responsibilities thrust upon them by the pace of urbanisation and growth of the urban economy, and for putting the devolution of resources to urban local bodies on a rational and firmer footing.

2.30 In view of the position stated above, the Committee endorse the provision in the Bill for the setting up of Finance Commission at the State level. The Committee further are of the opinion that the State Finance Commission proposed in the Bill should also specifically consider the measures needed to improve the financial position of the Municipalities and the extent to which the Consolidated Fund of the State needs to be augmented by assistance from the Government of India to supplement the resources of the Municipalities. The Committee are also of the opinion that the Central Finance Commission should consider measures to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations



(xvi)

made by the Finance Commission of the State. Article 243Y has accordingly been amended and a new clause (3) added for amendment of Article 280 of the Constitution.

2.31 The Joint Committee recommend that the Bill, as amended, be passed.

NEW DELHI;  
July, 1992

K.P. SINGH DEO  
Chairman,  
Joint Committee.

#### MINUTE OF DISSENT

I am of the opinion that the creation of a "Twelfth Schedule" containing primarily of entries from List II of the Seventh Schedule is a needless exercise and contains elements contrary to the theory of the basic structure of the Constitution.

If the "Twelfth Schedule" is merely illustrative it is repetitive and overlaps with the List II and therefore it is likely to create friction between the States and the local-bodies. The words mentioned in Clause 243W(a) that the Municipalities would be endowed "*with such powers and authority as may be necessary to enable them to function as institutions of self-government*" and the words in Clause 243W(a) (ii) that "*the performance of functions and the implementation of schemes as may be entrusted to them*" would suffice and the apparent redundancy of the "Twelfth Schedule" may be avoided.

In the present overcentralized top-heavy federal set-up unless the Union gives more powers and financial resources to the States the cry for 'devolution' and 'de-centralization' would be a cry in wilderness.

S. VIDUTHALAI VIRUMBI

NEW DELHI;  
July 4, 1992