



Looking Back at 25 Years: A Review of 74th Constitutional Amendment Act

A National Level Roundtable

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Report Collective:

Indo Global Social Services Society

Editing, Rewriting and Creative Inputs:

Sreshma Anitha, Varun Ramesan, Siddhant Parisicha

Report Lead:

Evita Das

Design:

Manoj M Hodawadekar

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A National Level Roundtable

Prepared by:

Indo-Global Social Service Society (IGSSS)



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October 2019

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Acronyms

AGM-	Annual General Meeting
AMRUT-	Atal Mission for Rejuvenation and Urban Transformation
CAA-	Constitution Amendment Act
CPL-	Community Participation Law
DDA-	Delhi Development Authority
DPC-	District Planning Committee
EC	Election Commission
FC-	Finance Commission
FDI-	Foreign Direct Investment
GDP-	Gross Domestic Product
GHMC-	Greater Hyderabad Municipal Corporation
GST-	Goods and Services Tax
IMF-	International Monetary Fund
IT-	Industrial Township
JNNURM-	Jawaharlal Nehru National Urban Renewal Mission
KMA-	Karnataka Municipal Act
LBT-	Local Body Tax
MLA-	Member of Legislature Assembly
MPC-	Metropolitan Planning Committee
PMAY-	Pradhanmantri Awas Yojana
PRI-	Panchayat Raj System/ Institution
SCM-	Smart Cities Mission
SEC-	State Election Commission
SFC-	State Finance Commission
SPV-	Special Purpose Vehicle
SC/ ST-	Schedule Caste And Schedule Tribe
ULB-	Urban Local Bodies
ULG-	Urban Local Government
WC-	Ward Committee
YUVA-	Youth for Unity and Voluntary Action

Acknowledgements

IGSSS acknowledges this report as a joint effort of numerous individuals. This report captures the trajectory of urban governance in the past 25 years, wherein an attempt has been made to evaluate the gaps and challenges faced while interacting with governance structure. After numerous discussion, it was realized that a national level roundtable should be organized in Bangalore to learn, reflect, share on the localized efforts taken place in different states. The notable contribution came from Vinay Baindur, Sitaram Shelar, Mathew Idiculla in conceptualizing, designing the roundtable framework and connecting to eminent activist, academician and practitioners.

Within IGSSS, we wish to thank our interns who have contributed immensely to the report. Firstly, Siddhant Pasricha who studied the document and made relevant inferences. Secondly, Aayush contributed in setting up the document chronologically. Most importantly, extending solidarity and thanks to Periyanaingam, external consultant in Bangalore office, without whom arranging a two-day consultation would not have been possible.

We are hopeful that this report will give us an insight how we have moved in these 25 years of commencement of 74th Constitutional Amendment Act and how strategically we need to move forward while we engage with urban governance in different forms and practices.

IGSSS

Urban Poverty Reduction Team

Foreword

I am glad to write a foreword to the conference held by IGSSS, reviewing the 25 years of the implementation of the 74th constitutional amendment that directly effected governance in cities. For the first time after independence a mandatory constitutional mechanism was evolved to ensure three tiers of governance; centre, state and local body, which included the rural bodies. The basics of this constitutional provision was for a timely election of the city governments along with empowerment, both political and financial. Though there were aspersions casted during the inception of the 74th constitutional provision that it is part of the neo-liberal economic reforms, which meant generating the resources to manage the cities within themselves by levying user charges etc., however a positive part of the amendment was to ensure regular elections of the city governments. Hence to some it appeared as a 'dead horse' since beginning.

Nevertheless, cities came to focus and more and more demands from the citizens started emanating. For better utilities, better services and governance, the cities started raising voices. There were different models adopted in the country to govern the cities. Some of the models are quite democratic where the elected city governments could steer the city and were not mere apparels of the bureaucracy. For example, the model of a Mayor in Council(MIC) in West Bengal, which was then followed by Madhya Pradesh; brought in a new paradigm of urban governance where the MIC acted like a state cabinet. Similarly models of financial

empowerment practiced through the people's plan in Kerala is another model where 40 per cent of the planned budget of the state directly goes to the urban and rural local bodies.

But, urban development being a state subject, the respective state's decided through their own wisdom, the method of urban governance. In some states like Haryana the bureaucracy actually controls the cities and even has the power of recommending the dissolution of the office of the mayor. Similarly, in some states a directly elected mayor was practiced in Uttar Pradesh, Uttarakhand, MP, Himachal and Rajasthan. Rajasthan and HP reverted back to the indirect form of elections. The debate to have a directly elected mayor in the cities finds credence as it is also part of the 74th constitutional amendment. The baseline has to be that it is the institution of the elected council and the mayor that should be empowered and should be liable in the city governance model.

Under the 12th schedule there are 18 functions that were to be transferred to the cities for management and administration. While reviewing the 74th constitutional amendment through a task force of which I was also a member, which was chaired by K. C. Sivaramakrishnan, we found that actually the cities are run by parastatals and a bunch of consultants who are ruling the roost. Not only the functions to the city governments are ambiguous; a review conducted by different research groups of 25 different cities of three Hindi speaking states provided an interesting picture. It showed that of all the functions, only

two were universal with all the 25 cities; these are registration of birth and death and solid waste management.

The 74th constitutional amendment needs to be updated for the simple reason that issues like migration in cities, street vending, urban poverty, homelessness etc., are not even discussed in the scope of the 74th amendment. Hence it needs to be strengthened. But what we find is further dilution of the amendment especially after the JNNURM reforms and the smart city mission(SCM) and AMRUT missions. Some of the observers have termed the SCM equivalent to writing an obituary of the 74th constitutional amendment. The SCM, which is supposedly to be the lighthouse of urban governance of the incumbent government at the centre, works on a business model of executing the projects through the special purpose vehicles(SPVs). These SPVs are managed and run by the bureaucrats or officials of the world bank instead of the city council. Interestingly, the SPV can easily bypass the elected city council and is not even answerable to it. Lots of criticism and contradiction has evolved in the process of SPV governance within the cities.

A new chapter to urban governance which is considered to be a vision for the ensuing 10 years of urban development in the country is being added in the form of National Urban Policy Framework(NUPF). Hardly anybody in the urban realm is aware of the NUPF and its guidelines which are supposedly to steer the country forward. There are some inherent problems with the basic principles of the NUPF, which needs to be discussed and debated thoroughly amongst the urban fraternity including the elected institution.

The useful features of 74th amendment; like the permanent tenure of the city governments, and regular elections after five years needs to be consolidated. The further consolidation must be done in the formation of the district

and metropolitan planning committees so that the city governments are entrusted the task of overall planning. A continuous engagement of city governments and other interested groups has to be laid to ensure that the city governments are empowered not just politically but even financially. Ultimately it is not the city government but the people at large who must taste the fruit of democratic decentralisation. A consistent engagement with the CSOs and other groups is required for working out plans for gender budgeting within the cities and ensure that the most marginalised groups residing in the cities are taken care of.

Tikender Singh Panwar

Urban Governance Expert & Former Deputy Mayor Shimla

Introduction

India is a diverse country which has been experiencing an exodus of citizens from rural to urban areas and also the urbanization of erstwhile rural areas. Hence, a need for strengthening the representation of people at the very grassroots of democracy, the 73rd and 74th Constitutional Amendments were added. The 73rd and 74th CAAs (constitutional amendment act) **conferred constitutional status** to local governance bodies. Prior to these amendments, the constitution recognized only states as subnational entities

The primary objective of the 74th amendment was to **strengthen democracy at the grass-root level through ULG (Urban Local Governments)**. In a democracy, every person has the right to express their opinions on issues related to the development of their area. This is possible only through decentralization of power. To strengthen the position of urban governance in a more organized manner the Government of India took a pivotal initiative through the enactment of the 74th constitutional amendment act. The 74th amendment is applicable to local governing bodies in the urban areas. The 74th CAA was passed by the parliament in December 1992 and came into force on June 1, 1993.

The secondary aim of the amendment was to increase the participation of public representatives in the development work of the cities. As per article 243-W, all municipalities will be empowered with such powers and responsibilities as may be necessary to enable them to function as

effective institutions of self-governance. Article 243-Q of the constitution provides for establishment of three kinds of municipalities of every state, namely **Nagar Panchayats** (For rural areas undergoing transformation to becoming urban areas), **Municipal Councils** (For smaller urban areas) and **Municipal Corporation** (For large urban areas).

All members of the municipality are to be directly elected by the people of the municipal area. The municipal area is divided into smaller territorial constituencies known as wards for the purpose of the election. Each of these wards is represented directly by the members via elections. Article 243-R of the constitution states that the process of election of chairpersons of municipalities is to be specified by the respective state governments. Reservation of seats for the Scheduled Castes and Scheduled Tribes in every municipality/corporation must be provided in proportion to their population to the total population in the municipal area. Every Municipal Corporation has a term of 5 years and elections are held after the expiry of each term. An election to constitute the corporation must be completed within six months from the date of the dissolution of a municipal corporation.

Article 243-ZA talks about the State Election Commission which is responsible for conducting these elections. The State Election Commission is independent of the Election Commission of India. One of the most important features of this amendment is the constitution of the finance commission under

article 243-I, under which the commission makes recommendations regarding the sharing of finances between state and municipality. It also suggests ways of improving finances and determining grants and aid. The finance commission constituted under article 243-I also review the financial position of the municipalities and make recommendations to the governor. In addition to this, the act has also added the XII schedule to the constitution. It contains 18 functional items of municipalities listed under article 243-W. The items include urban planning, financial & social development, urbanization, regulation of land use, roads & bridges, water supply, public health etc.

Review of 25 Years of Governance

74th amendment to the Constitution was meant to empower ULG's with decision-making abilities, revenue generation, and independence in expenditure. In terms of fiscal independence or autonomy, ULG's have certainly done better than their rural counterparts, however, no Indian city can still match any of the metros in developed countries even after 25 years of structural change.

While State Governments across the country speak of the need for implementation of the 74th CAA, enough has not been done to implement it with few exceptions like Kerala and West Bengal. The Union Government's agenda to motivate the States into enforcing the 74th Constitutional Amendment Act, and participatory governance mechanisms, made the availability of JNNURM funds dependent on compliance with decentralized governance such as the enactment of a (Model) Nagar Raj Bill (Community Participation Law) and a Public Disclosure Law. The smart city agenda was taken up in 2015 while discussions on participatory governance are increasingly being side-lined.

June 2018 marked 25 years to the passage of the 74th CAA. It is a saddening affair that apart from a few States, the law has hardly been implemented. It is the need of the hour to think through the gap between the intent of this legislation and the implementation.

A review of the role of participatory governance and social justice achieved by 74th amendment also had to be performed involving interactions by eminent persons from various fields of work such as governance, finance, administration, environmental issues, policy researchers and academics. Individuals from across disciplines collectively shared data acquired by them on localized efforts taken in cities, understanding the intersectionality of governance in present times.

Sessions

1. The Idea of 74th Amendment and Current Status of the 74th Amendment

The panelists of the session, that was chaired by Lalitha Kamath, Associate Professor at Tata Institute of Social Sciences (Mumbai), were Leo Saldanha from Environmental Support Group (Bengaluru), Mathew Idiculla from Centre for Law & Policy Research (Bengaluru) and Soumyadeep Chattopadhyay who teaches at Vishwa Bharati University (Shantiniketan, Kolkata)

Political Empowerment:

Article 243 makes direct elections mandatory for all the seats in the municipal council, and as per article 243-K & 243-Z(a.). The state election commission has been entrusted with the task of supervising the municipal election process. However, if we take note of the implementation process, it clearly appears that many states have not adhered to mandatory provisions of holding regular elections as mentioned in 74th CAA. For instance, the city of Vishakhapatnam & Chennai has not held municipal elections since 2011 & 2006.

Very low voters' turnout in municipal elections has been observed, reason being: preparation and updating of urban electoral rolls, conducting elections, and delimitation and reservation of voters are managed by multiple institutions making the process highly unaccountable. In the context of municipal bodies, ULG's are in mandate with reservation for women & backward castes, and this is problematic because the process is not transparent and accountable. The entire reservation system results in a lot of litigations,

which contributes to delay in the municipal election process. For example, the elections were delayed by five years in the Hyderabad Municipal Corporation because the state government did not provide updated rosters to the state election commission.

Fragmentation of political authority:

Article 243-R states that the state legislature provides the process for the election of a mayor, but the roles and functions of the mayor are not clearly defined. The details of the provisions have been left to the discretion of the state governments. As per the CAA, the fixed tenure of municipal governments is of five years, although the tenure and mode of election of mayors varies from state to state. In states like Rajasthan, Uttar Pradesh, and Bihar mayors are directly elected for five years, whereas in metropolitan cities like Bengaluru and Delhi mayors are elected indirectly for a period of one year, and in Mumbai, mayors were elected for a period of two and half years.



The provision of direct elections of mayors is problematic in the context of India because under the parliamentary system it may happen that the council of members may be elected from a certain political party, and the mayor may happen to be elected from a different party, in which the municipal decision making process can become cumbersome. The non-occurrence and poor participation in the AGM (Annual General Meeting) prove detrimental to making ward committee a deliverable body. A few members dominating the decision-making process, lack of awareness and non-availability of information among urban citizens, and politically motivated nominations of members defeat the very purpose of transforming the ward committee as an apolitical body.

Incomplete functional devolution:

Functional devolution of powers allocated to the ULG's can at best be deemed partial, as the state government executes the implementation. Most of the functions mentioned in the XXII Schedule already form a part of the state list in the VII Schedule. Typical state responses have been creating parastatal agencies and SPV's (Special Purpose Vehicle) to purvey some of the specified municipal functions as regard to delegation of power to municipal bodies. Fragmentation of governments with multiple entities operating at the city level is problematic. In the case of Municipal Corporation of Greater Mumbai (MCGM), which is responsible decision-making cities development but it lacks many substitute powers related to urban planning & land use. It does not have any independent authority to lease land & to raise revenue independently.

Considering the case of water supply, the government of India is the biggest funder, but it does not directly influence the implementation, rather it exerts influence through various stakeholder. The Central

Public Health Engineering & Environmental Engineering organization, that writes down the norms & technical standards for any projects related to urban water supply, however, under the 74th Constitutional Act, ULG's are entrusted with the charges of water supply.

The XXII Schedule does not distinguish between the various categories of ULG's. The functional domain of larger municipal bodies, such as Ahmedabad & Lucknow, is same as the functional domain of any transitional or smaller municipalities like Solan in Himachal Pradesh & Angul in Odisha. The one size fits all model is found to be difficult to implement due to the varied characteristics of different urban areas in India.

“The need for mayor and council, under whom serves the commissioner and municipal bodies should be empowered with all the above departmental sectors and smart city SPV should function under the municipal corporations as to ensure the democratically elected local self-government's say in the local decision-making process” – Soumyadip Chattopadhyay

Financial Disempowerment:

The 74th Amendment Act does not mention the handling of revenue for the municipal bodies and has resulted in problems associated with finances of the ULG's. Article 243-Y, which requires the state to set up the state finance commission and the insertion of 3(c) into Article 280 which requires the central finance commissions to make recommendations for augmenting the consolidated fund of the state. Many state governments have failed to constitute state finance commissions and there is an absence of a universal and acceptable methodology. The state government enjoys the discretion in the devolution of functional responsibilities which makes it difficult for the central financial commission to provide any concrete

suggestion. All the government entities depend heavily on the inter-governmental grants; at the same time, these grants are often inadequate & discretionary in nature. All these results in the poor financial health of ULG's.

ULG's should be given fiscal autonomy in order to set their own tax rate and identify sources of revenue. The benefits of public services are measurable and accrued to identifiable individuals within the given jurisdiction. Further, it is important to ensure the timely constitution of the state finance commission and to develop proper norms for estimating expenditure needs, and crucially time synchronization of the constitution of SFC's, submission of the report, and preparation of the implementation report to the SFC's on a timely basis.

Saldanha noted that the efforts to implement the 74th Amendment Act was largely unfinished business which made it essential to probe into the reasons of its happenings. Kerala & West Bengal were the most talked-about models of municipalities, but gradually the lumpenisation of politics was also taking shape in these two regions.

The politics of Karnataka, for instance, defined most elected representatives (MLAs) from rural areas while highly urbanised centres like Bangalore played a major role in shaping power at the state. The focus in 80s narrowed down on appointment of the commissioner, who would be expected to effectively manage the municipality, which gave rise to numerous commissioners. These commissioners campaigned for proper water supply, city clean-ups & fixed public transport in a centralized manner. Thereby, centralization & privatization caught up as parallel processes in India.

The union urban development minister, in 1992

presented a highly compromised version of the Act that was accepted in the Parliament. It comprehended the complexities of urban governance and variations in how cities were governed. There was a mayor and council system; Chennai gave strong power to the Mayor, and Bangalore gave weaker power to the Mayor. There was the Rippon Doctrine, which constituted of representatives where states like Kerala, or West-Bengal got the upper hand, on the other hand, we had Mayor doctrine like in Bangalore that had a ritual mayor. So, the 74th amendment became a ritual and taking into consideration that huge financial inputs of that time. The 74th amendment constitutes of reservation, representativeness, ground-up planning, etc. but their visions are not what the elite wanted. The type of investment decisions that took place at that time was based on a competitive paradigm. There was no real representativeness or understanding of what finance does to cities, in fact, the chief ministers were not seen as people who were accountable to an electorate. In Karnataka, groups like Janaagraha which started promoting urbanization were given the prime seat in power, and groups that opposed and pushed for decentralization and devolution of power were kept on the side-lines. The understanding of the vision of the 74th Amendment was skewed, and their efforts at creating a 'world-class' city was often found exclusive to their experience of urban planning in the United States. Be it the work of H.D. Gowde in 1995, followed by S.M. Krishna from 1999 to 2004, were modelled on a way of thinking that preferred parastatals to run the city, and these parastatal imaginations were not necessarily woven out of urban planning and governance-centric discussions, but can be seen to be outcome of the green revolution, and of the irrigation projects. Despite complex amendments, state governments were unwilling to give up on parastatals, as it entailed ceding power by

existing bureaucrats and politicians, in the case of Panchayat Raj System, states had already implemented the system, and the Amendment to the Act followed suit. By the 80's states such as Karnataka, Kerala & West Bengal were way ahead of other states leading the way for the rest to catch up. Cities were neglected and the course correction provided by 74th Amendment was undertaken ritualistically, which was followed by foreign direct investment, and external suggestions to transform urban spaces to 'world-class cities', which we now know as smart cities. A slippery situation is enabled where divisiveness is aggravated and is expected to reach unprecedented levels in creating world-class cities.

Article 243-Z(e), states that planning should begin from the ward committee level upwards. Instead, the system functions top-down, and the proposals follow suit showing the ritualistic treatment of the 74th Amendment. The process is still at its early stages with the primary goal being to get the constituting ward committee right. It is the mayor who is delegated the power to exert pressure on the commissioner to ensure such provisions are instated on the ground. It certainly should not require citizens to submit such petitions to initiate change. The speaker closed the speech on the note that researchers and activists working on urban issues are required to reconsider ways of deconstructing structures of power.

There are multiple ways of looking at the 74th Amendment, but Idiculla focused on three questions primarily. The questions that were examined were: the need and crucial role of 74th Amendment, why ULG's continue to weak despite 25 years of the Amendment and ways in which governance should be organized for the future could be rethought.

corporations to derive its power from this provision in the constitution, earlier the power was delegated to municipalities by the state legislatures. It is interesting to note that very few national constitutions have provisions for local governance. For instance, the US & many of the EU countries constitutions are devoid of such clear provisions for local governance and taking US case law in which local governance derives its powers from the powers of the state government. 74th Amendment shifted the base from which the local governments draw power, enabling derivation of power directly from the constitution, instead of being directed through the state law. The Indian Constitution in 1950s hardly had any mention of local governments but was enlisted as item 5 in List ii- (Seventh Schedule) under 'local governments' which meant that local governments are state subjects. Also, the provision of Article 40, a directive principle of state policy which talks about empowering village panchayats, but the 74th Amendment essentially mandated the constitution of urban local governance in all urban areas. It is not a discretion, but instead the Statement of Object & Reasons that the 74th Amendment gave, which included local elections not being conducted, improper functioning of local bodies, lack of devolution of power, all of which changed with the introduction of the 74th Amendment which clearly mandated the constitution of urban local governments.

The debate centres on the question of the implementation status of the 74th, despite the good provisions that it contains. The second question is about tracing out the reasons behind the existence of weak local governments in present times. There are multiple ways of looking at "implementation failure". One is, the inherent limitations of the 74th Amendment which hinders it from being a powerful institution, and secondly, even though there are provisions, are not implemented properly.

The 74th Amendment provides for municipal

One key limitation is that many of the key provisions of the 74th Amendment are ‘may’ provisions which are left to the discretion of the state. The three lists, that is the central list, state list and the concurrent list wherein the provision involving the division of power remains within the domain of centre and state while only some subjects included in the state list are culled out for the local governments. This does not imply that what exists in the state cannot be taken up by the local governments, but that some of the powers may be devolved by the state to the local governments. Thus, it cannot be easily said that we have a three-tier federal system, as we clearly find two units of government functioning, subordinated by a weak half-unit, as the structure of governance.

The 73rd Amendment provided for a multi-tier local government system, comprising of panchayats at the village, taluk, and at the district level, whereas the 74th Amendment provides for a one-tier system, and this often seen as a barrier in the context of big cities where multiple levels of complexities exist. The functions under the XXII Schedule are not often not devolved to the local governments hence they do not possess independent powers. In addition to this, 18 functions enlisted in the XXII Schedule are not found to be comprehensive. The other inherent issues in the 74th Amendment is that some of the key functions are not included in the XXII Schedule. Other limitations include the absence of a Gram Sabha equivalent in the cities and the Industrial Township Exception which makes it mandatory for all urban areas to constitute local self-governments, except in the case where areas have been demarked as industrial townships by the state governments. The absence of separate tax and finance domain and the absolute control by the state finance commission is yet another inherent limitation.

The genesis of the 74th Amendment never broke ground as a bottom-up people’s movement. There was a significant push for the 73rd Amendment that provides for a Panchayat Raj, but this was missing in the case of the 74th Amendment, which remained an afterthought, after the first draft of the 73rd was prepared in 1986, only to be replicated thoughtlessly for urban areas. The drawback in this scenario is a lack of ownership, and unless local governments and citizen groups exert pressure from ground up, the failures of the top-down structure permeate all areas of urban life. Global groups like C-40 which are city-wide networks working globally, but we have no city-wide local government networks which are crucial for better functioning. This is necessary to phase out the existing ways of merely executing the orders by the state government.

Thus, it is critical to chalk out our priorities, because most of the civil society organizations and the elite rhetoric are related to establishing ward committees and Metropolitan Planning Committees (MPC’S), and the demand for empowering the local government has been absent from most discussions. It is important that we steer away from solely referring to MPC’s & ward committees in our discussions but moving forward the core body of the local government should be the point of departure henceforth. There have been suggestions to include further amendments, such amending the Article 243 Part 9A which was added in the 74th Amendment. If an amendment is to be made, what are the principles guiding such a step that drive urban governance reform? Therefore, this proves to be an instrumental starting point to instigate such discussions for the future.

2. Role of Participatory Government Mechanisms

The panellists of the session was chaired by Sitaram Shelar, Centre for Promoting Democracy (Mumbai) were Raju Bhise, Right to City campaign(Mumbai), Kathyayani Chamraj, Civic Bangalore(Bengaluru) and Marina Joseph, YUVA (Mumbai).The panel discussed the idea of participatory governance. The key points of the discussion revolved around moving towards direct engagement of people in policy decisions from merely having representatives to do so, the role of people in the gradual process in achieving participatory governance and the way forward to propose and critique to enable people-friendly governance.

Bhise opened the discussion with the idea of participatory urban governance being an unaccounted aspect of decentralisation. The participation includes accepting suggestions and not decision-making process. It is important to focus on right term, as decentralisation would be effective when citizens are stakeholders to the process. The most important function in participatory decentralised governance is to ensure equity in resource distribution. To work on a multiplicity of issues in the urban space is an inherent motivation of this form of governance, and the roots of all these can be traced back to resources. The second issue in cities, is that of ownership. Participatory decentralised governance is of critical importance to strengthen the democratic process by creating 'ownership' & strengthening 'citizen rights', especially for weaker sections.

“When rights are denied, it aids corruption in society. Access to rights, and control of systemic corruption can be achieved by participatory self-governance, wherein there is greater transparency in the decision-making process, which the people

can claim a stake in and ensure quality control.” -Raju Bhise

The most importance issue with respect to municipal urban governance, is the need to re-structure the existing urban governance structure which is one-tiered and centralised. For instance, the budget allocated to the Zilla Parishad may be considerably less than that cumulatively allotted to gram panchayats. Therefore, the functions and functionaries may be greater at the village panchayat level, it is this three-tier system that is required to be adopted in the urban areas. Activists and researchers need to work towards breaking the existing power dynamics in cities. Three major challenges exist in establishing a participatory urban government: firstly, administrators are wary of devolving powers to elected representatives, secondly corporators are wary of the same devolving power, and thirdly, people are not ready to invest their time and money. The role of active citizenship is to be strengthened and the attitude of corporators need to change to improve the quality of participation and establishment of accountability.



Further, economic independence which is a prerequisite for establishing a strong participatory decentralised government, entails greater powers for the local bodies to negotiate with state governments and curbing party politics. Local Bodies have become weaker due to GST replacing LBT. Therefore, capacity building of local bodies

in this regard is vital.

Participatory Democracy is to be actualized as it can be achieved at the grassroots levels or ward levels. It has been an uphill battle to even initiate municipalities to devolve powers downwards to the ward committees, but the implementation has not been possible after 25 years of work.

Chamraj emphasized on the 'may' clause in the XXII Schedule, which states that functions which 'may' be devolved to the ULG's. The reason for this clause is that it is not a mandatory bill however the idea was that states could add to it. The chief functions of the municipalities as per the 74th Amendment is to plan for social and economic development and social justice. The very basic requirements for social justice can be found to be overlooked in the 18 functions in the 74th Amendment. There is no mandate present to work at the grassroots level to realize the fundamental rights of citizens. This is because most states have stuck to these 18 functions and devolved power on paper, not initiating any devolution at three levels of functions, funds and functionaries.

The 74th CAA has left the constitution of ward committees up to the states, and most states have been unwilling to empower the citizens, which defeats the purpose the Amendment which is to transfer power to the people. Most states have chosen for nominations as opposed to having elected ward members such as in Kerala, Assam, West Bengal and Bihar. The nominations are primarily by political parties choosing their party workers, as in the case of Karnataka. Over 25 years there are no cases of ward committees functioning continually, but only sporadically under citizen pressure, and wherever they have been found to be present it has been dysfunctional. Ward committees' nominations have been devoid of transparency as well as

clear guidelines. Thus, no democratic process exists even in nomination of members. The court's response to the case related it to the issue of waste disposal rather than looking at it as an issue of urban body governance. Chamraj said that they were in the process of filing a petition that questions the way ward committees have been constituted. Supreme Court judgments such as in the case of the 2G & Coal Gate says that even in the case where they have authority it cannot use it arbitrarily, but clear guidelines must be framed which substantiate the decisions to be taken. Although work has been on in this regard for a long time, little has changed with respect to constitution of ward committees. The purpose of the ward committees was to work transparently and accountably, this purpose was defeated when the court ruled that councillors should nominate ward members, when citizens of Bangalore demanded that notice be taken to their application.

Mr. Arvind Kejriwal during his tenure at the NGO Parivartan had formulated an alternative was called the Nagara Rajya Bill as a model bill for institutionalizing citizen participation. The provisions that were recommended were far ahead and focussed on direct democracy rather than participatory democracy. The 74th CAA was to actualize Gandhi's vision of resurrecting Gram Swarajya which came even before the independence struggle. Nagar Swarajya was an afterthought, that the urban areas also require such self-reliant communities whose livelihood depends and hence local control on local resources and assets.

“Parivartan Bill went far in actualizing that, and the ward committees in addition to the mohalla sabhas should have total control over the properties in their area, and they should have a say in the decision-making process over the properties in their area. They should have a say on any development

work that is initiated in the area, for instance construction of flyover.” Kathyayini Chamaraj.

The panellists also suggested that they should also have the power to penalize the local officials if they are not performing their duty. The mohalla sabhas and the ward committees should be involved in the total planning, implementation, monitoring and social auditing. Thus, total direct democracy was what they dreamt of, but none of this seems to be ideal. In 2005, there was some effort towards promoting participation from the central government, through community participation law under JNNURM. But urban development being a state subject, could not be enforced in all states uniformly. Most states opted for the nomination procedure over election for area sabhas. Karnataka opted for nomination by the councillor of the area sabha representative but in Karnataka State Law an additional point states that if the councillor does not recommend any name, the commissioner must nominate a candidate within 90 days. Neither any councillor nor any commissioner has nominated anyone from the area sabha representative, even though it is mentioned in the act itself. No area sabhas have been notified since the 2011 amendment. Hence there is no participatory democracy at the area sabha level, totally being denied the right to participate. It is accepted in Panchayati Raj, Gram Sabhas are mandatory where at least namesake meetings take place. On the other hand, in many states the area sabhas are not yet even put into the Act and where they have been, they are found to be dysfunctional. The powers of the ward committees and the area sabhas are only recommendatory in nature. Additionally, very few states have devolved finances for their own use and grants have not been given. Whereas in state like Kerala forty percent of the funds is given to the ULG's and they can devolve it further to the ward committees. Also, in the Parivartan Bill of Arvind Kejriwal, there was a provision for

recalling the councillor or the area sabha representatives by having no-confidence motions. No state has yet made any such progressive provision, and even ward committees are supposed to hold monthly meetings, but it has been found that most corporators are not bothered to do the same. The other progressive inclusion in the Parivartan Bill was to have Sustainable Development Goals with Human Development Index at the ward level. For which a social infrastructure index of the ward was required; including a five-year ward vision plan, aiming to address basic rights/ amenities, however this was not materialized. There should be a monitoring committee attached to public institutions so that the corporators can indirectly be held responsible for actualizing social and human development through people's participatory platforms that already exist. All committees are also linked to the ward committees so that the ward committees also work towards genuine human development in the areas. There is no provision for grievance redressal or jana spandana in the Act, even though it is mandatory in rural areas. Though most of the states do say that in the ward committees and area sabhas planning must be initiated at the grassroots level, but as area sabhas are not even constituted, the planning is with parastatals and not at the municipal levels through the councillors.

YUVA runs mohallah sabhas in Nagpur campaigning for access to land rights, and in Indore it has been able to register mohallah sabhas at the basti (slums) where they have successfully advocated for planning and governance. Civil society groups get trapped in adhoc initiatives, in other words, it is not enough to have mohallah sabhas the governance system does not allow for area sabhas or ward sabhas to even be formulated. Marina discussed how youth participates and fragmented notions of citizenship are

experienced in one constituency. The real deal behind the non-implementation of the Amendment lies at having exclusionary participatory system, which arises out of unequal power dynamic, experienced in urban area. People's participation is often considered as governance of the past whereas it is important to reclaim this constitutionally guaranteed right. Marina emphasised on the questions over who can claim or to whom does state allow to claim power.

Participation becomes a mandate of the more privileged in a fragmented India. The objective is to improve youth participation in local governance, considering the high demographic dividend of youth (65% below 35 years of age) and the formal political participation being gerontocratic. Large youth participation has two perspectives, one being the government's mission to skill and provide employment, and the other hand looking at young population as a vote bank. Youth plays an active role in the politics informally in rural as well as urban. They are the brains behind the most successful social media political campaigns and implementing strategies on ground. On the other hand, young people are also used as participants of political agenda through means of hate and violence. They are not the ones controlling the means of decision making. In places where governance has failed or is completely absent, the youth form aspiring collectives to claim their space in urban governance although it is not the norm. The notion of fractured citizenship especially among the youth is very high, but they are still able to collectivize.

While discussing the role of Civil Society Organisations in collectivising, YUVA, has been trying to build an alternative build a narrative of the city that is rooted in people's struggles. The struggle is structural, constituting the legal, policy and scheme

aspect of it.

"In fact, each scheme that we have whether the Pradhanmantri Awas Yojana, the Smart Cities Mission, the AMRUT (Atal Mission for Rejuvenation and Urban Transformation) Mission, all have different forms of governance at the urban level and it is further fractured." Marina Joseph

It was highlighted that it was important to explore future endeavours with respect to participation as a right to the discourse of a city.

3. Social Justice Achieved

The panellists, Shaktiman Ghosh, National Hawkers Federation(Kolkata), Vinay Srinivas, Alternate Law Forum(Bengaluru), and Varsha Vidya Vilas (Mumbai) discussed the session that was chaired by Rajendra Prabhakaran, Urban Justice Activist. Cities as it was conceived in 1992 has undergone change with respect to the actors, especially the marginal groups such as street-vendors. Prior to the 70's, the cities were perceived to be a hotspot of economic and social development. At the same time, green revolution forced workers out of their villages, into the cities. These communities became unemployed overnight, as a result of rapidly industrializing urban space that required a different technical skill set. There was a wave of liberalization, privatization, and globalization parallely efforts were taken to strengthen participatory democracy through decentralisation.

Workers here who have been labelled as “unskilled” with the effects of urbanisation, are identified as ‘poor’ by the government schemes despite being the primary contributors in creating and sustaining the cities. These communities are doubly alienated in terms of materially and social deprivation.

Shaktiman Ghosh opened by discussing about the shift towards a consumeristic state from welfare state. For example, governments’ 2015 smart cities scheme looked at cities as a consumeristic privilege where they chose to consciously ignore the urban poor citizens. It is to be questioned whether the state government or the central government has the political will to implement this Act. Recently, the mayor of Delhi stated the decision to attend a meeting that can only be taken with approval of the municipal commissioner which contradicts the mandate of the 74th Amendment which accords power to the elected mayor.

Only two percent of the ward committees have been instituted in the country so far. There is a need to democratize and decentralize urban governance especially when we are witnessing municipal bodies are being sidelined by the PPP Model. The Smart Cities have been exempt of any interference from the existing municipal corporation and will be administered by a separate corporation for which the Special Purpose Vehicle (SPV) will not be an elected official, but through the secretary for urban department. This has been done so that, in the case of demolition of slums for redevelopment activities, the elected official is not held accountable. 496 cities have been accorded the AMRUT status, yet 70% of the urban power have been found to reside in these cities. The contradiction between the informal sector and the governments agenda of making rapid growth in GDP, has led to vast economic inequalities and consequentially inequalities related to housing and infrastructure. The government has only contributed to this situation, and concepts like Smart Cities do not permit any realization of social justice, and it is the presence of these economic contradictions which is at the root of the government’s need to push the informal sector outside the city.

In the *Olga Tellis v. Bombay Municipal Corporation Case* Justice Chandrachud stated that ‘hawking is a right’ resonant in the idea that life is livelihood, and even after introduction of the Street Vendors in 2014, most cities are in the process of removing hawkers from the streets. The government seems to unwilling to accommodate such groups of people in their vision for the city. The requirements for the city as well as the urban poor are not taken into consideration by the planners of the city. Ghosh said, ***“The Urban Renewal Mission a joint initiative of the Indian Government & donor organisation, and the Smart Cities Mission all reflect of similar***

exclusionary attitudes. How then can social justice then be achieved in a society where prominence is given to western standards of consumption and such actors who make significant contributions to the city are excluded?" There is no housing rights movement to resist and cease unlawful evictions. Street vendors movements are active across the country and many other citizens are expected to participate in the movement. It is through sustained resistance that the space of social justice can be reclaimed.



Srinivas stated that while discussing the 74th Amendment it had been clear that none of the panellists believed that any social justice had been achieved. The reasons behind this must be understood. Changes are required in the Act to enable social, economic and political justice. The preamble also sets forward a vision is to achieve justice, liberty equality and fraternity which is impossible without achieving social justice. The various laws in the constitution address issues related to caste, gender & religion, but the laws on governance made in the 74th Amendment are found to be formulated exclusive of issues of caste, gender and religion, which translates similarly on ground. For instance, in the case of the nominations to ward committees in Bangalore, the rules states that resident's association are required to register and validate a minimum number of years of registration. Resident Welfare Associations are supposed to be inclusive of all residents in the respective

layouts. Yet, it is often found that the association is exclusive only to people of a certain class, who can influence rules and nominations of the ward committees. The rules are devoid of any clause which ensures diversity and greater participation from disadvantaged sections of the society in Karnataka. In Kerala, registered trade union members are required to constitute ward committees, and in the case of West Bengal, women BPL cardholders are required to be in the ward committees. Now let us consider three disadvantaged groups in the city, street-vendors, pourakarmikas, (waste pickers) and slum-dwellers. The Ejipura Slum Demolition case in Bangalore involved 900 odd people living in multi-storeyed buildings, which collapsed eventually, and these houses were given out on rent despite being uninhabitable by the owners. Despite the council passing a resolution that both owners & tenants should be given homes, half of the land was given to private developer and the other half is reserved only for housing previous owners. Currently, the tenants have been relocated 15 kms away, and the developer has also mortgaged the land. The 74th Amendment seems to have done nothing to prevent large injustices. Secondly, in the case of municipal contract workers and other such services such as solid waste management which are obligatory functions of the municipalities, are outsourced to contractors in most cases in the country. In this case, why was the outsourcing not prevented is a pertinent question to ask. Despite the Street Vendors Act Section 3.3 stating that no street vendors shall be relocated or evicted till a survey of all street vendors as well as registration are done, evictions continue to be executed. The instance of the mayor of Bangalore questioning the legality of street vendors illustrates this gap in social justice. Srinivas commented, ***"Therefore, nothing in the Act or the rules prevents the widespread casteist, gendered injustices that are found***

to prevail. Hence, we do not need a tinkering of the Act such as mohallah sabhas or ward committees, but we need a fundamental alteration of the 74th Amendment, to reimagine the ways our cities are built." In addition to this, the chances of a slum representative winning an election is low considering the large sums of money pumped, in return for power. The Street Vendors Act provides for an elected Town Vendors Committee in every municipality, which has a 40% reservation of seats to be filled by direct election. In the case of Delhi Municipal Corporation, some street vendor leaders were elected, but along with them, were few leaders of ostentatious appearance and personality who were known to splurge for the cause of the election. On the other hand, in the case of nominations there were different resident groups and civic forums who put out an online advertisement on social media platforms to call for nominations. One such nomination filled was a resident from Rajajinagar who filed a false case in the Karnataka High Court to evict street-vendors, accusing them of blocking the storm water drain. One of the ward committees in Whitefield passed a resolution to evict street vendors and they in fact got evicted. Thus, urban governance in present times is the luxury of a specific class of people.

The re-imagination of this Act must happen ground up, but the groundwork of familiarizing with these social movements has not been carried out. A high number of individuals involved in urban governance are distant from the farmer's movement, the trade union movements, and the Dalit movement. Thus, a coalition of all group in the cities ensuring greater diversity in representation to sensitize about the need to get back the power to the people is required. This endeavour is to ensure that people from disadvantaged group get their rights and enjoy equal rights to the city as would an individual in a relatively

up-scale neighbourhood. Lastly, the preamble and the constitution should be put to the right use to reimagine the 74th Amendment.

Vilas opined that it was desirable that the efforts towards the implementation of the Amendment are posed questions. Firstly, with respect to participation, when reservation was implemented for the first time in Maharashtra, there was 15% reservation for SC's, 60% for ST's, 27% for OBC, and 50 % for women overall in 15 municipal corporations. Although representation could have been better, the responsibilities of these elected representatives are not confined to one. Similarly, when caste-based reservations are made, these are not exclusively for the weaker sections, but for all those who fall into those categories. Hence, when the elected representatives from the above stated categories are found to unable to formulate schemes or agendas particularly for the weaker section. The situation is the case of political parties. Thus, the true objectives of the 74th Amendment remain unfulfilled.

Currently representation levels of women are at 52 %, compared to the 10% before 1992. Yet, this representation is merely a number, as women representatives still do not have the power to implement. Women are part of child-care, health, education and sanitation committees, but excluded from finance committees. The participation of women in slum committees is also nil. There is still no prevalence of a gender budget in the municipal council or corporation. Vilas said, *"Even after representation of 52 women in the House, there is a need to run rights movements in Mumbai. The reservation merely serves as a skill development tool and does not translate into policy level or changes in existing schemes."* In one of bastis in Mumbai, an area sabha was formed where basic services have not been fulfilled at all. As one of the corporators being from a minority category, for the first time in

Mumbai, and health specific budget was allocated and formulated through public participation. This was done through the administration and the corporators, wherein they had to firstly, answer questions posed by, identify and prioritize citizen needs. Therefore, to achieve, power to and for the people, work must be directed towards filling the lacunae in the Act.

Therefore, the fundamental questions discussed were about the changes that have taken place in the urban space in the last 10-15 years, the meaning of old and new urbanisations to the city and whose vision was accepted when cities were renewed and reorganized. Before the 70's the primary function of the urban space was industrialization, and to convert the ousted agrarian population to industrial labour. And post globalization cities have transformed as fertile ground for international capital. So, the intention of the investors is primarily to develop the infrastructure of the cities, so the purpose of urbanization itself has changed. In such a privatized context there is lesser scope to demand for right than when cities are run by the citizens. In a privatized space, the idea of share is not taken into consideration, with respect to resources and livelihood opportunities. This is because global investors are redesigning and reimaging city spaces according to their market purposes. Therefore, the question of social justice also takes a new dimension. The issue of social justice is disvalued when people from 'economically weaker sections' are not given an equal status with respect to citizenship. There is also the perspective of 'poverty alleviation' where such communities are labelled as beneficiaries, as a burden and exception to the government, eating into its budgets. Therefore, social justice cannot merely be achieved through the 74th Amendment.

4. Interaction of New Schemes/Policies with the 74th Amendment

The session that was chaired by Ashima Sood, Indian School of Business, Hyderabad was discussed by the panellists Tikender Panwar, Former Deputy-Mayor (Shimla), Vinay Baindur, Independent researcher and activist (Bengaluru), Amita Bhide, Tata Institute of Social Sciences, (Mumbai) and Anand Lakhan, Housing rights activist (Indore). The agenda of the session was the ways in which the monopoly of schemes and policies influence the whole experiment of local democracy.

Amita Bhide opened the discussion by pointing out the need to discuss schemes was to review a trajectory of schemes, rather than focusing on a scheme. The need to discuss this trajectory arises, as they are characterized primarily through their approach of these schemes to the governance of cities. The key junctures that were considered were the 11th Finance Commission, JNNURM, Smart Cities, and the lesser researched case of AMRUT.

There is a recent trend of central government intervention in all schemes. Urban local governance is a state subject, and yet since 1999 the central government has shown increasing interests in the affairs of the city, with the resolution of the 11th Finance Commission. The central government funds must be matched the state government funds almost to an equal extent, that which is often not accorded enough importance, and even the ULG's are expected generate a certain amount of funds. The state government has found a bypass where the state government and local bodies contribute nothing, but in fact pick out revenues from land. All these schemes touch upon the implementation of the 74th Constitutional Amendment and effecting the transfer of function, functionaries and funds as conditionalities to giving all these functions. Bhide said that, *"There are a lot of*

conditionalities and funds linked to these started with the 11th Finance commission was continued into JNNURM, not continuing into AMRUT and Smart Cities, in fact that they are made part of the progress report whether in terms of PMAY, Smart cities or AMRUT cities. Therefore, the question at hand is whether this indicates that the central government is dedicated to the 74th Amendment, or not?"

As per the Grant Thornton evaluation study of JNNURM which studied 25 states across the country, found that only 8 states had transferred all the functions in the 12th Schedule to the ULG's prior to JNNURM, and post-JNNURM 11 states were found to do so. The figures in the case of District Planning Committees were 11 and 3 more states in the pre-JNNURM and post-JNNURM periods respectively. With respect to formation of metropolitan planning committees, only West Bengal had done it in the pre-JNNURM states, and 2 more states were added to this list of implementing MPC's. Hence, we see that outcome of even a heavily funded major program like JNNURM seems to be an ineffective method. Thus, it is important to think how to effect decentralisation rather than as a campaign of civil society. The first question is regarding content is the second is about method, and how does one move there. The Grant Thornton study, in the case of Odisha, revealed that the approach is for the state governments to transfer functions of utilities to the ULG's, but in a very fragmented way. The power to plan cities are not transferred to ULG's, but the capacities to execute the plan are transferred the ULG's. A cadre of officials is formed who will be based in the local bodies but who are in fact transferable across local bodies and will be accountable to the state government. So, in addition to commissioners who are now the bureaucratic chiefs, an addition of 5 officials from each portfolio, who are much more accountable to the state government and follow a more homogenised

template of governance as opposed to powers that the local bodies will hold. The same has been done to curtail powers of spending and expenditure of local bodies, so then it is essential to re-consider the levels of decentralisation achieved by JNNURM whether it is about genuine decentralisation or a direction of different kind by the state governments.



The content of decentralisation that we want is important. The 74th Amendment by all these schemes is clearly being conjoined to other reforms which needs to be sifted in order to get a clear picture. For example, community participation law which came via the JNNURM talks about including versions of the Parivartan Law which are visions that are fragmenting the city rather than talking about a comprehensive, direct democracy or bottom-up versions of democracy. The financing of ULDs in a post-GST regime is weak as it is dependent of central and state governments. Local Bodies cannot be empowered without providing adequate funding for which different ways such as debt financing (like JNNURM) or reviving and enhancing property taxes should be thought of. The question is to understand space for independent decision-making by ensuring inclusiveness for the and the adequately financing local bodies.

Secondly, the democracy in the city is limited to bureaucratic devolution rather than as an entity with political agency. The claims to the

city are incomplete without the citizens being empowered and not just the corporators. The visions of the politicians are not spread out to the city and it is this political space that needs to be created for a different approach on decentralisation. The term Urban Local Body is superfluous about city governments, and about subsidiaries, functions, spaces for decision making, operating, and accountability wherein empowerment and efficiency go hand in hand.

Baindur observed that the process of Model Municipal law (MML) which came about in a period of just six to eight years of the passage of the 74th Amendment was an idea initiated by the Ministry of Urban Development, but it the process which followed very well illustrates that bi-lateral and multilateral agencies had a major role in how these policies can be brought into legislation with hardly any participation by state legislatures at all. Baindur noted that, ***"Some of the answers that were received by the people who filed RTI's in the Ministry, research organisations and with certain state governments. The response to these which was received from the National Institute of Urban Affairs was that the Government was only peripherally involved in the preparation which is shocking."*** Whose law is it anyway?

The mohallah sabhas and samitis as infrastructures envisaged by the 74th Amendment can in fact serve the purposes for which it was intended. One of the problems with local democracy, certainly in Bangalore where technocratic elites and trans-national organizations have taken up the role of pushing civic agendas is that the prevailing view is that this system will benefit people to improve civic facilities in middle class colonies. This leaves behind those residing in slums and shacks who form much of the population of India. Moreover, the political representatives did not take well to the empowerment of the

mohallah sabhas. So, these local conflicts between a host of actors is part of why democracy is much difficult to achieve.

Lakhan on discussing the role of political parties said that, ***“Political parties present were spoken to, but it was only one of the parties that took up the agenda, and put together a letter of promise, which goes beyond the manifesto to say that this vision of democracy which was realized through housing rights activism, through mohallah samitis will be realized. This one instance of how bottom-up governance is implemented.”***

Panwar started the speech by discussing the changing metamorphosis in the cities, that is the changing roles of the city, and these roles is linked to the neo-liberalist capitalistic order that we are living in. Some twenty to thirty years ago, cities and city governments were mainly meant to be managers of the city. This role has changed from city managers to city entrepreneurs. City entrepreneurs are steppingstones to privatization of cities, and the Smart Cities Mission which is marketed is but an abject privatization of our cities. He noted his experience of being a deputy mayor wherein both factions had to bear with a skewed representation as there was no provision for a no-confidence movement. Panwar stated that there was a scope of engagement, if adequate intervention was taken. While reviewing the 74th Amendment, using data mainly from states of Madhya Pradesh, Himachal Pradesh, Maharashtra, Odisha and Karnataka, the schemes of JNNURM, the Rajiv Awas Yojana, under the Ministry of Housing and Poverty Alleviation, were studied. One of the key assessments that were made were that there was no clarity about the role of ULG's. The provisions of JNNURM puts the ULG's at par with the parastatals. The roles of the city are largely undefined, and the attrition of functions is also suffered at the hands of parastatals.

In the case of Chandigarh, the mayor gets barely a year of time to function during their tenure, there is a complete scathing and indictment of the elected institutions. In Haryana, the Director of Urban Development can remove the mayor. The public owns the city, but repository is the elected government, and this is something which is not explicitly mentioned is that the executive powers should be with the elected people. The case is made worse under Smart Cities, where not even in single SPV is headed by the mayor. Also, the SPV's are elitist as they do not answer to the council. It is for this reason that many cities opposed the idea because it was an encroachment on the democratic process.

Only 0.5% of the total GDP comes from their own revenue resources as far as city governments are concerned, but it is not because of the non-payment of taxes. Land is thus a major issue and still not with the city governments, and it is through that land that many state governments are playing. In Delhi, it is Delhi Development Authority (DDA) which is the central government. It is pointless unless the method to empower financially is passed to city governments. Panwar said that, ***“One of the suggestions, quite sweepingly made to part 10% of the total income tax collected from the cities back to the city governments. That is a huge amount, as 1/3 of the urban population contribute to 2/3 of the GDP, but 90% of the total revenue of the government comes from the cities. So, the decision to part 10% of the total revenue is being practiced in Scandinavian countries where 30% is allocated.”***

Lastly, about the ward sabhas, the irony is that the biggest impediment to the Act, was the councillor, because there is a certain budget that is allocated to the councillor, who in 50% to 60% cases are nexus contractors. In response, the innovative idea trialled, which was not institutionalized and gradually went off

the track, was that plan has to be carried out in the ward sabha or ward committee and if it is not signed by 50% of ward, then the plans do not get approved, and that was practiced in Shimla. In addition to this, 10% of the total revenue of the ward goes to the ward sabhas, in the form of property tax and other taxes the municipal corporation generates will go back to the ward sabhas. So, then the wards start formulating plans, but it was realized there a single format prevailing every six months they never attended ward sabhas, and got the signatures forged. Such mechanisms do exist. Democratic decentralisation does mean 1) devolving powers to the elected government such as the mayor and council in West Bengal, Madhya Pradesh and Kerala, but apart from that it is from the people. There members must be empowered to bring in innovations like allocating 10% of the total finances to the ward sabhas.

Finally, in majority of the cities, the entire Smart Cities offload is not 14% of the total budget. The change in paradigms is from city governance to city entrepreneurship to privatization. Private will only venture where there is a fair amount of profit. Majority of the governments who are not able pay the salaries of their employees work as adjuncts of the state governments because that is seemingly the only way. Only 6% growth has taken place in statutory towns, but large-scale growth is found to take place in census towns. This is an anomaly, as the growth of the population is not reflected in the state finance commission. Cities thus are in dire need for improving delivery systems and governance, and this is mostly due to the inadequacies and inefficiencies of most city governments, barring a few, highlighting the enforcement of the Act.

Sood stated that it was important to divert our attention to the important historical conjuncture at which the 74th Constitutional

Amendment was passed, and the backdrop was the liberalization project, and process of economic reforms initiated through IMF conditionalities. There is a constant tussle between, privatization, centralization, and the local democracy. A different perspective instead of viewing decentralisation as one-way process might be state special rescaling wherein decentralisation is only part of what is happening. There is greater integration with the global economy and capital circuits with respect to the cities. With the 2002 guidelines for FDI in townships for construction and infrastructure, tremendous capital is pulled in and there is an integration global market. The city is a powerful tool for the state government and the central government in this manner. Cities are drivers of growth. The idea of competition between cities is central to policy imaginations which is reflected in AMRUT and Smart Cities Mission. Bombay competes with Shanghai, and Bangalore competes with Singapore, and this notion of competition is so central to policy vision that then the city is in fact a tool for certain kinds of economic logics to be put into motion. On one hand there this vision of local democracy, a bottom-up perspective of the city of what the cities are like, but against them are powerful forces, which the state governments are very aware of. There is an interesting anomaly that, in the West particularly in North America city governments are powerful enough and are expected to be entrepreneurial actors. In India, it is in fact the state governments that have taken up that job and the cities governments are invariable seen as hurdles in realizing the vision of the entrepreneurial city. A study undertaken with Loraine Kennedy, stated that the Greater Municipal Corporation of Hyderabad doesn't have a vision currently, and requires one to transform it into a world class city. Sood said that, ***"In Hyderabad, this has played out in an interesting way, and it is part of what has being tried to trace which is that the state governments have through***

amendments to Andhra Pradesh Panchayati Raj Act, the Municipal Act, as well as the Greater Hyderabad Municipal Corporation Act, it has devolved powers in particular industrial areas of municipal corporation to its own parastatal, the Industrial Infrastructure Corporation, and this is found to happen in Hyderabad, but such trends are more frequent than imagined across the country, and at the heart of this is a tremendous tension between the city as a node to be the heart of all economic growth. In Telangana, Hyderabad provides 80% of the revenue of the state, like a golden goose, and why would the state government want to let go of it, so for instance through this devolution they have created Industrial Area Local Authorities.” So, what this means is that the most prosperous parts of the city where property taxes are found to be highest, are areas such as IT parks. It is the state government, which is through its channel of industrial corporations, collecting property taxes, and keeping most of those taxes. There is a small loophole in the Amendment, proviso to Article 243 Q (1) says that that state government may declare any area to be an industrial township. Looking at places like Jamshedpur which is now an urban agglomeration more than a million people doesn't have a municipal corporation. By creating these enclaves, special spaces are carved out wherein the people are citizens and their government is a private entity. There is really no way for people who live there to have a say in the use of those funds at all and makes it important to fight for the 74th Amendment.

5. Conclusion

What is governance to people? Is it about having “smart” infrastructure, good utilities? Is it about having fancy concretisation of city and building status quo? Or governance talks about much more than all of these above. It goes beyond the material transaction that one sees in urban governance. It is very much part of citizenship, imagination of neighbourhood. The extent to which and the potential of the 74th Amendment to work is focussed towards the urban middle class. The middle class does not want to interfere in politics if good utilities are supplied. The 74th Amendment was set up in a time when massive reforms were happening and one of the major changes were municipal financial reforms which is essential for making local bodies or places responsible for their finances, without giving them any capabilities or capacities for them to become politically active agents. The delivery of the Amendment is questionable if it is so designed to disable places. It is important to understand what is possible from the act.

The structure of municipal governance is based on residence such that only a resident of a ward, having a voter id card proving their address of residence in the ward, would be permitted to speak in the ward, which is not the only way people are living in cities, as vendors and other actors whose interests as urban citizens, are not located in one particular place. It is important to understand who the residents are and how they are seen, as it decides the power claimed by different groups of city dwellers in the decision-making process. The design must be rethought in such a case, and maybe we need to acknowledge that all these people are already active in local governments. There are different other associations for slum dwellers and traders’ associations, but we are focussed on the 74th Amendment which it is closely connected to the issue of property tax. Residents are

heterogeneous in nature, with variation in sizes and power to purchase property. It must be thought how the knowledge and these other forms of being in the city can be brought into the imagination of the city. In the original city plan for Hyderabad which was in collaboration with several international bodies set up a matrix of actors in the city which include those have stakes and the power to influence and those who did not. Trade Unions, workers and the host of actors including politician’s central to these discussions were excluded. If these actors are not present then cannot we imagine a city development plan, because the competition found is between our cities rather than foreign cities?



We need to think about of using the 74th Amendment as a template wherein the kind of content that needs to be added, deleted or modified, even at a city scale. Secondly, it is to be identified how to move forward and who or what kind of alliances need to be built if we have a vision for change.

The useful features of the 74th Amendment are that it makes ULG’s permanent, tenure of the local bodies is assured, that is every five years’ elections have to conducted to these local bodies, there is pattern of reservation among the members, there will have to be a Metropolitan, on District Planning Committee and Ward Committees. Structurally we have something from municipal corporations at the apex level right down to the ward level, there

are a series of institutions which are now made constitutional institutions with provisions for an election commission, a finance commission, for local bodies. These are the gains of the 74th Constitutional Amendment, but there are number of things which should have been drafted better, such as the powers of the municipal bodies. The legislature of the state may by law determine what shall be the powers of the urban local government, and apart from elected representatives, it provides for representation of MLA's and MPC's. Some of which make the local bodies underlings of the state legislatures wherein the state legislatures and state level political leadership are very reluctant to give up their powers.

The key steps involved in rollout of works towards urban governance-

- We propose that it is important for CSO to engage in capacity building workshop on gender budgeting and municipal finances. This will help in a more critical engagement with city governments, understanding the process of budgeting, how participatory is it on the ground. This is to also strengthen the advocacy work and build an analysis of how much participation of women is important in planning and budgeting as this can be reviewed under the mandate of 74th Constitutional Amendment Act 243-W (i) mentions that the municipalities with powers, responsibilities, authority may necessary contain provisions for the devolution of powers and responsibilities upon municipalities, to prepare of plans for economic development and social justice.
- To create a module for capacity building for CSO and ULG's looking at best practices across states, roles and responsibilities mentioned under 74th CAA. Build in engagement with the city governments in order to build linkages in such capacity building programme and facilitate hand holding for the same.
- We propose that as collective of CSO, academicians, practitioners, elected representatives should start building towards a networks of councillors.
- A ground-up transformation can be achieved after studying the status quo and pushing for the enforcement of the 74th Amendment in political manifesto and creating a public consciousness. Organizations such as IGSSS should collectively put forth a revised draft of the Act for consideration by all major political parties in the forthcoming election campaign. Questions such as reflecting on content and how to move towards it, creating peer network in this respect and developing clarity horizontally and vertically about responsibilities of institutions should be considered.
- Channelizing the strength votes to demand for social audit of municipal body, and monitor the social justice spending from the municipal budgets, focusing on existing tools provided by the 74th Amendment and working to create democratic space for the marginalized groups in the city and creating an ownership among the sections of relevance areas to focus on.
- As regard to grassroots initiatives and what people's movements are demanding, an awareness program in 6-7 state levels can be developed as many of the states going for state elections and need to see how elected representatives and candidates of governments address the needs of people's organizations. The law per say might not be effective with respect to including the clause of migrant labour into the institutional process of the Amendment, but what is provided for in the Act are rights which all citizens should collectively usurp. Therefore, the way forward comprises the following steps such as generating awareness among every citizen about their rights, ensuring that they are not side-tracked by vested political interests that

are intimidating them and filing court orders for redressal of concerns.

- A lot has been spoken about giving representation to trade unions, migrants and so on. The scope for representation of such people can only be envisioned at the ward levels, but such issues are pan-city. Therefore, there is a need for representation in the Municipal Planning Committees, or as per provision in the Act, they are also expected to consult with such groups while decision making.

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Annexure

Concept Note

Looking back at 25 years: A review of 74th amendment A National Level Round Table

**Organized by Indo- Global
Social Service Society**

12th and 13th November, 2018

The need to empower Urban Local Governments (ULGs) and to make them more effective is an ongoing debate since the 1970's. Such a need was felt as many ULGs were dis-functional due to being superseded as well as the lack of financial support by the respective state governments. There were either delays or no elections of the ULGs in contravention to democratic principles.

In 1992, the 74th Constitutional Amendment Act (CAA) was passed in Parliament as a measure towards devolution of powers and decentralisation of urban government through empowering of ULGs. On 20th April 1993, the President of India gave his assent to the Amendment and the 74th Constitutional Amendment Act (CAA) came into force on 1st June 1993. This was also later approved and passed by 2/3rds of the state legislatures as conformity legislation in tune with the CAA. State governments had to make necessary amendments in relevant state Acts within one year to facilitate implementation of 74th CAA.

This Amendment gave the ULGs a

Constitutional Recognition as 3rd tier of governance for the very first time. This also brought them a range of additional powers such as the right to generate revenue and duties such as ensuring economic development and social justice (as listed in the XIIIth Schedule). To ensure that the marginalised groups were involved in the decision making process, reservations for such groups in the elected councils of ULGs were provided. To ensure participation and transparent governance, ward committees were proposed.

While State Governments across the country speak of the need for implementation of the 74th CAA, enough has not been done to implement it with few exceptions like Kerala and West Bengal. The Union Government's agenda to motivate the States into enforcing the 74th Constitutional Amendment Act, and participatory governance mechanisms, made the availability of JNNURM funds dependent on compliance with decentralized governance such as the enactment of a (Model) Nagar Raj Bill (Community Participation Law) and a Public Disclosure Law. The smart city agenda was taken up in 2015 while discussions on participatory governance are increasingly being side-lined.

June 2018 marked 25 years to the passage of the 74th CAA. It is a shame that apart from a few States, the law has hardly been implemented. It is the need of the hour to think through the gap between the intent of this legislation and the implementation.

It is important to delve deeper into the processes concerning the intent of the implementation and keeping track of layered legislation, laws, schemes, policies affecting 74th amendment. In other words, there is a wave of new regimes which are creating diversion to the legality of the 74th amendment. The spectrum of legality of 74th is very conveniently twisted and tweaked by formation of SEZs', SPVs' and smart cities etc. These schemes/policies are giving rise to grey areas in understanding of new forms/shapes of governance which are unfolding to fundamentally forging with 74th excluding participation of ULBs, creating space for a range of parastatal bodies, that are jeopardizing the municipal roles and functionaries. Moreover, one such example is article 243Q, which has given leeway to build private governance, affecting the fabric of Indian cities and has pushed us to critically think: what does this privatisation of governance roles and functionaries entail? Are they the alternatives of our municipal roles and functionaries? Do we have the capacity to incorporate multiple forms of governance in 74th, while knowing the fact that, the implementation of basic functionaries such as forming of election commission, delimitation of wards, devolution of roles and responsibilities has been poor? What happens to the finance structure with the new trends coming in?

It is increasingly imperative that we keep asking new forms of questions and engage with them in order to review our 74th amendment and start looking for opportunities to work on the democratic space as promised. Keeping this in mind we wish to bring together people from across India to reflect and deliberate on local achievements, challenges and modes of working that have had positive consequences also discuss on thinking through some alternative ways of engaging with 74th amendment.

Structure of the consultation

We envision this Roundtable as a platform to facilitate debate /dialogue between groups committed to achieving equitable urban governance. The gathering would include formal discussions on different thematic areas.

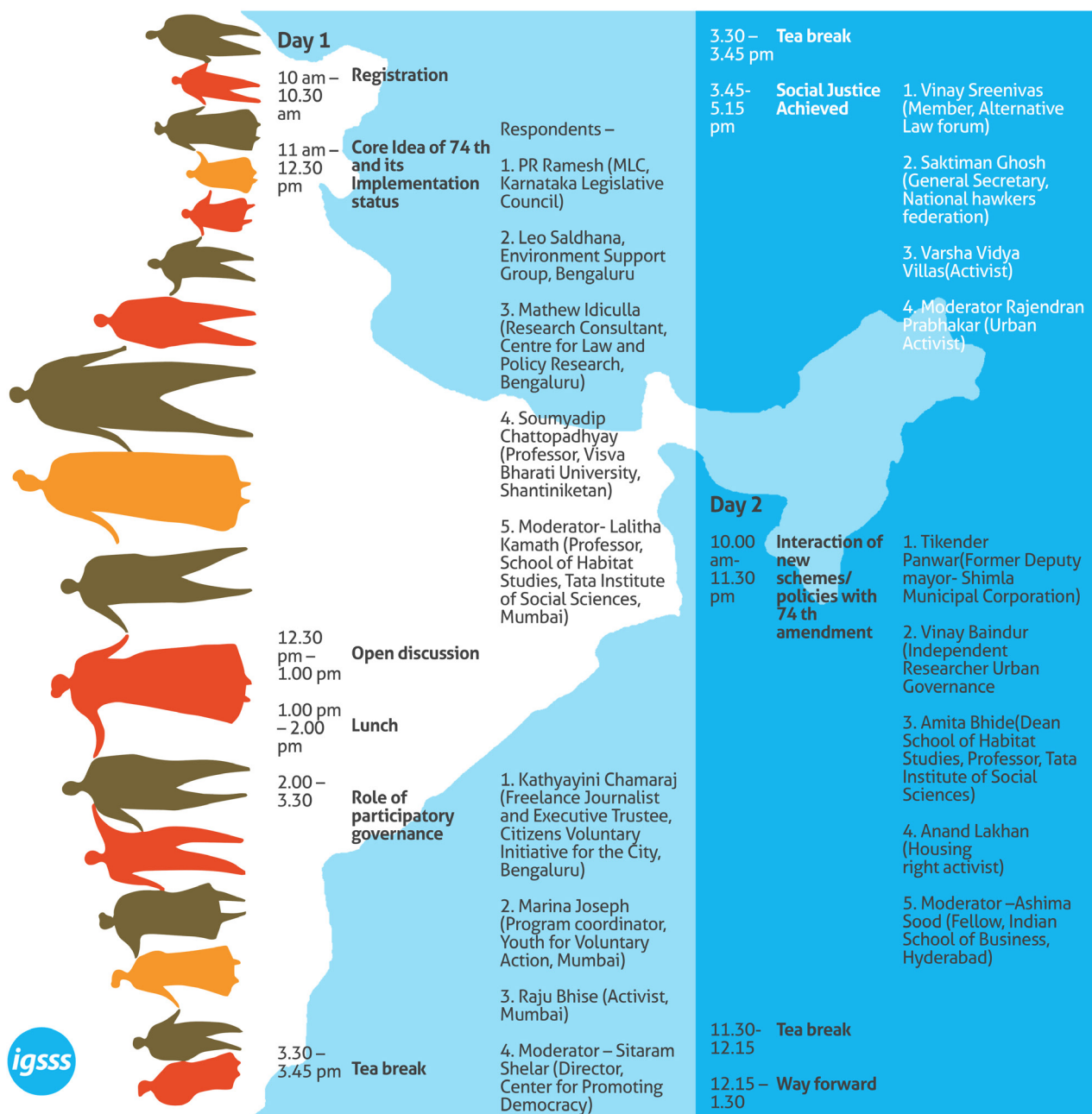
12th - 13th

November
2018

Looking back at 25 years : A Review of 74th Amendment

IGSSS invites you to join us on National Round table

Venue: United Theological College: 63 Miller's road, Benson Town Bengaluru, Karnataka 560046



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igsss IGSSS Team – 9867220679

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About IGSSS

Indo-Global Social Service Society (IGSSS) is a non-profit organisation working with the mandate for a humane social order based on truth, justice, freedom and equity. Established in 1960, IGSSS works for development, capacity building and enlightenment of the vulnerable communities across the country for their effective participation in development.

With its presence in 25 states and one Union Territory of India, IGSSS has set its thematic focus on promoting sustainable livelihood, energising the youth as change makers, protecting lives, livelihood and assets from the impact of hazards, advocating for the rights of CityMakers (Urban Poor Residents) and developing cadre of leaders from the community and civil society organisations. Gender and Youth are underlining theme across all its interventions.



**Indo-Global
Social Service Society**

Indo-Global Social Service Society

28, Institutional Area, Lodhi Road,
New Delhi-110003

Email - info@igsss.net

Tele - 011-45705000

Website - www.igsss.org

Facebook - www.facebook.com/igsss

Twitter - @igsss