

METROPOLITAN GOVERNANCE IN INDIA

Legal-Institutional Challenges and Prospects



I. Background

The composite set of interrelationships between various institutional structures and actors within metropolitan areas and regions requires consideration in light of the expansion of urban areas and their population in India. The 74th Amendment to the Indian Constitution sought to empower urban local bodies in order to enable greater efficiency in the management of urban areas. The principal challenge in every jurisdiction remains one of finding an appropriate balance in the broad governance framework, which is effective and coordinated across scale—neighbourhood to metropolitan. This framework needs to take into account political economy considerations to ensure effective democratic decision making that is well coordinated, citizen centric and sensitive to the needs of the vulnerable and marginal populations.

II. Demographic Trends

‘Metropolitan Areas’ are legally defined under Article 243P© of the Constitution of India, as areas “having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area.” As per the Census of India, of the 53 ‘million plus’ areas (metropolitan areas, as legally defined) that have over 40 per cent of India’s urban population, a majority belong to the category of Urban Agglomeration(UA) while six have been categorised as cities. These urban agglomerations often contain a combination of census towns, outgrowths, cantonment boards etc., within their territories. In terms of the state wise distribution, Uttar Pradesh and Kerala have the highest number of metropolitan areas (7 UAs), followed by Maharashtra (5 UAs and 1 city). Uttar Pradesh also leads in terms of the number of cities having a population of more than 1 lakh (63), followed by West Bengal(61).

Areas with population between 5–10 million like Surat, Ahmedabad, Hyderabad etc., are estimated to be have grown at a faster rate than the larger metropolitan areas over the period from 2001–2011. In 1951 there were only five cities with a population greater than 1 million in comparison to the 53 million plus UA’s/cities currently in India. These produce about 32 per cent of the GDP, with 13.3 per cent of the population and just 0.2 per cent of the land.

III. Key Issues

Metropolitan areas are characterised by complexities of governance especially in terms of institutional structures and the inter relationships and interactions created by the overlaps, contradictions, and definitional ambiguities. Partly arising from definitional ambiguities, a significant challenge within metropolitan areas relates to different boundary/area arrangements that exist within or around these areas, and the various institutional arrangements that could potentially exist within the same metropolitan area, with different jurisdictional claims.

Definitional Issues

As discussed above, under Article 243P© of the Constitution of India, a metropolitan area refers to one which has a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification. The Census of India also sets the same population level; however, it does not explicitly use the term 'metropolitan area'. Instead, it provides for 'million plus' urban agglomerations/cities. Various other institutional definitions are also in use by the NSS, UDPI, and private entities. The use of terms such as 'urban agglomerations', 'metropolitan regions' (with its own authority) create complexity in determining the boundaries and actors involved in the areas. For instance, the combination of different Census based area classifications such as census towns, cantonment boards, integrated townships, outgrowths etc., that often exist within the boundaries of metropolitan UAs.

Devolution Issues

Second, while the emphasis under the 74 Amendment has been decentralisation, recent developments indicate a possible shift of this discourse to one which is moving away from empowering local levels of governance. Under Article 243Q of the Constitution, industrial townships are legally 'carved out' as an exception and do not fall within the jurisdiction of urban local bodies. Accordingly, the Governor is empowered to declare an industrial township based on two criteria i.e., the size of the area and whether industrial establishments within it, propose to, or already provide municipal services. These areas do not require a municipal setup and instead have a different type of authority constituted for the purpose of administration which is usually not representative in nature. This assumes importance in light of the recent push

towards the establishment of SEZs, NIMZs and various industrial corridors. In addition, while areas sabhas and ward committees were seen as means to effect greater representation and involvement of citizens at the local level, the constitution of such sabhas has progressed at a slow pace with only a few municipal corporations such as Greater Hyderabad Municipal Corporation taking active interest. In addition, the actual involvement and extent of participation of citizens within such ward committees and area sabhas remains uncertain and skewed across different metropolitan areas. The principle of 'subsidiarity' has not been fully implemented in the case of urban decentralisation itself.

Constitution of MPCs

Third, in order to ensure greater efficiency in planning at the local level, The Constitution under Article 243 ZE sought to establish Metropolitan Planning Committees (MPCs). There are various approaches adopted in the establishment of MPCs within different states. States such as Maharashtra, West Bengal, and Tamil Nadu have enacted separate legislations in order to establish MPCs in metropolitan areas. Bihar has drafted Rules in order to establish MPCs while Karnataka has introduced an Amendment in its Municipal Act and thereafter drafted Rules to that effect. While all these states have listed a broad set of functions predicted on the mandate of the Constitution incorporated within the legislative enactments, some have expanded the scope of functioning considerably. Despite this, there appears to be a lack of interest and commitment on the part of the states in implementing these enactments and establishing MPCs in their respective metropolitan areas. In Maharashtra and Karnataka, the High Courts have stepped in to push for the establishment of these. However, progress remains to be seen. There has also been a crucial development and shift with regard to the actual nature and functioning of the MPC in Hyderabad which differs from that of other states. Here the MPC plays a consultative role while the Hyderabad Metropolitan Development Authority assumes the primary and more powerful role in relation to planning. It is observed that the actual intention behind, and purpose for, the establishment of MPCs has changed over time. It is therefore unclear what the roles and status of these will be in the future.

Multiple Authorities

From an institutional standpoint, there are various multiplicities and lags which exist within the governance structures and relationships in

metropolitan areas. Various forms of negotiation and cooperation exist alongside the relationships of conflict and contestation within land, property rights, and demand for services in metropolitan areas. The institutional arrangements governing land and service delivery in metropolitan areas are fraught with complexities in terms of their mandates and the politics surrounding them. For example, the multiplicity of legislation such as the Town and Country Planning Acts, the various legislation on land acquisition, land use, and control, as well as other legal instruments such as the Development Control Regulations create a complicated and sometimes contradictory legal landscape within urban and peri urban areas. The failure to link land conversion processes with planning, and the procedural delays, multiplicity of laws and institutions have exacerbated the complexity of the situation. Similarly, with the field of urban water supply and sanitation, relationships range from government-private sector interactions to private sector community-based interactions or those between local governments and CBOs/NGOs. The lack of coordination between urban and rural local bodies coupled with fragmented land use also creates complications.

IV. Strengthening democratic Governance in Metropolitan Areas

The current institutional set up has to be understood in light of political economy factors such as the governing politics (party based as well as other forms of associational politics) and civic engagement. Such questions are in turn dependent on the nature of land and property rights in metropolitan areas, and the political economy surrounding such issues. A debate on institutional change in metropolitan governance has to recognise the intricate difficulties inherent in the current practices surrounding land and property as well as service delivery in urban areas, while taken into account differences between and among metropolitan areas.

Role of the Judiciary

The entitlement approach is reinforced by the Indian Supreme Court on questions of the right to housing/shelter, right to water, right to livelihood, right to a clean environment and so on, within the scope of the Right to Life under Article 21 of the Indian Constitution. Environmental issues, while being included in various cases under the ambit of Article 21 filed in the form of series of Public Interest Litigations (PILs) before the Courts, have

not generally addressed the issue of sustainability as a whole, or arrived at a clearly nuanced and balanced position where environment is pitted against livelihood and informal settlements. Judicial recognition of rights has rarely translated into an effective legal framework for the implementation of related policies, partly because of the inadequate institutional structures. The lack of functional and institutional clarity coupled with the lack of resources has ensured that any progress under the Constitutional scheme remains slow. The Judiciary however remains a very significant institutional actor, including in metropolitan areas in India.

Comparative International Examples

It may be difficult to categorise and provide a one size fits all solution in terms of how metropolitan governance related institutions and interactions may be structured. There are governance related aspects in other countries that could be illustrative of steps that could be adopted in metropolitan areas in India. While it may be useful to have a strong mayoral system like that of New York or London in the megacities in India, medium and smaller metropolitan areas may be more suited to a system as relevant in Johannesburg where city utilities type of arrangements exist based on interactions within local government. While comparisons with other countries may provide insights into the various ways in which specific metropolitan areas in India could adopt alternative models of governance based on their individual characteristics. Some international illustrations are discussed below:

- **Mayoral System:** New York (strong mayoral system), London (directly elected, though owners are subject to Assembly scrutiny) etc.
- **Constitutional/Legal Mandate:** Countries such as Brazil, Argentina and Japan have enacted Constitutional provisions/legislations clearly defining metropolitan areas/regions along with providing for various forms of powers and autonomy in specific cases.
- **Devolution:** Shanghai (multiple levels of local government), London (devolution of powers to the boroughs), Sao Paulo (division of a large region into multiple municipalities).
- **Hierarchy of Local Bodies:** Shanghai, Beijing (single mayoral system), Santiago and Manila (two tiered system-municipal corporation handles services of the entire metropolitan area while municipalities within the corporation deal with specific services within their geographical area)

Possible Definitional/Institutional Approaches

The overarching definition of metropolitan area needs to accommodate more nuances to encompass the various differences in population and other criteria, in order to govern metropolitan areas better. A possible classification could be as follows, based on projected trends for the future: a) megacities with more than 15 million population; b) megacities more than 10 million, c) metropolitan areas between 5–10 million population, d) metropolitan areas between 3–5 million population, e) metropolitan areas between 1–3 million population. Apart from the population criteria, these areas would vary on economic, social, infrastructure, and other indices, as well as historical and political factors, including the nature of state government disposition towards such regions. The governance structures would be shaped by each of such factors. The nature of metropolitan scale would accordingly vary. Some other possible approaches based on existing realities along with potential benefits and challenges are as follows:

- Institutional re-organisation with legal and executive actions: This may encompass revisions in existing legislations, clarification on the roles of various authorities such as the MPCs.
- Metropolitan governance by Executive action and consensus/coordination: Better coordination between authorities within a metropolitan area wherein certain authorities take the lead while being assisted by others as illustrated in the relationships between the Greater Hyderabad Municipal Corporation and Vishakhapatnam Municipal Corporation and their parastatals which assist in implementation of service provisioning.
- Metropolitan Governance led mainly by the state government, where subsidiary delegated functions for parastatals and Development Authorities are clearly identified with some residual functions entrusted to municipal level bodies. At the same time, this is inadequate with the Constitutional vision as laid down in the 74th Amendment.
- Metropolitan governance with utility compacts with Municipal Government: A useful example may be seen in the manner in which decentralisation and service delivery purportedly implemented in South Africa.

There must be clarity in terms of the areas of functioning, administrative deficiencies as well as the definitional ambiguities that arise especially within metropolitan areas to improve democratic decision making and efficiency. In addition, the apparent shift in trends away from the decentralisation discourse as under the 74th Amendment requires consideration in order to identify the specific roles of institutions that are constitutionally provided for, such as areas sabhas, ward committees and MPCs. Devolution of power, and coordinated across scale (neighbourhood to metropolitan) is therefore an essential step in order to ensure democracy, efficiency and accountability. This could be done in various ways. First, it includes further decentralisation by establishing ward committees and area sabhas under the Community Participation Law in order to take a step towards ensuring some form of citizen participation.

In terms of fiscal devolution, there are various developments once initiated that could prove to be useful. The expansion of the property tax base, clear identification of taxable properties, simplification of the system of property taxation based on public discussions and consultations, online payment and grievance redress, use of alternative revenue instruments in the form of fees/other charges would be useful in encouraging greater independence of local bodies. Recent developments on Goods and Service Tax (GST) reform holds promise if urban local bodies get a share of the resources.

Finally, some form of incentivisation needs to be identified to promote institutional commitment to the implementation of better governance and management within metropolitan areas. These approaches are to be read in conjunction with entitlement frameworks that exist in current legislation and judicial determination.

State governments will, in the short to medium run, continue to be the most significant actors in deciding the extent of devolution, while newer forms of urbanisation such as inter-state urban local bodies emerge. Recent developments on GST reform holds promise if urban local bodies get a share of the resources. Finally, some form of incentivisation needs to be identified to promote institutional commitment to the implementation of better governance and management within metropolitan areas. These approaches are to be

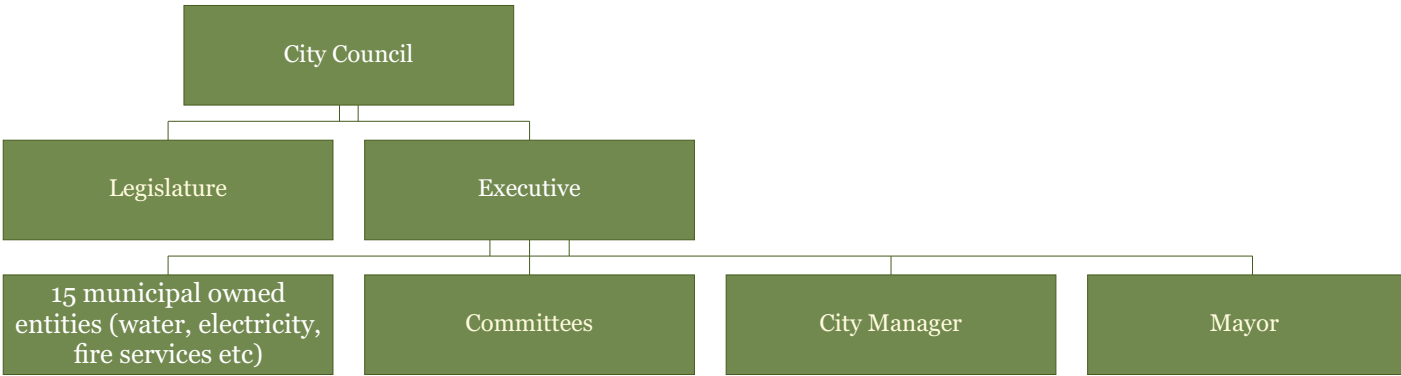
read in conjunction with entitlement frameworks that exist in current legislation and judicial determination. State governments will, in the short to medium run, continue to be the most significant actors in deciding the extent of devolution, while newer forms of urbanisation such as inter-state urban governance structures at metropolitan scale, remains distant in the political horizon. What is however possible is the ability of certain metropolitan areas to leverage greater influence and work in tandem with state governments, on matters that require coordination along political, legal and institutional action. On this question also hinges some of the political transitions around India's urbanisation. The need for a more effective and coordinated democratic institutional structure, across multiple institutions, and across different scales in India's metropolitan areas will continue to be deeply felt.

ANNEX: Some Examples of Institutional Structures and Functions of Authorities in Metropolitan Areas of Various Countries

Johannesburg

Johannesburg is a metropolitan municipality which is divided into seven administrative regions. The City is governed by a council which consists of two arms—the Executive and Legislature. The Executive consists of the Executive mayor, city manager and Mayoral committees. The executive mayor is assisted by a mayoral committee consisting of ten councillors. In addition, there are various other committees which are set up to perform various functions and report to the Council. There are portfolio committees with an oversight role over various departments and standing committees deal with relevant council matters (eg., Municipal public accounts). These standing committees do have certain delegated decision making powers but do report ultimately to the Council. Finally, there are 15 agencies/municipal owned entities which deal with water, electricity, fire, health, and land-use managements with the metropolitan municipality area. Some of these are City Power, Johannesburg Water, Pikitup, Joburg Theatre, Joburg Tourism Company and City Parks.

Figure 1: Organizational Structure of Johannesburg Metropolitan Municipality



London

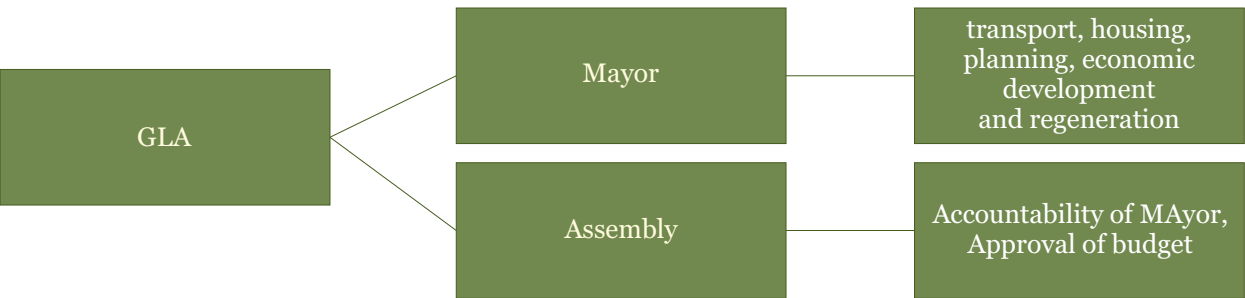
The main authority within this area is the Greater London Authority (GLA) which consists of the Mayor and the London Assembly (25 members). While the Mayor is the in charge of the GLA in general, the London Assembly does hold the Mayor accountable by examining his policies and plans. The London Assembly is also responsible for approving the Mayors Budget. The Mayor has a significant portfolio covering areas such as transport, housing, planning, economic development and regeneration etc., he does not exercise very strong powers as he is accountable to the Assembly.

The area of London consists of 33 local authorities (32m boroughs and the City of London Corporation) whose representatives are elected by the citizens. These are responsible for education, social services, housing, planning, environment and waste management, etc., at the local level. They also have the power to collet council tax at this level, a part of which is given to the GLA. The boroughs are further divided into wards headed consisting of elected councilors.

Figure 2: Organizational Structure of the Greater London Area



Figure 2b: Functions of the Greater London Authority



Sao Paulo

Figure 3a: Sao Paulo Metropolitan Region Structure:

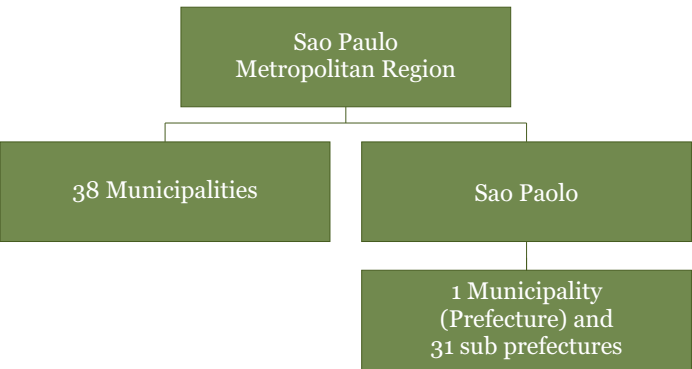
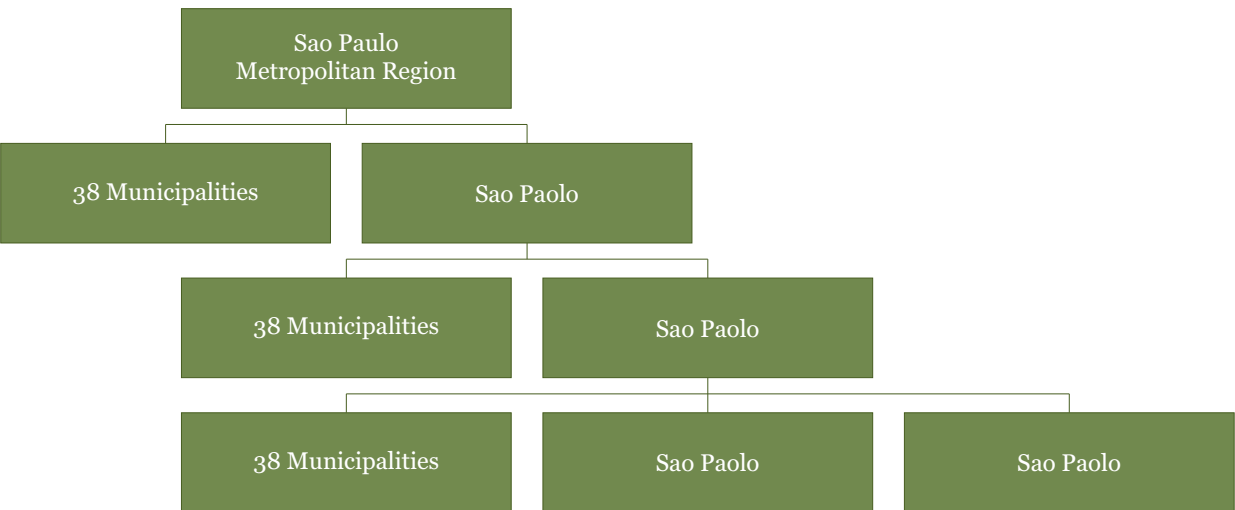


Figure 3b: Functional Structure of a Prefecture:



The Sao Paulo Metropolitan Region consists of 39 municipalities of which the area of Sao Paulo is included. Sao Paulo is further divided into one municipality (prefectures) and 31 sub prefectures. It provides an insight into inter institutional cooperation, the ABC Region, created by a subset of cities in the metropolitan region in the 1990's and consisting of seven cities with population around 2.4 million. The metropolitan region does not have a consolidated political organisation; instead it consists of various arrangements. The first is a development council which consists of representatives from the municipalities and members from the State nominated by the Governor. Second, there is scope for the views of civil society within the region to be taken into account. The third consists of technical groups that provide information and views on various specific topics which may be relevant. There is a regional enterprise which is linked to the Secretariat of the Metropolitan Development which collects various charges and fees along with elaborating and overseeing plans and their execution. Finally, the Regional Development Fund consists of four members of the Development Council and two from the Regional Enterprise.

Further Readings

Lama-Rewal, Tawa Stephanie. (Lama-Rewal, 2009)", Chapter 1, Governing Indias Metropolises, eds. Joel Ruet, Stephanie Tawa Lama- Rewal, Routledge, 2009.

Sivaramakrishnan, K.C "Governance of Megacities: Fractured Thinking, Fragmented Setup", Oxford University Press, 2015.



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