Community Participation Law (CPL)

What Participation? Whose Community?

Background
The Jawaharlal Nehru National Urban Renewal Mission (JNNURM) is a Rs. 50,000 crore initiative for 'improving urban governance, service provision and alleviating urban poverty'. JNNURM funding will provide 'seed' money to 63 target cities.

States accepting JNNURM funds must abide by and implement some conditionalities including privatization of water and sanitation services, repeal of the Urban Land Ceiling and Regulation Act (ULCRA) and implementation of public-private partnerships (PPP). **Most importantly, states will have to enact or modify legislation and municipalities will have to undergo structural and institutional reforms.** One such proposed legislation which attempts to reform urban governance is the 'Community Participation Law' (CPL).

How laws are made in the era of urban reforms and public-private partnerships?
CPL, originally called Nagara Raj Bill 2004, was presented at a seminar in the Indian Institute of Management (IIM), Bangalore, in December 2004. Designed by Mr. Ramesh Ramanathan, the founding member of an organization in Bangalore called Janaagraha Centre for Citizenship and Democracy (JCCD), CPL has emerged from Janaagraha's programme 'Ward Vision' where a few hundred citizens participated in ward planning and budgeting in about 10-15 wards out of 100 wards in Bangalore. <u>The Central Government has now made it conditional on States receiving JNNURM funding to implement CPL. This violates the constitutional and federal sharing of powers because by imposing CPL on State Governments, the Central Government is encroaching on the powers of State Governments to draft legislations pertaining to local government (which is part of the State List).</u>

Amendments to municipal laws impact citizens and various groups in cities. Such amendments have to be debated and discussed in the Council by the councilors. In the case of CPL, *the Central Government is directly interfering with the functions of the municipality and is bypassing the mandate given by the people to the elected Municipal Council and the Councilors. It is also questionable as to how and why the mandate was given to a private individual, in this case Mr. Ramesh Ramanathan, instead of the elected representatives? <u>By signing a memorandum of association with the Ministry of Urban Development (MoUD)-Government of India (GOI) agreeing to implement CPL, even State Governments are party to the snatching of powers from MLAs and the state legislature.</u>*

The Illogic of CPL - *<u>fast forwarding governance!</u>*
According to the authors of CPL, decentralization in India has succeeded in the rural areas but has not reached urban areas. CPL outlines a model of three-tiered city governance with the Municipality at the top followed by Ward Committees and Area Sabhas at the lowest rung.

The Area Sabha is based on a polling station limit i.e. one or more polling booths are the footprint of the Area Sabhas. The concept of the Area Sabha is taken from the idea of the Gram Sabha in the village Panchayats. Organizations such as Loksatta in Hyderabad and JCCD in Bangalore argue that in village Panchayats, there is one elected representative for every 500-1,000 people whereas in the urban areas there is one elected representative for every 50,000 people. According to them, the Area Sabha concept will ensure that there is one elected representative for every 5,000 people in the cities. Thus, when Area Sabhas are created, a representative will be elected to head it. S/he will represent the interests of his/her Area Sabha in the respective Ward Sabha.

What is important to note here is that the logic of lifting a three-tiered model of government from the rural areas and straightaway applying it to the cities is completely illogical. Populations in cities are dense. Several complexities which exist in cities (such as status of migrants) are not present in the rural areas. **While JNNURM is a one-size-fits-all model for all cities in India, CPL is attempting to become a one-size-fits-all model for the urban and the rural areas! Now, how logical is this?**

The case of Kerela Municipalities

In Kerela, all areas have a corporation/municipality. A ward committee exists for each ward in each corporation/municipality. ***The elected councilor nominates upto 50 people for the ward committees, from various groups such as trade unions, schools, etc.*** The powers are vested in the elected council which is unlike what CPL is proposing where powers will be vested in private individuals, private groups and International Finance Institutions (IFIs) under the guise of 'civil society'!

How CPL bypasses the decision-making powers of the elected council and puts city governance in the hands of private persons?

First privatize decision-making

Area Sabha representatives are the members of the Ward Committees (besides representing their respective Area Sabhas). Such Area Sabha representatives will constitute 2/3rds of the Ward Committee. The elected councilor is the chairperson of the Ward Committee. In addition, 10 persons representing 'civil society[1]' from the ward will be nominated on the ward committees. Such 'civil society' members constitute 1/3rd of each Ward Committee.

A quorum of 10% is fixed for the Ward Committee. This means that 10% of the members present can vote on important resolutions.

If we put together the pieces of this puzzle together, it means that **1/3rd 'civil society' members can, at any time, given the 10% quorum, vote on crucial decisions which support their interests. In this way, powerful groups, such as corporate bodies and the elite, which may be civil society members, can hijack decision-making at the Ward level. The elected councilor who is the chairperson of the Ward Committee cannot reverse or even contest this decision according to the provisions of CPL. His/her authority as chairperson is only nominal!**

Then deflate the Elected Council

CPL not only brings the elected councilor under elite control but also attempts to liquidate the crucial process of council debate which IFIs see as messy and against their interests.

Council debate forms the basis of cross-party understanding and consensus. *CPL attempts to re-structure local political authority and power relationships.* With IFIs and the corporate elite coming into the picture, the top party bosses sitting in New Delhi dictate terms to party members at the State Government level who in turn attempt to 'discipline' the councilors at the local level. This increases centralized political party control. Add to this senior bureaucratic control which results when State Governments create new para-statal bodies. These para-

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Participation of the Poor in the CPL Structure – controlled?

Microfinance is fast spreading in urban areas. Microfinance Institutions (MFIs) are either directly or through NGOs, organizing Self-Help Groups (SHGs). In the case of SHGs, the NGOs are responsible for organizing them and linking them to MFIs and nationalized and cooperative banks.

MFIs give loans to several SHGs in Bangalore. On the board of some of these MFIs are members of various civil society organizations pushing for reforms. For e.g. Mr. Ramesh Ramanathan is on the board of Janlaxmi, an MFI lending to the poor in Bangalore.

Some of the leaders of these SHGs can be fielded as Area Sabha representatives. In reality though, these candidates may be controlled by the top bosses in the MFIs and NGOs. *Thus, what we may see as participation of the poor through Area Sabhas may actually be NGO and MFI dictated and controlled!*

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[1] CPL defines civil society as "any non-government organization or association or persons established, constituted or registered under any law for the time being in force and working for social welfare, and includes any community-based organization, professional institution and civic, health, educational, social or cultural body or any trade or industrial organization and such other association or body as the Municipality may decide". **The informal sector has been left out of this definition of Civil Society**.

statals are created under the guise of 'managing various large infrastructure projects' pushed through by the IFIs. In reality, the establishment of para-statals ensures that the state and central government maintain their control over the municipality. For e.g. the Karnataka Urban Infrastructure Development and Finance Corporation (KUIDFC) in Bangalore which has been formed by the World Bank (WB), the Mumbai Metropolitan Regional Development Authority (MMRDA) headed by the Chief Minister of Maharashtra and which is now being given powers at the expense of the Municipal Corporation of Mumbai.

Now enter IFIs and Corporate Control

Once the 'mess' of the council debate is out of the way, IFIs like WB, United States Agency for International Deverlopment (USAID), Asian Development Bank (ABD), etc. can easily push financial loans and loan conditionalities through. **This places the political risk on the council rather than on higher levels of government since municipalities have to repay these loans and now under JNNURM, there is greater pressure on municipalities to become creditworthy and raise money from the markets. Citizens at the local level end up paying for these IFI loans.** And this infrastructure may actually be created for the benefit of only a few such as large corporations. So everyone pays up what only some people/groups will gain from! **Now, isn't this clearly a give-and-take relationship?**

Before CPL	After CPL
Elected council legitimate, representative and responsible for decision-making	"Civil Society" (read business and corporate bodies), legitimate, representative and responsible for decision-making (note: this civil society does not include the informal sector)
Elected council debates and discusses projects proposed by IFIs	Deflated elected council – enter corporate control through central political parties in Delhi
Municipal bureacracy and elected councilors close to affected social groups	Para-statal bodies instituted by State Governments for large IFI-funded infrastructure projects become powerful at the expense of municipalities
Municipalities and elected councilors responsible for fulfilling basic needs of slum dwellers	Area and Ward Sabha members (read private persons with no mandate) to identify slum dwellers who are legible to receive basic amenities such as water supply and sanitation
Democracy and government – dissent and debate	Manipulative, undemocratic governance controlled by corporate interests – all this in the name of decentralization

The case of the VoteMumbai Campaign

Councilors are given half-baked information!!!

In Mumbai, the campaign for amending the Municipal Act (1888) and establishing Area Sabhas has been launched by an organization called Loksatta. Loksatta is based in Hyderabad. It has a chapter in Mahrashtra which is spearheading the VoteMumbai campaign. The founder of Loksatta, Dr. Jayprakash Narayan, is one of the members of the governing board of Janaagraha Centre for Citizenship and Democracy (JCCD).

The VoteMumbai campaign advocates implementation of the CPL and some additional features such as direct election of the mayor for the city, etc.

Some municipal councilors in Mumbai were interviewed to know their opinion of the VoteMumbai campaign and the amendments it is proposing. One municipal councilor stated that the campaign is good because it will get more people to vote. When asked what he thinks about the creation of Area Sabhas, direct election of mayor, etc., he mentioned that he had not been told about these features of the campaign. Similarly, another councilor said that VoteMumbai is about direct election of mayor which he endorses. When asked about his opinion on the formation of Area Sabhas, he said he did not know what were Area Sabhas. Another councilor stated that he had no idea about the campaign.

In various forums, members of the Maharashtra Chapter of Loksatta have been stating how elected councilors are in complete support of these changes. But from what was found through the interviews, it appears that the councilors are not being told everything that the campaign is advocating. Can such civil society, which does not even have the mandate that is given to elected representatives, be trusted to bring in people and pro-poor reforms?

Other features of CPL:

1. CPL specifies that the State Government will decide the territorial limits of the Area Sabhas. It has not been made clear as to who or which department in the State Government will execute this responsibility. But it is likely that senior bureaucrats in the State Government, connected to powerful lobbies may decide on the territorial limits or decide the criteria on the basis of which Area Sabha limits may be set. Hence, there is a strong chance for arbitrariness and corruption in such a demarcation process

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. It is however likely that State Election Commissions (SEC) may not hold elections of Area Sabha representatives due to any reasons. Therefore, this amendment from nomination to election is just an escape clause to quiet down the critics of CPL.

3. The other problem with CPL is that individuals whose names do not appear on voter lists cannot participate in Area Sabha proceedings and decision-making. **Area Sabha is defined as "the body of all the persons registered in the electoral rolls pertaining to every polling booth in the Area in a Municipality"**. This means that migrant

populations in the city will be excluded from the participatory democracy which CPL promises.

4. Slum dwellers' access to basic services such as water supply, sanitation, education and healthcare depends on the sanction of the Ward Committees which have been vested with the responsibility of "ensuring the legal veracity of each slum for provision of basic services to the poor". What mechanisms are then available, particularly to floating migrant populations, to participate in the affairs of the city?

5. Under CPL, accountability and transparency mechanisms are fuzzy: CPL does not specify in what way Area Sabhas will be accountable to Ward Committees and to the Municipality and there is also no mention of Ward Committees being accountable to the Municipality.

Conclusion

CPL is no messiah for decentralization. Rather it bypasses not just the councilors, but the very institution of council debate which forms the basis of a vibrant democracy. The Municipal Corporation becomes a mute implementer of the Urban Reforms Agenda (URA) through the entry of international capital rather than continue to be a forum for debates on these issues. In exchange, *the activity mapping which outlines functions to be performed by municipalities, Ward Committees and Area Sabhas, assigns the municipality with such functions 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.* If the main concern driving implementation of CPL is decentralization and furthering the 74th Constitutional Amendment, then we need to question why such redundant functions have been assigned to the Municipality.

But then, didn't we say that we were doing all this in the name of democracy? The question is democracy for who and by who?

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) was articulated by Nandana Reddy of CWC (Concern for Working Children). CPL is also available on www.jnnurm.nic.in

This write-up is produced by CASUMM (Collaborative for the Advancement of Urbanism through Mixed Media) through support of Action Aid India. For more queries, write to casumm@casumm.net