

Unpacking Local Self-Government: The Uncertain Power of Cities in the Indian Constitution

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Abstract: While cities are increasingly becoming powerful economic and political units, legal scholars have paid inadequate attention to the role of local governments in the constitutional division of powers. This paper examines the legal authority of city governments in India's constitutional architecture and analyses the nature and extent of powers exercised by them. While globally city governments seldom derive their powers directly from the Constitution, in India the passage of the 74th Amendment has ensured that they have a definite space in its Constitution. Despite constitutional entrenchment, urban local governments in India find themselves powerless to administer some of the core municipal functions including urban planning. This paper seeks to analyse the reasons behind this contradiction. It argues that city governments continue to be weak because of the inherent limitations of the scope of the 74th Amendment as well as the way in which it is translated and implemented by the states. It examines the constitutional authority of urban local governments by analysing the key provisions of the 74th Amendment and its judicial interpretations. To understand how the constitutional reform has translated on the ground, this paper closely examines the role and functioning of the city government of Bangalore.

A. Introduction

With the last century witnessing many waves of urbanization, cities are becoming key units of political, economic and social power across the globe. However, legal scholars have paid inadequate attention to the role of cities and local governments in the constitutional division of powers. Though its relative position in the constitutional structure vary vastly between different countries, local governments are ubiquitous institutions found across most jurisdictions. Local governments are responsible for carrying out many of the core state functions and are the level of government closest to the people. Hence, the authority of local governments in the constitutional architecture of different nation-states deserve closer scholarly attention.

While the rising power and influence of cities is being increasingly analysed by political scientists, economists, sociologists and other urban studies scholars, it has still not be-

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come a topic of systematic study by legal scholars, especially outside the global north. One of the prominent conceptual frames that social scientists have used to analyse the changing nature of power exercised by cities is the theory of state rescaling. The state, it is argued, is being rescaled through institutional arrangements that shift the state's scale both upwards to supra-national levels and downwards to sub-state levels¹. Scholars have analysed the evolution of urban governance systems to argue that globalisation has transformed the idea of statehood as subnational spaces such as cities gain prominence.² However, this literature has not paid much attention to the position of cities in the global south.³ Further, the discussion on the rise of city power has not adequately considered the legal power of city governments.

Theories and analyses of the changing role of cities in the global economy will be strengthened if they are accompanied by an examination of the legal authority of city governments. A comparative analysis of the position of cities in the constitutional architecture of various countries should ideally have been an integral part of research in the field of comparative constitutional design. As a starting point, constitutional studies scholars can deeply examine the position of cities in the constitutional architectures of specific jurisdictions. This paper examines the legal authority of urban local governments in India's constitutional architecture and analyses the nature of powers exercised by them.

The Constitution of India, with the passing of the 73rd and 74th Amendments, has given rural and urban local governments a definite space within India's constitutional architecture. Globally, city governments seldom derive its powers directly from national constitutions and usually exercise powers delegated to it by higher levels of government. Hence, the enactment of these amendments is an important constitutional moment in India that deserves to be closely examined. Though local governments in India continue to be within the exclusive legislative domain of the state, these constitutional reforms have ensured that the state government must respect the specified mandate given to them under the Constitution.

However, despite the pious pronouncements in the Constitution, urban local governments in India continue to find themselves powerless to administer some of the most basic

- 1 *Erik Swyngedouw*, Globalisation or 'glocalisation'? Networks, territories and rescaling, Cambridge review of international affairs 17 (2004), p. 25; *Roger Keil*, Globalization makes states: perspectives of local governance in the age of the world city, Review of International Political Economy 5 (1998), p. 616.
- 2 *Neil Brenner*, Globalisation as reterritorialisation: the re-scaling of urban governance in the European Union, Urban studies 36 (1999), p. 431; *Neil Brenner*, Urban governance and the production of new state spaces in Western Europe, 1960–2000, Review of International Political Economy 11 (2004), p. 447.
- 3 Scholarship that have used the stare rescaling framework in the Indian context include: *Loraine Kennedy*, The Politics of Economic Restructuring in India: Economic Governance and State Spatial Rescaling, London 2013; *Loraine Kennedy / Ashima Sood*, Greenfield Development as Tabula Rasa: Rescaling, Speculation and Governance on India's Urban Frontier, Economic and Political Weekly 51 (2016); *Shriya Anand / Neha Sami*, Scaling Up, Scaling Down: State Rescaling along the Delhi–Mumbai Industrial Corridor, Economic and Political Weekly 51 (2016).

municipal concerns. The 74th Amendment mandated the creation of various institutions for governance and planning and added the 12th Schedule to the constitution with a list of 18 functions that the states are to devolve to the local governments. However, these institutions have still not found fruition and many of the core functions listed in the Schedule including urban planning continue to be outside the purview of the local government. Hence, despite the promise of the Constitution, the actual powers exercised by urban local governments in India are quite limited. What explains this contradiction? Does it emerge out of the inherent weakness of the scope of constitutional amendment? Or is it because states have refused to implement the constitutional vision of devolving powers to the local government? Do the entrenched practices of the state - both colonial and post-colonial- further stifle city power?

These are some of the questions this paper grapples with. The disjuncture between the constitutional provisions and the actual powers of city governments calls for a closer look at the role of constitutional and legal instruments in transforming local governance. In a comparative context, it becomes important to also examine whether constitutional entrenchment is a necessary or sufficient condition for local governments to exercise autonomy. The powerlessness of India's local governments seems to suggest that constitutional entrenchment is not sufficient for local governments to exercise independent powers. However, it is important to examine whether this is because of the limited scope and weakness in the design of the 74th Amendment or because of the way it has been interpreted and implemented. Connected to this, there are larger questions regarding the transformation of urban governance through the emergence of new forms of governance institutions that challenge the notion of legal authority over urban spaces.⁴ However, this paper does not substantially examine those changes underway and its scope is limited to the nature and extent of power exercised by urban local governments in India.

This paper examines the position of urban local government in India's constitutional architecture by analysing the relevant constitutional provisions as well as the de facto powers exercised by Indian cities. The constitutional authority of local government is examined by tracing its constitutional entrenchment, the key provisions which ostensibly empower local government and the judicial interpretations of these provisions. The de facto powers exercised by city governments is explicated through the case of the city of Bangalore. The paper is divided into 4 substantive sections. Section 1 examines the concepts of "local self-governance" and federalism and discusses the evolution of local governments in India and other jurisdictions. Section 2 examines how local governments were constitutionally entrenched with the passing of the 73rd and 74th Amendments. Section 3 examines the scope and limitations of urban local governments and the judicial interpretation of the provisions of the 74th Amendment. Section 4 examines the de facto powers and role of city governments through a close examination of the role of the Municipal Corporation of Bangalore. A short conclusion sums up some key highlights of the paper and raises questions for future discussion.

4 See *Mathew Idiculla*, *New Regime of Private Governance: The Case of Electronics City in Perurban Bangalore*, *Review of Urban Affairs: Economic and Policy Weekly* 51 (2016), p. 102.

B. Federalism and Local Self-Governance

The relationship between the concepts of federalism and local self-governance has not been explored much in academic scholarship. Federalism may be defined as a system of government with division of powers between a national government and other units of government below it. The division of powers on specific subject matters between the levels of government are typically laid out in the Constitution. In a federal country, sovereignty is shared between two layers of government and a Constitution protects the division of powers between them.⁵ One of the classic definitions of federalism is by the political scientist William Riker who identified three essential features: “(1) two levels of government rule the same land and people, 2) each level has at least one area of action in which it is autonomous, and 3) there is some guarantee (even though merely a statement in the constitution) of the autonomy of each government in its own sphere”⁶.

Local government does not instinctively fit within such a definition of federalism, not merely because it is often a third tier of government in federal jurisdictions, but also because it does not always exercise powers in specific areas in an autonomous manner and such autonomy is seldom guaranteed, in a written Constitution or otherwise. The historic origins and theories of federalism are distinct from those of local self-governance. A key argument in federalism is that sovereignty is not concentrated at one level but shared between at least two levels of government and neither of these are superior.⁷ However, local governments hardly ever make claims of shared sovereignty and usually function under the aegis of a higher level of government. So, local governments do not fit neatly into the conceptual basis of federalism.

While there is a rich body of literature that lays out the conceptual meaning and need for federalism, there is limited theoretical explorations on the idea of local self-government. The normative argument for local governments is often made in arguments for decentralisation or by invoking the principle of subsidiarity. Decentralisation as an idea has been gaining a lot of traction with groups as disparate as World Bank and “anarcho-communitarians” championing it.⁸ The rationale for decentralisation is mostly captured in two arguments: efficient provision of public goods and public participation in democracy. The first argument emerges from the literature on fiscal federalism that argues that since local governments are closer to the people, it delivers public goods and services as per the tastes and preferences

5 *Yishai Blank*, Federalism, subsidiarity, and the role of local governments in an age of global multi-level governance, *Fordham Urban Law Journal* 37 (2010), p. 509.

6 *William H. Riker*, *Federalism: Origin, operation, significance*, Boston 1964.

7 *Akhil Reed Amar*, Of sovereignty and federalism, *Yale Law Journal* 96 (1986), p. 1425.

8 *Pranab Bardhan*, Decentralization of governance and development, *Journal of Economic Perspectives* 16 (2002), p. 185.

of the local residents.⁹ The second argument is based on the idea that democracy should allow citizens to participate in the political process and this can effectively take place only in small units in the form of local governments.¹⁰ The principle of subsidiarity, which has gained more traction under European Union law, argues that higher levels of government should only perform functions that cannot be performed by lower levels.¹¹

The terminology of local self-government or self-governance is also interesting. The prefix of “self” is not used against federal/national governments or state/provincial governments. At one level, the term self-government seems to indicate the freedom of a local community to organise the institutions of governance in its area in an independent manner.¹² It seems to be an acknowledgement of the pre-existence of self-governing communities before modern nations and their constitutions emerged. Self-government is also a term associated with notions of self-rule against colonial administration, most famously captured in Mahatma Gandhi’s concept of *Swaraj* (literally, self-rule), and also ideas of self-determination in international law. Article 3, Part I of the European Charter of Local Self Government of 1985 states: “Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population”.

Local governments mostly function according to powers delegated to it by higher levels of government - the state government in most federal states and the national government in a unitary state. Most of the early constitutions, like that of the United States, don’t have any provision regarding local government and its constitutional recognition is more of a post-World War II phenomena.¹³ In American jurisprudence, local governments are typically considered as “creatures of the state”.¹⁴ Local governments in America typically follow either the “Home Rule” or “Dillon Rule” principle. While Home Rule gives local government wide autonomy in taking decisions that are unaddressed by the State, Dillon Rule limits their scope to only those that the state government has legislatively sanctioned.¹⁵ The Dillon Rule emerges from Justice John Dillon’s judgements in the Iowa Supreme Court and

- 9 *Peter A. Watt*, Principles and theories of local government, *Economic affairs* 26 (2006), p. 4; *Wallace Oates*, *Fiscal Federalism*, New York 1972, as cited in: Anwar Shah (ed.), *Local governance in developing countries*, Washington 2006.
- 10 *Richard Briffault*, Our Localism: Part II--Localism and Legal Theory, *Columbia Law Review* 90 (1990), p. 346.
- 11 *Michelle Evans and Augusto Zimmermann*, The global relevance of subsidiarity: An overview, in: Michelle Evans / Augusto Zimmermann (eds.), *Global perspectives on subsidiarity*, Dordrecht 2014, pp. 1-7.
- 12 *T. N. Srivastava*, Local 'Self' Government and the Constitution, *Economic and Political Weekly* 37 (2002), p. 3190.
- 13 *Nico Steytler* (ed.), *The place and role of local government in federal systems*, Johannesburg 2005.
- 14 *Gerald E. Frug*, *The city as a legal concept*, New York 1984.
- 15 *Jon D. Russell and Aaron Bostrom*, *Federalism, Dillon rule and home rule*, ACCE White Paper January 2016, <https://www.alec.org/app/uploads/2016/01/2016-ACCE-White-Paper-Dillon-House-Rule-Final.pdf> (last accessed on 21 April 2020).

got reaffirmed by the US Supreme Court in 1907 in *Hunter v. City of Pittsburgh*¹⁶ where it held that local governments are mere instrumentalities of state government. In contrast to this, many states have passed “Home Rule” enactments, in varying forms, which give local governments autonomy, at varying degrees, from state governments.¹⁷

Across much of the commonwealth, city governments derive power either from ordinary legislations or state constitutions. Local government finds no mention in the Constitution of Australia but is recognized in all the state constitutions.¹⁸ The Canadian Constitution does not mandate local self-governance but merely provides that the provincial legislatures may exclusively make laws in relation to municipal institutions in the province. The UK, which does not have a written Constitution, has over the last couple of decades come up with many legislative measures that have sought to reform local governments.¹⁹ Local governments are also increasingly making its presence felt in the Constitutions of the member states in the European Union.²⁰

Much of the developing world in the last couple of decades has been undergoing a significant shift in its administrative system as various forms of decentralization measures that strengthen local government are being carried out.²¹ In countries like Brazil, South Africa and India the decentralisation initiative was not merely an administrative exercise but was constitutionally entrenched. Brazil and South Africa have constitutionally instituted what may be called as a three-tier federal system with division of powers between the union, state and local governments laid out in the Constitution. The Brazilian constitution of 1988 recognises municipalities/counties as a level of government in the same manner as Union, States and Federal Districts.²² The post-apartheid Constitution of South Africa, enacted in 1996, recognises local governments as one of the three spheres of government which are distinct, but interdependent and interrelated.²³

The passage of the 73rd and 74th Amendments to India’s Constitution instituted local governments as a definite institution of constitutional government. While it might be tempting to place India’s constitutional reform along Brazil and South Africa, whose constitu-

16 207 U.S. 161 (1907).

17 *Richard Briffault*, Home rule for the twenty-first century, *The Urban Lawyer* 36 (2004), p. 253.

18 *Lyndon Megarrity*, Local government and the Commonwealth: An evolving relationship. Research Paper No. 10 2010-11, Parliamentary Library, Parliament of Australia, January 2011.

19 *Peter John*, The great survivor: The persistence and resilience of English local government, *Local Government Studies* 40 (2014), p. 687.

20 *Ángel Manuel Moreno* (ed.), *Local government in the member states of the European Union: a comparative legal perspective*, Madrid 2012.

21 *Pranab Bardhan and Dilip Mookherjee*. *Decentralization and local governance in developing countries: a comparative perspective*, Cambridge 2006.

22 *José Roberto Afonso and Erika Amorim Araujo*, Municipal organization and finance: Brazil, in: *Anwar Shah* (ed.), *Local governance in developing countries*, Washington 2006, pp. 381-418.

23 *Richard Simeon and Christina Murray*, Multi-sphere governance in South Africa: An interim assessment, *Publius: The Journal of Federalism* 31 (2001), p. 65.

tions also emerged around the same time, the nature of power vested in local governments does not suggest that it establishes a genuinely three-tier federal system. Further, as the sections below demonstrate, the de facto powers exercised by urban local governments in India have continued to be minimal. Hence, the nature of power and legal authority exercised by local governments in India becomes an interesting topic of analysis.

The term “local self-government” has been commonly used in Indian right since the days of British colonial administration. India had a system of self-governing village communities with relative autonomy for regulating its affairs for much of its ancient and medieval history. However, the village community was not organised based on a set of strict rules laid down by any local authority. Since there was no uniform pattern of organisation, each village “panchayat” often had the freedom to set up its own rules of governance.²⁴ While the orientalist views of British officers like Charles Metcalfe and Henry Maine regarding the existence of pristine “village republics” need to be questioned for their factual correctness, the observations in *The Imperial Gazetteer* offers some insight:

*“While the Hindus had . . . for many ages a system of village self-government, neither they nor their Muhammadan conquerors succeeded in evolving a local administration such as that which grew up in Europe. Neither the customary rule of the Indian village communities nor regulations of the industrial castes, which in some respects resemble mediaeval trade guilds, ever grew into a true municipal system; and accounts which have reached us of the method of town government in Hindu and Muhammadan times show the authority vested not representative body of inhabitants, but in the police officers, tax gatherers, and other officials of the Sovereign”.*²⁵

Despite some traditions of local self-governance in India’s past, the present form of municipal governance can be traced to the laws and institutions established by the British colonial government, first implemented in the Presidency Towns. The Municipal Corporation of Madras established in 1688 is in fact considered to be the oldest Municipal Corporations in the world outside Britain. The ceremonial aspects of Municipal governance in England was replicated in India. Writing about the Municipal Corporation of Madras, S.N. Malik remarks: “The ornamental features of municipal life were closely copied from London, and on solemn occasions the Mayor used to have carried before him two silver maces, gilt, not exceeding three feet and a half in length, and he and the aldermen used to ride, robed in scarlet serge gowns, on horses richly furnished with various trimmings.”²⁶ It is interesting to note that Mayors of India’s Municipal Corporations, despite their limited powers, still carry forward some of these ornamental features like being robed in scarlet gowns for official events.

24 T. N. Srivastava, note 12.

25 As cited in *Hugh Wheeler*, Local Self-Government in India, J. Soc. Comp. Legis. 17 (1917), p. 153.

26 1929.

The establishment of the Municipal Corporation of Madras was followed by the creation of Municipal Corporations at Bombay and Calcutta in 1726. Outside of the presidency towns, the British colonial administration did not make any major attempt to provide for local self-government till late 19th century. H. H. Dodwell in the classic *Cambridge History of British Empire* interestingly remarks that “Local self-government was imported from England and bestowed as a gift, first on the three presidency towns and later on the district towns, while the villages were allowed to retain their ancient customs.”²⁷ However, in the presidency and district towns, as Dodwell further points out, “since this system was not an indigenous growth but a forced plant of foreign importation, it developed in India not like the English local government but somewhat like that in France, with local authorities looking rather to the wishes of the central authority than to what was desired by the local people”.

The system of local self-governance became more systematic across British India with the enactment of 1872 Resolution by Lord Mayo which provided for a degree of decentralization of finances to local governments. However, it was Lord Ripon’s Resolution of 1882 that established local self-governments as elected bodies with sufficient autonomy.²⁸ The Government of India Act, 1919 transferred the responsibility for local government from the district officers to a department controlled by a popular minister and franchise for election to local bodies was also substantially widened. This was further consolidated in the Government of India Act, 1935 which formed an important source for the post-independence Constitution of India.

C. The Constitutional Entrenchment of Local Government

The Constitution of India, as enacted in 1950, did not provide for any clear role for local governments. The strongest dissidents within the Constituent Assembly to the centralised federal system that was ultimately adopted were the followers of Mahatma Gandhi who pushed for decentralising powers and making the village the basic unit of governance.²⁹ Gandhi had highlighted the importance of local self-governance in villages and even floated the idea that India should adopt a system of “village republics”.³⁰ However, Dr B.R. Ambedkar, the chairman of the drafting committee of the Constituent Assembly, was scathing in his criticism of the romantic view of “village swaraj” and famously remarked: “What is the village but a sink of localism, a den of ignorance, narrow mindedness and

27 Henry Herbert Dodwell, *The Cambridge History of the British Empire*, Vol. 4, Cambridge 1929.

28 Claude Markovits (ed.), *A history of modern India, 1480-1950*, London 2004.

29 Granville Austin, *The Indian constitution: Cornerstone of a nation*, Bombay 1979.

30 Surinder S. Jodhka, *Nation and village: Images of rural India in Gandhi, Nehru and Ambedkar*, *Economic and Political Weekly* 37 (2002), p. 3343.

communalism. I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit.”³¹

Hence, despite the criticisms of the Gandhians in the Constituent Assembly, India’s Constitution adopted a federal system with a bias towards the centre, leaving little space for local governments. Ultimately, to pacify the Gandhian sentiment, the Constitution incorporated village panchayats in the Directive Principles of State Policy, an unenforceable yet critical part of the Indian Constitution. The late inclusion of this provision in the Constitution may be seen as an instance of the use of constitutional directives to expressively accommodate ideological dissenters of the constitution-making process and give them hope for future political negotiations.³² So the Constitution of India that came in force on January 26, 1950 included Article 40 which stated: “Organisation of village panchayats: The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government”.

Urban local governments on the other hand were neither debated with much vigour in the Constituent Assembly nor did it find any clear mention in the final text of the Indian Constitution. This is ironic considering the fact that some of India’s most prominent leaders of the independence movement, including Jawaharlal Nehru, Vallabhbhai Patel and Subash Chandra Bose, held key posts in the municipalities of their respective cities.³³ However, as the Constituent Assembly decided to adopt a federal system with a strong central government, local governments were ignored with former municipal councillors like Nehru and Patel being strong advocates for a powerful union government.³⁴

The key provision regarding local government can be found in the List II (State List) of the Seventh Schedule of Indian Constitution. The Constitution of India divides subjects into three lists: Union; State and Concurrent. Item number 5 in the State List reads “Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration”. Hence, under the Constitutional scheme as enacted in 1950, local governments did not have any inherent power but was a subject matter of the state government which has the exclusive jurisdiction to make laws on this subject.

For most of post-independent India, urban governance did not receive much attention or focus from either the central government or most state governments. The 74th Constitutional Amendment actually owes its existence to the failure of rural governance. India’s flagship Community Development Programme launched in 1952 to promote overall develop-

31 Constituent Assembly of India Debates - Volume VII, 4th November 1948, https://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-11-04#7.48.230 (last accessed on 21 April 2020).

32 *Tarunabh Khaitan*, Directive principles and the expressive accommodation of ideological dissenters, *International Journal of Constitutional Law* 16 (2018), p. 389.

33 *Mathew Idiculla*, City Plights, *The Caravan* 1 (November 2018), p. 24.

34 *Austin*, note 29.

ment of rural areas with people's participation had failed to yield positive results. In this context, the Balwant Rai Mehta Committee was appointed in 1957 to study the failure of the programme and it recommended the adoption of a 3-tier Panchayati Raj System for improving rural development.³⁵ The recommendations of this committee as well as subsequent committees were initially ignored until the tenure of Mr. Rajiv Gandhi as Prime Minister in the late 1980s when Panchayati Raj again became a talking point.

Prime Minister Gandhi pushed for institutionalising Panchayati Raj through the 64th Constitutional Amendment. It was only at this stage that the need for a similar provision for urban areas was recognised. Hence the 65th Amendment on Municipalities was also prepared on similar lines.³⁶ However, both these amendment bills failed to pass in the Parliament due to opposition in the Rajya Sabha, India's upper house, where Mr. Gandhi's Congress party did not have a majority. Eventually, after the assassination of Mr. Gandhi and under the tenure of Mr. Narasimha Rao as Prime Minister, these proposals eventually materialised as the 73rd and 74th Constitutional Amendments, respectively. The Statement of Objects and Reasons to the 74th Amendment Act stated that such an amendment was required since:

*"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."*³⁷

While the 73rd Amendment which inserted Part IX (The Panchayats) came into force on 24 April 1993, the 74th Amendment which inserted Part IX A (The Municipalities) came into force on 1 June 1993. The 73rd Constitutional Amendment mandates the creation of Panchayats at three levels: Village (Gram Panchayat); Intermediate (Block/Taluk Panchayat) and District (Zilla Panchayat).³⁸ It also provides for "Gram Sabha"- a body consisting of persons registered in the electoral rolls at the village panchayat.³⁹ The 74th Constitutional Amendment however does not provide for multiple levels or tiers of government. It lays down three types of Municipalities based on their size: Nagar Panchayat- for an area transi-

35 Peter Ronald DeSouza, The struggle for local government: Indian democracy's new phase, *Publiclius: The Journal of Federalism* 33 (2003), p. 99.

36 Ramesh Ramanathan, Federalism, Urban decentralisation and citizen participation, *Economic and Political Weekly* 42 (2007), p. 674.

37 Statement of Objects and Reasons, The Constitution (Seventy-Fourth Amendment) Act, 1992, <http://legislative.gov.in/constitution-seventy-fourth-amendment-act-1992> (last accessed on 21 April 2020).

38 Article 243-B, Constitution of India.

39 Article 243-A, Constitution of India.

tioning from rural to urban; Municipal Council for smaller urban areas and Municipal Corporation for larger urban areas.⁴⁰

The 74th Constitutional Amendment has sought to achieve the empowerment of local bodies through the devolution of functions, funds and functionaries to elected municipal bodies. Before the amendment, as local government was a state subject as per the Constitution, it was purely up to the state administration to decide the extent of powers and functions of panchayats and municipalities.⁴¹ The 74th Amendment envisaged states to endow Municipalities with such powers necessary for them to function as “institutions of self-government”.⁴² The powers and responsibilities vested upon the municipalities may relate to the preparation of plans and implementation of schemes for economic development and social justice and those matters listed in the 12th Schedule which was added by the 74th Amendment. Though even after the 73rd and the 74th Amendment, laws for the administration of municipalities and villages are still under the state list, it has to meet the essential requirements of the Constitution. Various state legislatures have hence amended their Municipal Acts to bring them in conformity with the constitutional provisions.

The 74th amendment also mandates the reservation of seats in the elected council for women and people belonging to India’s marginalised communities, the scheduled castes and scheduled tribes.⁴³ For the integration of rural and urban planning, the amendment stipulates the setting up of District Planning Committees (DPCs) in every district and Metropolitan Planning Committees (MPCs) for larger urban areas. The DPC is to act as a platform for integrated planning at the district level, inclusive of both the panchayats and the municipalities of the district.⁴⁴ In big cities covering with a population of over 1 million, the body responsible for the preparing the development plan is the MPC.⁴⁵ For every city with a population of over 300,000, the Constitution also mandates the setting up of Wards Committees to carry out various functions of the urban local body within the ward.⁴⁶ The other bodies which the Constitution mandates the State Governments to create are the State Election Commission⁴⁷ for regular and fair conduct of Municipal elections and State Finance Commission⁴⁸ to decide upon the sharing of Central and State funds with local bodies.

40 Article 243-Q, Constitution of India.

41 Item 5, List II, Seventh Schedule, Constitution of India.

42 Article 243-W, Constitution of India.

43 Article 243-T, Constitution of India.

44 Article 243-ZD, Constitution of India.

45 Article 243-ZE, Constitution of India.

46 Article 243-S, Constitution of India.

47 Article 243-K, Constitution of India.

48 Article 243-I, Constitution of India.

D. The Legal Authority of Urban Local Governments

With the passing of the 73rd and 74th Amendments, it is commonly asserted that India has shifted from a two-tier federal system to a three-tier federal system of government. However, what seems to have become a truistic statement needs further enquiry. The 73rd and 74th Amendments have not provided Panchayats and Municipalities legislative powers over specific subjects matters like the union and state government. While these amendments make broad invocations about local governments being “institutions of self-government”, it is ambivalent about the level of autonomy of the local governments and the nature of power exercised by them.

The powerlessness of urban local governments in India may be attributed to two different kinds of reasons: firstly, the inherent limitations of the 74th Amendment and secondly, the failure to realise the letter and spirit of the Amendment by the states. While there has been a lot of discussion on “implementation failure” by the states, not much attention has been paid to the provisions in the 74th Amendment which itself restrict local government power. An overarching analysis of the amendment would reveal that unlike the union and the state which have legislative, executive and judicial wings, local governments are vested with only limited executive and quasi-legislative power and do not have any equivalent judicial institutions.

What is perhaps the most inherent limitations of the Amendment is that it only facilitates the devolution of powers from the state to the local government and does not directly vest the local government with autonomous powers. Key provisions which devolve powers from state to local government uses that language of “may” rather than “shall”. Article 243-W, which is the most critical provision of the 74th Amendment regarding the devolution of functions, states that:

“Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Municipalities with such powers and authority as may be 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 at the appropriate level, subject to such conditions as may be specified therein, with respect to—

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule.”

Unlike the union and state governments which have been allocated exclusive jurisdiction for matters listed respectively within List I and List II of the Seventh Schedule of the Constitution, local government in India is still not vested with any exclusive legislative pow-

ers.⁴⁹ Instead, the Twelfth Schedule, inserted into the Constitution by the 74th Amendment, serves as a guideline for states to assign various functional responsibilities to the Municipalities.⁵⁰ The functions listed under this Schedule, among others, include urban and town planning, regulation of land use and construction of buildings, planning for economic and social development, roads and bridges, water supply, public health, solid waste management, safeguarding the interests of weaker sections of society, slum improvement and regeneration, urban poverty alleviation, urban amenities like parks, gardens and playgrounds.

Article 243-W only provides that the State “may” endow the Municipalities with powers necessary for them to function as “institutions of self-government” through a law that “may” contain provisions for the devolution of powers and responsibilities to Municipalities. Hence, the devolution of the 18 functions from the state government to the urban local government is arguably not mandatory. According to an official review of the national programme Jawaharlal Nehru Urban Renewal Mission (JNNURM), only eight states and one union territory have fully devolved all the 18 functions under the 12th Schedule.⁵¹ Even among these states, though functional devolution may have happened on paper, its actual implementation on ground remains questionable. As per an analysis of 23 major cities across India, on average, only 9 out of the 18 functions have been effectively devolved.⁵²

One of the inherent limitations of the 74th Amendment is that it does not provide municipalities with enough financial powers or an autonomous domain of taxation. Hence, it is the state legislature which determines the taxes local governments can levy. Many scholars have argued that local governments in India have been ineffective because they have been provided with insufficient revenue generation tools.⁵³ Presently, city governments have very limited taxation powers and other sources of revenue and continue to rely on funding in the form of grants and loans from the state and central governments. In most urban local governments, including those of India’s metropolitan cities, a majority of their sources of finance are transfers from higher levels of government.⁵⁴ Hence, even though cities are en-

49 Though, even within for the state subjects, the Constitution allows the Union government to interfere in certain manner under Articles 52, 249, 250, 252, 253 making it an interdependent model of federalism.

50 Twelfth Schedule (Article 243-W), Constitution of India.

51 Grant Thornton India, Appraisal of Jawaharlal Nehru National Urban Renewal Mission- Final Report, March 2011, <http://www.cmamp.com/CP/FDocument/JnNURMvolumeI.pdf> (last accessed on 21 April 2020).

These 8 states are: Chhattisgarh, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Kerala, Maharashtra, Odisha, Punjab and Puducherry.

52 Janaagraha Centre for Citizenship and Democracy, Annual Survey of India’s City-Systems (ASICS) 2017, <http://www.janaagraha.org/asics/ASICS-2017.html> (last accessed on 21 April 2020).

53 *M. Govinda Rao*, Fiscal decentralization in China and India: A comparative perspective, *Asia Pacific Development Journal* 10 (2003), p. 25; *Rani D. Mullen*, Decentralization, Local Governance, and Social Wellbeing in India: Do Local Governments Matter?, London 2012.

54 Annual Survey of India’s City-Systems, note 52.

trusted with many functions, they are not provided the necessary financial autonomy to function as institutions of self-government.

In *Sakshi Gopal Agarwal v. State of Madhya Pradesh*, a set of petitions challenging various provisions and rules regarding the levy of local taxes on the urban residents in Madhya Pradesh, the Supreme Court affirmed that the 74th Amendment does not give local governments the authority to impose taxes on its own. The Court observed that Article 243-W clearly stipulates that “the Legislature of a State may, by law, endow the Municipalities with such powers. Thus, the source of power rests with the State Legislature.” On the question of the right to levy tax, the court held that though it was true that “there is some concept of self-governance but the Constitution has not empowered the Municipalities to impose taxes on its own as if it has the power to impose taxes by itself as that would have defeated and destroyed many a provision of the Constitution.”

Another inherent limitation for local government emerging from the constitutional text is the “industrial township” exception that relieves certain areas from the constitutional requirement of having a local government.⁵⁵ Article 243Q, which mandates the creation of elected municipal governments in all urban areas, includes a proviso that a municipality does not need to be created if the state government declares an area as an “industrial township” based on the said industry’s capability to provide municipal services in the area.⁵⁶ Interestingly, this proviso was not present in the previous versions of the amendment bill and was introduced in the final stage when the bill was being taken up for clause-by-clause consideration.⁵⁷

The Industrial Township exception provision has been employed in varied ways by different states in India. In Karnataka, a provision in its municipal law has allowed Electronics City in Bangalore, the city’s IT hub, to operate under the Electronics City Industrial Township Authority (ELCITA) with the power to levy property tax.⁵⁸ This provision has also been invoked for the creation of Special Economic Zones which are further granted exemptions from many tax laws, labour laws and customs and excise duties. The SEZ Policy of the union government allows states to “declare SEZ as an Industrial Township and if neces-

55 *Idiculla*, note 4.

56 243-Q states that (1) There shall be constituted in every State,

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

57 *K. C. Sivaramkrishnan*, *Governance of Megacities: Fractured Thinking, Fragmented Setup*, New Delhi 2014.

58 *Idiculla*, note 4.

sary, relevant Acts would be amended so that SEZ can function as a governing and autonomous body as provided under Article 243(Q) of the Constitution". States such as Andhra Pradesh, Gujarat, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal have notified SEZs as 'industrial townships' under Article 243Q.⁵⁹

Over the last two decades, the influence of the union government over the city government has increased. Under the Jawaharlal Nehru National Urban Renewal Mission (JN-NURM) of 2005, it is mandatory for the state legislatures to pass specific legislative reforms for the states to receive central funds under the programme. These include the repeal of urban land ceiling and regulation act, amendment of rent control laws, reducing the stamp duty and simplification of legal frameworks for conversion of agricultural land to non-agricultural purposes, topics which are in the exclusive legislative domain of the state. The influence of federal urban programmes got further strengthened in 2015 with the launch of the Smart Cities Mission which creates parallel governance institutions in the form of Special Purpose Vehicle (SPV) to implement the projects instead the elected municipal government. The Smart Cities Mission "encourages" the state and local governments to "delegate the decision making powers" of the local government under the municipal legislation to the Chief Executive Officer of the SPV.⁶⁰

The courts have also largely ignored the autonomy of local government and have failed to ensure that the functions listed under the 12th Schedule are devolved to the local governments. In *Shanti G. Patel v. State of Maharashtra*⁶¹ the petitioners sought to strike down Section 37(1AA) of the Maharashtra Regional and Town Planning Act, 1966, since it gave the state government the right to modify the development plan which, according to the petitioners, is a function to be performed only by the Municipal Corporation as per Items (1) and (2) of Twelfth Schedule.⁶² The Supreme Court held that "Article 243W contains merely an enabling provision, and it does not mean that the State is obligated to provide for such a statute." It further held that the 74th Amendment "does not envisage that the existing laws would become non-operative or a vacuum would be created in the matter of enforcement of existing laws relating to urban planning and/or regulation of land use..." Hence, the court held that the provisions of pre-74th Amendment laws would continue to operate unless a statute is enacted under Article 243W to replace the old laws.

Under India's constitutional scheme, local governments do not exercise independent powers but only those granted to it by specific legislations passed by the state. In *German*

59 *Ishita Dey*, Emerging spaces and labour relations in neo-liberal India: A review essay, Policies and Practices 49 (2012).

60 *Mathew Idiculla*, Will Smart Cities stifle local democracy?, Scroll 20 December 2015, <http://scroll.in/article/776459/will-smart-cities-stifle-local-democracy> (last accessed 21 April 2020).

61 (2006) 2 SCC 505: SC.

62 Items (1) and (2) of the 12th Schedule are respectively: "Urban planning including town planning" and

"Regulation of land-use and construction of buildings".

Trading Corporation v. Secretary to Government of Tamil Nadu, Municipal Administration & Water Supply Department,⁶³ a case regarding the decision of an urban local government to cancel the approval of a building plan to a factory, the Madras High Court held that as per “the constitutional scheme, the municipalities are to function under the statutory provisions enacted by the State Legislatures.” The court held that even though a “Constitutional status of an independent local body has been conferred by the provisions of Chapter IX-A of the Constitution of India, yet, the Athanur Town Panchayat can exercise the powers only in accordance with the provisions of the Act.”

The one area where the courts have actively upheld the rights of the local government over that of the state government is regarding the timely conduct of elections. As we have seen, one of the stated reasons to introduce the 74th Amendment was to ensure the conduct of regular elections and avoiding prolonged supersessions. In *Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad*⁶⁴, the Supreme Court held that: “Article 243-U was inserted in the Constitution to see that there should not be any delay in the constitution of the new municipality every five years and in order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue”. It further held that the State Election Commission has to function independent of the State Governments for conducting local elections and it can approach the Court to direct the State Government to provide all necessary cooperation to the State Election Commission to ensure the timely conduct of local government elections.

Similarly, a Division Bench judgment of the Gujarat High Court in *Gujarat Pradesh Panchayat Parishad and Hiteshbhai Kantilal Barot v. State Election Commission*⁶⁵ held that “elections are required to be regularly held and the only time that an unelected body can exist is when it is superseded. Even then it is incumbent to hold the elections within six months of the supersession.” Hence, based on Article 243U of the Constitution, the courts have held that a municipality can be dissolved or superseded without holding elections for a maximum period of 6 months. However, beyond this issue regarding the implementation of the provision for the timely conduct of elections, the judiciary has rarely come up with strong or well-reasoned judgments interpreting the 74th Amendment in favour of local governments.

E. The Powerlessness of Bangalore’s City Government

Urban local governments are unable to function as autonomous units not just because of the design or scope of the 74th Amendment, but also because of the manner in which states have interpreted and implemented its provisions. State governments still maintain over-extensive influence over municipal issues by exercising political, administrative and financial

63 (2013) SCC Mad 1544: Mad HC.

64 (2006) 8 SCC 352: SC.

65 LAWS(GJH)-2005-9-64.

control over cities. In this section, we aim to highlight what are the de facto powers exercised by local governments in India by analysing the role of the Municipal Corporation of Bangalore in performing essential municipal functions. While each state has its own municipal legislations, since there are a lot of similarities between them, the example of Bangalore will demonstrate the institutional milieu in which Municipal Corporations of Indian cities operate.

The state government exercises political and administrative control over the city government by empowering state-appointed officials instead of the elected local representatives. Bangalore has a mayoral system which provides for the Mayor to be the political head without adequate executive powers. Instead of the Mayor who is the head of the city, it is an appointee of the state government- the Commissioner- who wields both de jure and de facto powers. As per the Karnataka Municipal Corporation Act, the Commissioner of the Municipal Corporation is vested with the executive powers of the Corporation.⁶⁶ This seemingly anomalous system where a bureaucratic head exercises more powers than the political/democratic head is a legacy of the colonial system of administration which is still being followed in most Indian cities. Since the executive power of the Corporation is vested in the hands of the Commissioner and the Mayor only has a term of one year in Bangalore, the political authority of the elected executive is limited.

State governments also retain tight control over the city governments through legislative provisions which provide them with administrative oversight of local government actions. The Karnataka Municipal Corporation Act, 1976 empowers the State Government to call for any records relating to the business pending before the corporation and after giving the notice of fifteen days, pass orders it considers necessary.⁶⁷ Every order passed by government shall be implemented by the Commissioner of the Municipal Corporation. It further provides that if the state government is of opinion that any duty imposed on the Corporation has not been performed in a suitable manner, it may direct the Corporation to make arrangements for the proper performance of the duty.⁶⁸

The role of the local government in Bangalore to manage the city's affairs has been reduced over the decades with the promotion of various parastatal agencies (authorities and public corporations with some autonomy but report to the state government). In Bangalore the first parastatal agency was established in 1964 when, as per World Bank's recommendation, the state government shifted the responsibility for the provision of water supply from the Municipal Corporation to a new agency called Bangalore Water Supply and Sewerage Board (BWSSB). Other parastatal agencies in Bangalore responsible for development and service delivery include the Bangalore Development Authority (BDA), Bangalore Metropolitan Region Development Authority (BMRDA), Bangalore Metropolitan Transport Corporation (BMTCL), and Bangalore Electricity Supply Company (BESCOM). These

66 Section 64, Karnataka Municipal Corporations Act, 1976.

67 Section 95, Karnataka Municipal Corporations Act, 1976.

68 Section 96, Karnataka Municipal Corporations Act, 1976.

parastatals perform many of the functions listed in the 12th Schedule of the Constitution including urban planning, regulation of land use, water supply and slum improvement.⁶⁹

Though urban planning and development are essential functions of the municipal government, in Bangalore parastatal agencies like the Bangalore Development Authority (BDA) and the Bangalore Metropolitan Region Development Authority (BMRDA) perform these functions. The BDA formulates the Comprehensive Development Plan for the city and is also responsible for land use zoning, provision of land sites, creating urban infrastructure and improving urban environment in the Bangalore Metropolitan Area of 1309 sq.km.⁷⁰ For the larger Bangalore Metropolitan Region of 8000 sq.km comprising of Bangalore urban, Bangalore rural and Ramnagara districts, the BMRDA is responsible for planning, coordinating, and supervising urban development.⁷¹

Under the Karnataka and Country Planning Act, 1961, duly amended by the Bangalore Development Authority Act, 1976, the power of preparing the master plan for the city of Bangalore is vested in the BDA.⁷² The question regarding BDA's authority to plan has been fraught in public debates and legal battles for a while and is presently pending before the courts. Civil society groups in Bangalore have filed Writ Petitions in the High Court of Karnataka challenging the constitutional authority of the BDA to prepare the Master Plan. The petitioners have argued that the MPC constituted as per Article 243ZE of the Constitution should be responsible for preparing the master plan and not the BDA. The State Government has however argued that the draft Development Plan, which is to be prepared by the MPC, is different from the Master Plan prepared by the BDA.⁷³

The constitutional authority of an authority like BDA has been a legally contentious issue. In 2004, several landowners moved the Karnataka High Court seeking to quash the acquisition of land by BDA for building a residential township called Arkavathy Layout, arguing that BDA does not have the constitutional authority to undertake such a project. In *Sharadamma and Others v. State of Karnataka*,⁷⁴ a single judge of the Karnataka High Court ruled in favour of the landowners and held that since the 74th Amendment vested the powers of planning in the municipal corporation and MPC, the BDA itself had no locus standi to undertake such a project. However, on appeal, the division bench of the Karnataka High Court held that BDA is not a municipality and the provisions of the BDA Act, which is a special legislation, are not inconsistent with Parts IX and IX(A) of the Constitution of

69 *Mathew Idiculla*, *The Transformation of Governance in 'India's Silicon Valley'*, Seminar 694 (2017), p. 17.

70 Bangalore Development Authority Act, 1976.

71 Bangalore Metropolitan Region Development Authority Act, 1985.

72 Section 81B, Karnataka and Country Planning Act, 1961.

73 Karnataka government restrained from approving 2031 master plan, *The Hindu*, 17 October 2017 <https://www.thehindu.com/news/cities/bangalore/karnataka-government-restrained-from-approving-2031-master-plan/article19873421.ece> (last accessed on 21 April 2020).

74 2005 (4) KarLJ 481 (WP No. 6530/2008).

India.⁷⁵ It held that the BDA Act is a special self-contained code enacted by the state government under power traceable to Entry 5 of List II of Seventh Schedule.

In the appeal to this decision, the Supreme Court in *Bondu Ramaswamy v. Bangalore Development Authority*⁷⁶ upheld the decision of the division bench by distinguishing between the functions envisaged for the BDA and the Municipal Corporation. The Court held that municipal functions like urban town planning and regulation of land use are distinct from the task of 'development' as contemplated in the BDA Act. The Supreme Court also dismissed the argument of the petitioners that since the Constitution mandates the creation of an MPC for preparing the draft development plan for a metropolitan area, the BDA cannot draw any development scheme. The Supreme Court reasoned that:

“It would thus be seen that the object and functions of a Municipal Corporations are completely different from the object and purpose of a development authority like BDA. BDA is not a municipality. Therefore, it cannot be said that mere existence of Municipal Corporations Act... will nullify or render redundant, the BDA Act....members of the BDA represent different interests and groups, technical persons and elected representatives... the mere fact that BDA is not wholly elected body as in the case of a municipal corporation will make no difference..... We therefore find no merit in the contention that provisions of BDA Act become inoperative, on Parts IX and IX-A of the Constitution coming into force.”

The Court held that while the “development scheme” to be drawn by the BDA deals with acquisition of land, laying out of plots, formation of roads, construction of buildings etc., a development plan made by the MPC is for the overall development of various functions enumerated in the 12th Schedule. While this case has affirmed the BDA’s right to draw development schemes and acquire property to form the layout, since the question before the court was not whether BDA has the right to make a master plan, it has not conclusively answered the question as to who has the authority to plan the city.

F. Conclusion

Despite the promise offered by 74th Amendment, urban local governments in India are rendered largely powerless since the Amendment does not ensure autonomy from the state government and also because states have refused to implement its core vision. State-level agencies with no local accountability carry out multiple municipal functions like urban planning, regulation of land use, water supply and slum improvement. The list of 18 functions in the 12th schedule itself is quite narrow and does not include key civic functions like urban transportation, housing and urban commons. The introduction of federal-level urban programmes like JNNURM and Smart Cities Mission have further centralized urban policy.

75 WA No. 3783/2008.

76 (2010) 7 SCC 129 (CA No. 4097 OF 2010, Arising out of SLP (C) No. 4318 of 2006).

JNNURM sought to make states take decisions that the Centre is constitutionally prevented from legislating and the Smart Cities Mission furthers the centralization tendency by requiring cities to create governance mechanisms that bypass the local government.⁷⁷ The influence of new federal-level initiatives, which while often using the language of decentralisation, disempowers both state and local governments, will need further scholarly consideration.

Beyond the issues with the inherent design of the 74th Amendment and its implementation by the states, there are deeper reasons one has to consider for the “failure” of local government in India. It is important to note that decentralization measures in India were ironically carried out in a top-down manner by the central government. While many state governments were understandably reluctant to hand over their powers to the local government, there was also no wide-spread movement or demand from local governments or civil society groups for such a reform.⁷⁸ Hence, even when local government’s powers are undermined, there is little opposition to the same. While it can play an enabling role, top-down decentralization measures have a propensity to fail if it is done without building support from the state governments, local governments and local communities.

It might also be important to look at other structural reasons that disallow such constitutional reforms to take fruition. While the 74th Amendment introduced legal changes, the structures and practices of state power exercised in the pre-74th Amendment phase still continue to operate. In fact, the structure of the Indian state machinery as it exists today is largely based on what the British colonial government created, and this is also true for local governments. The independent Indian state inherited the discursive and material practices of the colonial state and continues to operate through these entrenched administrative practices.⁷⁹ Many of the responsibilities of local governance have been historically performed by various departments and agencies that have accumulated power and refuses to part with it. The state, by nature, finds it difficult to adapt and share its powers with a new set of authorities and elected representatives.

The role of the courts in perpetuating the status quo through its interpretations of the 74th Amendment cannot be ignored. Though India’s constitutional courts are known for “judicial activism”, increasingly now in matters related with “good governance”⁸⁰, it has not developed a strong jurisprudence in matters related to local government. There are very few cases that have closely examined the nature of legal authority of local governments envis-

77 *Lalitha Kamath*, New policy paradigms and actual practices in slum housing: The case of housing projects in Bengaluru, *Economic and Political Weekly* 47 (2012), p. 76; *Idiculla*, note 60.

78 National governments have often sort to undercut the states by empowering local governments. See: *J. Tyler Dickovick*, Municipalization as central government strategy: Central-regional–local politics in Peru, Brazil, and South Africa, *Publius: The Journal of federalism* 37 (2007), p. 1.

79 *Rajnarayan Chandavarkar*, Customs of governance: Colonialism and democracy in twentieth century India, *Modern Asian Studies* 41 (2007), p. 441.

80 *Nick Robinson*, Expanding judiciaries: India and the rise of the good governance court, *Wash. U. Global Stud. L. Rev.* 8 (2009), p. 1.

aged under the Constitution. Instead of providing a more purposive interpretation of the 74th Amendment, the courts have tended to adopt a conservative approach whereby they justify the continued control of local governments by state institutions. Perhaps, this is also due to the fact that there do not seem to be too many instances where local governments judicially challenged the authority of the state. The absence of a well-developed jurisprudence or serious doctrinal analysis on the legal position of city governments means that local government law does not have a clear existence in Indian public law.

In this context, it becomes interesting to examine the conceptual and normative basis for furthering local governments. Do theories of federalism still hold value for advocating local self-governance? Or is it better, as Yishai Blank⁸¹ argues, to reject federalism and opt for the principle of subsidiarity for multi-level governance? The key advantage for the idea of subsidiarity is that while federalism sanctifies already existing constituent units, subsidiarity is more flexible as it can incorporate new units like cities and is not defined by the principles of strict exclusive competence. However, when India's existing constitutional provisions, laws and their judicial interpretations do not explicitly recognise concepts like subsidiarity, is there any utility in promoting such a framework? Or is it better, as Heather Gerken⁸² argues, to reorient federalism in a way that pushes "federalism all the way down" to include other administrative units? Can such a framing on federalism be employed in jurisdictions beyond the US including countries like India?

These are questions that need careful consideration as we examine how cities and local governments can legally assert their powers and responsibilities. Debates on the legal authority of cities should also generate fundamental questions regarding our conceptions of democracy and sovereignty. It is important to ask whether the existence of democracy-through representation and participation- at various levels of the government, necessarily constitute each of those levels to be a sovereign body. And if it does, should the legitimate expression of the "will of the people" of a larger geographic-political unit necessarily supersede the democratic mandates of smaller geographic-political units within the larger unit? However one answers these questions, it is hard to deny that local governments, by virtue of having democratic representation and constitutional authority, are legitimate sovereign entities that should have sufficient freedom to govern its territories.

81 *Yishai Blank*, Federalism, subsidiarity, and the role of local governments in an age of global multi-level governance, *Fordham Urban Law Journal* 37 (2010), p. 509.

82 *Heather K. Gerken*, Federalism all the way down, *Harvard Law Review* 124 (2010), p. 4.