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An analysis of 74th Constitutional Amendment Act, Decentralization and the status of the Urban Local Bodies (ULBs)

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Abstract

74th Constitutional Amendment Acts and the Nagarapaalika Acts recognize urban local bodies as legitimate third tiers of local government and gave them constitutional validity and permanence. In order to ensure that the weaker sections in society get a voice in these bodies so that the traditional power structures at grassroots level could be altered. It provides for reservation of seats for SC/STs and to women, and article 243 entrusted them with the power of planning for economic development and social justice. However, despite more than 25 years of its existence, the goal of the 74th CAA has been not realized. Lack of finances, on the one hand and lack of participation on the other have disrupted the working of the ULBs. There is no active Ward committees and hardly any opportunities for citizens to participate in planning, implementing, monitoring and auditing works in their wards. The act has been not implemented in its true spirit; the Act is nowhere near fulfilling the main goal for which it was envisaged. It is significant that apart from the traditional municipal functions, article 243W allocates to ULBs the function of preparation of plans for economic development and social justice, and the Twelfth Schedule contains Urban Poverty Alleviation as a municipal responsibility. These take municipal bodies' mere providers of civic amenities to a much wider area of action encompassing economic and social planning. The 74th CAA has catapulted the ULBs to the status of being comprehensive institutions of urban self-government, and has left details to the state legislatures. The present study is intended to analyze the current status of the implementation and suggests reforms to correct the existing scenario.

Key Words: Constitutional Amendment, Urban Local Bodies (ULBs), Decentralization, Urban Finances, Planning Committees.

The 73rd and 74th Constitutional Amendment Acts were implemented with the spirit of enforcing decentralization and development planning through local governance. However, even after 25 years after these amendments, concentration of planning and de-facto governance by parastatal agencies resulted in erosion of powers of local bodies to take decisions on planning of development of areas that come under their jurisdiction. Undermining the decision-making and participatory powers of the local bodies by government authorities has become common. The physical expansion of the cities, whether done by the government or by the private real estate developers, causes the interests and rights of the poor people to be completely neglected. Even after 74th Constitutional Amendment Act and clear-cut provisions on town planning, a few crucial issues are yet to be solved. These issues include questions like who should have the powers to evolve development plans affecting revenue land-use in their jurisdiction. Should the Metropolitan Planning Committee have its own planning department or should the Town Planning Directorate help the Metropolitan Planning Committee? What are the powers and relations between ULBs and parastatals?

Conceptual issues like constitutional status of the local bodies, relationship between local/state/central governments and the local government as a democratic institution of self-government, have all to be clarified. Though the Constitution of India has empowered the State Government to determine the structure, functions and resources of local bodies, the supporting legislations in Karnataka, as elsewhere, have remained incomplete and confusing. This has resulted in the objective of decentralization remaining unfulfilled.

The Centre's role of enabling funds and urban development in many mega projects, contains significant contradictions. Cities have inadequate finances to improve themselves. They have not derived sufficient funds from either central or the state governments. The Project and programme's conditionalities further increase the burden on the ULBs and compel local bodies to outsource many of the functions to private firms and parastatals, as Bruhat Bengaluru Mahanagara Paalike (BMP) has done in case of the all most all the urban projects.

Local bodies should implement projects on their own and the Centre should not compel or put conditionalities on the ULBs to raise the funds. Unfortunately, many central projects reforms re contradict the the spirit of the 74th Constitutional Amendment. Partially, local bodies are also responsible for this unfortunate state of affairs. Urban development is state subject (Article 246(3)). There is hence the feeling that most of the Mega Projects are unconstitutional as central laws were imposed on states. 74th CAA sees ULBs as self-governing institutions. But the neo-liberal policies imposed policy conditionalities for giving funds have diminished the autonomy of the ULBs. rather than extending decentralization, all the policy frameworks favor centralization. Traditionally, the provision of urban infrastructure and services has been among the primary functions of the government where the funding of complete service delivery was sourced out of tax revenues. These basic

services have been generally considered as social goods to be provided by the government for free or at nominal prices to users. But the Net trend complete user charges would be neither affordable nor desirable.

The role of the central government with regard to ULBs is over-deterministic, standardized and authoritarian in the scope and imagination of its centralized, apolitical decision-making. The role that it could rather play to help cities move towards more humane inclusive outcomes needs to be more flexible, differentiated and supportive of local strategies, needs and priorities. Centre sponsored top-down policies like projects are fracturing local democratic process and local democratic accountability. ULBs are not making fiscal decisions; state and parastatals are imposing themselves in financial matters too. As a result there is not accountability of local governments to local taxpayers; because they don't have a say in decision making and they know very little about the projects. The decision making structure introduced by JNNURM is highly centralize and technocratic. Many projects which have been approved won't come under the control of local governments.

The role of the government has become a purchaser of services from the private sector. Government resources are being used to make projects commercially viable and attract private sector participation. Responsibility to the citizens is no where mentioned. Schemes like JNNURM only reinforced the state's position of facilitating private entry into urban services. The whole projects, reports and evaluation works are assigned to the private consultants based on the blind belief that private sector is more efficient, equitable and provide greater quality or access to services. Critics assert that imposition of conditions on local bodies to privatize services is "undermining the federal set up and democratic nature of governance in India". Conditionalities like prescribing what items money can be spent on; making full collection of user fees for public services mandatory; repeal and introduction of certain laws, such as the Urban Land Ceiling Act; initiating public-private partnerships directly – all disturb the states' power and the spirit of the 74th Constitutional Amendment. In many of the states, District Planning Committees and Metropolitan Planning Committees have not been set up according to 74th Constitutional Amendment. These institutions have not prepared City Development Plan; consequently, many state governments have followed an adhoc planning process. Urban Policy and planning are State subjects. The Central Government can issue directives, provide advisory services, set up model legislation and fund programmes which the States can adopt. Urban planning has long been centralized in India. The JNNURM is not an exception. Like the previous urban reform strategies described in an earlier chapter, it is also a top-down strategy, denying any significant role to the States and ULBs.

The Committee to Review the Working of the Indian Constitution and even the Second Administrative Reforms Commission (2nd ARC) recommended clearly that municipal governments should have full autonomy over the functions and activities devolved to them. These have been continuously overtaken by central and state governments. The Thirteenth Finance Commission pointed out the need for conferring powers to mobilize resources to the municipalities and further recommended that in the interim, the funds received by the parastatal organizations, especially through land sales, should be shared with the municipalities. In spite of

many recommendations of expert committees, commissions and policy pronouncements; the federal spirit and the spirit of the 74th Constitutional Amendment have been completely ignored.

The new mega projects trend and its practices have placed new finance-related demands on ULBs that are ill-equipped to perform them. They recommend technocratic fixes like improving ULBs' own resources and capacities. These financial reforms do not address the larger issues of fiscal relations between the three tiers of the government. The adoption of neo-liberal reforms, forcing uniform policy conformity among ULBs through an executive instrument and overriding efforts at different types of decentralization in various states have further worsened the situation. Efforts to move towards full cost recovery, commercialization of urban and civic services, introduction of private participation and making land management flexible - all these reforms contradict the basic spirit of the 74th CAA. Cities don't have adequate infrastructure and people don't have basic services these are merely symptoms of the problem. The actual problem is that they don't have a government that can enable the citizens to decide, to provide themselves the infrastructure they need and financial powers to pay for them. The need of the hour is strong ULBs with strong and powerful elected governments responsible for their functions. The urban deficits are not lack of infrastructure and basic services; but lack of self-governance. Mere infrastructure, metros, flyovers don't address the need of the poor.

The first and foremost need of the reform agenda should be to strengthen the municipal domain with town planning; that too with transparent and accountable frameworks as ULBs' are closer to the people than the Governments. The argument that ULBs' are inefficient and dishonest and they cannot be entrusted with town planning has no rational basis. Even the second Administrative Reforms Commission suggested that ULBs' should have the main responsibility of providing basic services, infrastructure and human development. The Commission clearly stated that the function of town and district planning has to be demarcated for local bodies and they should have the full autonomy over the functions and activities devolved to them.

Steps should be taken to come out of the 'real estate' approach to urban management. It is because of this, despite clear cut constitutional provision that urban planning and town planning form part of the ULBs domain; central and state governments have retained this power. The relation between the functional and financial domain has to be understood and the ULBs' have to be allowed to mobilize these resources.

Government should abide by international, national and state laws and policies that are based on human rights and social justice. The responsibility for fulfilling basic needs like food, water, sanitation, health education and shelter should lie with the government. Earmarking of budgets for providing minimum basic services to all should be considered before spending on other less required needs. Privatization need not be seen as the only solution for reforming poorly run public services. There have been very promising examples of public-people partnerships in the management of service agencies to remove inefficiencies in public provisioning.

Formation of a Metropolitan Planning Committee (MPC) for Bangalore has to be implemented as mandated by the 74th Constitutional Amendment Act. Representation should be provided to civil society groups and to the urban poor in MPCs. There should be an enlargement of the list of functions devolved to local bodies to include issues that affect the basic needs of citizens social security issues, schemes of food, labour, housing, health, education and labour etc. Direct election of ward committee members of the ULBs should be done on the population basis following stipulated reservation. Measures should be taken to include homeless and migrant population also to participate in ward committees. The new urban agenda should be democratic and equal; no one is left behind. For this we need strong local democracies and organized poor groups with good local leadership. A new source of finance has to be explored to strengthen local governments.

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