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Vulnerabilities of Institutional Checks in Indian Federalism: The Case of the Adarsh Society Scam in Mumbai

VAIDEHI TANDEL, SAHIL GANDHI, SIRUS JOSEPH LIBEIRO, and
CHAITANYA MARPAKWAR

Introduction

Successful democratic societies, in addition to having an accountable electoral system, require an institutional structure that creates separation of powers between different arms of the government so that “power is [. . .] used to check power through opposite and rival interest.”¹ Separation of powers is manifested in two forms: horizontal separation of powers and vertical separation of powers (federalism). The appeal of separation of powers lies in the checks and balances that it creates within the political system where veto players can safeguard against corruption.² However, the experience of many democratic developing countries has been that *de jure* constitutional separation of powers does not necessarily foster checks and balances.^{3,4} Formal institutions of separation of powers are likely to be subverted by informal institutions that govern interactions between different actors.⁵ The absence of effective checks and balances leads to concentration of power among a few ruling elite which in turn increases grand corruption.⁶ In what ways are checks and balances in developing countries vulnerable despite political institutions that create separation of powers between different branches of government? What are the mechanisms by which political and bureaucratic elite circumvent the system of checks and balances to realize private gains? Considering the case of vertical separation of powers in India, this article explores the mechanisms by which checks and balances are subverted by studying the Adarsh Housing Society Scam.

The Adarsh Housing Society Scam that took place in Mumbai involved prominent officials belonging to all levels of government colluding to acquire property in a project allegedly meant for defense personnel, war widows, and veterans—in one of the most expensive real estate market in the world and in the process circumventing the institutional checks.⁷ In the ten year period (2000–2010) since its inception to being awarded an occupancy certificate, the society was given concessions, exemptions, and/or priority by public officials belonging to different central, state, and local public organizations and departments. As of 2010, the total number of members of the society was 102, of which 65 do not belong to the defense services.⁸ Moreover, a large proportion of

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the members were politicians and bureaucrats, all of who paid much less than the prevailing market value for their apartments.⁹ In 2009, a Right to Information application by the National Alliance of Peoples Movement, a non-governmental organization, brought forth names of all the members of the society and generated considerable media attention.¹⁰

As the nature of the gains made by public officials was not monetary but in the form of private apartments, which are non-fungible, it facilitated identification of the use of discretions, omissions, and exemptions exercised by the relevant officials presumably in exchange for apartments. We analyzed events over a ten-year period from the commencement of the process for acquiring land for the society in 2000 until the scam was exposed in the public domain. The presentation is in an analytical narrative form, following the framework provided by Bates et al.¹¹

This article is divided into six sections. Section one introduces the article. Section two briefly discusses India's federalism and its manifestation in urban governance. Section three elaborates on the data used. Section four provides a narrative of the Adarsh Scam. Given the multiplicity of authorities and number of permissions and clearances required for the society, we focus only on the critical processes and events. Section five analyzes the nature of checks in the Indian federal setup and examines how they were subverted, against the backdrop of the Adarsh Scam. We offer some concluding remarks and observations in section six.

Indian Federalism and Urban Governance

India's constitution provides for a horizontal separation of powers between the bicameral legislature, executive, and an independent judiciary as well as a vertical separation of power among the center, state, and local governments. The nature of vertical separation of powers has undergone a radical change from being dominated by the center, to state governments increasingly asserting their autonomy.¹² The change is a result of weakening of the Indian National Congress, burgeoning regional political parties, coalitional politics, and increasing competition between state governments for investments and industry.¹³ Thus, the state governments are no longer subordinate to the center and an increasingly fractured polity has resulted in different machinations for power sharing between the political actors.¹⁴ Vertical separation of powers underwent further transformation with the 73rd and 74th Constitutional Amendment Acts that formally recognized local bodies as the third tier of government.

The 74th Constitutional Amendment Act assigns powers to urban local bodies to provide local goods and services and undertake planning within their jurisdiction. However, these local governments do not have adequate autonomy and continue to be dependent on the state and central governments.¹⁵ As a result, along with the local bodies, these higher-level governments, and their parastatals¹⁶ and line departments are essaying a greater role in matters related to urban governance.¹⁷ This multi-level, multiple authority involvement is even more prominent in governance of urban land. Land is a state subject, that is, legislations and administrative decisions pertaining to land are done at the state level. However, land use planning and its disposal for various public uses involves local governments, special planning authorities, and parastatals.

Furthermore, land use is regulated by environmental laws and rules framed by the central government. As a result, any real estate or land development requires various permissions and clearances from the departments and ministries at all the three tiers as well as other public organizations. Thus, there are a large number of veto players in the urban sphere, which can act as a possible check on corruption.¹⁸ Tsebelis cautions against only considering the number of veto players, however. There are high possibilities that veto players may be absorbed (for instance, two political positions controlled by the same political party reduces the number of veto players to one), in which case the number of effective veto players reduces.¹⁹

Data Sources

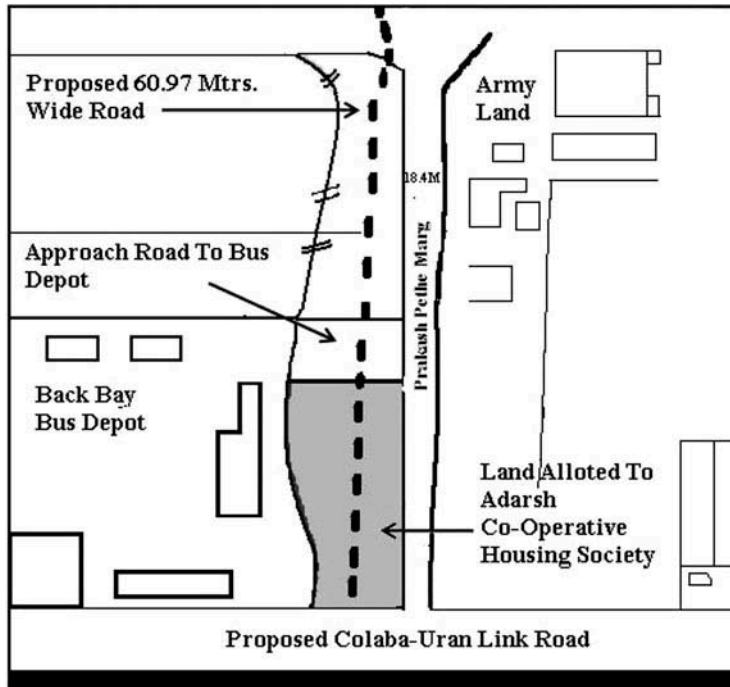
For the purpose of this article, we rely extensively on the official reports of investigations carried out by various agencies probing the scam. These include the report of the Comptroller and Auditor General of India (CAG) in 2011²⁰ and the testimonies of important witnesses who deposed before the state appointed commission of inquiry investigating the scam. Further, we also refer to the extensive coverage given by both, the print and mass media (television reports and online articles) to this scam. All of these sources were available in the public domain and were used to understand the progression of the scam and the role of officials in different public offices in facilitating it. In order to strengthen our analysis, we study the official letters and communiqués between the society and governmental organizations and individuals.

The investigation of this scam still continues, and there are multiple investigations being carried out concurrently. For the purposes of this article and its analysis, however, we restrict ourselves to the findings up until submission. Although the investigation is still ongoing, our analysis, which focuses on mechanisms by which checks were subverted, will not be affected by the final verdict.

Adarsh Scam: A Narrative

The Adarsh Co-operative Housing Society was proposed as a society for military officials and servicemen, and widows of military officials who had been killed in the Kargil war.^{21,22} At that time, it had forty proposed members, all of who were defense personnel. The society was to construct a building on a plot of land in the Backbay Reclamation Area, Colaba, which is an upscale area in South Mumbai and having some of the highest real estate prices in the world. The plot is in close proximity to a naval base and to Mantralaya, which is the administrative head office of the Government of Maharashtra. The army had been maintaining an eco-park on the plot since 1996. This land falls under the jurisdiction of the Mumbai Metropolitan Region Development Authority (MMRDA), which is a state parastatal in charge of planning and overseeing development in the Mumbai Metropolitan Region, and acts as a special planning authority. The plot also falls within the coastal regulation zone as per the coastal zone management plan for Greater Mumbai, thus requiring an environmental clearance. Adjacent to this plot lies the Prakash Pethe Marg on one side, which was under MMRDA's jurisdiction, leading to the proposed Colaba-Uran link road on the other side (see [Figure 1](#)), which came under the jurisdiction of the Municipal Corporation

FIGURE 1
MAP FOR LOCATION OF ADARSH.



Source: Adapted from the CAG Report 2011.

of Greater Mumbai (MCGM), which is the local municipal corporation. Therefore, the allocation of the plot required the involvement of the city collector, the state government, MMRDA, MCGM, the defense Head Quarters of Maharashtra, Goa and Gujarat (HQ MG&G), and western naval command,²³ as well as environmental clearance.

The narrative of the Adarsh scam is divided into two parts. The first part deals with initial allocation of the plot of land by the government to the society. The society was represented by its chief promoters, Kanhaiyalal Gidwani, a former member of the state legislature, R.C. Thakur, a serving officer in defense estates office, Mumbai, and brigadier M. M. Wanchoo. The second part elaborates on the various permissions and exemptions regarding the additional Floor Space Index (FSI)²⁴, eligibility criterion for members, and height relaxations that the society gained while the building was erected, until the scam was exposed in the public domain.

Allocation of Land

The plot identified for constructing the Adarsh society was said to be located on state government land. The value of the plot was more than Rs. 25 lakh²⁵ and hence, as per the Maharashtra Land Revenue Rules 1971, approval for allotment was required from the finance department, the chief minister of Maharashtra, and the revenue and

forest department. Thus, Thakur sought, in early 2000, permission to allot 3854 square meters of land in Colaba, Mumbai (indicated in [Figure 1](#)) from the chief minister of the state for constructing a residential building. The letter requesting the allotment was marked to the principal secretary (revenue) of the revenue and forest department and later forwarded to the collector, who is the custodian of all government land as per the Maharashtra Land Revenue Code 1966, for his remarks.²⁶ After a site visit, the collector remarked that the plot in question was enclosed by a boundary wall constructed by the “Military Department.” He asked the HQ MG&G for a no objection certificate²⁷ to allot the land for the proposed society. Following the letter from the collector, the HQ MG&G immediately wrote to the defense estates office, Mumbai, for confirmation of the status of the land. The defense estates office sent its reply to HQ MG&G and the HQ MG&G conveyed to the collector’s office that the plot fell outside the defense boundary and “necessary action at your end may be taken as deemed fit for the welfare of Service Personnel/Ex Servicemen/their widows.”²⁸

As per the provisions under the Maharashtra Regional and Town Planning (MR&TP) Act 1966, any development that is construction or change of land use must conform to the development plan for that region. Under this Act, development plans are prepared by planning authorities, which may be local bodies or special planning authorities, and are sanctioned by the state government. The plot for the Adarsh society lay adjacent to two roads, one under the jurisdiction of the MMRDA, and the other under the MCGM. Accordingly, the collector informed the revenue and forest department that the plot in question was reserved for road widening as per the development plan of the MMRDA and required a no objection certificate from MMRDA. It would also require a no objection certificate from the MCGM, with regard to the de-reservation of the proposed Colaba-Uran link road to residential zone. The collector also asked the Government of Maharashtra to approve the membership of this society and noted that occupancy charges at 20 percent of the market rate as of January 1, of the year in which the allotment is made, was leviable. This was to be done as per the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971. After the collector’s remarks, a meeting was held between the society and the then revenue minister, Ashok Chavan, regarding the allotment of the plot and approval of membership. After the meeting, the society in a letter to the chief minister stated, “we are agreeable to accommodate civilian members (members from outside the defense forces) to the extent of 40%.”²⁹

Following these developments, the urban development department of the Government of Maharashtra directed the MCGM to modify its development plan by deleting the southern Colaba-Uran link road and include a part of it as residential zone. It also directed the MMRDA to reduce the width of Captain Prakash Pethe Marg from 60.97 meters to 18.92 meters, which was a part of the proposed Colaba-Uran link road (refer to [Figure 1](#)), and include a part of the deleted area as residential zone. The MMRDA requested the urban development department to reconsider its directives. The urban development department declared that the MMRDA failed to carry out this modification, however, and by the power vested in it under the MR&TP Act, 1966,³⁰ it approved the alteration of the development plan by ordering the reduction of the road width and the deletion of the link road. It also approved the de-reservation of land

reserved for the Colaba-Uran link road following the failure of MCGM in doing so. Once the necessary modifications to the development plan had been made and the land was available for residential use, in January 2003, the revenue and forest department issued a letter of intent to allot the government land to the society. The letter of intent to allot the government land to the society was subject to certain terms and conditions. These included the following conditions: (a) members should satisfy eligibility conditions as laid down in the government resolution dated July 9, 1999, which lays down the different income categories that are applicable to government and non-government servants and the respective carpet area applicable to each income category, and (b) the society should get permission from the Ministry of Environment and Forests (MoEF) as the plot fell under the coastal regulation zone.³¹

The deputy secretary of the Urban Development Department wrote to the MoEF requesting a no-objection certificate for development on the plot allotted to the society in March 2003. The joint director of the MoEF responded in a letter stating that the ministry had delegated the powers to state governments and that the construction may be undertaken as per the coastal regulation zone Notification of 1991.³² As per this notification, all project proposals in the coastal regulation zone areas were to be submitted to the Maharashtra Coastal Zone Management Authority (MCZMA)³³ for scrutiny. The deputy secretary construed this letter from the joint director as a no-objection certificate from the MoEF, however. In a letter to the minister of state,³⁴ urban development department, Thakur communicated that the MoEF had accorded their no-objection certificate to the society.

In 2003, a leading English daily paper reported discrepancies in the membership of the society.³⁵ Following these reports, the Indian parliament raised a query seeking the status of the Adarsh plot. The then head of southern command, which controls the HQ MG&G, and the chief of the MG&G area responded to the query stating that the army did not possess the land³⁶ and the matter was put to rest.

In July 2004, with a government resolution from the state government, the plot was handed over to the society. The resolution was issued following an inspection of the plot, and mentioned that the plot was in the possession of the defense department. Within a month, following a request from the society, a corrigendum was issued by the state government deleting the words indicating the possession by the defense department from the original resolution.³⁷ After the allotment of land, the society approached the tree authority of the MCGM on multiple occasions between 2005 and 2008 seeking permission to fell trees on the plot and transplant some of them.³⁸ The MCGM accorded its permission and trees were transplanted to the United Services Club, which was on defense land and run by the western naval command. As this land belonged to the defense, permission for transplantation was required from the defense estates office. However, the transplantation was carried under the directives of the western naval command without the requisite permission from the defense estates office.³⁹

Other Permissions and Exemptions

The society requested the government to grant additional FSI for accommodating its members. It proposed to avail FSI of the area adjacent to the plot, which was being used

by the Brihanmumbai Electric Supply and Transport (BEST) undertaking for access approach to its bus depot (see [Figure 1](#)), and which was not likely to be constructed upon. In a meeting with the general manager of BEST, the promoters, and officials from the Government of Maharashtra, the principal secretary of the urban development department informed that the adjacent plot was reserved for the BEST depot and the society would have to approach the state government for allotment of the land that would be given once the reservation was deleted as per the MR&TP Act. BEST was asked to provide its comments on this issue. In December 2004, the assistant general manager and general manager of BEST stated, “. . . the subjected plot/land . . . shall be retained as an exclusive access to the BEST Depot.”⁴⁰ In a meeting convened in January 2005, the principal secretary urban development department remarked that the plot belonged to the state government, and BEST would have to pay the current market price of the land to the government for the plot to be allocated to it. Ultimately, BEST asked the state government to take the final decision regarding de-reservation. The government allotted this land to the society, which enabled it to use the FSI on the plot.⁴¹ Not only was additional FSI awarded to the society, but it was also exempted from the development control regulations under which 15 percent of FSI was to be deducted for recreation ground. This deduction was initially made by the MMRDA while approving the society’s building plans. The initial request of the society to release this FSI was rejected. The society argued that the Backbay Reclamation Scheme—the scheme for planning of the Backbay Reclamation Area—had already provided a recreational ground, and there was no need to deduct the FSI for individual plots. In July 2009, upon the request of the society, the chief minister allowed 15 percent FSI to be granted to the society in lieu of the deduction made for recreation ground.

For members to be eligible for an apartment in the society, the members were required to fulfill certain criteria laid down in the government resolution of 1999. In the initial scrutiny of eligibility of members, it was found that many did not meet these criteria. Following this, Thakur and Gidwani wrote to the revenue minister requesting that the eligibility criteria of incomes for owning an apartment in the society be relaxed for ex-servicemen by state government. The state government amended the government resolution in 2005 “by raising the income limit of all and waiving the requirement of domicile in respect of retired government employees and serving and retired service personnel from Maharashtra.”⁴² The government also, on a case-by-case basis, relaxed eligibility conditions for certain high-ranking defense personnel.⁴³

As per another government resolution, the state government appointed a high-rise committee as an advisory to the municipal commissioner of MCGM. The committee is supposed to scrutinize proposals of all buildings having a height of 70 meters or more and provide clearances. In 2007, it approved the building height of 97.6 meters for Adarsh society and issued no objection certificate for twenty-seven floors. Following this, a commencement certificate was issued to the twenty-seventh floor by MMRDA and forwarded to MCGM. 28 floors were constructed, however, and a meeting was held at MCGM to consider the society’s proposal for regularizing the 28th floor. The municipal commissioner of MCGM, Jairaj Phatak, contended that no clearance was required from the high-rise committee for the 28th floor and that an approval from the appropriate authority, that is, the MMRDA may suffice. This no objection certificate for the

28th floor was issued by the MMRDA. Thus, despite violating the high rise committee's permission by constructing beyond the permitted 27 floors, its fresh approval was not sought for regularizing the 28th floor.

In 2010, the naval authorities from the western naval command raised objections against issuing of occupancy certificate to the society⁴⁴ citing security concerns.⁴⁵ However, they failed to pursue the matter further. Ultimately, in September 2010, occupancy certificate was issued to the society by the MMRDA.⁴⁶

Today, this building stands at thirty-one stories, including ground floor, levels for parking and commercial use, and 104 apartments. The current market value of the society is estimated to be Rs. 600 crores. After the scam was exposed by the National Alliance of People's Movement in the public domain, a two member enquiry commission was appointed by the Government of Maharashtra to investigate the scam. The Central Bureau of Investigation is also probing the scam. The Central Bureau of Investigation, in its charge sheet has named the promoters of the society, top bureaucrats, defense personnel, and Ashok Chavan, the former chief minister of Maharashtra in the scam.⁴⁷ Furthermore, there is also a parallel investigation being undertaken by the enforcement directorate regarding money laundering in connection with the Adarsh case.

Modus Operandi and Analysis

The Indian federal system provides checks largely through a three-tiered setup where powers and functions are distributed between the center, state, and local governments. Within each tier, powers are distributed among various ministries, departments, and other public organizations. This distribution of powers applied for the case of Adarsh, where permissions and clearances were required from all the three tiers of government and organizations belonging to these tiers.

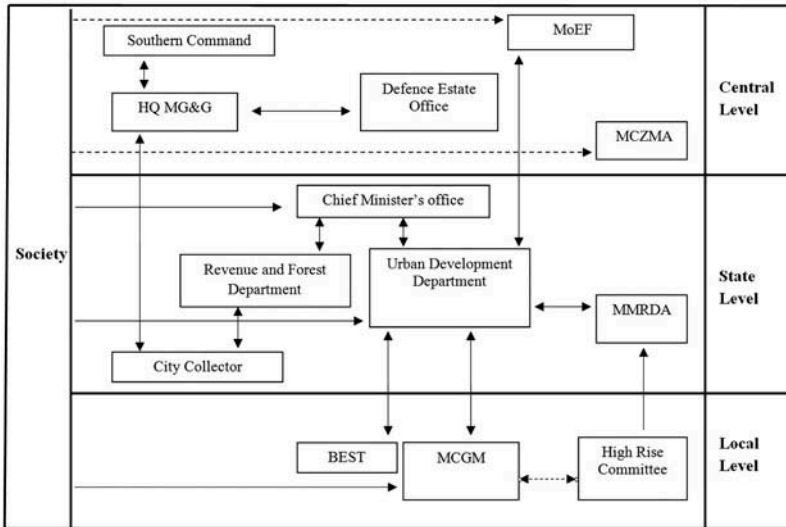
Figure 2 represents the entire process of permissions involving ministries, departments, and organizations belonging to the three levels of the federal setup for the Adarsh society. The arrows indicate interactions and communications between them in the process of granting allotment, clearances, permissions, and exemptions, from the initial application for allotment of land, until the issuance of the occupancy certificate. The dotted line indicates the interactions that should have taken place for certain permissions but which did not take place since the permissions were never taken. The western naval command has not been included in the figure as it was not directly involved in the processes but could have raised objections independently.

Our analysis is divided into two parts. The first part looks at the crucial institutional checks involved in the case of Adarsh society. It examines the mechanisms by which these checks collapsed. The second part looks at how informal networks within political and bureaucratic elite facilitated the scam.

How the Checks Collapsed

The checks within the system collapsed and decisions were taken in favor of the society on account of *quid pro quo*, overriding objections of concerned organizations, misrepresentation of facts, absorption, or by omission of due processes altogether. *Quid pro*

FIGURE 2
PERMISSION PROCESS: FROM ALLOTMENT OF LAND UNTIL THE OCCUPANCY CERTIFICATE.



quo refers to key players in the narrative getting apartments in the Adarsh society for themselves or their relatives, presumably in lieu of granting the requisite permissions and exemptions. Overriding occurs when higher level organizations use legal mandate to overrule objections raised by lower level organizations. Misrepresentation involves a false claim of receiving a permission, which was never granted. We define absorption as two or more veto positions being held by the same minister or bureaucrat at the same time.⁴⁸ Omission looks at the due process, which was bypassed by the society. We examine the checks at all the three levels separately and see how they were subverted.

Central level. As per the narrative, the central level involved the HQ MG&G, the defense estates office, the southern command, and the western naval command from the defense establishment. With regard to the environmental clearance, there were two authorities that were required to be involved: the MoEF and the MCZMA.

At the time of the proposed allotment, the land was in the possession of the army, and the matter was referred by the city collector to the HQ MG&G. As per the deposition of major general S.S. Jog, who belonged to the HQ MG&G and signed the letter to the collector on its behalf, he was pressurized by his general officer commanding A.R. Kumar into signing the letter, which was then treated as a no objection certificate.⁴⁹ The son of A.R. Kumar, who is also a defense officer, owns an apartment in the society along with several defense estate officers who enabled in the process of land allotment. Furthermore, the officers who responded to the query in the Parliament stating that the land was not possessed by the army also became members of Adarsh society. Successive general officers commanding of the southern command between October 2000 and February 2004 were members of the Adarsh society.⁵⁰ At least six apartments in the

Adarsh society were owned by heads of the southern command, general commanding officers, and defense estates officers. Thus, checks that should have been provided by the southern command, the HQ MG&G, and the defense estates office collapsed due to *quid pro quo*.

The western naval command transplanted a large number of full-grown trees from the Adarsh plot. The then commanding officer of western naval command, and the officer who initiated the exercise of transplanting the trees, were members of the society.⁵¹ Moreover, despite there being security threats due to the proximity of the society to the naval base, the naval authorities did not raise concerns. Most of the commanding and lower level officers in the western naval command, who could have raised objections to the building, were members of the society.⁵² Thus, checks provided by the western naval command also collapsed due to *quid pro quo*.

With regards to environmental clearance, the society blatantly violated the law. It approached the MoEF—via the urban development department—for a no objection certificate at a time when the MCZMA was the authority for granting clearances. After the MoEF clarified in a letter stating that the society should follow the procedure stated in the 1991 Notification, which required that it approach the MCZMA, it did not do so. In April 2003, the MoEF transferred the powers of granting clearances for projects above Rs. 5 crores to itself from the MCZMA; thus, the society would have been required to approach the MoEF for environmental clearance.⁵³ However, after the transfer of authority, neither the society nor the state government approached the MoEF for this clearance.⁵⁴ Thus, the check by the MoEF was subverted through omission.⁵⁵

The society never approached the MCZMA when it was the agency responsible for handling environmental clearances for project proposals. The society bypassed the MCZMA by claiming that the letter written by the MoEF to the urban development department was a no objection certificate. After the scam was exposed, the MoEF, in a press note, clarified that it did not issue any clearance or no objection certificate to Adarsh.⁵⁶ The press note further stated, “all construction in the Coastal Regulation Zone area, which were permissible under the Coastal Regulation Zone Notification, and were in consonance with the approved Coastal Zone Management Plan of Mumbai, had to be considered by Maharashtra State Coastal Zone Management Authority (MCZMA) [sic],” which was the concerned authority at that time. Thus, MCZMA could not be a check due to omission of due procedure and misrepresentation.

State level. There are five key players at the state level: MMRDA, the chief minister, the revenue and forest department, the urban development department, and the city collector. The Adarsh plot fell within the Backbay Reclamation Area, for which MMRDA is the special planning authority, and overlapped with the area reserved in the plan for road widening. Thus, it required modification in the plan for that area and a no objection certificate from MMRDA. Despite MMRDA requesting the urban development department to reconsider its directives, the urban development department went ahead with the modification using the power vested with it under the MR&TP Act.⁵⁷ Also, the mandatory deduction of 15 percent of FSI for recreation ground by the MMRDA was overridden by the chief minister, and additional 15 percent FSI—a rarely given

concession—was granted to the society.⁵⁸ Therefore, a possible check by the MMRDA collapsed because the urban development department and the chief minister overrode it.

Important decisions pertaining to allocation of government land and membership criterion are taken through state government resolutions, which are executive orders. This enabled the state government to modify its government resolution regarding eligibility criteria for members of housing societies on government land, which led to many defense officials and civilians being accommodated in the society. The chief minister's office, the urban development department, and the revenue and the forest department were responsible for these and other exemptions and discretionary⁵⁹ decisions in the case of Adarsh. All decisions for the Adarsh society needed a final clearance from the chief minister's office and also the revenue and forest department since the value of the plot in question was above Rs. 25 lakh. Between 2000 and 2010, Maharashtra had three chief ministers, Vilasrao Deshmukh, Sushil Kumar Shinde, and Ashok Chavan, belonging to the same political party, for varying periods of time.⁶⁰ Ashok Chavan had relatives owning three apartments in the Adarsh society, while Vilasrao Deshmukh recommended three of his aides for membership in the Adarsh society. Furthermore, bureaucrats in the office of the chief minister were direct beneficiaries and had apartments in the society. Thus, the check provided by the chief minister collapsed due to *quid pro quo*.

The position of revenue minister, who heads the revenue and forest department, was held by Sushil Kumar Shinde at different times during his tenure as chief minister.⁶¹ In fact, the letter of intent by the revenue and forest department to allot the plot to Adarsh society was given in January 2003 by Sushil Kumar Shinde in his first day in office as the chief minister and the revenue minister. The son-in-law of one of the revenue ministers in this period and the son of a bureaucrat from the revenue and forest department had apartments in the society. Thus the revenue and forest department, headed by the revenue minister, failed to act as a check not only because the revenue minister was absorbed into the chief minister's position but also due to *quid pro quo*.

The chief minister of Maharashtra, by convention, holds the urban development department portfolio; another case of absorption. Further, bureaucrats from the urban development department had apartments in Adarsh society. As a result, the check of urban development department collapsed due to absorption and *quid pro quo*.

The office of the collector is responsible for approving the membership of cooperative societies, after having confirmed their eligibility. It played a crucial role in the Adarsh scam as the number of members burgeoned from the original 40 (proposed in 2000) individuals to the final 102. Within a few days of the corrigendum, which deleted the mention of the possession of plot by defense, the state approved a list of 51 members of the society. The then collector, Pradeep Vyas failed to communicate to the government that the deletion by the corrigendum was factually incorrect.⁶² The list of approved members of the society included Vyas's wife. While the society was still awaiting the decision on gaining additional FSI in lieu of the recreational ground deduction by the MMRDA, it forwarded a letter to the collector's office with eight new members, who were to be accommodated if the additional FSI was granted by the government. This letter also informed of the approval of Ms. Idzes Kundan as a member of the society. Ms. Kundan was, at that time, serving as the collector, Mumbai city. Thus,

one can attribute two apartments in the Adarsh society to these two former collectors between 2000 and 2010. The check provided by the position of the collector collapsed, on account of *quid pro quo*.

Between the politicians and the bureaucrats belonging to the state government offices, at least 15 apartments are owned in the Adarsh society. It is also possible that many of the politicians involved in the dealings of Adarsh could be holding *benami* (proxy) apartments in the society.⁶³ Thus, at the state level, the checks collapsed owing to *quid pro quo*, overriding by a higher authority, and absorption.

Local level. At the local level, the agencies involved were the MCGM, the high rise committee, and BEST. Although not directly involved in granting permissions that would allow the society to come up, both the high rise committee and the BEST were critical players in the process since they could enable the construction of more apartments through additional FSI and floors, which could then be used to accommodate more public officials. The permission of the MCGM was required to carry out the necessary modifications in the plan for the proposed Colaba-Uran link road (see Figure 1). However, the urban development department used its power as per the MR&TP Act and went ahead with the modification. The urban development department overrode MCGM, thereby making it ineffective as a check.

While the original plan of the society was to construct up to 27 floors, the society constructed 28 floors. The high-rise committee accepted the original proposal for 27 floors. The society argued that there was no need for another clearance by the high-rise committee for the additional floor. The municipal commissioner of MCGM, Jairaj Phatak accepted the argument of the society and stated that there was “no need to obtain a fresh NOC (No Objection Certificate) from High Rise Committee.”^{64,65} Thus, the society not only managed to exceed the permitted height limit, but also succeeded in regularizing the additional floor without seeking a fresh permission from the high rise committee. Jairaj Phatak’s son was a member of the society. The high rise committee failed to act as a check on account of *quid pro quo* and omission.⁶⁶

The authority vested with the state enabled it to de-reserve the BEST plot and allocate additional FSI to the society. On being asked to give its comments on the matter, the BEST initially asked to be given exclusive access to the plot. However, the BEST yielded and gave up its claim over the plot of land adjacent to the society after it was asked to pay the market price, which it could not have afforded, for it by the state government.⁶⁷ Objections raised by the BEST were overridden by the state government thereby rendering it ineffective as a check.⁶⁸

Quid Pro Quo and Informal Networks

The proportion of formal checks in the process of the Adarsh scam made vulnerable because of *quid pro quo* was 54 percent; agents in various key positions were given a share of the pie—in the form of apartments in Adarsh society—in lieu of granting the various permissions and exemptions, and, in general, enabling the process for the construction of the society (see Table 1). The scam was sustained over time due to shared trust and a belief that there were little chances of an exposé. The collusion for rents

TABLE 1
MEANS BY WHICH INSTITUTIONAL CHECKS WERE SUBVERTED

Mechanisms/ authorities	Quid pro quo	Overriding	Misrepresentation	Absorption	Omission
Southern Command	✓				
HQ MG&G	✓				
Defence Estate Office	✓				
Western Naval Command	✓				
MoEF					✓
MMRDA		✓			
Chief Minister's Office	✓				
Revenue and Forest Department*	✓			✓	
Urban Development Department*	✓			✓	
MCZMA*			✓		✓
Collector	✓				
MCGM		✓			
High Rise Committee*	✓				✓
BEST		✓			
Weighted total	7.5	3	0.5	1	2
Percentage (rounded up)	54	21	4	7	14

Note: Each authority is counted as one check and equal weights is assigned to them mechanisms that lead to the check collapsing.

was possible because of informal networks between the actors. Gidwani, the chief promoter of the Adarsh society, played an important role here. He became a member of the Maharashtra legislative council with the Shiv Sena Party. Later, he was known to be close to Congress chief ministers like Vilasrao Deshmukh and Sushil Kumar Shinde. Being a legislator, he had existing relations and associations with politicians and bureaucrats in the offices concerned with clearances for the society. He could use his influence to gain direct access to ministers, and via them, bureaucrats and officers in the administration. As a political entrepreneur, it was possible for him to tap into his network of political and bureaucratic acquaintances to extract favors, which otherwise, may have eluded an outsider. Without him, it would have been extremely difficult to ensure the compliance of the offices of the revenue and forest department, urban development department, the municipal commissioner, and general manager of the BEST. The membership of the society expanded and Gidwani was allowed to bring 40 percent of the civilian members,⁶⁹ many of whom assisted with the allocation of land and acquiring other permissions for the society. One can conjecture that Thakur, who was with the defense estates office, was able to use his networks within the army for acquiring the requisite clearances and permissions needed from the defense officers.⁷⁰

Conclusion

A well-functioning democracy requires a formal separation of powers that leads to effective checks for safeguarding against corruption. In many developing countries, separation of powers does not necessarily result in a system of checks and balances. This is because informal institutions that govern interactions among the ruling elite subvert checks through various means. In India, horizontal and vertical separation of powers coexists with rampant corruption. This article illustrates the vulnerabilities of

institutional checks by examining the case of the Adarsh society scam that took place in Mumbai. The scam involved prominent officials belonging to all levels of government colluding to acquire property in a housing project in one of the most expensive real estate market in the world. Although each of the fourteen authorities that were involved could have either vetoed the entire project or certain key permissions, various means were employed in order to ensure that the society did not face any hindrances. We find that 54 percent of the checks collapsed on account of quid pro quo, 21 percent collapsed due to being overridden, 4 percent collapsed due to misrepresentation of facts, 7 percent were absorbed into another authority, and 14 percent collapsed due to omission in process. Informal networks between politicians, bureaucrats, defense officials, and the promoters of the society who had political and military backgrounds, played a decisive role in building trust and sharing of rents through quid pro quo. Thus, the *de jure* separation of powers failed to stop the project from being completed.

Despite the extensive collusion among the public actors and the society, the scam was exposed because of the concerted efforts of certain non-governmental organizations and the media through the use of the Right to Information Act of 2005. The extensive coverage of this scam by the media, led to the then chief minister, who was accused of being involved in the scam, resigning from office and an extensive inquiry by at least three independent bodies. These events point to the important fact that although endogenous checks in the Indian federalism have consistently failed, the external checks in the Indian democracy—the civil society and the media—are essaying a crucial role in exposing corruption. The rising importance and activism of the supervisors is a new and growing trend in the Indian democracy.

The analysis presents a clear lesson for developing countries. Vertical separation of powers in a federal system does not always deter collusion and thus fails to curb corruption and rent seeking. Formal institutional design for fostering checks must take cognizance of the institutional coping that allow a few ruling elite to continue to make private gains at the expense of the wider public.⁷¹ Moreover, strengthening external checks through institutions that provide greater freedom and disseminate information to the media and civil society could be an effective way of reducing grand corruption.

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NOTES

1. Vincent Ostrom, *The Meaning of American Federalism: Constituting a Self-Governing Society* (San Francisco: Institute for Contemporary Studies Press, 1991), p. 48.
2. The framers of the American Constitution recognized this and strove to create a “balanced government” to curb the rampant political corruption in the system, see John J. Wallis “The Concept of Systematic Corruption in American History,” in Edward L. Glaeser and Claudia Goldin, eds., *Corruption and Reform: Lessons from America’s Economic History* (Chicago: University of Chicago Press, 2006), pp. 23–62.
3. See Susan Rose-Ackerman, Diane A. Desierto, and Natalia Volosin, “Hyper-Presidentialism: Separation of Powers without Checks and Balances in Argentina and Philippines,” *Berkeley Journal of International Law*

- Vol. 29, No. 1 (2011), pp. 246–333; Daron Acemoglu, James A. Robinson, and Ragnar Torvik, “Why Do Voters Dismantle Checks and Balances?,” *Review of Economic Studies* Vol. 80, No. 3 (2013), pp. 845–875.
4. In developed countries like the United States too, constitutionally created separation of powers would not guarantee absence of corruption. Having identified this problem, several constitutional reforms were designed and carried out in order to root out “systematic corruption,” see Wallis, “The Concept of Systematic Corruption in American History” (note 1 above).
 5. Gretchen Helmke, and Steven Levitsky, “Informal Institutions and Comparative Politics: A Research Agenda,” *Perspectives in Politics* Vol. 2, No. 4 (2004), pp. 725–740.
 6. To be sure, corruption is not an issue faced by developing countries alone. Rebecca Menes, “Limiting the Reach of the Grabbing Hand: Graft and Growth in American Cities, 1880 to 1930,” in Edward L. Glaeser and Claudia Goldin, eds., *Corruption and Reform: Lessons from America’s Economic History* (Chicago: University of Chicago Press, 2006), pp. 63–93, documents how most American cities were plagued with corruption right up to the 1930s. However, she goes on to show that these cities undertook significant reforms, which have been successful in greatly limiting, if not eliminating, corruption.
 7. In a recent report, Mumbai was ranked 16th among top 20 most expensive cities in terms of real estate prices, see Knight Frank, *The Wealth Report 2013: The Global Perspective on Prime Property and Wealth* (London: Knight Frank, 2013), p. 29.
 8. There is a discrepancy between the final number of members in the society. While the Comptroller and Auditor General of India (CAG) report states the number as being 102, multiple media sources put the number to be 103. See Comptroller and Auditor General of India (CAG), *Report of the Comptroller and Auditor General of India on Adarsh Co-operative Housing Society, Mumbai* (Delhi: Union Government (Defence Services), March 2011), p. 15.
 9. See “Adarsh Payments Show Flats Went Cheap,” *The Times of India*, April 13, 2011.
 10. “We Used the RTI Act to Expose Several Housing Frauds,” *The Times of India*, February 25, 2011.
 11. Robert H. Bates, Avner Greif, Margaret Levi, Jean-Laurent Rosenthal, and Barry R. Weingast, *Analytic Narratives* (Princeton: Princeton University Press, 1998).
 12. See Aseema Sinha, “The Changing Political Economy of Federalism in India: A Historical Institutional Approach,” *India Review* Vol. 3, No. 1, (2004), pp. 25–63.
 13. T.N. Srinivasan and Jessica Seddon Wallack, “Inelastic Institutions: Political Change and Intergovernmental Transfer Oversight in Post-Independence India,” in Suman Bery, Barry Bosworth, and Arvind Panagariya, eds., *India Policy Forum 7* (New Delhi: Sage, 2011), pp. 203–243.
 14. K.K. Kailash, “Federal Calculations in State Level Coalition Governments,” *India Review* Vol. 10, No. 3 (2011), pp. 246–282.
 15. See Abhay Pethe, Vaidehi Tandel, and Sahil Gandhi, “The Dynamics of Urban Governance in India,” in Ashima Goyal, ed., *Handbook of the Indian Economy in the 21st Century: Understanding the Inherent Dynamism*, Oxford India Handbook Series (New Delhi: Oxford University Press, forthcoming 2014).
 16. A parastatal is a government owned organization.
 17. Abhay Pethe, Vaidehi Tandel, and Sahil Gandhi “Understanding Issues Related to Polycentric Governance in the Mumbai Metropolitan Region,” *Public Finance and Management* Vol. 12, No. 3 (2012), pp. 182–203; Abhay Pethe, Sahil Gandhi, and Vaidehi Tandel “Assessing the Mumbai Metropolitan Region: A Governance Perspective,” *Economic and Political Weekly*, June 25, 2011, pp. 187–195; K. C. Sivaramakrishnan, “Urban Development and Metro Governance,” *Economic and Political Weekly*, July 30, 2011, pp. 49–55.
 18. See David Brown, Michael Touchton, and Andrew Whitford, “Political Polarization as a Constraint on Corruption: A Cross-national Comparison,” *World Development* Vol. 39, No. 9 (2011), pp. 1516–1529; Josephine T. Andrews, and Gabriella R. Montinola, “Veto Players and the Rule of Law in Emerging Democracies,” *Comparative Political Studies* Vol. 37, No. 1 (2004), pp. 55–87.
 19. George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton: Princeton University Press, 2002).
 20. See CAG, *Report of the Comptroller and Auditor General* (note 8 above).
 21. The Kargil war was fought between India and Pakistan in 1999.
 22. In a letter to the chief minister of Maharashtra, the chief promoter of the Adarsh society explicitly mentions this: “. . . this allotment will be a kind gesture towards serving & retired officers of Defence Services, more particularly to our Heroes who bravely and successfully participated in Kargil Operation” (emphasis in original).
 23. Western naval command heads and commands the western fleet of the Indian navy.
 24. FSI refers to the ratio of the building’s total floor area to the size of the plot upon which it is built. It is also known as the Floor Area Ratio.
 25. As per the Indian numerical system, 10 lakhs = 1 million and 1 crore = 10 million.
 26. Although, as per Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971, approval is also required by the finance department, we find no evidence of the involvement of the finance department in the case of Adarsh.
 27. A no-objection certificate is a legal document issued by a concerned government agency to another agency, or an individual, indicating that it has no objections with the proposal concerned and its items.
 28. See CAG, *Report of the Comptroller and Auditor General* (see note 8 above), p. 3.
 29. “Flats Given to Civilians at Chavan’s Behest: Lawyer,” *The Hindu*, October 30, 2010.

30. The MR&TP Act gives the state government the power to modify development plans after issuing a public notice inviting suggestions and objections with respect to the proposed modification.
31. The coastal regulation zone notification of 1991 issued by the MoEF, demarcates the coastal zones and specifies the permissible and prohibited activities in those zones.
32. "No Clearance to Adarsh Housing Society: MoEF," *The Economic Times*, October 29, 2010.
33. Although the jurisdiction of MCZMA is the state of Maharashtra, it is considered to be a central and not a state level organization since it is appointed by the central government and is under the control of the central government.
34. Minister of state is a junior ranking minister who is supposed to assist the cabinet minister.
35. "Officer in CBI Net Ropes Big Fish for Prime Mumbai Plot," *The Indian Express*, August 3, 2003.
36. "Generals Lied on Adarsh," *India Today*, August 5, 2011.
37. "Adarsh Scam: Vyas Was Collector When Wife Got Flat, Panel Told," *The Times of India*, July 17, 2011.
38. "Now, Adarsh Asked to Prove it Transplanted Trees," *Hindustan Times*, November 10, 2010.
39. "New Twist in Adarsh Tree Shift," *DNA*, June 6, 2011.
40. *Note by the Assistant General Manager (Civil), BEST, in Response to Urban Development Department's Call for Comments on Proposal to Allot Additional FSI to Adarsh Society* (Mumbai: The Brihanmumbai Electric Supply & Transport Undertaking, December 7, 2004).
41. The society paid only Rs.6.14 crores for this plot, which was much lesser than the market rate; see CAG, *Report of the Comptroller and Auditor General* (see note 8 above), p. 20.
42. *Ibid.*, p. 26.
43. *Ibid.*, p. 26.
44. "Navy Raised Threat Claim at Later Date," *The Times of India*, February 3, 2012.
45. "Adarsh Scam: Navy Didn't Directly Approach MMRDA to Object OC, Says Gaikwad," *The Indian Express*, May 10, 2012.
46. Up until January 2009, MCGM was in charge of providing occupancy certificates for buildings under the jurisdiction of a special planning authority. However, MMRDA took over the powers to grant essential certificates.
47. "Towards Trial," *Frontline*, July 14, 2012.
48. Tsebelis also uses the term absorption, wherein there may be players that do not affect policy stability or policy outcomes since their preferences are located within the preferences of others, see Tsebelis, *Veto Players* (see note 19 above).
49. "Seniors Bullied Me Into Signing Adarsh NOC: Major General SS Jog," *DNA*, June 16, 2011.
50. "CAG Throws Light on Southern Command Heads Who Got Flats," *The Indian Express*, August 14, 2011.
51. "New Twist in Adarsh Tree Shift" (see note 39 above).
52. "Top Navy Officers Too Had Doggy Role in Adarsh," *The Times of India*, November 4, 2010.
53. Ministry Of Environment And Forest, "No CRZ Clearance or NOC Issued by MOEF in 2003 to Adarsh Housing Cooperative Society, Mumbai" [Press note], 2010. Accessible via <http://moef.nic.in/downloads/public-information/Press%20Note%20on%20Adarsh%20Housing%20Society.pdf>
54. "Adarsh Scam" (see note 45 above).
55. The Government of Maharashtra acknowledged to the commission of inquiry that the Adarsh building did not have an environmental clearance, see "Adarsh had no environment clearance: Maharashtra govt to probe panel," *DNA*, January 16, 2013.
56. "No CRZ Clearance or NOC Issued by MOEF" (see note 49 above).
57. On previous occasions, similar requests by other organizations, for the welfare of ex-servicemen were denied by the Government of Maharashtra owing to the reservation of the same land for road widening, see CAG, *Report of the Comptroller and Auditor General of India* (see note 8 above).
58. See "Man Who Cleared 31st Floor Is Father of Adarsh Allottee," *The Indian Express*, November 3, 2010.
59. Chief minister Vilasrao Deshmukh had used his discretionary powers to provide a one-time exemption to two army generals from providing the mandatory domicile certificates in order to gain membership in the society, see "CBI May Summon Ex-City Collector in Adarsh Case," *The Times of India*, June 20, 2011.
60. Thus, any possibility of the construction of Adarsh being stayed due to changes in the ruling political party was ruled out.
61. Sushil Kumar Shinde was the chief minister between January 18, 2003 and October 30, 2004. He held the revenue portfolio from January 18, 2003 to January 25, 2003 and between July 8, 2004 and November 1, 2004.
62. "Adarsh Scam" (see note 37 above).
63. See "CBI Scours Bank Accounts To Find Benami Adarsh Flats," *The Times of India*, March 24, 2012.
64. CAG, *Report of the Comptroller and Auditor General of India* (see note 8 above).
65. In a response to the inquiry commission regarding the regularization, Phatak stated that the high rise committee was only an advisory committee and the commissioner had the authority to accept or modify its recommendations.
66. Jairaj Phatak was not the municipal commissioner of MCGM when the state government modified the development plan using its legal mandate. Thus, his getting an apartment in the society is only because of the decisions he made regarding the building height permission.
67. CAG, *Report of the Comptroller and Auditor General of India* (see note 8 above).

68. While it is true that the daughter of Uttam Khobragade, former general manager of BEST is a member of the society, the plot was deserved when he was not the general manager and therefore there was no possibility of quid pro quo.
69. "Adarsh Scam: 'Kanhaiyalal Gidwani Was Appointed Coordinator for Alloting Land'," *DNA*, September 14, 2011.
70. See "How Did a Junior Officer Influence Army Top Guns?," *Mid-Day*, November 2, 2010.
71. Navroz K., Dubash, and Bronwen Morgan, "Understanding the rise of the regulatory state of the South," *Regulation & Governance* Vol. 6, No. 3 (2012), pp. 261–281, illustrate institutional coping in their discussion on the nature of regulatory outcomes following the transplantation of regulatory institutions to the South.

Appendix: Glossary of Abbreviations

BEST	Brihanmumbai Electric Supply and Transport
CAG	Comptroller and Auditor General of India
FSI	Floor Space Index
HQ MG&G	MG&G Head Quarters of Maharashtra, Goa and Gujarat
MCGM	Municipal Corporation of Greater Mumbai
MCZMA	Maharashtra Coastal Zone Management Authority
MMRDA	Mumbai Metropolitan Region Development Authority
MoEF	Ministry of Environment and Forests
MR&TP	Maharashtra Regional and Town Planning