
Part 9A- Municipalities

The Constitution (Seventy Forth Amendment) Act, 1992 has introduced a new Part IXA in the Constitution, which deals with Municipalities in an Article 243 P to 243 ZG. This amendment, also known as Nagarpalika Act, came into force on 1st June 1993. It has given constitutional status to the municipalities and brought them under the justifiable part of the constitution. States were put under a constitutional obligation to adopt municipalities as per system enshrined in the constitution.

- Definition of Metropolitan area
  - Metropolitan area in the country is an area where population is above 10 Lakh.
    (Article 243P)

- Three Kinds of Municipalities
  - Article 243Q provides for establishment of 3 kinds of Municipalities of every state.

- A Nagar Panchayat is for those areas which are transitional areas i.e. transiting from Rural Area to Urban areas.

- A Municipal council is for smaller urban area

- A municipal Corporation for Larger urban Areas
Composition of Municipalities
- All the members of a Municipality are to be *directly elected* by the people of the Municipal area and for the purpose of making the electorate;
- the municipal area will be divided into territorial constituencies known as *Wards*.
  
  - Besides the seats filled by direct elections, some seats may be filled by nomination of persons having special knowledge and experience in municipal administration.
  - Persons so nominated shall *not have the right to vote in the meetings* of the municipality.
  - The manner of election of Chairpersons of municipalities has been left to be specified by the State Legislature. {Article 243R}.

Ward Committees
- There shall be constituted the ward committees consisting of one or more wards within the territorial area of all the municipalities with a population of 3 Lakhs or more.
  {Article243S}

Reservation of Seats:
- Reservation of the seats for the Scheduled castes and scheduled tribes in every municipality corporation has to be provided in proportion to their population to the total population in the municipal area.
  
  - The proportion of seats to be reserved for SC/ST to the total number of seats has to be same as the proportion of the population of SC/ST in the municipal area.
  - *Note: There has to be no reservation for nominated seats.*

Duration of Municipalities
- Duration of the municipality has been fixed at *5 years* from the date appointed for its first meeting. Elections to constitute a municipality are required to be completed before the expiration of the duration of the municipality.
- If the municipality is dissolved before the expiry of 5 years,
- the elections for constituting a new municipality are required to be completed *within a period of 6 months from the date of its dissolution.* {Article 243U}.

Disqualifications of the members
- A member is disqualified to be chosen as a member of municipality if he / she is disqualified under any law to be elected as MLA.
- The minimum age to be qualified as a member is *21 years.*
Municipalities and Co-op societies

➢ Powers, authorities and responsibilities
  - As per Article 243 W, all municipalities would be empowered with such powers and responsibilities as may be necessary to enable them to function as **effective institutions of self-government**.
  - **The State Legislature may, by law**, specify what powers and responsibilities would be given to the municipalities in respect of preparation of plans for economic development and social justice and for implementation of schemes as may be entrusted to them.

➢ Financial Powers
  Through **Article 243X**, the constitution has left it open to **the Legislature of a State to specify by law matters relating to imposition of taxes.**
  - Such law may specify:
    - Taxes, duties, fees, etc. which could be levied and collected by the Municipalities, as per the procedure to be laid down in the State law
    - Taxes, duties, fees, etc. which would be levied and collected by the State Government and a share passed on to the Municipalities
    - Grant-in-aid that would be given to the Municipalities from the State
    - Constitution of funds for crediting and withdrawal of moneys by the Municipality.

➢ Audit and Accounts
  - As per **article 243Z**, the maintenance of the accounts of the municipalities and other audit shall be done **in accordance with the provisions in the State law.**

➢ Election Commission
  - **Article 243ZA** makes the provisions that the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to the Panchayats and municipalities shall be vested in the **State Election Commissions.**

➢ **Finance Commission**
  - **Article 243Y** makes provision that the Finance Commission constituted under Part IX for Panchayats shall also review the financial position of the municipalities and will make recommendations to the Governor.
Application to Union Territories:
- Article 243ZB makes provisions for applications of these provisions to the Union Territories.

Non-applicability in some areas
- Article 243 ZC says that provisions of part IXA are not applicable to
  - Scheduled Areas referred in article 244. These include Assam, Meghalaya, Tripura and Mizoram.
  - This part is also not applicable to the area covered under Darjeeling Gorkha Hill Council.

Committees for District Planning-
- As per the provisions of the Part IX-A, for urban areas, municipal bodies discharge functions of District Planning within their respective jurisdictions.
- As per Article 243 ZD, there shall be constituted in every State at the district level a District Planning Committee-
- to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

Metropolitan Planning Committee
- Article 243 ZE says that there shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.
Part 9B Cooperative Societies

Cooperative Societies are a type of volunteer association. Its main purpose is to provide service to its members. It is a kind of business where individuals belonging to the same class and similar profession join hands for the promotion of their common goals.

- **Article 19** states that the Right to form co-operative societies is a fundamental right.
- **Article 43-B** provides for the promotion of co-operative societies (DPSP i.e. Directive Principles of State Policy) and states that the State shall endeavor to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

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**Constitution (Ninety Seventh Amendment) Act 2011**
- It relates to the Co-operatives and was enacted to encourage economic activities of Cooperatives which in turn help progress of rural India. It is expected to not only ensure autonomous and democratic functioning of Cooperatives, but also the accountability of the management to the members and other Stakeholders.
- *Recently, the Hon’ble Apex Court has in one of it’s judgment with a majority of 2:1 held that the said Amendment is unconstitutional.*
- Part 9 B defining powers of the state legislature and the Union to regulate incorporation, elections and governing of these cooperative societies.
- For multi-state cooperatives and Union Territories, Parliament has the power to issue regulations.
- The issue was raised before the Hon’ble Apex Court in a Writ Petition that the powers defined under Part IX B would “restrict” the power of the states to regulate the cooperative societies, since the states already had power to regulate cooperative societies as they fall under Entry 32 of the State List.

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**Provisions governing cooperative societies are discussed in brief as under:**

1. **Art 243 ZI**- Incorporation, regulation and winding up of cooperative Societies based on the principles of Voluntary formation, democratic member Control, member economic participation and autonomous functioning;
2. **Art. 243ZJ**- Specifying the maximum number of directors of a Co-operatives Society to be **not exceeding twenty-one members.**
3. **Art.243ZK** A fixed term of **five years** from the date of election in respect of the elected members of the board and its office bearers; and an authority or body for the Conduct of elections to a Cooperative Society;
4. **Art.243ZL** A maximum time limit of **Six months** during which board of directors of a Co-operative Society Could be kept under **Supersession or suspension;**
5. **Art.243ZM** Independent professional audit;
6. **Art.243ZO** right of information to the members of the Co-operative Societies;
7. **Art.243ZN** and **Art.243ZP** Empowering the State Governments to obtain periodic reports of activities and accounts of Co-operatives Societies;
8. **Art 243ZQ** Penalties in respect of offences relating to Co-Operatives Societies.
9. **Art 243ZR** and **Art 243ZS** provide for application of Cooperative Societies to Multi-state cooperative societies and Union Territories respectively.
10. **Art 243T provides for the continuance of existing laws** on this part before coming into force of this amendment act, 2011. The laws shall be valid until and unless expressly amended or repealed by the legislature or uptill one year after this amendment act, 2011 coming into force.