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## **Formulating Open-Space Policies for India's Cities: The Case of Mumbai**

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# Formulating Open-Space Policies for India's Cities: The Case of Mumbai

## ABSTRACT

Over the past decade, Mumbai's civil society has raised concerns over the way in which the municipal corporation appears to be prioritising rapid development at the cost of the city's public space. Indeed, the city has lost significant areas of its open spaces owing to various reasons, among them archaic policies, unrealistic goals, and the labyrinthine division of power and jurisdiction between the Brihanmumbai Municipal Corporation and other development bodies. This paper analyses the existing central, state and municipal policy instruments that drive the open space agenda for Mumbai, and how these have proved to be inadequate in meeting the expectations of its space-starved 12-million inhabitants.

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## INTRODUCTION

Open spaces are defined as areas that are green, accessible and open to the sky. Urban studies use a vast number of formal terms and definitions to refer to ‘urban open and green spaces,’ including green space, urban greenery, open space, public space, public gardens and parks. These terms have been used interchangeably by urban planners and designers, architects, landscape architects and other professionals, and can be viewed through the lens of design, policy, planning, management, and environmental psychology.<sup>1</sup>

As per the Indian housing ministry’s 2014 Urban and Regional Development Plan Formulation and Implementation (URDPFI) guidelines, open spaces fall under three categories: recreational space, organised green space, and other common open spaces (such as vacant lands/open spaces including floodplains and forest cover in plain areas).<sup>2</sup> All urban local bodies use the URDPFI guidelines for land-use planning.

The functions of open spaces by land use—where open spaces on land plans are marked out—have been defined. But it is also important to understand that the functions of open spaces, which are characterised by low levels on humanmade interventions, play a vital role in the protection of nature. Open spaces can thus be defined as those spaces that account for “provision of recreation services to society and conservation of natural values.”<sup>3</sup>

Mumbai, India’s financial capital, is spread over 604 square kilometres and, according to the 2011 census,<sup>4</sup> is home a population of 12 million. Having sufficient accessible green open spaces is a crucial ingredient to create “sustainable cities and communities,” as per the UN’s Sustainable Development Goals.<sup>5</sup> Mumbai has an abysmal 1.24 square metres of accessible open space per person, ahead only of

Chennai, which stands at 0.81 square metres per capita. In comparison, Delhi has 21.52 square metres, and Bangalore has 17.32 square metres of open space per capita.<sup>6</sup> Other global megacities fare better than Mumbai as well; London has 31.68 square metres, New York City has 26.4 square metres and Tokyo has 3.96 square metres of open space per capita.<sup>7</sup>

The 2014-34 development plan for Mumbai, drafted by the Brihanmumbai Municipal Corporation (BMC), bumped up the percentage of open space in the city from 26 percent in 2012 to 46 percent in 2016 by changing the definition of open space. The new plan includes open spaces in the revised definition of 'environmental' areas, and views it as areas under coastal regulation zones I (ecologically sensitive areas like mangroves, coral reefs and biosphere reserves) and III (relatively undisturbed areas, and rural and urban areas that are not substantially developed); beaches; areas under nullahs, creeks and rivers; and areas formed because of sedimentation in the city's creek regions. This revision has put Mumbai at par with Singapore and Sydney, Australia, in terms of percentage of open space (Figure 1). However, most of the newly-added environmental spaces are inaccessible to the people and thus should not qualify as open spaces.

**Fig 1. Percentage of public green spaces in cities globally  
(as compiled by the World Cities Culture Forum)**

| City         | Percentage of green space | Year |
|--------------|---------------------------|------|
| Amsterdam    | 13.00%                    | 2018 |
| Austin       | 11.00%                    | 2018 |
| Bogota       | 4.90%                     | 2017 |
| Brussels     | 18.80%                    | 2015 |
| Buenos Aires | 8.90%                     | 2013 |
| Cape Town    | 24.00%                    | 2016 |
| Chengdu      | 42.30%                    | 2017 |

|               |        |      |
|---------------|--------|------|
| Dublin        | 26.00% | 2018 |
| Edinburgh     | 19.00% | 2016 |
| Helsinki      | 40.00% | 2018 |
| Hong Kong     | 40.00% | 2016 |
| Istanbul      | 2.20%  | 2015 |
| Johannesburg  | 24.00% | 2002 |
| Lisbon        | 22.00% | 2018 |
| London        | 33.00% | 2015 |
| Los Angeles   | 34.70% | 2016 |
| Melbourne     | 10.00% | 2016 |
| Milan         | 12.90% | 2016 |
| Montreal      | 14.80% | 2013 |
| Moscow        | 18.00% | 2017 |
| New York      | 27.00% | 2010 |
| Oslo          | 68.00% | 2018 |
| Paris         | 9.50%  | 2013 |
| Rome          | 38.90% | 2017 |
| San Francisco | 13.00% | 2017 |
| Seoul         | 27.80% | 2016 |
| Shanghai      | 16.20% | 2017 |
| Shenzhen      | 40.90% | 2016 |
| Singapore     | 47.00% | 2011 |
| Stockholm     | 40.00% | 2015 |
| Sydney        | 46.00% | 2010 |
| Taipei        | 3.40%  | 2017 |
| Tokyo         | 7.50%  | 2015 |
| Toronto       | 13.00% | 2018 |
| Vienna        | 45.50% | 2014 |
| Warsaw        | 17.00% | 2015 |
| Zurich        | 41.00% | 2018 |

Mumbai is an archipelago of seven islands, flanked by the sea on the east and west, and with a designated national park in the north. Why has it not been able to give its residents adequate green spaces?

While there is no defined international benchmark for how much space should be accessible per capita, global organisations have offered some guidelines. The World Health Organization (WHO) has set a minimum limit of nine square metres of open space per capita in urban areas, the UN has pegged this figure at 30 square metres, and the EU considers 26 square metres of open space per capita as acceptable.<sup>8</sup> In India, planning agencies follow the URDPFI guidelines, which suggests that 10-12 square metres per person are desirable.<sup>9</sup>

In all, Mumbai has 15.37 square kilometre of accessible open space, providing free and fair entry to all citizens. However, many gardens, playgrounds and recreation grounds that are part of this open space are ill-maintained and have broken infrastructure. The inaccessible spaces, such as those occupied by private gymkhanas and closed playgrounds owned by private entities, add about 128.41 square kilometres of open space for the city.

Although Mumbai's total geographical area is 458.28 square kilometres, the BMC's 2014-34 development plan covers only 415.05 square kilometres. The rest falls under the state's special purpose authorities such as the Mumbai Metropolitan Regional Development Authority (MMRDA), and under state and central agencies such as the district collectorates, Maharashtra Industrial Development Corporation (MIDC), Mumbai Port Trust, Airports Authority of India and the Indian Railways. The BMC's current land use shows that open spaces form 3.7 percent of the total area of the city. The current development plan aims to achieve an open space standard of four square metres per capita for the entire city.<sup>10</sup>



Several factors have contributed to the lack of open spaces, including decaying laws, bad planning, administrative inefficiency, the unmonitored execution of schemes and faulty policies.

The paper is formulated through the lens of the statutes that determine urban local management, particularly those related to open space. Urban landscape management and urban greenspace delivery require effective planning tools, which come from robust statutes. The existing laws, though sound in their basic structure, need to go through tangible, practical and innovatory modification for better outcomes. Isher Judge Ahluwalia, chairperson of the High Powered Expert Committee on Urban Infrastructure and Services from 2008 to 2011, enumerated this aspect by pointing out how India's federal framework has not empowered its third-tier despite amending the constitution for this purpose in 1992. According to Ahluwalia, the missing link in the institutional framework for metropolitan planning and governance is a roadblock to better management.<sup>11</sup>

The objectives of this paper are two-fold. The first is to describe the main policy instruments that have been proposed and utilised in Mumbai to protect and manage open spaces across all government levels and to see how these can be amended or improved. The second objective is to help policymakers and planners design more effective models to protect, augment and maintain Mumbai's open spaces. Further, the paper will assess how the BMC can strengthen its role as the principal provider and manager of Mumbai's open spaces.

## **EVOLUTION OF POLICIES GOVERNING MUMBAI'S OPEN SPACES**

In pre-independent India, from 1888 to 1947, the Bombay Presidency maintained and protected all open spaces in the city. The Bombay City

Improvement Trust (BCIT) was created in the aftermath of the 1898 plague epidemic, which led to the expansion of the main city by joining all the seven islands that now constitute Mumbai. The BCIT undertook a host of measures to improve sanitary and living conditions, and prepared a development plan that included 300 open space plots in the city.<sup>12</sup>

The BCIT widened roads in the central parts of the city, which were more densely populated. A new east-west road (Princess Street) and the north-south Sydenham Road (now Mohammed Ali Road) were constructed to channel the sea air into the centre of the crowded residential areas.<sup>13</sup>

The development in the Dadar-Matunga-Wadala-Sion suburban area began in 1899 with the express purpose of relieving congestion in South Mumbai. Well-laid out plots, with mixed land-use patterns, marked these sections. Access to these parts, completed in 1900, was through Sydenham Road.<sup>14</sup>

It was around this time that the BMC Act 1888, which established the municipal body, came into force.<sup>15</sup> The Act is still in effect 132 years later, albeit with some revisions, though the gist and vision remain unchanged. In 1915, the Town Planning Act enabled Town Planning Schemes in Mumbai, and the BCIT merged with the BMC in 1925.

The first 20-year development plan for the city was formulated in 1967, setting targets for the number of open spaces to be acquired and developed over its course.<sup>16</sup> The development plan led to the enactment of the Maharashtra Regional Town and Planning (MRTP) Act, 1966, which emphasised on the creation of an existing land-use plan and proposed the creation of a development master plan that would be revised every 20 years.

The MRTP Act called for the acquisition by the civic body of private plots earmarked for open spaces, including gardens, parks, playgrounds and recreation grounds, depending on the need and availability of funds.

In the 1991 development plan, the BMC introduced the concept of land monetisation through transferable development rights (TDR), a monetary incentive for private owners to give up space without causing a big hit to the exchequer.<sup>17</sup>

Post-1991, the BMC also came up with specific regulations and clauses that gave the municipal commissioner rights to allow acquired open plots to be developed through exclusive development agreements with private involvement, for instance, through caretakers who were allowed to construct community clubs on 25 percent of the space. The gross misuse of this policy to create exclusive and members-only spaces became the starting point of a citizen movement opposing the move and eventually led to permanent policy paralysis. The BMC had let out 216 plots to private players, but began to take them back in 2017 after several were linked to political organisations.<sup>18</sup> The involvement of political parties in the operation of these plots led to mistrust between the citizens and administration over public-private initiatives to maintain Mumbai's open spaces.

The 74th Amendment of the Constitution empowered municipal bodies to devise their plans and structures for different services to meet the needs of citizens.<sup>19</sup> But this did not change the BMC's approach towards open spaces.

The BMC has twice, in 2007 and 2014, drafted open spaces policies that were opposed by the civil society, and had to be withdrawn and reworked. Both policies were found to have loopholes and carried the legacy of development agreements that gave out public plots to private players. The BMC has repeatedly made it clear that it is unable to look

after the city's public spaces due to a lack of funds,<sup>20</sup> but to no avail. The municipal body is now formulating a new open spaces policy in discussion with various stakeholders.<sup>21</sup>

Although Mumbai is a coastal city and has about 16 kilometres of beaches, most beaches remain inaccessible due to polluted waters and unbridled constructions along the coasts. Citizen-led efforts to reclaim seaside areas have proved successful in some instances (Marine Drive and Bandra promenades), but the issue of jurisdiction is a hindrance to such development as beaches fall under the Maharashtra Maritime Board (MMB), a central government agency that does not work in coordination with the local civic body. So even though the BMC has included beaches as open spaces in its new development plan, the MMB is in charge of developing and maintaining these areas. There is thus a disconnect between coastline and beach impact and the open space policy, and there have been no attempts to link the two.

## **ANALYSING THE LEGISLATIONS AND POLICIES THAT IMPACT MUMBAI'S OPEN SPACES**

### **The 74<sup>th</sup> Amendment of the Constitution**

The Constitution (74<sup>th</sup> Amendment) Act of 1992 created institutions of self-governance and gave municipalities the power to create their plans for economic development and social justice. The Twelfth Schedule of the Indian Constitution, which contains the powers, authority and responsibilities of municipalities, mentions the provision of urban amenities and facilities such as parks, gardens and playgrounds. However, the Schedule is not mandated, and it is up to the state governments to decide which functions may be devolved to the local bodies and, in turn, determine which functions of the municipal bodies are obligatory and discretionary.

The 74<sup>th</sup> Amendment has had a direct impact on the governance of Mumbai's open spaces, as evident through the amendments made to the BMC Act to create a list of obligatory and discretionary functions, and which did not give much importance to the development of spaces. Although the 74<sup>th</sup> Amendment also allows state governments to clarify what municipal functions are 'obligatory' and 'discretionary,' most states, including Maharashtra, have not seized this opportunity.<sup>22</sup>

### **The Brihanmumbai Municipal Act**

The BMC is responsible for the civic administration of and providing infrastructure and amenities in Mumbai. The BMC Act, which details the rules for the city, does not consider the maintenance of open spaces as a *mandatory* duty but mentions it as one of the civic body's several *discretionary* duties.

Since the Act doesn't specify how open spaces should be treated, the BMC has adopted a casual attitude towards their upkeep, which in turn has impacted budgetary allocations. In 2017-18, the BMC allocated only 1.3 percent of its total budget towards the maintenance of open spaces,<sup>23</sup> cutting it to 0.7 percent in the 2020-21 budget (see Figure 2).

The state government could step in, under the provisions of the 74<sup>th</sup> Amendment, to encourage the BMC to make the maintenance of open spaces a mandatory duty. An attempt on this front was made in 2016 when a legislator introduced a private member bill, but the state government quashed it for political reasons.<sup>24</sup>

Importantly, the 132-year old BMC Act, dating back to the British era is archaic. It needs an urgent and comprehensive overhaul, given the vastly altered demographics of the city since the law was first enacted.

**Fig 2. Total provision made for the gardens department from 2018 to 2020  
(Compiled by ORF from BMC budgets)**

| Year    | Provision for Gardens department (in cr.) | Total MCGM budget (in cr.) | % of total budget |
|---------|---|----------------------------|-------------------|
| 2020-21 | 227                                       | 33441                      | 0.7               |
| 2019-20 | 277                                       | 30693                      | 0.9               |
| 2018-19 | 244                                       | 27258                      | 0.9               |

## Ward Committees

The 74<sup>th</sup> Amendment of the Constitution mandated the formation of ward committees in a bid to bring governance closer to the people and to carry out the responsibilities of urban local bodies (ULBs), including those detailed in the Twelfth Schedule.<sup>25</sup> The ULBs were to have one ward committee each for city areas with a population of 300,000 and above.

The BMC's functions are spread over 24 municipal wards, which, in turn, are distributed among 16 ward committees. The ward committees, constituting the local municipal councillors and three members representing NGOs or civil society, are chaired by an Assistant Municipal Commissioner.

While the Constitution gives ward committees a legal standing, in Mumbai, their role remains significantly undermined. A careful look at the members of the 16 ward committees reveals that those who are meant to represent civic groups or NGO are mostly political appointees, defeating the purpose of ensuring the citizen's voice is heard.

While the 74<sup>th</sup> Amendment did put a premium on the formation of ward and district committees, it did not vest enough legislative or

financial powers in them to take necessary decisions.<sup>26</sup> There is a great need to reinforce the ward committees as the focal point for planning services and amenities, including open spaces. For starters, state governments must ensure that ward committees include citizens as active participants. The ward committees also need to be given a free hand in accessing and directly influencing the development plan of the city. Once they are given this freedom, citizens should be able to get involved in the acquisition, maintenance and operation of open spaces in their areas.

Until now, Mumbai's civil society has primarily played a reactive role. But this needs to change if successful and people-oriented policies are to be framed. Such involvement will give an impetus to getting accurate ground-level information and constructive critique while formulating an open spaces policy.

### **Maharashtra Regional and Town Planning Act, 1966**

The MRTTP Act was constituted to make provisions for planning the development and use of land, with the broader intention of ensuring that town planning schemes were made and executed effectively through development plans.<sup>27</sup> It also aimed to create new towns by empowering planning authorities with compulsory land acquisition rights under the development plans.

According to the MRTTP Act, a development plan shall generally indicate how the use of land in the area of the planning authority will be regulated. It also shows how the land will be developed, with proposed designated areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries and dairies.

According to the MRTTP Act, development plans must incorporate suggestions and views from the planning authorities as well as those

obtained through public consultations, but can ultimately only be sanctioned by the state government. So, although the Act identifies the need to create open spaces, it leaves the final decision to the state government.

The 74th Amendment envisages conferring more powers on the municipalities to make them effective and complete institutions of local government. The Amendment also requires the state government to enact a law for the constitution of a Metropolitan Planning Committee, to be tasked with the preparation of development plans for the metropolitan region.

If this is the larger goal, then the MRTTP is working against decentralisation and is empowering the state to interfere in the affairs of the local government. As its interference is contrary to the constitutional mandate and is arbitrary and unreasonable, the provision empowering the state government to be the final authority needs to be annulled. The municipal governments must have the sole and full authority in devising and implementing the city development plans.

## **Mumbai Development Plans**

The 20-year development plan is created by a team of urban planners and town planning experts after taking into consideration the current land use of that region and the broader regional plan. The plan spells out how the area, including its open spaces, is to be regulated and how the development will be carried out. Till now, Mumbai has had three development plans—1967, 1991 and 2014.

### ***1967-87 development plan***

This was the city's first-ever comprehensive development plan. It set up a goal of attaining at least half an acre of open space per 1000 people



over its 20-year duration, raising the target to one acre per 1000 people over 30 years. The plan did not include the Rajiv Gandhi National Park in its ambit but contemplated adding some 'foreshores' (between the water and cultivated or developed land) to attain its one acre per 1000 people goal.<sup>28</sup> The BMC admitted in its subsequent development plan that it was unable to prioritise the acquisition of open spaces as per the 1967 plan due to funding constraints, thus forcing the civic body to come up with a new open space acquisition method.

### ***1991-2011 development plan***

The 1991 development plan introduced provisions for the acquisition of land in a manner that did not strain municipal finances, which had been acknowledged as the cause for the failure to meet the acquisition goals laid out in the previous plan. The plan also set targets at two square metres of open space per capita for Mumbai city and four square metres per capita for its suburbs.<sup>29</sup>

The 1991 plan moved the focus of open spaces from the physical to the fiscal. Private landowners were given transferable development rights, or TDRs, for handing over their un-encroached private land free of cost to be used as public open spaces.

Through the TDR process, the BMC would provide landowners with TRD certificates instead of paying them cash for their land, and landowners were given a certain amount of additional built-up area, which they could either build themselves or sell to another builder. The certificate mentioned the floor space index (FSI) of the acquired land, and could be sold in the open market, but only northwards in the suburbs.

The TDR policy gave landowners a free hand to build northwards into the suburbs of Mumbai (the southern and central areas were

already crowded) without mandating for the creation of essential infrastructure to support this development surge. Over two decades, the TDRs generated in South Mumbai got loaded in the northern suburbs, resulting in substantial redevelopment activity that aggravated the congestion problem and did not bridge the imbalance of open spaces. Meanwhile, the open spaces targets remained unachieved.<sup>30</sup>

### **2014-34 development plan**

The 2014 development plan has proposed reserving a uniform four square metres of open space per capita across the city.<sup>31</sup> A detailed look at the plan illustrates that most of the new reserved spaces are private and inaccessible and are certainly not open to a large part of the population. Some of the reserved spaces, such as mangroves and saltpan lands, are natural areas and no-development zones.

The plan also proposes reclaiming about 19.17 million square metres of land to meet the per capita open space target. The average cost of procuring land for open space development is INR 3,230 per square metre, meaning a total of INR 61,930 million if the plan is to be implemented. With a municipal budget of INR 300 billion and open spaces not even featuring as a mandatory duty of the civic body, the BMC is not in a position to set aside this astronomical amount for land acquisition.

Given the previous financial constraints to acquire land for open spaces, this plan includes a provision for an accommodation reservation scheme.<sup>32</sup> According to this scheme, the BMC will get 70 percent of the total space for the amenity. It will pay for only 5 percent for reserved land, 15 percent for building construction and 20 percent for open space and cemetery development. Private landowners will also be given incentive FSIs and full development rights to the size of their

original plots. Besides, if landowners agree to build the civic amenity, they will get 0.5 times the TDR. The accommodation reservation scheme will allow the BMC to pay in terms of 'development rights' instead of money.

The 2014-34 development plan is futuristic and lays down a very encouraging, achievable and reasonable model of multi-space use to increase the public open spaces in the city. It includes public/semi-community spaces, open spaces in public and educational institutes, and greens below flyovers in its ambit.

This plan looks beyond traditional allocations to solve the open spaces issue. It also proposes that 20 percent of institutional space be allowed for the creation of art galleries, museums, music schools and cultural spaces.

### ***Altering the Development Plan Approach***

- **Need for integrated planning**

The absence of an integrated approach towards planning has had a significant impact on the development of open spaces in the city. Mumbai's development plans have traditionally only considered those areas that fall under the BMC's ambit. Open spaces that fall under the jurisdiction of other organisations such as the MMRDA and MIDC, which together account for about one percent of Mumbai's land space, have not featured in the city master plan.

Section 22 of the MRTP Act envisages development plans as comprehensive and integrated. But this can only be achieved if plans for all sectors, including transport, water supply, waste disposal, road networks, airports and ports, special trade and manufacturing zones, and open spaces are created together.

The areas under the BMC and Mumbai Metropolitan Region (MMR)—which covers 18 urban local bodies, including Mumbai, Thane, Panvel, Bhiwandi and Karjat-Kasara—are closely linked, showing that there is a great need to change the urban planning approach.

About 60 percent of jobs held by the 22.8 million people living in the MMR are based in Mumbai. Over 40 percent of students from across the MMR travel to Greater Mumbai for their education. The Greater Mumbai region also has major public hospitals where people access modern and advanced healthcare. The MMR functions like a suburb of Mumbai and is primarily used for residential purposes, as a secondary business hub, and for manufacturing and allied industries.

Currently, the BMC prepares its development plan, as do the MMR's 18 ULBs. The MMRDA assists the state government to make a separate metropolitan regional plan that focus on the bigger picture—promoting regional economic growth, assessing land needs, new road networks and transportation, slum management, affordable housing and water supply, and environment strategies.

Although Section 27 of the MRTP Act mandates the BMC to consider the regional plans while creating its proposals, the 20-year development plan excludes those areas.

- **Setting realistic goals**

The first two development plans for Mumbai had unrealistic open space targets. The 1967 plan set a goal of attaining at least half an acre of open space per 1,000 people over 20 years, while the 1991 plan set the target at two square metres of open space per capita for Mumbai city and four square metre per capita for its suburbs. All goals were missed. The 2014 development plan, meanwhile, has proposed reserving a uniform four metres of open space per capita across the city.

A lack of funds for land acquisition led to the monetising of land through the TDR process, but it did not help the city achieve its open space goals. Yet, the 2014 plan includes a provision for accommodation reservation. In their criticism of the accommodation reservation scheme, urban experts and open space activists have pointed out that BMC should allot more money for such amenity plots and not just for a measly 70 percent of space.

The 2014 plan suggests that 25 percent of land that falls under no-development zones should come under the ambit of public open spaces. Besides, areas under the Mumbai Port Trust, saltpan land and mangroves should also be included under public open spaces. These amount to approximately 850 hectares and make up for 0.66 square metres per capita.

A 2005 Mumbai High Court order declared mangroves as “protected forests,” and a 2013 government resolution went a step further to classify it under “reserved forests.”<sup>33</sup> Another High Court order restricted any kind of development on wetlands.<sup>34</sup> While providing permeable pathways through the mangrove areas may seem like an attractive proposition for nature lovers, in reality, such encroachments have been a burgeoning problem that the BMC has failed to rein in. The wetlands and mangroves are the city’s natural lungs. Opening these areas to the general public without having a protection mechanism in place will only spell destruction.

For the past decade, the Mumbai Port Trust has been contemplating opening a chunk of their land (approximately 1,800 acres of docklands) for development. In 2014, the Rani Jadhav committee, set up to plan the development of the eastern waterfront, recommend that over 100 acres of this land should be allocated for public open spaces. But five years on, this remains a pipe dream.<sup>35</sup>

The 2014 development plan also proposes the ‘green reclamation’ of natural pockets in the sea to meet its open space target. Under this scheme, land will be reclaimed at Cuffe Parade in South Mumbai to establish a 300-acre central park, along with adding 50 metres on the seaside for the entire stretch of the coastal road, which will add 88 hectares to Mumbai’s open space.<sup>36</sup> But no environmental impact assessment was conducted before the plan to establish a central park in Cuffe Parade was outlined. Besides, the proposed location of the park is in South Mumbai, where several open grounds, promenades and green spaces already exist. Cuffe Parade is predominantly a business district where people go to work while living in the suburbs. Projections in the 2011 Census and the development plan indicate a decline in population in this area. Additionally, the coastal road—the construction of which is currently stayed by the High Court—is also seeing massive opposition from several quarters over environmental, transportability and cost issues.

In a bid to acquire open spaces, development plans often set targets without understanding if the civic bodies have funds to buy land or whether the land in question are encroached. This must change.

### **BMC’s open spaces policy**

From 1991 onwards, the BMC framed an open spaces policy based on the principles of adoption and caretaker, where an adoptee would operate and maintain a plot with no construction allowed, while a caretaker would be allowed amenity construction on a fixed percentage of land. This was based on a new provision in the 1991 Development Control Regulations that allowed the development of various land uses for reservations like gymkhanas, clubs, stadiums, swimming pools and recreation grounds.

In 1992, the BMC introduced a special clause whereby the municipal commissioner could give out public green plots to private entities under the adoption and caretaker open space policy. Several plots were given on no-construction 'adoption clauses,' while caretakers were given nine recreation grounds measuring 98,558 square metres on a development agreement.<sup>37</sup>

Under these agreements, the caretakers could construct clubs on up to 25 percent of the open space, give subsidised memberships to citizens to use the clubs and leave the remaining vacant portion of land as open access. Eventually, these caretakers violated rules and constructed exclusive 'members-only' clubs on these lands and denied unrestricted access to non-members, ending up in litigation with the civic body. Many of these clubs had political affiliations, making it difficult for the administration to act against them. The BMC gave away about 20 percent of its lands to private interests through this agreement, causing generational damage.<sup>38</sup>

In 2005, the BMC framed revised guidelines to allot municipal plots reserved for recreation grounds and playgrounds on adoption and caretaker basis. A huge outcry followed, and in December 2007, the state government stopped the policy from taking effect.<sup>39</sup>

On 1 September 2012, the Maharashtra government resolved to constitute a committee to prepare a comprehensive policy framework for the planning of open spaces.<sup>40</sup> The committee, chaired by the municipal commissioner and including government and civil society representatives, was expected to address the following:

- Preparing comprehensive and uniform guidelines for open spaces by collecting data on these areas using maps, surveys and conducting visits where required

- Taking note of the existing policies of the municipal corporation and other authorities
- Comparing the policies of the state government and central government, and giving recommendations
- Studying suggestions of government and non-government sectors on the planning and maintenance of open spaces
- Looking at national and international policies on open spaces, making a comparative study and putting forth recommendations

The committee tabled its recommendations in April 2014, but with the general and state elections looming then, it fell by the wayside and remains on paper till date.

In 2015, a new policy declaring that “all existing caretaker plots remain status quo” was instated. As per the policy, “All applicants for caretaker having applied prior to December 31, 2014 and can prove to have spent INR three crore on the adopted plot can be upgraded to caretaker status.”<sup>41</sup> Besides the nine plots given to caretakers in 1992, the new policy would have given the same status to about 12 more plots. There was a huge public outcry over this, forcing a halt on the policy.<sup>42</sup>

In September 2016, the BMC presented an interim open spaces policy, purely an ‘adoption’ policy, that did not give any construction rights on the open spaces but only operation and maintenance rights.<sup>43</sup> It drew a distinction between adopted plots, previously adopted plots that were now under the BMC, and plots that were always under the BMC’s ownership. All previously adopted plots and those currently under the BMC’s stewardship were eligible for new adoption agreements, while a set of conditions were laid out to screen potential adopters. These included corporate support and experience as adopters.



All such plots would be eligible for fresh adoption agreements after a three-step screening and approval process, and the new agreements would be for 11 months. The plots that did not meet the published conditions would remain in the BMC's possession and be administered by it. This ensured that adoptees would not be able to sublet the plot, hold any political or other social functions, and would not be able to construct any structure on the premises.

In August 2019, the BMC put out a public notice in local newspapers about the drafting of a garden policy.<sup>44</sup> It invited suggestions from citizens, societies, NGOs and companies to help draft an inclusive, accessible and sustainable policy. The policy is yet to be tabled before the BMC's Corporation Council, but given the civic body's chequered history with the open space policy, doubts reign over its latest efforts.

## CONCLUSION AND RECOMMENDATIONS

Urban open spaces are invaluable for the health and prosperity of a city and its residents. Instruments that drive open space policies must be mindful of the direct impact they have on the lives of people. The existing policy framework can be improved, keeping in mind the goal of boosting open spaces per capita in Mumbai.

### Revising 74<sup>th</sup> Constitution Amendment and BMC Act

It has been over 25 years since the Twelfth Schedule of the Constitution, which contains the powers, authority and responsibilities of municipalities, was enacted. With the new challenges and changed priorities of cities, the vision of local governing bodies will need to evolve.

The Schedule needs to be amended and must mandate at least some functions directly impacting the Sustainable Development Goals, such as the provision for governance of urban amenities and facilities like

parks, gardens and playgrounds. The amendment should also ensure that it is no longer left to the state governments to decide which functions are devolved to the local bodies, and which of their functions will be obligatory or discretionary. This will have a direct implication on the BMC Act 1888, which classifies the maintenance and operation of open spaces as a discretionary duty of the civic body, and will ensure that plots get acquired, and funds are available for the operation and maintenance of open spaces.

Such provisions can also be brought in as an amendment at the local body level or changed through a government ordinance.

### **Implementation of development plans**

Although the 1967, 1991 and 2014 development plans set ambitious targets for open space per capita in Mumbai, their implementation has met with little success over the years. The BMC has not been able to implement even 25 percent of the 1967 and the 1991 plans, which has created a considerable deficit in amenities. The lack of funds for land acquisition, and the delays in obtaining permissions from other authorities, could explain the BMC's lackadaisical attitude in implementing the development plans. But unless the implementation of the development plan becomes a mandatory duty of the BMC, there will be no accountability.

The Constitution views town planning as a function of local bodies, and this is mandated by law as per the provisions of the MRTP Act. There is a need to bring town planning and implementation under the ambit of the BMC Act under sections 62 and 63, which makes it mandatory for the BMC to implement the development plan.

The team behind the 2014-34 development plan has proposed that the master plan is split into four five-year implementation plans, and

further into annual plans. The yearly plans will have budgets and be processed phase-wise to streamline the implementation process. This is a welcome measure as it is forward-looking, transparent, and fixes responsibilities.

An annual review and monitoring mechanism should be established and integrated with suggestions and inputs from citizen groups, experts and advocacy groups from across the city.


### **Single policy approach**

Rather than a narrow-focus adoption and caretaker policy, there should be one overarching open spaces policy for all plots. The umbrella policy should go far beyond the issue of jurisdiction and ownership of these spaces, which currently lies with the central government, state government and municipal corporation.

Bringing together complementary policy instruments could be far more effective than banking on one single narrow-focus open spaces policy to solve the issue of public spaces in Mumbai. A successful smart city with sufficient and well-maintained open spaces will be backed by a policy that encompasses all other spheres such as urban renewal, housing and transport. It is essential to understand that the policies to protect open spaces go hand-in-hand with those that manage urban growth. Thus, innovative regulatory approaches in urban growth must be introduced to ensure that amenities and facilities are available to residents of cities like Mumbai, which see rapid development.

There is also a need to tackle the problem of overlapping territories and responsibilities between the authorities and parastatal agencies on issues like open spaces. For lands belonging to the central or state governments, an arrangement must be made with the BMC for these

spaces to be kept open and used by people while the ownership remains with the respective agency.

Additionally, besides creating a new open space 'garden' policy, the BMC and Maharashtra government must revisit the very pillars—the constitutional amendments, the Acts and plans—on which the policy stands to ensure a green future for this megacity. 

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