

**LLB.3rd Semester; SCHOOL OF LAW UNIVERSITY
OF KASHMIR**

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LOCAL LAWS-III

Unit-II:

Jammu & Kashmir Municipal Corporation Act, 2000

Municipal Corporation & Functions of the Corporation

Municipal Corporation

The Municipal Corporation in India is the highest form of municipal government designed for the administration of civil affairs of the cities in the country. Municipal Corporation is the top and highest form of urban local government as it enjoys comparatively more powers and autonomy in day to day administration.

According to *American Encyclopedia*, 'Municipal Corporation' is a legal institution formed by the sovereign power creating a popular community

of prescribed area and continues succession and for the purpose and with authority of subordinate self-government for improvement and administration of the affairs of the area.

The essential attributes of a local government are, firstly, its statutory status; secondly, its power to raise finance by taxation in the area under its jurisdiction; thirdly, participation of the local community in decision making in specified subjects and their administration; & fourthly, the freedom to act independently of central control.

The following criteria may be considered sufficient for setting up a Municipal Corporation for the city:

- Existence of thickly populated area.
- Need for the development of the municipality and scope for its future development.
- Financial position of the municipality- present and prospective.
- Ability and willingness of the people to bear the burden of increasing taxation.

The state is the sole judge to decide as to which city should be converted into a corporation, towns and after looking into public opinion in favour of a municipal corporation. The State Government retains powers of control and supervision including even the power to dismiss the council and take over the administration. The 74th Amendment Act provide that the area for different types of urban bodies would be specified by the Governor of the State, taking into account the population, density of the

population, revenue generated by the local body. It is created by an act of the State legislature or of the parliament in case of union territory. Subject to the limit contained in either, the constitutions or the statute, the state government has almost unlimited authority to create such legal entities. The State Government exercises the powers for determining the area, size of its council, responsibilities and powers, term of office, financial resources and can also dissolve it in case of consistent default in the performance of its duties.

Municipal Corporation is a protective bordered political organization having a population and works for its welfare.

The right of local autonomy is not regarded as an absolute right. Purpose of autonomy is that it will be more suitable for the local authority to handle the matters of specific/local concern. Municipal Corporation can make rules and regulation for day-to-day work.

For carrying out its work the expenditure is contributed by the people of the area through taxes and fees, in addition to the grant-in-aid by the state government.

Jammu & Kashmir Municipal Corporation Act, 2000

Municipal corporation

J&K Municipal corporation act was amended in the year 2016, which later on was repealed by JK Municipal Corporation (Amendment) Act, 2018. This Act of 2000 is still in force in the UT of J&K.

According to **Section 2(8)** of J&K Municipal Corp. Act, 2000; “*Corporation*” means the Municipal Corporation declared and constituted under section 3 and 4 of this Act.

Section 2(29) “*Municipal Area*” means the territorial area of the Corporation declared under section 3 of this Act.

Section 3 deals with ‘*Declaration of Municipal Corporation area as Corporation*’. Subsection 2 of section 3 lays down that ‘the Government may, from time to time, by a notification in the Government Gazette, declare any municipality to be a Corporation; provided that no municipality shall be so declared to be a Corporation unless the population thereof exceeds four lacs.’

Section 4 lays down that ‘the Corporation shall be a body corporate having perpetual succession and common seal with power subject to the provisions of this Act, to acquire, hold and dispose of property and may by the said name sue and be sued’.

Municipal area shall by a notification, be divided into territorial constituencies to be known as wards.

Functions of the Corporation

Section 41: *General powers of Corporations:*

(1) Subject to the provisions of this Act and the rules, regulations and bye-laws made thereunder, the Municipal area shall vest in the Corporation.

(2) Without prejudice to the generality of the provisions of sub-section (1) it shall be the duty of the Corporation to consider all periodical statements of the receipts and disbursements and all progress reports and pass such resolutions thereon as it deems fit.

Section 42: *Functions of Corporations to be entrusted by Governments.*---

(1) Without prejudice to the generality of the provisions of sub-section (1) of section 41 the Government may by notification endow the Corporation with such powers and authority as may be necessary from time to time to enable it to function as an institution of Local Self Government, subject to such conditions as may be specified therein, with regard to,---

(a) the preparation of plans for economic development and social justice;
(b) the performance of functions and implementation of schemes which may be entrusted to it including the functions in respect of the following matters, namely:---

(i) regulation of land use and construction of building;

(ii) planning for economic and social development;

(iii) roads and bridges;

(iv) water supply for domestic, industrial and commercial purposes;

(v) public health, sanitation, conservancy and solid waste management;

(vi) urban forestry, protection of the environment and promotion of ecological aspects;

- (vii) safeguarding the interests of weaker sections of the society, including the handicapped and mentally retarded;
- (viii) slum improvement and upgradation;
- (ix) urban poverty alleviation;
- (x) provision of urban amenities and facilities such as parks, gardens and play-grounds;
- (xi) burials and burial grounds, cremation and cremation grounds and electric crematoriums;
- (xii) cattle pounds, prevention of cruelty to animals;
- (xiii) vital statistics including registration of birth and deaths;
- (xiv) public amenities including street lighting, parking lots, bus stops and public convenience;
- (xv) regulation of slaughter houses and tanneries;

Provided that the notification regarding the devolution of powers under this sub-section shall be issued within three months from the date of commencement of this Act, in the first instance.

(2) Nothing contained in this section shall be construed to divest the Corporation of various powers and function vested in it under various provisions of this Act, rules, bye-laws made there under.

Section 43: *Obligatory functions of the Corporation*

It shall incumbent on the Corporation to make adequate provisions by any means or measures which it may lawfully use or take for each of the following matters, namely:---

- (a) the construction, maintenance, and cleaning of drains and drainage works and of public latrines, urinals and similar conveniences;
- (b) the construction and maintenance of works and means for providing supply of water for public and private purposes;
- (c) the scavenging, removal and disposal of filth, rubbish and other obnoxious or polluted matters;
- (d) the reclamation of unhealthy localities, the removal of noxious vegetation and generally the abatement of all nuisance;
- (e) the regulation of places for the disposal of the dead and the provision and maintenance of places for the said purposes;
- (f) the construction and maintenance of cattle pound;
- (g) measures for preventing and checking the spread of dangerous diseases;
- (h) the construction, maintenance of Municipal markets and the regulation thereof;
- (i) the regulation of the abatement of offensive of dangerous trades or practices;
- (j) the securing of removal of dangerous buildings and places;
- (k) the construction, maintenance, alteration and improvements of public streets, bridges, culverts, causeways and the like;
- l) the lighting, watering and cleaning of public streets and other public places;

- (m) the removal of obstruction and projections in or upon streets, bridges and other public places;
- (n) the naming and numbering of street and premises;
- (o) the maintenance of Municipal offices;
- (p) the laying out of the maintenance of public parks, gardens or recreation grounds;
- (q) the maintenance of monuments and memorials vested in the local authority in the Municipal area immediately before the commencement of this Act or which may be vested in the Corporation after such commencement;
- (r) the maintenance and development of the value of all properties vested in or entrusted to the management of the Corporation;
- (s) the fulfillment of any other obligation imposed by or under this Act or any entrusted to the management of the Corporation;
- (t) planting and care of trees on road side etc.; and
- (u) survey of buildings and lands.

Section 44: Discretionary functions of the Corporation

The Corporation may provide either wholly or in part for all or any of the following matters, namely:---

- (a) the furtherance of education including cultural and physical education;
- (b) the establishment and maintenance of and aid to, libraries, museums, art galleries, botanical gardens or zoological collections;

- (c) the establishment and maintenance of, and aid to stadium, gymnasia, akharas and places for sports and games;
- (d) the civic reception to persons of distinction;
- (e) the providing of music or other entertainments in public places or places of public resort and the establishment of theatres and cinemas;
- (f) the organization and management of fairs and exhibitions;
- (g) the construction and maintenance of ----
 - (i) rest houses;
 - (ii) poor houses;
 - (iii) infirmaries;
 - (iv) children's homes;
 - (v) houses for the deaf and dumb and for disabled and handicapped children;
 - (vi) shelters for destitute and disabled persons;
 - (vii) asylums for persons of unsound mind;
- (h) the building or purchase and maintenance of dwelling houses for Corporation officers and other Corporation employees;
- (i) any measures for the welfare of the Corporation officers and other Corporation employees or any class of them, including the sanctioning of loans to such officers and employees or any class of them for construction of houses and purchase of vehicles;
- (j) the organization of management of chemical or bacteriological laboratories for the examination or analysis of water, food and drugs for

the detection of diseases or research connected with the public health or medical relief;

(k) the provision for relief of destitute and disabled persons;

(l) public vaccination and inoculation;

(m) the organization, construction, maintenance and management of swimming pools, public wash houses, bathing place and other institution designed for the improvement of public health;

(n) the organization and management of farms and dairies within or outside the Municipal area for the supply, distribution and procession of milk and milk products for the benefits of the residents of the Municipal area;

(o) the organization and management of cottage industries, handicraft centers and sales emporium;

(p) the construction and maintenance of warehouses and godowns;

(q) the construction and maintenance of garages, sheds and stands for vehicles and cattle biers;

(r) the provision for unfiltered water supply;

(s) the improvement of the Municipal area in accordance with improvement schemes approved by the Corporation;

(t) the provision of housing accommodation for the inhabitants of any area or for any class of inhabitants;

- (u) the establishment and maintenance of hospitals, dispensaries and maternity and child welfare centres and the carrying out of other measures necessary for public medical relief;
- (v) any measures not herein before specifically mentioned, likely to promote public safety, health, convenience or general welfare.

Appointment and Functions of Commissioner

45. *Appointment of Commissioner*:---- (1) The Government shall, by notification, in the Government Gazette, appoint a Class I Officer of the Government having a service of not less than fifteen years, as the Commissioner of the Corporation.

(2) Subject to the provisions of sub-section (3) the Commissioner so appointed shall hold office for a term of three years in the first instance: Provided that his appointment may be renewed for a term not exceeding three years:

Provided further that no officer who has attained the age of superannuation shall be appointed or continue as Commissioner.

(3) The Government:---

(a) shall recall the Commissioner if at a special meeting of the Corporation called for the purpose, a resolution for such recall has been passed by a majority of not less than two-thirds of the total number of members:

(b) may in the public interest recall the Commissioner at any time during the term of his appointment.

50. Functions of the Commissioner.--- Save as otherwise provided in this Act, and subject to supervision and control of the Corporation and its Mayor the Executive power for the purpose of carrying out the provisions of this Act, shall vest in the Commissioner, who shall also:---

(a) exercise all the powers and discharge all the duties specially conferred or imposed upon him by this Act or by any other law for the time being in force;

(b) prescribe the duties of and exercise supervision and control over the acts and proceedings of all Corporation officers and other Corporation employees and subject to any rules that may be made in this behalf dispose of all questions relating to the **service of the said officers and other employees** and their pay, privileges, allowances and other conditions of serve;

(c) on the occurrence or threatened occurrence of any sudden accident or any unforeseen event or natural calamity involving or likely to involve extensive damages to any property of the Corporation or danger to human life, take such immediate action in consultation with the Mayor and make a report forthwith to the Corporation of the action he has taken and the reasons for the same as also of the amount of cost, if any, incurred or likely to be incurred in consequence of such action, which is not covered by a budget grant;

(d) the Commissioner shall bring to the notice of the Corporation any act or resolution of the Corporation which may be in violation of any Government instructions or the provisions of this Act, provided that if such act or omission of the directions of the Government or the provisions of the Act, as the case may be, is not rectified within 15 days of the communication, it shall be the duty of the Commissioner to bring such omission or violation to the notice of the Government.