

MUNICIPALITIES IN MIZORAM: UTILITARIAN APPROACH

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INTRODUCTORY:

The term 'local government' literally means management of the local affairs by the people of locality. It is based on the principle that the local problems and need can be looked by the people of locality better than by the central or state governments. The administration of the local affairs is entrusted to local persons elected by the people of the locality at regular intervals. According to Finer, "Local government means authority to determine and execute measure within a restricted area inside and smaller than the whole state". To Hasluck, "Local Government is that sphere of government within which local bodies are legally permitted to adopt variations in administration". In India, the term local self-government originated when the country was under British administration. Lately in 1993, local government in India of both rural and urban has become constitutionalized as per the Constitution (73rd and 74th Amendment) Acts, 1992.

Retrospectively, Lord Rippon's Resolution of 1882 provided for the expansion of local urban bodies, more devolution of financial resources, reducing the official element in urban local bodies to one-third and adopting election process for the Constitution of these bodies. Due to far reaching approach of Lord Rippon and due to the hostile attitude of his successors, his reforms were not implemented faithfully. *Lord Rippon is therefore called as the father of local self-government in India* and his Resolution of 1882 is also known as the Magna carta of local self-government in India.

Features/Nature of Local Government:

1. It has defined jurisdiction within a definite territory and is concerned with the solution of the peculiar problems present in that area
2. Local government institutions are governed by elected representatives of the local people who are accountable to people
3. Local institutions are primarily concerned with the promotion of interests of the local people. In other words "local government acts as the local community's house wife and looks after its domestic work"
4. Local institutions have their own budget and finances. There is close connection between self government and self taxation
5. They are free to manage their affairs in accordance with rules laid down before hand. According to Dimock autonomy means that the local government institutions are free to act as they like so long as their actions do not over step the rules and limits laid down in advance by the competent authority.
6. Local institutions are created by the Central or State Governments and possess a definite sphere of activity determined by the statutory authority. But the local bodies are not treated as the administrative outposts of the central or state authorities.

Role and importance of Local Self Government

1. Local Government institutions provide extensive range of service to the people

2. Leads to efficiency of administration at local as well as state and national level. The local government institutions not only tackle the local problems, but also lighten the load of the state and central governments by relieving them of some burden.
3. Acts as an effective check on authoritarian tendencies of state and central governments
4. Lead to economy in administration. As the local people are fully aware of the implication of the issue, they fully cooperate with those concerned with the implementation of the programme.
5. Cultivate spirit of self help and self-dependence
6. Promotes spirit of liberty among people
7. Serves as a training ground for democracy
8. Contributes towards steady, through slow progress
9. Serve as useful channel of communication between the state and the people. It articulates the desires and aspirations of the people of the area and transmits them to the state or central government for necessary action and vice versa.
10. Creates social and political consciousness among the people
11. Makes restricted experiments possible. New experiments can be conducted at the local level without causing much damage.
12. Useful for developing and under-developed countries. The local government, based on the principle of decentralization is helpful in quicker development. With the direct participation of the people, the pace of development is rather fast.

To sum up, we can say with Robson that “Democracy on the national scale can function in a healthy manner only if it is supported and nourished by democratic local government”

Salient features of Local Government in India in the light of the Constitution (73rd and 74th Amendment) Act, 1992

A. Rural:

As desired under Article 40 of the Constitution, the Constitution (73rd Amendment) Act, 1992 had introduced rural local body as follows:

1. Three tier system of local government viz. village, intermediate and district levels should be constituted
2. The Panchayat members shall be elected by means of direct election from territorial constituencies in the area
3. Seats shall be reserved for the Scheduled Caste, Scheduled Tribes and Women
4. The duration of Panchayat is for five years
5. The Panchayat are authorized for the preparation of plans for economic development and social justice and for the implementation of schemes for economic development and social justice as listed in the 11th Schedule of the Constitution of India
6. Finance Commission to review the financial position of the Panchayat and to make necessary recommendation pertaining to finance to the Governor should be constituted
7. State Election Commission consisting of a State Election Commissioner to be appointed by the Governor shall be made for the superintendence, directions and control of electoral rolls for, and the conduct of, all election to the Panchayat

B. Urban:

The Constitution (74th Amendment) Act, 1992 had introduced urban governance in India as mandatory as follows:

1. Nagar Panchayat shall be constituted at the transitional urban area in transition from a rural area to an urban area, a Municipal Council for a smaller urban area and a Municipal Corporation for a larger urban area
2. Each Municipal area shall be divided into territorial constituencies to be known as wards for the purpose of election of Municipality by means of direct election
3. Wards Committee shall be constituted consisting of one or more wards within the territorial area of Municipality having a population of three lakhs or more
4. Seats shall be reserved for the Scheduled Caste, Scheduled Tribes and Women
5. The duration of Municipality is for five years
6. The Municipality is authorized for the preparation of plans for economic development and social justice and for the implementation of schemes for economic development and social justice as listed in the 12th Schedule to the Constitution of India
7. The Municipality shall also authorize to levy, collect and appropriate such taxes, duties, tolls and fees and provide for making such grants in aid to the Municipalities from the Consolidated Fund of the State
8. Finance Commission to review the financial position of the Municipalities and to make necessary recommendation pertaining to finance to the Governor should be constituted
9. State Election Commission consisting of a State Election Commissioner to be appointed by the Governor shall be made for the superintendence, directions and control of electoral rolls for, and the conduct of, all election to the Municipalities
10. Committee for District Planning as the district level should be constituted 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
11. Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole shall be constituted in every Metropolitan area

Note:

The entity of Municipality is concerned by the Hon'ble Supreme Court in **Bondu Ramaswamy vs Bangalore Development Authority** decided on 5 May, 2010 in connection with Civil Appeal No. 4097 of 2010 (Arising out of SLP (C) No. 4318 of 2006), their Lordship of Hon'ble Apex Court has observed that-

“21. The Constitution (Seventy-Fourth Amendment) Act, 1992 inserting Part IX-A in the Constitution, seeks to strengthen the system of municipalities in urban areas, by placing these local self-governments on sound and effective footing and provide measures for regular and fair conduct of elections. Even before the insertion of the said Part IX-A, Municipalities existed all over the country but there were no uniform or strong foundations for these local self-governments to function effectively. Provisions relating to composition of Municipalities, constitution and composition of Ward Committees, reservation of seats for weaker sections, duration of Municipalities, powers, authority, responsibilities of Municipalities, power to impose taxes, proper superintendence and centralised control of elections to Municipalities, constitution of Committees for District Planning and Metropolitan Planning, were either not in existence or were found to be inadequate or defective in the state laws relating to municipalities. Part IX-A seeks to strengthen the democratic political governance at grass root level in urban areas by providing constitutional status to Municipalities, and by laying down minimum uniform norms and by ensuring regular and fair conduct of elections. When Part IX-A came into force, the provisions of the existing laws relating to municipalities which were inconsistent with or contrary to the provisions of Part IX-A would have ceased to apply. To

provide continuity for some time and an opportunity to the concerned State Governments to bring the respective enactments relating to municipalities in consonance with the provisions of Part IX-A in the meanwhile, Article 243ZF was inserted. The object was not to invalidate any law relating to city improvement trusts or development authorities which operate with reference to specific and specialized field of planned development of cities by forming layouts and making available plots/houses/apartments to the members of the public.”

Reservation of seats is also discussed by the Hon’ble Writ Courts, In the case of **Vinayakrao Gangaramji Deshmukh v. P.C. Agrawal & Ors** reported in AIR 1999 Bom 142, Hon’ble Bombay High Court has held that-

“... Now, after the seventy-third and seventy-fourth Constitutional amendments, the constitution of local bodies has been granted a constitutional protection and Article 243D mandates that a seat be reserved for the Scheduled Caste and Scheduled Tribe in every Panchayat and Sub-article (4) of the said Article 243D also directs that the offices of the Chairpersons in the panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide. Therefore, the reservation in the local bodies like the Village Panchayat is not governed by Article 16(4), which speaks about the reservation in the public employment, but a separate constitutional power which directs the reservation in such local bodies. ...”

And in the case of **Dr. K. Krishna Murthy & Ors vs Union Of India & Anr** decided on 11 May, 2010 in connection with Writ Petition (Civil) No. 356 of 1994, the Constitution Bench of Hon’ble Supreme Court has held that-

“48. In view of the above, our conclusions are:-

- (i) The nature and purpose of reservations in the context of local self-government is considerably different from that of higher education and public employment. In this sense, Articles 243-D and Article 243-T form a distinct and independent constitutional basis for affirmative action and the principles that have been evolved in relation to the reservation policies enabled by Articles 15(4) and 16(4) cannot be readily applied in the context of local self-government. Even when made, they need not be for a period corresponding to the period of reservation for purposes of Articles 15(4) and 16(4), but can be much shorter.
- (ii) Article 243-D(6) and Article 243-T(6) are constitutionally valid since they are in the nature of provisions which merely enable State Legislatures to reserve seats and chairperson posts in favour of backward classes. Concerns about disproportionate reservations should be raised by way of specific challenges against the State Legislations.
- (iii) We are not in a position to examine the claims about overbreadth in the quantum of reservations provided for OBCs under the impugned State Legislations since there is no contemporaneous empirical data. The onus is on the executive to conduct a rigorous investigation into the patterns of backwardness that act as barriers to political participation which are indeed quite different from the patterns of disadvantages in the matter of access to education and employment. As we have considered and decided only the constitutional validity of Articles 243-D(6) and 243-T(6), it will be open to the petitioners or any aggrieved party to challenge any State legislation enacted in pursuance of the said constitutional provisions before the High Court. We are of the view that the identification of 'backward classes' under Art. 243- D(6) and Art. 243-T(6) should be distinct from the identification of SEBCs for the purpose of Art. 15(4) and that of backward classes for the purpose of Art. 16(4).
- (iv) The upper ceiling of 50% vertical reservations in favour of SC/ST/OBCs should not be breached in the context of local self-government. Exceptions can only be made in order to safeguard the interests of Scheduled Tribes in the matter of their representation in panchayats located in the Scheduled Areas.
- (v) The reservation of chairperson posts in the manner contemplated by Article 243-D(4) and 243-T(4) is constitutionally valid. These chairperson posts cannot be equated with solitary posts in the context of public employment.”

The term ‘Collective Responsibility’ is also applicable in the Municipality as held in **Afzal Imam vs State Of Bihar & Ors.** decided on 19 April, 2011 in connection with Civil Appeal No. 2843 of 2011, the Supreme Court went on that-

“37. Conclusions

The above overview clearly shows that after the 74th Amendment to the Constitution, the Municipalities are strengthened and they are given wide ranging powers. The Municipal Laws in other states which we have seen clearly demonstrate that wherever Mayor-in-Council system is adopted, the tenure of

the members in the Council is made co-terminus with that of the Mayor. The idea is that the Mayor should have the confidence of the Executive Council or the Empowered Standing Committee, as the case may be, apart from that of the House. The members of the Empowered Standing Committee are authorized to answer the questions on behalf of the Empowered Standing Committee under the Bihar Municipal Act. Thus, there is an element of collective responsibility. The Empowered Standing Committee is supposed to function on the basis of the principle of Democratic Governance in the sense that the decisions are to be taken by the majority. If the new Mayor is not permitted to have his nominees on the Empowered Standing Committee, the collective functioning will be under jeopardy. Thus, there is a clear omission in the Bihar Municipal Act, 2007 in this behalf.

OVERVIEW OF MIZORAM MUNICIPALITIES ACT, 2007:

The followings were enacted and framed out for the constitution and functioning of Municipalities in Mizoram-

- (1) The Mizoram Municipalities Act, 2007¹ [As amended in 2009]²
- (2) The Mizoram Municipalities (Election to Counselors) Rules, 2007 [As amended in 2010]³
- (3) The Mizoram Municipalities (Procedure and Conduct of Business) Rules, 2007⁴
- (4) The Mizoram Municipalities (Delimitation of Wards) Rules, 2008⁵
- (5) The Mizoram Constitution of State Election Commission Rules, 2008⁶
- (6) The Mizoram Grants-in-aid to Aizawl Municipal Council Rules, 2008⁷
- (7) The Mizoram Municipalities (Ward Committee and Local Council) Rules, 2010⁸
- (8) The Mizoram Finance Commission Act, 2010 (Act No. 17 of 2010)⁹
- (9) The Aizawl Municipal Council (Facilities to Chairman, Vice Chairman, Executive Councilors and Councilors) Rules, 2010¹⁰
- (10) Accounting Manual (Vol. I & II) for Aizawl Municipal Council (AMC), 2011¹¹

Note:

Mizoram State Election Commission was constituted on 28th August, 2008¹². Whereby, the first State Election Commissioner was also appointed on 2nd September, 2008¹³. The status of State Election Commission and their sinuous is holistically dealt by the Hon'ble Supreme Court in **Kishan Singh Tomar Vs. Municipal Corporation of the City of Amedabad & Ors** in connection with Appeal (civil) 5756 of 2005 decided on 19/10/2006 and reported in 2007 AIR 269, 2006 (7) Suppl. SCR 454, 2006 (8) SCC 352, 2006 (10) SCALE 438, 2006 (9) JT 320, the Hon'ble Apex Court has held that-

“In our opinion, the entire provision in the Constitution was inserted to see that there should not be any delay in the constitution of the new Municipality every five years and in order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue, the provisions have been suitably added to the Constitution. In this direction, it is necessary for all the State governments to recognize the significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during the elections for the Parliament and State Legislatures. In fact, in the domain of elections to the Panchayats and the Municipal bodies under the Part IX and Part IX A for the conduct of the elections to these bodies they enjoy the same status as the Election Commission of India.

....Article 243 K (3) also recognizes the independent status of the State Election Commission. It states that upon a request made in that behalf the Governor shall make available to the State Election Commission "such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1). It is accordingly to be noted that in the matter of the conduct of elections, the concerned government shall have to render full assistance and co-operation to the State Election Commission and respect the latter's assessment of the needs in order to ensure that free and fair elections are conducted.

Also, for the independent and effective functioning of the State Election Commission, where it feels that it is not receiving the cooperation of the

concerned State Government in discharging its constitutional obligation of holding the elections to the Panchayats or Municipalities within the time mandated in the Constitution, it will be open to the State Election Commission to approach the High Courts, in the first instance, and thereafter the Supreme Court for a writ of mandamus or such other appropriate writ directing the concerned State Government to provide all necessary cooperation and assistance to the State Election Commission to enable the latter to fulfill the constitutional mandate.”

Salient features of the Mizoram Municipalities Act, 2007 (As amended in 2009) inter alia may be epitomized as follows-

Extend:

It shall extend to the whole of the state of Mizoram except the area which has been or may hereafter be declared as, or included in, a Panchayat or a Village Council under the provisions of any law in force in Mizoram, but shall not extend to the Mizoram tribal areas, as referred to in Part III of the paragraph 20 of the Sixth Schedule of the Constitution of India [S. 1 (2)]

Effective date:

By virtue of S. 1 (3) of the Act, the Act shall be deemed to have come into force with effect from 1st Day of July, 2008 in respect of Aizawl Municipal Area of Aizawl city¹⁴

Classification of towns:

Towns/city will be classified into three forms viz. (i) Transitional area having a population of not less than ten thousand (ii) Smaller urban area having a population of not less than one lakh fifty thousand and (iii) Larger urban area having a population of not less than five lakhs. [S. 3]. In this catena, a town having population less than ten thousand is not also barred from being specified as a transitional area. [Proviso to S. 7]

Classification of Municipalities:

Municipalities are classified as follows-

- (a) Municipal Board for a specified transitional area
- (b) Municipal Council for a smaller urban area, and
- (c) Municipal Corporation for a larger urban area. [S. 7]

Number of Wards:

- In case of Municipal Board, not less than five but not more than nine
- In case of Municipal Council, not less than eleven but not more than twenty three
- In case of Municipal Corporation, not less than fifteen but not more than thirty one [S. 8]

Note:

The Government of Mizoram determined nineteen (19) Wards of Aizawl Municipality on 15th March, 2010¹⁵ and their respective boundary is also described on 21st May, 2010¹⁶.

Municipal Authorities:

- (a) The Municipality
- (b) The Executive Council, and
- (c) The Chairman [S. 11]

Meaning and composition of Municipality

Municipality mainly meant Board of Councilors charged with the authority of the Municipal government of such area consisting of (i) elected Councilors but not more than one sixth or nearest of the number of councilors elected (ii) members of the House of the People and the members of the Legislative Assembly of the state representing the constituencies comprising wholly or partly of the Municipal area but shall not have a right to vote in the meeting of the Municipality [S. 12].

Tenure

Municipality is for a period of five years unless dissolved earlier from the date of its first meeting after the general election and no longer [S. 13]. The said first meeting will be held as soon as may be as possible after the names of the elected persons are published in the Gazette under sub-section (3) of section 26 [S. 51 (2)], the first meeting will be convened by the District Magistrate or the Executive Magistrate authorized in this behalf by the District Magistrate [S. 51 (1)]

Reservation of seats

Seats shall be reserved for the Scheduled Castes and Scheduled Tribes and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election as the population of the Scheduled Castes or the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats shall be allotted by rotation to different constituencies [S. 13 (7)].

Not less than one third of the total number of seats reserved under clause (1) of Article 243 T of the Constitution shall be reserved for women belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes [S. 13 (8)].

Not less than one third (Including the number of seats reserved for women belonging to the Scheduled Castes and Scheduled Tribes) of the total number of seats to be filled by direct election in every municipality shall reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality [S. 13 (9)]

The offices of the Chairman shall also be reserved for the Scheduled Castes, Scheduled Tribes and women as per the Legislature of the state may, by law, provide [S. 13 (10)]

Note:

Mode of allotment of seats in the Aizawl Municipal Council reserved for women by rotation is notified on 9th August, 2010¹⁷

The Government of Mizoram also fix the reservation of seats in respect of the Scheduled Castes, the Scheduled Tribes, General and women in Aizawl Municipality is also notified on 13th August, 2010¹⁸

Chairman and Vice Chairman

The Chairman and Vice Chairman shall be elected by the elected councilors from amongst themselves [S. 16 (1)]

The Chairman shall be the executive head of the Municipality but shall not act in opposition to or in contravention of any decision of the Board of Councilors [S. 15]

Executive Council

Executive Council will consist of the Chairman, the Vice Chairman and other members not exceeding in the case of Municipal Board, two, in the case of Municipal Council, three and in the case of Municipal Corporation, four and all executive powers of the Municipality shall vest in the Executive Council and shall also be collectively responsible to the Municipality [S. 14 r/w r. 38 of the Mizoram Municipalities (Procedure and Conduct of Business) Rules, 2007]

Personnel system

The Municipal Corporation or Municipal Council may have all or any of the following officers namely [S. 61 (1)] -

- ✓ Executive Officer
- ✓ Health Officer
- ✓ Engineer
- ✓ Finance Officer
- ✓ Town Planner
- ✓ Secretary

Common municipal service cadre may be constituted by the Government for the above Executive Officer, Health Officer, Engineer and Finance Officer [S. 62]. Municipal Service Selection Board may also be appointed for selection of municipal officers and employees as may be required from time to time [S. 63 (1)]

FUNCTIONS OF COUNCILORS UNDER THE ACT

The powers and functions of the Municipality is mainly contemplated in S. 57 of the Mizoram Municipalities Act, 2007, its discretionary functions is also elucidated in S. 58 of the Mizoram Municipalities Act, 2007, the State Government may also transfer some of the business to the Municipalities as listed out in S. 59 of the Mizoram Municipalities Act, 2007

The Municipality is responsible for managing public streets, public places and private streets under Chapter- XI of the Mizoram Municipalities Act, 2007

Note:

In the case of **Virender Gaur & Ors. V. State of Haryana & Ors.** [(1995) 2 SCC 577], it was stated:

"It is seen that the open lands, vested in the Municipality, were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreation, playground and ventilation purposes. The buildings directed to be constructed necessarily affect the health and the environment adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the Government and the action taken pursuant thereto by the Municipality would clearly defeat the purpose of the scheme"

And in the case of **Padma V. Hiralal Motilal Desarda and Ors.** (2002) 7 SCC 564, wherein it was stated:

"The significance of a development planning cannot therefore be denied. Planned development is the crucial zone that strikes a balance between the needs of large-scale urbanization and individual building. It is the science and aesthetics of urbanization as it saves the development from chaos and uglification. A departure from planning may result in disfiguration of the beauty of an upcoming city and may pose a threat for the ecological balance and environmental safeguards."

And in **Hari Ram vs Jyoti Prasad & Anr.** decided on 27 January, 2011 in connection with Civil Appeal No. 1042 of 2011 [Arising out of SLP (C) No. 35813 of 2009], the Supreme Court has observed that-

“18. Any act of encroachment is a wrong committed by the doer. Such an encroachment when made to a public property like encroachment to public road would be a graver wrong, as such wrong prejudicially affects a number of people and therefore is a public wrong. So long any obstruction or obstacle is created to free and unhindered access and movement in the road, the wrongful act continues thereby preventing the persons to use the public road freely and unhindered. Therefore, that being a continuing source of wrong and injury, cause of action is created as long as such injury continues and as long as the doer is responsible for causing such injury.”

The Executive Council/Municipality is responsible for regulation of buildings under Chapter- XII of the Mizoram Municipalities Act, 2007

Note:

In the case of **Arvind L. Abhyankar vs Municipal Corporation Of Hyderabad** decided on 17 September, 2002 and reported in AIR 2003 AP 94, 2002 (5) ALD 763, 2003 (1) ALT 336, the Andhra High Court has held that-

“31. From a reading of the above provision, it becomes clear that where a building is constructed or reconstructed or some structures are raised unauthorisedly, it is competent for the assessing authority, to levy property tax on such illegal constructions with a penalty of ten per cent on the amount of tax levied till such unauthorised constructions are demolished or regularised. In other words, so long as the unauthorised constructions continue to remain undemolished or uncured, it is competent for the assessing authority to assess such illegal constructions and impose penalty often per cent on the tax levied.”

The Board of Councilors/Municipality is responsible for public conservancy and private conservancy under Chapter- XIII of the Mizoram Municipalities Act, 2007

Note

In the case of **Municipal Council, Ratlam vs Shri Vardhichand & Ors** decided on 29 July, 1980 reported in 1980 AIR 1622, 1981 SCR (1) 97, the Supreme Court has held that-

“We make the further supplementary directions which we specifically enjoin upon the municipal authority and the State Government to carry out.

1. We direct the Ratlam Municipal Council (R1) to take immediate action, within its statutory powers, to stop the effluents from the Alcohol Plant flowing into the street. The State Government also shall take action to stop the pollution. The Sub Divisional Magistrate will also use his power under s. 133 I.P.C., to abate the nuisance so caused. Industries cannot make profit at the expense of public health. Why has the Magistrate not pursued this aspect ?

2. The Municipal Council shall, within six months from to-day, construct a sufficient number of public latrines for use by men and women separately, provide water supply and scavenging service morning and evening so as to ensure sanitation. The Health Officer of the Municipality will furnish a report, at the end of the six- monthly term, that the work has been completed. We need hardly say that the local people will be trained in using and keeping these toilets in clean condition. Conscious cooperation of the consumers is too important to be neglected by representative bodies.

3. The State Government will give special instructions to the Malaria Eradication Wing to stop mosquito breeding in Ward 12. The Sub Divisional Magistrate will issue directions to the officer concerned to file a report before him to the effect that the work has been done in reasonable time.

4. The municipality will not merely construct the drains but also fill up cesspools and other pits of filth and use its sanitary staff to keep the place free from accumulations of filth. After all, what it lays out on prophylactic sanitation is a gain on its hospital budget.

5. We have no hesitation in holding that if these directions are not complied with the Sub Divisional Magistrate will prosecute the officers responsible. Indeed, this court will also consider action to punish for contempt in case of report by the Sub Divisional Magistrate of willful breach by any officer.”

The Executive Officer/Municipality is responsible for taking precaution in the menace of nuisance like (i) *dangerous structures* (ii) *dangerous quarrying* (iii) *fire* (iv) *well, tanks which requires permission of the Executive Officer* (v) *filling in pools etc* (vi) *cleansing of unsanitary private tank or well used for drinking* (vii) *dangerous or nuisance animals etc.* under Chapter- XIV of the Mizoram Municipalities Act, 2007

Note

'Precautionary principles' is discussed in the case of **Vellore Citizens Welfare Forum Vs. Union Of India & Ors** decided on 28 August, 1996 reported in 1996 AIR 2715, 1996 (5) Suppl. SCR 241, 1996 (5) SCC 647, 1996 (6) SCALE 194, 1996 (7) JT 375, it was held thus-

"Some of the salient principles of "Sustainable Development", as culled-out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Nature Resources, Environmental Protection, the Precautionary Principle, Polluter Pays principle, Obligation to assist and cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays" principle are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means. (i) Environment measures - by the State Government and the statutory Authorities must anticipate, prevent' and attack the causes of environmental degradation. (ii) Where there are threats of serious and irreversible damage lack of scientific certainty should not be used as the reason for postponing, measures to prevent environmental degradation. (iii)The "Onus of proof" is on the actor or the developer/industrial to show that his action is environmentally benign.

"The Polluter Pays" principle has been held to be a sound principle by this Court Indian Council for Enviro-Legal Action Vs. Union of India J.T. 1996 (2) 196. The Court observed, "We are of the opinion that any principle evolved in this 'behalf should be simple practical and suited to the conditions obtaining in this country". The Court ruled that "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on". Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."

The Executive Council/Municipality is responsible for granting and manning of licenses and fees like (i) *keeping of animals* (ii) *construction/establishment etc of factory, workshop, work place with certain restrictions requiring prior approval of state government* (iii) *slaughtering* (iv) *Milk trade* (v) *Markets* under Chapter- XV of the Mizoram Municipalities Act, 2007

The Municipality is responsible for collecting and managing Municipal Taxation under Chapter- XVI of the Mizoram Municipalities Act, 2007

The Municipality is responsible for providing water supply under Chapter- XVII of the Mizoram Municipalities Act, 2007

Note:

Pertinently, providing unpolluted drinking water to all citizenry is a part of fundamental rights under Article 21 of the Constitution of India as held in the case of **Narmada Bachao Andolan vs Union Of India And Others** decided on 18 October, 2000 reported in 2000 AIR 3751, 2000 (4) Suppl. SCR 94, 2000 (10) SCC 664, 2000 (7) SCALE 34, 2000 (2) Suppl. JT 6. Also in the supreme court decisions in **Voice of India (Through its Chairman) Vs. Union of**

India & Ors. in connection with Writ Petition (Civil) No. 263 of 2010 decided on 20/09/2010. It was held in the following words-

“Petitioner has filed this petition alleging that the right to free drinking water is part of Right to Life under Article 21 of the Constitution. Consequently, petitioner prays that water be supplied to every citizen in this country free of cost. In this connection, petitioner has submitted that the various State Governments, including, Delhi should be directed to arrange for free potable drinking water through MCDs and NDMCs.

In this writ petition all the States and Union Territories are made party-respondents. We are fully conscious of the fact that even after 60 years a citizen of this country is not getting clean potable water. In this regard, we agree with the petitioner.”

The Municipality is responsible for drainage and sewerage under Chapter- XVIII of the Mizoram Municipalities Act, 2007

Note:

In the case of **Ragini Prasad And Ors. vs Ranchi Regional Development Authority & Anr.** decided on 11 February, 2004 and reported in 2004 (1) JCR 616 Jhr, Jharkhand High Court has directed to construct drainage in the city that-

“10. The parties submitted at the bar that there is no drain(s) in the street in question. From the drainage plan submitted by the petitioners also, it appears that there is no drain(s) in the street in question. If that is so, the respondents are directed to take steps for providing drain(s) in the street in terms of chapter III of the Act, without any delay. The width of such drain should be excluded from the width of the street, and if the petitioners or other persons submit their plans on that basis, the same should be considered in accordance with law.

11. In the result, it is held that the width of an existing/proposed drain(s) has to be excluded while measuring the width of a 'street/means of access'.”

The Board of Councilors/Municipality is responsible for restraint of infections under Chapter- XIX of the Mizoram Municipalities Act, 2007

The Board of Councilors/Municipality is responsible for maintaining and updating of vital statistics in their jurisdiction under Chapter- XX of the Mizoram Municipalities Act, 2007.

The Board of Councilors/Municipality is responsible for disposal of the dead under Chapter- XXI of the Mizoram Municipalities Act, 2007.

The Board of Councilors/Municipality is responsible for Urban Renewal and Regional Development under Chapter- XXII of the Mizoram Municipalities Act, 2007.

Note:

In the case of **Friends Colony Development Committee V. State of Orissa & Ors.** [(2004) 8 SCC 733] stated the law in the following terms:

"In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably

necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified."

The meeting of Municipality is divided into two (i) *Ordinary meeting and (ii) Extra Ordinary meeting* and the quorum of the meeting shall be one third of the total number of councilors of the Municipality [rr. 11, 12, 13 and 16 of the Mizoram Municipalities (Procedure and Conduct of Business) Rules, 2007]

RIGHTS, DUTIES AND OBLIGATIONS OF THE COUNCILORS

Rights and protection

The entitlement of Chairman, Vice Chairman, Executive Councilors and Councilors are governed by the *Aizawl Municipal Council (Facilities to Chairman, Vice Chairman, Executive Councilors and Councilors) Rules, 2010* say-Remuneration, Sumptuary Allowance, Ward Allowance, Contingency Allowance, Sitting Allowance, Transport Allowance etc.

No suit shall be maintainable against any municipal authority or any officer or other employee of the Municipality or any person acting under the direction of any municipal authority or any officer or other employee of the Municipality or of a Magistrate in respect of anything done lawfully and in good faith and with due regard to the provisions of the Mizoram Municipalities Act, 2007 or the rules or the regulations made thereunder [S. 362 of the Mizoram Municipalities Act, 2007]

No officer or other employee of the Municipality shall, in any legal proceedings to which the Board of Councilors is not a party, be required to produce any register or document the contents of which can be proved by a certified true copy or to appear as a witness to prove any matter or transaction recorded therein save by order of the court made for special cause [S. 365 of the Mizoram Municipalities Act, 2007]

The Board of Councilors or any officer or other employees of Municipality authorized by the Board of Councilors or empowered by or under the Mizoram Municipalities Act, 2007 may enter into or upon any land or building with or without assistance or workmen for the purpose of any assignment made under the Mizoram Municipalities Act, 2007 [S. 353 of the Mizoram Municipalities Act, 2007]. They are also further authorized to enter land or adjoining land in relation to any work [S. 354 of the Mizoram Municipalities Act, 2007]. They can also break the building for the said purpose [S. 355 of the Mizoram Municipalities Act, 2007]

Duties and obligations

Subject to the provisions of the Registration of Births and Deaths Act, 1969, the Board of Councilors is responsible to keep statistics of births and deaths and also responsible to supply such information to the applicant with prescribed fees [S. 315 of the Mizoram Municipalities Act, 2007]

The list of departments and allocation of business among the members of the Executive Council like (i) *General Administration Department (ii) Accounts and Cash Department (iii) Revenue Department (iv) Public Works Department (v) Water Supply Department (vi) Public Health and Convenience (vii) Lighting and Electricity Department (viii) Education Department (ix) Stores Department* is appended in the First Schedule of the Mizoram Municipalities (Procedure and Conduct of Business) Rules, 2007. The powers of the Executive Council is also appended in the Second Schedule of the Mizoram Municipalities (Procedure and Conduct of Business) Rules, 2007.

It is also the duty of Councilors in their official capacity not to infringe the fundamental rights as enshrined under Part- III of the Constitution of India to every citizenry or any other persons as the case may be since they are also termed within the meaning of 'State' under Article 12 of the Constitution of India. In other words, their negative action will always cause liability of the state/government.

Note:

It is the duty of Municipality (Local Government) to observe natural justice viz. (1) *no one shall be a judge in his own cause* (Nemo iudex in causa sua), and (2) *no decision shall be given against a party without affording him a reasonable hearing/hear the other side* (audi alteram partem) as held in **A. K. Kraipak & Ors. vs. Union of India & Ors.** AIR 1970 SC 150. The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by the Supreme Court to the concept of equality which is the subject-matter of that Article as held in **Union of India v. Thulsiram Patel etc.**, [1985] 3 SCC 398 (at page 476). Also vide, **Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram HSS**, 1993 AIR 2155, 1993 (3) SCR 863, 1993 (4) SCC 10, 1993 (2) SCALE 924, 1993 (3) JT 487; **State of Orissa Vs. Dr. (Miss) Binapani Dei & Ors.**, 1967 AIR 1269; 1967 SCR (2) 625.

Moreover, there should not be any rooms for nepotism, biasness, unfairness etc. under the glimpse of transparency in the functioning as recently held in **Akhil Bhartiya Upbhokta Congress vs Staet Of M.P. & Ors.** decided on 6 April, 2011 in connection with Civil Appeal No. 2965 of 2011 (Arising out of SLP(C) No. 25509 of 2009), the Supreme Court has held that-

“Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non- discriminatory or non-arbitrary method irrespective of the class or category of persons proposed to be benefitted by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

32. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favoritism and nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.”

FUNCTIONS OF COUNCILORS WITH RESPECT TO VARIOUS STANDING COMMITTEES

Ward Committee

The Councilor from the concerned Ward shall be the chairman of the Ward Committee [S. 23 (1) r/w R. 4 (2) of the Mizoram Municipalities (Ward Committee and Local Council) Rules, 2010]. Three members of the Ward Committee besides two members each from the Local Councils within the Ward shall be appointed by the Municipality on the recommendation of the Councilor from amongst the prominent citizens residing in the ward of which one shall be a women. In the absence of the Councilor of the ward, the members present shall elect a Chairman from amongst themselves to preside over the meeting [R. 4 of the Mizoram Municipalities (Ward Committee and Local Council) Rules, 2010]. Municipality shall make available to the Ward Committee the information like (i) *decisions or resolutions of the Municipality concerning the*

ward (ii) decisions or resolutions of the Executive Committee concerning the ward etc. [R. 13 of the Mizoram Municipalities (Ward Committee and Local Council) Rules, 2010]

Joint Committee

As the State Government may considers necessary, joint committee may be constituted consisting of (i) *two nominees of each constituent municipality or local authorities (ii) one nominee of each of the concerned departments of the State Government or of the concerned Municipalities or of the concerned local authority (iii) such expert or experts as the State Government may nominate (iv) Director of Local Bodies who shall also act as a convener of the Committee.*

Special Committee

The Board of Councilors may from time to time appoint a Special Committee to perform such specified functions, or conduct such enquiries, or undertake such studies including reports thereon, as may be contained in a resolution but any person who is not a Councilor but possess special qualifications useful for the purpose of a committee may be associated therewith as its member [S. 24]

Local Council

The Municipality shall form a Local Council in every locality within the ward for matter of local and internal nature according to the Mizo traditions, customs and practices and such other matters necessary for effective functioning of the local council [S. 23 (3) r/w R. 20 of the Mizoram Municipalities (Ward Committee and Local Council) Rules, 2010]. Ward committee shall make available to the Local Council the information like (i) decisions or resolutions of the Municipality concerning the council (ii) decisions or resolutions of the Executive Committee concerning the council etc. [R. 23 of the Mizoram Municipalities (Ward Committee and Local Council) Rules, 2010]

Urban Development Committee

Whenever, the State Government may constitute Urban Development Committee, it shall be incumbent upon the Board of Councilors to consult it in all matters of preparation of any master plan and entrust to it all items of implementation so far as they relate to areas outside the municipal area [S. 342 of the Mizoram Municipalities Act, 2007]

Municipal Service Selection Board

Two Councilors of the concerned Municipality will be a member in the *Municipal Service Selection Board* under the Chairmanship of the Secretary to the Govt. of Mizoram, Urban Development and Poverty Alleviation Department [S. 63 of the Mizoram Municipalities Act, 2007]

CONCLUSION:

The Government of Mizoram by fulfilling its owe as enumerated under entry 5 of list – II (State List) of the Seventh Schedule to the Constitution of India already constituted urban government at Aizawl city, efficaciousness of the said institution mostly depends on the elected Councilors- their knowledge, corruption free zeal, prudence, dedication, hard working etc. but subject to the will of the state government. Decentralization/devolution of power itself is one of the cardinal elements of ‘good governance’ where administrative development resulted development administration viz. *changes + growth*, constitution of Municipality in Mizoram under the edifice of the 74th Constitution

(Amendment) Act, 1992 is no doubt a magna carta towards development administration as challenged in the socio-political change at Globalization era.

Reference:

1. Notification No. H. 12018/120/2003-LJD/28, the 20th April, 2007 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXVI 24-4-2007 Issue No. 123)
2. Notification No. H. 12018/120/2003-LJD, the 19th Nov., 2009 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXVIII 24-11-2009 Issue No. 534) Viz. the Mizoram Municipalities (Amendment) Act, 2009 (Act No. 14 of 2009), received the assent of the Governor on Dt. 09-11-2009
3. Notification No. B. 13017/9/2008-UD&PA the 31st Jan., 2008 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXVII 04-02-2008 Issue No. 12), the Mizoram Municipalities (Election of Councilors (Amendment) Rules, 2010 is notified under No. B. 13017/21/2007-UD&PA the 8th June, 2010 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXIX; 11-06-2010 Issue No. 195)
4. Notification No. B. 13017/6/2007-UD&PA the 25th Feb., 2008 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXVII 26-2-2008 Issue No. 32)
5. Notification No. B. 13017/7/2007-UD&PA the 25th March, 2008 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXVII 26-3-2008 Issue No. 75)
6. Notification No. B. 13017/11/2008-UD&PA (M), the 26th Aug., 2008 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXVII 26-8-2008 Issue No. 329)
7. Notification No. B. 13017/22/2008-UD&PA the 13th August, 2008 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXVII; 20-08-2008, Issue No. 301)
8. Notification No. B. 13017/21/2008-UD&PA (M), the 2nd November, 2010 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXIX; 04-11-2010, Issue No. 436)
9. Notification No. H. 12018/211/10-LJD/Pt., the 12th November, 2010 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXIX; 18-11-2010, Issue No. 458)
10. Notification No. B. 13017/36/2010-UD&PA (AMC), the 29th December, 2010 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XL; 06-01-2011, Issue No. 2)
11. Notification No. B. 13017/2/2008-UD&PA/Loose, the 25th March, 2011 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XL; 06-01-2011, Issue No. 2)
12. Notification No. B. 13017/11/2008-UD&PA (M), the 28th August, 2008 (Vide, the Mizoram Gazette, Extra Ordinary; Vol- XL 01-04-2011 Issue No. 150)
13. Notification No. B. 13017/1/2008-P&AR (GSW), the 2nd September, 2008 (Vide, the Mizoram Gazette, Extra Ordinary; Vol- XXXVII 04-09-2008 Issue No. 351)
14. Notification No. B. 13017/1/2006-UD&PA the 28th Dec., 2009 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXIX 19-01-2010 Issue No. 11)
15. Notification No. B. 13037/7/2007-UD&PA the 15th March, 2010 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXIX 23-03-2010 Issue No. 86)
16. Notification No. B. 13037/7/2007-UD&PA the 21st May, 2010 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXIX; 26-05-2010 Issue No. 172)
17. Notification No. B. 13017/38/2010-UD&PA the 9th August, 2010 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXIX 11-08-2010 Issue No. 284)

18. Notification No. B. 13017/38/2010-UD&PA the 13th August, 2010 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXIX 17-08-2010 Issue No. 299)

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