

74TH CONSTITUTION AMENDMENT ACT (CAA), 1993 AND DECENTRALIZATION OF DEVELOPMENT PLAN PREPARATION AND APPROVAL PROCESS

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Abstract

This paper focusses on decentralization of plan preparation and approval process in the light of provisions of 74th Constitution Amendment Act (CAA), 1993 related to spatial planning and also under 'Urban Development Plans Formulation and Implementation (UDPFI) Guidelines', 1996 and 'Urban and Regional Development Plans Formulation and Implementation (URDPFI) Guidelines', 2014 of the Ministry Urban Development, Government of India and gave suggestions taking into consideration, the ground realities of the Development Plan preparation and approval process enunciated in of 74th CAA under which the powers and authority is bestowed on the local bodies, to function as institutions of self-government.

Keywords: Decentralised Planning, Metropolitan/District Planning Committee, typology of urban Plans, Plan formulation and approval process

Introduction

The seventy fourth Amendment Act is a step in the devolution of power at grass root level which gives power to the *panchayats* and Municipal Councils / Corporation to enable them to function as institutions of self-government for the preparation of plans for economic development and social justice; performance of functions and implementation of schemes for various matters listed in the Twelfth Schedule, which comprises of eighteen functions (Article 243-w) namely - urban planning including town planning; regulation of land use and construction of buildings, planning for economic and social development, water supply for domestic, industrial and commercial purposes, public health, sanitation and solid waste management, fire services, urban forestry, protection of the environment, safeguarding the interests of weaker sections of society, slum upgradation, urban poverty alleviation, provision of educational and aesthetic aspects,

burial and cremation grounds, electric crematoriums, cattle ponds, vital statistics including registration of birth and dates and public amenities including street lighting, parking lots, bus stops etc. Out of these functions, first three functions relate to urban planning.

Seventy Fourth Constitution Amendment Act, 1993

The Seventy fourth CAA provides for a District Planning Committee (DPC) (article 243-ZD) at district level to consolidate the plans prepared by the *panchayats* and municipalities [article 243 – ZD (3)] so as to prepare a draft development plan for the whole district. However, while designing the Development Plan, the DPC shall take into account matters of common interest between the *panchayats* and the municipalities which includes spatial planning, sharing of physical and natural resources, development of infrastructure, environmental conservation and the available resources - financial or otherwise.

Similarly, under article 243-ZE, it is mandatory to constitute Metropolitan Planning Committee (MPC) for every metropolitan area to design a development plan for the metropolitan area as a whole. The draft development plans need to take into account the plans designed by municipalities, *panchayats* and the matters of common interest including spatial planning of the areas, integrated development of infrastructure and environmental conservation, etc., [article 243-ZE (3)].

The spatial planning system prevalent in India focuses on preparation of Regional Plans for cities / regions. However, the Ministry of Urban Affairs and Employment, in order to examine the efficacy of these plans organized a National Workshop on 'Master Plan Approach: Its Efficacy and Alternatives' in February, 1995, at Vigyan Bhawan, New Delhi through Town and Country Planning Organization (TCPO). The workshop had participants like that of State Secretaries dealing with housing and urban development, Chief Town Planners of the State Governments, Directors of State, Town and Country Planning Departments, Chief Executives and Senior Planners, Commissioners of Municipal Corporations, Heads of various Planning Schools, , experts in the field of town planning, senior officers from the Ministry of Urban Affairs and Employment, Planning Commission, Housing and Urban Development Corporation (HUDCO), TCPO, and other Central / State Government Agencies.

As a follow up, the Ministry Urban Affairs and Employment, Government of India awarded the work of preparation of 'Urban Development Plans Formulation and Implementation (UDPFI)' Guidelines, 1996 to Institute of Town Planners. The Ministry of Urban Development, Government of India revised the guidelines under 'Urban and Regional Development Plans Formulation and Implementation' Guidelines, 2014. This paper examines the plan preparation and approval process suggested in UDPFI and its Guidelines with reference to decentralization, in the next section of this paper.

Urban Development Plan Formulation and Implementation Guidelines, 1996

The terms of reference for UDPFI Guidelines includes preparation of Spatial Development Plans and Resource Mobilization Plan of small, medium, and large urban centres, implementation of techniques for promoting spatial-economic development of urban areas and simplification of town planning laws and their amendments. The major focus of UDPFI Guidelines is on urban development planning system, content of development plans, resource mobilization, legislative support and implication of the seventy fourth CAA, 1973, etc. The UDPFI Guidelines contains four volumes: the first provides guidelines on urban development plan formulation and implementation, second focuses on 'Model Urban and Regional Planning and Development Law (Revised)', third contains suggested modification to 'The Maharashtra Regional and Town Planning Act, 1966, while fourth suggested modification to 'The Gujarat Town Planning Urban Development Act, 1976'. The UDPFI Guidelines recommended to adopt a set of four inter-related plans:

- **Perspective Plan**, a long term (twenty – twenty-five years) policy plan of spatial-economic development;
- **Development Plan**, conceived within the framework of the approved Perspective Plan, Development Plan (five years) is a comprehensive plan of spatial-economic development;
- **Annual Plan**, conceived within the framework of approved development plan, it is a plan containing physical and fiscal proposals of new and ongoing projects that the local body aims to implement during the respective financial years; and

- **Plans of Projects / Schemes**, conceived within the framework of approved Development Plan / Annual Plan, are detailed layouts for execution.

In reference to regional approach, the guidelines specifically mention that plans at the levels higher than the settlements should be regional. The guidelines also suggested to adopt decentralization of plan approval process at various levels, as discussed below.

Decentralization of the Plan Approval Process

Keeping in view the seventy fourth CAA and the delay in the plan approval process in a fast-changing socio-economic scenario, UDPFI Guidelines recommend the plan approval process to be decentralized as given below:

Perspective Plan: To be approved by State government through the State Chief Town Planner

Development Plan: To be approved by Municipal Council / Corporation

Annual Plan: To be approved by Municipal Council / Corporation

Schemes / Projects: To be approved by Municipal Planner

The approving authority may approve the plan with or without specific modifications. In case of modifications, the local authority, agency or individuals, need to modify the plan before next step in the approval process.

Approval of Perspective Plan

Perspective Plan should be approved by the State Government on the technical advice of the Chief Town Planner of the State Town and Country Planning Department (TCPD). The Perspective Plans of small and medium size towns are to be scrutinized by the Divisional Town Planner. The plan of cities needs to be scrutinized by the State Chief Town Planner, and submit to the State Government with recommendations. The steps involved in the approval process along with timeline are given below:

- On submission of Draft Perspective Plan to the Municipal Council / Corporation for consent, according consent and submission of Draft Perspective Plan to Town and Country Planning Department and Metropolitan Planning Committee / District Planning Committee for concurrence – one month

- Concurrence for public notification of Draft Perspective Plan by Town and Country Planning Department of the State / State Chief Town Planner / Divisional Town Planner / Metropolitan Planning Committee / District Planning Committee - one month
- Public notification of Draft Perspective Plan by Municipal Council / Municipal Planner - one month
- Public comments and suggestions - one month
- Public hearing and final Draft Perspective Plan formulation and submission to Municipal Council / Corporation for consent by Chief Town Planner of State Government - two months
- Consent of the municipal council / corporation to forward to the Draft Perspective Plan for approval to the Government through Town and Country Planning Department for approval - one month
- Approval of the final Draft Perspective Plan and communication to Municipal Council by Government / Chief Town Planner of State Government / Divisional Town Planner - two months
- Notification of approval by Municipal Council / Corporation and Municipal Planner - one month.

Total timeline for the approval of Perspective Plan is ten months.

Approval of the Development Plan

Following the seventy fourth CAA for decentralization of approval of the Development Plan, the Plan should be approved by the local authority. The State Town and Country Planning Department shall examine the draft development plan within the framework of the perspective plan and issue a letter of concurrence. Following public notification and hearing, the development plan will be approved by the municipal corporation or municipal council.

To ensure efficiency, deemed clause is proposed to be included in the revised town and country planning law in cases where, if by the end of the timeline, approval is not communicated with or without specific modifications by the state government, the plan shall be deemed to have been approved.

To distribute work-load and introduce efficiency, the guidelines recommend the issuing of letter of concurrence to Development Plan, as it is within the framework of the Perspective Plan to be decentralized as:

- For large cities: State Chief Planner of the State
- For small and medium size towns: Divisional Town Planner of Town and Country Planning Department.

The steps involved in the approval of Development Plan along with the timeline are:

On submission of Draft Development Plan to Municipal Council / Corporation for consent, submission of draft Development Plan to Town and Country Planning Department of the State and Metropolitan Planning Committee / District Planning Committee for concurrence by Municipal Council/Corporation / Municipal Planner - one month

- Confirmation of Draft Development Plan is within the framework of approved Perspective Plan by Town and Country Planning Department / Chief Town Planner of State Government / Divisional Town Planner / Metropolitan Planning Committee / District Planning Committee - one month
- Public notification and display of the draft Development Plan by Municipal Planner - one month
- Public meeting and public comments and suggestions - one month
- Public hearing and final draft Development Plan submission to Municipal Council / Corporation for approval by Standing Planning Committee - two months; and
- Approval of final draft Development Plan and its notification by Municipal Council / Corporation - one month.
- Total timeline for approval is seven months.

Urban And Regional Development Plans Formulation And Implementation (Urdpfi) Guidelines.

UDPFI Guidelines, 1996 provided a framework for plan implementation process. However, since 1996, many developments have taken place in the field of urban planning, especially in context of requirements of urban

settlements due to rapid population growth, globalization of economy and phenomenal advances in information and communication technologies. The towns and cities have become more dynamic and are subject to unprecedented changes in terms of requirements of infrastructure and other amenities. Emerging aspects like regional development, inclusive planning, sustainable habitat, land use and transport integration at planning stage, Service Level Benchmarks, disaster management and governance reforms have added a new dimension to the process.

To address these issues, UDPFI Guidelines were revised under 'Urban and Regional Development Plans Formulation and Implementation (URDPFI) Guidelines' comprising of two volumes: outcome of consultations with Ministries, Experts, Professional and Academic Institutions and other stakeholders. The URDPFI Guidelines, 2014 were framed to incorporate the provisions of the legal and policy guidelines of the line Ministries, best practices of the States and the planning systems in vogue. A participatory approach was followed in order to revise the guidelines to holistically understand and involve the Government of India Ministries/Agencies for guidance.

Keeping in view the CAA and the slow process of approval of urban development plans resulting in delays, the URDPFI Guidelines recommended the plan approval process to be decentralized as:

- **Perspective Plan:** To be approved by State Government
- **Regional Plan:** To be approved by State Government / Regional Development Authority
- **Development Plan:** To be approved by Municipal Corporation / Development Authority / Metropolitan Planning Committee
- **Annual Plan:** To be approved by Municipal Council / Municipal Corporation / Development Authority
- **Zonal Development Plan:** To be approved by Municipal Corporation / Development Authority / Metropolitan Planning Committee
- **Urban Revitalization Plan:** To be approved by Municipal Corporation / Development Authority / Metropolitan Planning Committee

- **City Development Plan:** To be approved by Municipal Corporation / Development Authority / Metropolitan Planning Committee
- **Comprehensive Mobility Plan:** To be approved by State Government;
- **City Sanitation Plan:** To be approved by State Government; and
- **Projects / Research:** Municipal Corporation / Development Authority / Metropolitan Planning Committee.

However, no timeline has been recommended.

Development Plan 2000, Nagpur; A Case Study.

As per Section – twenty-one of Maharashtra Regional and Town Planning Act, 1966 (MRTP Act) every planning authority shall prepare an existing land use map and a draft Development Plan not later than three years from the date of constitution of the area within its jurisdiction as per the Regional Plan, and submit the draft to the state government for sanction.

Nagpur, almost equidistant from Kolkata, Chennai and New Delhi is the largest city in the central belt of the country where major highways and railway lines intersect. It continues to develop as an administrative, educational and cultural hub in the field of commerce, industries and transport; etc. Population of Nagpur as per 2011 Census was 24, 05,421 and is projected to be 29,40,000, by 2021.

The awareness for planned city development was raised by Sir Patric Geddes, who visited Nagpur City in 1915. Nagpur Improve Trust (NIT) was established in 1936 for the planned development in the city. British Government made Nagpur as the capital of the new state named central Province and Bearer in mid-nineteenth century and remained so till 1956. NIT in the year 1946 prepared the Master Plan for Nagpur which addressed the issues of financial policy, development control, zoning regulations and also envisaged development schemes. However, keeping in view the development potential and rapid increase in population, the two municipalities and adjoining villages were merged together in 1951 to form, what is today known as, Nagpur Municipal Corporation (NMC).

Government of Maharashtra gave the status of planning authority to NIT and it started exercising power from October 6, 1967. Under Section - 23 (i)

of MRTP Act, 1966, NIT declared its aim to prepare the Development Plan for the entire area falling under its jurisdiction. Objections and suggestions from the public were invited within a stipulated time limit of sixty days from the publication of the notice in official gazette. Town Planning Officer prepared the existing land use map and proposals of Development Plan in six months. However, the Board decided to prepare an Interim Development Plan and invited suggestions from public. After receiving the suggestions, the NIT submitted the Interim Development Plan to the state government for sanction in 1971, and requested the government for extension of time. NIT published the draft Development Plan and invited suggestions and objections on the proposals within a period of sixty days. However, several modifications were received and therefore, requested for extension of time limit up to the end of October 1974, for submission of the Plan for sanction. The Development Plan came into effect from June 3, 1976. The total time taken for the preparation, submission and approval of the Development Plan was over seven years.

NIT declared its goal to prepare the revised Development Plan which was published in the Maharashtra Government Gazette of dated June 9, 1983 and appointed a Town Planning Officer for preparation of the existing land use map under Section - 25 of the Act, within the approved time limit. The state government in September 1985, constituted an Advisory Committee under the chairmanship of Commissioner, Nagpur Division, Nagpur and sanctioned a Special Development Planning Unit (SDPO) under the Deputy Director of Town Planning on February 7, 1986. However, Town Planning Cell was created on November 24, 1986 and the actual work on the revision of the development plan started, on January 1, 1987. The revised Development Plan was published on May 4, 1989, and suggestions and objections were invited within a period of 60 days. Planning Committee heard the voices who filed their suggestions and submitted its Report to the NIT on May 2, 1990. The Board of Trustees of NIT considered the Report of Planning Committee and the submitted the draft revised Development Plan to the state government for sanction on October 11, 1990. The state government, after consulting the Director of Town Planning, returned the Plan to NIT on January 14, 1993, and directed the Planning Authority to modify the it. The Assistant Director of Town Planning was to prepare and modify this Plan on October 27, 1993. The revised draft Development Plan was published on 17 March 1994 and called for suggestions.

Planning Committee scrutinized the suggestions received on May 23, 1994 and the Modified Revised Draft Development Plan was placed for public inspection on November 30, 1995. After that the NIT submitted the Modified plan, Government sanctioned it in parts on March 1, 2000. Thus, the total time taken for the preparation, submission and sanction of the Plan was more than seventeen years.

Discussion

As per MRTP Act 1966, the Planning Authority, before surveying and preparing an existing land use map, needs to adopt a resolution to prepare a Development Plan and send it to the state government along with a copy of Plan depicting the boundary of the entire area proposed, which is to be published in the official gazette for suggestions within a period of not less than sixty days. NIT, as a planning authority, is aware of the area under its jurisdiction including the additional areas added to its boundaries; so is the state government. Therefore, calling for suggestions appears to be a formality and can be eliminated to save time. Latest technologies in preparation of base maps like Aerial Photography, Remote Sensing, Geographic Information System (GIS), Global Positioning System (GPS), etc., have hastened the process of mapping.

MRTP Act, 1966, aims to publish a notice in the official gazette for suggestions at the time of declaration of intent (Section – 23) and publish a notice in the official gazette stating that Development Plan has been prepared (Section - 26). The Planning Committee on receipt of suggestions makes enquiries and paves way for being heard, modifying the Plan and publishing in official gazette (Section - 28). Again, modifications made by Planning Authority need to be published by giving notice in the official gazette (Section - 29), by the state government, after consulting the Director of Town Planning by notification in official gazette (Section - 31). The modified draft Development Plan has to go through the same cycle. Thus, there is a need to enquire whether suggestions can be invited only at the final stage of approval of draft Development Plan, so as to save time.

It is relevant to note that as per MRTP Act, 1966 Section - 38, there was a provision that Planning Authority may revise the Development Plan at least once in ten years; further extended to twenty years. The process of preparation of revised Development Plan for Nagpur, started in the year 1982, but Development Plan came into force in 2000. This got extended to

another twenty years i.e., 2020 unless the state government directs any change. Thus, the provisions of Nagpur Development Plan, 1976 will remain in force till 2000. For this reason, the process of preparation of Development Plan is labelled as static.

Under Section - twenty-five, twenty-six, twenty-eight and thirty, there is provision to extend the period which enables the Planning Authority to ask for extension of time limits as in the case of Nagpur Development Plan. Thus, there is a need to limit the number of time extensions.

After the enforcement of MRTP Act, 1966, Nagpur Improvement Trust declared its intention in the year 1969 to prepare the Development Plan of Nagpur. The NIT received a number of layouts and diversion cases and decided to prepare first, the Interim Development Plan under Section - 32. It was published in the year 1970, and submitted for sanction in the year 1971. After submission of the Interim Development Plan, the draft Development Plan was prepared and published in the year 1972 and republished in 1974. State government sanctioned the Plan on June 3, 1976 and it came into force after five years. Therefore, it was necessary to enquire whether preparation of Interim Development Plan was needed or could it be prepared directly.

The NIT as the Planning Authority declared its intention to prepare the revised Development Plan in 1982 under Section - 38 and Section - 23. The notice was published in Maharashtra Government Gazette on June 9, 1983. The Plan was also supplemented by another document of 'Policy Plan', prepared under the guidance of an Advisory Committee. Revised Development Plan was prepared and published in 1989 and was sent to the state government for sanction in 1990. It was returned in 1993 to the NIT for modifications as it didn't consider the schemes of NIT and reservations of the Development Plan of 1976. It was published in 1994 and re-submitted to the state government in 1996. State government sanctioned the revised Development Plan under Section - 31 of the MRTP Act, which came into force from March 1, 2000. It can be observed that till the final approval of the Revised Master Plan in 2000, the Master Plan of 1976 remained in force i.e. for 24 years, which was already absolute and outdated.

Development Plan of Nagpur, 1976 was based on 1971 Census data, when the population of Nagpur was 8,66,076, while the revised Development Plan was approved in 2000 i.e., the Development Plan, 1976 was catering to the population of 16,22,000 (1991) and to the population of 20,50,000 (2001) and

to the population of 25,00,000 (2011) i.e., more than three times population, making all the infrastructure facilities and services over burdened and over stressed.

As per provisions of MRTP Act 1966, there is no provision for the preparation of alternative proposals thus, it is the fait accompli as there is no alternative but to accept the single proposal prepared by Planning Authority.

Also, under MTRP Act, 1966, there is no provision to have the feasibility analysis of Development Plan. Therefore, it can be construed that no feasibility study has been carried out for the proposals of Development Plan, 1976 and 2000 because there is no provision in the Act and needs to be incorporated in the Act.

The experience of preparation and approval of Development Plan of Nagpur in fact is not only the case of inordinate delay. In some cases, even after expiry of the period of Development Plan (20 to 25 years) the plan has not been approved. This clearly demonstrates that the present process of preparation and approval of Development Plan is time consuming, that too in fast changing spatial-economic, socio-economic and ever-changing political scenario, which definitely calls for decentralization of the prevalent plan preparation and approval process. It would also be advisable to introduce 'deemed to be approved' clause to achieve efficiency and also to ensure timely approval of Development Plans because having the approved planned for their cities and town is the right of people / citizens as Development Plan / Master Plan is a statutory document since it is prepared under the Act and approved by following the provisions of the Act.

Conclusion

The seventy-fourth CAA empowers panchayats and municipal Councils / Corporation to prepare spatial plans and District Development Plans for the whole district and Metropolitan Development Plans for metropolitan areas, but the timeline has not been prescribed and is left to the discretion of State Governments / local bodies. As stated above, the pace for the plan preparation and approval process is slow and tardy.

The Urban and Regional Development Plans Formulation and Implementation (URDPFI) Guidelines recommended decentralization of the function of plan preparation and approval at various levels, but did not

prescribe any time line. However, the ‘Urban Development Plans Formulation and Implementation (UDPFI) Guidelines’, not only decentralized the plan approving functions at various levels but also defined the steps to be taken for approval of plan at various levels and prescribed timelines for each step. If these timelines are not followed ‘the deemed to be approved’ clause has been included to hasten the process of approval of plans. Therefore, it is advisable to follow the procedure suggested in UDPFI Guidelines for decentralization of plan preparation and approval process, so as to hasten the process of plan preparation and approval, which is time consuming.

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