

Institutionalizing Citizens' Participation

An Evaluation of the Community Participation Law and the Community Participation Fund

Introduction

Under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) launched in Dec 2005, states which apply for funds must implement certain reforms, one of which is the Community Participation Law (CPL). CPL also known as the Nagara Raj Law was prepared and presented by Mr. Ramesh Ramanathan, the founder of an organisation called Janaagraha Centre for Citizenship and Democracy (JCCD) in Bangalore, in 2004 before the launch of JNNURM. It is claimed that¹ the text and content of the Nagara Raj Law emerged from the experiences based on Janaagraha's programmes 'Ward Vision' where a few hundred citizens indulged in "ward planning and budgeting" in about 10-15 wards out of 100 wards in Bangalore. States such as Maharashtra and Gujarat, which have accepted JNNURM funding, have agreed to pass legislation for community participation viz., CPL in the third/fourth year of the programme i.e., effectively towards the end of JNNURM. While none of these or other state governments have explained their plans to go about implementing CPL and putting in place the institutional structures that CPL envisions, it is also true that they have gone ahead with the formation of wards committees which are a mandatory constitutional provision.

The Constitution of India, 1951 allocates the powers and functions of the government between the Union (the central) and the state governments. Article 246 relating to the subject-matter of laws states that the Parliament has exclusive powers to make laws with respect to any of the matters enumerated in list 1 in the Seventh Schedule (referred to as the Union list); and that the legislature of any state has exclusive power to make laws for such state or *any part thereof* with respect to any of the matters enumerated in list 2 in the Seventh schedule (referred to as the state list); and the Parliament and state legislatures have power to make laws with respect to any of the matters enumerated in list 3 of the Seventh schedule (referred to as the concurrent list), with over-riding powers resting with the Union government.

What is CPL?

Through passing the CPL functions can be transferred from state governments to urban local governments. In addition to forming Ward Committees mandated by the 74th Constitutional Amendment, CPL suggests the creation of the third tier, "area sabhas" whose jurisdiction is based on polling station limits. Organizations such as JCCD in Bangalore and Loksatta in Hyderabad justify the creation of area sabhas on the basis of the fact that in urban areas there is one representative for every 50,000 people, which does not ensure true representative democracy, whereas in gram panchayaths there is one elected representative for every 500-1000 people. This can be replicated for cities by creating area sabhas where there will be one representative for every 5,000 people. But the basic principle of elective democracy is overlooked since this representative can emerge from among citizens but could be elected or nominated.² There are two issues at stake here:

- 1. Under the guise of keeping the provisions similar to the 74h CAA the original draft of Nagara Raj Law retains the state governments prerogative to fix the territorial limits of area sabhas. As in the case of forming ward committees there is a high likelihood that such a process will not be 'transparent' and that various interests will determine the territorial limits of area sabhas.**
- 2.

¹ Janaagraha Presentation to a JNNURM meeting in ASCI Hyd June 2007

² The Nagara Raj Bill 2004 had proposed that area sabha representatives should be nominated but after severe criticism of this clause from various civil society groups, it was seemingly amended. Area sabha representatives will now be elected as well as nominated.

The election or nomination process of area sabha representatives is unclear. Unlike in Gram Panchayaths' where a real elected representative represents the people, **under area sabhas a private and in all probability unelected citizen will perform this function.** Given the socio-economic differences among groups in cities and their different needs and demands, can we expect a private citizen to represent all interests equally?³

CPL – Institutionalized Citizens' Participation or Corporatisation of the State?

√ One of the strongest critiques voiced against CPL by activists and individuals in Bangalore was that while CPL aims at corporatisation of government and governance. CPL is couched in the neo-liberal model of globalisation that requires centralised decision-making and control, and decentralized implementation by local governments and 'peoples' platforms'. According to Nandana Reddy of the Concerned for Working Children (CWC), Bangalore, this is certainly not 'participatory democracy'.⁴

√ CPL suggests a three-tier model of decentralization starting with the municipality on top followed by ward committees and area sabhas are the third tier. Elected/nominated representatives will represent area sabhas. **CPL's definition of civil society includes members of industrial and commercial establishments and educational and cultural institutions and excludes the unorganised or informal sector which constitutes 93 % of the work force.**

√ **Only those persons who are registered on electoral rolls can participate in area sabhas.** As Nandana Reddy has pointed out in her critique of the original Nagara Raj Bill and PLACE MoU, **in the Panchayat Raj Act electoral rolls are used to determine geographic boundaries of a Panchayat whereas the Nagara Raj bill uses electoral rolls to determine the geographic area and constituency, thereby denying pavement dwellers, squatters and slum dwellers who are not on the electoral rolls the right to participate.** Clearly then, **CPL is a recipe for social exclusion through participation.**

√ The municipal councilor is awarded a nominal role as chairperson of ward committees under CPL but she/he cannot question or veto the decisions of the ward sabhas which can be passed by 10% of the members⁵ present and voting. **This subordinates the elected representative to the decisions of private citizens.** CPL also does not outline any role for the city MLAs in its three-tier decentralization model.⁶

In summary then, while state governments are yet to implement the recommendations of the 74th Constitutional Amendment, the Ministry of Urban Development (MoUD) has now come up with a new proposal i.e. CPL. CPL is unconstitutional and is yet to become legislation. There always remains a gap between conception of a policy/law and its implementation on the ground. JNNURM has come under the scanner precisely because implementation of its various schemes and programmes raise many questions. Similar doubts can be raised in the context of CPL as there are no clear indications of how CPL will become legislation and how state governments and municipal bodies will go about establishing area sabhas when state governments are still

³ See R. N. Sharma and Amita Bhide 'World Bank funded Slum Sanitation Programme: Participatory Approaches and Lessons Learnt' in the Economic and Political Weekly, April 23 2005 on how schemes aiming to enhance participation from poorer groups can become autocratic, and often detrimental to their interests.

⁴ These criticisms appeared in the first critique of the Nagara Raj Bill 2004 and the PLACE (Participatory Local Area Capital Expenditure) Memorandum of Understanding (MoU) articulated by Nandana Reddy of CWC (Concerned for Working Children) with additional responses from Dr. Solomon Benjamin and others. For copies of this critique, contact CWC or CASUMM on casumm@gmail.com. Subsequently, several versions of the CPL have been prepared. Each of these drew sustained criticism from various activists and groups. The draft suggested Model Nagara Raj Bill hosted on Ministry of Urban Development, Government of India website (since September 2006) is substantially different from the original one analysed here.

⁵ Area sabha representatives of the ward will make up 2/3rd of the members of the ward sabha. The remaining 1/3rd members will be drawn from 'civil society' i.e. members of industry, cultural and educational institutions, etc as defined by CPL.

⁶ See: <http://www.hindu.com/2007/02/12/stories/2007021220590300.htm>

behind in establishing ward committees and conducting elections to the ward committees.⁷ **If CPL is implemented, what becomes of the 74th Constitutional Amendment and its proposals of instituting ward committees? Also, with participation being restricted to registered voters under CPL, how do the various tiers of government account for the vast social exclusion consequently?**⁸

Community Participation Fund (CPF): Creating Support Structures for Implementation of CPL and JNNURM

Implementation of CPL and area sabhas requires passage of laws. Until such time, the MoUD (Ministry of Urban Development, Government of India) and the N-TAG (National Technical Advisory Group of JNNURM) have conceived and implemented the Community Participation Fund (CPF) to provide “participatory platforms for citizens at the grassroots level” and to help citizens to “effectively engage in collective decision-making and improve the living conditions of their environment.”⁹ Accordingly,

1. Resident Welfare Associations (RWAs), Community Based Organizations (CBOs), youth groups and market committees can propose projects concerning water supply, rebuilding/building a local vegetable market, establishing crèches among others, for a grant of ten lakh rupees. The ‘community’ must contribute 10% of the project costs. This contribution is relaxed to 5% in case of projects concerning/involving the urban poor. Under the guise of community contribution of funds for the project, this allows the imposing of a user charge for mandatory services in the social sector upon the community and
2. 51% of the voters of the polling station area must endorse the proposed project and must also approve of the agency that will implement the project. It is emphasized that the Urban Local Body (ULB) should mainly implement the projects. Elected representatives of the area must also sanction the project. The municipality should also approve this project, especially to ensure that there is no duplication of works undertaken through this project.
3. The TAG will review these projects and will be involved in appraising them from time to time.

This process “awards” a democratically elected local government the “power” to okay the centralised appraisal and approval by non-elected bodies such as the CSMC (Central Sanctioning and Monitoring Committee) and the TAG.

In a constitutional purists view therefore in its current form, the **CPF tampers with the constitutional responsibilities of the various tiers of government i.e., by allowing the CPL**

⁷ The other concern is that CPL does not specify the accountability mechanisms and responsibilities of the various tiers towards each other. Thus, we do not know how area sabhas, ward sabhas and the municipality will be accountable to each other.

⁸ **Yet another concern is with the clause that only registered voters can participate in area sabhas. Currently, private and civil society organisations are computerizing voter lists and identifying non-registered voters. In addition to the social exclusion that subsequently results from such exercises, the danger is that the state’s hegemony is strengthened over all those groups that were earlier hidden from its gaze. Participatory and decentralization initiatives are suspect in that they further the state’s power over different groups existing in society.** This was also confirmed by Medeiros in his work on the popular participation law implemented in Bolivia to further rural citizens’ participation. Medeiros found that under the ‘umbrella of participation’ all groups of rural citizens as well as territories that were earlier not marked on official maps were brought in the eyes of the state, thereby strengthening the state’s hegemony and power. See Medeiros, Carmen (2001) *Civilizing the Popular: The Law of Popular Participation and the Design of a New Civil Society in 1990s Bolivia*. *Critique of Anthropology*, Vol. 21(4), 401 – 425.

⁹ See ‘Toolkit for Community Participation Fund’, developed by the JNNURM TAG Ministry of Urban Development, available on www.jnnurm.nic.in.

and CPF to transfer what is originally the responsibility of state governments to private bodies such as establishing *balwadi* (*crèche*) to the non-formal sector or even the important function of providing water supply to the poor to RWAs and neighbourhood groups, CPL and CPF are clearly aiming towards corporatisation of governance and government. This must be strongly contested and resisted by all human rights, civic and welfare groups.

An important reform under the JNNURM reforms is that parastatals functioning are to be transferred to elected municipalities then how can a non-JNNURM mandate initiative like the CPF be allowed to transfer these to unelected non-formal bodies?

The CPF toolkit justifies that in the initial period of approval of projects and sanction of grant, the process will be centralised, but within a year the process will be decentralised to the level of state governments. Most importantly, it is proposed that a ‘professional fund manager’ will be created to take over some of the functions of the ULB and the coordination of this process. **If decentralization is the aim of the JNNURM, then how come devolution of powers and responsibilities stops at the level of the state government and new para-statals and fund managers are put in place instead of strengthening the municipality?** It is for these reasons that JNNURM and its various proposals have been suspected for promoting increased centralization and corporatisation of local bodies rather than decentralization and participation.

Additionally, CPF is problematic for the following reasons:

1. **CPF saddles municipalities with additional responsibilities of implementing projects prepared by RWAs, CBOs, neighbourhood groups, etc. The municipality has to divert its resources from providing basic services and improving existing services and infrastructure.** Under the CPL Activity Mapping that outlines what functions will be handled by the municipalities, ward sabhas and area sabhas, municipalities were assigned with redundant functions such as establishment and maintenance of nurseries for plants, vegetables and trees and promotion of greenery, organization of flower shows and promotion of flower growing as a civic culture, advancement of science and technology in urban life, publication of municipal journals, maintenance of museums, etc.¹⁰ **This corresponds with some of the earlier critiques of the Nagara Raj Bill 2004 that such participatory mechanisms attempt to make the municipality a mute implementer of urban reforms rather than strengthening forums of debate within the municipal councils, across party lines.**¹¹
2. **Participation stripped off political content: Another critique voiced against the CPL was that it lays down the foundation for a new form of civil society, one that is highly participatory but stripped off political content.**¹² CPF goes a step ahead in this respect in that projects that will be awarded grant of ten lakh rupees could include developing user-pay models of water distribution, building/rebuilding of a local vegetable market, educating hawkers and helping to implement zoning regulations, among others. It is unclear how these projects will ‘strengthen the capacity of the community’. The other question is which ‘community’ is being referred to here? Civil Society Organisations (CSOs) in Bangalore, JNNURM and other forums usually portray problems of differential access to infrastructure as technical problems. Thus, problems of water and sanitation are largely projected as problems of ‘mismanagement by municipalities’ rather than in terms of how different groups have differential access to

¹⁰ See CPL toolkit available on www.jnnurm.nic.in.

¹¹ See first critique of the Nagara Raj Bill 2004 and the PLACE (Participatory Local Area Capital Expenditure) Memorandum of Understanding (MoU) articulated by Nandana Reddy of CWC (Concerned for Working Children) with additional responses from Dr. Solomon Benjamin and others.

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3. these services and resources. In his work on the Popular Participation Law (LPP), implemented in Bolivia to ‘institutionalize rural citizens’ participation’, Carmen Medeiros found that **at the government-citizens’ meetings held under LPP, issues of school education programmes and number of schools to be built to cater to the ‘community’s needs’ would be discussed, but never once was the issue of lack of arable agricultural land raised.** When Medeiros inquired with the community leaders and members as to why this pressing issue was never raised, he was told that these were not the issues to be spoken about in such meetings. Medeiros concluded that **under such ‘institutionalized citizens’ participation’ programmes and policies, the political dimension of poverty, concerning issues such as land redistribution, is ‘reduced to mere technical problems calling for technical interventions.’**¹³
4. **CPF could help consultants make hay while the sun of participation shines:** CPF approves RWAs, CBOs and other community groups submitting proposals for community projects to employ ‘experts’ from within the NGOs and outside to help with formulating and presenting project proposals. Additionally, as mentioned above, it is mentioned that once the scale of activities under CPF grows,

... a professional fund manager will be considered to take on the roles of the ULB, and also undertake detailed appraisal of projects can be considered. ... such a Professional Fund Manager may be appointed to service the requirements of one of one or more States and play all coordination roles related to activities supported by the CPF.¹⁴

This indicates either potential creation of one more para-statal agency at the expense of the local government and/or employing consultants to comprise the Professional Fund Manager. In the past too, consultants have been employed for a number of infrastructure projects as well as ‘participatory projects’ such as the development of CDPs under JNNURM, which only cause a drain on the state and the municipal treasuries. CPF then can easily become a cash cow for consultants.

In summary then, under its present form, CPF is a centralized initiative that could well strengthen the power of the MoUD, through the TAG, and its scope of control over the municipal corporations. The Central Sanctioning and Monitoring Committee (CSMC) that is eventually responsible for approving the project proposals submitted can delegate its powers for approval of projects to a sub-committee constituted for the same. It is not clear who will constitute this sub-committee and how will powers be delegated to it. It appears then that CPF is a clear-cut formula for increased bureaucratization in the name of ‘citizens’ participation’.

Conclusion

It is clear that CPL and CPF are attempting to bring about participation to produce consent for a project i.e. JNNURM, that in itself was conceived in an undemocratic manner. Besides, existing exclusions, namely systematic exclusion and/or gradual co-option of the urban poor, are going to be rationalized and reinforced through law.¹⁵ The legitimacy of the TAG established under JNNURM is still in question. By establishing the CPF and providing a central role to the TAG under it, MoUD aims to bring about acceptance for the TAG. The municipality becomes a rubber stamp for sanctioning projects proposed by RWAs, CBOs, youth groups and market committees and assisting these groups to implement their ‘community projects’ instead of providing services to all groups of people in the city. It is also questionable as to how projects such as building/rebuilding a local vegetable market and educating and regulating hawkers,

¹³ Medeiros, Carmen (2001) *Civilizing the Popular: The Law of Popular Participation and the Design of a New Civil Society in 1990s Bolivia*. *Critique of Anthropology*, Vol. 21(4), 401 – 425.

¹⁴ See ‘Toolkit for Community Participation Fund’, developed by the Ministry of Urban Development, available on www.jnnurm.nic.in.

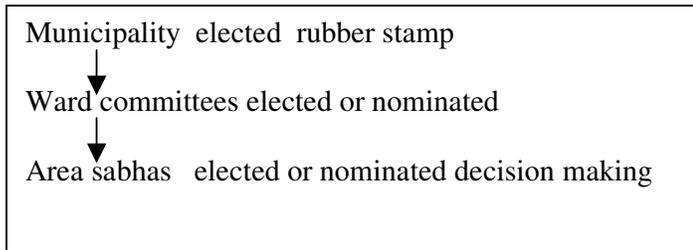
¹⁵ CASUMM is grateful to Dr. Anant Maringanti for providing these insights.

creation of hawking zone infrastructure, is going to ‘enhance’ the ‘capacity of communities’.
 Once again we raise the question: what community and whose community are CPL and CPF referring to?

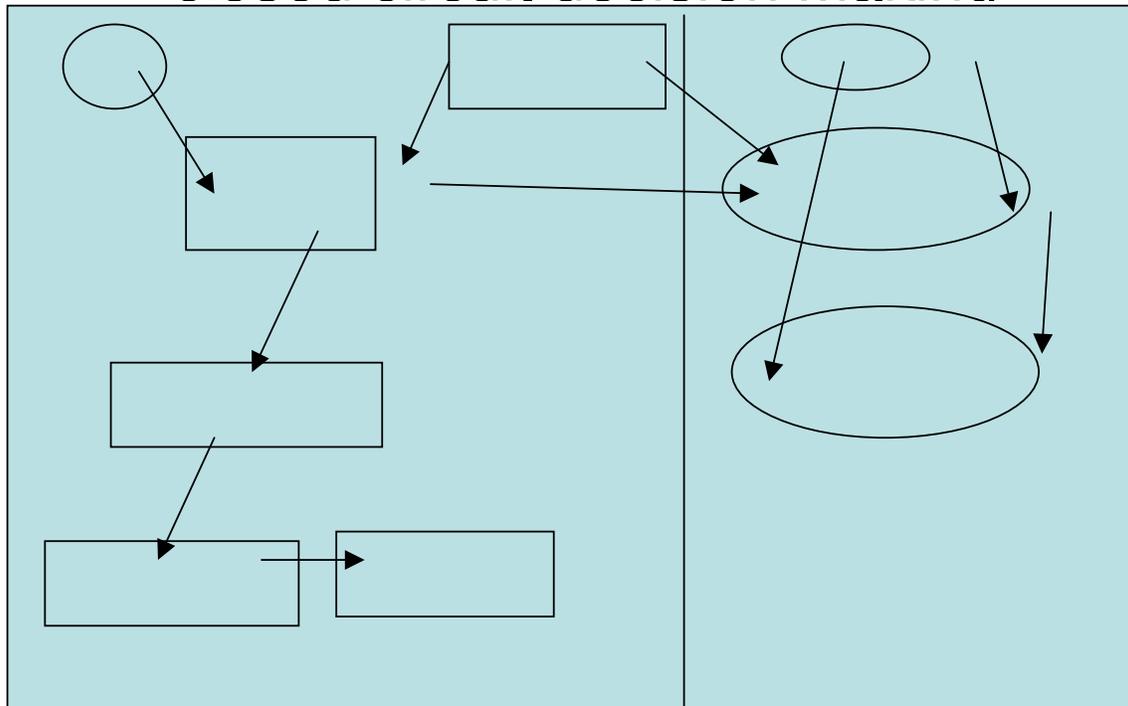
For further references, refer to the first critique of the Nagara Raj Bill 2004 and the PLACE (Participatory Local Area Capital Expenditure) Memorandum of Understanding (MoU) articulated by Nandana Reddy of CWC (Concerned for Working Children). Also refer to CASUMM Position Paper 3 “Community Participation Law?” CPL and CPF toolkits are also available on www.jnnurm.nic.in

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Support structures for JNNURM



AG's, TAG and Core groups closed circuit decision making



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We welcome your comments and questions on this Working Paper

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