

## **The Community Participation Law in Urban India: Status and Issues**

**A Report**

**On**

**Comparing Community Participation Laws across the States**

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**Executive Summary:**

- Existing structure of urban governance is not inclusive of citizen participation. Representation ratio in urban areas is very high. It is about an average of 20,000-25,000 citizens per elected representative. It needs to be brought down, so that elected representatives can approach their citizens effectively and more frequently. Similarly, citizens can also participate in the process of governance of their own locality.
- Under the purview of JNNURM, enactment of a Community Participation Law (CPL) is a part of the mandatory reforms to be brought about by the beneficiary states. It proposes to modify the existing two-tier system of urban local governance into a three-tier system by adding the Area Sabha/Mohalla Sabha as the lowest layer.
- Till now (as on Sept, 2011), 19 states have passed/enacted a CPL or modified their existing laws incorporating crucial points of the CPL.
- This report studies 11 states' laws including 9 such states that have passed/enacted CPL and 2 such states that are still to enact it. The Report also compares these states' laws with JNNURM's CPL and Parivartan's Model Nagararaj Bill (NRB).
- Comparison of CPL and NRB indicates that CPL is relatively weaker than what has been proposed in Parivartan's NRB.
- Review of these states' laws indicates that these states have not followed the provisions made in the CPL completely.
- The most compromised arena in these laws is the autonomy of the Area Sabha/Mohalla Sabha. Ward Committees are also not equipped with essential functions, rights and powers. Line of control still exists with the municipality.
- Many states have not provisioned Area Sabha and stay with two-tier system of urban governance. This is against the spirit of the CPL to strengthen community participation.
- None of the states provides financial autonomy to AS/MS and WC. And, very few provide planning functions to these structures.
- Most of the functions assigned to AS/MS and WC are either to advise or assist the municipality only. AS/MS and WC are not provided primary responsibility of implementing such functions.
- States are reluctant to transfer all functions to local bodies mentioned in the 12<sup>th</sup> Schedule of the Constitution. A few states have transferred partial functions and a few have not transferred anything at all.
- States also resist assigning rights and powers to local bodies. A vested political motive is reflected all through the provisions of states' laws.
- There is a majority of nominated members in AS/MS and WC instead of elected members.
- None of the states has been able to provide model practices. Reflections from experiences of participatory urban governance across the world show that citizen participation is a key to effective and outcome-driven process of urban governance.

- MoUD should deploy a more effective process of monitoring these reforms along with time-bound disbursement of benefits under JNNURM after certain reforms are brought about.
- Results of this study reflect that there should be a check on states, without disturbing the federal structure, to comply with the mandatory reforms to be brought out at the state level.
- This Report recommends that there should be a system of incentives and disincentives. States that perform well in terms of complying with the requirements of reforms should be given more funds while states that do not perform well can be left with decreased allocation of funds to them.
- Since the first round of JNNURM is going to end in a year's time, this report also recommends that extension of this programmes should be given to states only when they complete all the requirements that they had to.
- This report concludes that all states' laws, in their present form, are not likely to make any impact on the ground in enhancing citizens' participation.

## **The Community Participation Law in Urban India: Status and Issues**

### **1 Context: The Urban**

India is witnessing an unprecedented growth in urban population. Provisional calculations of the Census 2011 have recorded 33.73 per cent growth in urban population during the last decade (2001-11). The intensity of urbanization in India can be understood by observing the fact that the number of census towns in India in 2011, compared to 2001, has increased by 185.9 per cent. Population projections show that, by 2030, 40 per cent of Indian population will be urban<sup>1</sup>. It means that urban population in India will grow by more than 56 per cent in the next twenty years. This urban reality tends to create serious governance problems. The higher rate of urbanization is putting immense pressure on the mechanism of public governance in urban areas to provide effective public services and infrastructure development. These problems are not only connected with the administrative mechanism but also stress upon the need to revisit the system of political representation and local self-governance.

It is being felt that in the wake of unprecedented growth in urban population, the existing system of political representation in urban areas is not appropriate to provide equal opportunities to all people to participate in the process of governance. In the present system, the ward is the lowest local body in the urban governance structure. In mega cities, a ward has roughly 25-35 thousand population and a representative (Corporator or Councillor) is elected from each ward. Therefore, representation ratio becomes very high. In Mumbai, one councillor represents more than 54 thousand citizens. Similarly, for Delhi and Hyderabad, this ratio is about 50 and 45 thousand respectively (see Table 2). In this case, interactions of elected representative with the citizens from his/her ward become rare. Similarly, possibilities of participation of citizens in various public activities, planning and meetings get lower. This situation affects not only the capacity of an elected representative to tackle problems in the ward but also the system of participatory governance, which is the basic foundation of the 74<sup>th</sup> Constitutional Amendment.

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<sup>1</sup> *India's Urban Awakening: Building Inclusive Cities and Sustaining Economic Growth*, Mckinsey Global Institute, April 2010, p. 14

**Table 1: Urban Growth in India**

Indicators (No.)	2001	2011	Increase	Percentage
Statutory towns	3799	4041	242	6.37
Census towns	1362	3894	2532	185.90
Male population	150,564,098	195,807,196	45,243,098	31.80
Female population	135,565,591	181,298,564	45,732,973	30.06
Total urban population	286,119,689	377,105,760	90,986,071	33.73

Source: Provisional Population Totals, Census of India, 2011

**Table 2: Representation Ratio in Major Indian Cities**

City	Population 2011	No of Corporators /Councillors	Representation Ratio*
Greater Mumbai**	12478447	227	54971:1
Kolkata	4486679	141	31820:1
Delhi	13481997	272	49566:1
Chennai	4681087	155	30200:1
Greater Hyderabad	6809970	150	45399:1
Bangalore	8425970	198	42555:1
Ahmadabad	5570585	192	29013:1
Pune	3115431	144	21634:1

Source: Calculated by authors; base data has been collected from Census of India and respective city municipal corporations' websites.

\* Representation Ratio = Population of the city/No of Corporators or Councillors in the municipal area

\*\*It excludes Thane, Navi Mumbai and Kalyan-Dombivali municipal corporations

Therefore, a better picture of urban India depends upon progressive administrative reforms, which predominantly include restructuring of urban local bodies coupled with the devolution of appropriate power and functions to these bodies. There is a need for further decentralization in the existing structure of local-self governance and citizens' participation. The government of India is trying to resolve this problem by introducing certain governance reforms initiatives under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM). JNNURM, started in December 2005, is an important programme of the Indian (central) Government that offers extensive financial, technical and systemic support to the States in developing public infrastructure and providing effective basic public services to the urban poor in selected cities.

### **1.1 JNNURM and Urban Sector Reforms:**

Indian cities have shown enormous potential in consolidating economic growth. According to the McKinsey Global Institute's Report on Urbanization and Economic Growth, urban India contributed 58 per cent of the total GDP in 2008<sup>2</sup>. If this pace of economic development is to be maintained, where the 'urban' has a greater role to play in fostering growth, the urban set up has to go through intense reforms with clarity of vision, commitment and responsibilities. Such reforms have to be coupled with citizen participation in the governance of the city/town and sensitivity to the needs of the urban poor by strengthening the structure of urban local self-governance.

JNNURM is continuing the urban sector reforms started with the 74<sup>th</sup> Constitutional Amendment (CA) in the early nineties. Outcomes of 74<sup>th</sup> CA and other municipal laws

<sup>2</sup> *India's Urban Awakening: Building Inclusive Cities and Sustaining Economic Growth*, Mckinsey Global Institute, April 2010, p 16

did not suffice for effective urban reforms and development. Urban India still needs progressive steps to be taken to bring such reforms. The aim of the JNNURM is to encourage such reforms and fast-track planned development in identified cities. Focus is to be on efficiency in urban infrastructure and service delivery mechanisms, community participation, and accountability of ULBs/parastatal agencies towards citizens<sup>3</sup>. JNNURM requires beneficiary states to bring about certain reforms at the state and ULB level. These reforms are categorized as mandatory and optional reforms. These reforms have to be brought at both the state and local level. Mandatory reforms at the ULB level, which each beneficiary state has to introduce, include double entry system of accounting in ULBs, deployment of e-governance techniques, reform of property taxes by using GIS, levy of reasonable user charges, budgeting, pricing and delivery of basic services within local bodies. Mandatory reforms at the state level are mainly implementation of 74<sup>th</sup> CA assigning planning responsibilities to ULBs, repealing Land Ceiling Acts and enactments of Public Disclosure Law (PDL) and Community Participation Law (CPL). Optional reforms are mainly related to procedures of urban governance, structural changes within the administration and encouragement to introduce Public-Private Partnerships (PPPs). Under optional reforms, cities being covered under the JNNURM have freedom to choose any two reforms to implement in each implementation year.

**The Community Participation Law- Strengthening Citizen Participation:**

CPL sent by the Ministry of Urban Development (MoUD) to all States, also known as Model Nagara Raj Bill, is a part of the mandatory reforms to be introduced by each and every Indian state being benefited under the JNNURM. The main objective of the CPL is to instrumentalize citizen participation at the lowest level of governance of urban areas. CPL focuses on the constitution and functioning of Area Sabhas (AS) as the lowest layer of the structure of local self-governance even lower than Ward Committees (WC). Below is the detail of what CPL provisions say about the AS and WC.

**(i) Area Sabha:** An AS can be constituted for one or more, but not more than five, polling booths. There should be an AS representative elected by voters of such area through secret ballot voting system. This election would be held under the aegis of the State Election Commission (SEC). The tenure of the AS representative would be co-terminous with that of the Municipality. In the case of failure of the SEC in conducting elections for AS representatives, the Ward Councillor would nominate the AS representative through a “call for nominations”. Each eligible voter can nominate any other eligible voter for ASR through the filing of nomination papers. The nominee who gets the highest nominations in his/her favour would be nominated as AS representative. CPL assigns following important functions and duties to AS:

- Decide the priorities of development and welfare and prepare proposals accordingly and forward the same to the Ward Committee.
- Identify beneficiaries of schemes and programmes on the basis of criteria determined by the government; prepare a priority list of such beneficiaries and verify them.
- Suggest locations to establish public amenities such as water tanks, electricity, etc., identify deficiencies in these services and suggest remedial steps.

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<sup>3</sup> Mission Document, JNNURM, available at [www.jnnurm.nic.in](http://www.jnnurm.nic.in), viewed on 4<sup>th</sup> Nov, 2011.

- Assist in implementation of public health services including reporting any incidents of natural calamity and epidemics.
- Provide volunteer labour support and contribution in cash and kind to development schemes.
- Undertake and support tax mapping and encourage people to pay taxes.  
Following are the rights and powers assigned to the AS:
- Get information from officials about the works/schemes to be implemented.
- WC will inform AS about every decision concerning AS, the rationale of the decision and follow up actions regarding such decisions.
- Impart awareness on matters of public interest and promote harmony and unity among various groups.
- Cooperate with the WC in the sanitation arrangement in the AS.

**(ii) Ward Committees:** WCs are to be constituted within six months of the constitution of the municipality for the same tenure. All AS representatives within the particular ward are members of the WC. The president/chairperson of the WC is the Ward Councillor/Corporator. Not more than 10 persons of civil society groups in the ward will also be nominated as members of the WC. The WC will constitute a Ward Information and Statistical Committee to look after the developmental and planning works. It will also have information related to economic matters, land use and will be involved in infrastructure development. The WC will also constitute a Ward Finance Committee which shall look after the financial and budgetary functions of the WC. Ward Finance Committee will prepare a quarterly report on financial transactions of the WC and this report will be made available for public scrutiny. The CPL assigns the following important functions to the WC:

- Provide assistance in the preparation and implementation of developmental schemes, solid waste management and the identification of the beneficiaries of developmental and welfare schemes.
- Supervision of sanitation work.
- Ensure maintenance of parks and street lighting and people's participation in the voluntary activities for successful implementation of developmental schemes.
- Encourage art and cultural activities and social harmony.
- Assist in the collection of taxes and fees.
- Municipality will provide administrative and infrastructure support to enable WC to function.

Following are the rights of the WC:

- Get information from the municipality regarding any matter related to the ward and district and municipal plans.
- Seek clarifications and suggest changes in the municipal budget.
- Get full details on revenue items including taxes and budgetary allocations presented in a simple manner which is manageable by the WC.
- Retain 50 per cent of the ward revenue for development, until a predefined minimum level of Ward Infrastructure Index is attained.
- Have a proportionate claim on municipal development expenditures based on the comparability of Ward Infrastructure Index with other wards.
- The WC shall create checks and balances mechanism over government functionaries in its ward. The WC can recommend penalties in case of misconduct of government employees.

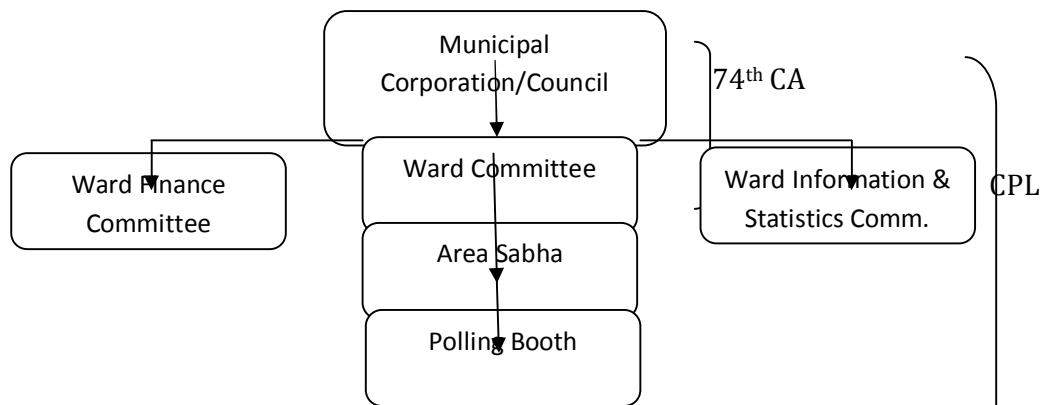


Following are the important duties assigned to the WC:

- Prepare annual ward plan
- Prepare ward budget in accordance with the ward plan
- Map the Ward Infrastructure Index
- Encourage local-level alternatives for implementation in areas where WC has responsibility to implement

The CPL has expanded the structure of urban local bodies promoted by the 74<sup>th</sup> CA. Figure one shows the after-CPL structure of urban local-self governance. CPL's provisions of local self-governance clearly indicates that creating structures of citizen participation will not do enough in ensuring effective and transparent governance unless these structures are provided appropriate power to function. The demand for effective and transparent governance has predominantly been part of civil society-led movements which have advocated the enactment of community participation law strongly. Parivartan, a Delhi based non-governmental organization, has also proposed a Nagara Raj Bill (NRB) which provisions various functions and power quite differently from the Government's CPL. The important features of this Bill and its differences with the Government's CPL are discussed in the following section.

**Figure 1: Structure of Urban Local Self-Governance under the 74<sup>th</sup> CA and CPL**



**Parivartan's Nagara Raj Bill and Its Differences with the Government's CPL:**

***Constitution of Mohalla Sabha:*** Parivartan's NRB proposes to have Mohalla Sabhas (MS) as the lowest layer of the structure of urban local-self government. MSs are equivalent to the CPL's ASs, though the way the MS is to be constituted and function is very different from the AS. Territorial boundary of MS should not be a locality having around 3000 population, while AS is to be constituted considering one or more polling booths. In this case, to form MS, Mohalla has to be demarcated to adjust around 3000 population in one Mohalla. NRB provisions that territorial boundary of a Mohalla should not be scattered, so governance remains focused in one area and citizens can interact easily with each other. If any MS wants to change or modify its boundaries and passes a resolution with a simple majority in this regard, and all other affected MSs also do the same, then such amendments shall be notified by the government. Such amendments can be brought, in each five year-term, six months before the election of MS. CPL does not have such provisions.



**Right to Recall:** Each MS will elect two representatives- one man and one woman- who will constitute a Mohalla Committee (MC). If SEC fails in conducting such elections, municipal body cannot make such expenditures which are supposed to be made by the MS or Ward Committee. NRB also has a provision for recalling MS representatives. If 20% or more voters sign a resolution demanding recall of representatives and submit it to the SEC, SEC will verify the signatures of voters within two weeks of receipt of such notice. If this application is found genuine through the verification done by SEC, SEC will conduct an election through secret ballot not more than a month later after it gets verification report. If two-third voters vote against the representative, he/she shall be deemed to have been removed with immediate effect and SEC will hold fresh elections within a month of recall of the MS representative. The same procedure will be followed to recall the councillor if two-third MS representatives or 20% or more registered voters sign a resolution in this regard. CPL does not have such provisions.

**Revenue of MS:**

The NRB gives substantial revenue powers to MSs. In addition to the allocations made by the WC and funds directed to MSs from the municipality, state and central governments, MSs will also receive funds from the WC. The WC will receive 60 per cent of total house tax collected within its jurisdiction. Similarly, 50 per cent of this will be a part of MS's revenue. One more monumental change has been suggested in the NRB. Funds received from various departments of municipality or state government for running institutions, maintaining assets and carrying on activities, which were earlier done by municipality or state government, would now be run by the ward committee. MSs will also have power to levy and collect taxes and fees on prescribed items, except on housing which rates will be decided by the municipality. MS will also be entitled to determine and collect fees of all parking and advertisement within the area of Mohalla. Compared to vast financial powers given to MS in NRB, CPL does not provide any such powers to ASs to manage their own resources. ASs do not have any power to levy or collect taxes.

**Functions and Duties of Mohalla Sabha:**

Functions and duties that are assigned to MSs to perform in NRB are extensive and substantive compared to what is available in CPL. Major functions and duties that are to be done by MS are following:

- MS would take care of all the activities mentioned in the 12<sup>th</sup> Schedule of the Constitution which fall within the geographical area of that Mohalla.
- Prepare annual plan for the financial year and forward it to WC
- Revoking and allocating of fair price shops
- Identification and verification of beneficiaries and preparing their priority list
- Prepare and annually revise list of people living under extreme poverty
- Issue of income and residence certificates
- Recommending for inclusion/deletion or alteration of names in voters' lists
- Issue utilization and completion certificates for all works carried out by any agency in that ward
- To take all steps to ensure employment for all, that all people have adequate educational and health facilities, that everyone has a home and no one starves in that Mohalla
- To recommend cases for registration of FIR to the police

- To be consulted before preparation of master plans or to recommend any amendments thereto
- To recommend whether land can be acquired in that Mohalla or not and if yes, on what terms and conditions
- To allow permission for removal of slums
- To levy and collect such taxes as may be notified

Functions and duties assigned to AS in CPL, compared to what has been given in NRB, are negligible. AS's functions and duties are mainly limited to 'assisting' or 'suggesting' to WC and municipality on various matters but does not have power to take decision by itself. The main function that ASs have are to prepare beneficiaries' list and to make proposals for the implementation of schemes based on its own priority but does not have power to implement these priorities. Though in some respects, functions given to MS to perform seem to be extraordinary and out of context. For example, MS cannot ensure employment, health and education facilities for all as it does not have enough resources to do it. This creates conflict between the jurisdictions of concerned state departments and MS. MS can utmost intervene in ensuring quality of these services and ask government to provide the same if they are not being delivered adequately. Similarly, permitting MS to recommend cases for lodging of FIRs seems like providing too many powers to MS. These matters should be left to the Police Department to act upon. It is also doubtful if MS has the capacity to handle all the activities mentioned in the 12<sup>th</sup> Schedule of the Constitution.

***Powers of Mohalla Sabha:***

Parivartan's NRB provides following powers to MS.

- MS shall have the powers to get any information from any official of the state government or the municipal body regarding issues directly or indirectly related to the Mohalla.
- To hire any consultants to seek technical guidance on any issues.
- To direct and authorize any kind of expenditure for the welfare of the people of that Mohalla on the subjects which are within the jurisdiction of MS.
- To impose financial penalties on such government officials, who are directly under the control of the MS and with whose functioning the MS is dissatisfied.
- To recommend to the ombudsman imposition of a financial penalty on an officer, who does not fall directly under the control of MS, but who provides services to that MS and with whose performance the MS is dissatisfied.
- To summon officials who provide services to the Mohalla and their immediate supervisor and require them to attend MS meetings personally to provide information, clarifications or respond to public grievances.
- To allow/ disallow any industrial activity or any land use conversion and acquisitions as per law.
- No slums or a part of them can be removed without the permission of MS. MS shall not give such permission until those being removed have been resettled as per existing policy.
  - a. It is the majority view of those who are being removed, which shall determine whether the resettlement has been done in letter and spirit of the resettlement policy.
  - b. MS shall make best efforts to resettle them in the same area and may submit various proposals to appropriate government. Appropriate

government shall accept and implement the proposal unless there is some problem in principle, which the government shall express in writing. Such rejection could be challenged by anyone before the ombudsman.

- No liquor shop can be opened in any Mohalla without the approval from MS. Such a resolution should have the support of at least 90% of women members present and voting. If any MS directs closure of an existing liquor shop through a resolution passed by a simple majority, the shop would have to be closed.
- A MS shall have first right and control over all natural resources in its jurisdiction, such as land, water, flora and fauna, sand, minor minerals, etc. The MS shall plan for the preservation and utilization of these natural resources in a fair and equitable manner.
- MS shall have the power to form any committee for any purpose.
- Any MS, through a resolution passed by two-thirds majority, can require the municipal corporation to discuss and decide upon any matter and municipality shall have to do it.
- If 5% MSs spread over 5 wards pass a resolution with simple majority each, the municipality will have to consider and take such action. If municipality does not wish to take such action, they will send copies of such resolution to all MSs for their opinion and if more than 50% of MSs endorse that proposal, municipality shall have to implement it.
- Those who are not voters of that Mohalla, but want to be involved in livelihood activities in that Mohalla, are required to take consent from MS.
- Police shall register an FIR if any case, related to occurrence of any cognizable offence in that Mohalla, is referred to them by the MS. If police makes any arrest in that Mohalla, it shall, within 2 hours of arrest, inform and send copies of FIR and all related documents to the MS secretariat.
- If there is a vacancy in any post, which is transferred to MS, for whatever reasons, and a new appointment is required to be made, the same shall be done by the MS. MS shall be treated as appointing authority for the same.

Parivartan's NRB provides huge powers to MS to perform its functions. Compared to Parivartan's NRB, powers of AS, as prescribed in the CPL, are limited to get information from officials and WC. NRB gives extensive executive powers including the ownership and planning of natural resources, imposing penalty over officials, allowing or disallowing acquisition and use of land, decision over removal of slums, removal of liquor shops, recommendation to police to file FIR, etc. A few executive powers provided to MS in the NRB can be contested. For example, anybody seeking employment and livelihood opportunity in the jurisdiction of a Mohalla has to get permission from the MS. This may not work well as local people may oppose entrance of an outsider for employment. This may go against a person's right to get work within the country. Similarly, MS's power to fill vacancies may bring partiality and confrontations. This job should be assigned either to municipality or district administration.

**Beneficiary Sabha:** In addition to the MS, NRB also provides for formation a Beneficiary Sabha. Beneficiary Sabhas will be formed for PDS, various beneficiary schemes and various developmental works. However, it may not be required for such projects or schemes, which benefit all people of that Mohalla or where the beneficiary group is too diffused. All decisions in a Mohalla shall be taken by MS but execution of those decisions shall be monitored and supervised by the Beneficiary Sabha. Decisions taken by a

Beneficiary Sabha shall be deemed to have been taken by MS and shall have the same effect. CPL does not have such provisions.

**Ward Committee:** In Parivartan's NRB, the WC is constituted by all MS representatives and chairperson of this committee is the elected member of the municipality who represents this ward. Tenure of the WC is co-terminus with that of the MS representatives of the ward. In Parivartan's NRB, the WC is different from CPL's WC in two respects. Firstly, CPL provisions nomination of civil society members in the committee which NRB does not. In this regard, representation provided in CPL is broader than that in Parivartan's NRB. This is desirable as it is observed that civil society has been an instrument to check wrong-doings of political power. And secondly, tenure of the WC in CPL is co-terminus with the municipality but in NRB it is co-terminus with that of the MS. This difference reflects a clear difference in the approach of both bills. CPL's WC would remain functional, even if AS or MS representatives are not elected. While, in case of Parivartan's NRB, the WC committee can only be constituted after MS representatives are elected.

**Functions of the Ward Committee:** The Ward Committee in Parivartan's NRB shall be responsible for the following functions-

- Carry out all such activities, maintain all such assets and manage all such institutions as decided by the MS. If there is a dispute whether any activity or institution or asset has inter-Mohalla implications or not, the majority decision of the WC members shall be final.
- Heads of all such institutions, over which the ward committee has jurisdiction, shall report directly to the ward committee only. The financial resources for running of these institutions shall be transferred to the ward committee by the appropriate government agency at existing levels of expenditures.
- The WC shall perform all such other functions and activities as are requested by MSs from time to time.
- To assist the MS wherever such assistance is sought.
- To create a ward infrastructure index in the manner prescribed.
- To try and resolve disputes between two or more MSs.
- Projects related to environment clearance, land acquisition and where public hearing is mandatory, the WC will seek opinion of all WCs which are directly or indirectly affected by the project. The WC will seek opinion from all concerned MSs.
- The WC shall allocate funds amongst its MSs according to criteria mutually agreed upon through consensus amongst all members. If consensus is not possible, Mohalla infrastructure and human development index shall be computed for each Mohalla in the same manner as ward index is calculated and the funds shall be allocated according to this index.
- To issue utilization certificate and completion certificate for every project carried out by the ward committee. Any payment could be done by the municipality or ward committee only after the ward secretary issues these certificates.
- The WC will prepare annual plans for the ward. There will be two kinds of plans. One is at the MS level where WC will compile all the annual plans received from MSs. Secondly, WC will also prepare plans which have inter-Mohalla

implications. In this kind of planning, WC will call for proposals. Therefore, MSs and citizens will also be involved in such kind of planning exercise.

Functions of WC provided in Parivartan's NRB are more substantial than what has been provisioned in CPL. Functions of WC in CPL are mainly about ensuring maintenance works and providing assistance in preparing development plans and implementing them. Therefore, WC in CPL seems to be providing assistance rather than taking ownership to perform such functions. On the other hand, NRB's WC is more powerful and independent to perform functions. A few of the most important functions among all that has been assigned to WC are to allocate funds to MSs and to have its say in the implementation of projects that carry important concerns like environment or land acquisition.

**Ward Revenue:** WC will receive annual funds from the state government based on the prescribed formula provided by the Finance Commission. Fund allocations to wards will be based on the ward infrastructure index and ward human development index. At least 40 per cent of the state plan funds shall be directly transferred to WCs. All funds, tied or untied, will be received directly from municipality, State or Central Government. WC will receive funds through voluntary donations and also from municipality or state government for running institutions, maintaining assets and carrying on activities. Ward Committee shall levy taxes on items as may be notified. It shall collect taxes on such items as may be notified. On the contrary, WC in CPL is to assist other bodies in collecting taxes instead of collecting itself. CPL's WC can hold 50 per cent of revenue for local development unless a formula is prepared based on ward infrastructure development.

**Powers of Ward Committees:** NRB provides following powers to WC:

- Ward committee shall have the power to seek any information from any officer of the state government or municipality related to the functioning of their ward or any information which could have some kind of bearing on their ward.
- The employees and all assets of all such institutions which are functioning within the geographical boundaries of ward committee and which deal with items that cater only to the public in that ward; the funds (both capital and revenue) presently being spent for the upkeep, maintenance or running of such institutions, assets or activities shall henceforth be allocated to the ward committee by respective government.
- In their first meetings, the MS shall decide which of these institutions shall be managed by MS and which ones will be managed by ward committee. The employees along with assets of those institutions shall accordingly get transferred to that MS or ward committee. The transfers, disciplinary matters and salaries of the employees, which get transferred to WC shall be directly handled by WC.
- WC shall have the power to summon any officer who is related to the functioning of any activity in that ward.
- Any Development Authority or any other authority, which is in charge of preparing the master plan for that town or city, shall call for the views of all WCs, who shall finalize its views in consultation with its MSs, before finalizing any master plans and zonal plans. That authority shall accept such views except in rarest of cases, wherein it shall give adequate reasons in writing for not doing so.



- If any ward committee, after consulting its MSs, recommends any amendment to existing master plan in relation to their area, the amendment shall be implemented by the Development Authority or any other relevant agency unless there is a strong reason not to do so, which shall be communicated by the agency to the ward committee in writing. The implementation or rejection shall be communicated within a month and if aggrieved, ward committee could approach ombudsman for the same.
- Ward Committee shall have the powers to impose financial penalties on such government officials, who report to ward committee and with whose functioning the ward committee is dissatisfied.
- WC can hire any consultants to seek technical guidance on any issue.
- WC will be appointing agency for the staff which work under the WC.

Power provided to WC in NRB differs with CPL in two respects. One, NRB provides administrative powers to WC to manage their own employees including their transfers. Secondly, WC has power to impose penalties on such officials who report to WC. CPL's WC lacks such powers.

**Ward Finance Committee:** NRB creates a ward finance committee to undertake financial responsibilities. This committee will be constituted by one-fifth of total members of the WC. Tenure of each member will be one year. Each year new member will become of part of this committee, so that all WC members can get an opportunity to get involved with the financial matters. The committee shall prepare the annual budget for the Ward and place it before the meeting of the Ward Committee which will deliberate upon and approve the budget. The committee shall also maintain ward-level bank accounts for all the receipts and expenditure activities of the ward. The committee shall present accounts every 3 months at the meeting of the Ward Committee along with a report of financial transactions. The report of the Ward Finance Committee shall be made available for public scrutiny. The Ward Finance Committee constituted in CPL comprises only three members. Therefore, here, all members of the WC would not get a chance to work as members of the finance committee which can be a great learning experience for them. However, functions of CPL's Ward Finance Committee are similar to that provisioned in NRB.

**Ombudsman:** This provision is the central provision in NRB which CPL does not have. NRB suggests a three-member ombudsman in each municipality which would look into violation of any provisions of this act. A search committee of 10 eminent persons from the state will select a few names which will be presented before a committee comprised of one member of each political party headed by the Chief Minister which will finalize the names. Based on the recommendations of this committee, the Governor of the state will appoint the ombudsman. Tenure of the ombudsman will be three years. The ombudsman will be eligible to get salary and allowances equal to a High Court judge. In an investigation, the ombudsman will have power as vested in a Civil Court. ombudsman has to give decision within a month of receipt of a complaint. The ombudsman can also impose penalties on any person including government officials for non-compliance of its orders. Any member of the ombudsman can be removed if 50 or more MSs pass a resolution in this regard. Municipality will send this resolution to all MSs and if two-third or more MSs approve it, that member shall be deemed as removed. If we make an overall comparison of both Acts, NRB is more comprehensive in terms of elaborating executive functions of local bodies, giving them appropriate duties and

rights. CPL seems to be a cautious step while promoting urban local bodies and tends to create a system where power still rests at the top. Since the line of control is visible and strong in CPL, the decentralization is still not a reality. On the other hand, NRB comes with clearer separation of domains, functions and powers between the local bodies and state government, the same remain vague among the local bodies. Many and same rights and functions have been allotted to MS and WC. Since jurisdiction of MS and WC is not different, how come both will perform same functions or duties? There are chances of conflicts and clashes between these two while discharging such duties.

**Status of CPL across Indian States:**

Each state that is availing benefits under the JNNURM has to enact a CPL within the time period they have committed to in the Memorandum of Understanding with the Government of India. But many states have not passed CPL yet, though the year of commitment of passing the CPL of many states is already over. Table 3 reflects present status as to how many states have passed this law and how many are still to pass it. Table 4 reflects the year of commitment of different states which haven't passed this law yet.

**Table 3: Status of Enactment of CPL (As on 30<sup>th</sup> September, 2011)**

No. of states who have to enact CPL	<b>31</b>
States who have enacted CPL or incorporated relevant provisions of CPL into the existing laws	<b>19</b> (Andhra Pradesh, Assam, CG, Gujarat, Haryana, HP, J&K, Kerala, Karnataka, MP, Maharashtra, Manipur, Mizoram, Nagaland, Rajasthan, TN, Tripura, UP, WB)
States who have not enacted CPL or incorporated relevant provisions of CPL into the existing laws	<b>12</b> (Arunachal Pradesh, Bihar, Chandigarh, Delhi, Goa, Jharkhand, Meghalaya, Puducherry, Punjab, Orissa, Sikkim, Uttarakhand)

Source: Status of State Level Reforms, [www.jnnurm.nic.in](http://www.jnnurm.nic.in), accessed on 10/12/2011

**Table 4: Year of Commitment to Enact CPL**

Year of Commitment	States have not enacted CPL yet
3 <sup>rd</sup> (2008)	Arunachal Pradesh, Bihar, Chandigarh, Punjab, Orissa, Uttarakhand
4 <sup>th</sup> (2009)	Puducherry, Sikkim
5 <sup>th</sup> (2010)	Goa, Jharkhand, Meghalaya
6 <sup>th</sup> (2011)	Delhi

Source: Status of State Level Reforms, [www.jnnurm.nic.in](http://www.jnnurm.nic.in), accessed on 10/12/2011

Now the major question is whether the states that have enacted CPL in the form of either a new law or necessary amendments to existing acts/laws have followed the model of CPL adopted by the Government, or what extent they have come close to Parivartan's model NRB. In the following, we will look at the status of CPL in those states who have adopted CPL, comparing their laws with the government's CPL and Parivartan's NRB.

**A Review of Madhya Pradesh Nagar Palika Mohalla Samiti Act, 2009:**

MP brought this Act in June 2009 which provisions constituting Mohalla Samiti (MS) below the existing lowest strata of urban local self-governance i.e. ward. Mohalla in this Act has been defined as a portion or sub-set of a local body, a colony, an apartment, a complex where minimum 100 households reside. A ward in a medium city, generally,



consists of 15000-20000 population. It means that in a ward there will be many MSs. This is good for people in the sense that if MS is small in size, people can manage their own governance effectively. But, this should necessarily be coupled with effective devolution power and financial autonomy. MS in this Act is headed by a President, a Vice-President and a Treasurer. These three office-bearers of MS will be elected by the people. Councillor of the ward is a member and the patron of the Samiti. Term of the MS is five years but not co-terminus with the urban council or municipality. There is no provision for removal of members of MS in case they are found guilty of any misconduct. NRB does have such provisions, though CPL doesn't have.

Functions and duties assigned to MS in this act are not as substantive and wide as provided in CPL and NRB. Very first provision of the Act is that the MS is to be the eyes and ears of the municipality, which gives a sense that MS is to work as a subordinate organ of the ward and municipality instead of being an independent and an empowered local body elected by the people. The functions assigned to the MS in this Act are generally to provide assistance rather than taking ownership of the functions to be performed within the boundaries of MS. The Act clearly provisions that MS has to perform supervisory and facilitating functions as an agency of the local body. Similarly, MS has not been given enough space to arrange their own resources which exist within the jurisdiction of the MS. MS has to depend on the allocations made to it by municipality, the state and central governments and contributions made by residents of the Mohalla. However, the MS can charge for supervision and consultancy fee for the work that it does for the local body. But this kind of provision sets MS as an agent or out-sourcing agency instead of the lowest formation of local self-governance.

If we compare CPL and NRB with the Madhya Pradesh Nagar Palika Mohalla Samiti Act, 2009, this Act lacks in establishing MS as lowest strata of local self-governance in urban areas. MS does not have power to prepare annual plans and annual budgets for the Mohalla. Similarly, MS does not have rights to arrange financial resources for themselves to manage their affairs. Resources that exist within the jurisdiction of the Mohalla is out of MS's purview and will be managed by the municipality or state government. Financial management in CPL and NRB are very substantial and extensive. CPLs' AS and NRB's MS have power to constitute a separate committee to take care of financial matters. Similarly, both proposed structures have rights to claim a fixed share of revenue and to manage resources that exist within their jurisdictions. Another important function that has been assigned to these structures in both CPL and NRB is that AS and MS will have power to identify beneficiaries for various social welfare and security schemes, so that irregularities in the distribution of such benefits can be checked. AS and MS would also verify these beneficiaries. At the minimum, AS and MS also have rights to seek information from the municipality and officials who are associated with works which influence/affect that Mohalla or Area. MS in this Act does not have this right. More importantly, Madhya Pradesh Nagar Palika Mohalla Samiti Act, 2009, does not reorganize structures and functions of ward committees as CPL and NRB have done. MS representatives are not members of Ward Committee while in CPL and NRB, members of AS and MS are the members of the Ward Committee. Establishment of MS as lowest strata of local self-governance in urban areas can be effective only when they have the required autonomy in performing given functions and managing financial resources.

**A Review of Karnataka Municipal Corporations (Amendment) Act 2011:**

Karnataka's Act has attracted most criticism for its inefficient structures of AS and WC that it has put in place. This Act does not comply with the provisions that have been envisioned in the CPL proposed by the Government of India as a leg of mandatory reforms proposed under the JNNURM. The most important and basic deficiency in this act is the appointment of AS representative. The Act provisions that AS representative will be nominated by the Corporation on the basis of the councillor's recommendation instead of being elected by the people through secret ballot election. The independent election is fundamental to ensure that ASs are independent and powerful in ensuring effective and transparent governance. If the AS representative is nominated, there are chances that the councillor would choose a person of his/her convenience and it would hurt the neutrality of the AS. The tenure of the AS representative is co-terminus with the tenure of the councillor. It means, if for any reason the councillor is removed or changed, nomination of the AS representatives would be done again on the basis of recommendation of the new councillor.

As far as functions and duties are concerned, only two important functions have been assigned to AS. Rest of them are just tentative which do not ensure that AS is independent enough in performing those functions according to requirements and interests. These two functions are identification and verification of beneficiaries. However, the verifications done by AS are not final. WC will again scrutinise it and forward it to the Corporation. In CPL and NRB, verifications of beneficiaries done by AS/MS are final. Secondly, ASs will prepare ward development scheme and will forward it to the WC. But again, in this Act, AS has not been given duty to prepare the budget. In terms of financial functions, AS have to support tax mapping and encourage people to pay the taxes in a timely manner. But the Act does not mention how share of such taxes will be reserved for the AS.

No rights or powers have been assigned to ASs in this Act. Similarly, in the WCs, the Act does not give representation to AS representatives. Most of the states, which have enacted CPL, have given representation to AS representatives in the WC. WC in this Act is constituted by the councillor and 10 other members who are nominated by the corporation on the basis of recommendation of the councillor. Though functions assigned to WC in this Act are broader than what has been assigned to AS, but at the same time, no arrangement has been done for the financial autonomy of the WC. WC has to depend upon the municipality of governments to manage their expenses. In contrast, both- CPL and NRB- provide major financial powers to WCs to ensure that they are autonomous enough in discharging their duties and they are not dependent on anybody for the financial support. Karnataka Municipal Corporations (Amendment) Act 2011 is silent on the removal of AS or WC representatives and does not propose any grievance redressal system like an ombudsman as NRB has proposed.

A most weak point of the Karnataka Act is that powers have been given to councillors to veto any decision taken by the ward committee nullifying the whole concept of citizens' participation.

**A Review of the Greater Hyderabad Municipal Corporation Rules 2010:**

Hyderabad Municipal Corporation is the first urban body which has implemented community participation law on the ground. However, the law seems to be an ordinary legal arrangement without assigning concrete powers and functions to lower strata of ULBs. Hyderabad Municipal Corporation Rules, 2010, has provisions for establishing AS and AS representatives. The appointment of AS representatives is to be done by

nominations made by the Corporations, instead of electing them directly by the people. This provision is one of the fundamental flaws that this law suffers from. As far as functions and duties are concerned, AS has to prepare its developmental plan and has not been given autonomy to manage any financial resources to execute its plan. In fact, AS has not been given any responsibilities regarding the direct implementation of any schemes and programmes. Therefore, it has also not been given any financial autonomy. Functions and duties that have been assigned to AS are mainly supervisory, but the primary responsibility of the implementation rests with the Corporation. AS's span of work is limited to merely identifying beneficiaries of schemes and programmes and suggesting locations for establishing urban services. Rights and powers of AS are limited to seeking information on schemes, plans and budget and launching awareness campaigns. Ironically, organizing campaigns to mobilize common people is listed in this law as one of the rights of the AS, while in reality, it is not a right or power. It is just an activity.

Secondly, the most important aspect of the community participation law is the WC. WC consists of the councillor, nominated members from civil society organizations and AS representatives. WCs have been given responsibility to prepare the developmental plan and annual reports. One of the important provisions which this law encapsulates is that WCs will get 20% of the annual budget to carry the maintenance works of urban services. These works will also be identified by WCs itself. In addition to it, WCs have been given the usual functions and power to perform. These include supervision of implementation of urban services related works, identifying beneficiaries, mapping of infrastructure index, helping in tax collections, right to be consulted in land use matters, etc.

What this law lacks, compared to what CPL and NRB propose, are the provisions of recall and financial autonomy. No provision has been put in place to recall members of ASs and WCs if they are found guilty of misconduct. No grievance redressal system has been suggested in this law. Similarly, ASs and WCs both have not been provided power to manage financial resources which is supposed to be the key of effectiveness of any institution.

#### **A Review of the Haryana Municipal Citizens' Participation Act, 2008:**

The Haryana Municipal Community Participation Act (HMCPA) 2008 establishes Area Sabhas in those wards where population is more than 10,000. It remains questionable as to why ASs cannot be established in those wards where population is less than 10,000. Generally, all Acts, i.e. JNNURM's CPL and other states, have provisioned to establish such structures at polling booth or lower levels where population is about 1200-1500 or even less. Therefore, the HMCPA seems to overlook the very purpose of establishing structures like ASs to provide structures with smaller boundaries, so that citizens can participate in their activities effectively.

The AS representative in HMCPA has to be nominated by the municipality instead of being elected by the people of that area. This is the second important loophole in this HMCPA. The municipality or ward authorities would like to put their people as AS representatives who may behave in a partial manner. Nominated representatives would be loyal to their bosses instead of being responsible to common people because they are not elected by the people. Therefore, HMCPA seems to violate second most important aspect of CPL that people should elect their representatives using secret ballot system. The HMCPA also does not say anything on recall of AS representatives.

The HMCPA gives responsibility of generating plans for development schemes but does not state clearly whether ASs shall have duty to prepare the annual plan for the area. As far as financial power is concern, HMCPA follows what JNNURM's CPL does. HMCPA seeks ASs to be involved only in tax mapping and collection of the same without providing its share to AS. Other functions given to ASs include suggesting localities to install public services, identifying beneficiaries for developmental and welfare schemes, identifying deficiencies lacunae in public services and mobilizing voluntary labour support among people. Normal functions and duties provided in HMCPA equate what has been provided in CPL. However, these functions remain negligible compared to what has been provided in Parivartan' NRB. As far as rights and powers are concerned, ASs in HMCPA have power to seek information from the authorities regarding matters related to the interests of their particular area. No other power or rights, like CPL, has been provided to ASs in HMCPA.

The HMCPA also has provisions to constitute WC comprised of the councillor, AS representatives and civil society representatives. HMCPA's WC has more or less similar functions and duties to perform as CPL has except one important function that HMCPA does not provide to WC. This function is preparing ward budget. Though HMCPA's WC has to prepare the ward plan, preparing the ward plan seems ineffective and meaningless if the WC does not have the power to prepare the ward budget. Not having power to prepare the ward budget has a direct bearing on the financial powers of the WC. HMCPA's WC has not been given any financial power except to help in collecting taxes. CPL has a provision to allocate WCs a share of financial resources until the ward development index reaches a certain level. Later, finances will be provided according to the ranking of ward development index. Parivartan's NRB does also have a provision to provide share of revenues and taxes to WC to execute its plan and manage its administration. NRB proposes more resources to WC than what CPL does.

Rights and powers provided to WCs in the HMCPA are limited to obtain information and to being consulted on land and zoning issues, while CPL also gives power to WCs to impose penalties on officials if they are found in any kinds of misconduct that affects people's interests in the ward. NRB has provided more number of rights and powers to WCs including its control on environmental issues, summoning officials and allocations of resources directly to ward to manage institutions working for the public in the ward. Unlike NRB, HMCPA and CPL do not say anything on removal of WC members and no provision of grievance redressal has been included in the Act.

#### **A Review of Jammu & Kashmir Municipal Laws (Second Amendment) 2010:**

Jammu & Kashmir Municipal Laws (Second Amendment) (JKMLs) was passed in 2010 in order to fulfil the mandatory reform provision of JNNURM of enacting a CPL. JKMLs provides for constitution of ASs comprising the area where not less than 500 and not more than 1000 people reside. AS representative is elected by citizens of the particular Area and his/her term is co-terminus with that of the municipality. JKMLs follows a similar scheme of constituting AS as that proposed by CPL. No difference exists in proposing AS in terms of the constitution of AS, election of AS representatives, functions and duties assigned to AS and rights and power provided to AS. Overall concerns remain the same as JKMLs does not provide financial autonomy to AS in terms of power to make annual plan and manage resources to execute the annual plan.

As far as WCs are concerned, JKMLs provides more or less similar duties and functions to them. CPL assigns duty to WCs to implement functions mentioned in the 12<sup>th</sup> schedule. JKMLs, though, does not mention clearly that WC shall implement all functions

mentioned in the 12<sup>th</sup> schedule but provides implementation power to WC in more or less all functions mentioned in the 12<sup>th</sup> schedule. JKMLs provides large scale supervisory and monitoring responsibilities to WCs in the implementation of basic urban services. As far as financial powers are concerned, JKMLs directly allocates 20% of the total municipal budget to the WC while CPL allocates finances on the basis of ward infrastructure index. However, two crucial functions remain out of the purview of WCs in JKMLs. These two functions are preparing the ward budget and imposing penalties on officials. This has been observed in most of the states' law that WCs have been given responsibility of preparing plan but the same WCs have not been given power to prepare budget.

Rest of the functions and powers of WCs remain the same as provided in the CPL including seeking information on important matters related to wards, revenue and budget. JKMLs is silent on the provisions of removal of WC members and grievance redressal system.

#### **A Review of Manipur Municipal Community Participation Act 2010:**

Manipur Municipal Community Participation Act (MMCPA) does not propose constitution of Area or Mohalla Sabhas. The mandatory reforms proposed by the JNNURM at the state level emphasizes introduction of a structure below the ward so that citizens can participate in local self-governance effectively. MMCPA provisions constitution of ward committees, namely Ward Development Committees (WDCs). WDC is to be constituted by the Councillor of the ward, with two elected members from the ward and two members of civil society nominated by the state government. In other state laws, civil society members are nominated by the municipalities based on the recommendation of the councillor of the ward. In this Act, since Manipur state is very small, the state government retains the responsibility of nomination of such members.

Roles and responsibilities assigned to WDCs in MMCPA are more substantive than any other states' law that proposes constitution of ward committee. WDC has been given duties to prepare the ward plan and budget. WDC has also been given responsibility to manage urban public services such as drains, water supply, sanitation, parks, roads and streets, in a decentralized manner. One of the distinct roles that WDC has to play, and other states' law do not provide this function to WC, is to prepare a report on housing and PDS in the ward. MMCPA provides other supervisory and advisory functions to WDCs as provided in the CPL. As far as financial power is concerned, WDC has right to keep/get 50% of total ward revenue unless ward infrastructure index is prepared. After such index is prepared, fund allocation to ward will be based on the rank of the index. Therefore, MMCPA provides all those functions, duties, rights and powers that have been provided in the CPL. No provisions have been made in the MMCPA concerning the removal of WDC members and grievance redressal.

#### **A Review of the Assam Nagara Raj Act 2007:**

Assam is one of the earliest states to pass or incorporate provisions of the community participation law into the existing law. The Assam Nagara Raj Act (ANRA) establishes ASs in the same manner as CPL does. ASs in ANRA are to be constituted for one or more, but

not more than five polling booths and the AS representative is to be elected directly by the people using secret ballot system. In terms of functions and duties, ASs have been provided very few implementation-related responsibilities that should be given to manage basic public services.



ASs have been given the duty to suggest locations for installing services like water tap, street light, sanitation units, etc., but not given the responsibility of setting up the same. ASs have to prepare plans for development schemes and forward it to WCs, but without having power to produce budget for the same. As far as rights and powers are concerned, ASs have been given right to seek information from WCs regarding budget, revenue and any other information related to decisions taken that are concerned with the Area. ASs have also rights to identify beneficiaries for development schemes. Besides the above mentioned, other duties, rights and powers are related to mobilizing people, imparting harmony and unity among people etc. ANRA does not provide any financial power to AS except providing assistance in tax mapping and collection. ANRA also constitutes WCs with the Councillor of the ward, AS representatives in the ward and nominated civil society members. Duties and functions assigned to WC are similar to what has been provided in the CPL, except that the ANRA does not commit to transfer all those functions and duties that are provided in the 12<sup>th</sup> schedule. As far as the rights and powers provided to WCs are concerned, WCs have rights to retain 50% of ward revenue for local development. WCs also have rights to get all administrative and financial support for their functions. However, ANRA does not provide power to WCs to be consulted on land and zonal regulations related issues. WCs also do not have power to impose penalties on the maladministration of officers involved in the works being carried out within the ward.

**A Review of The Gujarat's Community Participation Law:**

Gujarat's Law does not provide any provision for the constitution of Area Sabhas in urban areas. This violates the very spirit of community participation that was an important part of JNNURM guidelines. The objective of JNNURM is to institutionalize citizen participation as well as introduce the concept of the Area Sabha in urban areas. The Gujarat draft does not address this issue anywhere. The larger objective of JNNURM's CPL is to engage citizens in urban governance, i.e., municipal functions, but Gujarat's Law does not suggest any structure which can encourage effective citizen participation. Since constitution of Area Sabhas or a structure like this is a part of mandatory reform that has to be brought at the state level, Gujarat's Law violates this requirement.

Gujarat's Law talks about WCs but does not reconstitute it as has been done in various other states' laws and JNNURM's CPL. It retains the structure of WCs as provided in the Bombay Provincial Municipal Corporations Act 1949. The Bombay Act gives complete freedom to the municipal corporation to constitute WCs and overlooks any kind of inclusion of citizen participation in it. CPL provides for reconstitution of WCs including members of civil society and AS representatives. But, Gujarat's Law does not include these members and maintains its old structure. Section 3 of Gujarat's Law discusses the roles and responsibilities of WCs. It clearly mentions that the role of the WC is advisory which is subject to the control of the municipal corporation.

Roles and responsibilities of WCs in Gujarat's new law are namesake only and restrict the functions of the Ward Committees to merely advisory functions. The provisions that are assigned to WCs leave it ineffective. Most of functions of WC are to review of the ongoing implementation of schemes and programmes being controlled by the corporation and report to the corporation about the same. Functions of the WC overlook provisions under the 12<sup>th</sup> Schedule of the Constitution completely. WCs in Gujarat's new

Law lack roles related to planning or the budgeting for the ward. It also ignores role of the WCs in identifying beneficiaries for the schemes and programmes which is part of CPL and other states' laws. Even this does not give power to WCs to seek information from the municipal corporation and concerned officials. The existing law does not comply with the mandatory reforms suggested by the JNNURM and needs to be strengthened further.

### **A Review of Maharashtra Municipal Corporation and Municipal Council (Amendment) Act 2009:**

Maharashtra Municipal Corporation and Municipal Council (Amendment) Act 2009 proposes constitution of Area Sabhas in Municipal Corporations in Mumbai and Nagpur and in Municipal Councils at the polling booth level. But, very importantly, this Act does not provide any provisions for the election or nomination of AS representative. According to this Act, the councillor of the ward will be the chairperson of the AS and the councillor will appoint a secretary of the AS who will be a superintendent-level official. The AS in this Act does not ensure citizen participation at the area level. Though the councillor as chairman of the AS, has to organize meetings of the AS - at least one meeting in six months - it does not ensure that the AS would be able to accommodate voices of citizens.

As far as functions and duties that this Act assigns to ASs, these are more advisory in nature. The AS has to suggest the locations for installing public services and also has to identify deficiencies in these public services. But the AS does not have the right to implement basic services directly under its supervision. The AS has also been given the responsibility to suggest to the corporation its priorities under the schemes and development programmes of its choice. The AS does not have the power to produce plans for the Area or the budget. These two activities are the central points for the functioning of of any kind of decentralized structure . If the structure is decentralized, it has to be given powers to make plans and raise resources to execute that plan. As far as financial functions are concerned, this Act gives the AS the responsibility of tax mapping and assisting in its collection. The Act does not guarantee whether a part of this revenue will be given to the Area. The Maharashtra Municipal Corporation and Municipal Council (Amendment) Act 2009 provides only two rights to ASs. One is about seeking information from the WC and any official who is linked with any kind of work that is being carried out in the Area or has an effect on the Area. Second right is to have the attendance of ward-level officials related to public services during the AS meeting or on need. No other rights or powers have been assigned to the AS in this Act.

The Maharashtra Municipal Corporation and Municipal Council (Amendment) Act 2009 does not contain anything regarding Ward Committees or any institutions similar to it.

### **A Review of Orissa's Community Participation Law (Proposed):**

Orissa has not yet passed the community participation law<sup>4</sup>. However, the Cabinet of Orissa approved the draft of the bill and it was intended to be presented in the legislative assembly in the winter session of last year. But this draft does not have any provision regarding the constitution of Area Sabhas. The Draft overlooks the mandatory

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<sup>4</sup> Status report of urban reforms as on Sept 2011, Ministry of Urban Development, Government of India.



provision of having a three-tier system of decentralization in urban areas where the Area Sabha is the lowest and third tier. This indicates that the draft bill does not address the issue of citizen participation seriously, even though the Government of Orissa has entered into a MoU with the Ministry of Urban Development, Government of India, to bring such changes.

The Draft bill proposes the formation of WCs. The structure proposed in the bill is very wide. It contains a total of 13 members including persons from slums, civic bodies, civil society, professional institutes, administration, community, and trade and industry organizations. Out of a total of 13 members, 9 members are nominated by the municipality. Rest of the 4 elected members are directly elected by people. Three of them are elected from Residents' Welfare Associations one from slum committees. Therefore, it is doubtful that decisions taken in the WC will be impartial. It is anticipated that nominated members would side the corporator or other municipal officers. The Draft says that the WC meeting would be organized once a year. If this is the case, it is doubtful whether one meeting is sufficient for the preparation of the annual plan and annual budget.

Functions and duties assigned to the WCs are more or less the same as those provided in JNNURM's CPL. But this draft lacks the powers given to WCs in the CPL regarding ward revenues. The Centre's model CPL provides power to keep 50 percent of the ward revenue for local development unless the ward infrastructure index is of a certain level. But this draft does not provide such rights and powers. Similarly, Orissa's draft does not spell out the rights to seek information from a concerned official, which is the part of the Centre's CPL. Overall, since this draft does not propose establishment of Area Sabhas, the constitution of WCs also does not seem to ensure citizens' participation in the governance of their own affairs.

#### **A Review of Meghalaya's Community Participation Bill 2010:**

Meghalaya's Community Participation Bill (MCPB) is still to be enacted. MCPB does not make a provision for Area Sabhas. Since Meghalaya is not a big state, therefore, possibly, urban set ups in the state do not need a three-tier decentralized system. MCPB provides for a 11-member WC, including 10 members to be nominated by the government. MCPB devolves to the WC the responsibility of preparing annual plan for the ward, supervising and executing developmental schemes and assisting the municipal board in implementing basic urban services including water, sanitation, waste management, street lighting, roads, parks etc. But the MCPB does not provide financial powers to the WC. The MCPB does not give power to the WC to prepare the ward budget and any other financial responsibilities, except assisting in collecting revenues and taxes. The MCPB does not also provide any rights and powers to the WC. This is peculiar as it is questionable how citizen participation in decision making can take place in the WC if it has no rights and powers. The autonomy of the WC is further subverted through the provision that all decisions taken by the WC shall be put before the municipal board for final decision. It means that the line of control still lies with the municipal Board. The MCPB also fails to include a substantial part of the Centre's CPL. The MCPB also seems to neglect the spirit of the CPL in that it fails to create such structures which can facilitate citizens' participation in the newly modified structure of urban governance.

**Important Reflections from States' Community Participation Laws:**

The following important reflections have emerged from the study of 11 states' laws which include 9 states where laws regarding community participation have been passed and 2 states where such laws are still to be brought into the force:

- Four states' laws, i.e., Manipur, Gujarat, Orissa and Meghalaya, do not have any provision for constituting Area Sabhas or any such kind of structure.
- Two states' laws, i.e., MP and Maharashtra, do not have provision of constituting/reconstituting ward committees as suggested in the Centre's CPL.
- Out of 7 states which propose to constitute ASs, 2 states' laws, i.e., MP and Karnataka, do not provide any rights and powers to the ASs.
- Out of 9 states which propose to constitute/ reconstitute WCs, 4 states' laws, i.e., Meghalaya, Orissa, Gujarat and Karnataka, do not provide any rights and powers to WC.
- Out of 7 states which propose to constitute ASs, 4 states, i.e., MP, AP, Haryana, and J&K, assign functions to ASs to prepare annual plans for the Area/locality.
- No state gives responsibility to the AS to prepare the annual budget.
- Out of 9 states which propose to constitute/ reconstitute WCs, only Gujarat does not provide the duty to WCs to prepare the ward plan, while other states have made provisions for it.
- Out of 9 states which propose to constitute/ reconstitute WCs, 6 states, i.e., Karnataka, Andhra Pradesh, Haryana, J&K, Gujarat and Meghalaya, do not give responsibility to WCs to prepare the annual budget. This responsibility still rests with municipalities.
- None of the states provide a financial share to ASs, except MP that provisions to allocate a share of funds to Mohalla Sabhas.
- Four states, i.e., Andhra Pradesh, J&K, Manipur and Assam, provide a fixed share of funds to WCs.
- Three states - MP, J&K and Assam - have provisions to elect AS/MS representatives; the rest nominate them.
- AS representatives are part of the WC in four states - Andhra Pradesh, Haryana, J&K and Assam.
- Five states propose to create a ward infrastructure index and allocate funds to the WC according to the rank of the index.

**Best Practices of Citizens' Participation in Urban Governance across the World:**

India has a fairly better system of decentralization in urban governance compared to other countries in the Asian region, though some Asian countries have established deeper structures of decentralization. For example, India is still struggling to establish development planning at the local level. Nepal has already established development committees at the village and district level. Similarly, JNNURM's CPL tries to establish a three-tier system of governance, while in Bangladesh a four-tier system is already in place. This system works at the village, union, thana and district levels. Though Asian countries could not develop best practices regarding citizen participation in urban governance, Latin America has established a more robust and effective system of citizen

participation. Mexico has a concept of Neighbourhood Committees and Brazil has established consultative bodies<sup>5</sup>.

Brazil provides one of the best examples of city governance. Here, municipalities are given the opportunity to establish "organic" laws, by which they may structure their own operations and set up municipal boards. These boards, in turn, have the formal function of mediating between the local government and organized civil society. A study of the organic laws of the fifty largest Brazilian cities observed that except three municipal boards, there were twenty urban development boards, twenty-two transportation boards, six housing boards, two sanitation boards, and thirty-five environmental boards. The most important functions of these boards were health and education (defined in the new Constitution as municipal powers), with forty-five, and forty, respectively, having been created in the fifty cities studied<sup>6</sup>. Aside from the promotion of municipal boards, eighteen of the fifty cities instituted the participatory budget by which neighbourhood and then higher level committees discuss and finally decide on the allocation of a proportion of a city's capital allocation, on a regular basis. In the Belo Horizonte case, the participatory budgetary system reinforced the establishment of the 9 regional (decentralized) administrations in the city, since the local populations were brought into a more direct relationship with administrators<sup>7</sup>.

**Porto Alegre City in Brazil:** Porto Alegre is the most well known of the Brazilian cities practicing the participatory budget system. According to an article by Rebecca Abers, the system is based on the work of 16 forums based on local regions of the city; there are in addition five thematic forums (created in 1994) involving education, health and social services, transportation, city organization, and economic development; and a municipal budget council with representatives from the regional and thematic forums. The system was originated in 1989 by the Union of Neighbourhood Associations, resulting in some 400 people participating in 16 assemblies around the city. By 1995, some 7,000 people were participating in the regional assemblies, and 14,000 more in further meetings to negotiate compromises between the demands of one region and another. The system continues throughout the year. According to the municipality, more than 70 cities elsewhere in Brazil and throughout the world (including Buenos Aires, Barcelona and Saint Denis) have adapted this system to their own needs<sup>8</sup>.

**Khon Kaen City in Thailand:** Khon Kaen City<sup>9</sup> managed to develop a sustainable and comprehensive strategy to strengthen people's participation with the aim to improve the people's quality of life and social capital and to enhance the competitiveness and capacity of the municipality. First, the City Council was created to get to know people's opinion and needs to be able to formulate the appropriate policies. The Department of Citizen Participation and Decentralization Support was established and has become a key mechanism for the municipality in the collaboration with community organizations

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<sup>5</sup> Aditya, *India's Community participation Law: The Model Nagara Raj Bill 2008*, available at <http://www.criticaltwenties.in/lawthejudiciary/india%E2%80%99s-community-participation-law-the-model-nagara-raj-bill-2008>, accessed on 12/12/11.

<sup>6</sup> Ribeiro (1995) quoted in Richard E. Sturn, "New Approaches to Urban Governance in Latin America", available at [http://web.idrc.ca/cp/ev-22827-201-1-DO\\_TOPIC.html](http://web.idrc.ca/cp/ev-22827-201-1-DO_TOPIC.html), accessed on 12/01/12.

<sup>7</sup> Richard E. Sturn, "New Approaches to Urban Governance in Latin America", available at [http://web.idrc.ca/cp/ev-22827-201-1-DO\\_TOPIC.html](http://web.idrc.ca/cp/ev-22827-201-1-DO_TOPIC.html), accessed on 12/01/12.

<sup>88</sup> Ibid

<sup>9</sup> This detail has been excerpted from <http://www.delgosea.eu/cms/Best-Practices/Overview>, accessed on 13/12/12.

and in project screening before submitting them to the municipal executive for consideration. Lastly, the strategy has been designed in the belief that people know best their needs and constraints. In this whole exercise, community organizations were given power to decide their own plans. The following results were achieved:

- Better policies through better defined data on the needs and constraints of the people; involvement of more than 130 community organisations in the city council; close cooperation with the academia for community research.
- More community-based projects better reflecting the needs of the people; people define their own development plans, manage their budgets, human resources and procurements. Community management became cost-effective and efficient.
- Strengthened capacities and empowered people to better deal with local concerns and issues.
- Better policies led to the improvement of living conditions of the people, for e.g. by better environment and sanitation management (flood prevention, garbage management, safety food).

**Vinh City in Vietnam:** Vinh city<sup>10</sup> is the best example for deploying community participation in upgrading the old collective housing areas. A total of 142 housing areas were designed in two slums/wards of the city into a modern housing area with all required infrastructure. This project was implemented with the help of city government and a collective savings scheme through a bottom-up approach by mobilizing people. Specific results of community participation in the urban planning in Vinh City were the following:

- The master plan was approved by the government.
- The detailed plan of wards and communes were approved by the city government, with citizens' concurrence.
- The community has gradually become aware of the need to save land to build public spaces and green areas, and to participate in the urban planning and development process.
- Using investments from the community, several projects were carried out to demolish old and downgraded condominiums, to give way to parks and cultural houses.
- Land owners gave up 20,554 square meters of land to give way to infrastructure projects throughout the city.
- Resources were invested by residents as well as Vinh's citizens who are now living in other cities.

In addition to the above-provided case studies, Cambodia, Philippines and Indonesia are a few countries where public participation has been instrumental in effective and participatory urban planning, governance, budgeting and infrastructure. All such experiences indicate that no better alternative than citizen participation can be deployed for inclusive and effective execution of decentralized urban governance.

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<sup>10</sup> Ibid

**Conclusion:**

The first phase of JNNURM will be over in less than a year. But the status of implementation of reforms suggested in JNNURM is less than satisfactory. The High-Powered Expert Committee (HPEC) report<sup>11</sup> has observed that in the course of the implementation of JNNURM, implementing reforms under the JNNURM has been slow. According to a report released by Ministry of Urban Development, Government of India, only seven states - Andhra Pradesh, Bihar, Chhattisgarh, Gujarat, Kerala, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu, Tripura and West Bengal - have transferred a few or most functions to ULBs. Gujarat, Madhya Pradesh, Chhattisgarh, Maharashtra and Andhra Pradesh are the only states who have transferred all 18 functions to ULBs. However, many of these states have not passed the community participation law. Most of the eastern states namely Mizoram, Meghalaya, Arunachal Pradesh, Sikkim and Goa have not transferred even a single function to local bodies.<sup>12</sup>

The community participation laws/bills brought by different states do not fulfil the requirements put forward by the JNNURM's CPL. These requirements are basically regarding the transfer of functions to ASs/MSs and WCs which have been mentioned in the 12<sup>th</sup> Schedule of the Constitution. States are reluctant in providing budgetary functions and other financial responsibilities to these structures. Very few states provide planning responsibilities to ASs/MSs and WCs. Even if planning functions are provided, their final sanction depends on the concerned municipality. There has been lack of alacrity in providing rights and powers to these urban local bodies. Basically, mobilizing volunteer labour, encouraging art and culture and imparting public awareness are parts of the rights and powers given to ASs/MSs and WCs. In reality, such functions do not provide any autonomy to these bodies. Control over financial resources, allocations and planning functions should have been the rights and powers mentioned in states' laws.

States' laws are nowhere near to the Model Nagara Raj Bill proposed by Parivartan. In fact, the Centre's CPL itself does not include important functions which are instrumental in terms of establishing a citizen participation-based structure of decentralized urban governance. For instance, Parivartan's NRB provides WCs power to provide utilization and completion certificates to the agencies which are involved in public works in the jurisdictions of a ward. The Centre's CPL lacks this power. Provisions of recall or removal, control over natural resources and fixed share in the revenue are other examples which the Centre's CPL does not have. Overall, data coming out of the 11 states covered in this study reflect that states have not been honest in complying with the mandatory requirements of the JNNURM about enacting a CPL.

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<sup>11</sup> High Powered Expert Committee (HPEC) report on Indian Urban Infrastructure and Services, submitted to the Ministry of Urban Development, March 2011

<sup>12</sup> Urban Local Bodies: Toothless Tigers, An analysis report by Inclusion, available at [http://www.inclusion.in/index.php?option=com\\_content&view=article&id=620](http://www.inclusion.in/index.php?option=com_content&view=article&id=620) accessed on 8 Jan, 2012.

**Recommendations:**

- A clear division of functions and powers should be demarcated in the states' laws.
- Core functions such as planning and budgeting must be assigned to ASs/MSs and WCs.
- A fixed share of allocation of local revenue, control over natural resources including their management must be given to local bodies without any checks.
- AS/MS representatives must be elected. A few members can also be nominated from civil society but majority should be with elected members.
- A proper follow up is needed from the Ministry of Urban Development, Government of India, to monitor the implementation of mandatory reforms at the state level suggested through the JNNURM.
- Primary responsibility for implementing all 18 functions provided in the 12<sup>th</sup> Schedule of the Constitution must be given to ASs/MSs and WCs. However, supervisory powers may be given to the municipality.
- There must be a grievance redressal system at the municipality level as suggested in Parivartan's NRB.
- Since, the AS/MS and wards are small units, provision for recall/removal of the representatives can be enforced.
- Capacity-building programmes for citizens must be prepared and implemented by recognized experts at the Area level, so that citizens can participate in the governance processes with utmost capacity.
- All states' laws must have provisions for both Area Sabhas & Ward Committees.
- Draft of the community participation laws of such state where this law is still to be enacted should be sent to MoUD for its comments and suggestions before it is placed before the state Cabinet for its approval and legislative assembly for passing it.
- In those states where community participation law is passed, MoUD should pressurize these states to make necessary amendments in existing laws.
- In case of avoidance/violation of requirements of mandatory reforms, benefits being provided to such states should be withheld or stopped unless necessary actions are initiated by the concerned state governments.
- Disbursement of funds under the JNNURM should be made periodically depending on the compliance of beneficiary states with crucial points of mandatory reforms such as transferring functions to ULBs, giving power to prepare plans and budgets, control over local resources, etc.
- A state-wise brief and informative monthly report of status of reforms in all beneficiary states should be updated in the JNNURM/MoUD website. Present system of reporting such progress is quarterly and very broad.
- It must be ensured by the Government of India that in the process of compelling states to go through suggested routes and reforms, the federal structure should not be disturbed.
- There should be an incentive system to those states that bring real changes. An increased allocation of funds can be made to such states and allocation to those states that are not performing well can be decreased.
- Extension of next round of JNNURM should only be given to beneficiary states when they complete all the commitments that they had made in the MoU with the Ministry of Urban Development in order to receive the benefits of JNNURM.