

The Unfinished Business of Decentralised Urban Governance in India

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ABSTRACT Until the early 1990s, India's urban local bodies (ULBs) were under the complete control of the states, having little functional, financial and administrative autonomy. The 74th Amendment Act of 1992 sought to make ULBs self-governing institutions. Many salutary provisions were made in the Act and there have been certain positive outcomes since it came into effect in April 1993. However, many key issues have remained unresolved and at present, the states continue to dominate the ULBs. This brief highlights the strengths and deficits of the Amendment Act. It makes a case for a second generation of urban reforms to strengthen the decentralisation of urban governance across India.

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INTRODUCTION

Grassroots democracy was a subject of abiding interest to Mahatma Gandhi and many other national leaders who guided India's struggle for independence. To them, decentralised democratic governance was hinged on the primacy of the village in rural India. The Mahatma believed that cities were capable of taking care of themselves. "It is the villages we have to turn to," he wrote.¹ He held the cities in poor light. "I regard the growth of cities as an evil thing, unfortunate for mankind and the world, unfortunate for England and certainly unfortunate for India. The British have exploited India through its cities. The latter have exploited the villages. The blood of the villages is the cement with which the edifice of the cities is built".² In the many decades following independence, there was overwhelming national concern with the governance of the villages, and a resulting disengagement with the problems of cities.

Today, India appears to be on its way from the aphorism, "India lives in its villages," to "India lives in its cities." States such as Goa, Delhi, Mizoram, Tamil Nadu, Kerala, Maharashtra, Gujarat and Karnataka are already on the verge of or substantially moving to become more urban than rural. Other states are also urbanising and the country is expected to be more urban than rural sometime after the middle of this century.³

As India urbanised and the urban regions became too sizeable to be ignored, the official apathy towards cities receded. The

Government of India (GoI) has heightened its engagement with cities since the launch of the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) in December 2005.^a Interestingly, fund disbursements under the scheme was tied to certain specified reforms to be carried out at the state and local levels. This revealed the intent of the government to push through certain urban reforms by incentivising the states and rewarding them—and the cities—if they undertook reforms.

In subsequent years, GoI ventured to prepare a road map for wide-ranging municipal restructuring. Some of these reforms were implemented after 2015. These included the delivery of online services such as the issuance of birth and death certificates, as well as building permits; grievance redressal; efficient collection of user charges by ULBs; the establishment of municipal cadres and the provision of cadre-linked capacity building; the establishment of state finance commissions by states; the completion of credit rating by cities; and the preparation of GIS-based master plans. These reforms were carried out under the Atal Mission for Rejuvenation and Urban Transformation (AMRUT).⁴

These reforms were largely designed to exhort ULBs to function with greater efficiency through the use of digital and modern technology. Their implementation has been widely expected to result in an improved delivery system in cities. However, they have so far fallen short in altering the

a JNNURM aimed at financially assisting states and ULBs in upgrading the physical, social and economic infrastructure of cities and provision of basic services to the urban poor. This assistance was subject to a commitment to carry out specified urban reforms in line with the 74th Amendment Act.

ULB body politic. These much-needed improvements are in the areas of local body empowerment and the introduction of mandated tools of good governance.

DOMINANCE OF STATES OVER ULBs

The evolution of urban governance in India is of a more recent origin. The Indian Constitution positioned urban development as a state subject rather than federal, listing it as item 5 of the State List.⁵ For the first five decades following independence, little room was provided to the ULBs to function independently; the states exercised near-absolute administrative, functional and financial control over them. Elections were conducted by state representatives and the elected bodies were answerable to the state officials. Often, the elected bodies were superseded on insubstantial grounds and, on several occasions, the change of political dispensation at the state level led to statewide supersessions. It was the State-appointed civil servants who exercised authority.

States in the functional and financial domains of ULBs

Apart from political meddling, states had also taken hold of the functional and financial domains of ULBs. The states determined which functions local bodies would perform and which ones would be taken away from them. Similarly, it was them that took a call on what taxes the cities would collect, how much of the collection the ULBs would share with the states, which ones would be abolished and

which fresh ones would be introduced. The entire planning function of cities was handled by the state directorates of town planning. Wherever some modicum of planning role was given to ULBs, the states saw to it that all final approvals were retained at the state level.

Parastatals

The emaciation of cities and towns was exacerbated by the creation of a whole range of parastatals.^b These became the means of further embedding the power of the states in the performance of ULB functions. In this, international organisations played a major advisory role and the creation of parastatals was made as a precondition for the extension of loans for projects.⁶ The reason given was the weak capacity of the cities requiring functions to be handled by a superior band of officials. Over time, irrespective of the rising capacity of municipal bodies, parastatals got institutionalised. These were controlled by the states and they effectively usurped functions and revenues that ought to have been the domain of ULBs. Urban local governance was clearly not a constitutional obligation.

THE IMPACT OF THE CONSTITUTION (74th) AMENDMENT ACT

The Constitution (74th) Amendment Act, 1992 (henceforth referred to as Amendment Act) was passed with the objective of making ULBs empowered and self-governing institutions.⁷

b In the urban context, a parastatal is a state-owned company with a distinct legal form, generally created to undertake a city function such as water supply, city transport or urban planning.

The Statement of Objects and Reasons of the Act states:

“In many States local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government.

2. Having regard to these inadequacies, it is considered necessary that provisions relating to Urban Local Bodies are incorporated in the Constitution particularly for-

(i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to-

- (a) the functions and taxation powers; and
- (b) arrangements for revenue sharing;

(ii) ensuring regular conduct of elections;

(iii) ensuring timely elections in the case of supersession; and

(iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.”

The Act stipulated three levels of municipal bodies to be set up in the country: a ‘*nagar panchayat* (town council)’ for transitional areas; a ‘municipal council’ for a smaller urban area; and a ‘municipal corporation’ for a larger

urban area. The term for the ULBs was five years. Unless there were overwhelming reasons, a municipal body was not to be superseded by the state. In case a decision in regard to dissolution was under consideration, it was made mandatory that the ULB would be heard. If after a hearing, the state decided to dissolve the elected body before the completion of its full term, it would necessarily have to be reconstituted within a period of six months. The Act provided for an independent State Election Commission for the conduct, superintendence and control of municipal elections.

The Act also stipulated that seats be reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs) in proportion to their population in the municipal area. A revolutionary feature of the enactment was the mandatory provision of reserving one-third of every elected urban body for women representatives. Reservations were also provided for in the position of chairpersons of municipalities.

For the larger municipalities with populations 300,000 and above, wards committees were made mandatory. For the purposes of planning, a District Panning Committee had to be constituted. In addition, for every metropolitan area, defined as an Urban Local Body with more than a million population, a Metropolitan Planning Committee had to be formed. A State Finance Commission was also made mandatory, charged with the task of reviewing the financial position of the municipalities and making recommendations for the financial health of ULBs.

TOWARDS GREATER ULB AUTONOMY

Recognition of ULBs as the third tier of governance

There have been positive developments in the area of urban governance since the passage of the Amendment Act well over 25 years ago. The most significant consequence was in the constitutional recognition of civic bodies as the third tier of governance. The Act also guaranteed that the municipal bodies had an independent right to exist. Prior to the enactment, states could either extend the life of ULBs beyond their term or prematurely dissolve them if its political predisposition was different from the state government.

The Amendment Act divested the states of this power. Whenever the states have attempted to dissolve a ULB, they have faced judicial ire^c and have had to beat a retreat. It can now be safely asserted that states will find⁸ it extremely difficult to play foul with local political autonomy. In keeping with the spirit of inclusion and equity principles already operational at the higher levels of government, space has been mandated for the SCs and STs in proportion to their population in the geographical area of the ULB. This has had a salutary effect in terms of political representation and effective participation in all local decision-making.

Gender Empowerment

The introduction of the democratic principle of gender justice remains one of the hallmarks

of this Amendment Act. It became the harbinger of women empowerment and has led to a series of other reforms that have promoted gender equality in areas beyond the ULBs. The Act acknowledged that the socio-economic prosperity of the country cannot be achieved if half the population is bereft of a voice and denied participation in the democratic process. In the beginning, the effect of this pathbreaking reform was limited. A fair percentage of such representation got cornered by wives and daughters of male former representatives denied tickets on account of electoral seats getting reserved for women.⁹ There is growing evidence, however, that this is a weakening trend and even those women who had initially entered public office by being mere 'proxies' to their male family member are getting inspired to chart their own path. It has not only resulted in a larger participation of women in the affairs of the city but also in ensuring attention to gender issues that have an impact on women.¹⁰

Independent Municipal elections

The local electoral process was also taken out of the state's purview. An independent State Election Commission, outside the influence of states, was created after the 74th Amendment Act, ensuring transparency and fair play in the process of civic elections. The supervision, direction and control of all elections to the municipalities were vested in this Commission. Such local electoral governance beyond the dominance of the state was inconceivable before the Amendment Act.

c The Bombay High Court, for instance, in *Mohansingh Tanwani And Anr. vs State of Maharashtra And Ors.* (22 March 2000), quashed the state order dated 29 Nov, 2000 that dissolved the Dhule Municipal Council.

Wards Committees

A laudable innovation injected by the Amendment Act was the creation of wards committees in larger ULBs. This was with a view to take local administration as close to the people as possible. The Act mandated that in all ULBs with populations of 300,000 or more, wards committees would be formed. A wards committee is an administrative entity for a group of electoral wards to look after the civic affairs of their geographical area. It is a process mandated towards greater decentralisation within a city. Democratic decentralisation—the core principle of urban governance—thereby became embedded in the urban local bodies.

State Finance Commission

The Act also provided for an innovation, albeit limited, in the area of municipal finance: the mandatory constitution of the State Finance Commission (SFC) once in five years with the essential task of reviewing the state of municipal finances, recommending financial assistance to ULBs, and suggesting measures for municipal fiscal strengthening. The SFC's report was to be mandatorily tabled in the legislature of the state. This achieved two objectives. First, there was now a compulsory quinquennial review of the state of the fiscal health of ULBs. Second, its submission to the legislature ensured that the report would be studied and discussed.

CONTINUING CHALLENGES TO ULBs

Despite its impact on local governance, the Amendment Act left many substantive issues

unsettled. Indeed, the Amendment Act was “a postscript, and sat in the shadow of the more overwhelming engagement of the political masters with the rural Amendment Act. Panchayati Raj was the avowed priority vision: ULB raj was the poorer cousin which could follow behind the more glamorous kin. These facts are dust of the past, but they do show up the circumstances under which the urban Amendment Bill struggled and ultimately emerged with frailties that were bound to affect its verve. In the celebration of triumph, they were ignored; in the knowledge of outcomes, they have returned to haunt.”¹¹

1. Use of discretion by states. The Amendment Act made some of its provisions mandatory and others discretionary. Its use of the word “shall” in some places and the use of “may” elsewhere allowed states to exploit the loophole and refuse to abide by the spirit of the Amendment Act where they so desired. Wherever discretion was provided to the states, they ended up in a whole array of interpretations that suited the immediate needs of states.

For example, the Act indicated, *inter alia*, population, demographic density, revenue and non-agricultural activities as primary criteria for classification of nagar panchayats, municipal councils and municipal corporations. The listing of these criteria by the Amendment Act has not given any semblance of uniformity in delineating an urban area. Very large settlements are still dubbed as villages and smaller ones are converted into towns. In general, local rural political leaders have been reluctant to accept municipalisation on account of perceived loss of power, imposition of higher taxes, and the

forfeiture of large funding that villages receive under rural programmes.

At the ward level, the Amendment Act desired the induction of individuals of knowledge and experience in local governance. States could, by law, provide representation of “persons having special knowledge or experience in municipal administration”. However, this became a means of providing refuge to party functionaries or those who were unable to win elections. States also seem to have widely differing views on representation to Members of Parliament and Members of Legislative Assemblies in ULBs. It would be safe to conclude that decisions have been driven by political expediency rather than considerations of good governance.

The Amendment Act remained silent on the status of the Mayor. While the developed world has increasingly empowered its cities’ mayors, in India, the case is different. There is wide variation in the manner of elections of Mayors. They could be in office for one year, or two, or five; they could be directly or indirectly elected; and they could have some powers or fulfil a purely ceremonial role. They are in no position to play the kind of inspirational role that mayors of, for instance Barcelona, Curitiba, Tokyo or New York have played.

Surely, if ULBs are to be self-governed entities, as the Constitution of India expects, they cannot be headed by state appointees. As the Second Administrative Reforms Commission (Sixth Report) said, “The whole logic of local government empowerment is to facilitate people’s participation and democratic governance as close to the people as possible. Only when the elected executive exercises real

authority, can people understand the link between their vote and the consequences of such a vote in terms of provision of public goods and services.

Such a clear link also ensures fusion of authority and accountability. If the elected local government has no real authority and if executive powers are vested in an unelected official appointed by the State government, then local governance is reduced to mere symbolism. The Commission is of the view that the Mayor/Chairperson should be the Chief Executive of a city or urban government, and the city government should have the power to appoint all officials including the Commissioner and to hold them to account.”¹²

Even in the political sphere, experience shows that while elections are independently held, local politics continues to be dominated by orders from above. Since elections are fought on party lines, election candidates are decided by state party bosses and in their voting, local representatives toe the party line even if they are against the interest of the city. “What constrains the local elected system is the powerful and omnipresent presence of the State Government reinforced by the political party system. Both together suppress any local initiative, promote political clientalism within the political structure itself, and reward passive party obedience rather than actual groundwork.”¹³

2. Municipal Functional Domain. In the functional domain, ULBs were left as abandoned as earlier. The Amendment Act stated that “The Legislature of a State may, by law, endow the Municipalities with such powers and authority as necessary to enable

them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities... including those in relation to matters listed in the Twelfth Schedule”.

However, the XII Schedule inserted into the Constitution by the Amendment Act was merely illustrative, leaving the states with far too wide a discretion. Since it was not made mandatory, most states went ahead and amended their acts to include part or in some cases all of the 18 functions listed in Schedule XII. “A comparison of the State legislation with central Act reveals that few State governments have availed of the opportunity presented by the 74th Constitutional Amendment to clarify municipal functions listed as ‘obligatory’ and ‘discretionary’ and avoid overlapping institutional functional and geographic jurisdictions.”¹⁴

Furthermore, parastatals performing some of these functions are still in existence, only complicating matters. Linkages between levels of urban local bodies, their capacities and allocation of functions also appear missing. In sum, the Amendment Act failed to spell out a well-defined functional domain for ULBs and left the states as powerful as earlier in terms of allocation of functions. These remained entirely at the discretion of the States.

3. Municipal Financial Domain. In the financial domain, the Amendment Act stated that “The Legislature of a State may, by law, authorize a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees.... to assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State

Government to provide for making such grants-in-aid to Municipalities from the Consolidated Fund of the State”. It further stated that “The Finance Commission shall also review the financial position of the Municipalities and make recommendations.... to improve the financial position of the Municipalities...in the interests of sound finance of the Municipalities”.

It is true that the constitution of State Finance Commissions (SFCs) including placing their recommendations under the purview of the State Assemblies was made mandatory. Their recommendations for financial devolution to municipalities, however, have not led to any substantive transfer of resources to ULBs that match their responsibilities. The recommendations of the SFCs have largely been ignored at the state level, as states themselves reel under severe financial crunch. The Amendment Act has not changed the structure of fiscal federalism in the country and states at best have complied with SFC recommendations at a superficial level. Quite clearly, an independent tax domain for ULBs has not emerged.

4. Passage of GST. The passage of the Goods and Services Tax (GST), effective from 1 July 2017 has made the financial position of ULBs even more precarious. On the one hand, GST is silent on the financial share of ULBs; on the other, it has subsumed many of the local taxes. All forms of entry tax, including the octroi have been abolished as they are subsumed in GST. Taxes on advertisements also stand subsumed. This has left many municipalities weaker than before and even more dependent on the states, leading to a situation where they carry a large unfunded functional mandate.

5. Planning. ‘Urban planning, including town planning’ was listed in Schedule 12 as a municipal function. Quite clearly, the intent of the Constitution is that urban planning should be a ULB function and that the ULB should be the ‘Planning Authority’. But most States have not even started the process to amend the Town and Country Planning Acts. Even in states where the ULBs are declared the planning authority, plans and their development control regulations require the final approval of the state government. It has been seen that states take a long time to approve plans. Sometimes, this is done piecemeal. Besides, the states play a huge role in the designation of lands reserved for various amenities. It would be accurate to state that the planning functions of municipal bodies are effectively in the hands of the states.

These significant deficits show that urban decentralisation in India remains weak and frail. There is an urgent need to rectify these fundamental fragilities, lest cities continue to move further on the path of under-performance and dysfunctionality. In the overall context of the country’s democratic processes and economic well-being, ULBs in their current state would neither strengthen democracy nor contribute to the economy.

CONCLUSION

If urban local bodies (ULBs) are to be empowered to become self-governing institutions, the state would have to perform a different role than what it is doing today. States would have to shed their supervisory and operational roles vis-a-vis municipal bodies and assume a more strategic role in envisioning the overall direction of urbanisation in the

state, establishing state-wide governance mechanisms, and handholding cities wherever needed. ULBs would have to have well-defined and mandated functional and financial domains with the freedom to exercise them without hindrance by the state. Additionally, a city government would have to be led by an empowered, autonomous chief executive whose tenure is co-terminous with the municipal body.

This role is, in any event, a *sine qua non* in the context of good governance that demands adherence to the principles of subsidiarity and decentralisation. As the Report of the Committee on Transparency, Efficiency and Accountability in Urban Local Bodies defines it, “Subsidiarity signifies that a central authority should have a subsidiary function, performing only those tasks which cannot be performed effectively at a more immediate or local level. This, for our purposes means that if ULBs can perform a function well, the State must desist from performing it. Decentralization in regard to cities connotes the establishment of a local representative government endowed with administrative and financial powers to deliver mandated services to its citizens. For municipal administration, decentralization is the very essence of good governance. It has the innate ability of promoting democracy by taking decision-making close to the scene of action. It allows direct, larger, continuous and more meaningful participation by citizens in the development process of their area. This heightens a sense of true ownership of the citizens and their commitment to the civic cause.”¹⁵

Good governance also demands that while ULBs should be empowered, they must also have an equal measure of accountability. It is

an axiom of good governance that power must be counterbalanced by accountability; and in this age of digitisation, a whole host of transparency mechanisms need to be injected in municipal functioning. Given that cities are the centres of science and technology, virtually everything of significance in the ULB can be posted on the city council's website. This will help in cleaning up the city of malfeasance that often goes unnoticed. Similarly, accountability mechanisms such as external auditing of municipal accounts and the establishment of an ombudsman as a surveillance instrument for probity in municipal life are vital tools for good urban governance. Unfortunately, transparency and accountability are issues that the Amendment Act completely side-stepped.

Along with the counter-balance of transparency and accountability, cities must find increasing space for their own citizenry. They cannot argue for power for themselves and not share it with those in whose name they ask for power. All previous attempts in

this direction have yielded little success. The JNNURM had prescribed Community Participation Law (CPL) as a mandatory reform. The GoI had also drafted a Model Nagar Raj Bill (MNRB) for the consideration of and adoption by the states.¹⁶ The MNRB introduced the concept of 'Area Sabha' defined as "the body of all persons registered in the electoral rolls pertaining to every polling booth in the area of a municipality." The electoral ward was to be broken up into a maximum of five contiguous booths to constitute an Area Sabha and had several functions assigned to it. However, states dragged their feet and did not adopt it. This, therefore, will have to be a major deficit area to be plugged by second-generation reforms.

In the light of cited results, the Amendment Act would have to be viewed as only the beginning of a succession of reforms towards greater decentralisation. A further generation of reforms are called for that can take care of the deficits of the Amendment Act. 

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ENDNOTES

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