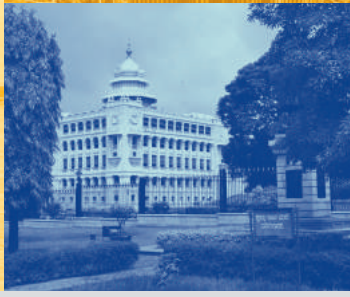
Strengthening Communities and Building Systems



2019

FIFTEEN REFORMS

FOR A PROGRESSIVE

KARNATAKA

SUGGESTED REFORM	LEGISLATIVE COMPETENCE
Reimagining Karnataka's Education Ecosystem	
Extending "Good Touch/Bad Touch" Education to all schools in Karnataka	7th Schedule, List III: Entry 25
Promoting Early Childhood Education in Karnataka	7th Schedule, List III: Entry 5, Entry 25
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Provisioning Opposition Days in Karnataka's Legislature	7th Schedule, List II: Entry 39

KEY LAW	MINISTRY/ DEPARTMENT
The Karnataka Education Act, 1983	Women and Child Development, Department of Primary and Secondary Education
New Legislation Recommended	Women and Child Development Department, Education Department
New Legislation Recommended	Department of Higher Education
The Karnataka Public Libraries Act, 1965	Department of Public Libraries
Karnataka State Commission for Women Act, 1995	Women and Child Department
Women Farmer's Entitlement Bill	Women and Child Department
New Legislation Recommended	Urban Development Department
Transparency in Public Procurement Act, 1999; Right to Information Rules.	Department of Information Technology, Biotechnology and Science &Technology
New Legislation Recommended	Revenue Department and Planning Department
The Karnataka Urban Development Authorities Act, 1987, Bangalore Development Authority Act, 1976	Urban Development Department
New Legislation Recommended	Urban Development Department
The Consumer Protection Act, 1986	Food, Civil Supplies and Consumer Affairs Department
Karnataka State Civil Services (General Recruitment) Rules, 1977, Karnataka Civil Services (Recruitmznt to Ministerial Posts) Rules, 1978	Ministry for Law, Justice and Human Rights
The Karnataka Prisons Act, 1963	Home Ministry, Prisons Department
The Rules of Procedure and Conduct of Business in Karnataka Legislative Assembly.	Ministry of Parliamentary Affairs

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Strengthening Communities and Building Systems

FIFTEEN REFORMS FOR A PROGRESSIVE KARNATAKA

The Briefing Book is a list of recommended reforms in the State of Karnataka. These recommendations aim to enhance the interaction of the people with the practice of law in the state. In 2019, we focus on reforms that will create the most widespread, on-the-ground change for the citizens of Karnataka while also creating or improving avenues that enable them to excel. The suggested reforms are thus categorised according to their areas of impact: communities and systems.

Vidhi Centre for Legal Policy is an independent think-tank doing legal research to make better laws and improving governance for the public good.

Contents

Introduction

Compared purely with other Indian states, the State of Karnataka has managed to achieve very respectable numbers on social and economic indicators. It has the fourth highest per capita GSDP of all states and has seen the third highest increase in HDI among all states in the last three decades. These numbers though, do not reveal the long distance that still remains to be traversed on some of the most crucial indicators—education and health. Here, Karnataka lags behind the rest of the southern states and has distressing figures for maternal mortality rates and female literacy.

Even as successive governments at all levels have attempted to improve the quality of life of the residents of Karnataka, they are doing so in a time of great change caused by large scale urbanization and urban migration. If the trends of the 2001 and 2011 continue, well over half of Karnataka's population may already be living in urban areas, with one in six living in the city of Bengaluru alone.

The policy challenges that the Karnataka Government faces are complex and diverse—a reflection of the State itself. No government possesses limitless reserves of expertise, capacity and capability to address every one of these challenges—therefore, it is important that the state prioritise its resources efficiently to achieve the most effective outcomes. In tackling large scale social and economic problems, government intervention cannot be piecemeal or one off. It must look to the future to ensure that the gains are long-lasting. To this end, real change requires both the strengthening of communities and building systems.

Any reform undertaken by the state government must centre around its people first in order to build strong communities that will drive towards better lives for all of Karnataka's citizens. In this quest to provide the state's citizens the highest quality of governance and ensure that any measures taken have a positive impact, they need to be built on a bedrock of systems and institutions. This means that the change must be translated through norms and effective mechanisms that allow reforms to gather their own momentum.

Legal reforms need to blend both these approaches and to this end, we at Vidhi Centre for Legal Policy present our second Briefing Book for the state of Karnataka. This is in keeping with Vidhi's successful series of briefing books which have contained a host of ideas that have been taken up for action by a number of governmental authorities. The first briefing book for Karnataka suggested fifteen legal reforms of which at least three have been acted upon to various extents by the Karnataka state governments. In this second briefing book of suggested legal changes, to strengthen communities, we have chosen three broad themes to structure our suggestions around – education, child development, and women's empowerment. Some reforms that we suggest are incremental—amending the existing laws on public libraries and the state women's commission. Other reforms look to build on ideas already in the public domain (rights of women farmers) or seek the creation of entirely new laws (private university regulation).

On systemic and institutional reforms, we have three broad themes—technology, urban development and governance institutions. These too consist of a combination of small and large measures that look to address existing issues (use of government land) and future problems (use of Artificial Intelligence) that the government will have to address.

We hope that the ideas for legal reform presented here will form part of public debate, academic discussion and civil society engagement leading eventually to stronger communities based on the most effective systems. Our aim, as always, remains better laws through better governance.

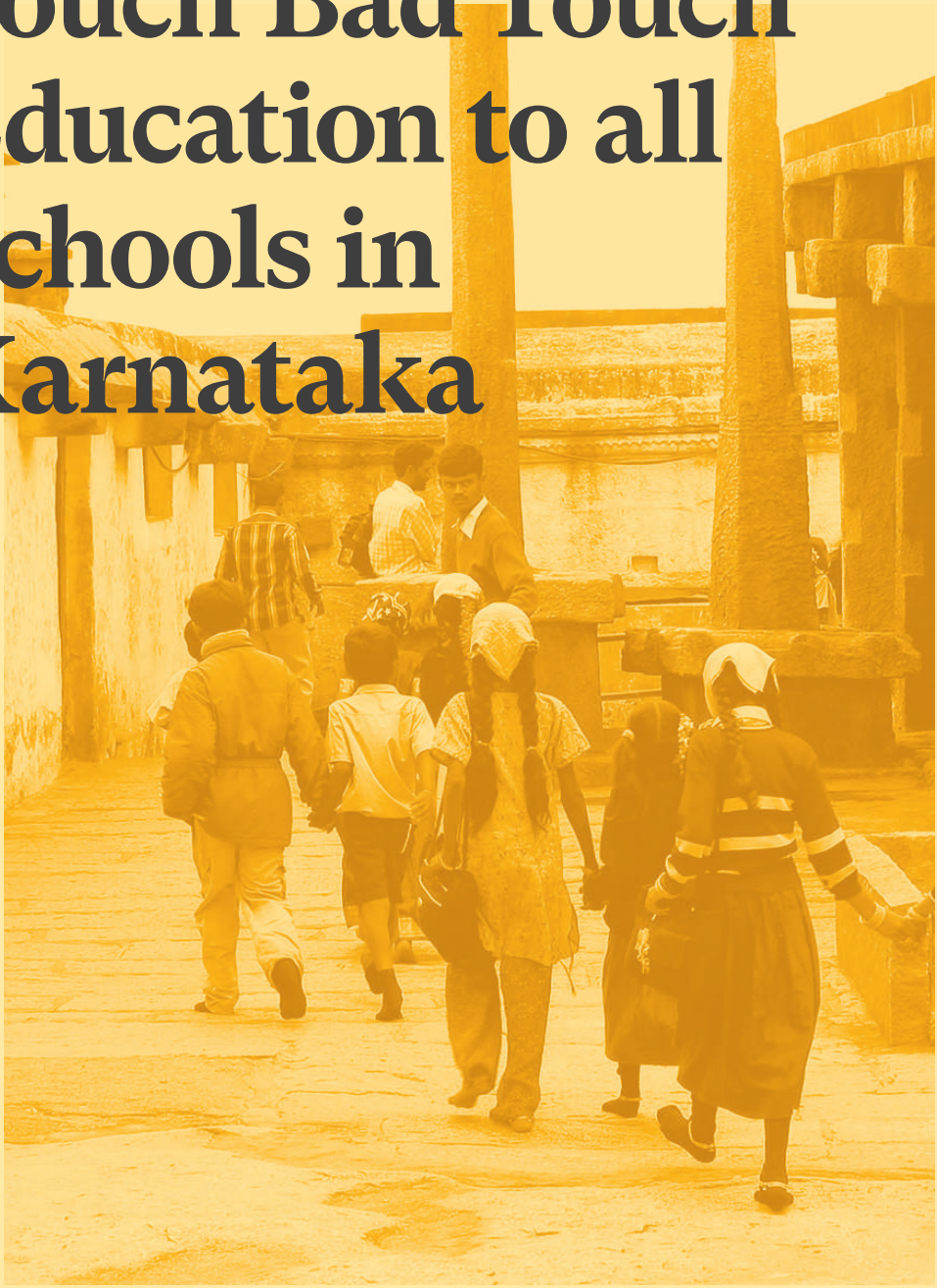
Strengthening Communities

A State is considered successful when it enhances the lives of the people it serves. The following reforms center people first. Their goal is to create positive and much needed change for the people of Karnataka, from women farmers whose work needs to be formally recognised to ensuring the safety of Karnataka's children from sexual abuse. The underlying goal of these recommendations is to bring the citizens of Karnataka together in order to build strong communities that will drive towards better lives for all of society.

REIMAGINING KARNATAKA'S EDUCATION ECOSYSTEM

EMPOWERING KARNATAKA'S WOMEN

Extending "Good Touch Bad Touch" Education to all Schools in Karnataka



INTRODUCTION

As per the Crime Records Bureau, 1,602 of Karnataka's children were reported to have been sexually abused in 2016 under the Protection of Children from Sexual Offences (POCSO) Act, 2012. 1,165 of these children were victims of rape. As of 2018, over 3,529 cases under (POCSO) Act, are still pending in Karnataka's courts. Over the last year, the increase in incidences of child sexual abuse cases across Karnataka has made headlines multiple times, especially in schools. The need to protect children in the state is more urgent than ever. Stringent measures need to be taken to curb this danger to children, starting with a comprehensive, mandatory policy on imparting preventive education centered around 'Good Touch, Bad Touch' to children in all schools across Karnataka.

PROBLEM

A lack of awareness of the difference between a safe touch and sexual abuse is one of the factors resulting in lowered reporting of instances of child sexual abuse, despite an increase in incidences.

'Good Touch, Bad Touch' education aims to address this very gap. 'Good Touch, Bad Touch' teaches children over the age of three the difference between safe and unsafe touch. It focuses on communicating that certain parts of their bodies such as the face and head are safe for other people to touch, but other body parts such as the neck, chest, genitals, etc. are never to be touched by strangers or even family members, unless it is by a doctor (in the presence of a family member) or parents during a bath etc. This teaches children to be alert to attempted sexual abuse and to report any untoward incident to people they can trust. Even if they do not understand every nuance, this law would ensure that they are equipped to report such incidents to a trusted figure. 'Good Touch, Bad Touch' education should therefore be imparted in an age and culturally appropriate manner through the use of rhymes, models, and educational videos such as 'Komal', a video that has been approved by the central government for raising awareness among children about child sexual abuse and what to do when faced with the same.

SOLUTION

It is a sad reality that a lack of sexual abuse awareness among children, due to the taboo attached to the topic, has made children vulnerable to sexual predators.

Other states such as Haryana, Rajasthan, and Punjab have already undertaken programmes that raise awareness about safe and unsafe touch. Government schools across India are also educating children from classes 2 to 7 about the concept of 'Good Touch, Bad Touch' under the "Sarva Siksha Abhyan" and the "Ayushman Bharath" Scheme. These schemes teach children about the concept of sexual abuse and also teach them of what steps to take in case of experiencing such incidences.

In some of Karnataka's government schools, there is a pre-existing measure where a workbook titled "Idu Nanna Deha, Nanna Icche" has been introduced to children aged between 6 to 12. It is recommended that the same be reviewed for extension to all schools across the state, whether private or government run.

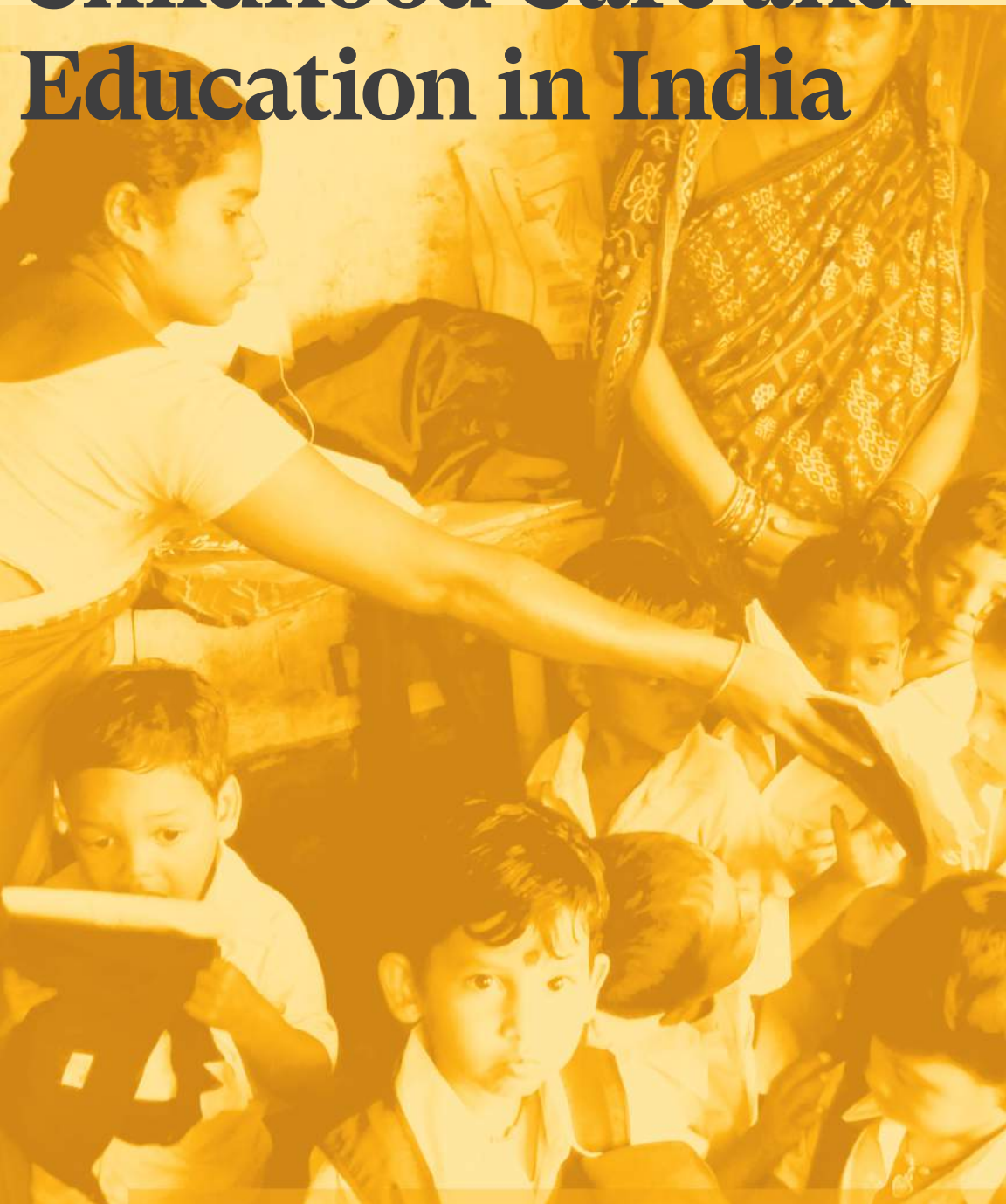
Karnataka needs to pass a legally enforceable and mandatory measure that ensures that 'Good Touch Bad Touch' is taught to all children from the age of 3. The measure must make it mandatory for children to be refreshed on the concept of good touch and bad touch monthly in order to ensure retention. It must also provide for mandatory training for anganwadi workers, government and private school teachers on the best ways to impart such knowledge to children in a sensitive manner. Finally, it is critical that the law mandate that every single school in Karnataka have an established protocol to deal with instances of child sexual abuse in the school. It must also be mandatory for the school principal to report any incident involving child sexual abuse to the local police station on the day it occurs.

Section 5A of the Karnataka Education Act, 1983 specifically provides that every educational institution shall take measures to ensure the safety and security of children. Further, it specifically mentions that such measures are to include protection of children from sexual offences. Additionally, the Act empowers the State Government to make rules under Section 145 (xxiv) of the Act on standards of education and courses of study in educational institutions. Good Touch, Bad Touch education could be imparted under this, as a course for all children so that they are protected from sexual predators.

Include Good Touch Bad Touch as a subject that must be taught to children in all schools in Karnataka.

MINISTRY/ DEPARTMENT	LEGISLATIVE COMPETENCE	KEY LAW
Women and Child Development, Department of Primary and Secondary Education	7th Schedule, List III: Entry 25	The Karnataka Education Act, 1983

Promoting Early Childhood Care and Education in India



INTRODUCTION

Studies have conclusively shown that 'early childhood' i.e., the first six years of human life, are critical to ensure lifelong holistic development. The rate of physical and mental development is faster in these years than in any other stage of life. Any deficit in these formative years has substantive, and sometimes irreversible, adverse impact later on. Given this, it is essential that early childhood be spent in an environment which ensures cognitive, physical, social and emotional development. This would be the combined responsibility of families, communities and the government.

As per the 2011 census, 158.7 million children across India, and 7.16 million in Karnataka, are in the age group of 0-6 years. And yet, the law and policy framework catering to these young citizens is far from satisfactory. There are at present three guidelines which lay down the parameters for Early Childhood Care and Education (ECCE) in India:

Firstly, the National ECCE Policy and the National ECCE Curriculum Framework, both released by the Ministry of Women and Child Development, GoI. Secondly, the Regulatory Guidelines for Private Play Schools promulgated by the Education Division of the National Commission for the Protection of Child Rights (NCPCR), applicable only for children between 3- 6 years. And most recently, National Minimum Guidelines for Setting up and Running Crèches under the Maternity Benefit Act, 2017.

PROBLEM

While these guidelines are steps in the right direction, they all suffer from a serious drawback - lack of implementation and accountability mechanism. They serve only as guidelines, thereby making compliance an entirely voluntary exercise. At present, there is no data on the number of institutions involved in ECCE at state and national levels, let alone any report as to the quality of care and education imparted in them. In fact, the ECCE ecosystem is so unregulated that there is no clarity as to the identity of these institutions which style themselves as daycares, crèche, playschools, Montessori etc., all of which are used interchangeably.

Therefore, before a Muzaffarpur shelter home type incident – where several girls were allegedly raped and sexually abused- shocks us out of slumber, the government and the civil society have to work towards drafting a law which ensures utmost quality and holds the ECCE institutions to the highest standards of accountability.

SOLUTION

The Constitution of India vide 86th Amendment Act, 2002, recognizes the State as an important stakeholder by urging it to "provide early childhood care and education (ECCE) for all children until the age of six years" (Article 45). However, being a Directive Principle of State Policy (DPSP), this is yet to fructify into a law vesting rights in children, with commensurate duties placed upon the government. A law such as the Right to Education Act, 2009, which unequivocally vests rights in all children aged between 6 to 14 years to receive free and compulsory education, is necessary in the context of ECCE as well.

Karnataka must lead the way by becoming the first state to enact rights based law for young children. The foundations for this has already been laid under the 2017 amendments to Maternity Benefits Act, wherein every state government is expected to formulate rules applicable to crèche facilities in establishments covered under the Act. However, the fact that no state, including Karnataka, has yet adopted such rules is telling of the lack of political will to provide for these children.

The draft crèche rules released by the labor department in Karnataka, which has fortunately not been notified, has several shortcomings. One of the obvious reasons for the same is the lack of expertise in the department to draft a women and children centric set of rules. This matter lies within the core competence of Department for Women and Child Welfare and Education Department, which must overcome their jurisdiction issues, and formulate a holistic legislation for ECCE in the state. This can be then adopted for crèche rules under the MB Act within Karnataka, while setting standards for other states.

Broadly, any ECCE law that the government of Karnataka promulgates must prescribe the following crucial points:

- Minimum separate qualifications for teachers and caregivers. Simultaneously, there should be a government recognized college/ university level course for ECCE teachers and caregivers.
- Minimum standards for physical infrastructure catering to the needs of different stages within early childhood (0-6 months, 6-12 months, 1-2 years, 3-6 years). This should include provisions for adequate sleep, nutrition, hygiene, and education.
- District and state level nodal agencies in-charge of licensing and inspection, specifically for regular background check of personnel in ECCE centers.
- Penalties for violations of standards prescribed along with provision for cancellation of license.

Enact a separate law recognising the right to Early Childhood Care and Education along with rules standardising ECCE facilities across the state.

MINISTRY/ DEPARTMENT	LEGISLATIVE COMPETENCE	KEY LAW
Women and Child Development Department, Education Department	7th Schedule, List III: Entry 5, Entry 25	New Legislation Recommended

Regulating Private University Education in Karnataka

INTRODUCTION

India's higher education system will be a key driver of its progress and levels of growth. With the number of students entering universities increasing yearly, the Indian higher education sector has the difficult task of molding young minds while establishing a platform for them to excel. To achieve this, a combination of good regulations, competitive curriculum and participation of all relevant stakeholders is necessary. However, university education in India is currently complex and disorganized, with overlapping regulatory powers of authorities. It is further handicapped by poor academic quality.

This situation requires change, especially as India has grown from 20 universities and 500 colleges to 760 universities and 38,000 colleges. The purpose of Universities must be to enable holistic student learning and also contribute to nation building by producing high quality research. Currently, this purpose is not being met by existing universities. Public universities do not have the capacity, while private universities are keen to increase intake, reflecting the misplaced priorities of higher education in India. To address some of these concerns, there is an urgent need for progressive regulations which can enable the creation of better universities.

Ensuring public universities deliver better results and provide high academic output may be easier as they are under the administrative control of the Government. The real challenge is to empower private universities to become centers of excellence. With the ability of the Government to spend on higher education being limited, it is the private sector which should ensure that there is no dearth of talent creation in the country. But, past instances have shown that the private sector looks at higher education as another avenue for income generation. What India needs, however, is a mature private sector willing to invest in talent generation and capitalize on utilizing experienced graduates. The power to establish universities has been given to the State and Central Government under the Constitution. The Central Government, through the UGC, is allowed to grant private institutions the status of deemed to be university. State Governments are also allowed to establish public universities within the State. This entry looks at regulatory changes that Government of Karnataka can undertake to enable better functioning private universities in the State.

PROBLEM

Karnataka has emerged as both a student and employment hub, with colleges and companies attracting talent from across the country. This diversity in student talent and access to opportunities should ensure universities in Karnataka become the benchmark for the rest of India to follow. Unfortunately, this has not been the case. No state university features in the top 20 universities in India. Private universities in Karnataka have also been at the centre of administrative mismanagement, with the State Government forcefully interfering in their affairs to mitigate student suffering. This problem has its genesis in the complex regulatory structure governing private universities centrally and in Karnataka.

In Karnataka, the state legislature must pass a bill for the establishment of a private

university. A prospective private university management is required to adhere to the guidelines issued by the Karnataka State Higher Education Council ("KSHEC"). These guidelines lack key parameters and do not have statutory force. For instance, under the KSHEC guidelines there are no stringent checks to assess the background of applicants and their ability to successfully run a university. While this may be undertaken in practice, a lack of statutory norms results in selective implementation of the guidelines. Under the current practice an application for establishing a private university is reviewed by the concerned education department without the consultation of experts. Establishing a private university requires specialized knowledge. The review of any proposal to that effect must have independent minds weighing the impact of establishing a university on higher education in the State. In comparison to Karnataka's current policy, Rajasthan, Tamil Nadu and Himachal Pradesh have enacted legislations which put in place a structured mechanism for the establishment of private universities.

The Government can ensure private universities fulfill their role and harness their potential, if due care is taken at the time of their establishment. Higher education in India cannot be reformed unless private universities which are truly non-profit, philanthropic and committed to promote academic and institutional excellence are established.

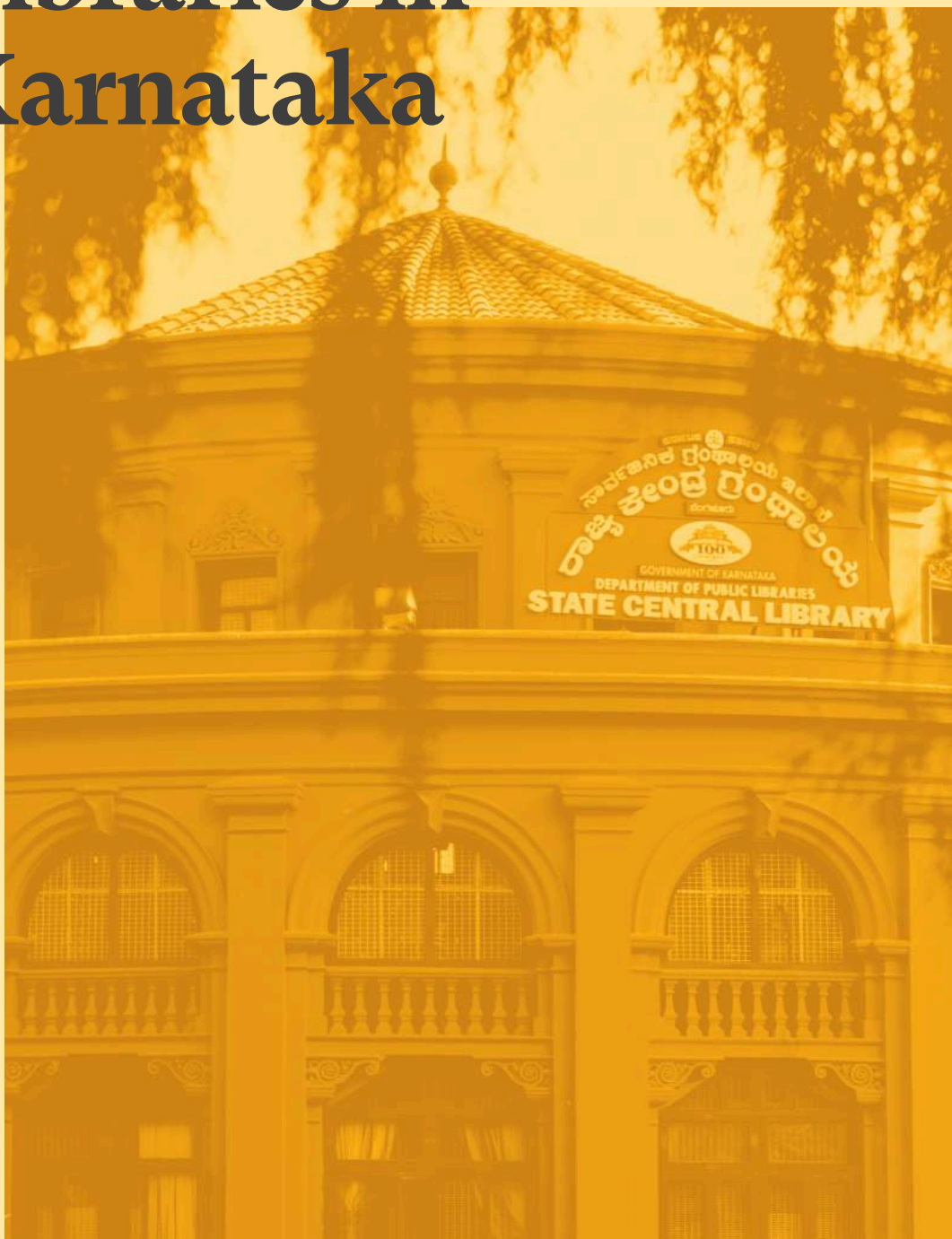
SOLUTION

Teaching and curriculum in Indian universities in India are regulated by the relevant course regulator, e.g., Bar Council of India, All India Council of Technical Education, etc. Their administration is regulated by the UGC. However, Karnataka's private universities lack stringent administrative regulation—a void that needs to be urgently filled. While Governments should not interfere in the internal affairs of the University, it must ensure excellence in higher education through institutional mentoring facilitated by regulators. To achieve this, the enactment of a comprehensive legislation which deals with the establishment and governance of private universities in Karnataka, similar to Rajasthan and Haryana, is needed. Such a legislation will specify the requirements and also set up a body to review proposals for establishing private universities. Currently, the Karnataka Higher Education Council is the nodal agency. However, its enabling act does not have power to recommend or approve establishment of private universities in the State. Dedicated legislation can also ensure that the management practices of private universities periodically reviewed by the Government.

Draft a new legislation to set up a mechanism to regulate establishment and functioning of private universities in Karnataka.

MINISTRY/ DEPARTMENT	LEGISLATIVE COMPETENCE	KEY LAW
Department of Higher Education	7th Schedule, List III: Entry 25	New Legislation Recommended

Funding Public Libraries in Karnataka



INTRODUCTION

Public libraries, set up and funded by the government (state or municipal) provide an important learning avenue for persons of all ages. Even in the internet era where internet access is improving dramatically, they still provide valuable public spaces for members of the public. They provide access to learning materials, literature or information to those who may not be able to afford to buy copies of books or subscribe to multiple newspapers and journals. They can also serve as common facilities for the community in a given area.

In Karnataka, as in many other states, public libraries are governed by the Karnataka Public Libraries Act, 1965 (KPLA). Among other things, this law provides for the setting up of a Karnataka State Library Authority (KSLA), a Department of Public Libraries (DPL) and Local Library Authorities which include City Library Authorities and District Library Authorities. The DPL operates about 2000 libraries across the State.

Under Section 30 of the Act, a Library Cess is levied as a surcharge on tax on buildings, tax on entry of goods into the local area for consumption, vehicle tax and professions tax. The surcharge is levied in accordance with the relevant laws empowering local authorities to collect such taxes which are to be collected by the concerned urban or rural local body. The local authority is entitled to retain ten per cent of the amount collected towards the cost of collection and pay the balance to the City or District Library authority as the case may be.

PROBLEM

The City and District Library Authorities in the state are severely starved of funds as the local authorities have repeatedly failed to release the amount on time. While the KPLA mandates that the money should be released to the concerned City or District Library Authority, it does not lay down a timeline for the release of the same.

The Bruhat Bengaluru Mahanagara Palike (BBMP), the urban local body for the city of Bengaluru for instance, has collected a sum of Rs. 400 crore that it has failed to release to the DPL. This problem is not limited to the city of Bengaluru. As of December 2018, the Mysore City Corporation for instance, had not yet paid the library cess it collected, amounting to Rs. 17 crore. Other local bodies in the district owe Rs. 60 lakh and 268 Gram Panchayats, Rs. 7 crore. This is not an issue limited to large municipal corporations. As far back as 2009 it was noted that the Kolar City Municipal Council owed Rs. 16 lakhs to the DPL. Likewise, the Town Municipal Councils were also in arrears to the tune of lakhs. Apart from making the existing functioning of public libraries difficult, these delays are preventing the upgradation and digitization of these libraries.

The problem begins with local authorities starved of funds, who then see library cess as an easy revenue source. Local bodies also have no control over the use of funds by the City or District Library Authority. While there is representation from members of the urban and rural local bodies in their respective Library Authorities, the overall superintendence and direction of the local library authorities vests with the Department of Public Libraries.

There is a misalignment between the powers and the accountability of the various authorities in question – while the money is spent by state government controlled bodies which are not accountable to the local community, the local bodies are simply collection agencies and have no role to play in the proper spending of the money.

SOLUTION

To address the problem of poor funding of public libraries, a two-fold solution is proposed:

- The Local Library Authorities should function under the aegis of the City and District Authorities and not the DPL.
- The cess should be collected by the State Government and disbursed to the concerned local authorities as a tied grant to be spent specifically on public libraries.

The State Government will be required to allocate such funds for each Local Library Authority in proportion to the tax collected by them as if such surcharge had been collected by them.

In this scenario, the function of the DPL is to only certify the expenditure plans of the concerned local authorities and help them make the most efficient and effective use of the funds they have been allotted. In turn, the duty of the Local Library Authorities is to draw up plans to spend the money allotted to them under the law and have it approved by the DPL. It can also lay down broad norms to guide the functioning of public libraries while leaving the specifics up to each local library authority.

Amend the Karnataka Public Libraries Act to give only the State Government the power to levy and collect the cess, and give greater powers to the local authorities to determine how it should be spent at the local level.

MINISTRY/ DEPARTMENT	LEGISLATIVE COMPETENCE	KEY LAW
Department of Public Libraries	7th Schedule, List II: Entry 12	The Karnataka Public Libraries Act, 1965

Empowering the Karnataka State Women's Commission with Powers for Investigation &Enforcement

INTRODUCTION

The Government of Karnataka does not have appropriate legal institutions to realise the goal of women's empowerment. The lack of formal legal backing, enforced through legislation and institutional mechanisms, means that these schemes do not realize their potential, and there is little incentive for the state government and its extant institutions to ensure their effectiveness.

The Government of Karnataka therefore has to reassess the existing mechanisms for the implementation of various welfare, development and protection schemes for women and ensure an effective and justiciable rights based framework for the realization of these rights. In particular, legislations like the Karnataka State Commission for Women Act, 1995 (SCW Act) need to be revised in order to create a framework of justiciable rights under which women can effectively claim the benefits of the various schemes and rights available to them under law.

PROBLEM

The State Commission for Women ("SCW"), was established in 1995 under the SCW Act, to safeguard and protect the rights of women within the State of Karnataka. Under Section 9 of the SCW Act, the Commission has the broad mandate to, inter alia, examine and investigate complaints made to it by women, monitor deprivation of women's rights, provide counseling and legal assistance to women.

Despite the wide mandate given to it under the Act, the SCW's powers are only recommendatory, and it lacks the power to effectively follow up and implement its mandate. While the SCW has the investigative powers of a civil court, the Supreme Court of India has noted that it does not have powers of a judicial magistrate, nor does it have the authority or powers to issue directions for compliance of various schemes. Its civil powers are also limited to its mandate under Section 9(a) - 9(f). Further, the centralization of its functions in one physical location makes it difficult to approach.

The constitution of the SCW must also be reformed to ensure its independence. For example, under Section 3 of the SCW Act, the Chairperson is to be appointed by the State Government, and the only qualification required is to be 'a woman committed to the cause of women'.

There is no review or appellate authority to monitor the functioning or the decisions of the Commission. Further, the functioning of the Commission is not transparent and its annual reports (required to be drafted under Section 14 of the SCW Act) are not required to be made public. This creates roadblocks to the accountability of the SCW.

SOLUTION

The SCW was envisaged as a nodal agency for addressing women's grievances and ensuring the effective implementation of various state government schemes and welfare projects. However, the lack of powers granted to the SCW and the lack of oversight mechanisms has led to the SCW becoming a paper tiger. This could be effectively addressed through appropriate changes in the legal framework of the SCW.

These issues may be addressed by making appropriate changes to the Karnataka State Commission for Women Act. The Act must incorporate the following changes:

Decentralising the SCW and having separate branches of the commission operating concurrently in each district. The institutional framework could be wholly revised and remodeled on the basis of the Child Welfare Committee under the Juvenile Justice Act, with at least one branch in each district.

The mandate of the SCW must be expanded, with concomitant powers to ensure the implementation of its orders or recommendations. This could include granting the SCWs a quasi-judicial mandate to act upon complaints, including the power to give directions to the appropriate government departments for the implementation of schemes for which it takes suo moto cognizance, instead of merely reporting such non-implementation to the state government. Additionally, the SCW could be vested with the power to mediate disputes concerning deprivation of the rights of women.

There must be a review and appellate mechanism for the functioning of the SCW. Such mechanisms may be tiered, with separate mechanisms at the taluka, district, and state level. Existing institutions such as the District Magistrate or similarly situated authorities may be provided the additional mandate for reviewing the functions of the Commission. The functioning of the SCWs should also be monitored, on at least an annual basis, by a review committee headed by a cabinet minister of the State Government or the director of the Department for Women and Child Development.

The qualifications and criteria for selection of members of the SCW must be prescribed by law, based on quantifiable past experience in working on women's welfare and related fields and should be selected by an independent panel consisting of civil society as well as government members. Further, the reports of the working of the Commission must be made periodically publicly available. The reconstitution of the Commission should be along the lines envisaged by the Paris Principles relating to the status of national human rights institutions.

Revise the KSCW Act to (a) de-centralise and (b) broaden the mandate and powers of the KSCW.

MINISTRY/ DEPARTMENT	LEGISLATIVE COMPETENCE	KEY LAW
Women and Child Department	7th Schedule List II: Entry 1, List III: Entry 23	Karnataka State Commission for Women Act, 1995

Recognizing Women Farmers in Karnataka

INTRODUCTION

Although the popular image of the Indian farmer is usually cast in the mould of a man, the reality is that one third of the agricultural workforce are women. According to one study, about 17 crore women are engaged in agriculture and farm related activities but only 13% have property rights. About 3.60 crore women are recognised as "cultivators" as per the census figures of the Union Government itself. Officially, they are not "farmers" in the eyes of the government. This leaves them unable to access schemes meant for farmers or subsidies and institutional credit meant for farming.

There are many reasons for this erasure, not all of them unique to the agricultural sector. They range from women's work being systemically under-valued to women not being allowed access to education to assert themselves. Landlessness has other negative consequences for women – it exposes them to greater domestic violence and subjugation in the household. It was for this reason (among others) that changes were introduced to the Hindu Succession Act, 1956 (HSA) in 2005 to ensure that women had an equal share in the coparcenery property of their brothers and fathers. Under the amendment introduced in 2005, a daughter of the owner of a coparcenery property will have the same right over that property that a son will have. Only properties which have been partitioned prior to the coming into force of this law will be exempt from the operation of the amendment.

PROBLEM

While the law, as it stands, acknowledges that the wife has a share in the property of the husband and that daughters will have equal share in the coparcenery property of their fathers and brothers, the reality is that the changes to the HSA in 2005 has not had much impact on the ground.

This is because there is no systematic land titling system across India. While land records are slowly being digitized across the country, with Karnataka having taken the lead in the process nearly two decades ago, such schemes still do not properly record the rights of women to the land in question. Many women may not even have any idea whose land they are working on, given that they do not have access to the institutional structures which guarantee the title to the property. Even when they do, they are faced with the hurdles of navigating the bureaucratic red tape and enormous costs in time and money.

Although under the law, women farmers are entitled to a share of the property, there is little or no documentation backing up their claims to the law. Even when women are working in a field, they may not necessarily be in ownership of the land they are working on. This means that they are unable to access formal credit mechanisms such as banks or even avail of relief and compensation from the government as they are unable to prove that they are owners of the property. This also makes them vulnerable to exploitation from other landowners and dominant castes in the region.

SOLUTION

One solution that has been proposed is to give identity cards to women cultivators, deeming them as such. The identity card will be a legal recognition of their right over the agricultural land that they have been tilling. This specific suggestion has been proposed in a detailed bill which was introduced by noted economist MS Swaminathan, called the Women Farmers' Entitlement Bill, 2011 (WFE Bill). This Bill explicitly recognizes the right of women farmers to receive certification from the Gram Panchayat and also their ownership of agricultural land. It also casts certain obligations on the central, state and municipal governments to ensure that the rights of women farmers are adequately protected.

The one flaw with this bill however is that it was introduced at the Union level while "agriculture" and "land" are within the competence of the States in accordance with Entry 14 and Entry 18 of the State List. "Land" includes "rights in and over land" and one of the main purposes of the WFE Bill is to protect the rights of women farmers over the land that they till. Even if passed, the WFE Bill would not have withstood scrutiny a court of law.

This therefore means that the State of Karnataka would have the constitutional competence to enact a law guaranteeing the rights of women farmers' to recognition and their property.

With the appropriate changes—mainly the replacement of the role given to the Union Government with that of the Karnataka State Government -- the Karnataka Legislative Assembly can pass the WFE Bill in order to secure the rights of women farmers. Given that Karnataka has already successfully implemented a scheme to digitize land records, the legal solution can be built on top of the same.

Modify the Women Farmer's Entitlement Bill for Karnataka's purposes and enact the same.

MINISTRY/ DEPARTMENT	LEGISLATIVE COMPETENCE	KEY LAW
Women and Child Department	7th Schedule, List II: Entry 14, Entry 18	Women Farmer's Entitlement Bill

Building Systems

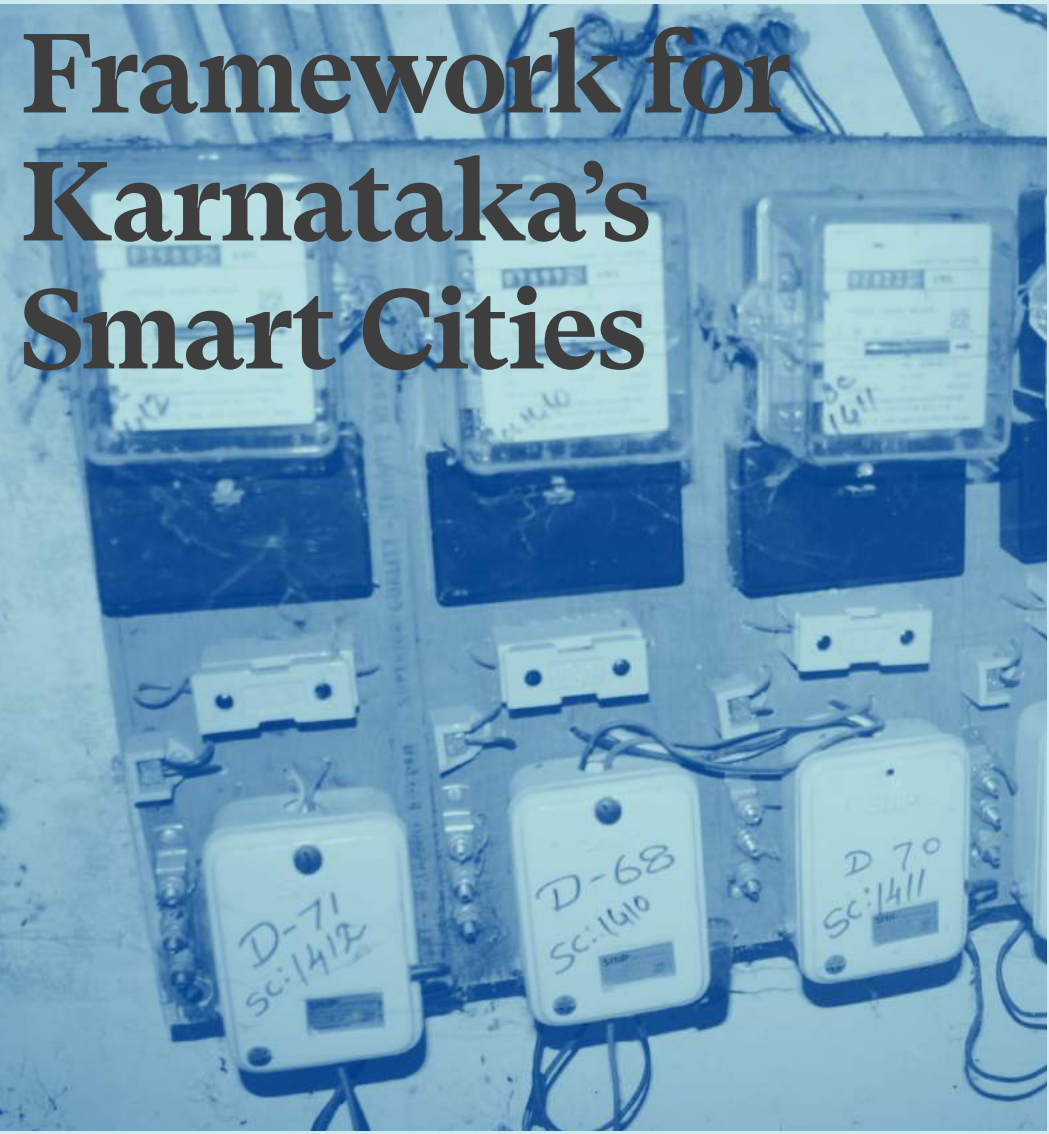
A smoothly functioning State enables people to achieve their potential. A system that is responsive to the needs of its people is an effective one. The following reforms seek to build agile systems that aim to rise above bureaucracy and red tape. From addressing the daily traffic woes of city dwellers to better land management statewide, to reformed convicts seeking re-integration into the public, these reforms seek to build a smoothly functioning state.

LEVERAGING TECHNOLOGY EFFECTIVELY

REFORMING URBAN GOVERNANCE

MAKING DEMOCRACY EFFECTIVE

Introducing an Urban Data Governance Framework for Karnataka's Smart Cities



INTRODUCTION

The coincidence of urban development with the development of Information and Communication Technologies has resulted in an unprecedented amount of data being captured about urban spaces, which is analysed for extrapolation of its economic value. This urban data includes land use patterns, transportation and mobility patterns, financial data and energy use data, among others. This data can have significant economic and social value when beneficially utilised. From an urban governance perspective, collective data can assist in designing improved mobility systems, improving public service delivery, or improving infrastructural utilities like water and electricity supply. Data is an additional infrastructural component of a city which is increasingly critical to the operation of urban economies and societies.

Governments and public authorities have envisioned the beneficial use of new technologies that improve the lives and livelihoods of its residents. The Bangalore 'Smart City' plan, for example, envisages the usage of the 'Internet of Things' to capture information about the usage of public infrastructure including, inter alia, transportation and sanitation. The electricity utility for Bengaluru, BESCOM, has also introduced 'smart meters' to track electricity usage through digitization in a systematic manner. The Bengaluru Metropolitan Transportation Corporation uses geospatial data from sensors inside busses to provide real-time location to commuters. Similar projects are being undertaken across urban planning schemes in Karnataka and elsewhere, involving both private and public participation.

PROBLEM

The explosion of data collection and data-driven technologies has resulted in a regulatory blind spot. The unregulated use of such information poses risks ranging from privacy harms to hidden discrimination, particularly to people from social and political margins. Moreover,it is concerning that a supposed public resource like commodity data is documented by and for private actors without any consideration of public interest. In addition, the absence of a legal framework dissuades cooperation between stakeholders, for example, the absence of a strong protective framework prevents the building of systems and standards for safe sharing of data.

There are systemic problems with the manner in which community data is presently collected and analysed. While there are some regulatory efforts to govern the use of personal data, there is no such framework for governing non-personal data, or aggregated data relating to specific communities. In particular, there is a lacuna in identifying who should be able to control information collected about urban communities, including information collected utilising public infrastructure (such as public roads, water pipes or electricity). Further, there are no rules or mechanisms for public oversight establishing the use and dissemination of such information, in order to prevent biased, discriminatory, undemocratic or otherwise harmful use of such data.

There is an urgent need to create rules and institutional mechanisms for the public stewardship and governance of collective urban data in the public interest.

SOLUTION

The governance of urban data is largely a function related to urban planning and local government, and the constitution enables state governments to legislate upon these matters. Entry 5, List - II, in the Seventh Schedule of the Constitution of India, empowers the state legislature to legislate on matters of local government, including urban local authorities.

To establish public stewardship over urban data, the Karnataka State Legislature should pass a legislation, which includes the following:

- Defines various forms of collective urban data (which must necessarily be non-personal data), and lays down the principles on the basis of which such data may be utilised – for example, for the improvement of delivery of public services, for urban planning by public authorities, etc. The law must also clarify that urban data is a resource under the public trust of the State Government, and the state government has the authority to determine the appropriate use of such a resource, for example, through licensing provisions or other appropriate measures.
- Establishes a two-tier regulatory structure for urban data governance—an Urban Data Authority, taking the form of a statutory authority with the ability to set standards, controls and restrictions on the collection and use of urban data. The Urban Data Authority should have representatives from across local authorities, in order to achieve seamless coordination and prevent jurisdictional conflict. The role of the authority would be to set appropriate standards for the collection and storage of data, and for ensuring that privacy is maintained in the design and use of technologies which collect and use data, for example, through setting appropriate standards for distinguishing personal and non-personal data. The authority must set standards for the collection, sharing and use of urban data - for example, establishing what data should be openly shared with the public, and establishing open standards to promote data sharing between private and public agencies. The law should provide what sets of urban data must be shared with local governments at the appropriate level, such as at the municipality level, who would have the responsibility to use such data for the provision of public services. There must also be an authorised representative/agency within each local authority to carry out the day-to-day functions of collection, sharing and use of urban data collected by each authority. It is also important to keep in mind that the capacity and expertise of the government to regulate technical issues is severely lacking, and will have to be gradually developed.

Introduce a legislation to empower urban local authorities to have well-defined and rights-protective governance structures for the publically beneficial use of urban data.

MINISTRY/ DEPARTMENT	LEGISLATIVE COMPETENCE	KEY LAW
Urban Development Department	Multiple Entries under List II	New Legislation Recommended

Introducing Algorithmic Accountability through Transparency in Public Procurement & Right to Information Law

INTRODUCTION

Governments around the world have been leveraging emerging technologies in computing to ease the process of delivering critical public services, including for the provision and distribution of public aid, and in the provision of public services like healthcare and education. In particular, governments are turning to the use of certain automated technologies colloquially known as 'artificial intelligence' technologies.

Artificial Intelligence (AI), for the purpose of this briefing book may be described as the use of algorithms, or sets of computing instructions, which make, or aid in making, decisions that normally require direct human intervention. The Government of Karnataka is one of the first states in India to establish a policy on AI and machine learning technologies. In the Action Plan for the Development of Machine Intelligence, the Karnataka Jnana Ayog has advocated for the use of AI in governance in fields including health, transport, education and e-governance. The Government of Karnataka has also reportedly started utilising AI technologies across a number of public services, including for the processing of farm loan waivers and using 'facial recognition' for policing in public areas.

However, even as the Government of Karnataka and the Union Government are moving ahead with automated decision making by implementing AI for use in governance, the policy framework does not adequately take into account the transparency and accountability of such systems.

PROBLEM

The use of AI can potentially improve efficiency and consistency, and reduce human bias and systemic discrimination in the provision of public services. Jurisdictions around the world are utilising AI machine learning algorithmic tools for determining eligibility for public benefits; assessing recidivism risk in the criminal justice system; or evaluating performance in public employment. However, the use of these tools can also lead to a lack of accountability and deepen systemic biases and exclusions. This is particularly exacerbated in the delivery of public services like health and education or schemes for social security, and disproportionately affects those most reliant on the state for the provision of services.

The issues with AI systems arise from the fact that their workings are often non-transparent. The decisions or outputs of such systems cannot be adequately explained by human operators. This is exacerbated in the case of machine learning systems, where the system can 'learn' from patterns and data and follows a logic not explicitly programmed into it, which is not easily understood by the persons in charge of the system or those facing its consequences. Further, the design of such automated systems may encode human bias within the system in various ways, including through the human bias of the programmers, the selection or availability of the data on which these systems are trained as well as through the parameters on which they are expected to perform.

There is no clear regulatory framework in India which addresses the concerns posed by AI. While Section 4 of the Right to Information Act, 2005, provides that all public authorities shall provide reasons for its administrative or quasi-judicial decisions to affected persons, its application to decisions made by AI are unclear. Further, many of the algorithms in use in the delivery of public services are proprietary or protected private systems and create a conflict between private interest and transparency.

SOLUTION

In the absence of a regulatory framework, the expanding use of automated technologies can pose significant concerns for the public, and can potentially violate constitutional norms of equality and natural justice.

As most automated systems utilise proprietary systems which are licensed for government use, one avenue of regulating their use may be through rules concerning their procurement by government entities, under Section 17 of the Karnataka Transparency in Public Procurement Act, 1995, and requiring an 'algorithmic impact assessment' prior to any procurement of AI systems. This can ensure that any proprietary system is made auditable and open to scrutiny to the government, and must disclose in a transparent manner the uses to which any automated AI system will be put to, as well as the policies and the logic behind considering the use of such a system, and their appropriateness. The impact assessment must also require public agencies to draw up standards to assess automated systems against risks of bias and opacity. The regulatory system must take into account the capacity and limitations of existing institutions to grapple with highly technical questions inherent in assessing such systems. The government may rely upon independent expertise, for example, as provided by the Government of Karnataka's Centre for Excellence in Artificial Intelligence, which could provide model guidelines for implementing such standards, such as the use of counterfactual explanations to test against bias.

The Government of Karnataka can also make amendments to the RTI Rules, 2005, framed under Section 27 of the RTI Act, 2005 and include rules concerning the transparency and explainability of automated decisions. Such rules should ensure, as has been proposed under the European General Data Protection Regulation, that individuals have the right to know when government agencies have made decisions concerning them which substantially involve the use of AI system. They must also define the broad parameters of such a decision, in a non-technical and simple manner. The rules should incorporate a mechanism for individuals to seek a reasoned basis for the judgement of such an automated system or opt for the decision to be reconsidered without the use of such a system.

Introduce algorithmic impact assessment frameworks under Transparency in Public Procurements Act; revise RTI Rules to include explainability requirements for algorithms in public services.

MINISTRY/ DEPARTMENT	LEGISLATIVE COMPETENCE	KEY LAW
Department of Information Technology, Biotechnology and Science & Technology	Multiple Entries under List II	Transparency in Public Procurement Act, 1999; Right to Information Rules.

Bettering Government Property Management in Karnataka

INTRODUCTION

"All land belongs to the Crown" may no longer hold true in the United Kingdom. But for the governments in India, it may have some basis in reality. As per a 2011 Task Force Report on 'Recovery of Public Lands and its Protection' (2011 Task Force Report), the Karnataka Government owns around 1.09 crore acres out of 4.84 crore acres in the state, which is approximately 22.5 percent of the total geographical area. It is acknowledged that a large government with hundreds of departments and lakhs of employees requires to own lands, for both present and future use. However, these requirements do not justify the extent of lands currently owned by the government. In fact, the surplus nature of lands is evident from the fact that the government does not even have an inventory of all the lands it currently owns.

PROBLEM

The concentration of land in the hands of the government, which evidently lacks capacity and interest in managing the same, has led to several issues viz. encroachment of government lands by private parties, non-utilisation of prime urban lands, stalling of public projects due to non-availability of suitable lands. As per the 2011 Task Force Report, 11.07 lakh acres or about 10% of all government land is under encroachment. The Report identifies the lack of Government's awareness, and inaction when aware, as the primary reasons for such brazen encroachment. In 2014, Karnataka Government's long pending Bill prohibiting land grabbing received the President's assent. Now, with the Karnataka Land Grabbing Prohibition Act, 2011, the state is one of the very few to have special courts to deal with government land encroachment cases. However, the proceedings before these special courts are currently stayed on account of challenge to the Act's constitutional validity.

All the same, both the reasons cited by the Report and the government's solution in enacting the law are superficial as they deal with the symptoms rather than the cause of the problem. It is widely acknowledged that the government holds more property than it can manage. Unused and encroached government lands in Bengaluru Urban District, which by sheer virtue of its location carries immense value, illustrates this.

SOLUTION

A simple solution to this is the opening up of unused and under-utilised government lands for private use. This will not only bring down the need for encroachment, but will also add to the government's source of revenues. It is a given that this will be a controversial move prone to misuse. In fact, as per the 2011 Task Force Report, the Karnataka government had adopted a policy of auctioning recovered government lands to private parties. But this was discontinued in 2008-09 due to allegations of corruption and mismanagement. Therefore, while there are undoubtedly merits in going back to a similar policy, it is of utmost importance to ensure that it is facilitated and regulated through a robust mechanism.

As a first step, the state government with all its departments, needs to prepare a comprehensive list of all the lands it has legal rights over, clearly identifying the ones which are either unutilized or under-utilized. At the central level, there is already a project underway to identify all central government owned properties called Government Land Information System (GLIS). In Karnataka, the government has made significant progress with Bhoomi and UPOR projects aimed at digitizing land records. A part of the same project can be specifically curated to identify and segregate government properties, along with digitizing the underlying land records. This way, the Karnataka Government can truly be a pioneer in modernizing land records, starting with properties owned by the government itself.

The next step would be to identify or create a suitable mechanism to divest government properties in a transparent and profitable manner. In Karnataka, the Karnataka Public Lands Corporation Limited (KPLC) established in 2008 deals with matters relating to lands owned by the state or statutory bodies. The mandate of the company is to secure government lands recovered from encroachers and ensure its proper utilization. The Memorandum of Association of KPLC lists that one of the objects of the company is to 'collect and maintain details of Government lands, encroachments of Government land and to allot evicted Government land to different government departments'. The government may consider amending this MoA to empower KPLC itself to act as the nodal agency to transact with private parties as well.

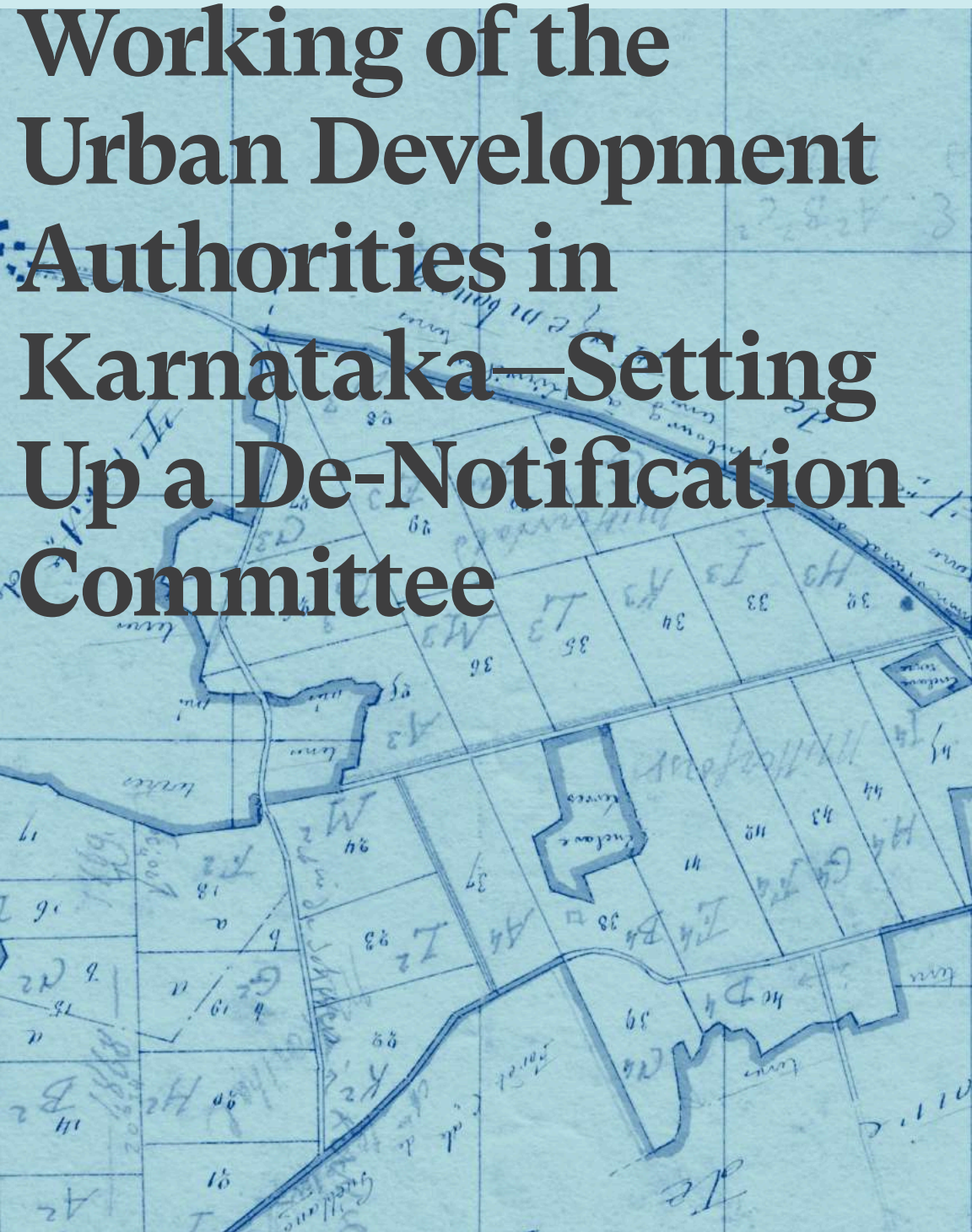
Further amendments will also be necessary to empower KPLC to invite proposals from private parties who wish to contest the government's current use of land along with proposing a better use. Here, lessons can be learnt from United Kingdom's 2017 circular which put forward a 'right to contest' model wherein citizens and private entities were given an explicit right to question and contest Government's use of land.

It is clear that the Karnataka state government needs to rethink its approach towards property management. From delay in public projects due to lack of suitable lands to mounting litigation costs due to encroachment disputes, property mismanagement is harming development prospects of the state. This simple yet impactful tweak in the policy—enabling private parties to put government lands to better use—will go a long way in addressing most of the present concerns regarding government properties in the state.

Enable private parties to lease or buy government lands which are currently unutilized or underutilized.

MINISTRY/ DEPARTMENT	LEGISLATIVE COMPETENCE	KEY LAW
Revenue Department and Planning Department	7th Schedule, List II: Entry 18, Entry 35	New Legislation Recommended

Strengthening the Working of the Urban Development Authorities in Karnataka—Setting Up a De-Notification Committee



INTRODUCTION

Urban institutions in Karnataka need to be strengthened to be more responsive to changing urban realities. Institutions must begin anticipating future trends and appropriately craft responses to address them. In Karnataka, urban areas are managed and regulated by two institutions: the local municipality/municipal corporation and the urban development authority. The municipality/municipal corporation is required under law to maintain and manage existing urban infrastructure. The urban development authorities are required to undertake projects to develop new infrastructure and plan the city's future developments. Over the past decade, conversations on urban governance and reforms have been centered on improving the municipalities and their ability to govern. In Karnataka, the urban development authorities have the mandate of developing housing sites, road transport infrastructure, and open spaces. Despite the urban development authorities playing a key role and the courts constantly holding them responsible, there has been limited attention given to reforming them.

Urban development authorities ("UDA") in Karnataka are established under the Karnataka Urban Development Authorities Act ("KUDA"), 1987. The UDA in Bengaluru is established under the Bangalore Development Authority Act ("BDA"), 1976. Limited land availability, weak internal structures within the UDAs, constant pressure to create housing sites, ever growing real estate prices and limited oversight of land acquisition have resulted in several irregularities in the functioning of UDAs in Karnataka. They are unable to provide effective infrastructure for the city's residents.

PROBLEM

Land available for development in Bengaluru and in many parts of urban Karnataka is limited and requires strong regulations to ensure its efficient usage in accordance with planning laws. To make sure that people in Karnataka have sufficient housing, UDAs take up the task of forming layouts for which large tracts of lands are acquired. Layouts developed by the UDAs are sought after as municipal services and access to public transport are easily available. While land for this is acquired in large proportions, its governance and efficient usage is a cause of concern in Karnataka. In the past, the formation of Shivram Karanath Layout, Arkavathy Layout etc. have created issues of efficient land management. The law provides limited guidance on this issue and amendments to existing Acts will help improve the situation.

There has been limited oversight on the process of de-notification of lands acquired for development of layout. De-notification is where land acquired for public purposes is given up by public authorities as there are problems such as title, measurement and existing litigation related to the acquired land. While de-notification is per se allowed under law, it can only be done prior to it being utilized for a public purpose. However, in Karnataka de-notification is done at different stages and many times subsequent to formation of layout or utilization for public purpose. Such denotification is contrary to the judgment laid down by the

Supreme Court in the BDA v Hanumaiah case. Subsequent to denotification, such lands are auctioned to private developers at high prices. Several cases of denotification have made their way to court. The Comptroller Auditor General of India has observed that repeated denotifications by BDA and other development authorities are a subject of concern due to the lack of oversight. This denotification process has also been responsible for distortion of prices in the real estate market in Karnataka.

Ensuring efficient governance of land is critical to any State, as it keeps the real estate market stable and ensures equitable access to housing. In Karnataka -- and especially in Bengaluru, where land is becoming a scarce resource -- ensuring its effective management has become the need of the hour. In addition to the issue of denotification, land acquisition in Karnataka is also mired with other problems, such as a gap between preliminary notification and final notification, delays in final notification and disbursement of compensation, gaps between actual demand and the extent acquired and disparities in compensation amount. While the current structure of land acquisition process in India may also be the cause of these problems, improving the system by setting up oversight mechanisms may help improve the system.

SOLUTION

To ensure that UDA's governance of land is more efficient and better structured, three changes are recommended:

- First, both the BDA and KUDA Acts need to be amended to set up a denotification committee, under the chairmanship of the Chief Secretary. The committee should be a permanent body whose decisions must be available for public scrutiny.
- Second, strengthen the rules governing allotment of sites to public subsequent to formation of layouts.
- Finally, to improve the overall process of land acquisition, the power of land acquisition must be transferred from the development authority to a specialized body whose sole mandate is the acquisition of land. This way the development authorities could focus on the development of land and the building of infrastructure, instead of spending a majority of their resources on the process of land acquisition.

Amend both the Bangalore Development Authority Act and Karnataka Urban Development Authority Act.

MINISTRY/ DEPARTMENT	LEGISLATIVE COMPETENCE	KEY LAW
Urban Development Department	7th Schedule, List II: Entry 18, Entry 35, Entry 45	The Karnataka Urban Development Authorities Act, 1987, Bangalore Development Authority Act, 1976

Creating a Unified Urban Land Transport Authority for Bengaluru

INTRODUCTION

Urban transport is a vital lifeline for cities. A well-planned and developed transportation system is integral to economic growth. To achieve an efficient urban transportation system, financing infrastructure, integration of technology and a robust governance mechanism are necessary. While India and her States have witnessed a massive surge in spending on urban transport infrastructure, the impact of this investment is still not visible. This is partly due to the lack of importance accorded to systemic institutional reforms required to ensure an effective transportation system. Well-functioning institutions and increased political support are essential for creating and maintaining good quality infrastructure and services for urban mobility.

Transport as a subject is influenced by land policies, the agendas of the municipal authorities and city planning. To ensure that urban transport is effectively governed, agencies empowered to decide on such matters must operate together, rather than in silos. To ensure that connections within the city are efficient there must also be multiple transport options that residents can choose from. Bengaluru -- which has grown into a sprawling metropolis -- provides several options for commuting within the city. Public transport options include buses, metro rail, and railways. Several private options such as taxi aggregators also exist. The challenge in Bengaluru, however, is to create an institutional structure under which these various transport options can be integrated to work seamlessly. The current regulatory framework in Bengaluru poses many challenges to such an integration.

PROBLEM

In India, multiple agencies are responsible for urban transport at the national, state and city levels of the government. These agencies play a multiplicity of roles geared towards public interest; however, there may exist certain perverse incentives, such as profit maximization, leading them to act otherwise. The multiplicity of responsibilities creates uncertainty and confusion relating to the tasks that each agency is mandated to perform. In Bengaluru, the Bengaluru Metropolitan Road Transport ("BMTC"), and the Bengaluru Metro Rail Corporation Limited ("BMRCL") are the two key public transport agencies. These agencies only provide transport services to residents. They are not entrusted with regulatory powers. Bodies such as the Transport Department, the Bruhat Bengaluru Mahanagara Palike ("BBMP"), and the Bengaluru Development Authority ("BDA") have regulatory powers impacting several functions of the public and private transport agencies. The laws are also scattered: land policies are decided under the Karnataka Town and Country Planning Act, 1961, while city planning is framed under the Karnataka Municipal Corporations Act, 1976. In addition to this framework, public and private transport are individually regulated by the Central Motor Vehicles Act, 1988 and taxed under the Karnataka Motor Vehicle Taxation Act, 1957.

The ill effects of this dispersed institutional structure is visible in the day to day administration of the city. For example, the decision of the BBMP to lay concrete roads overlapped with the routes where the BMRCL is undertaking metro construction, causing widespread technical issues. The last mile impact of such poor decision making is borne by the commuter. Further, the recent deadlock between the State Government and Central Government over the suburban rail system in Bengaluru also points to how stakeholders are keen to pursue individual rather than collective interests. There is a need for a statutory agency, under whose umbrella these multiple agencies will make more coordinated, and thus more effective, decisions.

SOLUTION

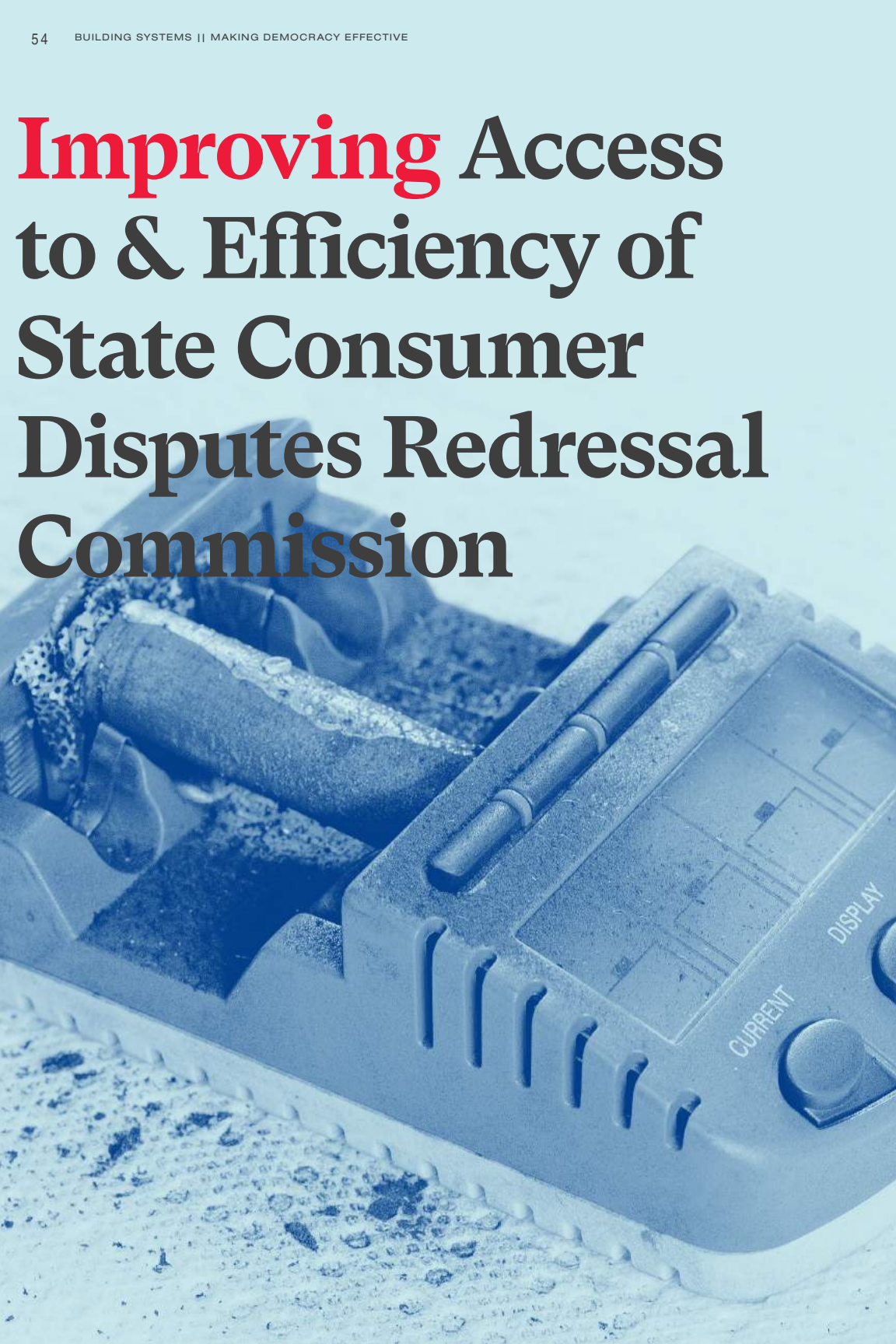
The National Urban Transport Policy, 2014 recommends establishing a statutory body known as the Urban Metropolitan Land Transport Authority ("UMTA") to address the issue of siloed decision making. The body must comprise of members of all responsible agencies, including Central Government departments such as Indian Railways and National Highways Authority of India. The UMTA must also have political representation from the city, preferably through the mayor or members of the legislative assembly, ensuring that residents are represented and decisions having a political impact are addressed. While the body must ensure coordinated decision making, it should also arbitrate regulatory powers which are conflicting. For example, issues such as financing and price determination are currently vested with the Transport Department and Urban Development Department. The BMTC's revenues are determined by the Transport Department whereas the BMRCL's by the Urban Development Department, making the two public transport agencies, competitors rather than partners. The UMTA should be tasked with powers of administrative coordination and regulatory control, ensuring that decisions on law and policy are taken in the larger interest.

Lastly, the UMTA must be resource rich in transport related knowledge, allowing them to scientifically assess the future of the city's transport needs. This would allow it to recommend on how individual agencies could shape their mandate keeping in mind a collective goal to build an efficient and sustainable transportation system for the city and her residents.

Draft a new legislation to establish an authority to co-ordinate and regulate urban transport related issues.

MINISTRY/ DEPARTMENT	LEGISLATIVE COMPETENCE	KEY LAW
Urban Development Department	7th Schedule, List II: Entry 5	New Legislation Recommended

Improving Access to & Efficiency of State Consumer Disputes Redressal Commission



INTRODUCTION

The Consumer Protection Act, 1986 ("the Act") was enacted as an alternative to the time-consuming and expensive process of civil litigation in ordinary courts. To this end, the Act lays down a dedicated three tiered consumer dispute resolution system: District Forum ("DF") in each district, State Commission ("SCF") in every state capital and National Consumer Disputes Redressal Commission ("NCDRC") at New Delhi; and also sets down a time period of three months for these fora to decide complaints/ appeals filed before them. While on paper the Act seems to fulfill the stated objectives of providing time-bound accessible justice to ordinary consumers, the reality is different.

In Karnataka, there are at present thirty-one DFs - six of which are in Bengaluru (five urban and one rural). Bengaluru also houses the lone SCF for the entire state, functioning with two Benches - Principal and Additional, in the same premises. The dire state of affairs can be discerned from the fact that for long, the SCF has been functioning with only two members- President and one-member Judge, with the other member Judge's position lying vacant since long. In fact, even the President's post was vacant between April-June, 2019. Given the number of pending cases and steady line of fresh filings, the lack of capacity in SCF has rendered it dysfunctional for all practical purposes.

PROBLEM

As per statistics released by the Karnataka State Consumer Disputes Redressal Commission (KSCDRC) in December 2018 ("statistics"), 70% of complaints (6326/8925) pending before all DFs in the State and 61 percent of all appeals (5164/8466) pending before the SCF have already breached the time limit of 90 days stipulated under the Act. This suggests that the aim of speedy resolution of disputes envisaged under the Act is nowhere close to being realized. While there are multiple factors which have contributed to this such as vacancy, lack of infrastructure etc., here we focus on one issue which hasn't received any attention till now: the lopsided contribution of Bengaluru District to the pendency issue, and the need for commensurate capacity changes to enable efficient handling of cases across the state, specifically at the level of the State Commission.

The statistics released by KSCDRC reveal that the six Bengaluru DFs account for 51 percent of all consumer complaints filings since inception and 53 percent of overall complaints pendency in the State. This high proportion of complaints from only one out of the thirty districts in the state, reflects commensurately in the proportion of appeals being filed in the State Commission. While practical considerations such as high inflow of complaints has ensured institution of six DFs in Bengaluru, the same practicality is glaringly amiss at the stage of handling appeals, which is entrusted currently to merely 3 Judges (out of which 1 position is lying vacant), including the President, in a single State Commission functioning in Bengaluru.

Of the 10,895 appeals filed before the Karnataka SCF between 2013 to 2017 (five years), the data extracted by Vidhi reveals that:

- only 38 percent of cases filed between 2013- 17 stand disposed as on July 2018; and
- the SCF has taken an average of 432.5 days for such disposals.

This inordinate delay in disposing cases coupled with burgeoning backlog indicates the complete lack of capacity in SCF to deliver on the objectives of the Act. As it stands, an ordinary consumer in Karnataka is slowly but surely losing their confidence in the consumer protection fora.

Therefore, there is an urgent need to not only address the issue of lack of capacity in the SCF, but also that of denial of access to justice- at present, a consumer in a remote corner of the state can seek redressal only if she either has the means to travel or appoint someone on her behalf in Bengaluru.

SOLUTION

The ready solution to both of the above concerns is to establish circuit benches of the State Commission in Karnataka. Such a measure finds precedence in multiple other states such as Rajasthan – five circuit benches, Maharashtra - seven circuit benches, West Bengal – three circuit benches, and Tamil Nadu - 2 circuit benches. To put things in perspective, Karnataka SCF has 9977 cases pending as of August, 2018, which is the third highest pendency in the country. However, Rajasthan, West Bengal and Tamil Nadu, all of which have merely half of this pendency, have multiple circuit benches.

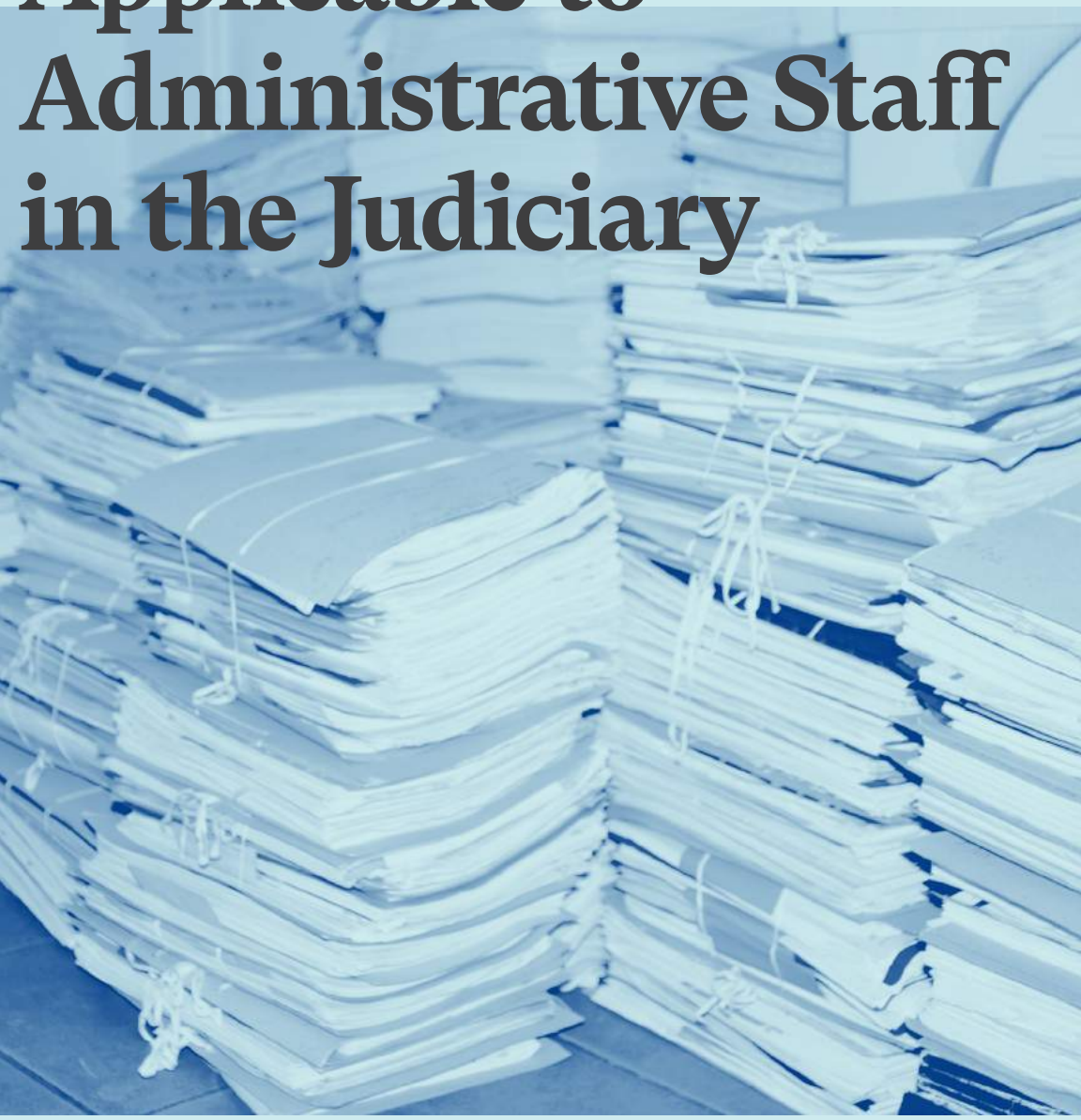
The above clearly shows the reason why the Karnataka SCF is unable to sustain its case-load. In fact, a demand for establishment for additional bench was made in 2017 as well. It's time for the State Government to implement this proposal and implement it well.

Section 17B of the Act dealing with circuit benches provides that a State Government may provide for additional benches in consultation with the SCF. It is suggested that the circuit benches be set up in districts which can act as epicenters for regions from where large number of appeals are currently being filed. Vidhi's data shows that maximum number of appeals arise from the districts of Mysore, Bengaluru, Belgaum, Dharwad, Dakshina Kannada, Bellary, Shimoga and Mandya. Circuit benches in two or more of these districts along with timely appointment of judicial members, is essential to prevent the Act from being just a paper tiger.

Establish circuit benches of the State Commission in two or more districts other than Bengaluru under Section 17B of the Consumer Protection Act.

MINISTRY/ DEPARTMENT	LEGISLATIVE COMPETENCE	KEY LAW
Food, Civil Supplies and Consumer Affairs Department	7th Schedule, List III: Entry 11A	The Consumer Protection Act, 1986

Reforming the Recruitment Process Applicable to Administrative Staff in the Judiciary



INTRODUCTION

On an average, for every single judge of a district court in Karnataka, there are at least a dozen administrative staff members working to assist her in her judicial duties. Justice delivery is thus as much dependent on the quality and number of judges, as the staff. And yet, when one talks about judicial reforms, the issues concerning judicial staff are often relegated to the background if not ignored altogether.

Recently, in a first of its kind exercise, Vidhi along with Daksh conducted an empirical study on the district courts in Bengaluru which involved qualitative data gathering exercise in the form of extensive interviews with the judges and staff of Bengaluru rural district courts. While discussing judicial reforms with people who make the judiciary, apart from the issues such as infrastructure, salaries, promotions etc., one prominent concern highlighted across board was the high vacancy in administrative staff positions. This was pointed out not only by overburdened staff, but also by Judges who felt that their courts were not functioning up to their optimal capacity, due to this shortfall.

PROBLEM

Vacancy in judicial staff positions seems to be the best kept secret of the judiciary. If addressed, it can have significant impact on judicial efficiency. As per the data made available to Vidhi-Daksh, Bengaluru Rural Courts across all six court complexes have been allocated a total of 975 staff posts. Only 410 of these have been filled. This means that these courts are functioning with a deficit of 57.94 percent in staff strength (as of May 2018). Despite these alarming levels of vacancy, judicial staff appointment has not been prioritised.

The crux of the problem lies in the current recruitment system. The power to recruit subordinate court staff is divided amongst two institutions: the Principal District Judge (PDJ) and the Karnataka Public Services Commission (KPSC). On the other hand, the HC staff is appointed directly by the HC Recruitment committee. Therefore, as far as a subordinate judiciary is concerned, there is an anomalous situation where an executive body -- KPSC -- is in charge of judicial staff appointments. Karnataka is only one of two states to have this recruitment system. It not only compromises on the separation of powers principle, but also has a direct bearing on the present staff vacancy crisis.

The subordinate judicial staff are appointed to their posts in two different ways: one, direct recruitment and two, promotions within the court staff hierarchy. Within the realm of direct recruitments, the following three laws lay down the procedure along with the in-charge authority:

- Karnataka State Civil Services (General Recruitment) Rules, 1977
- Karnataka Civil Services (Recruitment to Ministerial Posts) Rules, 1978

➤ Karnataka Subordinate Courts (Ministerial and Other Posts) Rules, 1982 (Promotions)

A combined reading of the above Rules provides that KPSC is incharge of appointment of 40% of First Divisional Assistants (FDA) and 75% of Second Divisional Assistants (SDA) by direct recruitment to various district courts in the state. The FDAs and SDAs form the backbone of the judicial administration, occupying positions such as filing and pending branch clerks, record room in-charge, bench clerks etc.. They act as an interface between the judiciary, the lawyers, and ordinary citizens. It is essential that these officials are not only staffed at their optimal strength, but also receive adequate training. However, the present system does not cater to either of these requirements.

The KPSC calls for applications based on an overall vacancy in both the executive and judicial administration and conducts a common examination for ministerial level staff. Thereafter, based on the vacancy and availability, successful candidates are appointed to different government departments as well as district courts. Therefore, the present status quo caters neither to the specific needs of the judiciary nor the specific interests of the candidates. The interviews conducted revealed that there were several FDAs and SDAs who had not opted for judiciary as their preferred choice of employment.

This disconnect within the recruitment process has multiple adverse impacts- delayed recruitment cycles, selection of unsuitable candidates to the judiciary, disgruntled and overburdened staff etc.

SOLUTION

In all other states except Karnataka and Tamil Nadu, it is the state judiciary which is in-charge of judicial staff recruitment, wherein district court staff is appointed through a committee comprising of the Principal District Judge and other junior judges of the district courts and the HC staff is appointed through a Recruitment Registrar of the High Court.

In Karnataka, it is proposed that a single law for appointment of judicial staff across all courts in the state, including the HC be promulgated. Under this law, a separate authority comprising of present HC and subordinate court judges, assisted by administrative officers from the ranks of Karnataka Administrative Services should be setup. This authority will not only be in charge of conducting regular recruitments, but also augment the training facilities and function as a grievance redressal body.

Further, with the setting up of a unified recruitment mechanism across various levels of the judiciary, the need for career progression amongst staff will also be catered to. Better performers at the district level stand the chance of getting promoted to the High Court while inefficient staff have the fear of transfer between districts.

Set up a Recruitment Committee in the High Court of Karnataka which will be in charge of recruitment and appointment of administrative staff in the judiciary throughout the state.

MINISTRY/ DEPARTMENT	LEGISLATIVE COMPETENCE	KEY LAW
Ministry for Law, Justice and Human Rights	7th Schedule, List III: Entry 11A	Karnataka State Civil Services (General Recruitment) Rules, 1977, Karnataka Civil Services (Recruitment to Ministerial Posts) Rules, 1978

Enacting a Law for Open Prisons in Karnataka

INTRODUCTION

The reformative theory of punishment holds that the purpose of punishment for a crime should be to re-educate and reshape the personality of the criminal and integrate him/her into mainstream society as a useful contributor rather than to punish and incarcerate the person for long periods of time. One of the ways in which the theory of reformative justice can be put into practice in India's criminal justice system, is through the adoption of open prisons.

Open prisons are not a new concept in India. In 1955, Rajasthan led the charge and became the first state to set up an open prison in India. Since then, over 63 open prisons have been set up across the country. These prisons—also known as semi open or low security prisons—grant low risk prisoners who have exhibited good behavior greater autonomy through minimal supervision and lesser security. Prisoners are allowed to work on the premises or in nearby areas with adequate restrictions. They are also allowed to stay with their families on the premises of the open prison, provided they are able to financially support them.

Karnataka can gain immensely by emulating Rajasthan's propagation of the open prison model of imprisonment. Open prisons have been shown to have multiple benefits including improved social adjustment of prisoners upon release, facilitating a sense of financial independence, and a significantly reduced burden on the state exchequer, attributable to the reduction in the prison personnel necessary to guard the prisoners and other overheads.

The economic benefit of open prisons cannot be understated. A 2017 study commissioned by the Rajasthan State Legal Services Authority showed that an open prison in Sanganer Town was 78 times more cost effective than closed prisons in the State. The cost of maintenance of a single prisoner in an open prison was Rs. 500 per month compared to the Rs. 7094 per month of their closed prison counterparts. This massive cost reduction is attributable to the fact that the Prison Department does have to bear the cost of providing prisoners with food, medicine, water, electricity or wages in an open prison model. Instead, the prisoners are expected to earn their own living and pay for these necessities themselves.

In creating a legal framework for institutionalizing open prisons, the Government of Karnataka will find support in the Supreme Court Case of Re – Inhumane Conditions in 1382 prisons, which has directed all states to proactively implement the open prisons system. Further, it has also directed the Central Government to issue 'Model Uniform Rules for the Implementation of Open Correctional Facilities' for the country.

PROBLEM

Karnataka currently houses over 14,206 prisoners in 105 jails, resulting in an overcrowding rate of 3%. However, this is a misleading statistic. The state of individual prisons is far worse, with the overcrowding rate ranging between 44% to 98%. The financial expenditure on each prisoner is also high - Karnataka spends Rs. 253.04 on food and administrative costs per prisoner per day, amounting to a Rs. 7608 monthly outlay per prisoner. Finally, there are also the labour costs to contend with; As of 2017, the total sanctioned strength of prison staff in Karnataka was 2,373, out of which 630 posts were vacant.

SOLUTION

Clearly, Karnataka could benefit greatly from opening and operating more open air prisons which are not as work force and capital intensive. However, thus far, there has only been one open prison in Karnataka with a capacity for housing 80 prisoners.

Currently, Prisons in Karnataka are governed by the archaic and retributive justice based Karnataka Prisons Act, 1963. As a progressive state, it is important that Karnataka take the step towards a more reformative and rehabilitative model of incarceration. Karnataka must frame new rules which comprehensively encompass all aspects of running open prisons in the state along the lines of the Rajasthan Prisoners Open Air Camp Rules, 1972. It is necessary that the rules that Karnataka adopts in this regard, at a minimum, encompass within themselves aspects such as eligibility criteria, internal management and administration of these open prisons. Additionally, a system of internal management of the open prison through the formation of a Prisoners' Panchayat, as has been provided in the Rajasthan Prisoners Open Air Camp Rules, 1972 would be essential to maintain discipline among the prisoners.

It is necessary to emphasize that the open prisons system cannot be the sole standard of punishment in the state. Open prisons must be an avenue of integration into mainstream society only for:

a. First time offenders

b. Who have completed one-third of their prison sentences

c. Have exhibited exemplary conduct and

d. Have not committed certain grave crimes which are to be defined under the rules.

Prisoners who are repeat offenders, who have committed certain types of heinous offences, have attempted escape etc. should not be eligible for admission to open prisons.

The system of Open Prisons is one that will need to work in tandem with the existing prisons structure which will still drastically reduce the costs of the prison system in the state.

Frame comprehensive rules on the functioning of Open Prison under the Karnataka Prisons Act, 1963.

MINISTRY/ DEPARTMENT	LEGISLATIVE COMPETENCE	KEY LAW
Home Ministry: Prisons Department	7th Schedule, List II: Entry 4	The Karnataka Prisons Act, 1963

Provisioning Opposition Days in Karnataka's Legislature

INTRODUCTION

Vidhi's study on Disruptions in the Indian Parliament shows that unparliamentary behaviour by members of parliament such as shouting slogans, showing placards, entering the well of the house etc. during session across legislative bodies in the country results in a massive loss of legislative productivity and time. For instance, in the current Lok Sabha, over 16%, i.e., 10 working day, out of a total 68 working days were lost to disruptions.

The picture in Karnataka is no less alarming. While there is a dearth of reliable data on the number of disruptions in the Karnataka legislature, some indicative data exists: An 8-day long budget session in 2019, saw a total of 5 disruptions in the House, with 3 of them resulting in adjournments. The State's Budget was passed without any debate due to the disruptive behavior of the members of the legislature. Disruptions like these lead to a loss of precious legislative time and set a dangerous trend of important bills being passed without adequate deliberation and debate.

PROBLEM

Members of the legislature resort to using disruptive measures for two main reasons:

- One cause is that the existing mechanisms of questioning the Ruling Party, including question hour, replies to unstarred questions, etc. are insufficient. Currently, parliamentary time is controlled almost entirely by the parties in power who, as a rule, do not provide sufficient time and opportunity for opposition parties to question or seek clarifications on matters of public importance. The Vidhi Report further indicates that the ruling party members also indulge in such disruptive behaviour in order to allow their party to avoid answering important questions on governance.
- Secondly, unfortunately, legislative sessions have morphed from being a forum to debate and decide upon the future of the nation into a forum for party members from both sides to garner publicity for themselves and a means to impress party leadership. The Vidhi Report found that while the Speaker and the Chairperson of the Houses did have some powers to curb such disruptive behaviour, these powers were proving inadequate and were also rarely used.

While the first is a genuine concern that needs to be addressed by changing how time is allocated during the Session, the second shows a lack of discipline among members of the legislature and a lack of respect for the legislative process, which must be dealt with punitively.

SOLUTION

It is essential that in a parliamentary democracy, the parties in power are held accountable for their actions, inactions and policy decisions. The current system of time sharing between the opposition and the ruling parties does not allow for this. It is unfortunate that in our parliamentary system, the rights and functions of the opposition with regards to the government have not been adequately defined.

Therefore, in order to address this disparity and simultaneously reduce the number of disruptions and the subsequent loss of legislative time in Karnataka's legislature, the practice of "Opposition days" needs to become a part of legislative sessions in Karnataka. This can be achieved through an amendment to the Rules of Procedure and Conduct of Business in Karnataka Legislative Assembly.

"Opposition days" are essentially a parliamentary oversight mechanism whereby certain days during the session are allocated for the opposition parties to set the house agenda. The adoption of this practice will ensure that Opposition Parties in Karnataka get adequate time to discuss topics of public importance without having to resort to disruptions.

"Opposition days" have been a popular measure across countries such as Canada and the United Kingdom. "Allotted Days" in Canada, for instance, see opposition party members propose motions for debate on any matters falling within the Parliament's jurisdiction. There are 22 "allotted days" in each calendar year and each opposition party is allocated such days based on its proportional strength in the House. Similarly, this system of opposition days also finds a place in the United Kingdom's Westminster system. Here, out of the 20 allotted opposition days per session, 17 days are given to the main opposition leader, while the rest are given to the second largest opposition party. This procedure is laid down under Standing Order 14 of the House of Commons. The topic of debate and the text of the motion as decided by the opposition parties are shared with the ruling party so that they may prepare for the proposed debate.

While it is imperative that the opposition be given the opportunity to question the Ruling Government on matters critical to the good governance of the state, it is also necessary that it be done in a manner that is less disruptive and more conducive to the functioning of the legislature. If the above suggested method is adopted, the disruptions in the Karnataka legislature would see a significant decrease.

Amend the Rules of Procedure and Conduct of Business in Karnataka Legislative Assembly to provide for ‘Opposition Days’.

MINISTRY/ DEPARTMENT	LEGISLATIVE COMPETENCE	KEY LAW
Ministry of Parliamentary Affairs	7th Schedule, List II: Entry 39	The Rules of Procedure and Conduct of Business in Karnataka Legislative Assembly.

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FIFTEEN REFORMS FOR A PROGRESSIVE KARNATAKA

The Briefing Book is a list of recommended reforms in the State of Karnataka. These recommendations aim to enhance the interaction of the people with the practice of law in the state. In 2019, we focus on reforms that will create the most widespread, on-the-ground change for the citizens of Karnataka while also creating or improving avenues that enable them to excel. The suggested reforms are thus categorised according to their areas of impact: communities and systems.

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