

## Constitutionalised Decentralisation and its Impacts on the Urban Housing Crisis in India and Colombia

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**Abstract:** In India's federal constitution, the urban housing agenda is allotted to the state governments. However, the overzealousness of the union government has meant that little of this power has been exercised by the state governments, with policies framed by the union government dominating the pursuit of the mandate. This overzealousness is not unique to the urban housing agenda, even though it has been an area of consistent interest and preoccupation, as evident in the overarching powers exercised by the union government. Such exercise of power appears to be facilitated by the use of the popular label of quasi-federal, recognising the unequal and centralising power of the union government. This situation is further complicated by the enactment of the 74<sup>th</sup> Constitutional Amendment Act, 1993, which sought to decentralise power by creating a third tier of government, local governments. This amendment placed the urban housing agenda as a function of local governments. However, the creation and operation of local governments are subject to the state governments' exercise of the authority to create and empower them with resources to perform these functions. On the other hand, Colombia, despite having a unitary constitution, displays a strong commitment to decentralisation, not just in the textual framing of its constitutional provisions but also in the exercise of power across different administrative units.

This stark contrast is explored by analysing how the urban housing agenda is pursued in India and Colombia, through the study of the administration of the cities of Mumbai and Bogota, respectively. The observation from the study, elucidated in the article, highlights the relative success of decentralisation in Bogota, enabling a satisfactory pursuit of the urban housing agenda, in comparison to that of Mumbai, which finds itself caught up in a complex web of governance structures impeding its ability to meaningfully address urban housing challenges. In doing so, the article aims to highlight the limitations of constitutionalised decentralisation in India by examining its federal constitution and government, as demonstrated in India's pursuance of the urban housing agenda.

**Keywords:** Decentralisation; Local Self-Governments; Housing

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## A. Introduction

A glance outside from any of the several high-rises in the business centre of the Bandra Kurla Complex in Mumbai, India, reveals a stark contrast to its affluence. What lies before is Dharavi, a 557-acre vast slum with over 1 million inhabitants. Originally, a swampy area occupied by Mumbai's fishing community, it was gradually transformed into a manufacturing hub, which eventually evolved into Dharavi, Asia's largest slum.<sup>1</sup> Concealed in this description is its unique nature as a bustling commercial hub that generates an annual revenue of about one billion.<sup>2</sup> However, its inhabitants are currently consumed by the fear of losing their livelihood and facing spatial fragmentation due to the Dharavi Redevelopment Project.<sup>3</sup> This project, helmed by the State Government of Maharashtra in partnership with the Adani Group, one of India's largest multinational conglomerates, seeks to redevelop Dharavi as prime real estate at the heart of the city to make it fitting for the country's thriving financial capital.<sup>4</sup>

Beyond the immediate perils of the Dharavi Redevelopment Project for Dharavi and its inhabitants lies a larger issue: India's complicated relationship with addressing the challenge of urban housing in its governance. To gain a better understanding, a brief overview of India's constitutional governance structure is helpful.

Constitutions are typically classified as either unitary or federal. A unitary constitution vests the entirety of the state's power in a single government. Whereas a federal constitution divides power between two levels or tiers of government.<sup>5</sup> India is a federal state, derived from the features of its constitution. The first tier refers to the government for the entire country, and the other level refers to governments in multiple, different regions. This division of power, however, is not equal, with the union government possessing certain overarching powers over the state governments, earning it the label of quasi-federalism.<sup>6</sup> In

1 *Amar Farooqui*, *Opium City: The Making of Early Victorian Bombay*, New Delhi 2008; *Kalpna Sharma*, *Rediscovering Dharavi: Stories from Asia's Largest Slum*, New Delhi 2000.

2 *Dhaval S. Kulkani*, *Dharavi revamp: Can Gautam Adani transform Asia's largest Slum?*, India Today, 6 August 2025 <https://www.indiatoday.in/india-today-insight/story/dharavi-revamp-can-gautam-adani-transform-asias-largest-slum-2767186-2025-08-06> (last accessed on 15 October 2025).

3 Land Conflict Watch, *Adani's Dharavi Redevelopment Plan ignites fear of evictions and displacements among residents*, <https://www.landconflictwatch.org/conflicts/adani-s-dharavi-redevelopment-plan-ignites-fear-of-evictions-and-displacements-among-residents#> (last accessed on 15 October 2025).

4 Dharavi Redevelopment Project, Slum Rehabilitation Authority, Government of Maharashtra <https://drpmumbai.maharashtra.gov.in/> (last accessed on 15 October 2025)

5 *Mahendra Pal Singh*, *The Federal Scheme*, in: Sujit Choudhry / Madhav Khosla / Pratap Bhanu Mehta (eds.), *The Oxford Handbook of the Indian Constitution*, Oxford 2016, p. 700.

6 *Mahendra Pal Singh*, *The Federal Scheme*, in: Sujit Choudhry, Madhav Khosla, Pratap Bhanu Mehta (eds.), *The Oxford Handbook of the Indian Constitution*, Oxford 2016, p. 717.

this structure, matters of urban planning and governance were allocated as subjects of the state governments.<sup>7</sup>

However, the central or union Government of India, in its administration, gave housing significant primacy. It established the Ministry of Housing and Urban Affairs of India, originally the Ministry of Works, Housing and Supply in 1952 to deal with the substantial increase in the urban population by 53.7 per cent between 1941 and 1951.<sup>8</sup> Other efforts included the passing of the Slum Areas (Improvement and Clearance) Act, 1956, to ensure concerted efforts to clear slums and ensure better living conditions in urban areas across the country,<sup>9</sup> and creating the Planning Commission of India to launch plans focusing on India's economic and social development by addressing problems relating to housing and the existence of slums.<sup>10</sup> Therefore, while state governments have the power to legislate, issue directives, and develop policies, actions by the Union Government have dominated most efforts in the realm of urban development and housing.<sup>11</sup>

This situation was further complicated by the passing of the 74th Constitutional Amendment Act, 1993, which created the third tier of governance in the form of urban local bodies. It introduced Part IXA to the Constitution of India, titled "The Municipalities", which instructed the creation of local self-governing bodies by the respective state governments.<sup>12</sup> This gave state governments the discretionary powers to devolve resources to local self-governments to enable them to perform their functions. Out of the 18 identified functions, Entry 1 on urban planning, including town planning, and Entry 10 on slum improvement and upgradation, directly impact the governance and administration of housing-related concerns in the country.<sup>13</sup>

It is against this background that the urban housing struggle in Mumbai, primarily exemplified by the Dharavi Redevelopment Project, will be analysed to reveal the complex ways in which urban housing concerns are addressed across India's different levels of governance and administration.

- 7 Entry 5, Seventh Schedule, List II – State List, Constitution of India, 1950; Government of India - Ministry of Housing and Urban Affairs, About Us – Mandate, <https://mohua.gov.in/cms/mandate.php> (last accessed on 29 June 2025).
- 8 Government of India - Ministry of Housing and Urban Affairs, About Us – Mandate, <https://mohua.gov.in/cms/mandate.php> (last accessed on 29 June 2025); *Lalit Batra*, A Review of Urbanisation and Urban Policy in Post-Independent India, Working Paper Series, Centre for the Study of Law and Governance, Jawaharlal Nehru University, New Delhi, April 2009, CSLG/WP/12, p. 5.
- 9 Slum Areas (Improvement and Clearance) Act, 1956, <https://www.indiacode.nic.in/bitstream/123456789/1709/1/195696.pdf> (last accessed on 29 June 2025).
- 10 *Rishi Muni Dwivedi*, Urban Development and Housing in India, New Delhi 2007.
- 11 *Annapurna Shaw*, Urban Policy in Post-Independent India: An Appraisal, Economic and Political Weekly, 31 (1996), p. 224; Government of India - Ministry of Housing and Urban Affairs, About Us – Mandate, <https://mohua.gov.in/cms/mandate.php> (last accessed on 29 June 2025).
- 12 Part IXA, Constitution of India (1950).
- 13 Twelfth Schedule, Constitution of India (1950).

This analysis will be undertaken as a comparative study with Colombia in the context of its decentralised federal governance structure and its impact on the country's urban housing challenges, especially its capital city of Bogota.

Concerns of housing in Colombia are linked to a long history of political contestation over land accumulation, dispossession, and displacement. After Independence, the 1886 Constitution of Colombia had formalised a unified nation-state by declaring it as a centralised republic.<sup>14</sup> Programs and policies were designed to prevent land-based conflict, however, they persisted, with the 1940s and 1950s being characterised by bitter internal political competition, along with continued displacement and dispossession.<sup>15</sup> Structural changes at the economic and political level were identified in the 1980s as an important strategy to combat continued violence and resultant displacement. One of the most significant changes adopted was the 1986 Decentralisation Reform, which provided for greater representation of local communities through popular elections of mayors and local councils, with the aim of facilitating the efficient provision of public goods and local administration.<sup>16</sup> This was formalised with the passing of the 1991 Constitution of Colombia, which adopted decentralisation as its core tenet and identified municipalities as the key authority in devising housing initiatives and addressing issues of informal settlement.<sup>17</sup> As will be seen in Part D in greater detail, decentralisation of power and devolution of such power to local governments in Colombia is widely viewed favourably and deemed as a success in addressing numerous prerogatives including urban housing.

We see that both the Constitutions of India and Colombia granted recognition to local self-governments in the early 1990s. However, the impact of such recognition has been widely disparate. This article attempts to highlight this disparate impact through the mandate of urban housing attributed to local self-governments in both countries with a specific focus on the urban housing status in the cities of Mumbai and Bogota in India and Colombia, respectively.

This analysis yields two key observations regarding the 74th Constitutional Amendment Act's limited ability to effectively decentralise governance in India. First, the framing of the 74th Constitutional Amendment Act possesses an inherent design flaw, which creates textual limitations that restricts meaningful decentralisation of power. Second, the resistance to devolving power by state governments, despite policy and administrative recommendations, can be understood within the larger context of the federal structure and federal culture that have evolved and are practised in the country. The label of quasi-federalism has created implications in the processes of ceding and devolving powers between

14 Article 1, Constitution of Colombia (1886).

15 *Francisco Gutierrez Sanin / Tatiana Acevedo / Juan Manuel Viatela*, *Violent Liberalism? State, Conflict And Political Regime In Colombia, 1930-2006*, An Analytical Narrative in State-Making, Crisis States Research Centre, Working Paper No. 19, November 2007, p. 10; *Devesh Kapur / John P. Lewis / Richard Webb*, *The World Bank: Its First Half Century*, Washington DC, 1997.

16 Decentralisation Reform, Colombia (1986).

17 Article 1, 311 and 313, Constitution of Colombia (1991).

governance structures, which, as has been argued elsewhere, not only raises concerns about the model of federalism in India but has also contributed to the effective failure of meaningful decentralisation.

This study adopts a comparative approach as the suitable methodology given the increasing prominence of the ‘city’ as a contested space, particularly in the context of housing concerns, across countries. To address these challenges, countries are either harnessing their existing constitutional mechanisms or developing new ones through constitutional recognition of cities and their governance. Employing a comparative methodology lends richness to a relatively new attempt to explore the place of cities in constitutional theory.

In this context, the rationale for analysing decentralisation as a governance model and its impact on housing by comparing India and Colombia is manifold. Both India and Colombia, alongside a few other countries like Brazil and South Africa, have the distinction of formally recognising decentralisation of power by granting constitutional status to local self-governments as an intrinsic part of their governance and administrative structure. As post-colonial countries in the Global South, grappling with concerns of national unity, integrity and socio-economic difference, both India and Colombia experienced the impact of global economic policies and subsequent push for urbanisation, contemporaneously. As will be demonstrated in the subsequent parts, both India and Colombia experienced liberalisation of their economies, and the adoption of decentralisation in their constitutional framework around the same time. Both these factors have played an important role in how the countries have dealt with the housing crises in their urban centres. However, despite the similarity in circumstances and concerns, the impact of decentralisation in dealing with the urban housing crises in both these countries has been considerably divergent.

The article undertakes an analysis of decentralisation in India and Colombia in four substantive sections. Section B delineates the federal design and operation of the Indian Constitution. This is followed by Section C, which identifies the nexus between decentralisation of governance and urban housing in India. Section D traces constitutional development in Colombia to explain its unique unitary, decentralised republic. Section E analyses the impact of decentralisation through the role played by local governments in the context of urban housing in Mumbai and Bogota. The article concludes with a brief reflection of some key highlights and observations derived from the analysis.

## **B. The “Federation” of India – Design and Operation**

As mentioned above, the Indian Constitution is a federal constitution. However, the terms “federal” or “federation” do not appear in the Indian Constitution. It opens with the declaration that India is a “Union of States.”<sup>18</sup> According to Dr. B. R. Ambedkar, the Chairman of the Drafting Committee of India’s Constituent Assembly, this phrasing conveys that while India and its people are divided into different regions with their own regional governments

18 Articles 1, Constitution of India (1950).

for the convenience of administration, “the country is still one integral whole, its people a single people living under a single *imperium* derived from a single source”.<sup>19</sup>

Despite the absence of the term federal or federation in the Indian Constitution, its federal feature is derived from the distribution of power or competencies, legislative, executive and judiciary, between the two primary constituents of the Indian republic, the centre or the union government, and the regional or state government, which is protected by the Constitution.<sup>20</sup> Schedule Seven of the Constitution delineates legislative power to the union or central government in List 1 (Union List) and the regional or state government in List 2 (State List). There is a third list known as the Concurrent List, which enlists areas over which both the union and state governments can exercise legislative power. However, in the event of a conflict between the two, the decision of the union government prevails.<sup>21</sup> The union government enjoys significant financial control, with the power to collect larger revenues and redistribute them to the states, along with emergency powers that empower it to override State powers and assume greater control over States during emergencies.<sup>22</sup>

These features collectively reflect that the division of power and competencies between the two levels is vertical, giving the union government more power than the state government. The nature of Indian federalism was identified as quasi-federal by Prof. Wheare, a categorisation that continues to be widely used in both doctrinal work and judicial pronouncements.<sup>23</sup> His categorisation is based on the concern that the union government's overarching power to intervene in affairs of state governments makes a fragile case for Indian federalism.<sup>24</sup> He also recognised two terms: the federal constitution and the federal government.<sup>25</sup> These terms identify the federal elements in a nation's constitution, alongside assessing whether these elements have sufficiently created federal governments that follow the ethos of the federal principles. This terminology will be revisited in later sections of this article. In a similar vein, some scholars of Indian Constitutional Law have adopted the terminology of “centralised federalism” to suggest the need to enquire whether India is federal or not. Their concerns stem from the incorporation of the term “Union” in Article

19 Constituent Assembly Debates, 4 November 1948, <https://www.constitutionofindia.net/debates/04-nov-1948/> (last accessed on 29 June 2025).

20 *Singh*, note 5, p. 700; *SR Bommai v. Union of India* (1994) 3 SCC 1, para. 112; *Kuldip Nayar v. Union of India* (2006) 7 SCC 1, paras. 74, 75 and 233.

21 Seventh Schedule, Constitution of India (1950).

22 Articles 275, 280, 282 and 353, Constitution of India (1950).

23 *K.C. Wheare*, *Federal Government*, Oxford 1963; *Louise Tillin*, *Indian Federalism: Centralism Amidst Diversity* in: John Kincaid and J. Leckrone (eds.), *Teaching Federalism*, Cheltenham 2023; *Ashutosh Varshney*, *How has Indian Federalism Done?*, *Studies in Indian Politics* 1 (2013), pp. 43–63.

24 *Nidhi Sharma*, *The quasi-federal constitution? Taxonomical influences on interpretation of federalism in India*, *Global Constitutionalism* (2025), p. 2.

25 *K.C. Wheare*, *Federal Government*, Oxford 1963.

1 of the Constitution but are exemplified by the measures adopted by union governments, especially those with single-party dominance, both presently and historically.<sup>26</sup>

The need for a strong union government, ensured through the Constitution's centralising federal design, is attributed to the belief that only a "strong Union can keep the country together" as a religious, social and ethnically diverse nation. Concerns about internal peacekeeping, economic coordination, and international relations were identified as some important reasons for the central bias.<sup>27</sup> With the memory of the violent partition still fresh, the Constituent Assembly was concerned about managing the crisis of its aftermath, fears of possible disunity, and the resultant prospect of anarchy in a newly independent country, causing it to design its federation by empowering the union government more than the state governments.<sup>28</sup> This fear is reflected in the response to Constituent Assembly member, Prof. KT Shah's proposal to add the term "federal" in Article 1.<sup>29</sup> HV Kamath argued that "the tendency to disintegrate in our body politic has been rampant since the dawn of history, and if this tendency is to be curbed, the word "federal" should be omitted from this Article."<sup>30</sup>

With respect to urban housing, the Constitution of India did not present a holistic urban imagination. A lone reference to the urban sphere could be found in List II of Schedule Seven, which enlists the state governments' power to legislate on local governments, including urban bodies such as municipal corporations, for local self-governance.<sup>31</sup> This provision, in conjunction with administrative and policy instructions, is seen as indicating that matters of urban planning and governance were allocated as subjects of the state governments.<sup>32</sup>

However, the central or union government of India, in its administration, gave housing significant primacy. As mentioned earlier, the Ministry of Housing and Urban Affairs of India was originally established as the Ministry of Works, Housing and Supply in 1952.<sup>33</sup> This can be understood in the context of the developments before and after the partition of India in 1947. During the Second World War, from 1939 to 1945, the establishment of

26 *Singh*, note 5, p. 700.

27 *Gautam Bhatia*, *The Indian Constitution, A Conversation with Power*, Cambridge 2025, p. 6.

28 *Uday Singh Mehta*, *Indian Constitutionalism, Crisis, Unity and History*, in: Sujit Choudhry / Madhav Khosla / Pratap Bhanu Mehta (eds.), *The Oxford Handbook of the Indian Constitution*, Oxford 2016, p. 139.

29 Constituent Assembly Debates, 15 November 1948, <https://www.constitutionofindia.net/debates/15-nov-1948/> (last accessed on 29 June 2025).

30 Constituent Assembly Debates, 15 November 1948, <https://www.constitutionofindia.net/debates/15-nov-1948/> (last accessed on 29 June 2025).

31 Entry 5, List 2, Schedule 7, Constitution of India (1950).

32 Seventh Schedule, List II – State List, Constitution of India (1950); Government of India - Ministry of Housing and Urban Affairs, About Us – Mandate, <https://mohua.gov.in/cms/mandate.php> (last accessed on 29 June 2025).

33 Government of India - Ministry of Housing and Urban Affairs, About Us – Mandate, <https://mohua.gov.in/cms/mandate.php> (last accessed on 29 June 2025).

war production plants led to the creation of employment opportunities in urban centres. This was exacerbated by the arrival of millions of refugees from the newly created Pakistan after the partition, in search of shelter and livelihood. The combined effect of the two was a substantial increase in the urban population by 53.7 per cent between 1941 and 1951, in contrast to the rural population, which increased by only 7.4 per cent during the same period.<sup>34</sup>

This sharp increase in urban population and the ensuing challenge of ensuring suitable housing for them prompted two responses. First, The Planning Commission of India launched its first five-year plan, focusing on problems relating to housing and the existence of slums, as an important part of driving independent India's economic and social development. The Plan described slums as a "national problem" and a "disgrace to the country", and advocated for their removal. It also recommended the need to strengthen local authorities in preventing the growth of slums. This was the first time that the important role played by urban local bodies was formally recognised in urban governance, particularly in the context of housing and slums.<sup>35</sup> Soon after this, the Slums Areas (Improvement and Clearance) Act, 1956, was also passed to ensure concerted efforts to clear slums and ensure better living conditions in urban areas across the country.<sup>36</sup>

These developments, in conjunction, reveal two things. First, a preoccupation with slums and their removal in India's governance strategy in the context of urban housing. This preoccupation has continued to persist not just in strategic planning—the last Planning Commission 5-year plan of 2012-2017 also highlighted the existence of slums in cities as a challenge to affordable housing—but also in more infamous administrative action—large scale removal of slums on grounds of illegality, without appropriate clearance from authorities and without notifying its inhabitants across different cities—have animated public knowledge and discourse about housing concerns in India.<sup>37</sup>

Second, an indication that even though within India's federal structure, state governments have the power to "issue directives, provide advisory services, set up model legislation and fund programmes which the states can follow at will",<sup>38</sup> actions by the union government have dominated most efforts in the realm of urban development and housing. In fact, the Government of India, Ministry of Housing and Urban Affairs of India, in its

34 *Batra*, note 8, p. 5.

35 *Dwivedi*, note 10.

36 Slum Areas (Improvement and Clearance) Act, 1956, <https://www.indiacode.nic.in/bitstream/123456789/1709/1/195696.pdf> (last accessed on 29 June 2025).

37 *Rajendra Shankar Shukla v Chhatisgarh* (2015) 10 SCC 400; *Gautam Bhan*, In the Public's Interest: Evictions, Citizenship, and Inequality in Contemporary Delhi, Telangana 2016; *Anuj Bhurwania*, Public Interest Litigation as a Slum Demolition Machine, *MIT Journal of Planning*, 12 (2016), p. 67.

38 *Annappurna Shaw*, Urban Policy in Post-Independent India: An Appraisal, *Economic and Political Weekly* 31 (1996), p. 224.

mandate clearly mentions that, while “matters pertaining to urban development have been assigned by the Constitution of India to the State Governments”,

*“the Govt. of India plays a much more important role and exercises a larger influence to shape the policies and programmes of the country as a whole. The national policy issues are decided by the Govt. of India which also allocates resources to the State Governments through various Centrally Sponsored schemes, provides finances through national financial institutions and supports various external assistance programmes for urban development in the country as a whole. The indirect effect of the fiscal, economic and industrial location decisions of the Govt. of India exercise a far more dominant influence on the pattern of urbanisation and real estate investment in the country.”*<sup>39</sup>

Hence, we see that despite having the explicit constitutional power to formulate urban policies, state governments have rarely exercised it. In most states, urban policies are drawn from the national five-year plans and other programmes and policies adopted by the central government.<sup>40</sup>

This two-tier quasi-federal system was further diversified with the proposal to introduce a third tier of governance by establishing local self-governing bodies.

India has historically had a rich tradition of local self-governance.<sup>41</sup> During British colonial rule, governing bodies in Indian cities were formalised as “instruments of political and popular education” with representation of Indians as part of an exercise to inculcate democracy.<sup>42</sup>

However, support for local self-government dwindled after India’s independence. The debates in the Constituent Assembly were divided on the question of decentralisation. While some voices had a strong desire to continue India’s tradition of local self-governance, especially in rural areas through unelected councils or panchayats, others were concerned about the representation challenges this may produce in a highly plural and diverse society, like India.<sup>43</sup> Ultimately, a provision on creating local self-governments in rural areas was included as a recommendatory and unenforceable provision in the Directive

39 Government of India - Ministry of Housing and Urban Affairs, About Us – Mandate, <https://mohu.a.gov.in/cms/mandate.php> (last accessed on 29 June 2025).

40 R. Ramachandran, *Urbanization and Urban Systems in India*, New Delhi 1989.

41 K.C. Sivaramakrishnan, *Local Government*, in: Sujit Choudhry / Madhav Khosla / Pratap Bhanu Mehta (eds.), *The Oxford Handbook of the Indian Constitution*, Oxford 2016 (2016), p. 562.

42 SN Mallik, *Local Self-Government in India*, *Annals of the American Academy of Political and Social Science* 145 (1929), p. 37; Lord Mayo’s Resolution on Provincial Finance, 1870, Resolution No 3334, dated 14 December 1870 in: M Venkatarangaiya / M Pattabhiram (eds.), *Local Government in India*, Kolkata 1969, pp. 96–103; Recommendations of the Royal Commission on Decentralisation, 1909, in: M Venkatarangaiya / M Pattabhiram (eds.), *Local Government in India*, Kolkata 1969, pp. 158–66.

43 Constituent Assembly Debates, 4 November 1948, <https://www.constitutionofindia.net/debates/04-nov-1948/> (last accessed on 29 June 2025). Dr. Ambedkar’s assertions were supported by Hussain

Principles of State Policy.<sup>44</sup> Urban local governments were listed among the legislative powers of state or regional governments, enabling state governments to legislate on local governments, including urban bodies such as municipal corporations.<sup>45</sup>

With the evolution of administrative systems and growth in population, numerous rural local self-government bodies were set up, facilitated by legislations passed by state governments that authorised their existence and assigned them duties and functions.<sup>46</sup> However, frequent changes in state governments and the absence of financial autonomy impeded the meaningful operation of these local self-government bodies.<sup>47</sup> The condition was worse for preexisting urban local bodies. Many preexisting municipalities in Indian cities were superseded and their work usurped by their respective state governments. This occurred in prominent cities such as Calcutta (present-day Kolkata) and Madras (present-day Chennai), both of which had a long-standing legacy of local urban self-governance.<sup>48</sup>

Over the years, concomitant with developments elsewhere, in India too, the importance of local bodies was increasingly recognised, especially in the context of urban planning and development.<sup>49</sup> As the economic landscape evolved to encourage industrialisation, a sharp increase in urban population was witnessed, with 25% of India's population residing in cities, a sharp increase since its independence.<sup>50</sup> This necessitated the examination of laws relating to urban development and local administration.<sup>51</sup>

Increasing urbanisation and the resultant problems of homelessness and pavement dwellings had also attracted the attention of the Indian judiciary, which has recognised the right to shelter for everyone as a part of the right to life and livelihood protected by the Indian Constitution.<sup>52</sup> National planning, led by the Union Government, progressively focused on the improvement of urban slums. Many of these efforts were seen as reactive

Imam and Begum Aizaz Rasul, 8 November 1948, <https://www.constitutionofindia.net/debates/08-nov-1948/> (last accessed on 29 June 2025).

44 Article 40, Part 4, Directive Principles of State Policy, Constitution of India (1950).

45 Seventh Schedule, List Two, Entry Five, Constitution of India (1950).

46 *Dr. Marina R Pinto*, Metropolitan City Governance in India, Thousand Oaks 2000.

47 See e.g., Planning Commission of India, Report of the Task Force on Panchayati Raj Institutions (2001).

48 *Sivaramakrishnan*, note 41, p. 564.

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

50 United Nations, Patterns of Urban and Rural Population Growth, Department of International Economic and Social Affairs, Population Studies No. 68; [https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/Jan/un\\_1980\\_patterns\\_of\\_urban\\_and\\_rural\\_population\\_growth.pdf](https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/Jan/un_1980_patterns_of_urban_and_rural_population_growth.pdf) (last accessed on 29 June 2025)

51 *J. K. Routray*, Urban and Regional Planning in Practice in India, *Habitat International* 17 (1993), pp. 55–74; 5<sup>th</sup> and 6<sup>th</sup> Five-Year Plan, Government of India, 1975-1985.

52 *Olga Tellis v. Bombay Municipal Corporation*, 1985 SCC (3) 545; 1985 INSC 151, para. 31, 37, 42 and 45.

measures to respond to the problem of rapidly growing cities, but they were criticised for not being designed to make cities equitable in the long run.<sup>53</sup>

These developments become clearer when located against the backdrop of India's economic liberalisation. In the years leading up to that, urban policy began to reflect the trends of economic policy. The 7<sup>th</sup> five-year plan recognised the important role that cities played in economic development, primarily to attract private sector participation and investment. The Plan called for "radical (re)orientation of all policies related to housing" and entrusted the private sector with the responsibility of housing construction.<sup>54</sup> The Union Government recognised the utility of urban local bodies to undertake infrastructure creation and proposed to set up a National Urban Infrastructure Development Finance Corporation to augment their capacity.<sup>55</sup>

By then, the country's political leadership had also begun to engage with the issue of local self-government bodies. In 1986, the incumbent government appointed LM Singhvi, an eminent jurist, to assess the experience of rural and urban local self-government bodies. The Committee, in its findings, recommended the need for constitutional recognition, protection, and preservation of local self-governments in India as a third tier of governance in India.<sup>56</sup>

This cause was officially endorsed in 1988, when the then government led by Prime Minister Rajiv Gandhi expressed its support for the recommendations of the Singhvi Committee. Prime Minister Gandhi asserted that for a massive polity like India, it was important to have a system of governance that truly represented its population. This could be ensured by designing a vast network of local governance system in rural and urban India which would significantly increase the number of representatives in the Indian political system. This idea was rooted in the belief that local governments would enjoy the same sanctity that the Parliament, at the central government level and the State legislation, at the state government level enjoys.<sup>57</sup>

He declared that "the transmission of democracy and development to the levels where the bulk of the people lived required a national debate and if necessary, an amendment to the Constitution".<sup>58</sup> This statement underscored the acceptance of decentralisation and, through it, the devolution of power to the locals as important features of not just a dynamic democracy but also a necessary condition for a developing society and economy.

53 *Batra*, note 8, p. 14.

54 7<sup>th</sup> Five-Year Plan, Government of India, 1985-1990.

55 *Batra*, note 8, p. 16.

56 Ministry of Panchayati Raj, 'Recommendations of the LM Singhvi Committee' as mentioned in *Batra*, note 8.

57 The Constitution (Sixty-fourth Amendment) Bill (Bill No 50 of 1989, as introduced in the Lok Sabha).

58 *Rajiv Gandhi*, Three Pillars of Our Nation (inaugural function of the Golden Jubilee of the Maharashtra Legislative Assembly at Vidhan Bhavan, Bombay, 3 September 1988) in: *Rajiv Gandhi*, Selected Speeches and Writings 4, 1989, pp. 68–73.

As the political sphere slowly geared up to constitutionally recognise local self-governments, it also braced itself for major economic modifications. Two years before the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment Acts were finally enacted, India liberalised its economy.<sup>59</sup> This period is also marked in international fora by the end of the Cold War, the opening up of national markets worldwide, and the “turn to the city” in development policies.<sup>60</sup>

In the context of decentralisation and urban governance, two developments become crucial. First, the setting up of the National Commission on Urbanisation in 1990 by the union government unequivocally emphasised the close link between urbanisation and economic development. Among its 78 recommendations, it highlighted the role of housing to ensure that cities should be prepared to play an enhanced role in economic development than they have before.<sup>61</sup> Second, the adoption of the 8<sup>th</sup> five-year plan, which was adopted in the same year as the passing of the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment Acts. Emboldened by the decision to decentralise cities and towns through the creation of elected urban local bodies, the union government formulated a governance model for cities based on a heightened role for these urban local bodies.<sup>62</sup> This included the Mega City Scheme, a centrally sponsored scheme in five cities and the preparation of The India Infrastructure Report: Policy Imperatives for Growth and Welfare, June 1996, which set the tone for urban planning and governance by central and state governments.<sup>63</sup> To better understand these policies, especially in the context of housing, it is essential to be aware of the changes promised by the 74<sup>th</sup> Constitutional Amendment Act.

### C. Towards Decentralisation in India

The 74<sup>th</sup> Constitutional Amendment Act begins with its Statement of Objects and Reasons, which states that such an amendment was required because, “[i]n 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”.<sup>64</sup> While we noticed that the role of urban local bodies was highlighted occasionally in the context of urban planning and governance, it did not have many strong advocates for its inclusion as a constitutional mandate. It was

59 The Constitution (Seventy-third Amendment) Act, 1993 and The Constitution (Seventy-fourth Amendment) Act, 1993.

60 *Helmut*, in: Eyal Benvenisti / Dino Kritsiotis (eds.), *Cambridge History of International Law, Volume XII: International Law since the Cold War*, Cambridge 2023, p. 1.

61 *Batra*, note 8, p. 17.

62 *Ibid.*, p. 20.

63 *Ibid.*, p. 24.

64 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 29 July 2025).

when the cause of recognising rural local governance, or the Panchayati Raj system, was pushed by the then Prime Minister Rajiv Gandhi that the need for similar provisions for urban areas was also recognised.<sup>65</sup>

Prior to the amendment, local government was listed as a subject in the State List.<sup>66</sup> However, the 74<sup>th</sup> Constitutional Amendment Act envisioned that States would endow urban local bodies with the power necessary for them to perform their functions as institutions of self-government.<sup>67</sup> The Amendment lays down three types of municipalities based on their size. First is the Nagar Panchayat for areas transitioning from rural to urban; second is the Municipal Council for smaller urban areas; and third is the Municipal Corporation for larger urban areas.<sup>68</sup> Many state legislatures amended their municipal acts to ensure that the existing Municipalities were in conformity with the constitutional provisions.<sup>69</sup>

While the 74<sup>th</sup> Constitutional Amendment Act aimed to devolve powers from the state government to the local government, thereby shifting India's federal system from a two-tier to a three-tier system, its own textual design presented it with shortcomings in this regard. First, Article 234-W, which recognises the state government's prerogative to endow municipalities with power and authority, uses the term "may" instead of "shall", creating a provision that facilitates the devolution of power from the state government to the local level, rather than directly vesting them with autonomous powers.<sup>70</sup> Article 234-W states that, "Subject to the provisions of this Constitution, the Legislature of a State may [emphasis given], 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."

This, therefore, facilitates the creation of a level of urban local governance that operates primarily on the discretion of their state governments. In order to fulfil the constitutional mandate of the 74<sup>th</sup> Constitutional Amendment Act, it would then be crucial for state governments to exercise their discretion in accordance with the letter and spirit of the Amendment reflected in its Statement of Objects and Reasons. However, the results so far indicate the contrary. An official review undertaken by the Jawaharlal Nehru Urban Renewal Mission (JNNURM) found that only eight states and one union territory had

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

66 Item 5, List II, Seventh Schedule, Constitution of India (1950).

67 Article 243-W, Constitution of India (1950).

68 Article 243-Q, Constitution of India (1950).

69 Sivaramakrishnan, note 41, p. 562; Mathew Idiculla, *Unpacking Local Self Government: The Uncertain Power of Cities in the Indian Constitution*, *World Comparative Law* 53 (2020), p. 40.

70 Idiculla, note 69, p. 71.

devolved all functions under the Twelfth Schedule.<sup>71</sup> Even with respect to these states, their operation and devolution of powers remain shrouded in doubt.<sup>72</sup> Another analysis of 23 major cities in India highlighted that, on average, only about 9 out of the 18 functions were effectively devolved.<sup>73</sup>

Another inherent limitation identified in the 74<sup>th</sup> Constitutional Amendment Act is that it does not provide municipalities with an autonomous domain of taxation or other sufficient financial powers.<sup>74</sup> Like with other powers, the state government determines the taxes that local governments can levy. Most urban local bodies have limited taxation power and revenue sources and continue to depend on transfers from higher levels of government.<sup>75</sup> Many believe that urban local governments' limited effectiveness can be attributed to their lack of revenue-generating tools.<sup>76</sup>

The lack of compliance with the constitutional vision of the 74<sup>th</sup> Constitutional Amendment Act has led to the initiation of litigation in the Supreme Court and the High Courts. The former has largely endorsed the overarching power of the state government over local governments. For instance, in the case of *Bondu Ramaswamy v Bangalore Development Authority*, the Court held that the state legislature of Karnataka could remove the power of town planning from the duly elected municipality for the city of Bengaluru and vest it in the state government-created body, "Development Authority".<sup>77</sup> Similarly, in the case of *Sakshi Gopal Agarwal v. State of Madhya Pradesh*, the Supreme Court affirmed that the Amendment does not confer on local governments the authority to impose taxes on their own and that the source of power to bestow local governments with the authority to levy taxes rests with the State legislature and can be endowed by them.<sup>78</sup>

These judicial pronouncements are in tandem with the Indian judiciary's acceptance of the Indian Constitution's centralising tendency on the question of India's federal structure. Across cases, courts have accepted this tendency by deeming it as a federation with a strong

71 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 19 July 2025); These eight states are: Chhattisgarh, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Kerala, Maharashtra, Odisha, Punjab and Puducherry.

72 *Idiculla*, note 69, p. 42.

73 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 19 July 2025).

74 *Idiculla*, note 69, p. 42.

75 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 19 July 2025).

76 *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.

77 *Bondu Ramaswamy v Bangalore Development Authority* (2010) 7 SCC 129.

78 *Sakshi Gopal Agarwal v. State of Madhya Pradesh*, 2003(4) MPHT1, para. 22.

Centre<sup>79</sup> or theorising it as quasi-federal,<sup>80</sup> while asserting “federalism” as a part of the basic structure of the Constitution.<sup>81</sup> This reflects not only an acceptance of a federalising approach by the union governments but also an inclination to justify them using federal vocabulary.<sup>82</sup>

In this light, it is easy to understand why, in the case of *Bondu Ramaswamy and Sakshi Gopal Agarwal*, the court endorsed the government's practice, although this time, it was the state government's practice of concentrating power despite a clear constitutional mandate to devolve it to the local governments.

These concerns will be looked at in greater detail in Part E through the case study of Mumbai. Before that, the article will look at the governance structure of the Colombian Constitution.

### **D. A Unitary but Decentralised Republic - Design of the Colombian Constitution**

In Colombia, the journey towards adopting decentralisation as a governance structure was slightly different. Much like India, Colombia also had local self-government bodies, especially municipalities, which were involved in city planning since colonial times. Soon after Colombia gained independence from its colonial rulers in 1810, it began its process of nation building. This process reflected a centralising tendency in the system of governance in the form of a unified nation-state, overshadowing its pre-existing decentralised, local self-governance mechanisms. This was formally operationalised in the 1886 Constitution, whose Article 1 declared Colombia as a centralised republic.<sup>83</sup>

As already discussed in Part A, a historical struggle over land accumulation by powerful elites, combined with economic policies focused on development led by a centralised model of governance, created violent strife in Colombia. The strife was a reflection of opposition to a nation-state building process dominated by a centralised vision of growth, which neglected the concerns of less powerful actors removed from the centre.<sup>84</sup>

To counter this violent insurgency, a new development plan was envisioned in the 1970s, known as the “Four Strategies”, which placed relatively more focus on the local community and its needs. The Four Strategies can be seen as the first imagination of developmental goals through efforts involving decentralisation. However, numerous international

79 *S.R. Bommai v. Union of India*, 1994 AIR 1918, para. 275; *M. Karunanidhi v. Union of India*, AIR 1977 MAD 192, para. 32.

80 *In Re: Article 370 of the Constitution*, 2023 INSC 1058, para. 481.

81 *S.R. Bommai v. Union of India*, 1994 AIR 1918, para. 275; *Sharma*, note 23, p. 2.

82 See *Rav Pratap Singh*, *Constitution of Tax: A Tale of Four Constitutional Amendments and Consumption Taxes*, India 2021, for another instance of the adoption of federal vocabulary by the government to justify its perpetuating centralising tendency through constitutional sanctioning of the GST Council.

83 Article 1, Constitution of Colombia (1886).

84 *Sanin / Acevedo / Viatela*, note 15, p. 15.

development and consequent national issues created an accelerated push to address the question of the local.<sup>85</sup>

In the international fora, by the 1980s, it was widely believed that the nationally centred developmental policies had created social and economic exclusions. A key solution advocated to address this was to create sub-territorial units and increase their political, administrative, and economic autonomy, ensuring that government interventions would focus on local problems. Numerous international instruments and institutions also began to advocate for the cause of decentralisation and the need to focus on local actors and governance.<sup>86</sup>

In 1986, in response to a combination of domestic and international developments, the then-President of Colombia, Belisario Betancur, passed a constitutional amendment mandating the popular election of mayors. He also initiated legislative interventions that conferred administrative and political autonomy, along with developmental responsibilities, to local or subnational levels of government.<sup>87</sup> Later, Colombian President Virgilio Barco introduced a legislation supporting municipal control over development initiatives.<sup>88</sup> This was followed by the 1989 Urban Reform Act, which introduced principles of decentralisation in urban planning by granting local governments the power to control urban finance and determine urban development initiatives.<sup>89</sup>

Democratisation at the local level through decentralised governance was also seen as a crucial political foundation for the economic liberalisation process that occurred in the early 1990s. Therefore, the deconstruction of state control over the economy through liberalisation was seen as concomitant with re-designing the state's geography as suitable territory for development.<sup>90</sup>

85 *Luis Eslava*, *Local Space, Global Life: The Everyday Operation of International Law and Development*, Cambridge 2015, p. 131.

86 Stockholm Declaration, United Nations Conference on the Human Environment, UN Doc A/CONF.48/14/Rev.1 (1973); Vancouver Declaration on Human Settlements, United Nations Conference on Human Settlements (Habitat I), UN Doc A/CONF.70/15 (1976); *Martin Wortmann*, United Nations Human Settlements Programme (UN-Habitat) in: Rüdiger Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law*, Oxford 2008; Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, UN Doc A/CONF.151/26 (vol. I) (1992); *Pranab Bardhan*, Decentralization of governance and development, *Journal of Economic Perspectives* 16 (2002), p. 185.

87 Acto Legislativo 1/86. Since the 1886 Colombian Constitution, Colombian presidents had appointed the governors of departments, who in turn appointed the mayors of municipalities. Ley 12/86 and Ley 9/89.

88 Decree 77 of 1987, Colombia.

89 UN Habitat, *Urban Law in Colombia*, Urban Legal Case Studies Volume 5, <https://unhabitat.org/sites/default/files/download-manager-files/Urban%20legislation-Colombia11.pdf> (last accessed on 29 June 2025); Urban Reform Act of Colombia, Law 9 of 1989.

90 *Miguel Urrutia*, *Economic Reform in Colombia*, in: Harry Costin / Hector Vanolli (eds.), *Economic Reform in Latin America*, Fort Worth 1998; *Luis Eslava*, *Decentralization of Development*

Ultimately, in 1991, Colombia adopted its new constitution. The constitutional reform process was driven by the objectives of strengthening state institutions, protecting citizens' fundamental rights, and enabling effective participation in public and private decision-making.<sup>91</sup> At the same time, it also recognised the limitations of actualising these objectives with the concentration of power and authority merely at the centre. Therefore, Colombia's new constitution adopted decentralisation as its core tenet. Article 1 of the new constitution declared Colombia a republic that was united, decentralised and constituted of autonomous local territories.<sup>92</sup> Therefore, the Colombian Constitution is unitary and organised in a decentralised structure comprising different territorial entities, namely, departments, districts, municipalities, and indigenous territories.

The use of the term "unitary republic" signifies the unity of the nation, with power held at the centre through an elected central government. However, the simultaneous use of the terms "decentralized" and "autonomy of local territories" indicates the acceptance of the need to devolve power to ensure effective and efficient administration.

A federal government requires the existence of two different levels of government with autonomy of operation in their own spheres.<sup>93</sup> The 1991 Colombian Constitution does not create two different levels of government. Instead, it envisages a single government, helmed by the President as the supreme administrative authority, while creating administrative territorial units run by representatives as an extension of the executive branch of the government.<sup>94</sup>

The department and the municipality are the two subnational administrative units, while districts are indigenous territories, special territorial entities with relative political independence.<sup>95</sup> Each department has its own local government and a local assembly elected for a four-year term. Multiple departments together form municipalities. The municipalities are identified as the fundamental political-administrative entity in Colombia and are also recognised as the primary locus for development.<sup>96</sup> Each municipality has its own political structure, with a Mayor elected through democratic elections for a four-year term.<sup>97</sup> The Mayor works alongside the City Council, which is also elected democratically through

and Nation-Building Today: reconstructing Colombia from the Margins of Bogota, *Law and Development Review* 2 (2009), p. 307.

91 *Luis Eslava*, *Constitutionalization of Rights in Colombia: Establishing a Ground for Meaningful Comparisons*, *Revista Derecho del Estado* 22 (2009), p. 183.

92 Article 1, Constitution of Colombia (1991).

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

94 Article 115, Constitution of Colombia (1991).

95 Article 330, Constitution of Colombia (1991).

96 Article 311, Constitution of Colombia (1991).

97 Article 312 and Transitional Article 61, Constitution of Colombia (1991).

popular vote, and prepares the local development plan, which includes land use and housing policy.<sup>98</sup>

This administrative decentralisation in Colombia was also accompanied by fiscal decentralisation to ensure that the administrative units have sufficient resources to fulfil their functions.<sup>99</sup> This was driven by the belief that local self-governments are better suited to deliver effective services and should, therefore, receive commensurate resources. This includes not only the horizontal transfer of resources from the central government to local governments, but also empowering them with the authority to raise their own resources by levying taxes.<sup>100</sup> Therefore, the decentralisation envisaged by Colombia's new constitution includes not just the aspiration for devolution of power, but also ensures in its textual design that such devolution is mandated and takes place sufficiently, unlike India.

Article 311 of the Colombia Constitution, which creates municipalities as the “fundamental entity of the political-administrative division”, exemplifies the rationale of meaningful decentralisation. By sanctioning the creation of municipalities as administrative units with the responsibility to lead public services for local progress, development, community participation and social and cultural betterment of its inhabitants, the Colombian constitution is embodying and enabling the local government that is closer to the people to deliver goods and services as per their needs, while facilitating local citizens to participate in political processes and deepen democracy. This is in stark contrast with the 74<sup>th</sup> Constitutional Amendment Act of India, which, while attempting to create local governments for effective administration, has fashioned a tier of government that is neither empowered to deliver goods and services to local citizens by way of proximity nor to deepen democracy by facilitating public participation in governance.

With this backdrop, Part E of the paper will analyse the impact of decentralisation through the role played by local governments in the context of urban housing in the Indian city of Mumbai alongside the Colombian city of Bogota.

## E. Local Self Governments and the Urban Housing Crisis

Before discussing these two cities, it is important to clarify the reasons behind choosing to analyse and juxtapose them. The reasons lie in the similar position that both these cities hold in the economic functioning of their respective countries. Although Mumbai is not the administrative capital, unlike Bogota, both cities are helmed as key centres for financial growth. This has meant that, with the shift in economic policies focused on industrialisation and free markets, often leading to the neglect of local trade and rural economies, both cities

98 UN Habitat, *Urban Law in Colombia*, Urban Legal Case Studies Volume 5, <https://unhabitat.org/sites/default/files/download-manager-files/Urban%20legislation-Colombia11.pdf> (last accessed on 29 June 2025)

99 Article 287, Constitution of Colombia (1991).

100 Article 356 and 357, Constitution of Colombia (1991).

experienced organic and indiscriminate migration.<sup>101</sup> This caused the growth of informal settlements or slums, often deemed unregulated, unplanned, and illegal<sup>102</sup> creating a serious housing challenge in both Mumbai and Bogota. The need to address this challenge was exacerbated by the economic liberalisation of both countries around the same time, thrusting both Mumbai and Bogota into a race to demonstrate themselves as “Global Cities”, with capacities suitable for economic investment and financial infrastructure.<sup>103</sup> These factors, along with the constitutional recognition of decentralisation in the governance design of both India and Colombia, with implications for the administration of Mumbai and Bogota, make them suitable subjects for this analysis.

### *I. Mumbai*

Mumbai is the capital city of the state or region of Maharashtra in western India. Even before the formalisation of decentralisation, Mumbai was locally governed by the Mumbai Municipal Corporation Act, 1888. Under the British colonial rule, Mumbai developed as a manufacturing hub and an important trade centre, necessitating the creation of a formal structure for governance.<sup>104</sup> Like most municipalities, it was not very active in the intervening period. However, soon after the enactment of the 74th Constitutional Amendment Act, the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994, was passed to modify the Mumbai Municipal Corporation Act, 1888, and make it uniform with the new rules, devolving powers and functions to the municipalities.<sup>105</sup> Under these, Mumbai is now governed by the Brihanmumbai Municipal Corporation (BMC), also known as the Municipal Corporation of Greater Mumbai. It performs civic functions and contributes to urban planning and development through public amenities and infrastructure projects.<sup>106</sup>

The BMC follows a mayoral system where a Mayor is elected to represent the community that is governed by the Act. The Mayor is elected from amongst the Councillors that represent the different wards within the Corporation, and is expected to perform the “decorative role of representing and upholding the dignity of the city and the functional

101 *Solomon Benjamin*, Occupancy Urbanism: Radicalizing Politics and Economy beyond Policy and Programs, *International Journal of Urban and Regional Research* 32(2008), p. 719.

102 *Usha Ramanathan*, Illegality and the Urban Poor, *Economic and Political Weekly* 41 (2006), pp. 3193-3197.

103 *Saskia Sassen*, *The Global City: New York, London, Tokyo*, Princeton 1991; *Saskia Sassen*, *Cities in a World Economy*, Thousand Oaks 2018.

104 *Amar Farooqui*, Urban Development in a Colonial Situation: Early Nineteenth Century Bombay, *Economic and Political Weekly* 31 (1996).

105 Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994.

106 Brihanmumbai Municipal Corporation, [https://portal.mcgm.gov.in/irj/portal/anonymous?guest\\_user=english](https://portal.mcgm.gov.in/irj/portal/anonymous?guest_user=english) (last accessed on 29 June 2025).

role of presiding over the deliberations of the Corporation".<sup>107</sup> Therefore, despite being the elected representative and a symbol of the urban community, the Mayor does not perform any executive functions. The executive functions of the Municipal Corporation are entrusted to its Commissioner, who is appointed by the Government of the State of Maharashtra as the Head of the Executive Wing. The Municipal Commissioner, along with a team of Additional, Deputy, and Assistant Commissioners, is responsible for performing all executive functions of the BMC.<sup>108</sup> This has reduced the BMC from an effective local self-government to an executive limb of the state government.

Alongside the BMC, the State of Maharashtra has numerous other para-state agencies, which are public corporations or authorities that operate with some autonomy but report to the State Government, many of which were already performing functions of urban planning, construction of buildings and slum improvement and upgradation, before the enactment of the 74<sup>th</sup> Constitutional Amendment Act.

For instance, the Maharashtra Housing and Area Development Authority (MHADA) is responsible for providing affordable housing in the state of Maharashtra. It was originally created under the Bombay Housing Board Act in 1948 and known as the Bombay Housing Board, in the aftermath of the partition, to tackle the problem of housing in the region due to the vast settlement of refugees.<sup>109</sup> With growing urbanisation and migration into the city, the problem of slum dwelling increased, which was dealt with by the creation of the Maharashtra Slum Improvement Board under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Soon after, all housing boards in the State were merged into an umbrella authority known as MHADA through the Maharashtra Housing and Area Development Act, 1976. Its objective is to provide a coordinated and comprehensive approach to addressing the housing problem in the state of Maharashtra. This was concurrent with the union government's policies and recommendations aimed as slum removal.

This influence of the union government's policies with respect to slums is also evident in the gradual shifting of approach, from redevelopment by providing civic amenities in slums and undertaking improvement works, to adopting a comprehensive slum rehabilitation scheme.<sup>110</sup> This scheme was initially adopted in the 1980s with the assistance of the World Bank.<sup>111</sup> As this approach became popular, the state government felt the need for

107 Brihanmumbai Municipal Corporation, Mayor – the First Citizen of Mumbai, [https://portal.mcgm.gov.in/irj/portal/anonymous/qlmayoffice?guest\\_user=english](https://portal.mcgm.gov.in/irj/portal/anonymous/qlmayoffice?guest_user=english) (last accessed on 29 June 2025).

108 Brihanmumbai Municipal Corporation, Administrative Wing, [https://portal.mcgm.gov.in/irj/portal/anonymous?NavigationTarget=navurl://6f29601fef5d15a0da11e5ff7177ce5&guest\\_user=english](https://portal.mcgm.gov.in/irj/portal/anonymous?NavigationTarget=navurl://6f29601fef5d15a0da11e5ff7177ce5&guest_user=english) (last accessed on 29 June 2025).

109 Maharashtra Housing and Area Development Authority, History, <https://www.mhada.gov.in/en/history> (last accessed on 29 June 2025).

110 *Batra*, note 8, pp. 5, 31.

111 Slum Rehabilitation Authority, Brihanmumbai, Government of Maharashtra, Department History <https://sra.gov.in/details/sub-category/department-history> (last accessed on 29 June 2025).

a dedicated Slum Rehabilitation Authority (SRA), which was established in 1995 through an amendment to the above-mentioned Maharashtra Slum Improvement Board under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. The Chief Minister of the State of Maharashtra is the Chairperson of the SRA, while its Chief Executive Officer is an Indian Administrative Service officer.<sup>112</sup>

The SRA is now responsible for formulating schemes for slum rehabilitation and ensuring their implementation. In fact, the Maharashtra Regional and Town Planning Act, 1966, was amended in 1996 to classify the SRA as the planning authority for slum rehabilitation with the power to suggest modifications in development plans relating to slum rehabilitation schemes.<sup>113</sup> Therefore, an authority created by the State Government is empowered as a planning authority with the power to suggest modifications in development plans, proposed and prepared by local authorities, despite the existence of a local government, BMC, possessing the formal power to exercise its functions towards urban planning and slum improvement under the Twelfth Schedule of the Indian Constitution. This demonstrates how the state government has entrenched itself in functions and processes that are otherwise the prerogative of local authorities under the 74<sup>th</sup> Constitutional Amendment Act. This practice has, however, only persisted.

The Maharashtra Regional and Town Planning Act, 1966, was once again amended in 2002. This time, with the inclusion of Section 37(1AA), the state government was given the right to modify development plans proposed by local authorities.<sup>114</sup> This amendment was challenged in the Supreme Court, where the petitioners asserted that preparing development plans is the function of the Municipal Corporation as the suitable local authority to undertake urban planning initiatives as per Items 1 and 2 of the Twelfth Schedule. Hence, the state government should not have the authority to override those plans. The Supreme Court declared that Article 243W of the Indian Constitution, through the 74<sup>th</sup> Constitutional Amendment Act, has created an enabling provision for the state government to endow municipalities with the necessary power and authority to perform their functions, and does not create an obligation on the state government. The Court further held that the 74<sup>th</sup> Constitutional Amendment Act “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.”<sup>115</sup> The Court’s finding in this case is emblematic of the aforementioned tendency of the judiciary to condone the concentration of power by state governments by utilising the limitations of the textual design of Article 243W. As before, this tendency can be seen as drawn from similar

112 Slum Rehabilitation Authority, Brihanmumbai, Government of Maharashtra, Department History <https://sra.gov.in/details/sub-category/department-history> (last accessed on 29 June 2025).

113 Maharashtra Regional and Town Planning Act, 1966, <https://www.indiacode.nic.in/bitstream/123456789/16117/5/town.pdf> (last accessed on 29 June 2025).

114 Slum Rehabilitation Authority, Brihanmumbai, Government of Maharashtra, About Us, <https://sra.gov.in/details/about-us> (last accessed on 29 June 2025).

115 *Shanti G. Patel v. State of Maharashtra*, (2006) 2 SCC 505: SC, para. 9.

approval of concentration and centralisation of powers by the union government, utilising the federal features of the Constitution.<sup>116</sup>

The Court asserted that statutes and the bodies empowered under the 74th Constitutional Amendment Act would continue to operate unless a new statute is passed under Article 243W to replace the existing laws, empowering local authorities to take over charge concerning their functions under the Twelfth Schedule.<sup>117</sup> This once again placed the prerogative on state governments, since new laws, even those to replace old ones, can only be passed by state governments for application in their jurisdiction.

The implications of this judgment are that multiple authorities existing before the 74th Constitutional Amendment Act and the municipalities after the Act share common functions, with the former continuing to perform those functions, while the latter, despite having the authorisation, have limited autonomy to undertake initiatives to pursue its functions meaningfully.

A persistent problem for Mumbai's ascent to becoming a "world-class" city is the existence of slums in which close to half of Mumbai's population resides.<sup>118</sup> Given this, it is no surprise that the most recent urban planning initiative in Mumbai is the redevelopment of Asia's largest slum, Dharavi.

Following the World Bank's intervention in the 1980's in slum upgradation in Mumbai, the government adopted an approach of slum rehabilitation as mentioned above. This strategy focused on the use of land as a valuable resource and sought to free up valuable land by rehabilitating slum dwellers elsewhere and utilising the land for commercial endeavours.<sup>119</sup> Given this strategy of development, the state government of Maharashtra decided to rehabilitate slum dwellers in Dharavi and use the land occupied by the slum dwellers to allow "incentive floor space index (FSI) in the form of tenements for sale in the open market".<sup>120</sup> The Urban Development Department of the government of Maharashtra appointed the SRA as the Special Planning Authority for the Dharavi Slum Redevelopment Project. In 2007, while preparing to undertake the project, the government declared it a Vital Public Purpose Project, indicating that the project would be a collective undertaking

116 See Part C.

117 *Shanti G. Patel v. State of Maharashtra*, (2006) 2 SCC 505: SC, para. 10.

118 Observer Research Foundation, *The 'Slumbai' conundrum: Understanding the realities of rehabilitation & the future of slums in Mumbai*, <https://www.orfonline.org/event/the-slumbai-conundrum-understanding-the-realities-of-rehabilitation-the-future-of-slums-in-mumbai> (last accessed on 29 June 2025).

119 Slum Rehabilitation Authority, Brihanmumbai, Government of Maharashtra, Department History <https://sra.gov.in/details/sub-category/department-history> (last accessed on 29 June 2025).

120 Slum Rehabilitation Authority, Brihanmumbai, Government of Maharashtra, About Us, <https://sra.gov.in/details/about-us> (last accessed on 29 June 2025).

between the government and private entities.<sup>121</sup> A first successful tender for the project was floated in 2018. However, it was withdrawn on alleged grounds that the COVID-19 pandemic and the Russia-Ukraine conflict had created complications, leading to economic and financial upheavals.<sup>122</sup> The tender was won by Seclink Technologies, which challenged its cancellation in the Supreme Court, on the grounds of unfairness, but failed to get a favourable order.<sup>123</sup>

Ultimately, a fresh tender was floated in 2022, which was awarded to the Adani Group, one of India's largest multinational conglomerates, with close ties to the incumbent majoritarian government at the central and state governments.<sup>124</sup> The redevelopment is being carried out through a Special Purpose Vehicle Company called Navbharat Mega Developers Private Limited. In this arrangement, the state government of Maharashtra holds 20% equity while the Adani Group holds 80% equity.<sup>125</sup> This arrangement is in consonance with the Ministry of Housing and Urban Affairs, Government of India's policy on Public Private Partnership Models for Affordable Housing, 2017 which encourages Public Private Partnerships and provides state governments subsidies to undertake such projects to provide affordable housing in cities.<sup>126</sup>

For its one million inhabitants and small-scale enterprises, with an annual revenue of close to \$1 billion, the Dharavi Redevelopment project has stoked concerns about loss of livelihood and increasing social exclusion.<sup>127</sup> Severe concerns have been raised around the

- 121 Dharavi Redevelopment Project, Slum Rehabilitation authority, Dharavi – An Overview, <https://drpmumbai.maharashtra.gov.in/en/About-Us/Dharavi-an-Overview> (last accessed on 29 June 2025).
- 122 The Economic Times, Dharavi project: Old tender cancelled, fresh one issued due to impact on economic-financial affairs, Maha tells HC, 24 February 2023, <https://economictimes.indiatimes.com/news/india/dharavi-project-old-tender-cancelled-fresh-one-issued-due-to-impact-on-economic-financial-affairs-maha-tells-hc/articleshow/98213147.cms?from=mdr> (last accessed on 29 June 2025).
- 123 *Renni Abraham*, Dharavi Development: No easy Goal, Business India, 28 July 2025, <https://businesstimes.co/magazine/cover-feature/dharavi-redevelopmentno-easy-goal> (last accessed on 28 July 2025).
- 124 The Economic Times, BJP win in Maharashtra: Breather for Adani's \$3 billion Dharavi Project, 23 November 2024 <https://economictimes.indiatimes.com/industry/indl-goods/svs/construction/n/bjp-win-in-maharashtra-breather-for-adanis-3-billion-dharavi-project/articleshow/115599517.cms?from=mdr> (last accessed on 15 October 2025); CNBC, Adani's fall reignites scrutiny of billionaire's close ties with Modi, 16 February 2023 <https://www.cnbc.com/2023/02/16/adanis-epic-fall-reignites-scrutiny-on-tycoons-close-ties-modi.html> (last accessed on 15 October 2025).
- 125 Dharavi Redevelopment Project, Slum Rehabilitation Authority, About the Development Authority, <https://drpmumbai.maharashtra.gov.in/en/About-Us/DRP-Leadership> (last accessed on 29 June 2025).
- 126 Ministry of Housing and Urban Affairs, Government of India, Public Private Partnership Models for Affordable Housing, September 2017, <https://mohua.gov.in/upload/uploadfiles/files/PPP%20Models%20for%20Affordable%20Housing.pdf> (last accessed on 29 June 2025).
- 127 *Dhwani Pandya / Arpan Chaturvedi*, Indian court dismisses challenge to award of Mumbai slum revamp contract to Adani, Reuters, 20 December 2024, <https://www.reuters.com/world/india/i>

question of rehabilitation, as recent investigations have found that the present slum population is likely to be shifted into accommodations at a nearby landfill, which is extremely polluted and unfit for human settlement.<sup>128</sup>

The Dharavi Redevelopment Project and the modalities of its creation and operation have also drawn criticism on grounds of involving minimal participation from municipalities that function as constitutional representatives of local communities and their needs. Since early 2022, the Brihanmumbai Municipal Corporation's elections have been delayed on account of numerous concerns.<sup>129</sup> This has rendered the only representative local government, bestowed with the responsibility of slum improvement and upgradation, defunct.

The issue of elections is a crucial one. A key feature of the 74th Constitutional Amendment Act is that it affords constitutional recognition to the elected representatives of local self-governments.<sup>130</sup> It is deemed to be one of the only areas where the Amendment has upheld the rights of the local self-governments, as one reason for introducing the Amendment was to ensure the conduct of regular elections and avoid extended supersessions.<sup>131</sup> This right has also been reaffirmed by the Supreme Court, which has stated that no delays should occur in the constitution of municipalities through regularly held elections.<sup>132</sup> The delay in holding elections to the BMC is clearly in violation of the Indian Constitution.

The case study of the Dharavi Redevelopment Project, along with the state government's pursuit of the urban housing mandate in Mumbai, demonstrates how numerous parastatal bodies perform functions assigned to the BMC by the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994, passed to implement the 74th Constitutional Amendment Act. This represents a resistance to meaningful decentralisation or distribution of power by the state government, which is enabled by the faulty textual design of the 74th Constitutional Amendment Act. This also demonstrates the union government's overarching influence on state governments, particularly in the context of urban housing, through numerous policies and recommendations. This facilitates a practice or culture of exercising overarching powers by state governments, by not empowering local governments and employing parastatal agencies, under their authority, to undertake their functions. Therefore, tendencies that are enabled by the union government under

ndia-court-dismisses-challenge-award-mumbai-slum-revamp-contract-adani-2024-12-20/ (last accessed on 29 June 2025).

128 Indian Express, Reclaiming Deonar landfill, moving a mountain, 13 June 2025, <https://indianexpress.com/article/opinion/editorials/reclaiming-deonar-landfill-moving-a-mountain-10063658/> (last accessed on 29 June 2025).

129 Financial Express, Delayed and disputes – What's holding up BMC elections 2025?, 20 May 2025, <https://www.financialexpress.com/india-news/delayed-and-disputed-whats-holding-up-bmc-elections-2025/3850950/> (last accessed on 29 June 2025).

130 Article 243R, Constitution of India 1950.

131 *Idiculla*, note 69, p. 45

132 *Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad*, (2006) 8 SCC 352: SC, para. 20.

the quasi-federal structure are also facilitated and practised through faulty decentralisation measures by state governments. The analysis of Mumbai and its Dharavi Redevelopment Project exemplifies how, despite having a federal constitution with federal principles, the operation of its governance does not demonstrate the existence of a federal government.

## II. Bogota

In Bogota, the administrative and fiscal decentralisation operationalised after the enactment of Colombia's new constitution has been very distinct from Mumbai.

Bogota's transformation into the massive urban centre that it is today started in the 1950s. In 1954, Bogota underwent an institutional process of absorption of six neighbouring municipalities to form the current structure of present-day Bogota City. This led to the rapid expansion of existing urban services and infrastructure networks to integrate them into the city's functional and economic structure. However, a lack of sufficient interconnectedness led to the city expanding its periphery, characterised by precarious housing that was disconnected from other public services and infrastructure, such as electricity, sanitation, and transportation.<sup>133</sup> These developments were exacerbated by the persistent armed struggle, resultant forced displacement, and rural to urban migration, creating strain on the existing urban infrastructure, especially housing provisions in Bogota with its population increasing almost tenfold between 1950s to 1990s.<sup>134</sup>

Bogota's crucial role in the country's political and economic relevance led to numerous administrative reforms devolving upon it greater power. This involved creating parastatal agencies in Bogota that pursued national agendas and priorities at the municipal level. Ultimately, to ensure a better administrative balance, decentralisation as a governance strategy was adopted with the hope of bringing the government and the people closer to enable effective local administration informed by local needs and preferences.<sup>135</sup>

Since the passing of the 1991 Constitution, Bogota is governed directly by a democratically elected mayor for a four-year term. Even though the city falls under the department of Cundinamarca, as the capital city, it is granted the status of a special district, which gives it more autonomy than the other municipalities. For instance, Bogota is governed by the Mayor together with the City Council, which consists of elected Councillors. However, after the enactment of the Organic Statute in 1993, the role of the Mayor of Bogota was expanded, granting the Mayor significant autonomy and flexibility in administering the city while limiting the power of the City Council with respect to passing laws and

133 Luis A. Guzman / Daniel Oviedo/ Juan Pablo Bocarejo, City Profile: The Bogotá Metropolitan Area That Never Was, <https://discovery.ucl.ac.uk/id/eprint/10042955/1/City%20Profile%20Bogota%20V8.pdf> (last accessed on 29 June 2025).

134 Ibid.

135 Ibid.

supervising the actions of the executive.<sup>136</sup> Hence, decentralisation in Bogota took the form of not just creating locally elected bodies and an executive head, but also empowering the executive head to respond directly to its people by minimising bureaucratic challenges created by liaising between multiple centres of power. In addition to the Mayor and the City Council, Bogota is also classified into 20 local administrative units that operate under the supervision and control of the Mayor with limited responsibilities.<sup>137</sup> This governance of Bogota under a democratically elected, representative Mayor, responsible for executive functions of the city is in sharp contrast with that of Mumbai, where the local government of BMC is helmed by the Mayor as a titular head, with little to no executive powers to govern the city and its people.

The administrative devolution of power to Bogota was complemented by simultaneous fiscal decentralisation. The 1991 Colombian Constitution, set up a revenue-sharing system categorised on the basis of sectors, designed to increase over time.<sup>138</sup> However, this created limitations for local governments when it came to managing their expenditure. In the case of Bogota, this challenge was addressed by the Organic Statute of 1993, which, along with greater political and administrative autonomy, also gave it greater fiscal autonomy. Bogota was able to, therefore, expand its tax base and increase several tax rates while improving its tax management system to ensure a reduction in its debt burden and an improvement in investments in public facilities.<sup>139</sup>

Therefore, the Mayor of Bogota exercises control over almost all public services, including transport, health, housing, education, and environmental policies.<sup>140</sup> This unilateral control of multiple functionaries has proven to be very useful in addressing the housing crisis in Bogota. A key approach adopted by Bogota's local administration was to understand that issues of urban planning were intertwined with one another, and that a holistic approach involving multiple public facilities would have to be adopted in order to create any improvement. In the context of housing, a major challenge was existing informal settlements that were split from the cities "legal limits" making them devoid of other public facilities such as transportation and sanitation.<sup>141</sup>

A key strategy adopted in Bogota was the plan to formalise or legalise the informal settlements. This included bringing them within the realm of formality by connecting them

136 *Alan Gilbert*, *Urban governance in the South: How did Bogotá lose its shine?*, *Urban Studies* 52 (2015), p. 669.

137 LSE Cities, *Urban Age, Governance Structure, Bogota*, <https://urbanage.lsecities.net/data/governance-structure-bogota> (last accessed on 29 June 2025).

138 Transitional Article 61, Constitution of Colombia (1991).

139 *Annalisa Fedelino*, *Making Fiscal Decentralisation Work, Cross-Country Experiences*, International Monetary Fund 2010, <https://www.imf.org/en/publications/occasional-papers/issues/2016/12/31/making-fiscal-decentralization-work-cross-country-experiences-23731> (last accessed on 29 June 2025).

140 LSE Cities, note 137.

141 *Eslava*, note 85, p. 21.

to other public or civic measures, by the expansion of transportation networks to these neighbourhoods, allowing inhabitants spatial access to the city.<sup>142</sup> Another key strategy was to improve access to clean water and sanitation in these informal settlements. Significant investment was undertaken in these areas to modernise and expand water supply and sanitation networks to increase their quality, coverage, access and reliability. Inter-agency cooperation in Bogota across its administrative system was attributed for the success of undertaking such a task.<sup>143</sup> A combination of such initiatives has not only helped reduce informality but also improved the overall quality of life of city dwellers. In addition to relying on public resources, decentralisation also facilitated engagement with private entities to provide public services. One of the earlier instances of private sector intervention in providing public amenities in Colombia is the electricity sector, where such measures were adopted to help address the issue of electricity blackouts.<sup>144</sup>

Once again, this experience of Bogota is vastly different from that of Mumbai. Initial slum improvement strategies adopted in India and in Mumbai also focused on providing civil amenities to slums. This strategy was eventually replaced by a slum rehabilitation scheme, which prioritised the use of land as a valuable resource free of slum dwellings, resulting in the displacement of slum dwellers and their loss of livelihood, a problem that continues to be pressing.<sup>145</sup>

Holistic measures were undertaken in Bogota alongside focused measures to address the housing crisis by constructing new houses. The municipal government is also responsible for identifying and habilitating urban land for the purpose of developing social housing projects.<sup>146</sup>

These measures, in combination with multiple other initiatives by Bogota's local administration, have produced positive results in improving the housing crisis in Bogota, primarily in terms of formalising informal neighbourhoods and providing them with public amenities. However, the successes have been relative and must be seen in the light of a larger objective that is yet to be achieved. Housing continues to be a major challenge in Bogota, with highly stratified housing arrangements and continued informal, precarious

142 The Borgen Project, *City Planning and Poverty Reduction in Bogota*, <https://borgenproject.org/city-planning-and-poverty-reduction/> (last accessed on 29 June 2025)

143 World Bank Group, *Better Transport, Water and Sanitation for the Urban Poor in Bogota*, 13 August 2015, <https://www.worldbank.org/en/results/2015/08/13/better-transport-water-and-sanitation-for-the-urban-poor-in-bogota> (last accessed on 29 June 2025)

144 *Gilbert*, note 136, p. 670.

145 *Batra*, note 8, p. 5 and 31; *Ahana Sarkar / Ronita Bardhan*, *Socio-physical liveability through socio-spatiality in low-income resettlement archetypes – A case of slum rehabilitation housing in Mumbai, India*, *Cities* 105 (2020).

146 OECD Urban Studies, *National Urban Policy Review of Colombia*, [https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/05/national-urban-policy-review-of-colombia\\_2c97aa27/9ca1caae-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/05/national-urban-policy-review-of-colombia_2c97aa27/9ca1caae-en.pdf) (last accessed on 29 June 2025)-

housing at the periphery of the city.<sup>147</sup> Irrespective of this, there is immense consensus on the positive effects on the fate of Bogota after the implementation of decentralisation in its governance and administration.<sup>148</sup> The criticisms concern ways to improve administrative and fiscal decentralisation to advance local administration and better provide public services to the local population. They also highlight the limitations of policies like decentralisation in the light of prevalent challenging factors such as armed conflict, global economic policy challenges and social cohesion in a divided society.

Despite these challenges, the decentralised governance of Bogota displays concerted efforts to address the challenge of urban housing. Decentralisation, as envisaged in the 1991 Colombian Constitution, was not only textually designed for effective implementation, but subsequent actions of the Colombian government ensured that its spirit was also preserved, and objectives meaningfully pursued. In Mumbai, on the other hand, the improper implementation of decentralisation caused the urban housing mandate to become entangled in a complex web of governance structures, ultimately fragmenting the agenda and resulting in limited success.

## F. Conclusion

The analysis of decentralisation's features and its implementation in pursuing the urban housing agenda in Mumbai and Bogota demonstrates divergent results. It can be argued that efforts aimed at addressing urban housing challenges in Mumbai have yielded limited success, largely due to the city's complex and overlapping governance structure. Observations drawn from the analysis undertaken are twofold. First, it highlights a clear limitation in the textual design of the 74th Constitutional Amendment Act of 1993, which fails to confer real power on urban local bodies despite granting them constitutional recognition. Second, it exposed the failure of the state governments to embody the spirit of the 74th Constitutional Amendment Act and respect the objectives behind its enactment. While this is a clear shortcoming of the state governments, this is also telling of the federal structure that has evolved and the federal culture that is being practised in the country. Its central bias has evolved into a federalising approach, where the central government appears to take primacy over the other two tiers of government. The example of the housing crisis in Mumbai is a useful illustration of this. The aforementioned explanation of Mumbai highlights how the state government serves as a facilitator of urban planning policies established by the central government. These policies are often released as reports or recommendations, suggesting changes in the governance of cities without undergoing any deliberations in the Parliament or the state legislatures. This not only creates a de facto supremacy of the centre in matters of urban planning and governance, which are clearly assigned as functions to local

147 *Angélica Patricia Camargo Sierra / Alex Smith Araque Solano / David Holguin Lozano*, Understanding urban densification in Latin American cities: determinants of the production of built space in informal areas in Bogota (2007-2018), *Cities* 148 (2024).

148 *Eslava*, note 90, p. 309.

governments, but also violates the principles of democracy, including representation and accountability. These factors collectively have reduced decentralisation to a truism instead of a possible reality.

Additionally, the resistance of state governments to cede power and resources under the 74<sup>th</sup> Constitutional Amendment Act is also reminiscent of the union government's tendency to centralise power, which has acquired increasing legitimacy within the framework of quasi-federalism.<sup>149</sup> This framework accepts the lopsided sharing of power between the union and state governments in a federal constitution, to the advantage of the union government.

As mentioned earlier, in his assessment of federations in different parts of the world, Prof. Wheare recognised two terms—the federal constitution and the federal government.<sup>150</sup> India's consistent institutional and judicial legitimisation of centralising tendencies raises concerns about whether it constitutes a valid federal government or only a federal constitution, or neither.<sup>151</sup>

This terminology can also be adapted to undertake an appraisal of decentralisation in India. To determine this, the following features of decentralisation need to be assessed:

1. Does the constitution clearly devolve power, function and resources to the local government to undertake its duties?
2. Does the implementation of the constitutional provisions of decentralisation fulfil the rationale of decentralisation – facilitation of effective provision of public goods, and deepening of public participation in democracy?

As discussed at length earlier, in India's context, the text of 74<sup>th</sup> Constitutional Amendment Act vests in the state government the authority to create local governments, devolve powers and financial resources to them to operate meaningfully, thereby failing to establish an inherently strong system of local governments. Due to this textual limitation, state governments exercise considerable discretion in following the mandate of the 74<sup>th</sup> Constitutional Amendment Act, which has also earned the approval of the judiciary. Such exercise of discretion, alongside an increasing tendency to resist sharing power between tiers of governance, does not facilitate the effective provision of public goods and services to local citizens and does not encourage their direct representation in governance, thereby deepening democratic participation.

Therefore, the textual design of the Indian Constitution, following the enactment of the 74<sup>th</sup> Constitutional Amendment Act, creates a decentralised constitution in a limited manner. The implementation of this limited decentralised constitution is also marred with

149 In Re: Article 370 of the Constitution, 2023 INSC 1058.

150 *K.C. Wheare*, *Federal Government*, Oxford 1963.

151 *Sharma*, note 24, p. 19; *S.R. Bommai v. Union of India*, 1994 AIR 1918, para. 275; *M. Karunanidhi v. Union of India*, AIR 1977 MAD 192, para. 32.

inconsistencies and resistance to effectively sharing power, thereby failing to create a decentralised government.

In Colombia, on the other hand, the constitutional design reveals a clear commitment to decentralisation, not only as an aspiration but as an administrative strategy that is enabled by provisions elucidating the clear devolution of power, functions and resources to local governments. The operation of its local governments demonstrates the effective implementation of these decentralisation provisions, facilitating the provision of public goods and services to local citizens and deepening public participation in democracy through direct representation and participation in governance. These features suggest that Colombia has both a decentralised constitution and a decentralised government.

The findings of this assessment are validated by the case study of the pursuit of the urban housing agenda in Mumbai and Bogota. As urban housing continues to be a significant challenge in both these cities and their respective countries, its analysis helped identify how the implementation of decentralisation measures can successfully address challenges of urban housing, as seen in Bogota.

However, this is not without its challenges. The increased presence of private entities has generated anxieties about the neglect of community interests and public goods. This is exacerbated by increased records of corruption in local administration, which is seen as a shortcoming of the autonomy granted to entities like the Mayor in Bogotá as part of decentralising efforts. Despite this, opposition to decentralisation in Colombia remains minimal. It is widely deemed the most suitable way to revitalise nation-building in Colombia.<sup>152</sup>

In Mumbai, however, the possibilities of harnessing the strengths of decentralised governance remained unexplored due to the complexity of its governance structures, discussed above. It, however, remains to be seen if political developments and economic motivations in the urban polity will eventually bring about a change in this.



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152 *Eslava*, note 91, p. 307.