

PART IX-A

[Part IX-A of the Indian Constitution](#) is a crucial part added by the 74th Amendment of the Constitution. The Part provides Constitutional status to the Urban Local Bodies (ULBs), also known as Municipalities. The Part provides crucial provisions regarding the three levels of Municipal governance and their functioning. The 74th Amendment categorises the Municipalities into three types- Nagar Panchayat, Municipal Council and Municipal Corporations.

The Municipalities in India predate the Constitution. The first Municipal Corporation in India was established by the East India Company in Madras in 1687, followed by Calcutta and Bombay in 1726. Some of the most significant resolutions in the colonial times regarding the Municipal Corporation were Lord Mayo's Resolution in 1870, which paved the way for financial decentralisation. The resolution resulted in transferring some subjects like education, sanitation and roads to the provincial government. The aim, however, was to address the financial difficulties by shifting local taxes to fulfil local requirements rather than one centre. This was followed by Lord Rippon in 1882, passing the local self-government resolution. This became the foundation for municipal governance in India. The Government of India Act 1935 resulted in Municipal and local governance being kept under the provincial government.

The structure made by the GoI Act 1935 was followed in post-independence India. Urban local bodies were kept under the State. This structure resulted in the rise of some severe problems. The urban local bodies were defined by the State Laws. Thus, there existed no uniformity regarding the urban local bodies in the country. Since there was no defined set of rules, elections in these bodies were very irregular and were completely at the state's discretion. No fiscal powers were vested in these local bodies as well, and the administrative control was very tight, resulting in heavy dependency on the bureaucracy. 74th Amendment of the Constitution, which introduces Part IXA of the Constitution, addresses all these issues.

Before the 74th Amendment, some key Committees were formed, which highlighted the crucial gap in the functioning of local bodies. The [V.T. Krishnamachari Committee](#), formed in 1961, highlighted some crucial gaps and made key recommendations. The Committee recommended that administrative friction should be minimised by the administrative officers actively getting involved in the Community Development programmes at the lower levels of administration. It stated that the IAS Cadre should be expanded to meet social and economic needs and for the better implementation at the ground level. While the Committee had no direct bearing on Part IX-A, it highlighted the administrative problem prevalent in the local bodies, which were hindering development.

[National Commission for Urbanisation \(1985\)](#), also known as Charles Correa Commission, was a significant step towards the formation of municipalities. The Committee was established in 1985 under Charles Correa to examine the state of urban regions of the country. The report of the Committee highlighted the serious problems rampant in urban bodies of India. The high influx of the population from the rural areas in search of better employment opportunities had resulted in inhumane living conditions, poor sanitation and health facilities and the formation of slums. The Committee, in its 14 Volume Report, also assessed the condition of Urban Local bodies. It recommended a decentralised structure and strengthening of the local bodies for the better planning of the urban landscape. While it identified cities and urban places as motors of economic growth, it highlighted the key problems like overpopulation, poor living conditions and mismanagement as the crucial hindrance.

The Seventh and Eighth Plans played a decisive role in the democratisation of the urban local bodies and provided them with a constitutional status. The Seventh Plan (1985-90) focused on Poverty Alleviation and highlighted the decay of urban places. The plan acknowledged that existing state-level Urban Development Authorities, due to a lack of fiscal resources, have been incapable of urban development. The Plan called for municipalization by providing fiscal tools to urban development authorities. The Eighth Five-Year Plan (1992-97) came after the 74th Amendment. The Plan focused on strengthening local democracy. The plan focused on Urban Strategy and, rather than a provider, transformed the state into a facilitator of urban development.

Part IX-A of the Constitution includes Articles 243P to 243ZG, which state all the necessary provisions for the establishment and functioning of the urban local bodies.

Article 243P: Article 243 titled Definitions explains the terminology used in the context of Part IX-A. The Article defines Metropolitan Area as an area having a population of ten lakhs or more. The metropolitan Area can comprise one or more districts, two or more municipalities or Panchayats or a contiguous area as specified by the Governor. Municipal Area is defined as the territorial area of a Municipality, and Municipality, according to this, is an institution of self-government.

Article 243Q: Article 243Q states the Constitution of Municipalities. The Article defines the following three types of Municipalities:

- Nagar Panchayat for the transitional area from rural to urban areas.
- Municipal Council for smaller urban areas.
- Municipal Corporation for larger urban areas.

A proviso states that a Municipality may not be constituted in such areas where municipal services are to be provided by an industrial establishment and thus should be referred to as an industrial

township. The Governor, by notification, can make such directions and provide an exception to any of the urban areas.

“Transitional area”, “a smaller urban area” and “larger urban area” can be notified by the Governor based on factors such as population density, revenue generated for local administration and percentage of people employed in non-agricultural activities.

Article 243R: Article 243R is a crucial article that deals with the composition of the Municipalities. According to this Article, all the seats of the Municipality should be filled through direct elections. For this purpose, the Municipality shall be divided into territorial units named wards. The second clause of the article lists some exceptions. It states that the state legislature can nominate persons having special knowledge or experience in municipal administration. However, such a person shall not have the right to vote in municipal meetings. The state legislature can also nominate members of the State Legislature or Lok Sabha MPs if they represent the constituencies that form part of Municipal Areas. The member of the Rajya Sabha or the Legislative Council of the State can also be nominated if they are registered as electors in Municipal areas. Also, the manner of election of the Chairperson of a municipality is to be defined by the State Legislature.

Article 243S: Article 243S states provisions regarding the Constitution and composition of the Ward Committee. The Article states that Ward Committees should be formed, consisting of one or more wards in the municipality having a population of a minimum of three lakhs. The ward committee, according to this article, should consist of one or more wards, with ward representatives being the members of the Ward Committee. One of these ward members should be chosen as chairperson of the Committee. The State Legislature, according to this Article, is endowed with the power to make provisions regarding the composition, territorial area and the manner in which Wards Committee seats would be filled.

Article 243T: Article 243T states the provision of reservation for certain communities in the Municipal elections. The article states that seats should be reserved for the Scheduled Caste and Scheduled Tribe categories adequately to ensure representation. The reserved seats should be in proportion to the population of these categories at the concerned level. Of these reserved seats, 1/3rd of the seats should be reserved for women of these communities. Additionally of the total seats 1/3rd of seats should be reserved for women. These reserved seats should be allotted in rotation to various territorial constituencies of the Municipality. The State Legislature can make a law regarding the office of Chairperson of Municipality being reserved for the SCs, STs or women.

Article 243U: Article 243U defines the duration of a Municipality. According to the Article, a Municipality can function continuously for 5 years from the date of appointment. The election for a new Municipality should be done before the expiration of the Panchayat. The Municipality,

however, can be dissolved on some reasonable grounds. In such cases, the fresh election should take place within six months of expiration.

Article 243V: Article 243V states the necessary provisions for the disqualification of membership. A person can be disqualified on the same grounds that are applicable for disqualification for membership in the state legislature. An exception to this provision is the age qualification. For the membership of the state legislature, the age requirement is 25 years. However, for Municipal elections, it is 21 years. Thus, no one can be disqualified on the grounds of age not being 25 years. The article empowers the state legislature to make laws regarding the disqualification of membership of an individual.

Article 243W: Article 243W states that the State Legislature can grant power and authority to the Municipality to function as a self-governing institution. These functions and powers include the creation of plans for economic development and the implementation of social justice. The article also states that a Panchayat can work on the subjects mentioned in the Twelfth Schedule. The Twelfth Schedule includes the following subjects:

12th Schedule of the Indian Constitution

1. Urban planning, including town planning.	7. Fire Services	13. Promotion of cultural, educational and aesthetic aspects.
2. Regulation of land-use and construction of buildings.	8. Urban Forestry	14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums
3. Planning for economic and social development	9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.	15. Cattle pounds; prevention of cruelty to animals.
4. Roads and Bridges	10. Slum Upgradation	16. Vital statistics, including registration of births and deaths.
5. Water supply	11. Urban Poverty Alleviation	17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
6. Public Health,	12. Provision of urban	18. Regulation of

Sanitation and Solid Waste Management	amenities and facilities such as parks, gardens, and playgrounds.	slaughterhouses and tanneries.
---------------------------------------	---	--------------------------------

Article 243X: Article 243X states that the State Legislature can empower the Municipality to levy, collect and appropriate taxes, tolls and duties, as well as provide taxes, tolls, and duties collected by the State Legislature to the Municipality for its functioning. The Municipality can also receive grants-in-aid from the Consolidated Funds of India.

Article 243Y: Article 243Y includes the provision for the formation of the Finance Commission to review the financial position of the Municipalities. According to the article, the Governor of the state should ensure the formation of a finance commission within one year of the commencement of the 73rd Amendment and subsequently, every five years. The Commission could make suggestions regarding the distribution of taxes, tolls and duties between the State Government and the Municipalities, as well as the allocation of taxes, duties that can be assigned to the Municipalities. The Commission can also make recommendations to ensure the financial health of the Municipalities. The power to appoint members to the Commission is given to the State Legislature. The report of the Finance Commission should be discussed on the floor of the Legislature.

Article 243Z: The article states that the State Legislature, by law, should make provisions regarding the maintenance and auditing of the accounts of the Municipality.

Article 243ZA: Article ZA deals with the elections to the Municipalities. The article vests the responsibility of the supervision, direction and conduct of the Panchayat elections on the State Election Commission, as it was in Article 243K. The State Election Commissioner should be appointed by the Governor, and on the request of the Commissioner, the Governor should provide employees to conduct elections. The tenure and service of the Commissioner are to be decided by the Governor. To ensure the independence of the Election Commissioner, the disqualification can be done only in the way it is done for a judge of a High Court.

Article 243ZB: Article 243ZB states the applicability of provisions of Part IX in Union Territories. According to this article, the provisions of this Part shall apply to UTs as they are applied in states. However, the President, through a public notification, can make necessary exceptions if they feel the need for it in UTs.

Article 243ZC: Article 243ZC is a crucial article that deals with the states that are exempted from the provisions of Part IXA. According to this, these provisions shall not apply to the Scheduled

Areas listed in Article 244. These include the states of Assam, Meghalaya, Tripura, and Mizoram. Hilly areas of the Darjeeling district of West Bengal are also exempted from the provisions of this article, as there exists the Darjeeling Gorkha Hill Council.

Article 243ZD: Article 243ZD states the provisions regarding the Committee for district planning. According to this article, a District Planning Committee should be formed at the district level to prepare a draft development plan and consolidate plans prepared by Panchayats and Municipalities in the district. The State Legislature is empowered with the power to make laws regarding the composition of the District Planning Committee. Four-fifths of the total numbers, however, shall be elected, and the seats in the Committee should be divided based on the proportion of rural or urban population of the Municipality or Panchayat. The draft development plan should focus on the subjects of common interest of the Municipality and the Panchayat, like water sharing and other natural resources, as well as financial resources.

Article 243ZE: Article 243ZE states the provision regarding the Committee for Metropolitan Planning. According to this article, a Metropolitan Planning Committee should be formed at the metropolitan level to prepare a draft development plan for metropolitan level at the whole metropolitan area. The State Legislature is empowered with the power to make laws regarding the composition of the Metropolitan Planning Committee. Two-thirds of the total numbers, however, shall be elected, and the seats in the Committee should be divided based on the proportion of rural or urban population of the Municipality or Panchayat of that Metropolitan area. The draft development plan should focus on the subjects of common interest of the Municipality and the Panchayat, like water sharing and other natural resources, as well as financial resources.

Article 243ZF: Article 243ZF is regarding the continuance of existing laws and the Municipalities. According to this Article, laws enacted before the 74th Amendment regarding Municipalities shall cease to exist with the commencement of this Amendment Act. However, those Municipalities that have been elected before the 74th Amendment will continue to exist until their duration unless dissolved by the State Legislature.

Article 243ZG: Article 243ZG states that the validity of delimitation of constituencies and the allotment of seats in the constituencies in the Municipalities cannot be challenged in court. Additionally, the result of the Municipal elections shall be challenged through an election petition in the way the State Legislature has decided by law.

Some landmark judicial cases have invoked the Constitutional Framework created by the 74th Amendment, which provides interpretations of Part IXA.

[*Municipal Corporation of Greater Mumbai versus Kamala Mills*](#) is a 2003 case in which the core dispute was regarding property tax and related value assessment. The Municipal Corporation, in this case, assessed the property tax of a plot where old buildings were demolished for new construction. The Corporation used the market value of the land, resulting in a significant hike in the property tax. The Supreme Court held that the rateable value of the Land should be based on the Rents Act and the standard Rent determined by it. This ruling prevents the municipal authority from making exorbitant rent charges on the basis of market fluctuations.

[*Kishan Singh Tomar versus Municipal Corporation of Ahmedabad \(2006\)*](#) invoked Article 243U, which deals with Municipal elections. The Municipal Elections of Ahmedabad Municipal Corporation were being delayed due to administrative hurdles like delimitation of wards and updating electoral rolls. The Court, in its judgment, held that the Municipal elections should be convened in the interval of 5 years and stated that the provisions made in Article 243U are non-negotiable. It directed that the State Election Commission is an independent body and thus should convene elections every 5 years.

[*K Krishnamurthy versus Union of India \(2010\)*](#) invoked 243T, which provides reservation of seats for some categories. The Petitioner in this case challenged the reservation being given to Other Backwards Castes in Panchayats and Municipalities. The Court, in its Judgement, held that political backwardness is different from social and economic backwardness used for jobs and education. Thus, it validated the reservation being given to OBCs and other categories. However, it limited the reservation to a maximum of 50 %.

In [*Pune Municipal Corporation versus Promoters and Builders Association \(2007\)*](#), the Maharashtra State Government modified the Development Control Rules (DCR), adding some restrictions to the Floor Space Index (FSI) and Transfer of Development Rights(TDR) without following the full procedure. The respondent had challenged the state action in the High Court, where the Judgment was upheld in their favour. After this, the PMC moved to the Supreme Court, where the Court held that the State Government holds the final say in matters which are assigned to Municipal Corporations, as they are not sovereign.

[*Rajendra Singh Rana versus Swami Prasad Maurya*](#) is a 2007 case that is indirectly related to Part IXA. The case deals with the anti-defection law. In 2003, 13 MLAs of the Bahujan Samajwadi Party had defected to the Samajwadi Party. The speaker, however, had accepted the split and did not disqualify the defected MLAs. The Supreme Court, however, in its ruling struck down the decision of the Speaker, stating that a quasi-judicial tribunal like the Speaker cannot make arbitrary decisions and their decisions are subject to judicial review. While these laws don't directly apply to

Municipal elections, District Magistrates at such a level as Presiding Officers act as a quasi-judicial tribunal. The judgment affirms that their decisions are also subject to judicial review.

References

- Center for Law and Policy Research. (1948, November 4). *Constituent Assembly Debates on 4 November 1948*. Constitution of India.
<https://www.constitutionofindia.net/debates/04-nov-1948/#102934>
- Government of India. (1992). *The Constitution (Seventy-Fourth Amendment) Act, 1992*.
<https://bombayhighcourt.nic.in/libweb/misc/coi/constitution/act/ACT/C074Act.pdf>
- *Kishan Singh Tomar versus Municipal Corporation of Ahmedabad* AIR 2007 SUPREME COURT 269
<https://indiankanoon.org/doc/1736371/>
- *K Krishnamurthy versus Union of India* 2010 AIR SCW 3368
<https://indiankanoon.org/doc/1451338/>
- *Rajendra Singh Rana versus Swami Prasad Maurya* AIR 2007 SUPREME COURT 1305
<https://indiankanoon.org/doc/1620629/>
- *Pune Municipal Corporation versus Promoters and Builders Association (2007)* AIR 2007 SUPREME COURT 1956
<https://indiankanoon.org/doc/228489/>
- *Municipal Corporation of Greater Mumbai versus Kamala Mills*