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PROTECTING INDIA'S SLUM DWELLERS: RAJIV AWAS YOJANA'S SLUM-FREE CITIES PROGRAM AND THE SEVENTY-FOURTH CONSTITUTIONAL AMENDMENT ACT

INTRODUCTION

India's population is becoming increasingly urbanized.¹ According to data from the 2001 census, nearly one third of India's population is living in urban areas,² and by 2021 that percentage is expected to grow to roughly 40% of India's total population.³ The central government of India, in an effort to create economically productive and sustainable cities, has taken steps over the last several decades to facilitate economic development and improve the provision of public services in cities, with a particular focus on developing affordable housing units and public infrastructure.⁴

1. See MINISTRY OF HOUS. & URBAN POVERTY ALLEVIATION, NATIONAL URBAN HOUSING AND HABITAT POLICY 3 (2007) (India) [hereinafter HOUSING AND HABITAT POLICY], <http://mhupa.gov.in/policies/duempa/HousingPolicy2007.pdf>. India's central government defines urban as "a human settlement with a minimum population of 5,000 persons, with 75% of the male working population engaged in non-agricultural activities and a population density of at least 400 persons per sq. km." *Id.* Further, all statutory towns having a Municipal Corporation, Municipal Council, or *Nagar Panchayat*, as well as a Cantonment Board, are classified as urban. *Id.*

2. See *id.* Most of India's growth is concentrated in its largest cities, with 68.7% of India's total population living in Class 1 cities (populations in excess of 100,000). *Id.*

3. MINISTRY OF URBAN EMPLOYMENT & POVERTY ALLEVIATION, JAWAHARAL NEHRU NATIONAL URBAN RENEWAL MISSION: OVERVIEW 3 (2005) (India) [hereinafter JNNURM OVERVIEW], <http://jnnurm.nic.in/wp-content/uploads/2011/01/UIGOverview.pdf>; see also HOUSING AND HABITAT POLICY, *supra* note 1, at 3 (explaining that India's urban population growth has been a steady phenomenon, with growth rates between 2.7% and 3.8% in the five decades leading up to 2001).

4. See HOUSING AND HABITAT POLICY, *supra* note 1, at 3. India's Ministry of Housing & Urban Poverty Alleviation has stressed the importance of housing affordability in cities, since nearly one third of India's low-income population resides in cities (representing about 80.7 million people). *Id.* The Ministry has set an "Affordable Housing to All" agenda, which is focused on the "Economically Weaker Sections (EWS)" and "Low Income Groups (LIG)" sec-

The decentralization of urban governance is among the policy objectives that are consistently present in India's major urban redevelopment programs.⁵ Decentralization involves the delegation of designated civic responsibilities to localities and, more specifically, to the community members themselves, as they are "the best judges of their needs."⁶ One rationale underlying India's decentralization efforts is that community participation in government decision making, particularly among politically disenfranchised groups, will lead to a more equitable distribution of urban infrastructure and more efficient delivery of services.⁷

India's decentralization process was embodied in law in 1993 with the passage of the Seventy-Fourth Constitutional

tors. *Id.*; see also JNNURM OVERVIEW, *supra* note 3, at 3 (documenting the need for reform initiatives to facilitate investment in basic urban infrastructure and services).

5. See MINISTRY OF HOUS. & URBAN POVERTY ALLEVIATION, RAJIV AWQAS YOJANA (RAY), DRAFT GUIDELINES ON COMMUNITY PARTICIPATION 3 (2011) (India) [hereinafter RAY GUIDELINES ON COMMUNITY PARTICIPATION], available at http://119.226.159.173/downloads/RAY/Guidelines_Community_Participation_June.pdf. A central government review of JnNURM revealed that to "ensure the sustainability of urban transformation," ULBs must be a part of the implementation of economic development programs. *Id.*

6. Deepak Sharma, *An Evaluation of 74th Constitutional Amendment Act: A Case Study of Chandigarh, India*, 6 J. ADMIN. & GOVERNANCE 83, 89 (2011); see Terry Macdonald, GLOBAL STAKEHOLDER DEMOCRACY: POWER AND REPRESENTATION BEYOND LIBERAL STATES 40 (2008) (arguing that democratic institutions need to move away from a "closed" constitutional structure, to a more decentralized system of "stakeholder communities" with "participatory entitlements"). Stakeholders are identified based on their relationship to public power: "It is the communities of individuals whose autonomous entitlements are affected by the exercise of [public] power that should be identified as the legitimate agents of democratic control, with respect to the particular political actors that wield this public power." *Id.*; see also Clayton P. Gillette, *In Partial Praise of Dillon's Rule, or, Can Public Choice Theory Justify Local Government Law*, 67 CHI.-KENT L. REV. 959, 995-98 (1991) (explaining that localities are more likely to be responsive to the preferences of local residents than the state legislature).

7. See John Harriss, "Participation" and Contestation in the Governance of India Cities, 5 (Simons Papers in Sec. & Dev. No. 8/2010, 2010) (referring to the 74th CAA's goal of providing "'adequate representation' of women and the so-called 'weaker sections' (an official euphemism for people from historically lower castes)"); see also Sharma, *supra* note 6, at 89 (explaining that the 74th CAA was designed to "revamp the performance ability of municipalities so that they are able to discharge their duties efficiently").

Amendment Act (“74th CAA”).⁸ The 74th CAA was intended to strengthen urban governance through constitutional recognition of urban local bodies (“ULBs”) as the “third tier of urban governments.”⁹ However, the implementation of this constitutional amendment has largely been left in the hands of state governments, which in many cases have resisted a genuine delegation of power to local governments and their citizenry.¹⁰

As India’s central government pursues its newest urban redevelopment program, Rajiv Awas Yojana (“RAY”)—a slum-free cities program—it is imperative to question whether there are local governance frameworks in place to protect the interests of politically disenfranchised slum dwellers, consistent with the programmatic goals of RAY and the constitutional mandate of the 74th CAA. Local government capacity is a critical consideration in the context of RAY since RAY’s jurisdictional design embraces a cooperative federalist model.¹¹ Under this model, the central government crafted the slum-free cities mandate and set out the programmatic objectives: the participating state governments are responsible for program admin-

8. INDIA CONST. art. 243P–243ZG, *amended by* The Constitution (Seventy-Fourth Amendment) Act, Part IX-A, 1993. Various provisions of the 74th CAA make clear that while the amendment was passed in 1992, it did not go into full force until 1993. *Id.* art. 232I, 243N, 243ZF. Ramaswamy v. Bangalore Development Authority, (2010) Unreported Judgments (India), *available at* <http://judis.nic.in/supremecourt/imgs1.aspx?filename=36309> (describing the “inadequate devolution of powers and functions” at the state level that prompted the 74th CAA).

9. MINISTRY OF HOUS. & URBAN POVERTY ALLEVIATION, IMPLEMENTATION OF THE 74TH CONSTITUTIONAL AMENDMENT, STATE LEVEL REFORMS UNDER JNNURM 2 (2011) (India) [hereinafter JNNURM IMPLEMENTATION].

10. Harriss, *supra* note 7, at 9; *see also* NAT’L INST. OF URBAN AFFAIRS, IMPACT OF THE CONSTITUTION (74TH AMENDMENT) ACT ON THE WORKING OF URBAN LOCAL BODIES xiii (2005) [hereinafter WORKING OF URBAN LOCAL BODIES] *available at* http://www.niua.org/Publications/research_studies/74caa_v1/Impact%20of%20the%2074th%20CAA-Consolidated%20Report%20Vol%20-%20I.pdf (pointing out that even when states take steps to create ward committees, those ward committees remain nonfunctional).

11. *See* PAUL E. PETERSON ET AL., WHEN FEDERALISM WORKS 7 (1986) (introducing the concept of cooperative federalism in the context of U.S. grant-in-aid programs initiated in the 1960s, which involved municipal, state, and federal agencies).

istration and the local governments are tasked with program implementation.¹²

RAY set out a three-pronged approach to improving existing slums¹³ and preventing future slum development:¹⁴ (1) integrating slums into the formal system of government so slum dwellers can access the same basic amenities as neighboring urban residents, (2) tackling the structural issues within India's formal system of government that cause the creation of slums, and (3) addressing affordable housing shortages for the urban poor, which lead to extralegal solutions like slum development in order to survive.¹⁵

RAY employs a property rights strategy to prevent displacement of slum dwellers.¹⁶ Each qualifying state is to provide slum dwellers with a legal document of entitlement to ensure that residents will be able to access dwelling spaces at an affordable cost and receive proper services while new dwelling units are being constructed.¹⁷ In theory, property entitlements are supposed to prevent the displacement of slum dwellers in the face of redevelopment.¹⁸ However, without the framework of strong local governments and mandatory local participation, the assignment of property rights to slum dwellers may not be enough to deter displacement. This Note argues that full compliance with the 74th CAA is needed before RAY can be implemented in a fashion that is genuinely protective of the rights of slum dwellers.

But, before reaching the argument that local governments are not strong enough to be protective of slum-dwellers' interests, it is necessary to begin with a basic question: why should

12. RAY GUIDELINES ON COMMUNITY PARTICIPATION, *supra* note 5, at 3.

13. See MINISTRY OF HOUS. & URBAN POVERTY ALLEVIATION, DRAFT GUIDELINES FOR PREPARATION OF A SLUM FREE CITY PLAN OF ACTION UNDER THE RAJIV AWAS YOJANA 2 (2011) [hereinafter SLUM FREE CITY PLAN OF ACTION], available at http://mhupa.gov.in/ray/planning_guidelines.pdf.

14. *Id.* (describing the prevention of future slums as a preventative strategy).

15. *Id.* at 1.

16. MINISTRY OF HOUS. & URBAN POVERTY ALLEVIATION, DRAFT MODEL PROPERTY RIGHTS TO SLUM DWELLERS ACT 5 (2011).

17. See *id.*; see also Nisha Kumar Kulkarni, *Revisiting Property Rights for Slum-Dwellers*, SEARCHLIGHT S. ASIA (Feb. 26, 2013) ("[The bill] gives eligible slum-dwellers a dwelling of 25 square meters of carpet area, or its equivalent land area, at an affordable cost.").

18. *Id.* at 6.

local governments be involved in India's redistributive programs in the first place? It is conceivable that the shifting of implementation functions to local governments with more limited capacity actually hinders the proper execution of RAY, and a more centralized system is preferred.¹⁹ Alternatively, one could argue that the central government's top-down design of RAY's slum-clearance program leads to its own set of inefficiencies, and a significant degree of local control is needed for effective implementation.²⁰ After placing these competing narratives in the context of contemporary theories of jurisdictional design, this Note argues that RAY's jurisdictional model is indeed the correct approach, but requires a strong framework for resolving jurisdictional conflicts between state and local actors.²¹ To strengthen India's local governance framework, this Note advocates for an amendment to the Constitution of India ("Constitution") alongside new central government oversight functions to expressly and functionally shift delegatory authority of planning functions from states to the central government. Such an amendment would ensure that wholly local planning

19. See CLAYTON P. GILLETTE, LOCAL REDISTRIBUTION AND LOCAL DEMOCRACY: INTEREST GROUPS AND THE COURTS 31 (2011). Institutional design hinges on the governmental objectives at stake. *Id.* If the goal is to understand local preferences and match government resources to those preferences, local autonomy may be more appropriate. *Id.* But if local governance structures are weak, their involvement may actually hinder political accountability. See MINISTRY OF URBAN DEVELOPMENT, DEVELOPING SUSTAINABLE AND INCLUSIVE URBAN INFRASTRUCTURE SERVICES: A GUIDEBOOK FOR PROJECT IMPLEMENTERS AND POLICY MAKERS IN INDIA 12 (2011) (India) [hereinafter DEVELOPING SUSTAINABLE AND INCLUSIVE URBAN INFRASTRUCTURE SERVICES], available at <http://www.urbaninfrastructureindia.org/guidebook.html> ("If local government is fundamentally constrained with weak finances and/or limited mandate, it has minimal influence in shaping development, and cannot be seriously held accountable for improving the living conditions in the city.").

20. See DEVELOPING SUSTAINABLE AND INCLUSIVE URBAN INFRASTRUCTURE SERVICES, *supra* note 19, at 12 (detailing the challenges associated with state and central government tackling everyday quality-of-life issues for urban dwellers).

21. See Clayton P. Gillette, *The Exercise of Trumps by Decentralized Governments*, 83 VA. L. REV. 1347, 1347 (1997). Gillette sets out a framework for analyzing jurisdictional conflict through the introduction of the "decentralized trump," which he describes as a "situation in which legislation enacted by a decentralized unit of government prevails over legislation enacted by the centralized unit of government of which the decentralized unit is a part." *Id.*

functions, which are often trapped in a battle between state and local authorities, reside in local hands.

Part I of this Note presents theories of jurisdictional design to argue that central government oversight with local implementation is preferred in light of RAY's programmatic mandates. Part I proceeds with a discussion on the history of local urban governance in India. Part II introduces the 74th CAA and addresses the implementation challenges associated with this constitutional amendment. Part III introduces Rajiv Awas Yojana's slum-free cities program and considers whether an allocation of property rights under RAY will effectively protect the interests of slum dwellers, particularly when full compliance with the 74th CAA has not yet been achieved. Finally, Part IV recommends an amendment to India's Constitution to foster compliance with the 74th CAA while granting more autonomy to local governments.

I. BACKGROUND

A. *Theories of Jurisdictional Design*

This Note's primary concern is that India's slum-clearance program will inadequately protect the rights of slum dwellers given the limited capacity of local governments. Yet this hypothesis requires some unpacking—embedded in it is a preference for local government implementation. Some of the hallmarks of local implementation include democratizing functions, like the fostering of broad-based local participation and “preference satisfaction,” or in other words, responsiveness to community preferences about what public goods local government should provide and at what level.²²

However, there are a number of other plausible jurisdictional arrangements to consider.²³ For instance, RAY could have been designed as a program both funded and administered by the central government.²⁴ Or alternatively, the central and state governments could share funding and administration responsi-

22. GILLETTE, *supra* note 19, at 34. Gillette also references Charles Tiebout's influential observations on jurisdictional competition based on bundles of public goods, whereby residents vote through locational decisions to access their preferred set of municipal services. *Id.*

23. *Id.* at 31 (“[D]etermining the proper scope of local autonomy is largely a question of institutional design.”).

24. Gillette, *supra* note 21, at 1347.

bilities without the participation of local governments.²⁵ And yet another scenario is one where RAY is entirely decentralized, where local governments create and fund their own slum-clearance programs.²⁶

RAY's existing jurisdictional design—with central government design, state administration, and local implementation—is preferred so long as there are strong mechanisms in place to resolve jurisdictional conflict and genuinely delegate implementation to local planning bodies.²⁷ But at present, the partial implementation of the 74th CAA leaves the door open for frequent jurisdictional conflict between state and local governments on program implementation.²⁸ Until full implementation of the 74th CAA is achieved, perhaps through a constitutional amendment, local governments will be unable to adequately protect the property rights of slum dwellers during the redevelopment process.

Intuitively, it is unsurprising that the jurisdictional design for a particular program should vary with public sector objectives.²⁹ Redistributive programs, which shift resources from one segment of the population to benefit another group, pose unique challenges for local governments.³⁰ To illustrate the dynamic, imagine a simple theoretical example involving two nearby cities—City A and City B. City A undertakes a program that redistributes wealth to low-income residents, while City B's policies remain unchanged. Low-income residents in City B will flock to City A to tap into City A's redistributive programs.³¹ But that is not the only population shift that occurs: middle- and high-income residents of City A will move to City B to escape the tax burdens associated with City A's redistributive programs.³² Consequently, City A suffers the loss of a core

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at 1348.

30. See PETERSON, *supra* note 11, at 15–16.

31. See *id.*

32. See *id.* An alternative outcome, though one regularly subject to legal challenges in the United States, is for municipalities to adopt land use controls that inhibit the entry of lower-income individuals and safeguard a combination of low taxes and desirable municipal services. See Norman Williams Jr., *Planning Law and Democratic Living*, 20 LAW & CONTEMP. PROBS. 317, 344 (1955) (discussing the underlying motivations for economic exclusion

portion of its tax base and is saddled with residents that will require a costly set of social programs.³³

It is this possibility of flight between cities that creates a collective action problem among local governments—"no local government will provide redistributive services on its own initiative for fear that it will be unduly burdened by a social problem while others escape responsibility or, as is often said in this connection, ride free."³⁴ Solving this collective action problem may require a jurisdictional reorganization of the redistributive program to include state and national actors.³⁵

Broader participation across various levels of government allows for localized costs and generalized benefits to be shared more evenly.³⁶ As legal scholar Clayton Gillette explains: "if the objective of government is to solve collective action problems in the provision of a public good, then government boundaries should coincide with the geographical scope of the benefits generated by government provision or production of that good."³⁷ Many redistributive programs provide widespread social benefits beyond the immediate recipients, but the burdens remain entirely localized.³⁸ Central and state government intervention

within local communities, including the preservation of property values and neighborhood character).

33. See PETERSON, *supra* note 11, at 15–16.

34. *Id.* at 16. *But see* GILLETTE, *supra* note 19, at 31 (testing this conventional theory of local redistribution and urban finance, and arguing that there are indeed circumstances where "a locality characterized by a well-working political process would be willing to adopt local redistributive programs").

35. Gillette, *supra* note 21, at 1348.

36. See PETERSON, *supra* note 11, at 16. There is also an important role for courts to play in assessing the legal validity of local redistributive programs and setting precedents that could be adopted across a region. For instance, in the exclusionary zoning context, the New Jersey Supreme Court in *Southern Burlington NAACP v. Township of Mount Laurel* set a precedent for looking regionally to assess local affordable housing burdens, noting that "the universal and constant need for [affordable] housing is so important and of such broad public interest that the general welfare which developing municipalities like Mount Laurel must consider extends beyond their boundaries and cannot be parochially confined to the claimed good of the particular municipality." 67 N.J. 151, 179 (1975).

37. Gillette, *supra* note 21, at 1348.

38. See PETERSON, *supra* note 11, at 16 (explaining the far-reaching impacts of a given local government's program: "If, however, a locality does not redistribute resources to help those in need, other localities suffer: either they

may be warranted in a situation where redistributive programs are addressing concerns that impact several spatial frames: local, regional, and perhaps even national.³⁹

Assuming central government intervention is needed, one must question how much responsibility central governments should take on for a given redistributive program. While central governments can help adjust burdens and incentives in support of local redistribution, the conventional fear is that they will be too far removed from localized social issues to intervene effectively.⁴⁰ Some theorists have turned to the following distinction for determining what level of central government intervention is appropriate: when programs can be administered on relatively objective and easily reviewable terms—like a welfare cash award or a social security payment—centralized funding *and* administration may be the most efficient.⁴¹ Alternatively, when a redistributive program involves the public provision of a commodity—like housing or other social services—coordination with local government is often needed for effective implementation.⁴²

This theoretical distinction suggests that RAY's jurisdictional design may very well be ideal in light of its more nuanced programmatic objectives: upgrading slum conditions and providing suitable affordable housing for the poor.⁴³ Then again, what this distinction does not capture is the potential for jurisdictional conflict. In his analysis of local government involvement in redistributive programs, Gillette pointed to the potential for jurisdictional conflict when multiple layers of government are (or could be) involved.⁴⁴ These conflicts generally relate to am-

must take up the burden or their residents must witness the resultant suffering").

39. Gillette, *supra* note 21, at 1347.

40. See ROBERT DAHL & EDWARD TUFTE, *SIZE AND DEMOCRACY* 134–35 (1973) (noting that “a larger political system, confronted by the disadvantages of boundaries larger than the problems it wishes to deal with by uniform rules, may be driven successively from one alternative to the next until it has transformed itself into a congeries of smaller political systems”).

41. See PETERSON, *supra* note 11, at 17 (emphasis added).

42. *Id.*; see also Gillette, *supra* note 21, at 1348–49 (“If the function [of government] is to foster self governance, the government should be small enough to permit participation.”).

43. SLUM FREE CITY PLAN OF ACTION, *supra* note 13.

44. Gillette, *supra* note 21, at 1354 (explaining that although there may be “significant advantages to retaining some degree of autonomy at the decen-

biguous statutory or constitutional language that may undermine local authority.⁴⁵ Thus, when a redistributive program involves multiple jurisdictional layers, clear statutory and constitutional delegations can help to minimize jurisdictional conflict.⁴⁶

In addition, this statutory and constitutional language should embrace local governance structures by formalizing some degree of autonomy.⁴⁷ Legal scholars have long addressed the tendency of courts and legislatures to undermine the power of local institutions.⁴⁸ For instance, David J. Barron's seminal piece on localism in the United States described the historically weak protections given to local governance structures.⁴⁹ Barron underscored the importance of these local structures in promoting substantive constitutional values and offering a forum for a counter-majoritarian voice.⁵⁰ Barron's powerful defense of localism stressed that:

[t]owns and cities are often the institutions that are most directly responsible for structuring political struggles over the most contentious public questions, whether they concern the proper means of overcoming racial stratification, securing quality public education, or protecting disfavored groups from private discrimination.⁵¹

Theoretical contributions on the importance of localism and the risks of jurisdictional conflict therefore suggest the need for clear constitutional and statutory delegations that both stabilize local entities and promote local autonomy.⁵² By providing unambiguous constitutional and statutory underpinnings for localism, governance structures are better equipped to support

tralized level," decisions need to be made on how to resolve conflict across different jurisdictional levels).

45. GILLETTE, *supra* note 19, at 26.

46. *Id.*

47. See David J. Barron, *The Promise of Cooley's City: Traces of Local Constitutionalism*, 147 U. PA. L. REV. 487, 487-91 (1999) (defending the important public functions that local governments play in society and critiquing the current treatment of local governance in the United States).

48. *Id.*

49. *Id.*

50. *Id.* at 490-91.

51. *Id.* at 491.

52. Gillette, *supra* note 21, at 1347; Barron, *supra* note 47, at 490-91.

complex jurisdictional designs like RAY, which involve multiple layers of government in a redistributive program.

B. The History of Local Governance in India

The above analysis on jurisdictional design applies when there are democratic institutions at various spatial increments (e.g., state and local) to collaborate with.⁵³ India's democratic governance structures have the unique feature of being embodied in the very text of the Constitution.⁵⁴ Although urban governance structures have existed in India for centuries, the constitutional recognition of local government is a recent innovation.⁵⁵

During the British colonial period, there were several well-documented efforts to expand municipal administration, beginning with the Charter of James II in 1687, which granted legal authority to the East India Company to create municipal corporations.⁵⁶ In the nineteenth century, there was widespread understanding of the need for local institutions to address the unsanitary conditions that were widespread across India's towns and cities, and municipalities soon proliferated.⁵⁷ How-

53. See PETERSON, *supra* note 11, at 6 (noting that cooperative federalism requires multiple layers of government that depend on one another).

54. See INDIA CONST. art. 243P–243ZG, *amended by* The Constitution (Seventy-Fourth Amendment) Act, Part IX-A, 1993. *Cf.* Barron, *supra* note 47, at 490 (pointing out that local governments, like towns, are not part of the United States' federal constitutional structure).

55. Soumen Bagchi, *Decentralised Urban Governance in India: Implications for Urban Infrastructure*, ECON. & POL. WKLY. (2004) (tracing municipal administration to India's ancient beginnings—the period of the Indus Valley Civilization (2300–1750 B.C.)); *see also* Rumi Aijaz, *Challenges for Urban Local Governments in India* 6 (Asia Research Ctr., Working Paper No. 19, 2007) (noting that evidence of urban life in the Indus Valley Civilization existed in the form of “wide streets, market places, public offices, community baths, drainage and sewerage system[s]”).

56. Bagchi, *supra* note 55, at 2 (detailing additional steps toward decentralization, such as the creation of the Mayor's Court in 1726 in the three Presidency towns of Madras, Bombay, and Calcutta); *see* Vikrant Narayan Vasudeva, *Legal Intervention in Poverty Alleviation: Enriching the Poor Through Law*, 2 NUJS L. REV. 447, 447 (2010) (remarking on how the colonial period marked India's “plunge into mass poverty”).

57. Aijaz, *supra* note 55, at 6. In 1850, the British Colonial Government passed an act that created local committees designed to improve public health. *Id.* However, there were still significant barriers to public participa-

ever, the strengthening of municipal institutions was not without considerable resistance; many central government officials considered the decentralization reforms of the late 1800s too radical.⁵⁸ Moreover, Indians struggled to obtain political rights within the newly constituted urban governance frameworks, while British "district officers in those days were not sympathetic to the idea of extension of the elective principle."⁵⁹

Although there were a few isolated examples of genuine integration of Indians in the administration of the colonial government, most power remained firmly entrenched in the hands of unelected district officers that were reluctant to implement decentralization reforms.⁶⁰ The passage of the Government of India Act in 1919 was the colonial regime's first formal statutory attempt to transfer power from district officers to popularly elected local bodies.⁶¹ Yet, this decentralization effort was unsuccessful, in part because of an inadequate legal framework for regulating municipal affairs.⁶² In fact, "several municipalities [were] superseded on the charges of corruption and inefficiency," which significantly undermined the decentralization movement.⁶³ The power struggles and pitfalls associated with the British colonial regime's decentralization reforms would

tion in 1863, when the Royal Army Sanitation Commission reported the "fast deteriorating sanitation conditions" across the country. *Id.*

58. *Id.* at 7. In 1882, Lord Ripon was a staunch advocate for local self-government, financial decentralization, and elections to constitute local bodies. Municipal Acts were passed under Lord Ripon that embodied these principles, but "achieved little success, since they were considered too radical." *Id.*

59. *Id.* at 6. In the late 1800s, "municipalities [were] established in every town of importance. However, these municipal bodies were completely under the control of the district magistrate and the town people were associated only for raising funds for the maintenance of police, conservancy and road repairs." *Id.*

60. *Id.* at 7. Calcutta and Bombay provided early examples of successful local self-government. For instance, in 1888, the Bombay City Municipal Corporation Act was passed, which created a City Council comprised of a combination of elected and nominated members. *Id.*

61. *Id.*

62. *Id.* (explaining that "laws governing local bodies enacted during the period 1917 to 1937 fail[ed] to prescribe an effective system for day-to-day management of municipal affairs; hardly any attention was paid to the question of administrative efficiency and fixation of responsibility for the proper performance of municipal functions").

63. *Id.*

ultimately turn out to be a familiar refrain for urban dwellers over a century later.⁶⁴

India became independent from Great Britain in 1947, and within three years the sovereign nation had drafted its own Constitution.⁶⁵ Virtually absent from the Constitution was any reference to systems of urban governance; legislative authority over India's cities was delegated to the states.⁶⁶ Until 1992, India's Constitution recognized two tiers of government—the national government and the states as subnational units.⁶⁷ Although some urban local governments remained in place, “they were organized on the basis of the ultra vires principle, meaning that there was no established legal authority for their operation and they could be completely dissolved by the states.”⁶⁸

64. Mayraj Fahim, *Local Government in India Still Carries Characteristics of Its Colonial Heritage*, CITY MAYORS (May 24, 2009).

65. Aijaz, *supra* note 55, at 7; *see also* Shubham Chaudhuri, *What Difference Does a Constitutional Amendment Make? The 1994 Panchayati Raj Act and the Attempt to Revitalize Rural Local Government in India* (Columbia Univ., Working Paper 4, 2003). India's post-colonial government is structured as

a federal parliamentary democracy made up of 28 states and 7 union territories. At the national level, legislative authority rests with the two houses of the parliament: the Lok Sabha (House of the People), which consists of 545 members, all but two of whom are directly elected from single-member parliamentary constituencies distributed proportionally on the basis of population among the state and union territories; and to a lesser extent, the Rajya Sabha (Council of States), which has no more than 250 members, most of whom are indirectly elected by the members of the state legislative assemblies of the various states.

Id.

66. Aijaz, *supra* note 55, at 7. While there were provisions for the governance of rural settlements, the Constitution's only direction with respect to urban local government was to delegate authority to state governments without any specific direction. *Id.*; *see also* Chaudhuri, *supra* note 65, at 4 (describing the structure of the Constitution prior to the 74th CAA, with List 1 (the Union List), where the Central government has exclusive authority, and List 2, with the areas where states have exclusive legislative authority). Areas where states were granted authority include “law and order, public health, agriculture, wealth taxes, land tenure, and land reforms, and most notably in the current context, functions of local government.” *Id.*

67. Chaudhuri, *supra* note 65, at 4.

68. Sharma, *supra* note 6, at 85 (explaining that since local governments were not constitutionally required, “state governments were at liberty to ex-

India's local governments were largely neglected, with little attention paid to functional issues, like the provision of public goods, or structural issues, such as mandating regular elections or mechanisms for public participation.⁶⁹ Meanwhile, the central government's bureaucracy grew as it focused on a system of expansive control over economic growth through a mix of tariffs, subsidies, industry regulation, and in some cases, nationalization of certain industries.⁷⁰

In the decades leading up to decentralization reforms, the "centralized apparatus of the Indian developmental state" functioned as a barrier to successful revitalization and equitable service delivery in cities.⁷¹ As one scholar pointed out when discussing India's vast central government bureaucracy, "the inefficiency of India's managed economy is symbolized by the fact that a nation with widespread poverty, and unemployment or underemployment, has at the same time one of the world's most capital intensive developing economies."⁷² The inequality associated with India's centrally-managed economy led to questions about the proper role for the central government in the marketplace and how to craft redistributive programs that benefit the poor.⁷³

tend or control the powers through executive decisions without an amendment to legislative provisions").

69. Aijaz, *supra* note 55, at 7 (noting that local governments were neglected in the 1950s without formal constitutional recognition); *see also* Chaudhuri, *supra* note 65, at 2 (explaining that the 74th CAA provided the impetus for regular elections and more representative participation in government).

70. DENNIS C. MUELLER, CONSTITUTIONAL DEMOCRACY 32 (Oxford Univ. Press 1996).

71. Chaudhuri, *supra* note 65, at 4 (tracing India's dismal record in the provision of public goods and in the sphere of human development); *see also* MUELLER, *supra* note 70, at 32-33. As of 1996, when this text was written, poverty rates were roughly the same as they were pre-independence, with 50% of the population living in poverty. *Id.* Mueller notes that "at least some of the blame of this poor performance must be placed on India's government and its political institutions." *Id.*

72. MUELLER, *supra* note 70, at 32.

73. *Id.* at 33. India poses the question of "the proper role of government in providing those goods and services that government can provide more efficiently than the market, and also the question of the optimal amount of redistribution." *Id.* Additional examples of the inefficiency of the central government include the lack of spending on education relative to other develop-

The central government's oversight of urban governance provides an illuminating example of inefficiency within its bureaucratic apparatus.⁷⁴ Rather than identifying a particular ministry to focus on urban governance issues, the central government erratically shifted primary oversight between different ministries, which limited meaningful policy reform in cities.⁷⁵ Despite (or perhaps, because of) the central government's fragmented approach to urban governance, a more concerted effort began in earnest in the late 1980s to strengthen urban local governments.⁷⁶ One scholar pointed out how the decentralization effort was uniquely driven by generalized social and economic forces:

[W]hereas in some countries the impetus for decentralization has come from external sources or has been triggered by an economic crisis, in India, it was home-grown and there was no single precipitating event that led to the reform. That is not to say, however, that the pressure for reforms came from the grassroots. Instead the reforms reflected the emergence of a remarkable consensus among India's policy-making and intellectual elites.⁷⁷

Prior to the 74th CAA, there were two failed attempts at constitutional amendments to strengthen urban local governments: the first in 1989 (the 63rd Amendment) and the second in 1991 (the 73rd Amendment Bill).⁷⁸ One of the main arguments against constitutional recognition of urban local governments was that it would constrain the rights of state gov-

ing nations, and the challenges the police face in controlling public order, with violence steadily increasing over the last twenty years. *Id.*

74. *Id.* at 32. ("A vast bureaucracy was created to guide the economy, a bureaucracy that has grown more corrupt and inefficient over time.")

75. Aijaz, *supra* note 55, at 7 (listing the many agencies that had overlapping responsibilities for overseeing urban local governments, including the Ministry of Health, Ministry of Works, Ministry of Housing and Urban Development, Ministry of Health and Family Planning, etc.).

76. *Id.* In 1985, the Ministry of Urban Development was created, functioning as a coordinating agency for urban governance. The National Commission on Urbanisation was also established to analyze the increasing trend toward urbanization in India. *Id.* *But see* Harriss, *supra* note 7, at 5 (remarking that the constitutional reform efforts were focused on rural governance structures rather than decentralization for urban local government; the enactment of the 74th CAA was described as "an afterthought" for urban areas).

77. Chaudhuri, *supra* note 65, at 4.

78. Aijaz, *supra* note 55, at 7–8.

ernment.⁷⁹ As one local government advisor described the debate, "a primary reason for the delay was that local governments were perceived to be rivals, rather than complements, by state governments. Hence, local government was not maintained with commitment and sufficiently empowered in the post-independence era."⁸⁰

II. COMPLIANCE WITH THE LETTER AND SPIRIT OF THE 74TH CONSTITUTIONAL AMENDMENT ACT

There are numerous examples of central governments initiating decentralization reforms.⁸¹ But what distinguishes India's decentralization effort is that the central government created the 74th CAA, but left implementation of the letter and spirit of the 74th CAA to the states.⁸² As will be more fully discussed in Part II.B, India's state-level implementation model has led to mixed results, with weak compliance in areas critically important to local participation.⁸³ The central government has initiated programs to foster greater compliance with the 74th CAA, like the Jawaharlal Nehru National Urban Renewal Mission, but it remains unclear whether such programs have tangibly advanced the decentralization agenda.⁸⁴

79. See *Fashim, supra* note 64. States exercised varying degrees of power over functions that were ultimately devolved to local governments in the 74th CAA. See Darley Jose Kjosavik & Nadarajah Shanmugaratnam, *Between Decentralized Planning and Neo-liberalism: Challenges for the Survival of Indigenous People of Kerala, India*, 40 SOC. POL'Y & ADMIN. 632, 633 (2006) (describing the serious impact that decentralization had on the state of Kerala in light of the state's significant role in development projects).

80. *Fashim, supra* note 64.

81. Chaudhuri, *supra* note 65, at 2.

82. In many other countries "the impetus for decentralization reforms originated at the national level and implementation responsibility also resided at the national level." *Id.*

83. JNNURM IMPLEMENTATION, *supra* note 9, at 2. ("The existing legal framework as defined by the state municipal acts was not conducive for implementing the provisions of the 74th CAA in its true spirit.")

84. See M.P. MATHUR, IMPACT OF THE CONSTITUTION (74TH) AMENDMENT ACT ON URBAN LOCAL BODIES: A REVIEW, NAT'L INST. OF URBAN AFFAIRS (2007) (offering the most comprehensive summary to date on decentralization reforms).

A. Passage of the 74th CAA and Core Provisions for Local Participation

There are competing narratives on the political forces that ultimately tipped the scales in favor of a constitutional amendment.⁸⁵ One narrative relates to the growing frustration around the poor living conditions in the cities, while the other suggests that there were strong political forces advocating for local governance structures in rural areas, and cities were included merely as an afterthought.⁸⁶ While the true impetus remains in question, the 74th Constitutional Amendment Act eventually passed in 1992, providing the constitutional underpinnings for local government entities in cities.⁸⁷ A landmark step toward decentralization, the 74th CAA gives legal recognition to urban local bodies (“ULBs”), creating a uniform local governance structure for cities across the country.⁸⁸ The 74th CAA recognizes that ULBs can foster more community participation, address unmet infrastructure needs, fight poverty, and promote equity.⁸⁹ Included in the contents of the 74th CAA are four mechanisms to achieve these goals.⁹⁰

First, the 74th CAA sets out three different types of municipalities based on the urban landscape.⁹¹ Nagar panchayat is the designation for areas that are transitioning from rural to urban, municipal councils are for smaller urban areas, and

85. Harriss, *supra* note 7, at 5.

86. *Id.*

87. *Id.*

88. D.P. Tiwari, *Challenges in Urban Planning for Local Bodies in India*, GEOSPATIAL MEDIA & COMM., available at <http://www.gisdevelopment.net/application/urban/overview/urbano0037a.htm> (last visited Feb. 5, 2014).

89. JNNURM IMPLEMENTATION, *supra* note 9, at 2. See also DEVELOPING SUSTAINABLE AND INCLUSIVE URBAN INFRASTRUCTURE SERVICES, *supra* note 19, at 12. The 74th CAA designates local institutions as the providers of urban services, including the development of new parks, support for new employment opportunities, and investment in core infrastructure like “water, sewer and electrical supply.” The amendment was also designed to address the problem of “representational distance,” where urban dwellers would have to turn to the state capital to address everyday issues. *Id.* The 74th CAA, through its formal acknowledgement of local institutions, aimed to mitigate “[the] wide gap between citizens and central or state representatives [which] create[d] a relatively small and privileged group of high-powered brokers [and] encourage[d] trading money for access.” *Id.*

90. INDIA CONST. art. 243P–243ZG, amended by The Constitution (Seventy-Fourth Amendment) Act, Part IX-A, 1993.

91. *Id.* art. 243Q.

municipal corporations are for larger urban areas.⁹² The 74th CAA also identifies a number of factors to be used when classifying municipalities into one of these categories, including population size and density, percentage of employment in non-agricultural activities, and the revenue generated for local administration.⁹³

Second, the 74th CAA calls for the creation and constitution of ward committees as the smallest units of political representation within the ULBs.⁹⁴ These committees are designed as a "means of increased democratic participation and of deliberative decision making."⁹⁵ While the 74th CAA mandates that municipal areas with populations of 300,000 or more be divided into wards,⁹⁶ the states retain significant discretion with respect to the ward boundaries, the composition of ward committees, and the process for constituting these ward committees.⁹⁷ Additionally, the 74th CAA makes clear that states are free to create local participatory bodies in addition to ward committees.⁹⁸

Third, the 74th CAA requires local elections within municipalities,⁹⁹ with spots reserved for women and constitutionally recognized disadvantaged groups.¹⁰⁰ One-third of the seats on a ward committee must be reserved for women belonging to scheduled castes or scheduled tribes.¹⁰¹ This constitutional provision is designed to allow politically weak groups, like women

92. *Id.* art. 243Q(a).

93. *Id.* art. 243Q(2)

94. *Id.* art. 243S.

95. Harriss, *supra* note 7, at 9. *See also* Vani S. Kulkarni, *The Making and Unmaking of Local Democracy in an Indian Village*, 642 ANNALS AM. ACAD. POL. & SOC. SCI. 152, 153 n.2 (describing the 74th CAA as "an extraordinary impetus to local democracy" in the context of governance at the village level).

96. INDIA CONST. art. 243R, *amended by* The Constitution (Seventy-Fourth Amendment) Act, Part IX-A, 1993 ("[A]ll the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each municipal area shall be divided into territorial constituencies known as wards.").

97. *Id.* art. 243S.

98. *Id.* ("[N]othing in this article shall be deemed to prevent the Legislature of a State from making any provision for the constitution of Committees in addition to the Ward Committees.").

99. *Id.* art. 243R.

100. *Id.* art. 243T.

101. *Id.*

and those belonging to lower castes, to leverage the ULBs as a forum for civic participation.¹⁰²

Lastly, the 74th CAA delegates specific governmental functions to municipalities¹⁰³ and grants them the authority to levy and collect taxes to carry out those functions.¹⁰⁴ The Twelfth Schedule of the 74th Constitutional Amendment Act identifies eighteen separate functions and responsibilities that should be delegated to local bodies through state legislation.¹⁰⁵ These functions include urban planning, public health, urban poverty alleviation, and slum improvement.¹⁰⁶

The delegation of substantive functions to local governments and the ability to raise revenue to carry out those functions are at the core of local empowerment.¹⁰⁷ However, that delegation of power was left entirely at the discretion of the states in the 74th CAA with the following permissive language: “the Legislature of a State, *may*, by law, endow—(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self government.”¹⁰⁸ The 74th CAA uses the same permissive language in its discussion of taxes and funds for local governments.¹⁰⁹

A close reading of the 74th CAA reveals that in addition to the broad latitude that state governments have over the establishment of ward committees, they retain full control over the delegation of Twelfth Schedule functions.¹¹⁰ Although the Constitution sets out a number of substantive planning functions for local governments, delegation does not occur unless a state

102. Harriss, *supra* note 7, at 5.

103. INDIA CONST. art. 243W, *amended by* The Constitution (Seventy-Fourth Amendment) Act, Part IX-A, 1993.

104. *Id.* art. 243X.

105. *Id.* art. 243W, Twelfth Schedule; *see also* Tiwari, *supra* note 88, at 2–3.

106. *Id.* art. 243W, Twelfth Schedule; *see also* D.S. Meshram, *Interface Between Various Agencies under 74th CAA*, INST. TOWN PLANNERS INDIA J., Oct. 2004, at 13, *available at* <http://itpi.org.in/pdfs/oct2004/chapter3.pdf> (noting the need for state governments to delegate power over environmental and urban planning functions to municipalities to comply with the Twelfth Schedule).

107. Tiwari, *supra* note 88, at 2–3.

108. INDIA CONST. art. 243W, *amended by* The Constitution (Seventy-Fourth Amendment) Act, Part IX-A, 1993.

109. *Id.*

110. *Id.*; *see also* DEVELOPING SUSTAINABLE AND INCLUSIVE URBAN INFRASTRUCTURE SERVICES, *supra* note 19, at 11 (noting that “much of the content of the 74th CAA is not mandatory”).

decides to enact legislation conferring local authority.¹¹¹ As one scholar observed, the 74th CAA merely calls upon states to “devolve powers and resources to local bodies” so they can function as autonomous institutions.¹¹² The 74th CAA clearly articulates a substantive role for ULBs to provide public goods, engage in local planning, reduce poverty, and promote equity.¹¹³ Those roles, by constitutional design, hinge on permissive state legislative action.¹¹⁴

Thus, the 74th CAA’s delegation of substantive powers to local governments—the heart of political empowerment—is conditioned on a willingness of state governments to relinquish control of certain substantive areas. This makes decentralization uniquely challenging for India: “unlike in many other countries where the impetus for decentralization originated at the national level and implementation responsibility also resided at the national level, in India, the final responsibility for the design and implementation of local government reforms lay with the states.”¹¹⁵

B. Implementation Challenges Associated with the 74th CAA

Decentralization mandates have been undermined by state governments trying to retain control over the substantive areas designated for local authority, like land use planning and development.¹¹⁶ Additionally, many state politicians have felt threatened by the prospect of decentralization, “fear[ing] the possible loss of their powers of patronage.”¹¹⁷ One political the-

111. See Subramaniam Vincent & Meera K, *Janaspandanas or Ward Committees: Calling the Bluff*, CITIZEN MATTERS (July 20, 2009), http://bangalore.citizenmatters.in/blogs/editors-blog/blog_posts/1222-government-janaspandanas-or-ward-committees-calling-the-bluff (describing the shortsightedness of the 74th CAA in allowing the state governments to have control over the composition of ward committees).

112. Chaudhuri, *supra* note 65, at 2.

113. *Id.*

114. *Id.*

115. *Id.*

116. See Harriss, *supra* note 7, at 7; see also JnNURM Primer (stating that in order to implement the decentralization agenda, “an attitudinal change” is needed such that states no longer view ULBs as adversaries, but as partners to strengthen the governance in their state).

117. Harriss, *supra* note 7, at 10.

orist analogized state-level implementation of the 74th CAA to driving with one foot on the gas and the other on the brake.¹¹⁸

There are a number of studies that evaluate decentralization following the 74th CAA.¹¹⁹ Yet, it is instructive to begin with a brief examination of the social and economic forces that have hindered decentralization reforms. One dynamic that scholars have observed are the close ties between central and state governments and the capitalist class, which create incentives to block local participation.¹²⁰ Many of the large-scale developments occurring in India's cities are advanced through public-private partnerships, with heavy assistance from the capitalist class.¹²¹ These public-private development projects are increasingly changing the urban landscape, with one social anthropologist describing the hegemony of the capitalist class in "shaping the urban form."¹²² The challenge for local governments, in light of this paradigm, is that they are often not a party to the public-private agreements that set the terms for large-scale developments.¹²³ This is inherently inconsistent with the 74th CAA, since the Twelfth Schedule specifically articulates urban planning as a function to be devolved to local governance structures.¹²⁴

Nevertheless, this lack of local representation may very well be by design.¹²⁵ Central and state governments are protective of their ties to the capitalist class because they want to encourage and protect swift, large-scale investment in India's cities.¹²⁶

118. *Id.* at 7.

119. *See, e.g.,* Bagchi, *supra* note 55, at 3. A challenge associated with these decentralization studies lies with setting conceptual definitions to measure decentralization and its impacts on the allocation of public resources and the delivery of public goods. *Id.*

120. Harriss, *supra* note 7, at 7 (considering the dominance of information technology firms within the capital class and the real state trends in the city of Bangalore where there were frequent direct links between IT firms and state and central government agencies).

121. *Id.*

122. *Id.*

123. *Id.* at 7–8.

124. Tiwari, *supra* note 88, at 3.

125. Harriss, *supra* note 7, at 8 (discussing a study on the corporate economies in cities like Bangalore and Ahmedabad, which found limited opportunities for local participation, in part because "their definition of public priorities is discordant with those that may be expressed by participants in the local economies").

126. *Id.* at 7.

Local oversight of urban planning has the potential to slow new development, or even derail important infrastructure investments when there are countervailing community concerns.¹²⁷ As a result of these dynamics, local governments face an uphill battle when trying to assume genuine control over the land use planning process, despite the delegation in the 74th CAA.¹²⁸ And where states have delegated some control over municipal planning to local bodies, it is regularly undermined by the "land poaching" that is characteristic of these public-private partnerships.¹²⁹

The public-private partnership paradigm, as described above, has important class implications for India's cities.¹³⁰ The land that is "poached" for new development often comes from slum areas, where land can be obtained at relatively low costs.¹³¹ Slum dwellers are regularly displaced as state-sponsored developments result in the demolition of their homes.¹³² This residential displacement sometimes forces slum dwellers out of their existing communities, since the new development drives up local land prices.¹³³ Although major development projects have the potential to tangibly improve the conditions of slum dwellers, the relative weakness of local governance structures makes it difficult for the urban poor to secure housing.¹³⁴ One scholar observed that "publicly sponsored mega-projects do little to support the local economies that are so important for the city's prosperity, and may disrupt them."¹³⁵

The emphasis on public-private partnerships in India's redevelopment schemes has led states to resist genuine implementation of the 74th CAA.¹³⁶ Meanwhile, limited local government

127. Solomon Benjamin, *Governance and Economic Settings and Poverty in Bangalore, Environment and Urbanization*, 12 ENV'T & URB. 1, 35-56 (2000); see also WORKING OF URBAN LOCAL BODIES, *supra* note 10, at 1 (noting the limited capacity of local institutions).

128. Harriss, *supra* note 7, at 7.

129. *Id.*

130. *Id.* at 7-8.

131. Benjamin, *supra* note 127, at 38, 46.

132. *Id.* at 46.

133. *Id.* (noting the increased threat of eviction for slum dwellers as a result of these public-private partnerships).

134. *Id.*

135. *Id.* at 44-46 (describing the public-private partnerships as a restraint of "pro-poor economic activity").

136. Harriss, *supra* note 7, at 7-8.

representation has left slum dwellers without a voice in the land use planning process, while the capitalist class works on state-endorsed megaprojects that are likely to redefine the built form of cities.¹³⁷ This was precisely the dynamic that the 74th CAA was intended to correct.¹³⁸ Yet compliance with the letter and spirit of the 74th CAA has been inconsistent at best.¹³⁹

In 2005, the National Institute for Urban Affairs (“NIUA”) conducted the first comprehensive study on the implementation of the 74th CAA on a national scale.¹⁴⁰ Some of the key decentralization metrics that NIUA examined include: (1) the presence of ULBs, (2) the reservation of seats for women and underrepresented castes on those ULBs, (3) local elections held with regularity, and (4) the constitution of ward committees.¹⁴¹ NIUA found that most states were complying with certain provisions of the 74th CAA, like the constitution of ULBs and the reservation of seats on those ULBs.¹⁴² In addition, most states

137. *Id.*

138. WORKING OF URBAN LOCAL BODIES, *supra* note 10, at vi.

139. Harriss, *supra* note 7, at 7.

[T]he increasing power of the corporate sector, of the upper middle class and of real estate developers over the shaping of urban space provides an indication of the failure, so far, to make a reality of the intentions of the 74th Amendment with regard to the establishment of decentralized democratic governance of the cities.

Id.

140. WORKING OF URBAN LOCAL BODIES, *supra* note 10, at vii (assessing decentralization in twenty-seven states and one union territory in India). NIUA’s study was funded by the central government’s Ministry of Urban Development. *Id.* NIUA noted that one of the challenges of such a comprehensive assessment was the unavailability of data for certain implementation metrics; for instance, gender representation on ward committees. *Id.* There were also certain regions where data was incomplete. *Id.* For example, there were significant data gaps for most of the states in the northeast of India and the newly formed states of Chhattisgarh, Jharkhand, and Uttaranchal. *Id.* at vii–viii.

141. *Id.* at viii. Unfortunately, data constraints limited NIUA’s ability to look closely at the devolution of powers from the Constitution’s Twelfth Schedule, like urban planning functions, across states. Therefore, the focus of their assessment is on key structural changes connected with the 74th CAA, like the abovementioned ULBs and ward committees. *Id.*

142. *Id.* NIUA found that as of 2005, there were over 3,000 ULBs, and that most states had amended their municipal acts in accordance with Article

had adopted municipal acts consistent with the 74th CAA to include the substantive functions from the Constitution's Twelfth Schedule (e.g., urban planning, poverty alleviation) as expressly designated duties of the ULBs.¹⁴³ However, these widespread amendments to state municipal acts should not be taken to imply that these substantive duties were functionally transferred to the ULBs.¹⁴⁴ NIUA noted that in many cases, states retained control over substantive duties in the Twelfth Schedule, either in part or in full.¹⁴⁵

A look at the status of the ward committees reveals more limited compliance with the 74th CAA; eight out of twenty-eight states, and one out of seven union territories, had ward committees in place at the time of assessment.¹⁴⁶ And even where ward committees existed on paper, few were operational.¹⁴⁷ This is a crucial concern when considered within the larger context of the decentralization agenda, since ward committees are the smallest increment of local government and the primary tool for public participation among the politically disenfranchised.¹⁴⁸ When ward committees are constituted, they are tasked with vital civic duties (at least on paper) such as tax collection, budget drafting, public grievances, development planning and monitoring, and slum improvement.¹⁴⁹ Structurally, ward committees are necessary for ensuring that ULBs are able to effectively represent historically weaker sections of the urban population.¹⁵⁰

NIUA's observations on devolution of Twelfth Schedule functions and the constitution of ward committees hints at a more generalized finding on compliance with the 74th CAA: state legislation delegating power to local institutions is an essential first step in the decentralization process, but not always suggestive of genuine implementation of the 74th CAA.¹⁵¹ NIUA

243(T) of the Constitution to reserve seats for schedule castes, schedule tribes, and women in the ULBs. *Id.* at xi.

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*; see also Harriss, *supra* note 7, at 10.

148. WORKING OF URBAN LOCAL BODIES, *supra* note 10, at vii; see also Harriss, *supra* note 7, at 10.

149. WORKING OF URBAN LOCAL BODIES, *supra* note 10, at xiii.

150. *Id.* at x.

151. *Id.* at vii.

highlighted that even in states that have enacted municipal acts to delegate power to local institutions, local participation within governance structures remains weak.¹⁵² The same is true for local revenue streams, where despite local legislative authority to recover tax revenue, municipalities encounter serious delays when trying to access needed funds.¹⁵³ These findings underscore that formal legislative action is not enough to implement the 74th CAA. Central government enforcement may be necessary to ensure that constitutional mandates and state enactments result in an actual devolution of power to local governments.

C. Compliance with the 74th CAA Through the Jawaharal Nehru National Urban Renewal Mission

In 2005, the same year that NIUA's comprehensive report on the 74th CAA was released, the central government's Ministry for Urban Development and Poverty Alleviation ("MUDPA") created a platform for urban revitalization—the Jawaharal Nehru National Urban Renewal Mission ("JnNURM").¹⁵⁴ The program focuses on a variety of administrative concerns so that planned developments in cities can move forward with greater efficiency, transparency, and citizen-centric accountability.¹⁵⁵ JnNURM set out a seven-year plan, with a number of reforms designed to strengthen ULBs. Among those reforms is implementation with the letter and spirit of the 74th CAA.¹⁵⁶

152. *Id.*

153. *Id.* Even the presence of state finance commissions in some cases did little to address delays associated with local governments getting approval to generate their own sources of revenue. *Id.*

154. Harriss, *supra* note 7, at 10.

The origins of JnNURM are in the commitment made in 2004 in the Common Minimum Programme agreed by the Congress Party with the parties on which it depended for office, to a "comprehensive programme of urban renewal and to a massive expansion of social housing in towns and cities, paying special attention to the needs of slum dwellers."

Id.

155. JNNURM OVERVIEW, *supra* note 3, at 5.

156. JNNURM IMPLEMENTATION, *supra* note 9, at 2; see also DEVELOPING SUSTAINABLE AND INCLUSIVE URBAN INFRASTRUCTURE SERVICES, *supra* note 19, at 11. Nearly two decades after the passage of the 74th CAA, the spirit of the

When explaining the rationale for focusing on implementation of the 74th CAA, MUDPA echoed many of the findings from NIUA's study, with an emphasis on how states have inhibited the autonomous functioning of local governments through approvals to generate local revenue.¹⁵⁷ In light of those findings, MUDPA created a Model Municipal Law ("MML") for state implementation of the 74th CAA.¹⁵⁸ The MML is a guide for states as they adopt municipal acts that incorporate the 74th CAA's decentralization reforms.¹⁵⁹ It provides language that would allow ULBs to function more autonomously, consistent with the 74th CAA.¹⁶⁰

Much of the MML's language tracks the mandatory requirements of the 74th CAA, such as the creation of local ward committees.¹⁶¹ In addition, the MML provides for the transfer of key substantive functions to local governments, an enhanced ability for local governments to generate revenues, and structural developments to aid in decentralization.¹⁶² The MML also proposes that state and local governments work together to provide a wider range of services in urban municipalities.¹⁶³ To accomplish this, the MML suggests looking to public-private partnerships to expand the delivery of civic services.¹⁶⁴

amendment has not been implemented, but "JnNURM tries to reignite the decentralization process." *Id.*

157. JNNURM IMPLEMENTATION, *supra* note 9, at 2 (emphasizing that states have struggled to implement many of the provisions of the 74th CAA, that ULBs have not been properly transferred revenue sources, and that their autonomy is undermined with state approvals for tax rates, user charges, and new taxes).

158. *Id.* at 3.

159. *Id.*

160. *Id.*

161. *Id.*; see also INDIA CONST. art. 243S, amended by The Constitution (Seventy-Fourth Amendment) Act, Part IX-A, 1993.

162. JNNURM IMPLEMENTATION, *supra* note 9, at 4. With respect to structural innovations, the MML includes provisions to develop the State Election Commission for holding regular local elections, the State Finance Commission to aid local governments in revenue generation, and the District Planning Committees and Metropolitan Planning Committees to provide a regional framework for ward committees. *Id.*

163. *Id.* at 4.

164. *Id.* When considering the earlier discussion of how public-private partnerships have undermined local authority, this proposal may actually be in tension with the 74th CAA's decentralization agenda. Harriss, *supra* note 7, at 7-8.

JnNURM sets out a series of steps for states and urban municipalities to put the reforms embodied in the MML into practice.¹⁶⁵ State-level steps include a review of existing municipal acts in light of the MML's language, definitive timelines for legislative action, and a state agenda that allows municipalities to function as institutions of self-government, with the devolution of substantive areas listed in the Twelfth Schedule and the delegation of financial powers.¹⁶⁶ In addition, at the municipal level, local governments are to clearly delineate the boundaries of wards, constitute ward committees where the legal authority exists, and create other governance structures to concentrate on particular substantive areas (e.g., the financing of municipal services).¹⁶⁷

To encourage states to advance the decentralization agenda, JnNURM conditioned central government funding for designated urban development projects on the successful implementation of the 74th CAA.¹⁶⁸ For example, if a state government sought funding under JnNURM for municipal solid waste management upgrades (a JnNURM-eligible project), the state would first have to show that they had enacted so-called "mandatory reforms" pursuant to the 74th CAA.¹⁶⁹ However, these mandatory reforms are as open-ended as the language calling for decentralization under the 74th CAA.¹⁷⁰ When describing the 74th CAA compliance requirement for funding, JnNURM uses ambiguous terms, such as "meaningful association and engagement of ULBs in planning functions" and demonstration of "implementation of decentralization measures as envisaged in the 74th CAA," rather than conditioning funding on the more concrete decentralization steps mapped out in the

165. Harriss, *supra* note 7, at 4–5.

166. *Id.* at 5. The state-level reforms also called upon state governments to prepare plans for social justice and economic development, yet it is left unclear if or how those planning efforts would include local governments at the outset. *Id.*

167. *Id.* at 5.

168. JNNURM OVERVIEW, *supra* note 3, at 12.

169. *Id.* Other projects eligible for JnNURM assistance include waste management, storm-water management, urban transportation, water protection, soil erosion prevention, and urban renewal—an umbrella term for the redevelopment of aging city areas, including such projects as the widening of narrow streets, the movement of industrial areas outside the central city, traffic-reduction measures, sewage and solid-waste disposal upgrades, etc. *Id.* at 10.

170. *Id.* at 12.

MML.¹⁷¹ Moreover, there is little documentation on the extent to which JnNURM has furthered compliance with the 74th CAA.¹⁷²

JnNURM is a guidelines-based regime with an incentive structure in place to foster reforms consistent with the MML.¹⁷³ But what is absent from JnNURM is any suggestion of constitutional reform to remove the discretion from states to choose whether such legislation should be enacted. To the contrary, the ministry characterizes state municipal laws as *required* under the 74th CAA.¹⁷⁴ Yet the actual language of the 74th CAA makes state delegations through municipal acts permissive, leaving a clear opening for states to turn their backs on the decentralization agenda.¹⁷⁵

III. RAJIV AWAS YOJANA AND ITS RELATIONSHIP TO THE 74TH CAA

A. Core Objectives of Rajiv Awas Yojana's Slum Redevelopment Program

The central government announced Rajiv Awas Yojana on June 4, 2009; a program designed to encourage partnerships with state and local governments to achieve a "slum-free India."¹⁷⁶ Administered by the Indian Ministry of Housing and

171. *Id.*

172. The NIUA released a report in 2007 on compliance with the 74th CAA, however that report merely restated data from October 2004. *See* MATHUR, *supra* note 84.

173. JNNURM IMPLEMENTATION, *supra* note 9, at 3. ("The MML serves as an illustrative example of how state governments can orchestrate their legal framework guided by their own choices.")

174. *Id.* at 2. The JnNURM primer specifically states that the 74th CAA "requires the state governments to amend their municipal laws in order to empower ULBs 'with such power and authority as may be necessary to enable them to function as institutions of self governance.'" *Id.*

175. INDIA CONST. art. 243W, *amended by* The Constitution (Seventy-Fourth Amendment) Act, Part IX-A, 1993. However, the ministry's characterization of the 74th CAA runs counter to the constitutional text, which states that "the Legislature of a State, *may*, by law, endow—(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self government." *Id.* (emphasis added); *see* JNNURM IMPLEMENTATION, *supra* note 9, at 3.

176. RAY GUIDELINES ON COMMUNITY PARTICIPATION, *supra* note 5; *see* Aarti Dhar, *Expert Panel on Rajiv Awas Yojana Formed*, HINDU (Mar. 10, 2010), available at <http://www.thehindu.com/news/national/article223584.ece>. In

Urban Poverty Alleviation, RAY embodies many of the values of local involvement initially set forth in JnNURM.¹⁷⁷ At a high level, RAY is intended to bring slums¹⁷⁸ within India's formal governance structures to create parity in terms of urban amenities and tackle some of the underlying structural causes of slums, like the dearth of suitable affordable housing for the urban poor.¹⁷⁹ RAY sets out a mix of curative strategies to upgrade or eradicate existing slums and preventative strategies to limit new slum development in urban areas.¹⁸⁰ RAY's programmatic scheme is divided into two phases.¹⁸¹ In the first phase of RAY, which runs from 2011 to 2013, the central government planned to dedicate Rs. 5,000 crore (or roughly one billion U.S. dollars) for the creation of slum-free city plans and

March 2010, Rs. 60 crore were released to twenty states to begin their slum-free city plans. MINISTRY OF HOUS. & URBAN POVERTY ALLEVIATION, STATUS NOTE ON RAJIV AWAS YOJANA (Mar. 2010) (India), available at http://mhupa.gov.in/W_new/NOTE_RAJIV_AWAS_YOJANA.pdf.

177. RAY GUIDELINES ON COMMUNITY PARTICIPATION, *supra* note 5, at 3 (finding that an inclusionary approach promotes efficiency with respect to implementation).

178. The term "slum" is often used loosely to refer to a variety of informal housing conditions. Adam Auerbach, Clients and Communities: The Political Economy of Party Network Expansion and Development in India's Urban Slums 17 (Aug. 2012) (unpublished manuscript, on file with author). The U.N. Habitat defined a slum as a

mainly uncontrolled low-income residential area with an ambiguous legal status regarding land occupation; they are to a large extent built by the inhabitants themselves using their own means and are usually poorly equipped with public utilities and community services . . . they proliferated with the rapid growth of cities in the less developed countries after the Second World War.

Id. (quoting UNITED NATIONS CTR. FOR HUMAN SETTLEMENTS, SURVEY OF SLUM AND SQUATTER SETTLEMENTS (1982)). In the 1970s, India experienced a surge in slums as farm workers, looking for more industrial jobs, relocated to cities. *Id.* These workers were often squatters and never secured property rights. *Id.* This is unsurprising given the types of lands where slums are developed, including "unused government land, hazardous sites unfit for sanctioned urban development, or private lands under ambiguous ownership." *Id.* at 18. Slum dwellers find these sites attractive for slum development, as eviction in the near term is unlikely when there are no immediate development plans for the land. *Id.*

179. SLUM FREE CITY PLAN OF ACTION, *supra* note 13, at 1.

180. *Id.* at 2.

181. EUROINDIA CTR., RAJIV ASAS YOJANA 1 (July 2011).

the execution of pilot slum redevelopment projects.¹⁸² The first pilot projects were to be funded in cities where central government spending was most likely to be cross-subsidized through state and local funding and public-private partnerships.¹⁸³ The second phase of the program runs from 2013 to 2022, which is when the redevelopment projects are to be implemented pursuant to the state slum-free city plans.¹⁸⁴

RAY requires that participating states create Slum Free City Plans of Action ("POA"), which map out state and local curative and preventative measures for slums.¹⁸⁵ The central government has articulated a set of core values for these POAs.¹⁸⁶ Many of these core values relate to the land tenure rights of slum dwellers and local participation in slum redevelopment plans.¹⁸⁷ Yet the challenge with these POAs is that they are not legally enforceable documents.¹⁸⁸ As such, POAs may comport with RAY's guidelines on paper, but states may choose not to recognize or fully engage local governments when carrying out redevelopment projects in slum areas.

Perhaps the most distinctive feature of RAY is the requirement that states extend formal property rights to slum dwellers in order to receive any central government redevelopment funding.¹⁸⁹ Thus, before any RAY project is approved, a state

182. See Moushumi Das Gupta, *Bill on Property Rights to Slum Dwellers in the Works*, HINDUSTAN TIMES (Oct. 30, 2012), <http://www.hindustantimes.com/India-news/NewDelhi/Bill-on-property-rights-to-slumdwellers-in-the-works/Article1-952380.aspx>.

183. MINISTRY OF HOUS. & URBAN POVERTY ALLEVIATION, RAJIV AWAS YOJANA: GUIDELINES FOR SLUM-FREE CITY PLANNING 2 (2012) (India) [hereinafter GUIDELINES FOR SLUM-FREE CITY PLANNING] (presenting the criteria for the selection of cities, noting that preference will be given to those that can maximize cross-subsidization through public-private partnerships); see also EUROINDIA CTR., *supra* note 181, at 2. The central government provides 50% "of slum redevelopment costs, including provision of basic civic [and] social infrastructure and housing including ownership, rental and transit." *Id.*

184. *CCEA Nod for Slum-Free India Scheme*, YAHOO! NEWS MAKTOOB (Sept. 3, 2013), available at <http://en-maktoob.news.yahoo.com/ccea-nod-slum-free-india-scheme-180215502.html>.

185. SLUM FREE CITY PLAN OF ACTION, *supra* note 13, at 2.

186. *Id.* at 1.

187. *Id.*; see also RAY GUIDELINES ON COMMUNITY PARTICIPATION, *supra* note 5, at 3.

188. SLUM FREE CITY PLAN OF ACTION, *supra* note 13, at 2.

189. GUIDELINES FOR SLUM-FREE CITY PLANNING, *supra* note 183, at 1 (Central government aid under RAY was conditioned on "[s]tates assign[ing] legal

will need to submit a detailed description of the slum-redevelopment site under review, a POA, and a state bill that formally assigns property rights to slum dwellers.¹⁹⁰ Notably, this bill does not need to be passed to receive funding for a RAY-sponsored redevelopment program, but the State Cabinets must approve the bill, and the State Assembly must provide the session when the bill will be voted on.¹⁹¹

The central government also described two companion presumptions to guide the slum-free cities process: a preference for slum-upgrades and for no evictions.¹⁹² Beginning with slum upgrades, the central government has stated that state and local governments should first look to whether conditions can be improved within urban slums before considering any slum-resettlement options.¹⁹³ Upgrades are classified into a number of different categories based on the level of capital investment that is required.¹⁹⁴ For instance, a “slum improvement” is the least capital intensive, involving infrastructure investments in areas where slum dwellers have constructed incremental housing.¹⁹⁵ A “slum upgradation” is more capital intensive, involving both infrastructure and housing unit upgrades to provide a sufficient base of incremental housing.¹⁹⁶ And “slum redevelopment” is the most capital intensive, involving full clearance of the slums on site and redevelopment of low-cost housing for slum dwellers on that same site.¹⁹⁷ The central government has expressed that these options are preferred to “slum resettlement,” where slums are cleared and slum dwellers are relocat-

title to slum-dwellers over their dwelling space.”). In order to house displaced slum dwellers, the central government requires that of the new housing developed in slum areas, 25% should be reserved for the urban poor. *Id.* An alternative requirement of 35% of dwelling units may apply in urban areas where the economies are particularly weak.

190. *Id.* at 2–3.

191. *Id.*

192. SLUM FREE CITY PLAN OF ACTION, *supra* note 13; *see also* GUIDELINES FOR SLUM FREE CITY PLANNING, *supra* note 182, at 2 (describing the whole-city approach to slum redevelopment as an “integrated and holistic plan prepared for the upgradation of all existing slums, notified or non-notified, in each identified city”).

193. SLUM FREE CITY PLAN OF ACTION, *supra* note 13, at 2.

194. *Id.* at 16.

195. *Id.*

196. *Id.*

197. *Id.*

ed to alternative sites.¹⁹⁸ Instead, this option should be reserved for “untenable slums,” where upgrades or redevelopment on the site in question is either not possible or practicable.¹⁹⁹

If slum resettlement is deemed necessary,²⁰⁰ the central government has advised that alternative housing for slum dwellers should be identified in either the same ward or a nearby ward to minimize the level of disruption and retain important community assets.²⁰¹ Similarly, in the event that eviction is unavoidable, the central government’s guidelines call upon local governments to consult with the urban poor to identify alternative locations for housing.²⁰² Indeed, the slum-redevelopment process is supposed to be driven by the smallest unit of political representation, the ward committee.²⁰³ The hope is that engagement at the ward committee level will help align redevelopment priorities with the needs of slum-dwellers.²⁰⁴

B. RAY’s Jurisdictional Design

The central government provided recommendations for RAY’s general administrative arrangements, which are intended to foster community participation.²⁰⁵ A state-level “nodal agency” is tasked with program design and oversight responsibilities, which can be divided into the following three categories: institutional, financial, and planning.²⁰⁶ Institutional responsibilities include establishing statewide slum and household definitions, setting criteria for the prioritization of slums, and developing eligibility criteria for property entitlements for slum-dwellers.²⁰⁷ Financial responsibilities include setting external

198. *Id.* at 2.

199. *Id.* at 16.

200. *Id.* at 9. One situation the central government discussed is the identification of slums located on environmentally hazardous sites. *Id.*

201. *Id.* at 2.

202. *Id.* at 1.

203. *Id.* at 2. Planning at the ward committee level is thought to “ensure that slum dwellers within a ward or zone continue to live in the same area, which would promote heterogeneous neighborhoods as well as continuation of residence-livelihood linkages.” *Id.*

204. *Id.*

205. RAY GUIDELINES ON COMMUNITY PARTICIPATION, *supra* note 5, at 4.

206. SLUM FREE CITY PLAN OF ACTION, *supra* note 13, at 2.

207. *Id.*

development charges and subsidies for infrastructure development.²⁰⁸ And planning responsibilities involve monitoring the local collection of data and ensuring the involvement of ward committees in that process.²⁰⁹ The state agency administering RAY is supported by a state-level RAY cell, which is a committee of experts outside of government that serve as advisors to the state agency.²¹⁰

At the local level, ULBs are responsible for program implementation.²¹¹ Implementation includes slum-level mapping, door-to-door surveying of slums, designing and implementing slum redevelopment plans, and program monitoring.²¹² The central government contemplates that local administration can take a variety of forms.²¹³ Under one conception, the ULB retains full control of community surveying through an active Urban Poverty Alleviation Cell that lends local knowledge and technical expertise.²¹⁴ Alternatively, the ULB can contract out surveying to nongovernmental organizations (“NGOs”) and community-based organizations (“CBOs”) with technical expertise and on-the-ground knowledge.²¹⁵

One salient feature of RAY is the significant amount of local government capacity the program requires.²¹⁶ If one were to look just at the slum-level mapping function, the requisite level of technical capacity becomes readily apparent. ULBs must prepare a list of known slums, identify slum boundaries, identify vacant land for resettlement purposes, and then roughly map the actual slums, including households, schools, health care centers, community work spaces, commercial activities, community halls, night shelter, etc.²¹⁷ Once slums are mapped, the ULBs begin a process of household counting, working with either a selected agency or an NGO to engage community leaders within the slum.²¹⁸ Community volunteers are assigned to

208. *Id.*

209. *Id.*

210. RAY GUIDELINES ON COMMUNITY PARTICIPATION, *supra* note 5, at 4.

211. SLUM FREE CITY PLAN OF ACTION, *supra* note 13, at 2.

212. *Id.*

213. *Id.*

214. RAY GUIDELINES ON COMMUNITY PARTICIPATION, *supra* note 5, at 5.

215. *Id.*

216. *Id.*

217. *Id.* at 9.

218. *Id.*

give each house a unique number and to canvass to ensure that “every family living in the slum is included in the survey.”²¹⁹ Looking closely at these various steps is a sure indication that strong local governance structures are needed to implement RAY’s programmatic mandates, which have the potential to displace some of India’s most vulnerable citizens in the name of redevelopment.²²⁰

Where redevelopment through RAY has occurred, there is some evidence that the quality of new housing built for low-income families using RAY funds is subpar.²²¹ In fact, the central government is now considering third-party inspections for low-income housing developed under the program to address these quality concerns.²²² Thus, even where slums are properly identified, and new housing for slum dwellers is constructed, there is still a continuous need for local representation to make sure that new low-income housing is built to last.

C. Limited Redevelopment Progress under RAY Tied to the Property Rights Scheme

Nearly all states and union territories have received funding for slum-free city planning under RAY.²²³ Yet only a fraction of those states have adopted legislation that would confer full property rights to slum dwellers, which effectively precludes RAY funding for the physical redevelopment of slums.²²⁴ In fact, of the Rs. 5000 crore allocated for Phase 1, only Rs. 100 crore had been spent as of October 2012 (which is nearly the end of Phase 1).²²⁵ While states have drafted POAs, very few have come forward with specific slum development projects.²²⁶

219. *Id.*

220. *Id.*

221. See *Third Party Inspections of Rajiv Awas Yojana Units Soon: Maken*, ZEE NEWS (Dec. 4, 2012), http://zeenews.india.com/news/nation/third-party-inspection-of-rajiv-awas-yojana-units-soon-maken_814580.html.

222. *Id.*

223. See MINISTRY OF HOUS. & URBAN POVERTY ALLEVIATION, ALLOCATION FOR URBAN POVERTY ALLEVIATION SCHEMES (2011) (India), available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=75948> (describing the funding that was released for “undertaking preparatory activities in 157 cities across 34 states and union territories under the Slum Free City Planning Scheme, the preparatory phase of RAY”).

224. Gupta, *supra* note 182.

225. *Id.*

226. *Id.*

This is likely due to the “lukewarm” response that states have had to the property rights requirement for slum-dwellers.²²⁷

Based on the reluctance of state governments to enact property rights legislation for slum dwellers, the central government’s Ministry of Housing and Urban Poverty Alleviation unveiled revisions to model property rights legislation.²²⁸ The revised bill removed the requirement that slum dwellers receive permanent ownership rights to a dwelling place, and replaced it with a provision requiring that states confer leases to slum dwellers for a minimum of fifteen years.²²⁹ The bill retains the presumption toward slum-upgrades, providing that unless there is an extreme case, the property entitlements should be designed to keep slum dwellers in the same area.²³⁰ The revised bill also addresses the problem of encroachment on public lands, leading to new slum development.²³¹ To deter the creation of new slums, the model bill provides for a system of monetary penalties and even jail time of up to three years for those that construct illegal structures on public lands.²³²

IV. PROPOSED CHANGES TO RAY AND DECENTRALIZATION REFORMS TO PROTECT SLUM DWELLERS

Contention over key features of the RAY program, like the Property Rights to Slum Dwellers model bill, suggests that

227. *Id.* Several policy groups have questioned and critiqued the workability of providing tenure security to slum dwellers. See PATRICIA CLARKE ANNEZ ET AL., AHMEDABAD, MORE BUT DIFFERENT GOVERNMENT FOR “SLUM FREE” AND LIVABLE CITIES (World Bank Sustainable Dev. Network, Policy Research Working Paper No. 6267, 2012).

228. See Gupta, *supra* note 182.

229. *Id.* Commentators have indicated that even under the revised bill, the transfer of property rights is bankable, meaning slum dwellers could use their entitlements as collateral for a mortgage from banks to build new homes. *Id.*

230. See Mahendra Kumar Singh, *Slum-Dwellers Will Be Given Property Right: Maken*, TIMES OF INDIA (Oct. 31, 2012), http://articles.timesofindia.indiatimes.com/2012-10-31/india/34836089_1_slum-dwellers-property-rights-ajay-maken.

When announcing the revised model bill, the new minister for Housing and Urban Poverty Alleviation stated, “[W]e plan to rehabilitate those living in slums in the vicinity of a five km radius where in situ rehabilitation is not possible,” adding that “shifting the poor away from their source of livelihood would not solve the problem.” *Id.*

231. Gupta, *supra* note 182.

232. *Id.*

there is not yet consensus among state and local actors on how to pursue redevelopment in a fashion that is adequately protective of slum dwellers.²³³ The jurisdictional conflict over land tenure provisions is not surprising in light of the current state of compliance with the 74th CAA, which is far from achieved.²³⁴ The notion that RAY's slum-free cities program can incorporate local voices at a time when ward committees are nonexistent or barely functional is cause for concern. A program design that calls upon local governments to identify slum areas and take stock of families that will potentially get displaced in redevelopment requires a strong forum for local participation.

As such, central government actors should consider delaying RAY until the decentralization reforms, such as those tied to JnNURM, have taken shape. This delay has occurred in practice as a result of reluctance on the part of states to grant permanent protections to slum-dwellers. What is recommended, however, is that the central government deliberately delay any capital project that involves slum clearance until states have achieved full compliance with both the letter and spirit of the 74th CAA.

To aid states and local governments on the path to decentralization, the central government should revisit the language of the 74th CAA to remove the permissive terms around state legislative enactments and provide definitive legal authority for local governments to assume substantive planning and urban redevelopment functions. Similarly, the text of JnNURM should be revisited to tie central government funding to concrete steps toward decentralization, like state municipal acts that delegate Twelfth Schedule duties to local bodies, or the constitution of ward committees.

A. Advancement of Decentralization Reforms

Examinations of RAY rarely address limitations in local government capacity. India's local governance structures, particu-

233. See Bibek Debroy, *Rajiv Awas Yojana: Government Errs by Not Assessing Similar Projects Like BSUP and IHSDP*, ECON. TIMES (Jan. 16, 2012), http://articles.economictimes.indiatimes.com/2012-01-16/news/30631808_1_bsup-slum-development-rajiv-awas-yojana

(arguing that despite the importance of a more formal approach to slum eradication, the central government should have done a full appraisal of related JnNURM programs before unveiling RAY).

234. See *supra* text accompanying notes 140–153.

larly the ward committees, are still relatively weak, which makes genuine local participation a challenge.²³⁵ To move forward under the current local governance framework would undermine the spirit of RAY's programmatic mandates and inhibit the full protection of slum dwellers that is sought under the program.

As redevelopment progresses with the support of RAY funds, the central government should consider how to advance decentralization reforms, as it did under JnNURM, to bolster local government participation and capacity. One way to support decentralization is to revisit the language of the 74th CAA and remove the permissive terms regarding the enactment of state municipal acts. The Constitution should firmly require that states adopt legislation to delegate the substantive duties in the Twelfth Schedule to ULBs, and grant ULBs the power to levy taxes and generate other forms of local revenue so they can more effectively provide urban public goods.

As was discussed when looking at NIUA's findings on compliance with the 74th CAA, legislation is just one step in the process toward genuine delegation of power to local governance structures. Central government review of state delegations and the constitution of ward committees will foster compliance with the terms of the 74th CAA. Yet without legislative enactments, jurisdictional conflicts are difficult to resolve and usually result in undermining local authority.²³⁶ In addition to constitutional reforms, adjustments should be made to the JnNURM program to create clear benchmarks for decentralization, which states and territories must satisfy before receiving any funding under JnNURM.

B. Programmatic Reforms under RAY

In light of the revised bill on property rights to slum dwellers announced in late 2012,²³⁷ there is reason to be concerned about the rights of slum dwellers as redevelopment programs move forward under RAY. The property rights scheme was altered markedly, from a program of ownership rights for slum dwellers, to a program requiring only long-term leases.²³⁸ And

235. MATHUR, *supra* note 84, at 20.

236. Gillette, *supra* note 21, at 1347.

237. Gupta, *supra* note 182.

238. *Id.*

while this significant revision may have been necessary to induce states to move forward with slum-redevelopment under RAY, new central government interventions are now necessary to compensate for the erosion of these tenure security provisions.²³⁹

For instance, the central government should consider (1) barring any RAY funding until certain structural changes are made at the state level to protect slum dwellers, and (2) making the detailed commitments in state-level POAs legally enforceable. Conditioning funding on structural commitments is low-hanging fruit in terms of programmatic reforms for RAY. A relatively simple mechanism to ensure that states follow through on protections to slum dwellers is to condition development funding on the passage of property rights legislation, rather than the mere drafting and tentative approval by state legislative bodies. The same should be true for ward committees—if ward committees are not fully constituted in the particular location where slum redevelopment is proposed, central government funding should not be provided under RAY.

A separate reform to the property rights scheme relates to the criminalization of slum dwellers in areas where RAY POAs are in place. As discussed above, the new MML provides that those who encroach on government land are subject to up to three years of jail time, fines, or some combination of the two.²⁴⁰ This is seemingly inconsistent with RAY's core objectives, which were expressly designed to consider both curative and preventative strategies.²⁴¹ A blanket state legislative enactment that criminalizes vulnerable slum dwellers encroaching on public land may not be appropriate in all cases. A more nuanced approach to handling the encroachment on public lands, with an assessment of where social services and property entitlements can help to eradicate the slum in question, is therefore advised.

In terms of the enforceability of commitments made in state-level POAs, the central government should look at claw-back

239. See Clarke, *supra* note 227, at 4 (explaining how tenure security to all slum dwellers is impractical since private landowners are unlikely to support any legislative enactments that would provide permanent rights for slum dwellers, and public landowners may not all agree as to where such guarantees should be made).

240. See *supra* text accompanying note 232.

241. SLUM FREE CITY PLAN OF ACTION, *supra* note 13, at 2.

provisions to retract state funding where commitments in the POA are not realized. Additionally, RAY places a strong emphasis on public-private partnerships to foster slum redevelopment.²⁴² Yet, without proper safeguards, these partnerships may erode the property rights afforded to slum dwellers, and lead to unnecessary relocation of poor residents. A particular focus should therefore be on local participation where public-private partnerships are involved, as historically, this has been an area where local voices have been restrained.²⁴³

Until these reforms are adopted and there exists clear consensus on protections for urban slum dwellers, the central government should place Phase II of RAY on hold. Moving forward with capital-intensive slum-clearance projects without a full understanding of the needs of potentially displaced slum dwellers runs the risk of destabilizing the most vulnerable segments of India's urban poor, and merely shifts the problem of slum development from one locale to another. Ironically, capital outlays for slum-redevelopment have already seen delays, but those delays stem from conflicts over ratcheting down the protections for slum dwellers rather than ratcheting them up. This is particularly worrisome as slum-redevelopment plans are likely to be significantly disruptive for the urban poor.

CONCLUSION

While many critiques of RAY focus on the defects with the existing programmatic structure, there is a strong link between the weak implementation of some of the 74th CAA's core provisions, like the establishment of ward committees, and the primary concerns surrounding the adequate protection of slum dwellers under RAY. Although RAY's jurisdictional design is consistent with its programmatic objectives, constitutional reform is warranted to advance a decentralization agenda that will bolster local governance structures.

Without strong local governments, there is concern that slum dwellers will not receive adequate procedural and substantive protections as slum-clearance projects proceed. This concern is heightened as RAY moves from a program that had offered permanent property entitlements to slum dwellers, to one where only fifteen-year leases are required. As such, removing

242. GUIDELINES FOR SLUM-FREE CITY PLANNING, *supra* note 183, at 3.

243. Harriss, *supra* note 7, at 9.

permissive language from the 74th CAA to require state enactments supporting both the functional devolution of substantive powers to local governments and local revenue generating authority would be an important step forward in protecting the rights of traditionally disenfranchised slum dwellers.

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