

The Role of Legal and Social Policies in Attaining Sustainable Urban Development in India

Manohar Samal¹

Abstract

This paper intends to explicate the present framework of legal and social policies in India, which govern urban development. The research is directed towards contemplating the progress of sustainable urbanism in India in achieving the goals of the 2030 Agenda for Sustainable Development. Overcrowding, rise in the number of informal settlers and unplanned development are the most prominent multi-faceted issues that India faces in the present day. A comprehensive analysis of urban development policies, environmental legislation, property laws and information laws have been discussed in order to exhibit the lacunae in the legal system which has slowed down the process of sustainable urban development in India. It is not only the policies, but also an array of problems that, have affected urban development in metropolitan cities, semi-urban regions and transitioning rural areas rendering them to be unsustainable. Therefore, this paper envisages and suggests solutions in tackling problems in legal and social policies that would make sustainable urbanism conducive and successful in India. An attempt has also been made to display how completely sustainable urban spaces would look in India. Analytical, Comparative and Doctrinal methods of research have been utilized to conduct the research.

Keywords: Development, Local Self Government, Policies, Sustainable, India

1. Introduction

The New Urban Agenda adopted at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) has established a roadmap to achieve the goals of sustainable urban development encompassed by the 2030 Agenda for Sustainable Development. It is estimated that, India will have megacities with over 10 million in population by the year 2030. All the States in India have Regional Town Planning Acts for effective town planning, development and acquisition; similarly, the Union Territories also have Town and Country Planning Acts. The system of local self-government in India comprises of Municipalities in urban areas and Gram Panchayats in the rural areas. The State Governments are empowered to legislate for urban development in their respective States. But, Municipalities, Municipal Corporations, Cantonment Boards or Townships form part of local self-government, as they are independent Constitutional bodies. The Central Government governs and formulates policies for development in the Union Territories. The Twelfth Schedule of the Indian Constitution stipulates that, Municipal Corporations have to execute functions of urban planning including town planning, regulation of land-use and construction of buildings, roads and bridges, water supply for domestic and industrial purposes, sanitation and solid waste management, slum improvement, urban poverty alleviation, provisions for green spaces such as parks, gardens and playgrounds, and providing public amenities including street lighting, parking lots, bus stops, public transit systems and other public conveniences (Basu, 2012).

¹Student of Bachelor of Legal Science and Bachelor of Laws (Integrated Law Course) at Vivekanand Education Society's College of Law, Mumbai (Affiliated to Mumbai University)

2. Assessing the Progress of Sustainable Urban Development in India

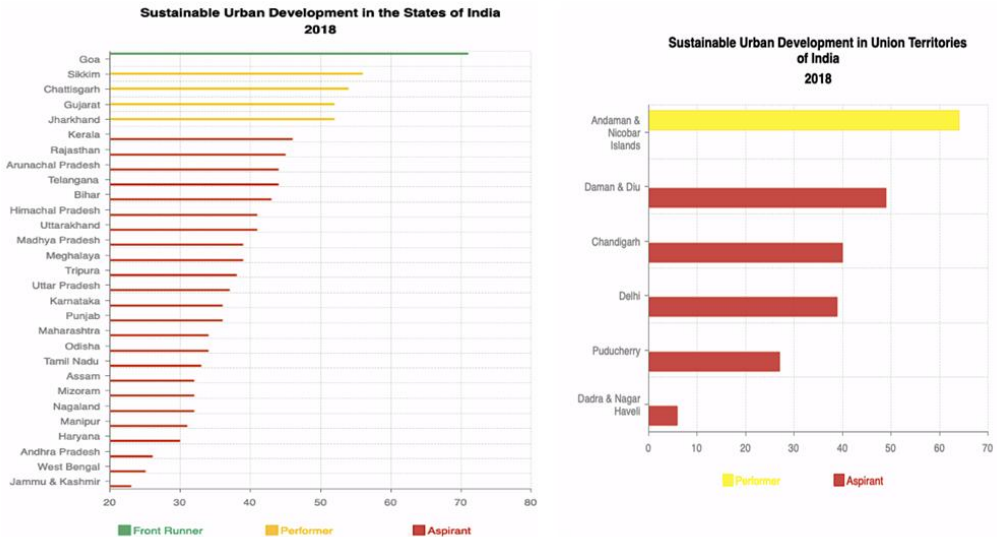


Figure 1: Statistics reflecting the progress of Goal 11 of the 2030 Agenda for Sustainable Development in Indian States and Union Territories. Source: Sustainable Development Goals India Index- Baseline Report, 2018¹

Goal 11 of the sustainable development goals aims to make cities and human settlements inclusive, safe, resilient and sustainable (2030 Agenda for Sustainable Development). The statistics in Figure 1 demonstrate that, only one Indian State and no Union Territory so far, has been able to achieve sustainable urban development in substantial quantity. Although the aforementioned statistics relate to Goal 11 specifically, almost all other goals explicated by the 2030 Agenda also play a vital role in sustainable urban development. In light of the fact that, India's population will reach 152,76,57,988 by 2030, it is pertinent that, urban development has to be in consonance with the 2030 Agenda.

3. Urban Laws and Policies in India

The term “urban area” has been defined by the Census of India, 2011 as; (1) All places with a municipality, corporation or cantonment board or notified town area committee, etc. (2) All other places which satisfies the following criteria: (i) A minimum population of 5,000; (ii) At least 75 percent of the male main working population engaged in non- agricultural pursuits; (iii) A density of population of at least 400 persons per sq. km.

Urban laws and policies in India over recent years have piloted solutions for the severe

¹ United Nations, National Institution for Transforming India. *SDG India Index- Baseline Report 2018*, NITI Aayog, Government of India, Data retrieved from www.niti.gov.in/content/sdg-india-index-baseline-report-2018.

and tremendous challenges faced in urban development. However, sustainable urban development is still a distant dream for the cities in India. This part contains the problems assessed independently along with the urban laws and policies espoused for achieving progress in their respective objectives and goals with the help of official data present on Government databases, reference to legislation, judicial precedents, delegated legislation and guidelines. Various cities have been compared to illustrate a model sustainable city and solutions in legal and social policies have been propounded.

3.1 Land Utilisation and Planning

Land is a limited resource and therefore, it is pivotal that, utilisation of urban land has to be effectively planned. An ideal urban development plan in the Indian setting, should comprise of optimum land use for residential projects, educational institutions, medical facilities, markets, social welfare institutions, public entertainment and recreational facilities, playgrounds, zoological gardens, green belts, nature reserves, sanctuaries, public utility works such as airports, ports, railways and roadways, sewage treatment and disposal facilities, water and electricity distribution services, archaeological and heritage sites, tourist spots, places of worship and lastly, spaces reserved for Central Government and State Governments for their establishments (Rajiv Mohan Mishra v. CIDCO, 2018).

Illegal constructions and development on land, contrary to the Master Plans and Regional Development Plans have become conventional. Even if permission is taken from the appropriate authorities, building norms and rules are blatantly violated by surpassing Floor Space Index (FSI) limits. Master Plans have a binding effect in law (R.K. Mittal v. Union of India) and therefore, its breach would naturally attract sanctions. Section 86 of the Punjab Regional and Town Planning and Development Act, 1995, Section 52 of the Maharashtra Regional and Town Planning Act, 1966 and Section 35 of the Gujarat Town Planning and Urban Development Act, 1976 are few statutes in different States that prescribe penal provisions for illegal and unauthorized constructions and development. However, the punishments prescribed therein are ineffective in deterring persons, as all offences are bailable offences. Penology is a branch of criminal jurisprudence that assists statutory laws to achieve its objective. It is pertinent that, the punishment prescribed has to be adequate in order to prevent offenders from deliberately contravening them. The pressure on land is extremely high and this is why legislation has to impose stringency in order to enable local self-governments to efficiently implement urban development policies. Therefore, town-planning laws in India have to administer offences as non- bailable offences and prescribe higher rates of fine for persons indulging in illegal constructions and development.

Chandigarh is the capital city of the States of Punjab and Haryana, and also enjoys a special position of being a Union Territory. It is extremely well- planned and the greenest city in India. Chandigarh has balanced arrangement for green spaces along with infrastructural development.

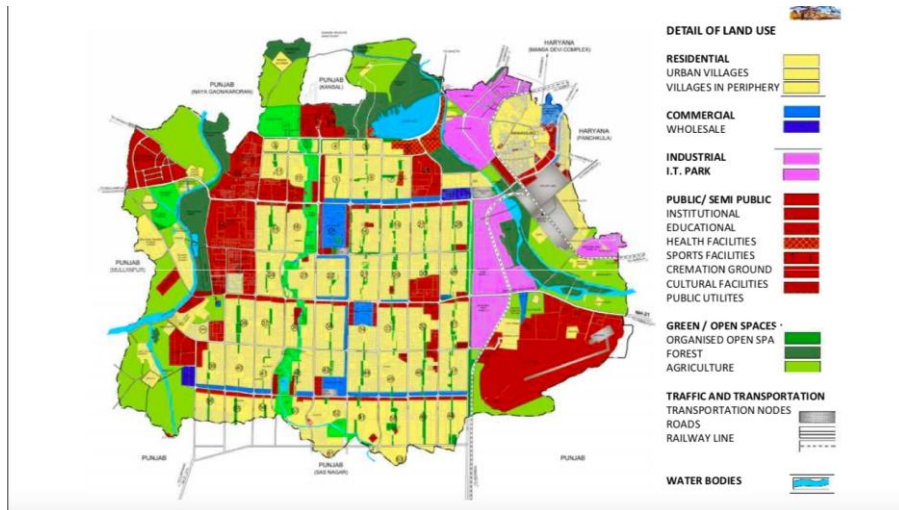


Figure 2: Existing Master Plan of Chandigarh. Source: Chandigarh Master Plan 2031, Official Website²

However, the same cannot be said about the other cities in India. Unfortunately, some large metropolitan cities like Mumbai and Kolkata suffer from inadequate implementation of plans, congested lanes, lack of green public spaces, weak infrastructure and overcrowding. Smaller cities like Patna, Lucknow and Berhampur have not even achieved efficient infrastructural facilities or adequate public utility services. In such circumstances, providing housing, employment and sustenance for all becomes austere.

Considering that population and urban migration in India is extremely high, sustainable vertical development is the way forward (Al- Kodmany, 2018). Firstly, relaxation in the stringent limit of Floor Space Index (FSI) and Floor Area Ratio (FAR) has to be executed. A lower limit of FSI/ FAR results into horizontal development, which occupies more land and leads to unplanned and unbalanced acquisition of open spaces, forests and agricultural lands; resulting into destruction of the natural environment, decreasing the possibility of decongestion and increasing urban concrete jungles. Secondly, vertical forestry, urban agriculture, building green walls and roofs on building structures are some of the techniques through which sustainable urban greening can be achieved. But, it is imperative that Government policies and laws supplement them. Indian laws do not recognise any of the aforesaid methods of urban greening. The concept of agriculture is still conservatively restricted only to rural areas. Urban Greening Guidelines, 2014 issued by the Ministry of Urban Development, Government of India is the closest policy that, classifies the types of urban greening; but, none of it leaves room to embrace innovative methods of greening. All of this can only be achieved through delegated legislation in the form of Rules and Notifications that are issued by the respective local self-governments of the urban areas. However, as far as urban agriculture is concerned, only fresh principal legislation can foster its implementation. Although it is

² "Chandigarh Master Plan 2031." *Official Website of Chandigarh Administration*, Retrieved from www.chandigarh.gov.in/cmp_2031.htm.

not conducive for metropolitan cities like Mumbai, Delhi, Kolkata, Bangalore or Chennai to practice urban agriculture, many smaller cities and towns possess the potential for it. Developing such techniques would help in providing employment opportunities for the migrating rural and peri-urban population. Moreover, it would also compensate for the land acquisition of agricultural areas, which are acquired by the Government for infrastructure development projects like highways, bridges and railways.

The autonomy and independence of local self-governments enable them to resolve conundrums of urban areas as they administer them on day-to-day basis, making them well equipped to understand the complexities of urban planning and development. Therefore, if principal laws and policies mobilize towards the right direction, it would ensure the formulation of appropriate delegated legislation by local-self-governments and result into sustainable land utilisation and planning in Indian cities.

3.2 Public Transport, Infrastructure, Energy and Safety

Public Transport networks in Indian cities are the second largest consumers of energy. The cities of Mumbai, Delhi and Kolkata have the largest public transport networks. At present, the use of clean energy for public transport is minimal (National Urban Transport Policy, 2014). Notification No. G.S.R. 889(E) issued by the Ministry of Road Transport and Highways has introduced an amendment, viz., Central Motor Vehicles (11th Amendment Rules), 2016 wherein, Bharat Stage VI Emission Standards have been made compulsory for all vehicles, manufactured on or after 01st April, 2020. The said Rules were challenged before the Supreme Court alleging that sufficient time was not accorded to the automobile industry for the transition; wherein, the Supreme Court held that (M.C. Mehta v. Union of India, 2018), the health of millions of countrymen were involved and that, small steps to reduce pollution would lead to large scale reduction in pollution. Therefore, it was affirmed that, no motor vehicle would be sold or registered in the entire country with effect from 01st April, 2020. This development will also impact the public transport network positively in terms of reducing emissions. However, the number of privately-owned vehicles in India have drastically risen. Therefore, law making in the present context will have to be directed towards attracting the population towards public transport systems in urban areas. Another drawback faced by public transit networks is that, they suffer heavy losses, as they are unable to recover operating costs. This is because the prices of public transport in urban areas are kept at affordable rates in order to make it accessible for all segments of society.

The scope of public transport development is enormous in scope and therefore, Central legislation which is in consonance with the Motor Vehicles Act, 1988, Railways Act, 1989, The Metro Railways (Construction of Works) Act, 1978 and similar legislation will have to be devised. Capacity building by way of public-private-partnerships enticed by incentive schemes and tax benefits (Swamy S. & Patel G., 2014), research, identification and investment in multimodal public transit systems such as non-motorized and intelligent transport systems have to be the primary focus. Owing to the fact that, every State has different needs, delegated legislation under the Central legislation can be formulated. Cities like Dehradun, Shimla, Agartala and Itanagar are hilly regions and therefore, the requirements of public transport vary from other cities in India.

Furthermore, policy- making has to embrace the development of public transport networks for movement of freight. Inefficiency in services of public transit networks and inadequacy of infrastructure are the chief reasons for the population in urban areas to not avail public transport facilities. The efficiency of services can only be improved by further developing the Mass Rapid Transit (MRT) Model. But, in order to be able to do that, traffic congestion has to drastically reduce. The maximum use of public transport networks by the population of urban areas is the ideal way in achieving decongestion. Rates of fine need to be levied at extremely high rates for violations under the Motor Vehicles Act, congestion taxes and a stringent regulation of deregistering old vehicles that do not comply with emission standards will contribute to successful traffic decongestion. The Make in India Scheme will succour in cutting down investment costs. Moreover, it is pertinent that, clean technology is used in public transport systems. Although the Indian Railways, metro rail and mono rails network have substantially managed the use of clean technology, excessive rates in the prices of lithium ion batteries are deterring investments in electric based vehicles on road. Manufacturing the batteries indigenously would help in mass production of electric based vehicles. Initially, lower rates of customs import duty have to be imposed on the components than the finished product (finished electric based vehicle) to encourage indigenous manufacturing (Juyal, Shikha, et. al., 2018).

The switch to clean and green energy cannot only be restricted to public transit networks but also has to be employed while delivering urban amenities and public utility services. Primarily, buildings and headquarters affiliated to Central and State Government have to be built and managed in an energy efficient manner. Subsequently, it is pertinent that, infrastructure for the supply of electricity and water; waste management, sanitation and sewage treatment are dispensed in a sustainable manner. Section 86(e) of the Electricity Act, 2003 stipulates that, the State Commission constituted under the Act has to promote co- generation and generation of electricity from renewable sources of energy. The National Wind- Solar Hybrid Policy has set a target of achieving 175 gigawatts (GW) from renewable sources by 2022. However, this seems to be an extremely ambitious plan as majority of the States are failing in complying with their Renewable Purchase Obligations (RPO) (Kaladharan M., 2016). The Central Electricity Regulatory Commission Regulations, 2010 provides for the development of power from non-conventional sources of energy. The Supreme Court of India (Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission, 2015) ruling on the validity of such obligation has held that, every Distributor Company will have to comply with their Renewable Purchase Obligations for the larger public interest. The recent formation of RPO Compliance Cells has managed to improve compliance only to a limited extent. As far as waste management is concerned, sufficient Rules like the Solid Waste Management Rules, 2016, E- waste (Management) Rules, 2016, Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and Bio- Medical Waste (Management & Handling) Rules, 1998 that emanate out of the parent legislation, The Environment (Protection) Act, 1986 already exist. However, the severe challenge of dumping untreated garbage in landfills and burning of garbage on dumping grounds still remains. Municipalities do not possess the complete infrastructure for garbage or sewage treatment in spite of having extremely high budgets and funding. The Solid Waste

Management Rules, 2016 mandate waste segregation, but its implementation still seems to be lagging behind in Indian cities. Maharashtra, Tamil Nadu, Sikkim and Odisha are few States in India that have banned certain forms of hazardous plastics. But, in terms of the entire nation, it is vital that, every resident manages and segregates their own waste into recyclable, biodegradable and other non- biodegradable waste. Even the waste which is non- biodegradable can be processed in waste treatment units after which, metal, construction and fiber industries that require waste and scrap materials as their raw materials can buy it from those treatment units. In terms of water supply and management, freshwater sources are depleting rapidly. Therefore, it is pertinent that policy- making is directed towards grey- water recycling and rainwater harvesting. Co-operative housing societies and building societies need to be urged to adopt these systems, as it would be impracticable for residents to install these systems individually. Cost- benefits and protection of water resources would be the upside of such direction in policy- making.

The use of smart technology is a significant facet in building sustainable cities (Goi, C.L., 2017). The Smart Cities Mission, 2015 introduced by the Ministry of Housing and Urban Affairs, Government of India aims at urban development, environment protection and governance through the means of smart technology. The present legal structure only comprises of the Information Technology Act, 2000 and the National Cyber Security Policy. On perusal of the Smart Cities Mission, it is apparent that, governance, development and life in smart cities will be with the help of Internet of Things (IoT). Data robbery, breach of privacy and difficulties in surveillance will be some of the preliminary problems of such cities. It is paramount that, legislation fulfills the needs of such cities in the near future. The ambit of smart cities governance and development is multi-faceted. Therefore, separate legislation that prescribes the limits of surveillance, system for apprehending cybercriminals, penal mechanism, affording emergency services through technology and data privacy in smart cities is the need of the hour, without which, peaceful sustainability is unfeasible.

Safety in cities as elucidated by Goal 11 of the 2030 Agenda includes safety from accidents and crimes. Crimes arising out of discrimination against women are the biggest challenges, which still have to be overcome in Indian urban areas today. Article 15(3) of the Constitution of India provides for protective discrimination through which the legislature is directed to enact laws for the protection and equality of women and children (Basu, 2012). In spite of this, the definition of urban area as per the Census of India, 2011 is flawed. As seen above, the phrase “male main working population” is used. It is pertinent that, the female working population needs to be added in the 2021 Census. Furthermore, Delhi is the most unsafe city for women where 87% of people in Delhi start worrying about an unaccompanied female household member post 9 pm who is outside her respective house (Durani A. & Sinha N., 2018). Although sufficient laws have been enacted, the missing factor is a strong Executive. Implementing authorities still suffer from non- responsiveness to complaints. Increase in the number of women in enforcement agencies and the training of women in martial arts under the ‘Sashkti’ programme has led to the progress in things. Gradually, crimes are reducing in every city due to the increase in awareness. In consideration of the fact that, safety of women in Indian cities is an extremely sensitive matter and quintessential for any form of

development, individual responsibility for negligence by Executive authorities has to be introduced by way of law- making. This would help in reducing non- responsiveness and in promoting prompt action.

3.3 Encroachment and Resettlement in Urban Areas

Encroachment by informal settlers and hawkers on one hand and the illegal destruction of property owned by migrants by the local self-governments on the other hand has been a widespread conundrum for State Governments in India. It is pertinent that, policy- making in Indian cities have to facilitate a right that guarantees the cities equally for all and at the same time prevent encroachment and illegal development of land which is reserved for specific purposes. The origin of the connotation “right to the city” can be traced back to Henri Lefebvre’s work in *Le Droit a La Ville* (Lefebvre, 1968). Right to the city has been defined in the Habitat III Policy Papers as, *“the right of all inhabitants present and future, to occupy, use and produce just, inclusive and sustainable cities, defined as a common good essential to the quality of life. The right to the city further implies responsibilities on governments and people to claim, defend, and promote this right.”*

In the Indian context, the right to the city has been affirmed by a judgment passed by the Delhi High Court (*Ajay Maken v. Union of India*, 2019) wherein, the interpretation of the New Urban Agenda, Habitat III Policy Papers and the International Covenant on Economic, Social and Cultural Rights was reiterated. Furthermore, in the said judgment it was held that, the right to the city would emanate out of Article 21 of the Constitution of India, which envisages the right to life and personal liberty and encompasses within itself a grand scheme of fundamental rights that are absolutely necessary for the full realization of life and personal liberty (Basu, 2012). The right to the city in the Indian context harmoniously analyzed along with Article 21 of the Constitution of India reveals that, adequate housing, employment, safety, access to public utility services, public places and public transportation networks equally for all, forms an indispensable and primordial aspect of this right. However, the scheme of the Indian Constitution permits the infringement of fundamental rights for the greater good. In other words, a fundamental right is not absolute and can be abridged in order to uphold the balance between protection of individual rights and collective interest (Basu, 2012). In background of the right to the city under Article 21 of the Constitution, only a procedure established by law that is fair, just and reasonable (*Delhi Transport Corporation v. D.T.C. Mazdoor Congress*, 1991) can constrict it. The city of Mumbai comprises of the largest clusters of informal settlers. Informal settlers in India are referred to as slum dwellers and their habitats are referred to as slum areas. The Supreme Court of India has held that, encroachment in urban areas, committed by persons are not voluntary acts, but are the effects of inevitable circumstances (*Olga Tellis v. Bombay Municipal Corporation*, 1986). Therefore, during the clearance and eviction of slum areas, it is mandatory that notices have to be served prior to taking action. The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 prescribes rules for such service of notice. Furthermore, provisions for slum improvement and its procedure thereof have also been specified. A Slum Rehabilitation Authority has been constituted under the Act who takes charge for such slum rehabilitation. The Maharashtra Housing and Area Development Authority constituted under The Maharashtra Housing and Area Development Act, 1976

also runs parallel to the Maharashtra Slum Areas Act and provides alternative accommodation to informal settlers during clearance, destruction, improvement or redevelopment process. Although sufficient protection is afforded to informal settlers, in order to deter informal settlers from continuously constructing slums and availing the benefits of rehabilitation recurrently, a nominal cost for slum areas built after the year 2000 is being imposed for slum rehabilitation (Government Resolution No. SRP- 1001). However, this is not applicable in case of redevelopment works undertaken by the Government for other projects such as freeways, bridges or other public utility buildings. The core problem in this respect is that, only when a project is about to be undertaken by the Government, only then resettlement and rehabilitation is provided to informal settlers even though slum improvement has been assigned as a Constitutional function to Municipalities. In light of encompassment of the right to the city as a fundamental right, a higher obligation of local self- government agencies towards informal settlers exists.

3.4 Model Sustainable City in India



• Sub-arterial Roads - 50 m ROW

Figure 3: Amravati Smart City Model. Source: Andhra Pradesh Capital Region Development Authority Official Website³

³ Amravati Urban Design Strategy, Amravati Development Corporation, Andhra Pradesh Capital Region Development Authority Official Website, Retrieved from crda.ap.gov.in/APCRDA/Userinterface/HTML/masterplansNew.htm.

The Amravati Smart City Model as illustrated in Figure 3 is one of the ideal sustainable city models being developed in India. It is claimed that, 600 kilometres of road network, 115 kilometres of public transport corridors, jobs and homes for 4 to 6 lakh population, 30% areas reserved for green spaces and water bodies, parks and public facilities within 10 minutes of walking distance, pedestrian and cycle tracks connectivity in the entire city and zero discharge will be some of the primary amenities provided by the city. The city will comprise of thematic land utilization, as illustrated in Figure 4 below:

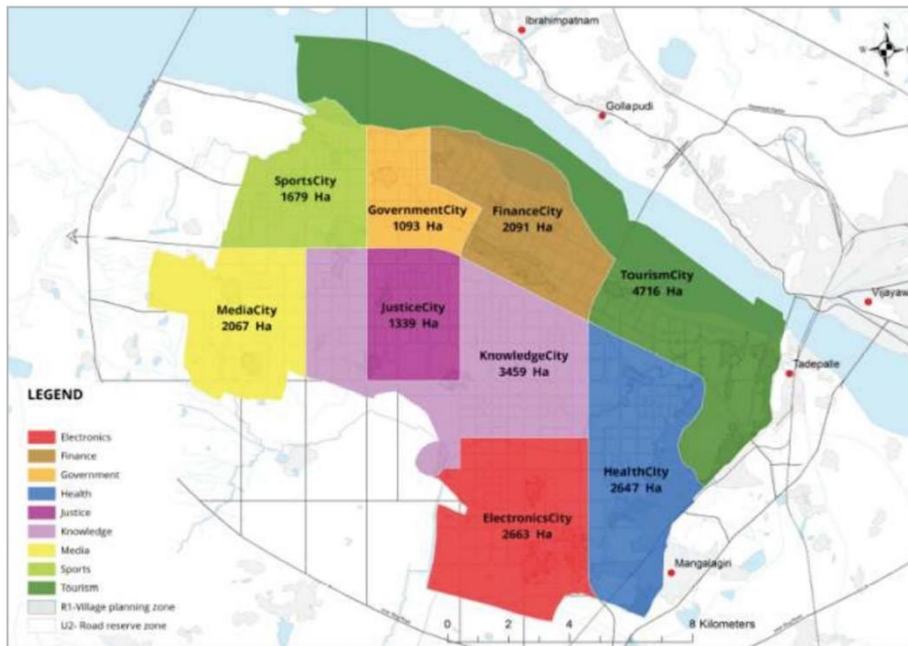


Figure 4: Amravati Thematic Land Use Map. Source: Andhra Pradesh Capital Region Development Authority Official Website

One of the drawbacks of this model is that, the goal has been set for the year 2050, which is beyond the postulated time prescribed by the Sustainable Development Goals enshrined by the 2030 Agenda. Moreover, many impediments will be faced by the planning and development authorities due to the lacuna in law and policy-making, which have been discussed during the course of the paper.

4. Conclusion

In order to achieve the first sustainable city in India, Government initiative alone cannot pave the road to success. Social policies aimed at achieving public welfare also play a vital role. Without public participation or contribution from the population, the accomplishment and goals of a social policy becomes miniscule. One of the chief reasons as to why Indian cities lag behind is also due to this. Maintenance of cleanliness, avoiding the wastage of water and electricity, proper use of Government facilities,

preservation of public places and cultural heritage sites are few of the duties of the citizens for ensuring a swift and sustainable urban development. Since the laws and policies in India intending to achieve sustainable urban development contain provisions and objectives for public welfare, they form as part and parcel of social policies. Simultaneous and incessant efforts from the Government as well as the population is the only way that will elevate the present scenario in Indian cities and lead to the accomplishment of sustainable urban development.

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