

EMPOWERING COMMUNITIES:

THE ROLE OF A CITY ATTORNEY IN INDIA

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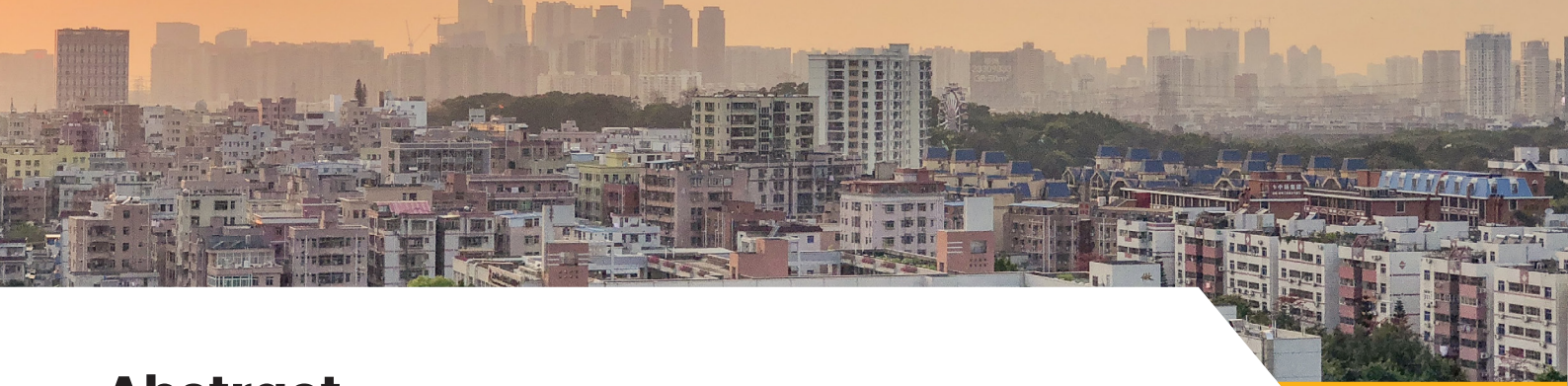
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Abstract

Local governance in India suffers from structural legal gaps: a deficit of in-house legal expertise at the municipal level, limited continuity across political transitions, and an absence of proactive legal oversight capable of serving both the institution and its citizens. This paper examines the concept of a City Attorney's Office (CAO) as a potential institutional reform for Indian municipal corporations, with particular reference to the Kochi Municipal Corporation in Kerala. Drawing on the historical evolution of the City Attorney framework in the United States, comparative institutional analysis, and primary stakeholder consultations with the Kochi Municipal Corporation's Legal Cell, the paper identifies key systemic gaps and proposes a framework for a City Attorney adapted to the Indian municipal context. The paper argues that a well-designed CAO can enhance legal compliance, reduce litigation backlogs, enable class-action suits on behalf of communities, and contribute to more responsive, accountable local governance. Considerations regarding appointment modalities, scope of authority, ethical obligations, and implementation challenges are also examined.

Keywords: City Attorney, Municipal Corporation, Local Governance, Legal Reform, Kochi, Class Action, Urban Law, Decentralisation



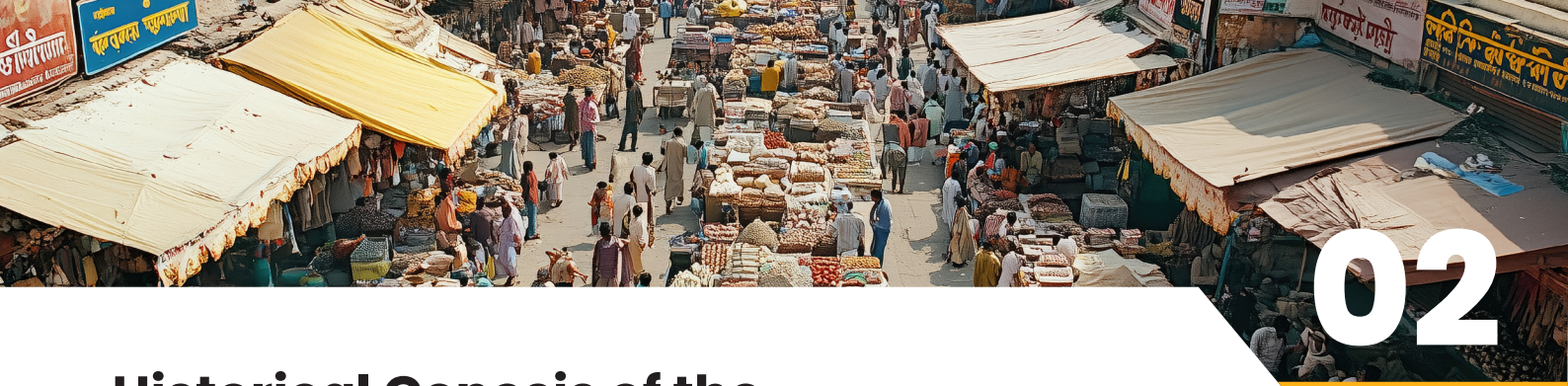
Introduction

Urban local governance in India occupies a paradoxical position. Municipal corporations are constitutionally empowered as the third tier of government under the 74th Constitutional Amendment Act of 1992, yet their legal infrastructure remains underdeveloped relative to their administrative and fiscal responsibilities. Cities manage contracts, regulate land use, enforce bylaws, and interact with courts and tribunals at multiple levels—all with minimal in-house legal capacity. Unlike the national or state governments, which is supported by elaborate hierarchies of law officers, the typical Indian municipal corporation depends on an ad hoc arrangement of external legal counsel, appointed largely on political grounds, with limited institutional memory and no proactive legal oversight function.

This paper examines one potential institutional solution: the establishment of a City Attorney's Office (CAO) modelled on the City Attorney framework in the United States, with necessary regional adaptations. A City Attorney is a legal professional who serves as the chief legal advisor to a city or municipality, handling a wide range of legal matters, including drafting and reviewing contracts, interpreting and enforcing local laws and regulations, representing the city in legal proceedings, and advising on land use and zoning issues. The office is crucial in ensuring that the city operates within the boundaries of the law while protecting the municipality and its residents.

In India, the case for such an office rests on an observable deficit: municipal corporations lack dedicated legal capacity for due diligence, cannot proactively advise their own councils, and remain dependent on reactive, externally appointed counsel. This paper contributes to the policy literature

on urban governance reform by: (1) tracing the historical genesis of the City Attorney concept in the United States; (2) analyzing India's existing hierarchy of government-appointed lawyers; (3) undertaking a detailed case study of the Kochi Municipal Corporation's Legal Cell; (4) identifying systemic gaps; and (5) proposing a contextually adapted framework for a City Attorney's Office in India.



Historical Genesis of the City Attorney Concept

The City Attorney framework has its origins in the municipal reform movements of nineteenth-century America. During this period, the structural framework of municipal governance proved inadequate in managing issues such as machine politics, endemic corruption, and excessive interference from state governments. Municipal reform initiatives gained momentum between 1850 and 1870, prompting significant restructuring of city governance institutions.

One significant dimension of this reform was the restructuring of city councils, which resulted in the delegation of administrative powers away from mayors, the creation of overlapping council committees, and the establishment of multiple independent boards within municipal governments. While the primary objective was to eliminate executive corruption and introduce checks and balances, these changes also necessitated new forms of institutional legal oversight. Municipal legal offices, including the position of City attorney, were established in this context, charged with attending to all legal suits and matters in which the city had an interest and serving as an independent watchdog for legal compliance.

The formation of the City Attorney concept was thus a direct institutional response to evolving governance needs: to address legal challenges, provide legal oversight, and enhance accountability within municipal governments. Over time, the office evolved from a reactive legal function into a proactive advisory and litigation role spanning civil, administrative, and regulatory domains.

2.1 Roles and Functions

The City Attorney serves as the legal advisor and representative for the city, akin to in-house legal counsel in private enterprises. Their primary duty is to handle all legal matters pertaining to the city, ensuring that actions taken by the city comply with legal requirements and are in the best interests of the public (American Legal Publishing, 2003). This encompasses providing legal advice to the city, supporting high-quality legal representation, advancing city interests through legal advocacy, and ensuring compliance with legal standards.

The City Attorney's role extends to providing legal opinions on uncertain issues, ensuring legal compliance, and safeguarding the city's legal standing. This underscores the importance of the office in ensuring that the city operates within the boundaries of the law while fulfilling its obligations to its residents.

2.2 City Attorney's Scope of Coverage

Examining case studies from cities such as San Francisco and Santa Clara reveals the diverse legal challenges addressed by City Attorneys (Appendix A1), including matters related to affordable housing, climate change, public safety, municipal annexations, taxation, civil rights, and environmental regulation. These cases highlight the proactive approach taken by City Attorneys to address legal issues, enforce compliance, and secure favourable outcomes for cities and their residents. The Appendix to this paper provides detailed case illustrations.

2.3 Technical and Structural Dimensions

The institutional design of a City Attorney's Office involves several technical considerations with direct implications for effectiveness. These are summarized below and are directly relevant to any adaptation of the model to India.

- 1. Full-time or part-time appointment:** In some US jurisdictions, the position is part-time based on a retainer agreement, with the attorney also in private practice. A full-time appointment is generally associated with stronger institutional continuity and deeper organizational knowledge.
- 2. Elected or appointed:** In California, most large cities—including San Francisco, Los Angeles, and San Diego—have elected City Attorneys; smaller cities typically appoint theirs. The selection mode has significant implications for accountability and independence from the executive.
- 3. Extent of power and mandate:** The scope varies considerably. San Francisco's City Attorney handles duties spanning areas that in other counties would involve county counsel, including health, social services, police, fire, and a broad range of public enterprises. The mandate must be carefully calibrated to the local context.
- 4. Binding or non-binding advice:** As the Texas Municipal League publication 'You and Your City Attorney' clarifies, legal advice from a City Attorney is advisory, not determinative. Elected officials and staff retain decision-making authority even when doing so carries legal risk. The City Attorney is a resource, not a decision-maker.
- 5. Single or multiple attorneys:** In larger cities, specialization by subject area—litigation, land use, contracts—is common. The structure should reflect the volume and complexity of the city's legal caseload.
- 6. Private practice:** Many jurisdictions permit City Attorneys to represent private clients, subject to restrictions against representing

parties adverse to the city. This requires careful ethical management.

- 7. Civil versus criminal jurisdiction:** City Attorneys typically handle civil representation for the municipality. Criminal prosecution remains the domain of a separate prosecutor's office—a distinction essential to the Indian adaptation.



Legal and Institutional Framework in India

India's legal profession has a complex institutional history traceable to the establishment of the First British Court in Bombay in 1672. The evolution through the Mayor's Courts, the Supreme Court of Judicature (1774), High Courts (1862), and the Advocates Act of 1961 produced a mature but heavily centralized legal profession. The Advocates Act gave self-governance to the Bar and allowed the profession to regulate admission, practice, ethics, and discipline—but did not create a mechanism for institutionalized in-house legal capacity at the municipal level.

3.1 National-Level Legal Hierarchy

At the apex of the central government's legal representation structure is the Attorney General of India, appointed by the President, who represents the government in the Supreme Court and provides comprehensive legal advice on all matters of law. The hierarchy descends through the Solicitor General, Additional Solicitors General, Central Government Standing Counsels, Senior Counsel, Government Pleaders, and Public prosecutors—each with distinct jurisdictional and functional mandates.

This hierarchy reflects a centralized model in which legal expertise and authority are concentrated at higher levels of government. Municipal corporations, by contrast, receive no equivalent institutional support, leaving them to establish legal capacity through administrative discretion rather than statutory mandate.

3.2 State-Level Legal Hierarchy

At the state level, the Advocate General serves as the top lawyer, appointed by the Governor to represent the state government in the High Court and other state-level courts. Additional Advocate Generals support this function. At the district level, District Public Prosecutors (DPPs) handle criminal representation in district courts. None of these roles address the civil, regulatory, and advisory legal needs of urban local bodies—the gap this paper seeks to address.

Case Study: The Kochi Municipal Corporation Legal Cell

To assess the current state of municipal legal capacity in India, this study draws on primary stakeholder consultations conducted with the Legal Cell of the Kochi Municipal Corporation (KMC) in 2023. It is supplemented by analysis of secondary sources, including the Corporation's annual budget documents, organizational data from its official website, and the Conduct of Cases and Payment of Fees to Legal Advisors Engaged by the Council's Rules, 2008 (Kerala Gazette, 2008). Given the time elapsed since data collection, certain institutional, legal, or operational aspects may have evolved since the time of publication.

4.1 Organisational Structure

The organizational structure of the Kochi Municipal Corporation is headed by the Additional Secretary and includes the Corporation Engineer, Deputy Secretary, Secretary's Personal Assistant, Council Secretary, Revenue Officer, Accounts Officer, Town Planning Officer, and Health Officer, in the given order. The Legal Cell operates within the Public Administration division.

4.2 Current Operations of the Legal Cell

The Legal Cell functions as a department or cell established as a support unit of the Corporation and does not derive its authority from a specific statute, legislation, or rule. Its staffing strength is determined periodically by the Secretary based on prevailing operational needs. There is no separate recruitment process for the Legal Cell; personnel

are recruited for the Corporation as a whole and assigned to departments by administrative convenience.

At the time of this study, the Legal Cell comprised five employees. Of these, only two possessed formal legal training—one serving as the legal assistant. The remaining staff performed clerical functions such as filing and record management. The primary function of the Cell is coordination and facilitation: allocating cases or appeals filed against the Corporation to the legal counsel and managing the associated documentation. Documentation is largely maintained manually; the Corporation has not yet advanced significantly on digitization.

The Legal Cell also assists with drafting notices, bylaws, and contracts for the corporation. However, since none of the Cell's members are practicing advocates, they are not legally empowered to offer formal legal advice under the Advocates Act. They may assist in interpreting judgments or offer suggestions on minor matters, but questions of law are deferred to the Legal Counsel.

4.3 Legal Counsel Arrangements

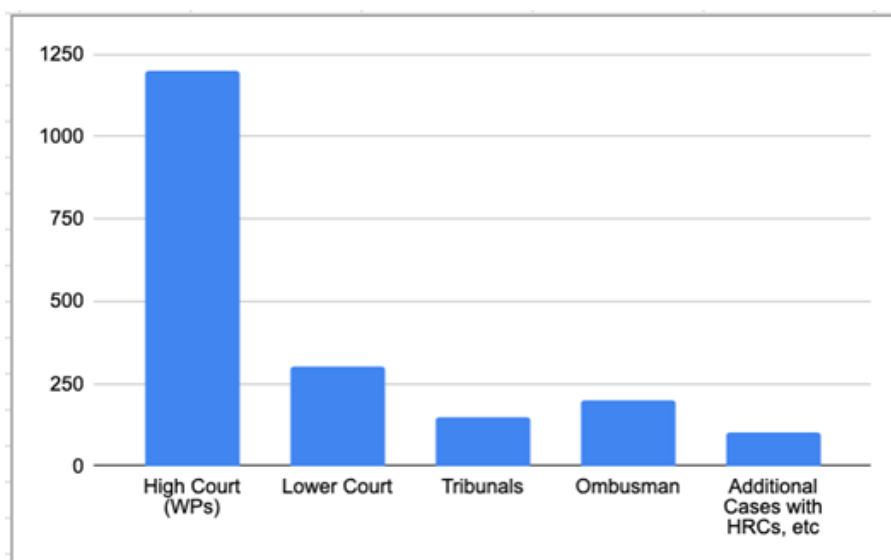
The Corporation's Legal Counsel is governed by the Conduct of Cases and Payment of Fees to Legal Advisors Engaged by the Council's Rules, 2008 (Government of Kerala, 2008). The Legal Counsel comprises 15 advocates distributed between the High Court and the lower courts. Counsel appointments are made for the term of the Corporation Council, and primary research

confirmed that appointments are influenced by the political affiliations of the advocates—paralleling the appointment of Government Pleaders at the state level.

Cases are allocated to advocates as they arrive, with some informal consideration given to specialization where it exists. Advocates appointed as Legal Counsel are permitted to engage in private practice but are barred from representing clients against the Kochi Municipal Corporation; they may represent parties against other corporations or the state government.

4.4 Volume and Nature of Cases

The Corporation handles approximately 1,500 new cases per year across several categories.



The largest share involves engineering, town planning, and building regulation matters, including disputes related to construction on paddy land or conversion issues, title document disputes, setback violations, and floor area ratio disputes. Other categories include service matters, revenue cases, and public interest litigation.

4.5 Case Disposal Rate

A significant concern is the rate of case disposal. Approximately one-third of cases filed in any given year remain unresolved and are carried over to the subsequent year, progressively increasing the total

caseload. The total live caseload is estimated at between 1,800 and 2,000 cases at any given time, with some cases dating as far back as the early 2000s. This accumulation of pending litigation represents a systemic burden on the Corporation's administrative capacity and financial resources.

4.6 Provision for Community-Initiated Legal Action

The study also explored the Corporation's capacity to initiate legal action on behalf of the community—for example, against a highly polluting industry operating within its jurisdiction. Stakeholder feedback confirmed that while there are few precedents for such action, it is legally feasible for the Corporation to pursue such cases. However, the absence of a dedicated legal office with a proactive mandate means this capacity remains largely unutilized. City versus state or union cases were noted as extremely rare, given that the city government operates under the authority of the state government.

4.7 Systemic Gaps

The stakeholder analysis and secondary research identified three principal gaps in the current system:

- 1. Absence of due diligence capacity:** No body, office, or official currently performs

proactive legal due diligence for the city. This is partly a product of the limited devolution of legislative and executive powers to urban local bodies and partly a structural deficit in institutional design. As Jacob and Jacob (2018) note in *Governing Locally*, the restricted autonomy of Indian cities constrains their capacity for independent legal action.

- 2. Absence of city-specific law:** Unlike US municipalities that generate a body of city law within their jurisdictional ambit, Indian municipal corporations lack the legislative authority to enact substantive local laws, limiting the legislative advisory function of a city attorney. This limitation reinforces the

need for a City Attorney who can advise on the boundaries of the Corporation's powers and the interpretation of applicable state and central laws.

- 3. External and politically-appointed legal counsel:** The current reliance on Legal Counsel who are externally appointed, often politically motivated, and not institutionally embedded in the Corporation creates inherent limitations in accessibility, reliability, and institutional memory. The Legal Counsel are reactive rather than proactive and cannot provide the continuous, in-house advisory function that effective municipal legal governance requires.



Proposal: Establishing a City Attorney's Office in India

Based on the foregoing analysis, this paper proposes the establishment of a Permanent City Attorney's Office as an institutional reform for municipal corporations in India, beginning with larger urban local bodies such as the Kochi Municipal Corporation. The framework proposed below draws on the US model while adapting to the constitutional, administrative, and legal context of Indian local governance.

5.1 Structural Design

The City Attorney's Office should function as a collegiate body rather than a single-officer position, given the breadth of legal issues faced by a major municipal corporation. The recommended structure includes a City Attorney (head of office), one or more Additional City Attorneys, an Administrator General, Joint Secretaries, Deputy Secretaries, Section Officers, and other municipal law staff.

The office should be organized into two wings: an Administrative Wing responsible for administrative proceedings and compliance rules, and a Legal Wing responsible for general cases, legal proceedings, and representation before the District and Sessions Court, Metropolitan Court, High Court of Kerala, and the Supreme Court of India. This dual-wing structure mirrors the model followed by the Office of the Advocate General at the state level.

5.2 Core Functions

The CAO should be mandated to perform the following functions:

1. Provide legal advice to the Mayor, Corporation Council, and all municipal departments on matters of law, policy, and compliance;
2. Draft and review local ordinances, contracts, licences, bylaws, and other legal instruments;
3. Represent the Corporation in civil legal proceedings across all relevant courts and tribunals;
4. Conduct legal audits of the Corporation's operations to identify areas of legal risk and develop mitigation strategies;
5. Provide legal training and capacity-building for municipal officials to enhance legal awareness and compliance.
6. Advice on land use, zoning, environmental regulation, and building permits;
7. Provide legal assistance to the Finance Commission functions of the Municipality under Article 243Y on matters of taxation, duties, fees, and grants-in-aid;
8. Contribute legal expertise to the District Planning and Metropolitan Planning Committees under Articles 243ZD and 243ZE to ensure development plans comply with applicable laws;
9. Assist with the legal aspects of the audit of municipal accounts under Article 243Z;

10. Initiate and manage class action suits on behalf of residents where the Corporation's legal interests and community interests align.

5.3 City Attorneys and Class Action Litigation

One of the most significant and underutilized mechanisms for community legal redress in India is the class action suit—a form of representative litigation in which a large group of individuals collectively bring a claim with shared interests before a court. In the US context, City Attorneys have successfully deployed class actions as a tool for addressing corporate misconduct, housing violations, environmental damage, and fiscal wrongdoing affecting municipal residents.

In India, class action suits are legally permissible under Order I, Rule 8 of the Code of Civil Procedure, and under Section 245 of the Companies Act 2013, though their use at the municipal level remains extremely limited. An autonomous City Attorney's Office with a proactive mandate could substantially expand this mechanism—initiating legal action on behalf of residents against polluting industries, discriminatory landlords, or entities that violate public safety norms—without requiring individual residents to bear the burden and expense of litigation.

City Attorneys also serve a deterrent function: their demonstrated willingness to pursue class-action claims sends a clear institutional signal that the Corporation will not tolerate harmful actions against its residents. This function is particularly valuable in cities experiencing rapid urbanization, industrial growth, and associated regulatory pressures.

5.4 Rights and Limitations

The City Attorney should be empowered to participate in relevant legislative proceedings, including state legislative committees examining municipal laws, paralleling the Attorney General's right to participate in Parliamentary proceedings. The office should have access to all Corporation files, records, and departments.

The City Attorney's authority must simultaneously be clearly circumscribed. Legal advice should be advisory—not binding—consistent with the principle that elected officials and administrators retain decision-making authority. The City Attorney should not advise or hold briefs against the Government of India or a Public Sector Undertaking, should not defend accused persons in criminal prosecutions without government sanction, and should not accept external appointments without permission.

5.5 Appointment Modalities

Given the diversity of municipal structures across India, a uniform appointment model may not be feasible. The paper proposes the following principles: the City Attorney should be appointed through a merit-based, transparent process involving the Corporation council—not solely the executive—with eligibility criteria specifying minimum years of legal practice, subject-matter expertise, and absence of active political affiliation. A fixed term of office — recommended at five years, co-terminus with the corporation's term but with security of tenure—would help insulate the office from political changes.

For City Attorneys of larger corporations, a full-time, exclusive arrangement is preferable. While permitting private practice may attract experienced advocates, it creates inherent risks of conflict of interest that are difficult to manage.

5.6 Ethical Framework

City Attorneys, as public lawyers, are held to higher ethical standards than private practitioners. Key ethical obligations include the following:

1. The client of the City Attorney is the municipal corporation as an institution, not individual council members or the mayor. Personal legal representation or confidentiality commitments to individual officials are prohibited.
2. Conflicts of interest must be proactively disclosed and managed; the City Attorney should not hold briefs for parties adverse to the Corporation.

3. The City Attorney must not simultaneously hold incompatible public offices.
4. In cases of internal conflict between officials, the matter should be referred to the highest available authority—the Mayor or City manager—or direction sought from the Corporation Council.
5. Confidentiality of legal advice must be maintained, but the City Attorney should not use confidentiality to withhold information the Corporation Council is entitled to receive.

5.7 Stakeholder Implications

The establishment of a City Attorney's Office will have implications for multiple categories of stakeholders:

1. **Local Government Officials:** Mayors, municipal councillors, and administrators will gain access to consistent, in-house legal advice, enhancing the quality of policy decisions and reducing the risk of ultra vires actions.
2. **Municipal Departments:** Departments dealing with planning, public works, finance, and contracts will benefit from standardized legal scrutiny and greater clarity on legal obligations.
3. **Citizens and Residents:** Communities will gain an institutional advocate capable of pursuing their legal interests—including through class-action mechanisms — without the burden of individual litigation.—without
4. **Businesses and Industries:** A City Attorney's proactive engagement with licensing, permits, and zoning will create greater legal certainty while also increasing legal accountability for firms operating in violation of municipal norms.
5. **Legal Professionals:** The establishment of CAOs in major urban local bodies will create new professional opportunities for public-sector legal careers at the municipal level.



Challenges and Limitations

The proposal to establish City Attorney Offices in Indian municipal corporations faces several significant challenges that must be addressed in any implementation plan.

- 1. Limited legislative powers of urban local bodies:** Indian municipal corporations have limited powers to enact substantive local law. Since a primary function of the US City Attorney is to advise on and draft city laws, the restricted legislative autonomy of Indian cities constrains this function. This challenge reinforces the need for fuller realization of the devolution promised by the 74th Amendment.
- 2. Geographical and population scale:** Most Indian cities are substantially smaller in area than comparable US cities that maintain City Attorney offices. A differentiated approach—with City Attorney offices mandated only for corporations above a defined population or revenue threshold—may be more practical than universal adoption.
- 3. Budgetary constraints:** The Kochi Municipal Corporation's budget does not specify a dedicated allocation for the Legal Cell, and municipal budgets are not standardized across India. Adequate budgetary provision—for both the City Attorney's remuneration and office operational costs—will be essential for effective functioning.
- 4. Resistance to change:** The introduction of a new legal oversight body may face resistance from existing legal counsel, political appointees, and administrators who may perceive it as reducing their discretion or access.
- 5. Governance of autonomy:** An empowered City Attorney's Office, if not properly governed, could generate institutional overreach or be misused for political purposes. Clear mandates, accountability mechanisms, and ethical constraints must be embedded in enabling legislation from the outset.

Conclusion

The case for a City Attorney's Office in India's major municipal corporations is grounded in an observable and growing gap between the legal obligations of urban local bodies and their institutional capacity to meet them. As Indian cities expand — in population, economic complexity, and regulatory responsibility—the limitations of ad hoc, politically appointed legal counsel become increasingly costly in the form of unresolved litigation, inadequate contract oversight, missed opportunities for community legal redress, and diminished public trust in municipal governance.

The City Attorney model, well-established in the United States and adaptable to the Indian context, offers a framework for addressing these gaps. A well-designed City Attorney's Office would function as a permanent, merit-appointed, institutionally embedded source of legal expertise for the municipal corporation—serving not as a political instrument but as an institutional guardian of legal compliance, community interest, and governance integrity.

Implementation will require careful attention to the constitutional and statutory framework governing urban local bodies, the design of appointment and accountability mechanisms, adequate budgetary provision, and a phased rollout that builds evidence from pilot cities before broader adoption. A pilot in a major metropolitan corporation such as Kochi—which already possesses a nascent Legal Cell, a relatively well-documented legal caseload, and a sophisticated administrative structure—offers a viable starting point.

The long-term benefits of this reform — enhanced legal compliance, reduced litigation burdens,

proactive community legal advocacy, and stronger local governance accountability — are commensurate with the institutional investment required. Establishing permanent City Attorney Offices is one concrete, implementable step toward the stronger urban institutions that India's governance reform agenda has long sought.



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Appendix: Case Studies from San Francisco and Santa Clara

A1. Cases Against Landlords — Housing Conditions

City Attorneys have been active in prosecuting landlords for deplorable living conditions that constitute a public nuisance. A notable San Francisco case (May 2022) involved legal action against the owner of the Marathon Hotel in the Tenderloin district, where tenants were exposed to hazardous conditions including excessive garbage, pest infestations, inoperative bathrooms, insufficient heat, broken stairs, damaged doors, and non-functional safety detectors. The lawsuit alleged violations of state housing law, multiple municipal codes, and California's Unfair Competition Law, seeking penalties, fees, and injunctive relief.

In a second case (November 2019), San Francisco City Attorney Dennis Herrera secured a settlement of USD 245,000 from Lem-Ray Properties for illegally discriminating against low-income tenants by refusing to accept government housing vouchers. These cases illustrate the potential of the City Attorney's office to provide accessible legal redress for vulnerable urban residents — a function directly applicable to Indian cities experiencing rapid urban migration and housing pressures.

A2. Fiscal Matters

The City Attorney plays an important advisory and litigation role in municipal fiscal matters. Ordinances imposing property taxes, sales taxes, regulatory license fees, and revenue charges must be carefully drafted, assessed, and defended in court. The City Attorney is typically required to draft such measures and defend them against legal challenge. This fiscal legal function is particularly relevant in the Indian context, where municipal finance reform and revenue generation are major policy priorities.

A3. Property Acquisition and Eminent Domain

In expanding cities, the City Attorney manages the legal dimensions of property acquisition for public purposes—including rights-of-way for sanitary sewers, drainage systems, streets, public buildings, airports, parks, and public utility facilities. Where direct purchase is not feasible, the City Attorney may institute proceedings in eminent domain, negotiate settlements, and defend against inverse condemnation suits. This function has direct relevance to Indian municipal corporations engaged in urban infrastructure development under schemes such as AMRUT and the Smart Cities Mission.

