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A STUDY OF KARNATAKA HIGH COURT'S WRIT JURISDICTION

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EXECUTIVE SUMMARY



This report seeks to provide an in-depth understanding of the manner in which writ jurisdiction of the Karnataka High Court is invoked and exercised. The writ jurisdiction, as opposed to other jurisdictions of a High Court, assumes special significance by virtue of wide ranging power that *Article 226* of the Constitution vests in every High Court of the country, to issue writs against any authority, including any Government, for violation of any legal right. Thus, writ jurisdiction affects both the judiciary, by constituting a bulk of its burden, and the Government, since most writ petitions are filed against it.

For the purposes of this study, primary data of writ petitions filed before the Bengaluru Bench over five years (2012-2016), and Dharwad and Kalaburgi Benches over three years (2014-2016), was extracted from the Karnataka High Court website. This data has been studied to understand the nature of writ petitions filed against the Government, functioning at different levels of governance. This gives us a nuanced understanding of what constitutes ‘Government litigation’ and what makes the ‘Government’, the biggest litigant. This study has also shed light on some of the inefficiencies in the functioning of the Karnataka High Court, both on the judicial and administrative side.

A few of the key findings of this study are as follows:

1. Writ petitions constitute around 60 percent of cases filed before the Karnataka High Court (all three Benches) annually.
2. The ‘burden’ of writ petitions on the High Court is more accurately represented if multiple individual writ petitions are counted as a single ‘WP-Case’, if filed as part of ‘joint petitions’, or heard as part of ‘batch petitions’ by the Court. The

analysis in this report is based on the study of such 'WP-Case's.

3. Even though there are 24 parent classifications and 129 sub-classifications under which a writ-petition can be filed, nearly 30 percent of the WP-Cases studied were filed under 'General Miscellaneous' classification.
4. 61 percent of the WP-Cases were filed by male petitioners, 18 percent by female petitioners, 17 percent by private entities and 4 percent by the Government.
5. 80 percent of the WP-Cases before the Bengaluru Bench were filed against a combination of State Government, Parastatal agencies under the State Government and Local Bodies.
6. A bulk of petitions against the State Government are in relation to service, land revenue, police, land acquisition and motor vehicles subject matters. As regards parastatal agencies, the subject matter of writ petitions is dependent on the nature of the agency. The Karnataka State Road Transport Corporation (KSRTC) is prone to service and labor petitions, while the Karnataka Industrial Area Development Board (KIADB) is prone to land acquisition petitions. Further, local bodies such as BBMP and BDA attract service, land acquisition and tax matters.
7. Of the WP-Cases filed during 2012 - 2016 before the Bengaluru Bench, 69 percent have been disposed. A majority (around 60 percent) of the disposed cases were disposed within two years of filing.
8. Overall, 31 percent of the WP-Cases filed before the Bengaluru Bench between 2012 and 2016 are pending. Further, 20 percent of the WP-Cases have remained pending for more than two years and thereby fall into the 'delayed cases'

category. A few classifications of WP-Cases such as 'SCST', labor, land acquisition etc., have large number of cases which are delayed.

Based on the findings of this study, our recommendations can be summarized as follows:

1. The registry of the Karnataka High Court needs to overhaul its classification system, improve case management and listing methodology.
2. The Karnataka High Court should improve upon the existing roster system of allocation of cases before different Judges, and deal with frivolous/misleading writ petitions strictly.
3. The State Government can reduce 'Government litigation' by implementing solutions unique to the subject matter of cases and the department/ parastatal agencies against which such cases are filed.

Overall, the data, research and analysis pertaining to the writ jurisdiction of Karnataka High Court has revealed that while Karnataka is among the better performing High Courts in the country, there is still significant scope for improvement. As regards the Government, by addressing issues specific to its departments and agencies, and by ensuring tailor made litigation policies, it is possible to significantly reduce the volume of Government litigation, and thereby reduce judicial overload.

INTRODUCTION

A High Court's 'writ jurisdiction' is considered to be an 'extraordinary' jurisdiction¹ whereby the High Court – which is at the apex of the State judicial machinery, becomes directly accessible to ordinary citizens seeking relief against any authority, including any Government, for the violation of any legal right.² Article 226 of the Constitution of India vests writ jurisdiction in every High Court in the country, empowering them to issue writs, orders, or directions to any person or authority, for protection of Fundamental Rights or any other rights. Further, under Article 226, a High Court can provide relief not only against persons or authorities within its territorial jurisdiction, but also beyond – as long as the cause of action, in whole or in part, arises within such territories.³ Unarguably, Article 226 bestows wide ranging powers on the High Courts, even wider than the power vested in the Supreme Court of India (SC) under Article 32, which can be invoked for enforcing Fundamental Rights alone.⁴

¹ The High Courts are vested with civil as well as criminal, ordinary as well as extraordinary, and general as well as special jurisdiction. The writ jurisdiction under Article 226 and the supervisory jurisdiction under Article 227 are considered to be 'extraordinary jurisdiction'; 124th Law Commission of India Report, 'The High Court Arrears- A Fresh Look' (1988) <<http://lawcommissionofindia.nic.in/101-169/Report124.pdf>> Last accessed: 22 January 2018

² Prior to 1950, only the High Courts in the three presidency towns- Madras, Bombay and Calcutta- had power to issue writs, with a few other High Courts having similar power under different statutory provisions. However, under the Constitution of India adopted in 1950, this power has been expressly conferred on all the High Courts in the country; Justice B P Banerjee, *Writ Remedies- Remediable Rights under Public Law* [7th edn., LexisNexis: 2016] 36.

³ Originally, Article 226 provided for two-fold limitation on HC's writ jurisdiction: (1) that the power could be exercised only within the territory subject to such a HC's jurisdiction; and (2) the person or authority to whom the HC was empowered to issue writs was amenable to its territorial jurisdiction. However, by virtue of the 15th Constitutional Amendment Act, 1963, the second of the above limitation was done away with, thereby enabling the HCs to issue writs even if the person or authority is not within its territorial jurisdiction as long as the cause of action, in whole or in part, arises within such territories.

⁴ *State of Orissa v. Madan Gopal Rungta*, AIR 1952 SC 12; *Naresh Sridhar Mirajkar v. State of Maharashtra*, 1966 SCR (3) 744; *DM Wayanad Institute of Medical Sciences v. UOI*, (2016) 2 SCC 315.

Writ remedy per se is a public law remedy; it concerns the laws governing relations between the individuals and public bodies, and inter-se public bodies.⁵ As such, the number and nature of writ petitions filed before a High Court are indicative of the extent of friction between citizens and the Government – in both its legislative and executive actions, and the disjunction within different departments of the Government. In fact, the broad nature of power and jurisdiction vested in the High Courts under Article 226 is justified in light of the intense legislative activity and enforcement of regulations by administrative agencies at the State level, making it essential for a citizen to have speedy and effective redressal against unconstitutional enactment or unwarranted executive action.⁶ Therefore, the necessity and importance of analyzing writ petitions filed before a High Court, as a means to identify the legislative lacunas and executive excesses, cannot be overstated. This is even more so in light of the current focus on addressing the issue of ‘Government litigation’.⁷

There is currently a dearth of data driven study to identify the underlying causes of Government litigation. In the earlier Law Commission of India Reports, directly on the topic- ‘*Litigation by and against the government: Some recommendations for reform*’⁸ and ‘*Government and Public Sector Undertakings Litigation Policy and Strategies*’,⁹ there are generic proposals to efficiently handle the burden of Government litigation. However, these are not based on comprehensive data on different types of cases filed against the Government functioning at different levels of governance. Similarly, the National

⁵ Justice B P Banerjee, see n (2)

⁶ 14th Law Commission Report, ‘Reform of Judicial Administration’, Volume 1 (1958) <<http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf>> Last accessed: 22 January 2018

⁷ Deepak Patel, ‘Disputes involving govt: A case to cut litigation count’ (Indian Express, 16th January 2018) <<http://indianexpress.com/article/india/disputes-involving-govt-a-case-to-cut-litigation-count-5026317/>> Last accessed: 22 January 2018; ‘Reduce Litigation By Governments: Law Minister To Centre, States’ (Live Law, 19th March 2017) <<http://www.livelaw.in/reduce-litigation-governments-law-minister-centre-states/>> Last accessed: 22 January 2018

⁸ 100th Law Commission Report, ‘*Litigation by and against the government: Some recommendations for reform*’ (1984) <<http://lawcommissionofindia.nic.in/51-100/Report100.pdf>> Last accessed 30 January 2018.

⁹ 126th Law Commission Report, ‘*Government and Public Sector Undertaking Litigation Policy and Strategies*’ (1988) <<http://lawcommissionofindia.nic.in/101-169/report126.pdf>> Last accessed: 22 January 2018

Litigation Policy-2010¹⁰ and the 'Action Plan to Reduce Government Litigation'¹¹ adopted by the Department of Justice, have failed to have any considerable impact¹², also due to this lack of basis in data, research and analysis. The present study seeks to bridge this information lacuna by undertaking empirical analysis of one of the most important contributors to Government litigations – writ petitions.

The nature of the writ jurisdiction itself is such that there is a direct correlation between the increasing number of Government litigations and the increasing burden on the judiciary. Therefore, a study of writ petitions would be in the interest of all three pillars of the State – the legislature, the executive and the judiciary – with the former two as the source of writ petitions, and the latter bearing its burden.

A LOOK AT THE NUMBERS

There have been reports and studies in the past which have analyzed various aspects of a High Court's functioning- such as those of case-load management,¹³ manpower sufficiency (both on the Bench and the administration side)¹⁴ and access to

¹⁰ National Litigation Policy: National Legal Mission to Reduce Average Pendency Time from 15 Years to 3 Years (Ministry of Law and Justice, 23rd June 2010) <<http://pib.nic.in/newsite/ereIcontent.aspx?reIid=62745>> Last accessed: 22 January 2018

¹¹ 'Action Plan to Reduce Government Litigation' (Ministry of Law and Justice, 13th June 2017) <<http://doj.gov.in/page/action-plan-reduce-government-litigation>> Last accessed: 22 January 2018

¹² Ameen Jauhar, 'Time to move towards a new litigation policy' (The Hindu, 18th November 2016) <<http://www.thehindu.com/opinion/columns/Time-to-move-towards-a-new-litigation-policy/article16666713.ece>> Last accessed: 22 January 2018; The Law Ministry is currently reviewing the existing Litigation Policy and had released a draft of NLP-2015. 'Status note on National Litigation Policy', available here: <<http://lawmin.nic.in/la/status%20note%20on%20nlp.pdf>> Last accessed: 22 January 2018

¹³ 79th Law Commission of India Report, 'Delay and Arrears in High Courts and Other Appellate Courts' (1979) <<http://lawcommissionofindia.nic.in/51-100/Report79.pdf>> Last accessed: 22 January 2018; 124th Law Commission of India Report, see n (1).

¹⁴ 121st Report of the Law Commission of India, 'A New Forum for Judicial Appointments' (1987) <<http://lawcommissionofindia.nic.in/101-169/Report121.pdf>> Last accessed: 22 January 2018

justice.¹⁵ Such reports have only cursorily looked at a High Court's writ jurisdiction. This is despite the well-known fact that writ petitions constitute a bulk of High Court's case load. In fact, the Malimath Committee Report on Arrears (1989)¹⁶ specifically identifies 'indiscriminate resort to writ jurisdiction' as one of the reasons for accumulation of arrears of cases before a High Court, and also that writ petitions form the bulk of pendency in almost all High Courts. Even earlier, the 14th Law Commission of India Report (1958) observes that writ petitions impose considerable burden on the Courts.¹⁷ The recently established e-platform called the National Judicial Data Grid (NJDG), adds credence to this observation, through numerical data emanating from all the High Courts in the country.¹⁸

As per the data available on NJDG-High Courts,¹⁹ writ petitions contribute to around 35 percent of fresh filings every month before all the High Courts.²⁰ Further, a look at the pendency data shows that writ petitions constitute nearly 33 percent or one-third of all pending cases before the High Courts, with more than one and a half lakh of them pending for more than ten years. This average across all High Courts is consistent with the pendency in the Karnataka High Court as well.²¹

¹⁵ 245th Law Commission of India Report, 'Arrears and Backlog: Creating additional Judicial (Wo)manpower' (2014), <<http://lawcommissionofindia.nic.in/reports/report245.pdf>> Last accessed: 22 January 2018; DAKSH, 'State of the Indian Judiciary Report' (2016) <http://dakshindia.org/state-of-the-indian-judiciary/00_cover.html> Last accessed: 22 January 2018; DAKSH, 'Access to Justice Survey' (2015-16) <<http://dakshindia.org/wp-content/uploads/2016/05/Daksh-access-to-justice-survey.pdf>> Last accessed: 22 January 2018; 'Report of the Working Group for the Twelfth Five Year Plan' (2011) <http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wg_law.pdf> Last accessed: 22 January 2018;

¹⁶ Report of the Arrears Committee- 1989-1990, available at: <http://dakshindia.org/wp-content/uploads/2016/08/Malimath-89-90.pdf>

¹⁷ 14th Law Commission of India Report, see n (6)

¹⁸ The National Judicial Data Grid for High Courts accessible here: <http://njdg.ecourts.gov.in/hcnjdg_public/main.php> [part of the E-Courts initiative to make the justice delivery system accessible, transparent and affordable].

¹⁹ State wise representation: http://njdg.ecourts.gov.in/njdg_public/graphical/home_barchart_statewise.php

²⁰ http://njdg.ecourts.gov.in/hcnjdg_public/main.php- data accessed for the months December 2017 and January 2018.

²¹ DAKSH, 'State of the Indian Judiciary Report' (2016) <http://dakshindia.org/state-of-the-indian-judiciary/00_cover.html> Last accessed: 22 January 2018. As per the data collected by DAKSH, 32 percent of workload of the Karnataka High Court is comprised of writ petitions.

The NJDG-High Court in its analysis, beyond reporting pendency, segregates civil writ petitions from criminal writ petitions (habeas corpus). However, this limited data does not shed any light on the subject matter or the identity of parties involved in these writ petitions, both of which are extremely important. Therefore, for the purposes of this study which focusses on (i) improving the manner in which the existing burden of writ jurisdiction is handled; and (ii) reducing the extent to which writ jurisdiction is invoked, thereby reducing ‘Government litigation’, data was collected afresh and the following methodology has been followed to extract and collate the relevant data.

RESEARCH METHODOLOGY

Scope

The procedure and format for filing writ petitions, as well as other case-types before the Karnataka High Court is largely guided by the following enactments: a) the Karnataka High Court Act, 1961 & the Karnataka High Court Rules, 1959; b) Writ Proceedings Rules, 1977 and c) The Karnataka Court- Fee and Suits Valuation Act, 1958. As per these, writ jurisdiction of the Karnataka High Court is comprised of the following:

1. Writ Petition Habeas Corpus (abbreviated as “WPHC”) for all writ petitions praying for issuance of the writ of Habeas Corpus;
2. Writ Petition Civil Petition (abbreviated as “WPCP”) for all petitions filed under Article 227 of the Constitution;
3. Writ Petition (abbreviated as “WP”) for all petitions filed under Article 226.

For the purposes of this study, only the third of the above list has been considered i.e. civil writ petitions filed under Article 226 (WP). This is because, while WPHC forms a

very negligible component of the writ burden on the High Court as per the NJDG data,²² the WPCP is in fact not part of the writ jurisdiction of the High Court at all. The following section explains this in greater detail.

Article 226 vs. Article 227

The data on writ jurisdiction of High Courts is distorted due to the intermixing of petitions filed under Article 227, which vests supervisory jurisdiction in the High Court, with that of Article 226 petitions.²³ In theory, Article 226 is an all-encompassing source of both power and jurisdiction vested in all High Courts to issue orders and writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, or any of them. Therefore, a reference to ‘writ petition’ filed before a High Court must necessarily be restricted to the petitions filed under Article 226 of the Constitution. However, the procedural rules applicable to different High Courts for handling different category of cases, such as the Writ Proceedings Rules, 1977 applicable to the Karnataka High Court, define ‘writ petition’ to include petitions filed under Article 226 and/or Article 227 of the Constitution.²⁴ This overlapping of separate and distinct jurisdictions – writ and supervisory – vested under Article 226 and Article 227 respectively, has not only distorted the data available on writ petitions, but also resulted in abuse of the writ jurisdiction of the High Court.

Further, despite a separate ‘WPCP’ category for filing Article 227 petitions, the prevailing practice in Karnataka while filing a petition seeking to invoke the

²² As per the pendency data available on NJDG, only 19 WPHC cases are pending as opposed 44,438 WP Cases. <http://njdg.ecourts.gov.in/hcnjdg_public/main.php> Last accessed: 23rd January, 2018

²³ Article 227 of the Constitution confers upon the High Courts the power of superintendence over all subordinate courts and tribunals. This power is distinct from the writ of certiorari vested in the High Court under Article 226, even though the result to be achieved might be the same. The power of Article 226 is only judicial while the power under Article 227 is both judicial and administrative. See *Radhey Shyam v. Chhabi Nath* [(2015) 5 SCC 423], *Surya Dev Rai v. Ram Chander Rai* [2003 (6) SCC 675]; Also See The MLJ, *Manual on the Constitution of India* [1st edn., Lexis Nexis 2016] 3410-3418.

²⁴ The High Court Rules applicable for filing writ petitions in Chhattisgarh, Gujarat, Jharkhand, Karnataka, Kerala, Orissa, Patna, Himachal Pradesh and Meghalaya High Courts define writ petitions to include petitions under both Article 226 as well as Article 227.

supervisory jurisdiction of the High Court, is to file writ petitions under 'Article 226 read with Article 227' under 'WP-General Miscellaneous- CPC' classification.²⁵ Since these do not strictly fall within the definition of a writ petition (as used in this study), data of all 'WP-GM-CPC' classification has been removed from the primary database.²⁶ However, it is acknowledged that this in itself might not have eliminated the overlap of Article 227 petitions with the writ jurisdiction of the High Court.

Timeline

The study considers all civil writ petitions filed before the Bengaluru Bench for the period between January 2012 and December 2016 (five years), and before the Dharwad and Kalaburgi Benches between January 2014 and December 2016 (three years).²⁷ We were forced to circumscribe the timeline for Dharwad and Kalaburgi Benches since these Benches were allocated consecutive case-slot numbers only from 2014.²⁸ The five year time line for Bengaluru Bench was chosen to determine the efficiency of the Karnataka High Court by measuring disposal, pendency and delay rates against a reasonably representative and fixed timeline.

Further, the primary data of writ petitions was collected over a period of 20 days between 30th August, 2017 and 20th September, 2017. Therefore, the disposal, pendency and delay rates correlate to the status of the writ petitions during this period.

²⁵ We consulted a few practicing advocates before the Karnataka High Court who have confirmed that this is a popular practice among the Bar to not only keep the option of Appeal open, but also take advantage of the wide ranging jurisdiction under Article 226 to do justice.

²⁶ One of the ways of identifying petitions filed invoking supervisory jurisdiction of the High Court is that the respondents in such petitions are private parties, as opposed to a typical writ petition wherein the respondents are usually the Government, its departments or agencies.

²⁷ Both Dharwad and Kalaburgi Benches were made permanent in 2013. Notification dated 14th August, 2013, Ministry of Law and Justice (Department of Justice) <http://doj.gov.in/sites/default/files/NA2013%20%2014_0.pdf> Last accessed: 23rd January, 2018

²⁸ Notification No. HCBB – 253/2014, <<http://karnatakajudiciary.kar.nic.in/generalNotification/common/Cases-Slot-2015.pdf>> Last accessed: 23rd January, 2018

Primary data extraction

Since one of the stated purposes of this study is to understand ‘Government litigation’, an ideal way of procuring data would have been from the Government itself. However, comprehensive data on all the cases involving the State Government is currently unavailable.²⁹ Therefore, primary data of civil writ petitions was extracted directly from the Karnataka High Court website — <http://www.karnatakajudiciary.kar.nic.in>, and collated under the following headings:³⁰

1	Case number
2	Case status
3	Petitioner and Respondent details
4	Advocate for petitioner and respondent
5	Date of filing
6	Classification of writ petition
7	District of the Petitioner
8	Stage of pendency or disposal
9	Last order passed; last action taken
10	Number of orders uploaded on the website
11	Date of the orders passed
12	Judge before whom the case is listed

²⁹ In its Budget for the year 2017-18, the Government of Karnataka has proposed to set up a Karnataka Integrated Government Litigation Management System (KIGLMS) for the purpose of effective supervision, management and control over all types of government litigations. See Budget 2017-18, (Government of Karnataka, 15th March 2017) Pg. 131 <<http://www.finance.kar.nic.in/Bud2017/BS-Eng2017-18.pdf>> Last accessed: 22 January 2018.

³⁰ All the data extraction, database management and programming tasks for this Study were done by Sandeep Reddy, a freelance programmer. All software used for data extraction is open source. More specifically, extraction was done using a Raspberry Pi on a Linux Operating System, Javascript (node.js framework) and MS SQL Database. First, the total number of cases for each case type in each year was fetched using simple binary search algorithm and then created an empty data set in database with all the cases. Next, a web scraper module was created for scraping data from the Karnataka High Court website and the data set was populated by running the scrapping script with error-retry logic until the complete data was fetched including the orders. The programmer had to limit the number of queries to the server to an x number so as to not overuse the server resources. The entire data was collected over a period of 20 days between 30th August, 2017 and 20th September, 2017.

'BURDEN' OF WRIT JURISDICTION

The primary data shows that nearly three lakh individual writ petitions were filed before the Bengaluru Bench, and over sixty thousand before Dharwad and Kalaburgi Benches, across their respective timelines of five years and three years respectively. This appears to be a misleading and exaggerated picture of the burden of writ jurisdiction if one were to equate the 'burden' with the time invested by the judiciary to adjudicate the writ petitions.³¹

Under Rule 7 of the Writ Proceedings Rules, 1977, 'common or joint petitions' can be filed on behalf of '*several persons having similar but separate and distinct interest in the subject matter of controversy involving common questions of law and facts*'. Such a common petition will however be treated as equivalent to filing such number of writ petitions as there are petitioners and shall be numbered accordingly, while for all other purposes, they are treated as a single case.³² An illustration of a 'joint petition' can be seen below:

Case No.	Stage	Petitioner	Respondent	Petitioner Adv.	Respondent Adv.	Date of Filing	Classification	Last Date of hearing
41117/14	Case Disposed	Dr.B.R.Ambedkar Medical College	Uol	Satyanarayana P Hogade	ASG For R1-3	26/8/14	L(PG)	25/06/15
41119/14	Case Disposed	Dr.B.R.Ambedkar Medical College	Uol	Satyanarayan a P Hogade	Kalyan Basavaraj ASG For R1	26/8/14	L(PG)	25/06/15
41121/14	Case Disposed	Dr.B.R.Ambedkar Medical College	Uol	Satyanarayan a P Hogade	Krishna S Dixit ASG For R1	26/8/14	L(PG)	25/06/15
41122/14	Case Disposed	Dr.B.R.Ambedkar Medical College	Uol	Satyanarayan a P Hogade	Kalyan Basavaraj For R1	26/8/14	L(PG)	25/06/15

³¹ It is acknowledged that the burden posed by individual writ petitions, irrespective of whether they are 'joint petitions' or 'batch petitions', will be the same for the registry, that is the administrative side of the judiciary.

³² The court-fee payable on such writ petitions shall be the same as payable on the number of writ petitions, when filed separately. Section 6 (1) of the Karnataka Court- Fee and Suits Valuation Act, 1958, dealing with 'Multifarious suits', read with Rule 39 of the Writ Proceedings Rules, 1977 provides that court fee chargeable shall be an aggregate of the value of reliefs claimed, when separate and distinct reliefs are claimed based on the same cause of action in a single petition.

The above table shows that WP Nos. 41117- 41122/ 2014 were all heard and disposed of together. Therefore, the adjudication burden posed by these separately numbered writ petitions is equal to that of a single case.

Further, in practice, an advocate may file one writ petition per each individual petitioner, even if all such petitions deal with similar subject matter and claim more or less similar reliefs. The High Court usually clubs such petitions and treats them as 'batch petitions' to be heard and disposed of together. An illustration of 'batch petition' can be seen below:

Case No.	Stage	Petitioner	Respondent	Petitioner Adv.	Respondent Adv.	Date Of Filing	Classification	Last Date of Hearing
WP 173/2014	Case Disposed	Sri S Sudhakar	The State Of Karnataka	Rajagopal M R	V Y Kumar For R2 & 3	2/1/2014	LA(BDA)	25/7/14
WP 174/2014	Case Disposed	Sri Umesh	The State Of Karnataka	Rajagopal M R	V Y Kumar For R2 & 3	2/1/2014	LA(BDA)	25/7/14
WP 175/2014	Case Disposed	Sri P S Krishna Murthy	The State Of Karnataka	Rajagopal M R	V Y Kumar For R2 & 3	2/1/2014	LA(BDA)	25/7/14
WP 176/2014	Case Disposed	Smt Manjula	The State Of Karnataka	M R Rajagopal	V Y Kumar For R2 & 3	2/1/2014	LA(BDA)	25/7/14
WP 177/2014	Case Disposed	Smt S Sarvaman gala	The State Of Karnataka	Rajagopal M R	V Y Kumar For R2 & 3	2/1/2014	LA(BDA)	25/7/14
WP 178/2014	Case Disposed	Sri G M Narasimha Murthy	The State Of Karnataka	Rajagopal M R	C R Gopalaswamy For R2 & 3	2/1/2014	LA(BDA)	25/7/14
WP 179/2014	Case Disposed	Smt H C Sarojamma	The State Of Karnataka	M R Rajagopal	V Y Kumar For R2 & 3	2/1/2014	LA(BDA)	25/7/14

The above table shows that WP Nos. 173-179/ 2014, even though filed in the name of different petitioners, were heard and disposed by the High Court in one go. Here again, the burden of these seven separate writ petitions can be seen to be equivalent to a single 'case'.

Therefore, in both the above instances of 'joint petitions' and 'batch petitions', even though there are a large number of individual writ petitions filed, they pose the same adjudication burden on the High Court as a single case would, in terms of the time spent by the Judge in hearing and disposing of the same. Therefore, to arrive at an accurate depiction of the 'burden' of writ jurisdiction on the High Court, understood as above, we have counted joint petitions and batch petitions as being a single petition in each instance. Post this exercise, the following table shows the difference between the number of individual writ petitions filed and the burden posed by 'WP-Cases'.

Table 1: 'Burden' of Writ Petitions

Bench	Writ Petitions (WP)	'WP-Cases'
Bengaluru (2012-16)	298896	79078
Dharwad (2014-16)	38268	10743
Kalaburgi	21760	4970
TOTAL	358924	94791

The above table indicates that the actual burden of writ jurisdiction is roughly one-fourth of the total number of writ petitions filed before the Karnataka High Court.

It is pertinent to highlight here that this report is henceforth based on the study of 'WP-Cases' and not the individual writ petitions, unless the context otherwise makes it clear. The WP-Cases have been analysed to answer the following research questions:

Research questions

1. What is the present burden of writ jurisdiction on the Karnataka High Court?
2. What are the various subject matters under which writ petitions are filed and is there an identifiable pattern to it?
3. Which Government departments or agencies are most prone to writ jurisdiction of the High Court and why?
4. Are there legislative lacunae or systemic deficiencies which can be addressed to reduce the number of writ petitions being filed?
5. What improvements can be made at the judiciary level to enable efficient handling of existing burden of writ petitions?

Apart from the data collected as above, we have also interviewed advocates practicing before the Karnataka High Court, including the Additional Advocate General - Mr. Aditya Sondhi, to get their inputs on our observations, especially 'Government litigation'. As part of the methodology we also held a consultation session with researchers and practicing advocates, to get their comments on the methodology and conclusions arrived at in this report.

Limitations

The present study is based entirely on the data uploaded on the Karnataka High Court website. There are therefore certain limitations to data collection and analysis. We have tried to overcome these limitations by manually segregating data where possible.

1. **Lack of uniformity** – Example - Under the Respondent data, the “State of Karnataka” was entered in more than a dozen odd variations such as “Government of Karnataka”, “Govt. of Karnataka” etc., with several typographical errors.

2. **Lack of accuracy** – Example - Date of filing for W.P No. 4350/ 2016 was entered as 02/03/2012. Such errors had to be manually corrected in our analysis of pendency and delay rates.
3. **Incomplete Data** - Example: 60 percent of the cases before Bengaluru Bench do not have any orders uploaded.
4. **Classification of cases**

One of the serious shortcomings in this report is directly attributable to the unscientific method of classification of writ petitions. Classification of any case is important to understand the nature of the case, without going through the pleadings.

In the 'case types list' uploaded on the High Court website,³³ there are 24 'parent classifications' and 120 sub-classifications under which a writ petition can be filed before the Karnataka High Court. (See ANNEXURE 1) There is no uniformity as regards the basis on which classifications are made. The following sample shows the multiple criteria for classification of writ petitions:

- Subject matter of the petitions. Examples: Service, Land Acquisition, Education etc.
- Legislations under which the petitions are filed. Examples: Karnataka Village Offices Abolition Act (KVOA), Agriculture Produce Marketing Committee Act (APMC) etc.,
- Identity of specific authorities against whom the petitions are filed. Examples: Human Rights Commission, Co-operative Societies etc.; and

³³ List of case types in High Court of Karnataka (karnatakajudiciary.kar.nic.in) <<http://www.karnatakajudiciary.kar.nic.in/noticeBoard/casetypes.pdf>> Last accessed: 22 January 2018.

- General Miscellaneous (GM)- This is an all-encompassing parent classification under which there are 49 sub-classifications such as Police (GM-Police), Mines and Minerals (GM-MM-S), Family Court (GM-FC) etc.

Even though there are a total of 94 specific classifications (excluding GM sub-classifications), data for Bengaluru Bench reveals that 30 percent of the WP-Cases are filed under 'General Miscellaneous' classification. Even otherwise, when a WP-Case is filed under other parent classifications, majority are under the 'Residuary' sub-classification. This has unfortunately resulted in an incomplete analysis of a large category of WP-Cases, since only a physical inspection of the case files could have revealed the details of the subject matter of cases filed under 'General Miscellaneous' or a Residuary classification.

Glossary of Terms used in this report

1. **Batch Petition:** Multiple writ petitions clubbed by the High Court to be heard and disposed together, based on similarity of subject matter and nature of reliefs claimed in such petitions.
2. **Case-type:** All the categories of cases which can be filed before the Karnataka High Court as provided in the 'List of Case Types in High Court of Karnataka' available on the High Court website.³⁴ One of the case-type provided in the list is 'WP'- Writ Petitions.
3. **Classification:** The sub-categories listed under individual 'case-type' based on various criteria such as subject matter of the case, relief claimed etc. For example, 'Edn-Education' is one of the classification listed under case-type-Writ Petition.
4. **Delay:** A case that has been in the Court/ judicial system for longer than two years from the date of filing.³⁵
5. **Joint Petition:** Writ petitions which are numbered consecutively based on the number of petitioners in a 'common petition' filed under Rule 7 of the Writ Proceedings Rules, 1977, on behalf of several persons having similar but separate and distinct interest in the subject matter of controversy involving common questions of law and facts.
6. **Karnataka High Court:** The High Court of Karnataka including all three Benches located at Bengaluru, Dharwad and Kalaburgi.

³⁴ List of case types in High Court of Karnataka, see n (33)

³⁵ 245th Law Commission of India Report, see n (15)

7. **Parastatal agencies:** Entities which are wholly or partly controlled by a Government.
8. **Pendency:** All cases instituted but not disposed of, regardless of when the case was instituted.³⁶
9. **WP/ Writ Petition:** An individual petition filed under the case-type Writ Petition (WP) before the High Court of Karnataka
10. **WP-Case:** Either a single writ petition or a bunch of writ petitions counted as a single case if they have been filed as 'joint petition' or clubbed as 'batch petition' by the Court.

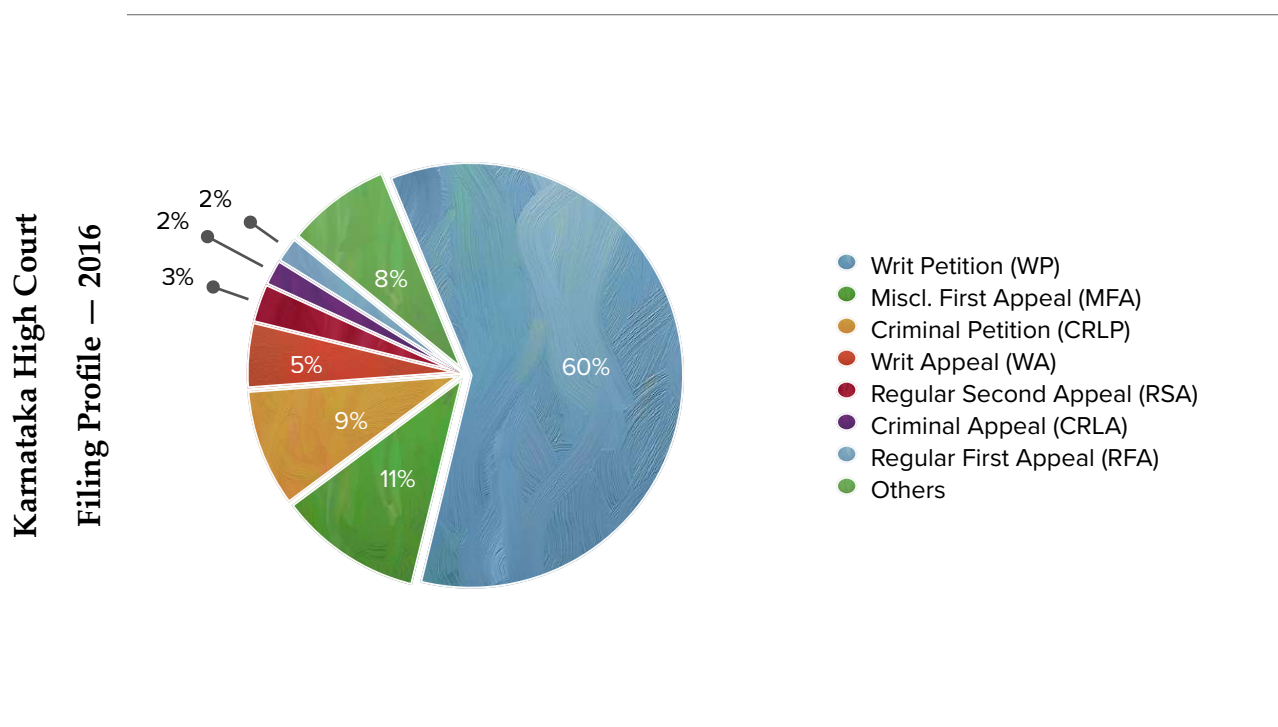
³⁶ 245th Law Commission of India Report, see n (15)

FINDINGS

I. FILING PROFILE

To understand the extent to which different jurisdictions of the Karnataka High Court are invoked, and to set in context the importance of writ jurisdiction, we collected data of all the cases filed before the three Benches of the Karnataka High Court for the year 2016. As shown in Figure 1 below, writ petitions constitute nearly 60 percent of all the fresh cases filed before the Karnataka High Court in 2016.³⁷

Figure 1: Constitution of cases before KHC-2016



³⁷ The data shown here is that of individual writ petitions, and not WP-Cases. In addition, for the purposes of this table, petitions filed under 'WP-GM-CPC' cases have not been eliminated.

As per DAKSH's report, writ petitions contribute to 32 percent of the 'workload' of the Karnataka High Court.³⁸ It is pertinent to clarify here that this is not in contradiction with the data discussed above, since DAKSH's analysis is based on all case types *pending* before the Karnataka High Court, irrespective of when the cases were filed. On the other hand, the 60 percent indicated above is based only on the fresh filings before the Karnataka High Court in 2016.

The above data affirms the findings of Law Commission Reports³⁹ that writ petitions, as a single class of cases, constitute the bulk of a High Court's case-load, and reiterates the need for a systematic analysis of the writ jurisdiction of the High Court.

Subject matter of writ petitions

As discussed earlier, the subject matter is understood through classification under which WP-Cases are filed. However, the data on classification hides more than it reveals, since a large number of them are filed under the 'General Miscellaneous' (GM) classification. Even though 'General Miscellaneous' itself has around 46 sub-classifications such as GM (DRT- Debt Recovery Tribunal), GM (FC- Family Court), GM (FE- Foreign Exchange) etc., nearly 37 percent of the cases under GM are filed under 'Residuary' sub-classification, thereby again foreclosing the option of deeper analysis of such cases.

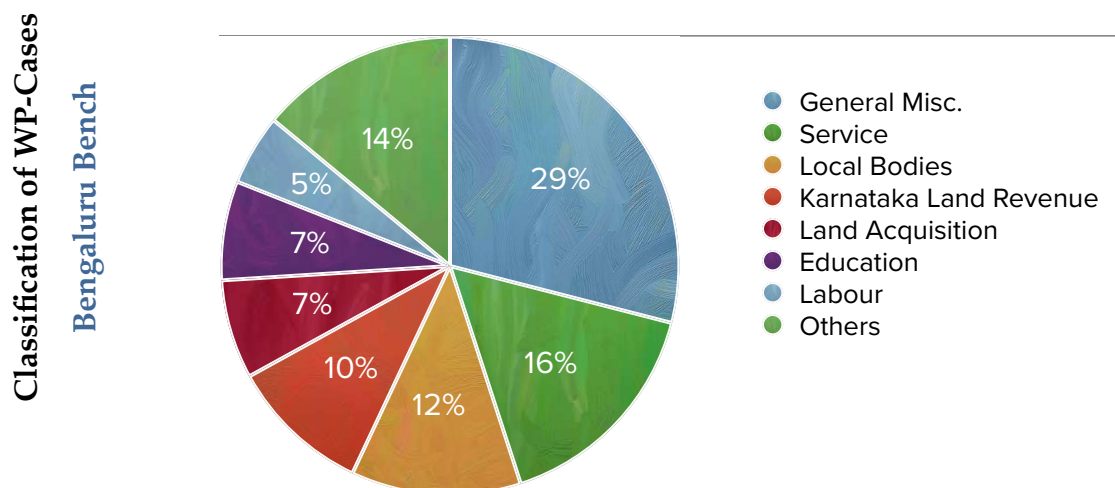
The following graph indicate the percentage of WP-Cases filed under a few dominant parent-classifications (*See Annexure 1*). This shows that apart from (GM), service, local bodies, land revenue, land acquisition and education form the subject matter of majority of WP-Cases before the Bengaluru Bench. For a detailed break-up of the prominent parent-classifications of WP-Cases filed before the three Benches separately, see

³⁸ DAKSH, State of the Indian Judiciary Report, see n (21) Chapter 1.

³⁹ Report of the Arrears Committee- 1989-1990 < <http://dakshindia.org/wp-content/uploads/2016/08/Malimath-89-90.pdf> >; 14th Law Commission Report, 'Reform of Judicial Administration', Volume 1 (1958) <<http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf>> Last accessed: 22 January 2018

Annexure 2. Interestingly, the dominant classifications are more or less the same across all three Benches.

Figure 2 Classification of WP-Cases



Petitioner Profile

A sample size study of three hundred WP-Cases filed before each of the three Benches depicts the disproportionality in the way judiciary is accessed.⁴⁰ The data shows that only 18 percent of WP-Cases were filed by female petitioners as opposed to 61 percent by male petitioners.⁴¹ Further, 4 percent of the WP-Cases were filed by the State itself. This correlates with the data on Respondent profile, which shows that 4 percent of WP-Cases are filed *against* private parties. A look at the subject matter of cases filed by each category of petitioner reveals that a bulk of WP-Cases filed by the State are under Labor (Karnataka State Road Transport Corporation) and Service (Central Administrative Tribunal / Karnataka Administrative Tribunal) category. For more details, see **Annexure 3.**

⁴⁰ The data is based on manual identification and segregation of WP-Cases under four Petitioner types- male, female, State (Centre and State Governments) and private entities.

⁴¹ DAKSH, 'Access to Justice Survey' (2015-16) <<http://dakshindia.org/wp-content/uploads/2016/05/Daksh-access-to-justice-survey.pdf>> Last accessed: 22 January 2018. DAKSH data, based on a survey of litigants all across the country also shows the skewed ratio in which male (84 percent) and female (15 percent) petitioners access judicial system.

The petitioner profile also reveals that, 'Government litigation' is comprised not only of cases filed *by* the Government, but mostly involves cases filed *against* it.⁴² Therefore, as mentioned earlier, the issue of Government litigation need to be tackled by addressing the systemic lacunas due to which citizens are forced to file cases against the Government.

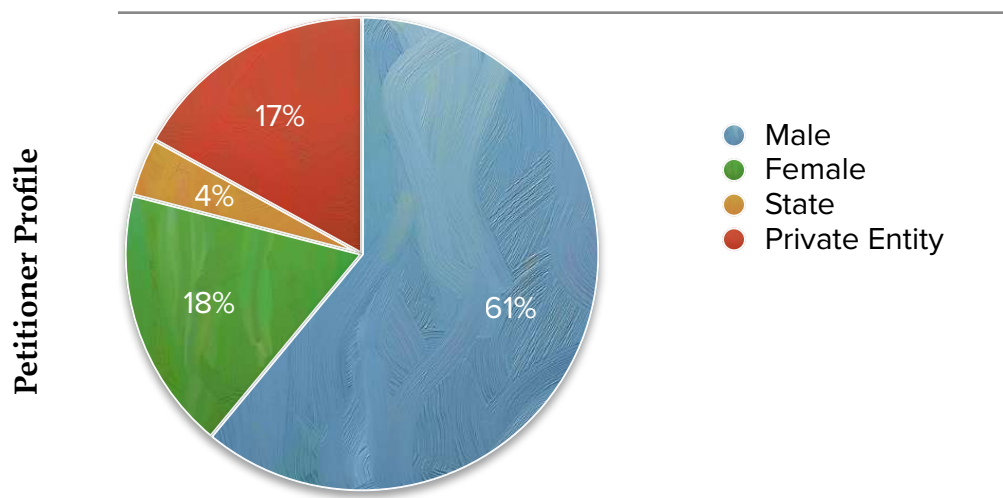


Figure 3: Petitioner Profile

Respondent Profile

One of the stated aims of this study is to identify the various levels of Governance against which writ jurisdiction is invoked. It is a truism that Government is the biggest litigant in the country. A recent Department of Justice document states that Government is involved in 46 percent of the cases pending before the judiciary.⁴³ This figure, albeit

⁴² In a Vidhi Report on the Supreme Court of India (SC), it is shown that only 7.4 percent of the fresh cases filed before the SC in 2014 were by the Central Government; Vidhi Centre for Legal Policy, 'Towards an Efficient and Effective Supreme Court' (2016) <<https://vidhilegalpolicy.in/reports/2016/2/8/towards-an-efficient-and-effective-supreme-court>> Last accessed: 22 January 2018

⁴³ <http://www.newindianexpress.com/thesundaystandard/2017/sep/24/government-goes-online-to-monitor-court-cases-1661700.html>; <http://doj.gov.in/page/action-plan-reduce-government-litigation>

unverified, does not reveal much about what constitutes 'Government litigation'. For a start, to a layperson, everything from a local panchayat to the Prime Minister's Office could be representative of the "Government". In addition, entities such as nationalized banks, cooperative societies, universities, etc., which most laypersons may not identify as "Government", are "State" for the purposes of Article 12 of the Constitution. Therefore, any attempt at understanding 'Government litigation' must start with identifying such departments or agencies which are most often involved in litigation, and thereby contribute to making the Government the biggest litigant. In the context of writ petitions, the need for identifying litigation prone departments becomes all the more important since the cause of action under a writ petition is violation of rights of citizens, which is a serious charge against the Government functioning as a 'welfare state'.⁴⁴

This study takes the first step in dissecting the identity of the 'Government', based on a manual exercise of segregating all the WP-Cases into six large 'buckets' based on the various levels of governance, as per below:⁴⁵

1. *State Government* which includes all departments under the State Government;⁴⁶
2. *Parastatal agencies of the State Government* i.e. agencies such as KSRTC, Universities etc. which are entities controlled wholly or partly by the State Government;
3. *Local bodies*⁴⁷ such as Bengaluru Development Authority (BDA), Bruhat Bengaluru Mahanagara Palike (BBMP) etc.;

⁴⁴ *Dilbagh Rai v. Uoi and Ors.* [AIR 1974 SC 130]

⁴⁵ It is pertinent to highlight here that the segregation is based only on the details of the first Respondent against whom the case is filed. We understand that this might have led to categorization of a few cases under the wrong Respondent – type. Therefore, we carried out a sample study of the cases which had 'State of Karnataka' as the first Respondent to see if the subsequent Respondents would result in a change in the 'Respondent –type' assigned to the case. Our sample study has revealed that there is infact scope for changing the Respondent-type, but overall, the margin of error is insignificant.

⁴⁶ Government Department Websites, Karnataka National Informatics Centre (kar.nic.in) <<http://www.kar.nic.in/govdepts.asp>> Last accessed: 22 January 2018

⁴⁷ The WP-Cases filed against Local Bodies have been segregated entirely on the basis of the classification, i.e. all cases filed under 'LB' classification have been shown under this Respondent - type.

4. *Central Government;*
5. *Parastatal agencies (Centre) such as nationalized banks, Information Commission etc.;*
6. *Private parties.*

The following chart depicts the division of WP-Cases under each Respondent-type before the Bengaluru Bench: (See **Annexure 2**)

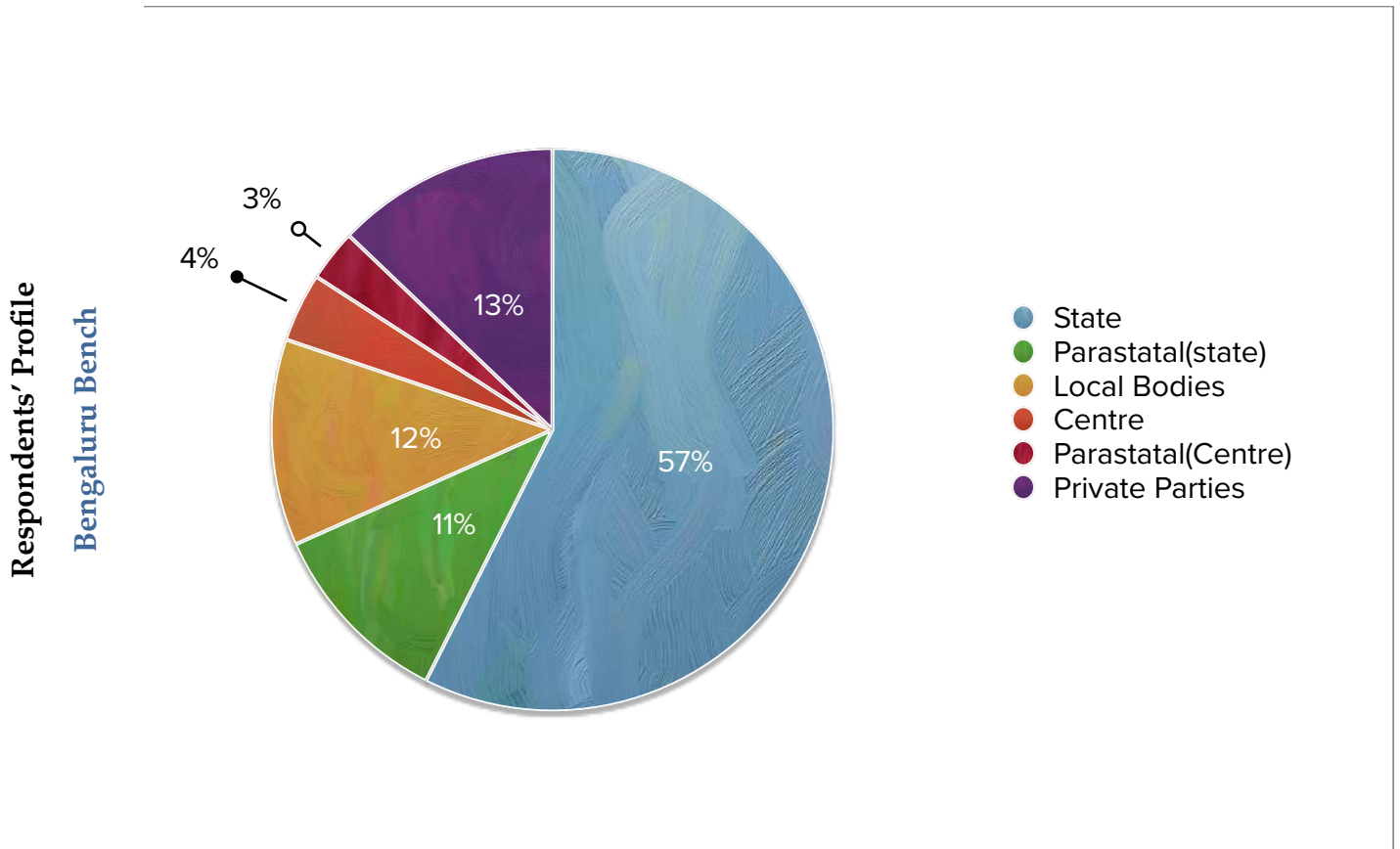


Figure 4: Respondent Profile

The above figure illustrates that nearly 80 percent of the WP-Cases filed before the Bengaluru Bench are against a combination of the first three Respondent-types, i.e. the State of Karnataka, Parastatal agencies (State) and the Local Bodies. Though it comes as no surprise that the writ jurisdiction is predominantly invoked against the Government functioning at various levels within the State, the subject-matter of the WP-Cases indicate that there is plenty that can be done to reduce the burden of writ jurisdiction.

Breakup of writ petitions against the Government

Though not exhaustive, the following list offers an insight into the identity of the State agencies and local bodies against whom the bulk of WP-Cases have been filed along with the subject matter of such WP-Cases. This is an analysis of WP-Cases filed before the Bengaluru Bench. (For more details see **Annexure 3**)

Table 2: Break-up of Government litigation

STATE GOVERNMENT		PARASTATAL AGENCY			LOCAL BODIES		
SUBJECT MATTER	NO. OF CASES	AUTHORITY	NO. OF CASES	SUBJECT MATTER	AUTHORITY	NO. OF CASES	SUBJECT MATTER
Service	6398	KSRTC	1831	Service and Labor	BBMP	3861	Service, Land Acquisition
Land Revenue	4544	KIADB	1181	Land Acquisition	BDA	3554	--do--
Land Acquisition	2778	KEB	802	Electricity			
Police	2510	Universities	779	Education			
Motor Vehicles	1672						
Education	1221						
SCST	1054						

The above table shows that a bulk of cases against the State Government are in relation to service, land revenue, land acquisition and police matters. As regards the parastatal agencies, the subject matter varies on the basis of the identity of the agency. While cases against KSRTC are in relation to labor and service matters, those against Karnataka Industrial Area Development Board (KIADB) are in relation to land acquisition matters. As far as local bodies are concerned, majority of the WP-Cases are filed under service and land acquisition matters against the BDA and the BBMP. This granular analysis of the nature of WP-Cases filed against each Respondent-type shows that there can never

be a 'one size fits all' policy to resolve the issue of Government litigation. The solutions proposed so far – National Litigation Policy and the State Litigation Policies, are high level solutions that only serve as a distant goal post to transform the Government into a 'model litigant'. However, in a run up to that distant future, a bottoms-up approach should be adopted to tackle the issue at various levels of governance.⁴⁸ In the following paragraphs, attempt has been made to understand the supply side issues leading to high incidence of writ cases under a few classifications and accordingly propose solutions unique to such classification and Respondent-type.

Land Acquisition matters

The above table shows that land acquisition is one of the common subject matters across all three Respondent-types. There are multiple legislations which empower the Government to acquire lands for various purposes within the State. A few of such legislations are the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR, 2013), the Karnataka Land Reforms Act, 1961, the Karnataka Town and Country Planning Act, 1961, the Karnataka Highways Act, 1964 etc. These enactments vest wide ranging powers in administrative officials to acquire land following due procedure, as well as resolve disputes in relation to land acquisition. For example, under the Karnataka Town and Country Planning Act, Chapter IX lays down procedure for land acquisition and Chapter VI empowers a Town Planning Officer to identify suitable lands for acquisition, establish identity of the owners, determine the amount of compensation to be paid to the owners etc. In discharging his duties as laid down under the enactment, a Town Planning Officer acts as a quasi-judicial authority.

A brief review of writ petitions filed under this subject matter, and our consultation with advocates who handle such matters, both on behalf of and against the

⁴⁸ Deepika Kinhal, "Tackling Government Litigation" <<http://www.thehindu.com/opinion/op-ed/tackling-government-litigation/article22444640.ece>> Last accessed: 22 January 2018

Government, reveals that the lack of expertise and training of such authorities to discharge judicial functions is one of the main contributing factors to the large number of writ petitions filed under this classification. To illustrate, in one of the writ petitions filed under Karnataka Land Revenue Act, 1964, challenging an order passed by the Assistant Commissioner, the Karnataka High Court, while quashing the order for being in violation of principles of natural justice, has observed that the quasi-judicial officer, *“ex facie demonstrates no knowledge of law.....and it is in the interest of the State that Revenue officers of the like should not be entrusted with discharge of quasi-judicial functions in the absence of aptitude to such posts unless trained in that regard”*.⁴⁹

In another recent decision of the Karnataka High Court,⁵⁰ while quashing the order passed by a quasi-judicial officer, the Court has once again made a scathing observation that *“Miscarriage of justice is a serious concern, since quasi-judicial authorities invested with jurisdiction of revision and appeal must be held answerable to the citizens. Absence of aptitude or skills of judgment writing as well as adjudication in such proceedings, demonstrates that incompetent persons are permitted to occupy posts of authority, leading to orders which are unsustainable, ex facie. Therefore, good governance requires appointing persons of caliber, aptitude and competence to such posts.”*

The above amply illustrate that even though legislations have provided for alternate remedies by vesting judicial powers in administrative officials, the same has failed to reduce the burden on the higher judiciary. To the contrary, as the numbers suggest, they are over burdening the writ jurisdiction of the High Court. This situation could be remedied either by providing compulsory legal training to all officers discharging quasi-judicial functions or in the alternative, by creating a separate class of quasi-judicial authorities who are qualified in law with the required years of experience.

⁴⁹ *Concord India Private Limited and Ors. vs. Assistant Commissioner, Bangalore North Sub-Division and Ors.* [2016(2)KarLJ227]

⁵⁰ *Krishnappa S. vs. The Assistant Commissioner, Chikballapur Sub-Division and Ors.* [2016(1) KarLJ 348]; Also See *Gowramma and Ors. v. The Asst. Commissioner, Bangalore North Division and Ors.*, [2016 (2) KarLJ 122]; *Manikant Lakamsey Nagda of Gadag and Ors. v. State of Mysore and Anr.* [AIR 1966 Kant 278]

Service related matters

The data suggests that service related writs form the largest bulk of writ petitions before the Karnataka High Court, next only to those under GM classification. Even though service and labor related cases are to be expected against any employer, particularly the Government which functions as one of the largest employers, it is the sheer number of such WP-Cases which is a cause for concern. A sample size survey reveals that most of these matters can be avoided by having better employment policies and grievance redressal mechanisms.

To illustrate, one parastatal agency which considerably stands out for contributing to service related petitions is KSRTC. Our data analysis of a hundred WP-Cases under Service (KSRTC) classification reveals that in less than 50 percent of such cases, the parties had approached Labor courts before invoking the writ jurisdiction, and in majority of such cases, it was the KSRTC which had filed the petition challenging the order of Labor Court. This is perhaps a good illustration of the oft-repeated statement regarding “Government being a compulsive litigant”. Further, where the parties had approached the High Court directly, the relief prayed for was in the nature of mandamus, directing the Respondent (KSRTC) to consider the representation of the employee-petitioner expeditiously.

Based on the above, the supply-side issues of writ petitions involving KSRTC can be addressed by (1) the Corporation adopting a better litigation policy; and (2) establishing a robust dispute resolution mechanism which inspires confidence among the employees, thereby reducing the instances of writ petitions filed before the High Court.

Education

Education is the sixth largest classification under which writ petitions are filed before the Karnataka High Court. The uniqueness of this subject matter is that it is not governed by a definite set of legislations and the identity of the Respondent might

range from a local Government School to a University. Given this, it is difficult to identify one single or even a set of solutions which might reduce the filing of education writs before the High Court.

The 124th Law Commission Report, recognizing that numerous disputes were brought to the High Courts in the field of education, recommended setting up of Educational Tribunals at the state and central level.⁵¹ Notwithstanding the fact that tribunalisation is a contentious solution in itself,⁵² it might not be the most suitable solution for education matters in particular. Our consultation with advocates handling education matters before the Karnataka High Court reveals that the subject matter of such writs might range from issues such as – attendance shortage, non-issuance of hall tickets etc., which affect individual students, to issues such as de-recognition of a University which affects thousands of students.⁵³ While the former can be handled by a tribunal, the latter must ideally be dealt by the High Court. Therefore, the issue of education matters clogging the writ jurisdiction of the High Court will require a well thought out solution, based on a focused study of such matters.

The above analysis of subject matters and Respondent-types shows that the main challenge in addressing the issue of ‘Government litigation’ lies in the myriad forms in which a Government operates and the variety of cases that each such form attracts. Therefore, the policy makers need to rethink their approach towards Government litigation by letting Governments at the lowest level design litigation policies that suit their respective departments. This will help address the intertwined problems of Government litigation as well as judicial overload.

⁵¹ 124th Law Commission of India Report, see n (1) Page 6.

⁵² Vidhi Centre for Legal Policy, ‘State of the Nation’s Tribunals’ Reports (2015) <<https://vidhilegalpolicy.in/events-updates/2015/5/19/state-of-the-nations-tribunals>> Last accessed: 22 January 2018

⁵³ ‘Karnataka HC sets deadline or UGC to consider KSOU plea’ (The Hindu, 22nd November 2017) <<http://www.thehindu.com/news/national/karnataka/karnataka-hc-sets-deadline-for-ugc-to-consider-ksou-plea/article20629755.ece>> Last accessed: 22 January 2018

District Profile

Karnataka High Court is one of eight High Courts in India which functions from more than one Bench. The Dharwad and Kalaburgi Benches were first set up in 2009 as circuit Benches⁵⁴ and then made permanent Benches in 2013.⁵⁵ These additional Benches of Karnataka High Court were set up in response to a long standing demand of more than fifty years, on the ground that the High Court in Bengaluru was too far for ordinary citizens to travel, thereby directly affecting their right to access justice.⁵⁶ In the 230th Law Commission Report, the sole criteria recommended for establishing new Benches is that the litigants should not be required to travel long to reach courts.⁵⁷

The following table shows the consolidated list of districts of the petitioners who have filed WP-Cases before the three Benches. For the sake of uniformity and ease of comparison, WP-Cases filed only between 2014 and 2016 is shown in the below table across all Benches.

The table presents interesting insights as to the manner in which writ jurisdiction of Karnataka High Court is accessed across different regions in Karnataka. As expected, Bengaluru (city) exceeds every other district by a significant margin. The other important trend emanating from the Bengaluru Bench, worthy of a deeper analysis, is the large number of WP-Cases arising from the coastal region (Dakshina Kannada) of Karnataka and surrounding districts i.e. Udupi, Mangaluru, Shivamoga and

⁵⁴ 'Establishment of Permanent Benches of Karnataka High Court at Dharwad and Gulbarga Districts in the State of Karnataka' (Press Information Bureau, Government of India 4th June 2013) <<http://pib.nic.in/newsite/mbErel.aspx?relid=96410>> Last accessed: 22 January 2018

⁵⁵ The jurisdiction of Dharwad Bench is in respect of cases arising in the districts of Bagalkot, Bellary, Belgaum, Dharwad, Gadag, Haveri, Uttara Kannada- Karwar and Koppal, while that of Kalaburgi Bench is in respect of cases arising in the districts of Bidar, Bijapur, Kalaburgi and Raichur. Notification dated 14th August, 2013 published in Gazette by Government of India, Ministry of Law and Justice (Department of Justice) <http://doj.gov.in/sites/default/files/NA2013%20%2014_0.pdf> Last accessed: 22 January 2018

⁵⁶ 'A dream finally comes true for north Karnataka' (The Hindu, 4th July 2008) <<http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/A-dream-finally-comes-true-for-north-Karnataka/article15254478.ece>> Last accessed: 22 January 2018

⁵⁷ 230th Law Commission of India Report, 'Reforms in the Judiciary – Some Suggestions' (2009) <<http://lawcommissionofindia.nic.in/reports/report230.pdf>> Last accessed 30 January 2018.

Table 3: District Profile

BENGALURU		DHARWAD		KALABURGI	
Bengaluru City	24263	Belagavi	2889	Kalaburagi	1732
Mysuru	3012	Dharwad	2522	Vijayapura	1294
Tumakuru	2324	Bagalkot	1244	Bidar	996
Mangaluru	2098	Ballari	1162	Raichur	796
Mandya	1389	Haveri	796	Yadgir	283
Shivamogga	1413	Karwar	777	Koppal	4
Davangere	1359	Koppal	646	Bagalkot	1
Hassan	1442	Gadag	511	Hassan	1
Kolar	1306	Bengaluru City	53	Bengaluru City	1
Udupi	1142	Vijayapura	31	TOTAL	5109
Chitradurga	1109	Raichur	16		
Chickballapur	1019	Davangere	13		
Bengaluru Rural	1074	Kalaburagi	12		
Chikkamagaluru	882	Shivamogga	10		
Ramanagar	803	Bidar	6		
Madikeri	540	Chitradurga	6		
Chamarajnar	474	Kolar	4		
Ballari	397	Mangaluru	4		
Belagavi	280	Udupi	2		
Kalaburagi	208	Hassan	2		
Dharwad	196	Chikkamagaluru	1		
Vijayapura	164	Yadagiri	1		
Bidar	142	Tumakuru	1		
Karwar	128	Mysuru	1		
Bagalkot	142	Chickballapur	1		
Raichur	137	TOTAL	10711		
Haveri	87				
Koppal	97				
Gadag	46				
Yadgir	18				
TOTAL	47691				

Chikmagalur. A combination of WP-Cases from this region (5,535) is comparable to the number of WP-Cases being filed before the Kalaburgi Bench (5,109). This data, though limited to writ jurisdiction of the High Court, definitely adds credence to the long pending demand for a separate Bench in Mangaluru.⁵⁸ This is especially so in light of the fact that the coastal region is much further away from Bengaluru Bench (Mangaluru is roughly 345 kilometers from Bengaluru) when compared to Mysuru (159 kilometers), which gives rise to similar number of WP-Cases.

Further, the number of WP-Cases before the Dharwad and Kalaburgi Benches form only one-third of the case load of WP-Cases before the Bengaluru Bench. This is a factor that ought to be considered while allocating judges between the three Benches.

II. DISPOSAL RATE

In the 14th Law Commission of India Report, it is recommended that writ petitions should ideally be disposed of within 6 months (180 days) from the date of their institution.⁵⁹ Our data shows that the average number of days to dispose a WP-Case before the Bengaluru, Dharwad and Kalaburgi Benches are 194, 188 and 223 days respectively. This indicates that the Dharwad Bench fares slightly better in comparison to the other two Benches and is closer to the ideal time limit set by the Law Commission Report.

However, a more accurate depiction of disposal time would be the median number of days as per which, Bengaluru Bench fares much better than other two Benches. Recently, there have been reports that due to the decreasing number of Judges allocated

⁵⁸ Vinobha KT, 'Advocates demand Circuit Bench of High Court in Mangaluru' (The Times of India, 10th September 2015) <<https://timesofindia.indiatimes.com/city/mangaluru/Advocates-demand-Circuit-Bench-of-High-Court-in-Mangaluru/articleshow/48902169.cms>> Last accessed: 22 January 2018

⁵⁹ 14th Law Commission of India Report, see n (6) Volume II, Page 670.

to Dharwad and Kalaburgi Benches, the arrears and case-load of these Benches is increasing.⁶⁰

Table 4 Average and Median days to dispose WP-Cases

Number of days taken to dispose WP-Case			
(2014-2016)	BENGALURU	DHARWAD	KALABURGI
Average (days)	194	188	223
Median (days)	111	129	154

A further analysis of the disposal rates for the Bengaluru Bench, as seen below, reveals that at the end of 2016, 69 percent of WP-Cases filed between 2012 and 2016 have been disposed of. A direct take-away from this is that 31 percent of WP-Cases filed between 2012 and 2016 remain pending at the end of 2016. Even though this is far from ideal, one must bear in mind that most of the pending WP-Cases are the ones filed in 2015 and 2016.

Table 5 Disposal Rate before Bengaluru Bench

DISPOSAL RATE BEFORE BENGALURU BENCH						
BENGALURU	2012	2013	2014	2015	2016	TOTAL
Filed	14268	15516	15076	17211	17007	79078
Disposed	12491	12344	11058	10113	8321	54327
Ratio	88%	80%	73%	59%	49%	69%

Though the table on disposal rate before Bengaluru Bench (Table 6) amply illustrates that the disposal rate is directly correlated to the year of filing, a further analysis is

⁶⁰ In 2008, five judges were posted to Dharwad and Kalaburgi, each. However, with effect from August 14th, 2017, only three judges have been posted in Kalaburgi and five judges in Dharwad. Praveen B Para, 'Shortage of judges hits work in Kalaburgi, Dharwad Benches of the High Court' (The Hindu 26th June 2017), <<http://www.thehindu.com/news/national/karnataka/shortage-of-judges-hits-work-in-kalaburagi-dharwad-benches-of-the-high-court/article19146439.ece>> Last accessed: 22 January 2018

essential to see the extent of such correlation. The table below (Table 7), which contains year-wise break-up of disposal rates before the Bengaluru Bench shows that approximately 60 percent of the cases disposed, are disposed within a year of the case being filed. For the year 2012, it is seen that 85 percent of the cases disposed were disposed in the first two years of filing itself, while the remaining 15 percent has staggered over five years. Overall, 12 percent of the cases filed in 2012 continue to remain pending at the beginning of 2017, i.e. five years after their initiation (Table 6). This shows that the challenge lies in ensuring speedy disposal of such cases which seem to get stuck in the judicial system for variety of reasons, including inefficient listing system followed in the Karnataka High Court.

Table 6: Years of disposals – Bengaluru Bench

YEAR OF DISPOSALS – BENGALURU BENCH						
Filed/Disposed	2012	2013	2014	2015	2016	2017
2012	55%	29%	8%	3%	2%	2%
2013		58%	26%	8%	5%	3%
2014			59%	25%	10%	7%
2015				58%	30%	12%
2016					62%	38%

The above analysis shows that the disposal rate in itself is not useful in determining whether a Court is efficiently handling its case-load, given that the quantum of disposed cases is related to the year of filing. Therefore, disposal rate must be studied in combination with the year of disposal, to understand if, and to what extent, the High Court is adding to its backlog.

III. PENDENCY RATE

The following table is based on the data available on NJDG-High Court website.⁶¹ It represents the number of writ petitions pending per year between 2012 and 2016, across seven different high courts. The numbers of writ petitions pending will be proportional to the number of cases filed, which might vary vastly across high courts. However, the value depicting the percentage pendency per year is a figure which can be used to compare performances of different High Courts.

Table 7: Pendency rate across High Courts

	2012	2013	2014	2015	2016	Slope
Calcutta HC	4252	5574	5477	6005	7364	
% pendency	0.15	0.19	0.19	0.21	0.26	0.03
Madras HC	10931	14780	19226	20191	21145	
% pendency	0.13	0.17	0.22	0.23	0.25	0.03
Gujarat HC	2109	2746	3224	4692	7064	
% pendency	0.11	0.14	0.16	0.24	0.36	0.06
Karnataka HC	2719	4470	6363	10917	13128	
% pendency	0.07	0.12	0.17	0.29	0.35	0.07
Bombay HC	4266	5302	8579	10802	17998	
% pendency	0.09	0.11	0.18	0.23	0.38	0.07
Delhi HC	732	809	1119	2344	3033	
% pendency	0.09	0.10	0.14	0.29	0.38	0.07
Punjab & Haryana HC	2089	3099	4306	6746	10354	
% pendency	0.08	0.12	0.16	0.25	0.39	0.08

⁶¹ NJDG High Court data <http://njdg.ecourts.gov.in/hcnjdg_public/> Last accessed on 2nd February, 2018

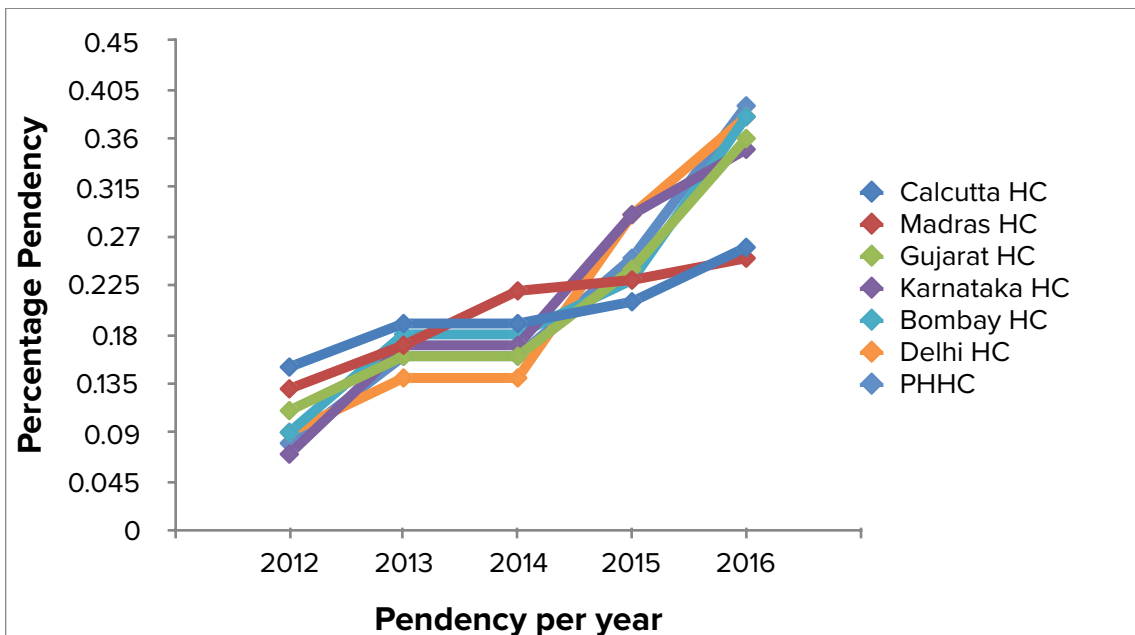


Figure 5: Pendency rates across High Courts

As per the above table and the accompanying graph, the High Courts of Punjab and Haryana, Bombay and Karnataka, are performing better than the High Courts of Calcutta, Madras and Gujarat. This is because, in the better performing High Courts, the percentage of cases pending decreases significantly the farther back in the timeline one goes (steeper the slope, better the performance). This data also shows that the Delhi High Court, despite having the least number of cases pending, is a medium performing High Court. Similarly, even though Gujarat High Court and Calcutta High Court have more or less similar number of cases pending, the latter fares far worse in handling its backlog of cases compared to the Gujarat High Court. This table shows that Karnataka High Court, though one of the better performing High Courts, has a lot of scope for improvement.

IV. DELAY RATE

As discussed in a Vidhi Report on the judicial delay in Delhi High Court, it is difficult to ascertain the 'normal time' that should be taken to dispose of different category of cases.⁶² Even so, based on several committee Reports which have delved on this issue, an upper limit of two years is considered to be ideal for disposing *any* type of case.⁶³ Even though writ jurisdiction is usually treated with priority and prescribed much lesser time limit of 6 months, for the purposes of this analysis, we have taken two years as the benchmark beyond which a WP-Case is counted as delayed.

To understand the extent of delay, we have focused only on the Bengaluru Bench, since we are restricted by data availability of only 3 years for the Dharwad and Kalaburgi Benches.

As per our analysis, 20 percent of the WP-Cases filed between the years 2012 and 2014 were still pending before the High Court at the end of 2016.

Table 8 Delay Rates before Bengaluru Bench

BENGALURU	2012	2013	2014	TOTAL
Filed	14268	15516	15076	44860
Pending	1777	3140	3979	8896
Percentage	12%	20%	26%	20%

The following table shows the classification of WP-Cases with more than the average percentage of delayed cases. Though there are several other classifications under which

⁶² In *P Ramachandra Rao v. State of Karnataka* (2002) 4 SCC 578, a seven judge Bench held that no mandatory timelines can be prescribed for cases, however timeframes for disposal of cases can be used as guidelines for the Courts. For a more detailed discussion on the problems of setting strict timelines: 245th Law Commission of India Report, see n (15); Vidhi Centre for Legal Policy, 'Inefficiency and Judicial Delay: New Insights from the Delhi High Court' (2017) <<https://vidhilegalpolicy.in/reports/2017/3/29/inefficiency-and-judicial-delay-new-insights-from-the-delhi-high-court>> Last accessed: 22 January 2018

⁶³ 245th Law Commission of India Report, see n (15)

the delay percentage is much more, they are mostly outliers since the number of cases filed under such classifications were insignificant to begin with. For example, under GM (Money Lenders/ Pawn Brokers Act) classification, our data shows that 71 percent of the WP-Cases are delayed. However, it is seen that from 2012 to 2014, only 7 cases have been filed under this classification and 5 of them remain pending at the end of 2016. In the larger context of this study, this is too small a number to focus and deliberate upon. Therefore, in the below table, only such classifications which have more than a hundred WP-Cases pending at the end of 2016 have been listed.

Table 9: Classifications with more than average delay

Classification	Delay Percentage (2012-14)	Number of WP-Cases delayed
SCST	52%	416
LR(RES)	40%	152
LA(BDA)	40%	399
L(TER)	38%	225
S(DIS)	38%	127
S(R)	37%	158
S(PRO)	36%	161
LR(SEC 48-A)	36%	101
L(KSRTC)	33%	296
L(RES)	33%	191
LR	31%	177
LB(RES)	28%	573
S(RES)	25%	1002
KLR(RES)	24%	373

The above data shows that the classifications which have a significantly higher delay percentage WP-Cases under SCST, land revenue, land acquisition, labor and service.

The most prominent of the lot is the SCST classification which has a staggering 52 percent of WP-Cases being delayed. A sample study of SCST cases shows that most of these are filed under the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. Our consultation with practicing advocates revealed that such cases require a relook into property transfers across decades and generations, which requires more time being spent on such cases, leading to delay in disposing them. In fact, the Supreme Court, while dealing with an appeal from a decision of the Karnataka High Court in a writ petition filed under this specific classification, has observed that such cases tend to over-stretch the writ jurisdiction of the High Court and held that *“the High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence....”*⁶⁴

Therefore, it is suggested that for cases requiring the High Court to go into lengthy appreciation of evidence, it must appoint enquiry commissioners or send specific questions of fact to a subordinate court to give its findings based on evidence.⁶⁵ This would not only be in the interests of efficacious disposal of such cases, but also allow for an increase in judicial time to handle other cases.

The problem of pendency and delay plagues the judiciary at all levels.⁶⁶ In the context of writ jurisdiction, this problem assumes more significance given that it not only inconveniences the citizens whose rights are threatened, but also hampers the State’s discharge of administrative functions.⁶⁷ The above analysis of pendency and delay rates in the context of writ jurisdiction of the Karnataka High Court shows that the issue of

⁶⁴ ‘Writ jurisdiction only to avert miscarriage of justice’ (The Hindu, 20th January 2008) <<http://www.thehindu.com/todays-paper/tp-national/Writ-jurisdiction-only-to-avert-miscarriage-of-justice/article15169633.ece>> Last accessed: 25 January 2018; *B. K. Muniraju v. State of Karnataka and Ors.* [Appeal (civil) 1320 of 2008]

⁶⁵ *T C Basappa v. T Nagappa and Anr.* [1954 AIR 440]; *Surya Dev Rai v. Ram Chander Rai and Ors* [(2003) 6 SCC 675]

⁶⁶ 245th Law Commission of India Report, see n (15)

⁶⁷ 14th Law Commission Report, see n (6) Volume II, Page 661.

judicial delay is not only enormous, but also complex.⁶⁸ As a first step, the problem needs to be appreciated not only in terms of sheer numbers, but also in terms of dissecting the nature of cases which get stuck in the system and the reasons for the same. Even though a comparison with other High Courts shows that Karnataka has one of the better performing High Courts, the analysis on Government litigation and delayed cases show that plenty can be done both by the Government and the Judiciary to set Karnataka High Court as a bench mark in efficient handling of writ jurisdiction.

⁶⁸ 245th Law Commission of India Report, see n (15)

RECOMMENDATIONS

There are three basic models for reducing court delay and expediting justice- first, making use of the existing resources of the court more efficiently; second, reducing the demand for court services and resources; and third, expanding court resources to meet the increasing demand for court services.⁶⁹ The recommendations listed out in this chapter are based on all three models described above.

I. REGISTRY/ HIGH COURT ADMINISTRATION LEVEL

1. **Case Information System:** It is imperative that all relevant data of a case is uploaded on the Karnataka High Court website accurately and regularly. Allowing judges to have discretion on this aspect reduces efficiency, adversely affects access to justice and also fundamentally affects uniformity. Hence, in furtherance of the stated objectives of e-courts initiative- fair and efficient management of case load, and citizen's access to information⁷⁰, the administrative side of the High Court should improve its case information system. This can be done through further automation to avoid human errors, and by applying a uniform case updating system across court halls and Benches of the Karnataka High Court.⁷¹

⁶⁹ S. Shetreet. 'The Limits of Expeditious Justice', *Expeditious Justice*, 1 at 15, in Law Commission of India, "Resource Allocation for Infrastructural Services in Judicial Administration- (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint) Report No. 127 (1988) <<http://lawcommissionofindia.nic.in/101-169/report127.pdf>> Last accessed: 22 January 2018

⁷⁰ High Court of Karnataka e-Newsletter (Volume 1) (January 2015) <<http://karnatakajudiciary.kar.nic.in/enewsletter/e-Newsletter-V1.pdf>> Last accessed: 22 January 2018

⁷¹ For a more detailed analysis of the shortcomings and scope for improvements in data management system in the High Courts: DAKSH, State of the Indian Judiciary Report, see n (21) Chapter 1.

2. **Classification:** A major limitation faced in this study is attributable to the existing classification system. Even earlier, the shortcomings of the existing method of classification adopted by various High Courts have been highlighted.⁷² In DAKSH's Report on 'State of the Indian Judiciary', there is a detailed analysis on the shortcomings of the existing system of segregating cases into different 'case-types' and 'classifications', based on a data comparison of similar cases across different High Courts. The need for a more logical method of classification of cases cannot be exaggerated. In fact, the advantages of classifying cases was amply illustrated by a Madras High Court Judge (Retd.) – Justice Chandru, who by classifying cases assigned to his Bench on the basis of subject-matter, number and cause of action, was able to dispose of a commendable 90,000 cases in less than seven years.⁷³ This shows that it is in the interest of the Judiciary- both on the judicial and administrative side,⁷⁴ as well as the ordinary citizens of the country, that the High Court over-hauls its existing classification system.

The purpose of classification of any case is to enable: (i) the registry to segregate cases under different case-types, to be sent to their respective scrutiny branches; (ii) equitable allocation of cases before different Benches; and (iii) listing of cases in daily cause-lists released for individual Benches, as per the priority and urgency of cases.⁷⁵ Therefore, the classification of a case should be able to give a comprehensive

⁷² Both the Satish Chandra Committee Report and the Malimath Committee Report have paid some attention to increasing efficiency of judiciary by proper case management at the Registry level. Malimath Committee Report suggests subject wise grouping of writ matters such as Labor cases, service matters, tax matters etc. See 'Report of the Arrears Committee-1989-1990' (para 8.7, page 35) accessed at <<http://dakshindia.org/wp-content/uploads/2016/08/Malimath-89-90.pdf>> Also see DAKSH, State of the Indian Judiciary Report, see n (21).

⁷³ Anuj A, "Never be afraid. Ultimately, you can't die every day." – Justice (Retd) Chandru of the Madras High Court' (Bar and Bench, 2nd September 2013) <<https://barandbench.com/never-be-afraid-ultimately-you-cant-die-every-day-justice-ret-d-chandru-madras-high/>> Last accessed: 25 January 2018

⁷⁴ DAKSH, State of the Indian Judiciary Report, see n (21) Chapter 6.

⁷⁵ Karnataka Judiciary Cause List, <http://www.karnatakajudiciary.kar.nic.in/entire_cause_list.asp>

and accurate picture of the entire case, without having to go through the pleadings filed.⁷⁶

To achieve the above purpose, we propose that the registry classify all writ petitions based on two parameters: (i) principal subject matter⁷⁷ and (ii) relief claimed. For example: If a writ petition is filed challenging an order passed by the Deputy Commissioner under Section 5A of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Land) Act, 1978 (“PTCL Act”), on the grounds that the Deputy Commissioner has erroneously upheld the transfer of a ‘grant land’ in violation of Section 4 of the PTCL Act, and the relief claimed is to quash the order passed, the writ petition should be classified as follows:

In the High Court of Karnataka
(Bengaluru Bench)
W.P. No. ____/ 2018
Subject Matter- Transfer of Property
[PTCL Act-Section 4]
Relief- Certiorari

The above two step classification will create a distinct identity for each case, which will help both the registry and the Bench to segregate the cases appropriately. Under the current system, the above petition would have been classified as ‘SCST’ which does not tell us anything about the subject matter of the case, but instead misleads into assuming that the petition might be related to Scheduled Caste and Scheduled

⁷⁶ In a Law Commission of India consultation paper on case management, it is suggested that at an early stage of filing itself, the Courts segregate simple, medium and complex cases, so that the former two can be fast tracked. This, it suggests, can be done through assigning a particular identity based on the subject and statute involved. See page 12: Justice M. Jagannadha Rao, ‘Case Management and it’s Advantages’, Law Commission of India Conference <http://lawcommissionofindia.nic.in/adr_conf/mayo%20rao%20case%20mngt%203.pdf> Last accessed: 25 January 2018.

⁷⁷ *Ibid.*

Tribe (Prevention of Atrocities) Act, 1989, which is a more well-known legislation related to Scheduled Castes and Tribes.

The responsibility of assigning appropriate classification to a writ petition should be on the Petitioner counsel. This can be enforced by amending Form 1 appended to the Writ Proceedings Rules, 1977, to include a compulsory ‘classification paragraph’ in every writ petition, identifying the law and the legal provision under which the writ petition is filed, and the relief that is being sought.

3. **Listing:** The registry of the Karnataka High Court releases a daily cause-list of cases listed before individual Benches. This cause-list is usually updated and released around 6 PM on a daily basis. A sample survey of cause-lists uploaded on the Karnataka High Court website⁷⁸ shows that more than 50 percent of the cases listed for hearing on any particular day is under the ‘Court Hall moved’ category. This means that the case has been listed only because either of the parties submitted a memorandum of request to the Bench, to list their case in the next day’s cause list.⁷⁹ The other cases in the cause-list are either ‘date given’ cases, or such cases which are listed by the Registry based on various unknown parameters.

The above system seems arbitrary and escalates inefficiencies of the judiciary. In matters where a ‘memorandum for listing’ is moved, the Court has no control over the case and this has led to unholy nexus between counsels and the registry officials, at whose discretion a case-file moves through layers of administration to reach the Court Hall. Further, in such cases where the registry lists cases on its own, given that the cause-list is released only at 6 PM the previous day, most of such cases are prone

⁷⁸ Karnataka High Court Principle Bench, Daily Cause List (Consolidated) <<http://www.karnatakajudiciary.kar.nic.in/ConsolidatedCauselist/consolidation.htm>>

⁷⁹ Earlier, only in exceptional cases, Bench would accept a ‘memo for listing’, if the counsel moving the memo showcased some need or urgency due to which the matter deserved to be taken up by the Court expeditiously. But nowadays, most of the Court Halls accept memos through Bench clerks, without any oral submission being made by the counsels moving memo.

to being adjourned at the request of either of the parties' counsels. Particularly in the case of writ petitions, where the Court and Government Counsels rely on state departments which are prone to systemic inefficiencies, such ad-hoc listing of cases causes avoidable delay in disposal of cases. A sample survey of the WP-Cases which have more than average rate of delay, shows that only in 48 percent of such delayed cases, a listing order was given, and even there, a case was listed as per the order only when a specific date was given as opposed to where the orders simply read 'list after x weeks'.

Therefore, it is critical that the Karnataka High Court overhauls its existing listing system. The Delhi High Court follows a system of giving advance dates in all the matters that come up before it. It is time for Karnataka High Court moved towards such a listing system, in the interest of efficiency and predictability.

II. JUDICIARY LEVEL

1. **Misleading Writ Petitions:** In one of the earlier paragraphs, we have dealt with in detail the practice among Karnataka Bar to couch Article 227 petitions as writ petitions. One of the reasons for such a practice is to overcome the lack of appeal provision against an order passed in an Article 227 petition.⁸⁰ Such practice prevails not only in Karnataka, but also in various other High Courts. Even the Supreme Court has taken note of the same and censured the bar for overburdening the High Court with misleading writ petitions.⁸¹ The Karnataka State legislature must take

⁸⁰ As per Section 4 of the Karnataka High Court Rules, 1959, an appeal shall lie to a division Bench of the High Court only from an order passed by a single Judge in the exercise of *original jurisdiction* of the High Court. Since Article 227 invokes supervisory jurisdiction, no appeal is available against an order passed in an Article 227 petition. *Gurushanthh Pattedar v. Mahaboob Shahi Kulbarga Mills and Ors.* [ILR 2005 KAR 2503]; *Tamanna and Ors. v. Miss Renuka and Ors.* [ILR 2009 KAR 1207]

⁸¹ *Surya Dev Rai v. Ram Chander Rai* [AIR 2003 SC 3044]- The Supreme Court, based on a review of decided cases observed that the facts and circumstances wherein the High Courts have issued writ of certiorari or exercised supervisory jurisdiction under Article 227 indicates that the distinction between the two jurisdictions stands almost obliterated (para 24). However, in subsequent cases such as *Radhey Shyam & Anr. V. Chhabi Nath* [(2009) 5 SCC 616] (para 23), *Shalini Shyam v. Rajendra Shankar* [(2010) 8 SCR 836] (para 26(b)), the Supreme Court has warned against erroneous application of *Surya Devi* case and reiterated that history of conferment of writ jurisdiction is substantially differed from conferment of the power of superintendence on the High Courts under Article 227.

steps to eliminate this overlap of writ and supervisory jurisdiction in the applicable law, and the High Court must instruct the registry to refrain from accepting Article 227 petitions couched as writ petitions under Article 226. Judges must discourage the filing of such misleading petitions by refusing to entertain them and imposing costs.⁸²

- 2. Frivolous Writ Petitions:** A sample study⁸³ of WP-Cases filed under the classification of Debt Recovery Tribunal (DRT) reveals that 64 percent of the cases were either dismissed preliminarily or withdrawn. Further, a study of such cases which were disposed of in less than 30 days of their institution, shows that in 85 percent of them, the cases were either dismissed or withdrawn. On the basis of this data, one can reasonably assume that most of such DRT writ petitions were frivolous, filed with an intention to buy time.⁸⁴ This observation has also been echoed by the Supreme Court, wherein it has specifically cautioned the High Courts against entertaining frivolous DRT writ petitions. The Supreme Court has observed that such writ petitions defeat the very purpose of the statutory scheme governing the debtor-creditor relationship, and adversely impacts the financial condition of the Banks.⁸⁵

It is recommended that the High Court be circumspect in interfering with a lower court/ tribunal's orders in such cases and impose costs to discourage the practice of filing frivolous cases. In the 14th Law Commission Report, one of the

⁸² Case Management and its Advantages, see n (77)

⁸³ A sample size of fifty cases filed before the Bengaluru Bench, with ten cases per year from 2012 to 2016.

⁸⁴ In a Vidhi Report on the Delhi High Court, the conceptual understanding of 'frivolous litigation' is detailed out. Even though cases which are filed to buy time or intimidate someone into a settlement are usually withdrawn or settled within the first few hearings, might be indicative of frivolous litigation, it cannot be conclusively said that all the cases which are disposed within the first few hearings are frivolous. Vidhi Centre for Legal Policy, 'Inefficiency and Judicial Delay: New Insights from the Delhi High Court' (2017) <<https://vidhilegalpolicy.in/reports/2017/3/29/inefficiency-and-judicial-delay-new-insights-from-the-delhi-high-court>> Last accessed: 22 January 2018

⁸⁵ *United Bank of India v. Satyavati Tondon and Others* [AIR 2010 SC 3413]

recommendations to deal with frivolous litigation is that petitions should be carefully scrutinized at the admission stage and a rule nisi issued only in proper cases.⁸⁶

- 3. Roster System:** The Karnataka High Court follows a roster system for allocation of case-types to be dealt with by different Judges. The roster allocated is periodically changed, usually every 6 weeks. The basis of such allocation of case-types is presumably to ensure that the Judges get a chance to handle a wide variety of cases and also to prevent nepotism between the Bench and the bar. While these are valid considerations, the fall out of the same is decreased efficiency in case disposal and increased legal costs. Every time the roster changes, a large number of cases get delayed since the roster change may happen mid-way through case-hearings, thereby forcing the parties to relay the same arguments before multiple judges.⁸⁷ This issue is now further exacerbated post the establishment of Dharwad and Kalaburgi Benches, which means that the cases are now not only transferred between different Court Halls, but the Judges themselves are moved between different Benches.

Therefore, while acknowledging the fact that the roster system is perhaps the best way to address the considerations highlighted above, in order to prevent the same from causing unnecessary delay and increasing legal costs, it is suggested that the time-cycle for roster changes be increased from 6 weeks to 6 months. This will give parties a chance to get their cases heard and disposed before a single judge and reduce the instances where the Judges are reluctant to hear a case, in light of imminent roster change. In addition, the longer roster will also discourage 'bench

⁸⁶ 14th Law Commission of India Report, see n (6) Volume II, Page 670

⁸⁷ DAKSH, State of the Indian Judiciary Report, see n (21) Chapter 6.

shopping’ wherein the parties wait for a roster change to file their case or get their case listed.

III. STATE GOVERNMENT LEVEL

- 1. Amendment in Rules:** As discussed earlier, the Writ Proceedings Rules, 1977 applicable to the Karnataka High Court, erroneously defines ‘writ petition’ to include petitions filed under ‘Article 226 and/or Article 227 of the Constitution’. This is in violation of the Constitution of India and the Supreme Court’s judgments on the issue. Therefore, the State Government in consultation with the High Court, must amend the said Rules to segregate the supervisory jurisdiction of the High Court from its writ jurisdiction.
- 2. Government Litigation:** In the past, several solutions have been proposed to deal with Government litigation.⁸⁸ The recommendations have ranged from - setting up a ‘Federal Legal Cell’ to monitor every single case filed against the Government at all levels, to setting up a Parliamentary Committee with powers to hold officers in charge of initiating litigation, accountable for their decisions.⁸⁹ The National Litigation Policy, 2010 and the ‘Action Plan to Reduce Government Litigation’ adopted to guide the Government to be a model litigant, have so far failed to achieve any considerable impact. In fact, one of the major failings of these policies lie in their lack of any accountability mechanism to gauge their success or failure.

This study has shown that a Government department or agency needs a tailor-made litigation policy to deal with the nature of cases unique to it. In addition, such

⁸⁸ ‘Reduce Litigation By Governments: Law Minister To Centre, States’ (Live Law, 19th March 2017) <<http://www.livelaw.in/reduce-litigation-governments-law-minister-centre-states/>> Last accessed: 25 January 2018; ‘Action Plan to Reduce Government Litigation’ (2017) Department of Justice <<http://doj.gov.in/page/action-plan-reduce-government-litigation>> Last accessed: 25 January 2018

⁸⁹ 126th Law Commission of India Report, see n (9) Part III, Para 8.21.

policies should also provide for an assessment mechanism to gauge the impact of such policy.

- 3. Quality of Government representation before the Courts:** For efficient disposal of writ petitions, whole-hearted cooperation of the Government and its departments is quintessential.⁹⁰ Therefore, at the Government level, necessary instructions should be issued to various departments to ensure that the concerned officials assist the Court and the Government advocates, by furnishing relevant materials and giving timely instructions.

In the 126th Law Commission Report, the issue of lack of quality representation of the Government has been considered.⁹¹ The Advocate General (AG), who is the top most law officer to the Government at the State level has no compulsory say in selecting public prosecutor or the Government pleaders attached to the High Court.⁹² Therefore it is recommended that appointment of Government counsels to AG's office must be relooked into to ensure competent lawyers represent the Government. In the National Litigation Policy (2010), a separate section is devoted to improving the quality of government representation by setting up screening committees for appointment of Government counsels and conducting regular training programmes.⁹³ However as with rest of the NLP, it is unclear as to the extent to which these recommendations have been implemented. Therefore, it is urged that the Government should put in place a standardized and fair procedure to appoint Government counsels.

⁹⁰ 79th Law Commission of India Report on 'Delay and Arrears in High Courts and Other Appellate Courts' (May, 1979)

⁹¹ 126th Law Commission of India Report, see n (9) Part II, Para 8.15.

⁹² *Ibid.*

⁹³ National Litigation Policy, see n (10)

CONCLUSION

The study of Karnataka High Court's writ jurisdiction has shown that the shortcomings of all three pillars of the State- the legislature, the executive and the judiciary, have contributed to the existing burden of writ petitions, which as seen above, affects both the Government and the judiciary in equal measure. Therefore, it is in the interest of all three pillars that the supply-side issues leading to invoking of writ jurisdiction be addressed. The solutions proposed in this report amply illustrate that only a concerted effort by all the stakeholders, over a period of time, can achieve any meaningful change in the status quo. Further, most of the recommendations, if implemented, will have a positive impact not only in the way writ jurisdiction is handled, but on the overall functioning of the judiciary and the Government.

ANNEXURE 1: Classification List

WRIT PETITION – CASE TYPE	
NO.	CLASSIFICATIONS
1	APMC Agricultural Produce (Marketing) Regulation Act
2	BDA Bangalore Development Authority Act
3	C Cinema Regulation Act
4	KDR Karnataka Debt Relief Act
5	EXCISE Excise Act
6	KVOA Karnataka Village Officers Abolition Act
7	LR Land Reforms Act i. SEC 48-A Section 48-A (Form No.7) ii. SEC-66 Section 66 (Form No.11) iii. SEC-77 Section 77 (Form No.7A) iv. SEC-38 Section 38 (Form No.2A)
8	MV Motor Vehicle Act`
9	HRC House Rent Control Act
10	SCST Scheduled Caste/Scheduled Tribe
11	ULC Urban Land Ceiling Act
12	CS Co-operative Society Matter i. DAS Debts/Attachment/Sale Proceedings ii. BL Bye-laws and Amendment iii. EL/M Election Disputes/Membership Dispute iv. SS Supersession v. SUR Surcharge Proceedings vi. RES Residuary

13	<p>EDN Education Matter</p> <ul style="list-style-type: none"> i. AD Admission ii. CET Common Entrance Test iii. EX Examination iv. GIA Grant-in-Aid v. PUC Pre-University vi. REG-P Recognition/Permission vii. RES Residuary
14	<p>GM General Miscellaneous Matters</p> <ul style="list-style-type: none"> i. LOT Lotteries Act ii. ML/PB Money Lenders/Pawn Brokers Act iii. MM-C Mines/Minerals-Central iv. INA Inam's Abolition Act v. BWSSB Bangalore Water Supply Sewerage Board vi. CC Caste (SC/ST/BC etc.) Certificate matte vii. CF Court Fees Act viii. CFA Chit Funds Act ix. CON Consumers Protection Act x. CUS Customs/Sea Customs Act xi. DPA Dowry Prohibition Act xii. DRT Debts Recovery Tribunals Act xiii. EC Essential Commodities Act xiv. FA Foreigners Act xv. FC Family Courts Act <ul style="list-style-type: none"> a) DIS Dissolution of Marriage b) MNT Maintenance c) VOID Void Marriages d) DIV Divorce e) RES Restitution xvi. FE Foreign Exchange/Enforcement Directorate. xvii. FF Freedom Fighters/Political Pension xviii. FOR Karnataka Forest Act/Trees Preservation Act xix. IA Irrigation Act xx. KEB Karnataka Electricity Board & Karnataka Electricity (Tax & Consumption) Act xxi. KIADB Karnataka Industrial Area Development Board xxii. KLA Karnataka Lokaayukta Act xxiii. KSFC Karnataka State Financial Corporation Act xxiv. KSR Karnataka Societies Registration Act xxv. KSSIDC Karnataka Small Scale Industries Development. Corporation xxvi. KWB Karnataka Urban Water & Drainage Board xxvii. MM-S Mines/Minerals-State

	<p>xxviii. PASS Passport Act</p> <p>xxix. PDS Public Distribution System</p> <p>xxx. PMR Public Money Recovery Act</p> <p>xxxi. POL Pollution</p> <p>xxxii. POLICE Karnataka Police Act</p> <p>xxxiii. PP Karnataka Public Premises (Eviction of Unauthorized Occupants) Act</p> <p>xxxiv. R/C Religious & Charitable Institutions</p> <p>xxxv. RES Residuary</p> <p>xxxvi. SILK Karnataka Silk Industries Development Corporation.</p> <p>xxxvii. SIR Sick Industries Rehabilitation Act</p> <p>xxxviii. SLUM Slum Clearance Act</p> <p>xxxix. ST/RN Karnataka Stamps Act and Registration Act</p> <p>xl. TEL Telephones</p> <p>xli. TEN Contract/Tender</p> <p>xlii. WAKF Wakf Act</p> <p>xliii. WLA Wild Life Protection Act</p> <p>xliv. MA Motor Accident Claims</p> <p>xlv. CPC Civil Procedure Code</p> <p>xlvi. AC Accident Claims</p>
15	<p>L Labour Matter</p> <p>i. KSRTC Karnataka State Road Transport Corporation, Bangalore</p> <p>ii. WC Workmen's Compensation</p> <p>iii. RES Residuary</p> <p>iv. BO Bonus</p> <p>v. ESI Employees' State Insurance</p> <p>vi. FA Factories Act</p> <p>vii. MW Minimum Wages</p> <p>viii. PF Provident Fund Act</p> <p>ix. PG Payment of Gratuity Act</p> <p>x. PW Payment of Wages Act</p> <p>xi. REF Compelling Reference u/s 10</p> <p>xii. SE Karnataka Shop and Establishment Act</p> <p>xiii. TER Termination/Dismissal/Back</p> <p>xiv. DE Department Enquiry</p> <p>xv. ID Industrial Dispute</p>
16	<p>LA Land Acquisition Matter</p> <p>i. HS Karnataka Acquisition of Land for Grant of House Site</p> <p>ii. KHB Karnataka Housing Board</p> <p>iii. KIADB Karnataka Industrial Area Development Board</p> <p>iv. UDA Urban Development Authorities Act</p> <p>v. RES Residuary</p> <p>vi. BDA Bangalore Development Authority</p>

17	<p>LB Local Bodies</p> <ol style="list-style-type: none"> i. TAX Assessments/Tax ii. ELE Election iii. UC Unauthorised Construction/Deviation iv. RES Residuary v. BMP Bangalore Mahanagara Palike
18	<p>KLR Land Revenue Act</p> <ol style="list-style-type: none"> i. CON Conversion of Land ii. LG Land Grant Rules iii. REG Regularisation of Unauthorised Occupants. iv. RR/SUR Record of Rights, Survey & Boundary Dispute. v. RES Residuary
19	<p>S Service Matter</p> <ol style="list-style-type: none"> i. DE Departmental Enquiry ii. DIS Dismissal/Discharge/Termination iii. PRO Promotion/Seniority/Gradation List iv. R Retirement/Retirement Benefits/Pension v. REG Regulation of Daily Wage/<i>Ad hoc</i> Employee/Temporary Employee vi. TR Transfers vii. RES Residuary viii. KAT Karnataka Administrative Tribunal ix. CAT Central Administrative Tribunal x. KSRTC Karnataka State Road Transport Corporation, Bangalore xi. BMP Bangalore Mahanagara Palike
20	<p>T Tax Matter</p> <ol style="list-style-type: none"> i. AIT Agricultural Income Tax Act ii. TAR Central Excise/Customs Act (Tariff) iii. CST Central Sales Tax Act iv. ET Entertainment Tax Act v. EX Excise vi. EYT Entry Tax Act vii. KST Karnataka Sales Tax Act viii. MVT Motor Vehicles Taxation Act ix. PFT Professional Tax x. PT Property Tax xi. GT Gift Tax Act xii. WT Wealth Tax Act xiii. RES Residuary xiv. IT Income Tax Act
21	<p>KLRA Karnataka Land Reforms Act</p>

22	CAV_WP Caveat Writ Petition
23	CAV.P Caveat Petition
24	IPR Intellectual Property Rights

ANNEXURE 2: Classification profile across three Benches

Bengaluru (2012-16)		Dharwad (2014-16)		Kalaburgi (2014-16)	
Parent Classification	WP-Cases Filed	Parent Classification	WP-Cases Filed	Parent Classification	WP-Cases Filed
GM	23033	GM	3160	GM	1195
S	12804	S	2596	S	1179
LB	9529	LB	1032	LB	697
KLR	7563	KLR	834	KLR	479
LA	5439	LA	821	EDN	373
EDN	5216	L	575	L	360
L	4178	CS	418	LA	357
MV	1761	EDN	393	LR	115
BDA	1621	LR	374	CS	112
CS	1938	T	208	APMC	91
SCST	1190	APMC	138	T	42
LR	1819	EXCISE	72	SCST	42
T	1809	SCST	71	EXCISE	11

ANNEXURE 3: Petitioner Profile

Petitioner profile across three Benches

Bench	Male	Female	State	Private Entity
Bengaluru	231	77	17	76
Dharwad	233	61	13	64
Kalaburgi	220	69	18	50
TOTAL	61%	18%	4%	17%

Classifications of WP-Cases per Petitioner-type (Bengaluru Bench)

Male	Female	State	Private Entity
S(RES)- 13%	S(RES)-21%	L(KSRTC)-38%	GM(RES)-12%
GM(RES)-10%	LB(RES)-8%	S(CAT)-11%	GM(POLICE)-9%
LB(RES)-7%	LB(ELE)-6%	GM(RES)-6%	EDN(RES)-6%
LA(RES)-5%	GM(FC)-5%	LA(RES)-6%	CS(RES)-5%
LR-4%	GM(RES)-5%	KLR(CON)-4%	LB(RES)-4%

ANNEXURE 4: Respondent Profile
Respondent Profile across three Benches

Respondent Profile	State	Parastatal (State)	Local Bodies	Centre	Parastatal (Centre)	Private Parties
Bangalore	42183	8082	8555	2870	2371	9842
Dharwad	6030	602	1121	257	161	1309
Kalaburgi	2729	697	756	143	57	771
Total	50942	9381	10432	3270	2589	11922
	58%	11%	12%	4%	3%	13%

Classification of WP-Cases per Respondent-type (Bengaluru Bench)

STATE		PARASTATAL (STATE)		CENTRE		PARASTATAL (CENTRE)		PRIVATE PARTIES		LOCAL BODIES	
GM(RES)	4881	S(RES)	1513	GM(RES)	701	GM(RES)	970	GM(FC)	1999	LB(BMP)	3861
S(RES)	3799	L(KSRTC)	1029	S(RES)	290	GM(D RT)	343	GM(RES)	1060	LB(RES)	3355
KLR(RES)	3114	S(KSRTC)	802	T(IT)	251	S(RES)	208	L(KSRTC)	768	BDA	1279
KLR(RR/SUR)	2667	GM(KEB)	677	S(CAT)	215	L(PF)	166	S(CAT)	616	LB(ELE)	1123
GM(POLICE)	2510	GM(RES)	386	T(TAR)	164	EDN(RES)	102	L(TER)	582	LA(BDA)	2244
GM(MM-S)	1523	GM(WAKF)	333	EDN(RES)	146	S(R)	82	L(RES)	527	GM(KEB)	157
MV	1672	EDN(AD)	297	GM(PASS)	99	S(DE)	48	EDN(RES)	435	LB(TAX)	125
LA(RES)	1244	GM(DRT)	297	T(RES)	84	EDN(REG-P)	47	CS(RES)	353	S(RES)	119
EDN(RES)	1221	EDN(RES)	258	EDN(REG-P)	74	GM(TEN)	46	EDN(EX)	340	LA(UDA)	100
SCST	1054	GM(EC)	239	GM(TEN)	59	S(DIS)	43	GM(AC)	322	LB(UC)	94
LA(KIADB)	1032	EDN(EX)	224	MV	58	L(RES)	36	EDN(AD)	270	GM(TEN)	74
		S(R)	216	GM(MM-S)	56	GM(AC)	35	S(KAT)	240	GM(RES)	71

ANNEXURE 5: Disposal data per Bench

BANGALORE	2012	2013	2014	2015	2016	Overall
Average	266.7372	258.1682	237.0896	198.3443	147.4143	227.7538
Median	109	109	111	114	103	110

DHARWAD	2014	2015	2016	TOTAL
Average	222.7086	199.5179	140.7815	187.6693
Median	129	155	101.5	129

KALABURGI	2014	2015	2016	TOTAL
Average	288.15	235.30	145.4323	222.96
Median	161	154	109	154



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