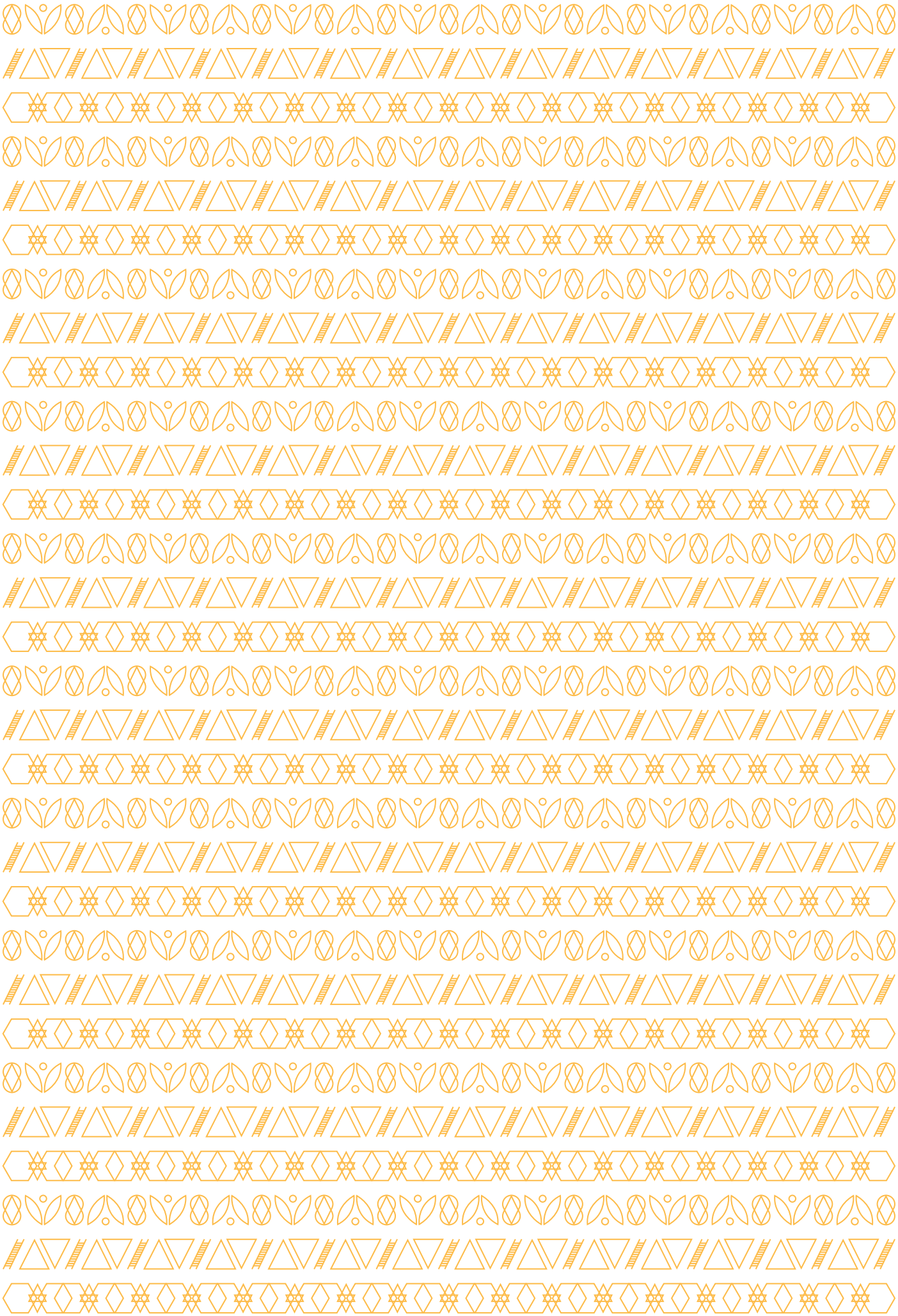
Vidhi
Centre For Legal Policy
BETTER LAWS. BETTER GOVERNANCE

15 Legal Reforms for a PROGRESSIVE KARNATAKA



The Vidhi Centre for Legal Policy is an independant think-tank doing legal research and assisting the central government and state governments in making better laws. This Briefing Book on Fifteen Legal Reforms for a Progressive Karnatak is published by Vidhi's office in Bengaluru.

AUTHORS:

Akhileshwari Reddy
Alok Prasanna Kumar
Deepika Kinhal
Divij Joshi
Shashank Atreya

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Designed by Koyal Chengappa

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141-2/1,
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4th Block, Jayanagar,
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Introduction

India's federal form of constitutional government is no historical accident and neither is it a simplistic re-creation of a foreign model of governance. It is the culmination of constitutional developments that happened parallelly with the independence movement in the first half of the twentieth century. India, as we know it today, was then a patchwork of British provinces and hundreds of large and small princely states, nominally independent but owing allegiance to the British Crown. It was, and remains, an incredibly diverse country and the Constituent Assembly was faced with the challenge of ensuring that whatever mode of governance they chose would adequately reflect this diversity and account for it while providing for a common basis for government.

Seventy years after independence, India is a vastly different country but very much the same in many ways. Constitutional government, despite multiple internal and external challenges, still survives. The extent and reach of the Indian state is far greater in the lives of its citizens than it was ever before and the expectation is that the government should do more, and better, for its citizens. In doing so, the Indian state finds itself more stretched than ever, with capacity gaps emerging in various areas, none more so than in the areas of legal research, drafting of laws, and reform of the institutions of law and justice.

This is what the Vidhi Centre for Legal Policy aims to address. Set up in New Delhi in 2013, as an independent think-tank doing legal research and assisting government in making better laws, we have engaged with the Union and various State Governments, governmental bodies and constitutional authorities on multiple issues. We have worked and continue to work on a wide range of issues including net neutrality, commercial courts, data protection, environmental pollution, discrimination against leprosy afflicted, drug abuse and organ transplant, among other areas.

As wide as the areas we have covered are, in 2017 we concluded that it was time to go deeper. That India's "government" is not just the Union Government in Delhi but also each of the twenty-nine State Governments, along with the local bodies and local self-government institutions. To that end, the Bengaluru office of Vidhi was set up in August, 2017, to work on issues affecting the people of Karnataka and engage with the government and other stakeholders in addressing the same through reforms to laws and institutions.

What are the issues that are being faced by people in Karnataka?

The first and foremost remains leading lives of dignity, freedom and security as guaranteed under the Constitution. While the economic and human development indicators for the state are better than the national averages, much, much more needs to be done to turn the state into a role model for emulation across the nation. These issues are addressed in the first section of this briefing book, which examines legal reforms which can address the problems, *inter alia*, of caste discrimination, improving work environments for women, and environmental protection in an urban setting. By no means is the law or legal reform mooted the end-point of addressing these long-standing concerns, but rather the necessary first action for any meaningful and sustained change on these fronts.

Karnataka's recent history as the hub of innovation in information technology, medical sciences, and computing has meant that it will be at the forefront of regulatory challenges as innovations are put to the market. Being a world-leader in the development of new technology, Karnataka's approach will not only inform the way in which other states in India will regulate them, but will chart a course for the rest of the world to follow. Even within India's federal framework, it is possible for States to innovate and adopt flexible regulatory strategies keeping local needs in mind. To this end, the second section of our briefing book looks at offering regulatory solutions to easing the friction that comes with the growth of technologies, such as e-commerce and the use of aggregator technologies for urban transport.

Laws, at the end of the day, are applied by institutions following a certain structure and manner of functioning. Indeed, modern government cannot function without modern institutions. Institutions, built or conceived once, need constant renewal and re-energising through capacity- building. The third section of this book addresses the concerns being faced by institutions tasked with some of the most important functions of any government – dispute resolution, resource allocation, and administration. Some of these are old institutions facing new problems – the lack of judicial capacity in the Karnataka High Court, for instance – whereas others are new institutions, facing old problems – the absence of a clear framework for the Karnataka State Finance Commission to operate in. Apart from specific solutions, we suggest approaches that could be applied across the board as well. This is by no means a comprehensive list of problems of governance and conclusive legal solutions to them, nor do we claim to be the first to identify these problems in the state. What we do present is a road-map for the future - of a Karnataka that fulfils the constitutional vision of a progressive, modern state that allows its residents to realise their innate human potential to the fullest. These legal reforms, we believe, will go a long way in ensuring a progressive and prosperous Karnataka.

IMPROVING LIVES & LIVELIHOODS

I. SOCIAL BOYCOTT LAW IN KARNATAKA

A. *Introduction*

The problems of caste discrimination, social policing and forcible enforcement of social mores within castes and communities take many forms, some being more subtle than others. One of the more subtle forms is that of social boycott. It is a form of social and economic extra-judicial punishment that is imposed on individuals whom the upper Caste Panchayats believe to have transgressed some social more or diktat. It takes the form of social exclusion from religious ceremonies and gatherings, community-wide gag orders, denial of employment, refusal to sell food, etc. Social Boycott is an insidious form of discrimination and torment that eventually ends in the slow starvation and isolation of persons subjected to it.

B. *Problem*

Although the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1995 ("PoA Act/Act") defines and classifies social and economic boycotts as crimes, there are two factors that make the Act both unsuitable and inadequate to address the endemic nature of social boycotts. The first factor is that the Act has been a highly ineffectual piece of legislation in terms of its impact on reducing atrocities against Scheduled Castes (SCs) and Scheduled Tribes (STs) across the country. With an average prosecution rate of a dismal 15.71% and the unlikelihood of improvement in the near future as well as the rate of pendency under the Act, clubbing social boycott crimes with the PoA Act will only further delay justice to victims of this crime. Secondly, social boycott as a means of discrimination and upper caste dominance has become endemic in Karnataka, with over 5,000 cases being reported yearly on this issue alone and therefore, the need for a far more aggressive and pinpointed effort to eradicate this type of discrimination cannot be ignored.

C. *Solution*

Undoubtedly, a law that deals comprehensively with social boycotts specific to Karnataka for this most egregious of crimes is the need of the hour. Maharashtra's initiative in this regard should be emulated by Karnataka.

An law akin to the Maharashtra Protection of People from Social Boycott (Prevention, Prohibition and Redressal) Act, 2016 ("Maharashtra Act") must be adopted in Karnataka as well. Under the Maharashtra Act, social boycott has been rendered illegal and punishable under the law with an imprisonment of up to three years, a fine up to one lakh rupees or both imposed upon the perpetrator and his/her accomplices to the crime. It also specifically enumerates the many types of situations and forms in which social boycott might be imposed such as ostracization, refusal to allow religious or caste based ceremonies, refusal to allow the use of schools, hospitals, burial grounds etc.

The Maharashtra Act also envisages the creation of the post of a 'Social Boycott Officer' whose responsibility it is to investigate and report instances of social boycott and implement orders of the magistrate. However, it is essential that the proposed legislation in Karnataka addresses the legislative lacunae present in the Maharashtra Act such that its existing pitfalls are avoided.

Three vital additional areas that the proposed Act needs to address are those of inter-caste marriage, witness protection and police sensitization.

One of the biggest reasons for the imposition of social boycott is that of inter-caste marriage. Caste panchayats vilify and boycott both parties in an inter caste marriage. It is very important that the framers of the law take this opportunity to challenge and criminalize the social boycott of consensual inter-caste marriages.

Secondly, one of the most important reasons for the dismal prosecution rates under the PoA Act is that of witnesses turning hostile during the trial. Instances of upper caste persons coercing and threatening persons who are to depose against them are a well-documented hurdle to prosecution. It is vital that provisions be made for witnesses to be moved to safe houses and that these be situated near police stations such that they are not subjected to violence and intimidation. This issue assumes an even graver dimension when the power disparity between the accused and the witness is rooted, as it is in this case, in caste hierarchies.

Finally, it is imperative that the government expend adequate resources in sensitizing the police forces about the evils of caste discrimination. Instances of the police themselves supporting 'upper caste' discrimination and attempting to silence the voices of 'lower castes' are far too many to let this issue lie without remedy. It is recommended that the police forces are made to mandatorily attend caste sensitization courses. Further, the proposed Act must find a way to discourage caste prejudice in the police system through a system of demerits for proven cases of casteism which would have consequences on career advancements. This would require a change in the Karnataka State Police (Disciplinary Proceedings) Rules, 1965. The Karnataka legislature must pass a law that makes the practice of social boycotting illegal through the promulgation of a specific law as suggested above.

II. WHEN OSTENSIBLE POVERTY BECOMES A CRIME

A. *Introduction*

Poverty is a problem that is endemic in India. Factors such as structural inequalities, drought, unemployment and illiteracy all contribute to the creation and perpetuation of poverty. Instead of addressing these root causes of poverty, most states across India have adopted the Bombay Prohibition of Beggary Act, 1959, which penalizes poverty and aims to make visible poverty invisible. As per the 2016 Planning Commission Report, there are an estimated 92.80 lakh persons living in Karnataka who fall below the official poverty line. Out of these, the Karnataka Government as of 2014 estimated that over 24,452 persons in the state are engaged in beggary as a source of earning.

B. *Problem*

Begging is often precipitated by a complex combination of factors such as poverty, ill health, disability, ageing, widowhood and sudden economic crisis. Economic compulsion must not therefore be equated to choice. Instead of addressing the structural, social and state failures that have led to the impoverished state of the beggars in Karnataka, the Karnataka Prohibition of Beggary Act, 1975 ("Act") makes begging a crime in the state. It is an archaic law riddled with numerous constitutionally unsound provisions that are regressive and punitive in nature. It gives excessive discretion to the police to authorize the detention of beggars thereby impinging upon the fundamental rights of destitute persons to a vast extent. The impingement of the rights of destitute persons under the Act may be seen under three heads, definitional arbitrariness, disproportionate sentencing and detention that in effect amounts to incarceration.

Definitional arbitrariness: While the Act makes the soliciting of alms through words and deeds a criminal act, even the mere appearance of impoverishment indicative of 'no visible means of subsistence' can result in a person's detention under the Act. This sets a very subjective standard that has led to the arbitrary and illegal detention of hundreds of migrant labourers and differently-abled persons in the state.

Disproportionate sentencing: Additionally, this Act only provides for summary trials, where the individual circumstances are routinely not enquired into, resulting in the continuation of detention of even those who have been wrongfully detained. This is a violation of the audi alteram partem principle which states that no party may be condemned unheard. Further, these summary trials are considered adequately thorough for the court to sentence persons to detention in rehabilitation homes for anywhere between 1 to 10 years of their lives. This sentencing time is egregiously excessive and utterly disproportionate for the crime of soliciting alms.

Detention that in effect amounts to incarceration: Upon sentencing, the apprehended persons are taken to 'relief centres' where they are detained and 'rehabilitated'. The ground reality is that the homes are more traumatizing and stifling of fundamental freedoms than rehabilitative. Records of abuse, beatings, and hunger in these homes have led to deaths and repeated illnesses of those forcibly brought to these homes. The death of 264 destitute persons living in one such 'Beggars' Home' in 2010 in Bangalore stands as a sad testament to the injustice that this Act has wrought on some of the state's most vulnerable citizens.

C. *Solution*

The Karnataka Prohibition of Beggary Act, 1975 must be repealed. It is regressive, oppressive and elitist. A new law that is more rehabilitative and humane, with strong monitoring mechanisms that ensure that the basic human rights of destitute persons are respected, is the need of the hour.

The new law must include provisions that will address the lack of skills of the destitute persons and must develop and implement vocational training courses that will actually help them earn a living in society. The Government of Karnataka must also create a scheme or policy for the rehabilitation of beggars based on human rights principles. This law must also necessarily contain effective monitoring and supervisory mechanisms to ensure that the human rights of destitute persons are respected at all times during rehabilitation in the aforementioned beggars' homes. Additionally, the hostility and insensitivity of the current police and criminal justice system must be addressed. Finally, the heterogeneity and different vulnerabilities of beggars whether they stem from disability, old age or widowhood must be kept in mind and addressed specifically and rehabilitation programmes should be created to utilize their unique abilities and strengths.

A word of caution seems appropriate at this juncture. The newly proposed 'Persons in Destitution (Protection, Care and Rehabilitation) Model Bill, 2016' is the same law in another garb and is not the right solution for addressing the plight of destitute persons in the state. A completely new law based on respect and adherence to constitutional guarantees such as non-discrimination, justice and equality before the law must be passed to ensure that justice is done.

III. A HOLISTIC APPROACH TO MATERNITY BENEFITS

A. *Introduction*

India's high Maternal Mortality Rate (167 per 100000 live births) and Infant Mortality Rate (34 per 1000 live births) coupled with chronic malnutrition in young mothers and infants have been a cause for persistent concern. Hence, the additional benefits given to working women under the Maternity Benefit (Amendment) Act, 2017 ("Amendment Act"), was heralded as a timely legal intervention to address the intertwined problem of maternal and infant well-being. Under the Amendment Act, a birth mother is entitled to 26 weeks, while an adopting or a commissioning mother is entitled to 12 weeks, of paid maternity leave. The Amendment Act also recognizes a 'work from home' facility and provides for a mandatory crèche facility in every establishment with 50 or more employees. These additional benefits have put India in a group of the few countries which grant a longer maternity leave than the 24 weeks recommended by the World Health Organization (WHO); and which recognize rights of adopting and commissioning mothers. However, the Amendment Act is only a welcome first step, and a lot remains to be done to ensure a more holistic and implementable approach to maternity benefits.

B. *Problem*

For a start, the Maternity Benefits Act, 1961 ("the Act/ Parent Act") is extremely limited in its scope and application. The Act caters to a very miniscule percentage of working women in establishments recognized under the Act, leaving out the majority of women working in unorganized sectors. Further, both the Act and the Amendment Act are silent on the rights of surrogate mothers and do not provide for paternity benefits. Be that as it may, even where applicable, it is widely reported that the implementation rate of the Act has been abysmal, and may continue to be so, due to financial constraints and impracticalities in implementing certain specific benefits.

The question of finances

The question as to who will shoulder the economic burden of maternity benefits has been a sticking point since the passage of Bombay Maternity Benefits Act, 1929, which put the entire burden squarely on the employer. A 2014 report released by the International Labour Organization (ILO) specifically cautions against making employers solely responsible for implementing maternity benefits since the costs involved may deter the employers from hiring or retaining pregnant women. The ILO report strongly advocates that maternity benefits should be provided either through compulsory social insurance or public funds. Even the Standing Committee on Labour had noted in 2007, while considering enhancement of 'medical bonus' provided under the 1961 Act, that very few women employees actually received maternity benefits and had suggested that the State create a corpus fund to partially sponsor the costs incurred by the employer. However, no government has so far attempted to change this status quo as regards financing of maternity benefits, even though the state has much to gain from ensuring the effective implementation of maternity benefits.

To illustrate: one of the key goals of any maternity benefit policy is to facilitate breastfeeding by working mothers. Studies have shown that health benefits that accrue to both the mother and her child by breastfeeding more than match economic returns at family, enterprise and national levels. A 2017 report released by the Global Breastfeeding Collective, led by UNICEF and WHO, ("Collective") has termed breastfeeding the 'best investment in global health' generating US$35 in global return for every US$1 invested. A 'Global Breastfeeding Scorecard, 2017' released by the Collective, shows that India spends an abysmal US$0.15 (less than 10 Rupees) per child to ensure that it meets the breastfeeding guidelines. The report suggests that as things stand, India is poised to lose an estimated US$14 billion in its economy or 0.70 percent of its Gross National Income (GNI) due to high level of child mortality and growing number of deaths in women from cancers and Type-II diabetes, directly attributable to inadequate breastfeeding. These factors make a compelling case for the Central and State Governments to change status quo and shoulder the financial responsibility of providing maternity benefits.

Impediments to Breastfeeding

Even though the benefits of breastfeeding are quite obvious, working mothers have been forced to deprive their infants of breast milk due to various reasons ranging from unsupportive attitude of employers to lack of suitable workplace infrastructure. This is a matter for particular concern in Karnataka, as revealed in the recently released National Family Health Survey (NFHS-4) for 2015-16. As per the survey, both in the urban and rural context, the percentage of children under the age of six months who were exclusively breastfed in Karnataka, has reduced over the last decade.

With the Amendment Act providing for 26 weeks paid maternity leave, crèche facility and nursing breaks, it would appear that the law has truly facilitated working mothers to adhere to WHO's breastfeeding guidelines i.e., exclusive breastfeeding for six months and complementary breastfeeding until two years. However, as in the case of several welfare legislations, the letter of the law is only a job half done. Due to the issues discussed in the finances section above, it is very likely that most employers may be unable to provide maternity benefits. Even then, through a simple

and innovative solution, infants and mothers can reap the benefits of breastfeeding.
In several developed countries, it has been found that pumping milk during working hours is the second most successful strategy that women use to continue breastfeeding while working. To facilitate this, employers only need to make suitable provisions for expressing and storing breast milk at workplace. This cost-effective method benefits the employers by improving retention of female employees after maternity leave, lowering employee absenteeism on account of improved child health, lowered health care costs for the young mother and a healthier workforce for the future. Given Karnataka's breastfeeding statistics, it is imperative that the Government takes measures to support and encourage women to express breast-milk. The first step in this direction is to redefine 'Nursing Breaks' provided under Section 11 of the Act.

C. Solution

To address the problem of finances - Section 28 of the Act empowers the appropriate government to make rules for carrying out the purposes of the Act. The State Government can make rules to enable employers to seek reimbursement of the expenses incurred by them in providing maternity benefits. A request for reimbursement could be made contingent on employers' proving compliance with all aspects of the legislation. Besides encouraging compliance, this would give the government greater visibility over the implementation of the legislation.
To address the concerns of breastfeeding - in exercise of the power vested under Section 28 of the Act, Karnataka can frame rules under Section 11 of the Parent Act which provides for 'Nursing Breaks', so as to specifically recognize a woman's right to express and store breast milk at her workplace. The state should also impose a corresponding obligation on the employer to provide suitable infrastructural facilities such as a private room and a hygienic storage space.
The above measures are necessary to give teeth to the recent amendments to the Maternity Benefit Act, and prevent the amendments and the benefits they offer from becoming a token gesture towards women and child rights.

IV. SECURING AND INCREASING BENGALURU'S GREEN COVER

A. *Introduction*

As part of the process of urbanization, it is also necessary to secure existing green cover and promote afforestation to provide clean and liveable spaces for residents. While infrastructure developments are often on the agenda of growing cities, encouraging eco-friendly development and preserving urban forestry is yet to attain a status of priority. Bengaluru was popularly termed 'Garden City' due to its dense vegetation cover. In the rush for development, the city has compromised its greenery and the ethos it was built on. According to a study conducted by the Karnataka State Pollution Control Board and the Indian Institute of Science, there has been about 584% growth in built-up area in the last four decades with a decline in vegetation by 66% and in water bodies by 74%. Quantification of the number of trees in the region using remote sensing data with field census reveals that there are only 1.5 million trees to support Bengaluru's population of 9.5 million, indicating one tree for every seven persons in the City. This is below the standard prescribed by World Health Organization. According to the Chief Conservator of Forests, Bruhath Bengaluru Mahanagara Palike ("**BBMP**"), the City loses about 10,000 trees every year and a large number of trees are cut for developmental projects. Between the years 2011-2014, 9,281 trees in the city were felled for the Bengaluru Metro Rail and the road widening projects.

The Ministry of Urban Development in response to these concerns issued the Urban Greening Guidelines ("**Guidelines**") in 2014. It was framed to limit concretization in urban development. The Guidelines provide policy directions, indicating various methods of improving green cover in the city. However, not only does it not assist State Governments in preserving the existing green cover, in addition it neither suggests methods it must adopt while undertaking infrastructure projects. With these shortcomings it is the State Government in consultation with the local bodies, which will have to undertake measures to ensure sufficient green cover in cities.

B. *Problem*

Increasing green cover is a continuous process, it requires dedicated and continuous effort by the administration. In Bengaluru, BBMP and Bengaluru Development Authority ("**BDA**") undertake measures to increase green cover. Instances have shown BBMP, BDA and Bengaluru Metropolitan Region Development Authority ("**BMRDA**") individually initiating measures, but these efforts show limited progress as they are uncoordinated and often in conflict with development projects undertaken by other authorities.

The State Government and local bodies are bound by the Karnataka Preservation of Trees Act, 1976 ("**Tree Preservation Act**") and the Karnataka Town and Country Planning Act ("**Town and Country Planning Act**") while outlining development plans for the state. Permission for felling of trees may be sought under the Tree Preservation Act, and the tree officer upon inspection may grant such permission for the felling of trees. One of the shortcomings of the Tree Preservation Act is that does not provide any directions or criteria to the tree officer for determining permissions sought under the Act. The tree officer is therefore restricted to reasons provided for in the application and required to exercise reasonable norms to consider the application on merits. The purpose of a tree preservation law should be to evaluate all impacts of a potential green cover loss and minimize it by having stringent ecological and environmental norms. The law must facilitate consideration of such factors.

The Town and Country Planning Act requires the BDA, under Section 9, to prepare a master plan for the city. Under Section 12 of the Town and Country Planning Act the contents of the master plan have been specified. While preparing the master plan, the authorities are not bound to consider the environmental and ecological factors but are required to carry out an Environment Impact Assessment ("EIA"), only if the proposed project falls within the schedule of Town and Country Planning Regulations, 2006 issued by the Ministry of Environment and Forest Government of India.

C. *Solution*

To guide the Tree Authority while deciding an application under Section 8 of the Town and Country Planning Act, factors such as impact on air pollution, generation of urban heat, impact on bio-diversity and the extent of carbon sequestration need to be considered. To introduce these factors, an amendment to Section 8 will have to be carried out. The State Government may, under the Karnataka Preservation of Tree Rules, 1976, issue specific guidelines to determine when such factors may be considered.

A master plan is required to provide a holistic approach to development. It must analyse all aspects that facilitate better living for the residents. In Karnataka, the master plan provides directions for improving public transport, infrastructure, utilizing renewable energy and access to water while providing limited guidance on securing and developing urban greenery. This shortcoming may be attributed to the law, as the Town and Country Planning Act under Section 12 does not require authorities to develop a road map for urban greenery. It is suggested that an amendment to Sections 12 and 26 be introduced to mandate the development of a policy/roadmap exclusively for urban environment and ecology. A similar provision may be found under the Kerala Town and Country Planning

Amendment Act, 2016.

An EIA under the schedule of regulations, 2006 has a generic set of assessments and in the absence of a localized focus it might not provide a true assessment of an infrastructure project. Urban areas have unique characteristics with extensive bio-diversity.

The State Government must utilize the law to protect said biodiversity and hence during the implementation of the master plan, the authorities must assess any proposed project on its impact on local or immediate environment. The National Green Tribunal, in February 2017, also placed emphasis on moving beyond the generic EIA regulations and adopting a localized approach which would recognize the concerns exclusive to an area. To facilitate this, Section 14 of the Town and Country Planning Act may be amended to require implementing agencies or authorities to carry out a local environment and ecological assessment for every proposed project. And for those already requiring an EIA, make such assessment an addition to the EIA.

Lastly, to ensure systematic and coordinated approach, the State Government may consider establishing a nodal authority under the Tree Preservation Act. BBMP and BDA may carry out their urban greenery activities under the aegis of the proposed nodal authority.

V. DECENTRALISED REGULATION FOR INTEGRATED WATER RESOURCES MANAGEMENT IN KARNATAKA

A. *Introduction*

Karnataka faces recurring issues of water shortages and droughts – in 2017, it was reported by the Karnataka State Natural Disaster Monitoring Centre that 160 of 176 taluks in the state were drought-affected for at least one cropping season. Disruptions in the availability of water can have disastrous implications on public health and water security in terms of domestic usage including drinking water supplies. Moreover, in a largely agrarian state, fluctuations in water availability affect food supply and agriculture for a large fraction of the population. Ineffective water governance exacerbates the ecological causes of deterioration of water quality and quantity in the state.

The management of intra-state water resources, is within the legislative domain of state governments under the scheme of the Constitution of India. Water management and governance structures in Karnataka are highly fragmented and insular – institutions for managing water resources in the state are constituted under different laws with different objectives, with little clarity on their roles. Such fragmentation results in both overlapping areas of authority and gaps in regulation as well as a lack of clear accountability or transparency in the governance of water resources.

B. *Problem*

An Asian Development Bank Report from 2011 recognizes at least 37 disparate organisations responsible for the administration of water resources in Karnataka. Some of these include:

1. The Karnataka Water Resources Department which is a state cabinet ministry, primarily responsible for the planning and coordination of irrigation projects. There are two separate ministerial posts in charge of the Water Resources Department – one for minor irrigation, and one for medium and major irrigation. The Water Resources Department also subsumes a technical body known as the Water Resources Development Organisation.
2. The Karnataka Groundwater Directorate was established in 2013, after its bifurcation from the mines and minerals department, as the authority responsible for ground water management in the state. Another body known as the Karnataka Ground Water Authority has also been established in 2012, by notification of the state government, to exercise powers under the Karnataka Ground Water Regulation Act, 2011.
3. Urban water supply is largely the responsibility of urban local bodies and municipal corporations, with separate water supply boards for Bengaluru and the rest of urban Karnataka.
4. The Department of Ecology is responsible, inter alia, for maintaining the quality of water bodies and for the conservation of water bodies and overseeing the functioning of the State Pollution Control Board.
5. The State Pollution Control Board is the body responsible for enforcing the provisions of the central Water (Prevention and Control of Pollution) Act, 1974 and managing qualitative aspects of various water resources.
6. The Watershed Development Department established under the Ministry of Agriculture and Horticulture is responsible for the management of catchment areas/river basins, primarily for agricultural purposes and to implement the various watershed development schemes proposed by the government.

An overview of governance structures and policies evidences a lack of planning and coordination in achieving holistic water governance. Firstly, while such bodies ostensibly operate under the broad principles outlined in the Karnataka Water Policy of 2002, there is no mechanism for ensuring that these bodies actually act in accordance with common policy objectives. This has resulted in a slew of uncoordinated and fragmented legislative initiatives administered by various departments, such as the enactment of the Karnataka Groundwater Act and Irrigation Act, 2011, the Urban Drinking Water and Sanitation Policy, 2002 etc.

Secondly, the lack of coordination and the insularity in the functioning of these institutions affects effective water governance in various ways, including, for example –

- The current administrative setup ignores the interrelationships between various aspects of water resources (such as groundwater and river water management) as well as relationships between water resources and other resources such as land.
- There is no assessment of sectoral priorities between the sectors governed by various agencies, and no mechanism for settling regional or intra-state disputes relating to water resources.
- There is jurisdictional overlap and conflict between the policies and jurisdictions of the various agencies. Jurisdiction is often built upon existing administrative boundaries instead of being based upon the river basin.

C. *Solution*

The concept of Integrated Water Resources Management ("**IWRM**") has largely been globally accepted as a standard approach for holistic water resources management. IWRM has been defined as "*a process which promotes the coordinated development and management of water, land and related resources, in order to maximize the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems*". IWRM

espouses river basins or catchment areas as the basic hydrological unit around which water management should be framed, as this provides a more holistic picture of interrelationships between different water sources. In the same vein, IWRM requires greater institutional coherence between the operational agencies in charge of water governance. IWRM is recognized in various water governance policies at the state and central level, including to an extent in the Karnataka State Water Policy, 2002. However, it has not been properly institutionalised or implemented in law, even though there are some instances of the state government pursuing IWRM as a policy, for example, in the Tungabhadra basin, through an Asian Development Bank – aided project, and through the establishment of the Advanced Centre for Integrated Water Resources Management.

Institutional reform in water governance on the lines of IWRM principles will require significant organizational changes, apart from substantive reform in water policies. The present roles of various administrative agencies would need to be consolidated or incorporated into an administrative set-up working as River Basin Organizations for different catchment areas. Further, there is a need to have a dedicated system for developing policy and setting regulatory parameters, including inter-sectoral allocations or water tariffs, as required. Ideally, this policy making body should be administratively independent, must include stakeholder participation, and should be overseen by an apex-level monitoring body to review its recommendations. Separately, a water regulatory agency should be in charge of implementing the recommendations of the policy making body.

The institutional framework must be participatory and local communities such as Water User Associations (which have been delegated certain functions under the Karnataka Irrigation Act, 1965) must be empowered as an integral part of such a framework. Various communities have differing needs as well as mechanisms for water management, which need to be encompassed within any regulatory scheme.

The objectives outlined above could be achieved through the implementation of an institutional set-up similar to that envisaged in the model State Water Regulatory System Bill ("SWRS Bill"), proposed by the erstwhile Planning Commission of India, which envisages administrative institutions with a modular set-up, incorporating the functions of various extant agencies responsible for water management and gradually transitioning the functions of these agencies into a set-up based on IWRM principles, in particular, using the river basin as the basic hydrological unit. The SWRS Bill proposes a structure whereby an independent regulatory authority acts as a high level policy-framing organisation, which is advised by an external committee of experts, which also functions as a regulator. The model bill also outlines a structure for the decentralisation of powers from State-level committees to local governance bodies.

It is proposed that the Government of Karnataka realign the various institutions which are currently responsible for the management of water resources in a way that conforms to the SWRS Bill, and pass an implementing legislation along the same lines. In addition, the functions of the Water Resources Department must be expanded to consolidate ministerial-level co-ordination and monitoring functions currently undertaken by various departments. Implementation of the above proposal would require both legislative changes and executive cooperation among the various agencies once an organization structure incorporating the various existing agencies is created.

Transforming Institutions for BETTER GOVERANCE

VI. ADDRESSING THE VACANCY PROBLEM IN THE KARNATAKA HIGH COURT

A. *Introduction*

Constitutional courts in India, namely the High Courts and the Supreme Court, perform the vital task of ensuring that citizens have redress for any grievance against the State. They also perform dispute resolution functions vested under the Constitution. To say that they are the cornerstones of constitutional governments is to state the obvious. Public confidence in these institutions is therefore essential for good governance.

B. *Problem*

The Karnataka High Court, at present, exercises both the constitutional jurisdiction vested in it, as also the appellate jurisdiction vested in it by multiple State and Central laws. It has, as of 01.09.2017 a sanctioned strength of 62 judges. However on the same date, there were only 24 judges (both additional and permanent judges) currently presiding in the Karnataka High Court. The Karnataka High Court is therefore one of the three High Courts that is presently suffering from severe capacity issues with less than fifty per cent of the sanctioned strength being functional. As per data from the National Judicial Data Grid, 2,15,272 cases are pending adjudication in the Karnataka High Court. While the absolute number may itself not be a problem, 70% of these cases have been pending for more than two years. Following the classification of the Law Commission of India in its 245th Report, these cases are therefore classifiable as "delayed'. Furthermore, 28% of the cases are pending for more than five years -suggesting that these cases are "arrears" adopting the same classification mechanism of the Law Commission.

To be fair, these numbers are still favourable when compared to the all India figures where, across High Courts, 79.65% of cases are delayed and 49.66% are arrears. However, should the capacity situation persist for a long period of time, it is likely that the Karnataka High Court will struggle to maintain its performance in the matter of disposal of cases so far.

Following the Supreme Court's judgment in ***Supreme Court Advocates on Record Association v Union of India*** ((2016) 4 SCC 1) ("**Fourth Judges Case**") appointments of judges to the High Courts and the Supreme Court are being made by the "collegium" of Supreme Court judges in consultation with the "collegium" of High Court judges where required. These collegiums are a result of the judgment of the Supreme Court in ***In Re Presidential Reference under Article 143(1)*** ((1998) 7 SCC 739) ("Third Judges Case") and consist exclusively of the judges of the Supreme Court and the High Court respectively, and the opinion of the Chief Justice of India after consultation with the collegium is binding upon the Union Government.

Subsequent to the judgement in the Fourth Judges Case, the Supreme Court had taken into account the need to improve the collegium function on considerations of efficiency, transparency and merit and thus passed an order directing the Union Government to frame a fresh Memorandum of Procedure ("**MoP**") on this basis. Two years after this order, due to differences between the judiciary and the Government over the content of the Memorandum of Procedure, it has yet to see the light of day.

Even if the differences between the Union Government and the Collegium over the MoP were to be resolved, there remains the problem that the collegium system itself has been unable to keep up with the demands of appointing enough judges to the High Courts across the country.

As a study has shown, between 2006 and 2014, the collegium was never able to ensure that more than 652 judges' positions were filled at any given time. As of 1st September, 2017 even though there are 666 judges serving, the fact remains that the percentage of vacant seats remains very high – 38%. At no point in the past has the collegium system been able to ensure that at least 700 judges serve in the High Courts at any one point of time.

This suggests therefore that the collegium system, while ensuring the independence of judges through the appointment process, is not able to adequately discharge its primary duty of ensuring that adequate numbers of judges are appointed to the High Courts. The difficulty may be attributed to the fact that the senior most judges of the Supreme Court and the High Courts have to carry out the appointment related functions as well, in addition to their judicial and administrative functions. Part of this can be rectified with the creation of a permanent secretariat which can support the appointment process and move it more efficiently, but at the moment the situation threatens to become dire in some High Courts such as the Karnataka High Court.

C. *Solution*

To address the issue of lack of judges, resort can be had to Article 224-A of the Constitution. This provision allows the Chief Justice of a High Court to request a retired judge of that or any High Court to serve on the High Court after their retirement. This power is exercisable subject to two conditions, first: that the retired judge consents to serve on the High Court and second, that prior permission is obtained from the President. Subject to these restraints, the Chief Justice is empowered to appoint such number of retired judges as are necessary.

Since the dates of retirement of judges are already known in advance, every Chief Justice could seek the consent of the judge and the President's approval prior to the date of such retirement to ensure continuity as far as possible. There

is past precedent for this practice when the Chief Justices of India used to exercise their powers under Article 128 of the Constitution in the context of the retired judges of the Supreme Court. Even during the 13 judge bench hearing in the Kesavananda Bharati case, three retired judges were appointed to the Supreme Court to prevent the backlog from building up to unmanageable proportions. While no time period is prescribed, retired judges may be appointed for six month terms extendable up to a maximum of one year.

A. *Introduction*

Openness, transparency and public participation are universally recognised as being critical aspects of good governance and rule of law. Transparency fosters governmental accountability and strengthens democracy by allowing greater participation in governance by the constituents of a polity. This is particularly so in the context of laws and regulations - encompassing laws passed by the legislature as well as delegated legislations and administrative orders. Moreover, apart from transparency in the outcome of legal processes, there must be transparency in the process itself – this includes public scrutiny of legislative debates and legislative inputs such as references to legislative committees, as well as pre-legislative consultation processes through the public or select stakeholders. In Karnataka, the rule of law suffers as the public does not have easy access to information about regulatory processes relating to laws which critically affect them, nor does it have proper insight or involvement in drafting such laws, which ultimately results in a less participative and robust citizenry.

B. *Problem*

In Karnataka, the procedures and outcomes of law-making and regulatory processes are relatively opaque. There is no legislative mandate for engaging the public in pre-legislative consultation and soliciting the views of the constituents of the state in order to inform the laws that govern them. This is particularly important for delegated legislation and administrative orders which do not receive the same level of legislative scrutiny as laws passed by the legislature. Further, the inputs received in the formulation of laws and rules, including -

(1) The views of ministries, cabinet members, and legislative committees to which legal drafts may be sent for scrutiny;
(2) Various iterations of draft bills from the stage at which they are drafted by a ministry or a private member;
(3) The text of the legislative debates, including questions raised about the bills, prior to the enactment of the law, etc. are not made available for public scrutiny. Even in cases where they are publically available, the methods of accessing the same are limited in choice and are difficult to navigate.

Further, the publication of enacted legislation is not only both irregular and insufficient but moreover, it does not even ensure wide access to said legislative documents. At the time of writing, only laws enacted post-2001 have been made available for online access, the most commonly available mode of public access. Further, many of the uploaded texts are not legible or have become corrupted due to lack of quality control and regular updating. The uploaded documents are not machine-readable which would enable easier accessibility. The problem of irregularity in the publication of laws has also been highlighted by the Chief Information Commission as well as the Delhi High Court in *Union of India v Vansh Sharad Gupta*, which mandated that the Central Government must swiftly resolve the issues with the methods of online publication of laws.

Currently, the process for pre-legislative consultation as well as publication of important legislative inputs is entirely ad-hoc and discretionary. The present legal framework, contained under the Karnataka Government (Transaction of Business) Rules, 1977, ("**Transaction Rules**") and the Karnataka Rules of Procedure and Conduct of Business of the Karnataka State Legislature, 2011 ("**Rules of Procedure**") do not have any framework for public consultation or for transparency of legislative inputs. This discretion impedes accountability in the law-making process and the arbitrary nature of the same prevents important public disclosures about inputs to various laws. The rules concerning regulatory transparency need to be reformed to ensure accountability and openness in Karnataka's laws.

C. *Solution*

Legal mandates must be put in place to ensure transparency in the law-making process in Karnataka. The Ministry of Law and Justice of the Central Government has framed a 'Pre-Legislative Consultation Policy' to be followed prior to the introduction of government bills. However, this is only applicable to central government agencies, is difficult to enforce, and is rarely observed in practice. Certain legal changes may be effected in order to introduce greater transparency.

Firstly, the Karnataka General Clauses Act ("**GC Act**"), 1899, which prescribes certain procedural requirements for laws to come into effect (including their publication in the gazette) may be amended to require the government to expeditiously upload all laws, rules and notifications published in the Gazette in a legible and machine readable format to the internet. ***Secondly***, the Government of Karnataka may introduce a new legislation which creates a framework mandating public consultation for certain non-urgent laws and rules. The amended law may provide for the mode for public consultation and include appropriate mechanisms for collating and responding to public concerns about draft laws as well as lower level regulations. Public consultation may take place in various degrees, as deemed appropriate of course, however, open and transparent public consultation should be the norm, unless sufficient reasons exist

for deviating from the same (for example, exemptions may exist for bills making only minor amendments to laws). Relevant stakeholders and affected persons and groups should also be identified and specifically approached for their views. In appropriate instances where special interest groups are concerned, public hearings may also be held for soliciting the views of these groups before the legislature. The law must ensure that access to consultative mechanisms is open to all and not merely to those privileged haves with access to resources like internet connectivity, by expanding consultative mechanisms beyond online portals into decentralised government bodies such as gram-sabhas and panchayats. Kerala provides one successful model of public consultation at a decentralised level, with consultations taking place at ward-sabha and gram-sabha levels. The framework established under the new law should ensure accountability by empowering key officials in each ministry to oversee the consultation process, as well as a grievance redressal and an appellate authority for oversight.

Thirdly, the State Government may frame rules under Section 27 read with Section 4(1) (c) of the Right to Information Act ("**RTI Act**"), which mandates proactive disclosure and publication by public authorities of "***all relevant facts while formulating important policies or announcing the decisions which affect public***". Such rules may provide for mandatory publication of the deliberations and testimonials before committees which review laws at regular intervals, and also provide for the publication of official records of legislative debates in the legislative assembly and the legislative council. In addition, consequential changes may be required to the Rules of Procedure and the Transaction Rules.

VIII. ENSURING EFFECTIVE STATE LEVEL ADMINISTRATION

A. *Introduction*

Administration at the state level is a challenging task - it requires specialized skills and dedicated personnel who are guided by a comprehensive regulatory framework. Karnataka, India's 7th largest state, has vast coastal areas and plays host to multiple ethnicities and diverse cultures; the aforementioned state also has a unique set of administrative challenges. To successfully govern such a large and diverse State, it must have well-defined hierarchy, detailed rules and qualified personnel to implement policies laid down by the Government.

To attract best talent into public services, the constitution provides for the setting up of the Union Public Service Commission ("**UPSC**") at the central level and State Public Service Commission at the state level. Government of Karnataka in 1967 established the Karnataka Public Service Commission ("**KPSC**"), with the responsibility of conducting recruitment to various services in the State. Currently, KPSC conducts recruitment for Karnataka Administrative Services, Karnataka Municipal Administrative Services, Karnataka Education Department Services and other specialized offices of the State. Officers in these specialized cadres' are in close interface with public and are often the first level of government interaction for the citizens. In addition to recruitment, KPSC is consulted by the State Government on matters of promotion and disciplinary proceedings. Therefore, work undertaken by KPSC directly contributes to ensuring effective governance.

To ensure quality in recruitment of public officers, KPSC as an institution must have a strong institutional framework which must also help preserve its apolitical nature.

B. *Problem*

Public employment in India is highly competitive, with the caste of candidates being an important consideration. When factors in addition to merit are involved in the selection process, appointments to public offices becomes a breeding ground for nepotism and malpractice *(In Re Mehar Singh Saini, Chairman Haryana Public Service Commission*, Unfortunately, the KPSC is not immune to these factors. The Karnataka High Court in the landmark judgment of *Khaleel Ahmed v State of Karnataka* highlighted the shortcomings of the commission and observed the lack of credibility in the process undertaken for appointment of its members. In order to maintain the integrity of the commission and preserve the purpose of its establishment, it must be led by strong leadership, appointed after careful consideration. However, in the State, the Karnataka Public Service Commission Act, 1959 ("**KPSC Act**") provides no criteria for the appointment of chairperson to the KPSC or its members.

The examinations conducted by KPSC are often challenged in the court for deficiencies in scheme of marking, answer key and ranking system. This leads to frequent stay orders, resulting in delayed appointments with the last mile impact on governance. Conduct of examination is KPSC's primary role and it should be done so efficiently leaving no scope for malpractice. It should inspire citizens to participate and reward merit. The current system by KPSC does not reflect this objective as the system of examination is ad-hoc. The KPSC Act also has an absence of dedicated rules dealing with the establishment of an examination board and process of evaluation. In the absence of such rules, the Karnataka High Court is often called upon to fill in this regulatory lacuna and provide directions.

B. *Solution*

Discretion of the State Government in the appointment of members to state public service commission has to be exercised on logic and determined on factors that have a rational nexus to the post. It is suggested that rules be issued under the KPSC Act which would provide qualifications/criteria for the appointment of a chairperson. Additionally, as per the recommendations of the P.C. Hota Committee in 2004, a search committee may be established, by amending the KPSC Act, which will have representation from all relevant stakeholders. The report of the committee may be placed before the Governor of Karnataka for consideration.

To successfully administer the examination process, the KPSC Act will have to be restructured to ensure that an effective and transparent system is put in place. It is suggested that Section 16 of the KPSC Act be amended to establish an independent and permanent board of examinations. The board of examinations will be headed by a controller of examinations and require mandatory external representation from any State University. To ensure its independence it may report to the committee under the chairmanship of the Chief Secretary, Government of Karnataka in which no serving member of KPSC may participate. The board of examinations may, on behalf of KPSC, issue rules for engaging evaluators from various fields and conduct examinations. Thus, as per the recommendations of the P.C Hota Committee (2004) , the KPSC Act may be suitably amended to ensure an internal and external audit of the examination board.

IX. PROTECTION OF REAL ESTATE SECTOR UNDER RERA

A. *Introduction*

By 2030, it is estimated that as much as 40% of India's population will be living in urban areas. As for Karnataka, it is expected to be one of the five large states which will have more people living in urban areas than in rural areas. In this scenario, the need for a robust and thriving real estate sector to meet the crying demands for residential and commercial infrastructure in Karnataka cannot be exaggerated.

In the last couple of years, the Government of India has unveiled a slew of law and policy reforms which have impacted the real estate sector, both in regulating and facilitating it. For instance, reforms such as raising applicable FDI limit to 100 percent and setting up of REITs (Real Estate Investment Trusts), have facilitated the sector by attracting increased investment and capital-building. On the other hand, demonetization and Goods and Services Tax (GST) have affected both the supply and demand side of the real estate sector due to liquidity issues and uncertainty of costs faced by the buyers and the builders respectively. Over and above all these, the most significant legal change, slated to radically change the way real estate sector operates in this country, is the Real Estate (Regulation and Development) Act, 2016 ("**RERA/ the Act**"). This law was enacted as an answer to the longstanding complaints of delay, inefficiency and fraud levelled against the real estate sector.

RERA has been welcomed with open arms by the buyers, while it has received mixed response from the builders' community, given that they are subjected to very high standards of accountability under RERA. Under RERA, the builders/ promoters are required to disclose property details, approval status, development plans and timelines of all 'ongoing' projects to the authority set up under the Act, after which the project is granted registration under the RERA. Unless registered, the builders cannot advertise their projects to potential buyers. Further, the liability provisions provide for both hefty fines and imprisonment in case of breach of undertakings and violation of the Act.

Not surprisingly, the validity of several provisions of RERA were challenged before multiple High Courts by builders, on grounds of arbitrariness and unconstitutionality. In December 2017, the Bombay High Court, before whom all the pending cases against RERA were clubbed and heard, upheld the constitutional validity of the Act almost in its entirety except for striking down Section 46(1)(b) which provided for appointment of non-judicial members to the Appellate Authority. The Court also granted limited relief to the petitioners by holding that the RERA Authority may decide not to cancel the registration of a project, despite the promoter being unable to complete it within stipulated timelines, if the Authority is satisfied that there are '***exceptional and compelling***' circumstances for the same.

Therefore, both the judicial and legislative stance on RERA has been to ensure strict implementation. While this approach is bound to boost consumer confidence, it has also resulted in a lopsided legal framework that fails to address the most pertinent problems affecting the real estate sector in India, particularly in Karnataka.

B. *Problem*

The real estate sector is heavily dependent on various state agencies which are in charge of granting approvals at various stages of a development project. It is trite to say that the relationship between the sector and the state agencies is oiled with corruption, nepotism and high-handedness of Government officials. In fact, in the 2010 ***Doing Business*** Report released by the World Bank, which looked specifically into the ease of availing construction permits by real estate developers, India was ranked 175th among 183 countries. This ranking does not come as a surprise to anyone who has been part of a development project, either as a developer or as an end-buyer. In Bengaluru, it is estimated that it takes nearly 2 years to obtain all the approvals from multiple authorities before a developer can begin construction. In addition to the delay and uncertainty, the developer also incurs additional overhead costs due to corruption, all of which gets passed on to the buyer.

C. *Solution*

Under Section 32(b) and (c) of the Act, the Authority under the Act is entrusted with the responsibility of making recommendations to the appropriate Government for "***creation of a single window system for ensuring time bound project approvals and clearances for timely completion of the project***" and for "***creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials***". Unfortunately, both the Act and the Karnataka RERA Rules, 2017, framed thereunder, are silent on the timeline for the Authority to propose such recommendations and further, there is no obligation on the appropriate Government to act on such recommendations. In any case, Karnataka is yet to set up a permanent RERA Authority which can discharge all the responsibilities entrusted to it under the Act and the Rules.

Streamlining Approvals

As a first step, the Government of Karnataka should set up a permanent RERA Authority, with strict timelines to recommend a single window system of approvals. Recently, in the draft Karnataka Municipal Corporations Building Bye-Laws, 2017, an online system of approvals along with self-certification has been proposed. However, in the same

breath, the draft Bye-Laws have also increased the number of documents required for providing a building sanction. This anomaly arising out of multiple laws governing the real estate sector should be avoided. Given that the RERA Authority has been vested with the power to streamline approvals, it should frame a comprehensive set of rules regarding the number of approvals required and a time-bound manner in which they can be obtained. Particularly, the streamlined approval system should provide for the following:

1. A single window electronic platform for one-time submission of all the required documents which will automatically be delivered to the respective state agencies.
2. Strict time-bound approval process, and if the process extends beyond the time period prescribed then deemed approval is to be granted on the basis of self-certification.
3. Designate an official for every project, who will be in charge of ensuring two-way communication between different state agencies and the builder. Such an official would also be accountable for any breach of timelines in granting approvals.
4. Post construction, simultaneous inspection by various authorities and outsourcing of inspection and certification where suitable.

It is pertinent to highlight here that Karnataka, which has otherwise been a pioneer in adopting technology to improve regulatory frameworks, is one of the few larger states yet to implement a singlewindow system for approvals. This has also resulted in the State slipping by 5 ranks in '***Assessment of State Implementation of Business Reforms- 2016***' report released by the Government of India in collaboration with the World Bank.

Grievance Redressal Mechanism for Builders

RERA is seen as an all-encompassing legislation for the regulation of real estate sector. In fact, to ensure speedy justice against builders, the pending real estate related cases before the District and State Consumer forums can be transferred to the RERA Authority. Therefore, it is only apt that the same Authority should also act as a one-stop shop to address grievances of the builders against State agencies or officials. At present, builders have very limited recourse in law to deal with corrupt officials. Legislations such as Prevention of Corruption Act, 1988, or the Karnataka Lokayukta Act, 1984, have failed to deter corruption of officials at lower, grassroot levels, especially among local bodies such as the Bengaluru Development Authority or the Bruhat Bengaluru Mahanagara Palike.

In the current legal framework, wherein the builders are held to stricter accountability, it is only just to simultaneously create a conducive system wherein the builders, big or small, are not held at ransom by State agencies. This can be achieved by creating a separate Bench within RERA Authority to hear complaints made by the builders, with the Rules stipulating strict liability provisions for officials who delay granting of approvals or indulge in corrupt practices.

The real estate sector contributes nearly 34% to Karnataka's Gross State Domestic Product (GSDP). Therefore, it is critical that the Government of Karnataka take the appropriate steps to remedy the lopsided legal framework currently in place and improve the business environment in the real estate sector.

X. MAKING THE KARNATAKA STATE FINANCE COMMISSION EFFECTIVE

A. *Introduction*

The 73rd and 74th amendment to the Constitution created a holistic structure to facilitate decentralization by constitutionally recognizing urban local bodies ("**ULBs**") and panchayat raj institutions ("**PRIs**"). The amendments also require State Governments to establish a State Finance Commission ("**SFC**") to facilitate devolution of financial resources among the State governments. The SFCs are established under Articles 243(I) and 243(Y) and are specifically required to recommend to their respective State legislatures, measures to improve finances of local governments. Article 243(I) requires that the Governor of a state cause every recommendation made by SFC together with an explanatory memorandum, mentioning the action taken and be placed before the State Legislature.

The role played by SFCs in India's federal setup is distinctive, with the broader aim being the rationalisation of the State Government-Local Bodies' fiscal relationship and providing adequate financial resources so as to fund citizen services. While the recommendations of the SFCs are not binding on the States, it is a healthy precedent that the devolution proposals are generally executed without much deviation. SFCs are required to design and structure a fiscal system that would meet the financial requirements of ULBs and PRIs. In Karnataka, Karnataka Panchayat Raj Act, 1993 under Section 267 constituted the Karnataka State Finance Commission ("**KSFCs**"), which is extended to City Corporations under Section 503C of the Karnataka Municipal Corporations Act, 1976 and Municipalities under section 302B of the Karnataka Municipalities Act, 1976. Government of Karnataka established the first KSFC in 1994. Since then three KSFCs have been appointed, with the fourth KSFC currently functioning and its report being due in 2020. Past KSFCs have provided recommendations on issues such as percentage of tied and untied grants, working of the district planning committee and efficiency of expenditure.

B. *Problem*

The Ministry of Panchayat Raj's 2015-16 report on devolution of funds and the Economic Survey 2018 indicated that the acceptance rate of KSFCs reported by Government of Karnataka is the lowest among all States at 11%. This reflects the limited reliance the Government places on the 5 year dedicated study conducted by the KSFC. With ULBs and PRIs in the State financially struggling and unable to fund various citizens' services, there is an urgent need for an effective KSFC.

The limited impact of KSFCs could be attributed to two reasons. The first is the terms of reference ("**TOR**") issued by the State Government upon which the KSFC is required to provide its recommendations. A closer look at the working of the previous KSFCs indicate that their recommendations are based on TOR which are common across all the past KSFCs. This limits the ability of KSFC to suggest and recommend changes which are outside of its mandate but are important. The TOR of State Finance Commissions in Kerala and Tamil Nadu go to the heart of issues that require detailed examination of the fiscal decentralization up till the third tier, and the TOR for these states have never remained common across any of its previous SFCs.

The second problem relates to the capacity of the KSFC. Currently the appointments to the KSFCs are ad-hoc and there are no criteria for the appointment of the chairman and members. For KSFC to be able to provide comprehensive recommendations to the State Legislature, it must be supported by a strong leadership and members with special knowledge.

C. *Solution*

Any public institution or body must function in a structured manner. To achieve this, it would be necessary to have such institutions supported by clearly laid down rules. The State Government must introduce rules for the functioning of the KSFC, which would include guidance while drafting KSFC's TOR by identifying a broad list of areas in municipal financing and mandating consultation with the Directorate of Municipal Administration and other stakeholders. States such as Kerala and Tamil Nadu have a detailed TOR due to a broad list of areas identified within the rules, allowing the respective State Governments to tailor the TOR based on the situation and need.

The rules may also provide criteria for the appointment of its members and allow full time appointment of experts in urban finance, economics, and representatives from the local bodies, as done in Kerala and Tamil Nadu.

Future-Proof Regulations for EMERGING TECHNOLOGIES

XI. CREATING AN OPEN PUBLIC REGISTRY FOR LAND TITLING IN URBAN AREAS

A. *Introduction*

India currently follows a 'presumptive' land titling system, wherein title to a property must be proved in each case. Globally, there is a move towards a form of 'conclusive' land titling, whereby the costs of property transactions are reduced to negligible levels thanks to the certainty provided by conclusive land titling. Karnataka has undertaken one of the most successful digitization of agricultural land record programs in India was under the Bhoomi scheme. Even though it hasn't set out to create a conclusive land-titling system, the system developed by the Karnataka government which integrates Bhoomi to 'Kaveri' (the land registration system) has created numerous knock-on benefits such as increased revenue collections, and has ensured certainty as well as going a long way in easing the process of transfer and alienation of property.

B. *Problem*

While there has been recognition of the need to have a system of conclusive land titling in India, different states have adopted different approaches to the problem. In Karnataka while Bhoomi is applicable only to agricultural lands, in urban areas, the Urban Property Ownership Records ("**UPOR**") scheme has been rolled out. The UPOR however does not cover all the urban areas of Karnataka. At present, it has been rolled out in three cities in Karnataka, namely Mysuru, Mangaluru and Shivamogga. While it has been made mandatory for registration of properties in Mysuru and Shivamogga, it has not yet covered all properties in the cities, and has not been introduced in Bengaluru yet.
Though Bhoomi has been a success in digitizing land records for agricultural land and integrating it with the property registration system KAVERI, no similar system exists at the moment for urban land. Despite being made mandatory, the UPOR has also not been able to attract widespread public uptake for a variety of reasons, one of which is that there is no clear title guaranteed by the State. Legal changes are necessary to give the certificate issued by the government a finality. Sans the legal guarantee of title, there is little incentive for property owners to obtain these certificates or cards under the UPOR scheme.

C. *Solution*

The UPOR should be made an open public registry for land titling across all urban areas of Karnataka, including Bengaluru, incentivizing property owners to register their titles. However, this has to be accompanied with the relevant legal changes necessary to make it applicable across all urban areas.
The legal changes can either be carried out through a standalone legislation or through the appropriate changes in the relevant legislation. The legal changes should provide for:

- A legal process under which a property owner can formally seek to register details of the property;
- A central registry to keep track of all certificates;
- Recognition of the certificate as final proof of ownership in court;
- A mechanism for raising objections and dealing with disputes over certificate; and,
- Indemnity provided either by the Government or by insurance companies

It is not strictly necessary that the certificate be granted by the Government itself. A third party service provider may also be empowered to grant such certificates, provided the requirements under law are fulfilled. This can be achieved by the Government promulgating relevant rules to ensure that third parties who provide such certificates are validly recognised and regulated under law.

A. *Introduction*

The Global Innovation Index, a ranking of countries based on their performance on various metrics related to innovation, places India at 60th position among 127 countries. India's performance particularly lags in 'regulatory quality', a metric that measures 'perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private-sector development'. The State of Karnataka aims to leverage its position as India's information technology hub to promote cutting edge innovation in areas spread across many sectors. It has attempted to bolster its capacity in this regard by implementing schemes such as the Karnataka Start-up Policy and establishing institutions such as the Karnataka Innovation Council. However, regulatory issues continue to dissuade innovation, particularly in disruptive sectors like information technology. However, despite these measures, issues of unclear or overly burdensome regulations continue to adversely affect innovative technology sectors in the state.

Information Technology is creating unprecedented developments in a number of fields – financial technologies are offering new ways for consumers to engage with banks or transfer money; insurance technologies which offer new and innovative schemes for insurance; and even healthcare, which is seeing rapid automation and innovation using the internet. Without an adequate regulatory framework under which such innovative industries can operate with relative freedom from overly burdensome requirement, Karnataka risks losing out on the impact of major technological and innovative breakthroughs.

B. *Problem*

The 'law lag' describes the phenomenon of legal and regulatory structures failing to adequately contemplate or deal with new technologies. In particular, the sphere of regulation is seen as a barrier to new technologies, curtailing innovation by tethering firms to harsh regulatory requirements, often those which are inappropriate for new technologies. An example of such requirements is the Karnataka On-demand Transportation Technology Aggregators Rules, 2016, which imposed various requirements of taxi aggregating technologies like Uber or Ola, including licensing requirements, which has forced the firms to withdraw innovative services like ride-sharing and carpooling. Such regulatory decisions are often taken as a knee-jerk response to the challenges that new technologies pose, rather than a well-deliberated and evidence-based response. Additionally, where regulations addressing specific technologies have not been issued, firms offering these technologies exist in a regulatory void without any legal certainty as to their rights, liabilities and obligations, which is also a deterrent to the firms as well as their customers.

C. *Solution*

'Regulatory sandboxing' broadly describes a set of practices evolved by regulators to foster innovation through new technologies for which existing legal frameworks may not be appropriate, by closely monitoring their performance and limiting their impact on the market. Regulatory sandboxes have distinct advantages for various stakeholders:

1. The innovating firm is allowed to experiment and gain exposure to a live market (albeit with limited customers and within a limited time frame), without implementing the regulatory requirements which would normally be applicable in offering its product. Implementing its product under specific, known conditions also allows firms to reduce their time to market.
2. The regulator can monitor the compliance of firms in the sandbox, and use the data to appropriately draft regulations which are more appropriate for the particular sector, once the sandbox experimentation ends and the firm can enter a broader market. During the sandboxing period, it ensures better protection for consumers through greater certainty and oversight.

Several models of regulatory sandboxes have been implemented across the world, including in the UK, Australia, Singapore, South Africa and Canada. While most examples of regulatory sandboxing have taken place in the financial technology sector (or its subsets, such as insurance technology), a sandboxing framework can be implemented across a wide array of sectors. Japan, for example, has mooted the idea of a regulatory sandbox for automated vehicles like self-driving cars and unmanned aerial vehicles.

As several regulatory authorities in India – the TRAI (telecommunication), RBI (finance), SEBI (securities) - have been established as independent bodies, framing appropriate regulatory approaches for firms applying to a sandbox would be a challenging task which would require the State Government to work with sector-specific regulators.

To this end, a nodal agency within the Department of Information Technology and Biotechnology ("**DITB**") would be best placed to identify crucial high-technology sectors which may require sandboxed regulation and facilitate the creation of such sandboxes, as well as acting as a single point of contact for multiple firms and independent regulators.

After identifying the appropriate sector and surveying firms to gauge interest, the agency would have to identify the relevant regulators who are empowered to set standards and restrictions for firms which wish to enter the sandbox, including limitations on geographical reach, consumer base, monetary exposure and time limits, as well as reporting requirements. The sandbox can be implemented with the nodal agency working with the regulators to frame a scheme and make an open call for applications. The nodal agency can be empowered to monitor the working of the firms in the sandbox and make suggestions to the regulators on appropriate regulatory conditions for the sandbox, and to collate its findings and forward them to the regulators, who can use this data to frame appropriate forward-looking regulations. The agency may also suggest legal or legislative amendments to the state government, which may be required for the implementation of a particular regulatory sandbox.

In addition to the above, a policy document may be framed by the DITB, laying down a framework for establishing regulatory sandboxes, and encouraging agencies of the Government of Karnataka, including state level regulators and ministries, to employ the concept of regulatory sandboxing for particular sectors within their specific mandates.

This will allow innovators to not only apply their technologies in the real world in a measured and structured manner, but also enable policy makers and regulators to properly gauge the impact of such technology before regulating its use.

XIII. EFFICIENT AND SUSTAINABLE TRANSPORTATION IN BENGALURU

A. *Introduction*

Bengaluru's population has been growing at a rate of 3.25% per year since the last decade. This has been followed with an equal rise in vehicles, especially two and four wheelers. In the absence of an adequate public transportation system, people prefer personalized modes which cause congestion on the limited road network and have an adverse impact on the environment.

The number of registered motor vehicles in the city has reached 36.8 Lakhs and the average growth of vehicles during the last 10 years has been found to be about 10%. Two wheelers, constitute about 70% of the total registered vehicles (in 2010), have grown at an average rate of about 10% per annum during the last few years. A study by the World Resource Institute indicates that growth rate of cars has been faster than two wheelers. If this trend is likely to continue, Bengaluru's infrastructure will prove to be inadequate.

The issues relating to traffic and transportation in a large and growing city like Bengaluru need to be viewed in the larger perspective in order to involve sustainable and shared mobility. However, the current legislative framework for motor vehicles in Karnataka does not accord legitimacy to private car and bike pooling. Shared mobility would ensure utilizing existing infrastructure and reducing the need to develop additional capacity to minimize urban congestion. Multiple international jurisdictions such as Singapore, Japan in Asia and San Francisco in North America have encouraged shared mobility and incentivized it through the law. Bengaluru must consider innovative solutions to decongest its traffic and one such method is legally recognizing shared mobility.

B. *Problem*

The regulation of motor vehicles falls under the concurrent list and is hence the responsibility of the Central and State Governments. The Motor Vehicle Act, 1988 ("Act") creates two levels of regulations at the Central and State Level. The Central Government governs the various types of registrations and permits that may be granted in relation to the intended use of the vehicle. The State Governments grant the permits created by the Central Government and also issues licenses for operation of such permits. Under this system, two kinds of vehicles are permitted, first, transport vehicles which are used for carriage of passengers and goods and hence granted a carriage license. Second, non-transport vehicles, meant for private use.

In Bengaluru, there are approximately 11.86 lakh non-transport vehicles. Non-transport or private vehicles are not eligible for carriage license. They cannot undertake journeys for hire & reward as per Section 2(31) of the Act and do not usually have co-passenger insurance, making it illegal for non-transport vehicles to pick and drop multiple passengers in the course of a journey.

The number of two wheelers as per the Department of Transport, Government of Karnataka, as of February, 2016, is 41.86 lakhs. To decongest the Bengaluru traffic, it is important to limit the number of two wheelers on road. This may be possible if the State Government grants carriage license to two wheelers. Carriage license may be given to any vehicle which is mechanically propelled. Utilizing this broad definition, the State Governments of Haryana and Goa have amended rules and issued guidelines for the registration of two-wheelers for contract carriage permits. However, authorities in Bengaluru are reluctant to follow suit due to the concerns of safety and insurance.

C. *Solution*

The State Government has the power to amend rules and issue guidelines to facilitate carpooling in Karnataka. The Motor Vehicle (Amendment) Bill, 2016 under Section 66 grants the State Government the power to modify any permit, if it reduces traffic congestion and eases urban transport. This amendment is welcome and may be viewed as a step towards legitimizing shared transport. However, to bring out any rule/scheme under Section 66, following are the legal hurdles for the Government of Karnataka:

1. Licensing of shared-transport aggregators
2. Insurance of co-passengers
3. Interpretation of the phrase "hire or reward"
4. Ascertaining the extent of commercial tax payable

The State Government may consider providing carriage license to non-transport vehicles through a scheme or by amendment to the rules. To successfully implement this, State Government could begin by recognising the aggregators, linking passengers to non-transport carpooling vehicles, under the Karnataka on Demand Transportation Technology Aggregators Rules, 2016. The rules are currently restricted to aggregators which connect passengers to transport vehicles. Insurance to co-passenger could be provided, by endorsing the Singapore model, requiring aggregators to undertake the responsibility of providing insurance for co-passengers. This may be implemented by issuing appropriate rules under Section 212 of the Act and by complying with the Insurance & Regulatory Development Guidelines. Further the term 'hire or reward' as per Section 2(31) of the Act has been defined to mean 'operated by a third party'

[1] (2015) 17 SCC 399

and 'benefit for another' respectively (*See Tata Iron & Steel Company v District Transport Officer & Others*[1]). Splitting the journey cost between co-passengers and a service fee by the aggregator does not fall within the above definition. To ascertain the extent of commercial tax payable, The Karnataka Motor Vehicle Taxation Rules 1957 will have to be suitably amended to include private car owners and define a taxable journey.

For the purposes of two-wheeler pooling, the State Government may in the above suggested amendments also issue guidelines under section 93 of the Act to allow two wheeler operators to apply for contract carriage license. The State Government may extend the aggregator model for two-wheeler pooling as well to ensure accountability and effectiveness. The guidelines while retaining the general principles of shared transport, should carve out specific provisions pertaining to pillion rider safety and area limits.

XIV. E-COMMERCE AND CONSUMER PROTECTION

A. *Introduction*

India's e-commerce industry is one of the fastest growing sectors, transforming the way business is traditionally done in India. Growing at a Compounded Annual Growth Rate of 28% from 2016-20, and with a consumer base of more than a 100 million, this sector has not only attracted considerable private investments, but is also aided in its growth trajectory by Government initiatives to transform India into a digital economy. Karnataka, particularly Bengaluru, has been at the forefront of such a transformation. The city not only boasts of having the largest e-consumer base, but also a home-grown e-commerce giant - Flipkart. With the increasing mobile and internet penetration in tier II and tier III cities in Karnataka, e-commerce portals are slated to become a preferred shopping destination across the State, overtaking the traditional 'brick and mortar' shops. These changes, while in tune with the developments all over the world, come with their own legal and economic challenges.

B. *Problem*

Regulating e-commerce has been a conundrum both for law and policy makers all over the world. In its nascent stage, to boost innovation and growth, the laws provided for 'safe harbour' provisions and liability exemptions to all online intermediaries, including e-commerce platforms. In India, this is reflected in Section 79 of the Information Technology Amendment Act, 2008, which provides that an intermediary (defined under Section 2(w) of the IT Act to include online-market places) shall not be liable for any third party information, data or communication link made available by it, barring a few exceptional circumstances listed under the Act. The mushrooming of several e-commerce portals in India, and the recent valuation of Flipkart at a staggering $11.6 billion indicate that the facilitative legal environment has achieved the intended result.

However, along with this phenomenal growth, instances of fraud and unfair trade practices have also been on the rise. As per the data released by the Minister of State for Consumer Affairs, the complaints against e-commerce and direct selling companies have been exponentially increasing in the last three years. This indicates that while an increasing number of consumers are benefitting from the advantages of online market places, such as access to greater variety, competitive prices and convenient payment options, there is a proportionate increase in violation of consumer rights as well. This is because, in contrast to 'brick and mortar' shops, online shoppers are exposed to greater risks due to the opacity with which e-commerce portals operate. There have been several instances of e-commerce portals hosting misleading advertisements, indulging in unfair commercial practices, or having flimsy payment portals resulting in identity theft, etc. Therefore, the need for a robust legal framework to regulate online intermediaries, especially e-commerce portals, in the interest of protecting consumer rights cannot be overstated.

The Consumer Protection Act, 1986 and Rules thereunder currently provide for protection of consumer rights in Karnataka. This law is ill-equipped to deal with the new-age buyer seller relationship established through an online intermediary. Under the Act, a 'consumer' is defined as any person who buys any good or avails any service for ***consideration***. However, e-commerce portals such as Amazon and Flipkart count themselves outside the ambit of consumer protection law since they neither sell any products, nor do they get paid by e-consumers. Therefore, e-commerce portals consider themselves as being similar to shopping malls which merely provide a meeting space between sellers and potential buyers. The Consumer Protection Bill, 2018, while according recognition to sale of goods and services through online market places, has completely overlooked the legal lacuna in which e-commerce portals operate, making them completely immune from any liability. Thus, in the current legal framework, the only semblance of checks and balances applicable to online markets comes from the Information Technology (Intermediary Guidelines) Rules, 2011 ("**IT Rules**"), which prescribes 'due diligence' practices to be followed by the intermediaries while hosting information from third parties.

This all but absolute exemption from liability and accountability of online markets vis-à-vis consumer protection rights is extremely lopsided given that:

(i) online markets are not mute bystanders but actively promote a few businesses over others ('Flipkart assured' or 'Amazon Prime' are a few examples), for which sellers pay the e-commerce portals;

(ii) online markets economically benefit from consumers albeit indirectly and enjoy superior bargaining power both with respect to sellers and consumers; and '

(iii) ordinary consumers do not have the wherewithal to trace the manufacturer of a faulty product and access legal remedies in different jurisdictions.

In light of the above, it is imperative that Karnataka take the initial steps in bringing about equilibrium to this extremely one-sided legal framework, so as to boost e-consumers' confidence, and ensure sustainable growth of its burgeoning e-commerce industry.

C. Solution

Balancing the interests of e-commerce portals with that of consumer rights demands legal innovation. Oflate, there has been a growing demand for a separate legislation targeted at the e-commerce sector. In fact, the US and the EU have separate protection frameworks for e-consumers, while the UK, under the Consumer Rights Act of 2015, has dealt with e-consumers under its pre-existing legislations. In addition to the above, the Organization for Economic Cooperation and Development (OECD) has published its recommendation titled 'Consumer Protection in E-commerce' and United Nations Conference on Trade and Development (UNCTAD) has released 'Guidelines for Consumer Protection' to serve as guidelines for framing laws on e-commerce. These guidelines offer building blocks to instil consumer confidence and give guidance to businesses regarding 'best practices' while operating online markets.

Drawing from the above guidelines, it is suggested that Karnataka, which has a large e-consumer base and several start-ups reaping the benefits of the e-commerce boom, e-commerce ought to be regulated e- through a separate legislation. A few issues that the new law should address vis-à-vis consumer rights protection are as follows:

- **Liability for faulty product description:** Under the IT Rules referred to above, the e-commerce portal is already under an obligation to regulate the content hosted on its platform. To ensure consumers are protected in case of faulty product description, or sale of fake goods or warranties, the consumers must be entitled to claim damages directly from the e-commerce portal. This will ensure that the e-commerce portals exercise due diligence to host only genuine sellers to trade on their platforms.
- **Liability for faulty products**: In instances where the consumers suffer due to defective goods purchased through an e-commerce portal, they must be entitled to make both the portal and the manufacturer (where identifiable), parties to legal proceedings. This will ensure that in the event of the manufacturer being untraceable or unable to compensate for the damages suffered, the intermediary can be made to pay.
- **Dispute Resolution:** A dispute resolution mechanism aimed at protecting consumer rights should be both affordable and accessible. One of the foremost legal hurdles faced in accessing justice against an e-commerce portal or an online seller is that of jurisdiction. The uniqueness of an online market place is that each party to a transaction can operate from any place in the world. To address this unique aspect, as a first step of dispute resolution, every e-commerce portal should provide for Online Dispute Resolution ("**ODR**") through mediation. This can be ensured by making it compulsory for all e-commerce portals to have a tie-up with ODR institutions, whose details are published on the website. Once a consumer complaint is received, it should be the intermediary's obligation to facilitate the resolution of the disputes between sellers, consumers and the intermediary.

Thus, the guiding principle should be the protection of consumer rights. Since online intermediaries are most easily traceable and identifiable, consumers should be entitled to seek remedies against them, and they in turn can pursue the sellers for appropriate compensation. This is justifiable since an e-commerce portal has higher bargaining and economic power to pursue legal remedies against a fraudulent seller and the law merely shifts the burden of seeking remedy from the consumer to the e-commerce supplier.

Inclusion of the above two aspects in the proposed law regulating e-commerce portals will ensure that consumers' rights continue to be protected. At present, there is no specific central law governing online intermediaries. Therefore, the Government of Karnataka would be well within its constitutional power under Entry 26 of List II to legislate on this subject, with a view to holistically address all issues concerning e-commerce industry, particularly those related to the extent of its liability vis-à-vis consumer rights. Alternatively, the State Government can amend the Consumer Protection Act, 1986 (or the new enactment once the pending 2018 Bill is passed), and then seek the approval of the President to provide for adequate protection to e-consumers.

XV. EXTENDED PRODUCER RESPONSIBILITY LAW FOR E- COMMERCE PACKAGING

A. *Introduction*

Karnataka produces a staggering 8,842 tons of waste per day. While the plastic ban imposed by the Karnataka government is a step in the right direction to tackle Karnataka's ever increasing solid waste management woes, it does not truly reign in one of the biggest generators of waste in the state currently, i.e., e-commerce companies. As India's e-commerce sector continues to grow at a staggering pace, its adverse environmental impacts are becoming ever clearer. This worrying development is most clearly seen in the thousands of tons of packaging waste that the e-commerce industry generates every year. India's packaging industry is poised to grow from a 32 billion dollar industry in 2015 to a 73 billion dollar industry in 2020 with experts attributing this directly to the rise in the packaging demands of e-commerce companies.

E-commerce packaging now comes in multi-layered packaging including plastic, paper, bubble wrap, tape and cardboard cartons. Not only will the above factors result in the addition of millions of tons of plastic and cardboard to the already catastrophic waste management situation in Karnataka, but they will also lead to massive loss of forest cover as the main raw material for making packaging cardboard is wood pulp. The waste generated will also adversely impact human health as the many chemicals used in their production invariably enter the soil and by extension, the food cycle. Whilst a lot of these materials are indeed recyclable, India's abysmal recycling record indicates that most of these materials will end up clogging our drains and landfills instead. While it is understandable that in order to reduce damage to products in transit and handling, sturdy packaging materials must be used, the current packaging method of multiple carton and plastic casing is both unreasonable and unsustainable. The problem of e-commerce waste generation has been given a further fillip by priority customer services of these companies that place a premium on ultra-fast delivery, regardless of the individuated deliveries and excessive packaging.

B. *Problem*

Currently, there is no law in India that regulates the area of e-commerce packaging specifically. Karnataka needs a state law that mandates that e-commerce platforms must abide by the principle of Extended Producer Responsibility ("**EPR**") and take up the recycling responsibility for the massive packaging waste that they generate.

C. *Solution*

A recent study has revealed that 94% of people are willing to recycle their e-commerce packaging waste for a small incentive in order to support the Swachh Bharath Initiative. This indicates that a programme of buyback of packaging will find favour within the state as well.

There are multiple ways in which this problem may be addressed. For instance, e-commerce companies could implement buy-back policies, or even give a choice to the customers to choose more sustainable packaging.

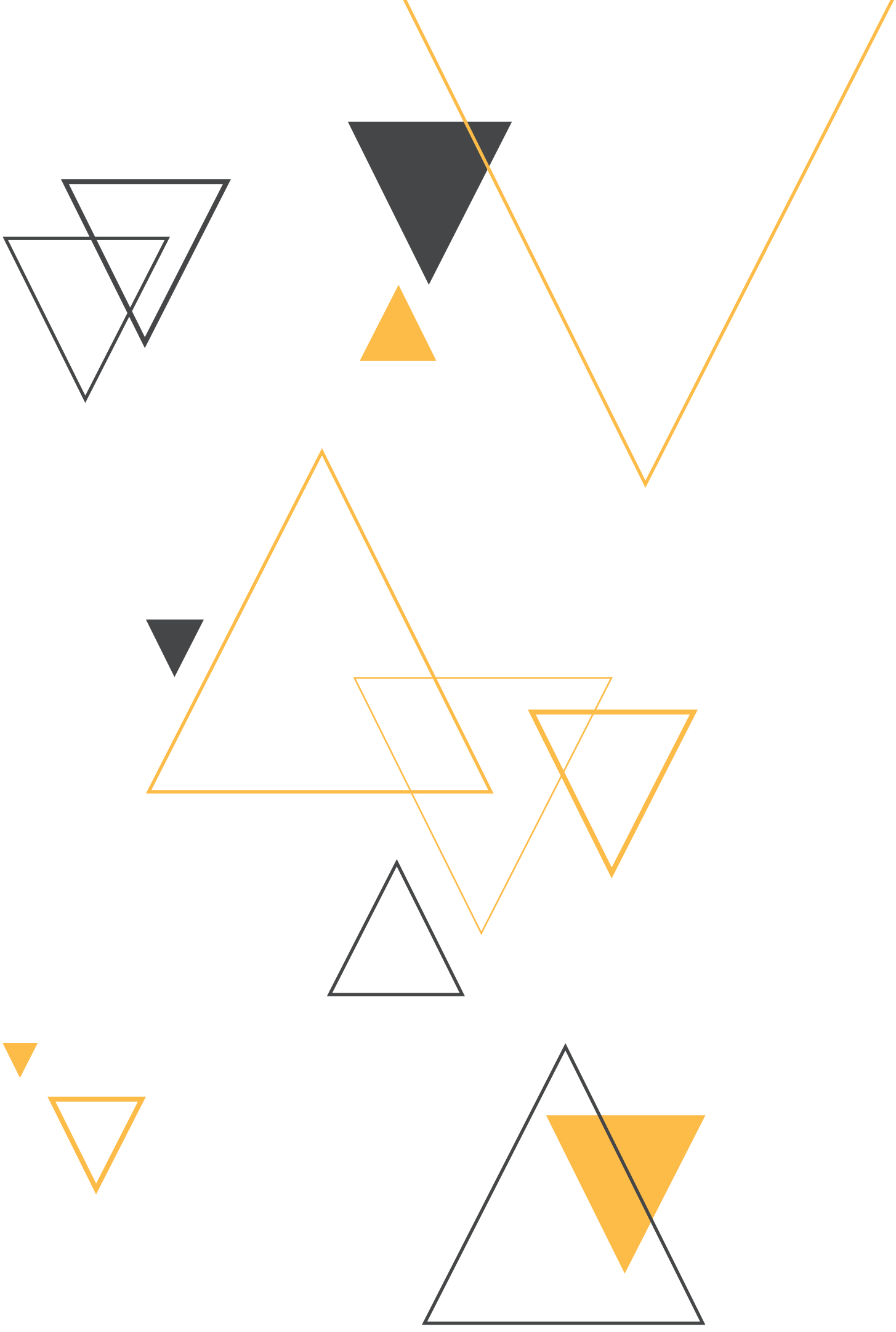
E-commerce players must adopt greener recyclable alternatives to plastic packaging if they are to ensure the least amount of environmental derogation. The EPR Law for e-commerce packaging must look at two aspects of the problem.

Firstly, standard packaging rules akin to India's Legal Metrology (Packaged Commodities) Act, 2009 must be framed and implemented.

Secondly, the law must also regulate the method of packaging and the material used based on environmental principles and must further place the onus of recycling on the e-commerce companies themselves. It is essential that the EPR Doctrine is implemented. This doctrine has been adopted across the European Union and has resulted in some of the highest recycling rates in the world. Further, the Plastic Waste Management Rules, 2016 as well as the Solid Waste Management Rules, 2016 require that EPR must be used proactively to tackle the garbage crisis in India.

The law must also necessarily provide for an enforcement agency that has the power to regulate, enforce and penalize e-commerce companies for any transgression of the packaging laws. The packaging waste problem can also be alleviated greatly by mandating that e-commerce companies create a common pool fund for research and development of more sustainable and eco-friendly alternatives to the current packaging practices. There is a vital need for e-commerce companies to invest in smaller, more sustainable and environmentally friendly packaging in the very first instance.

It is clear that if the e-commerce EPR legislation is indeed passed, it can have a huge positive impact in reducing waste in Karnataka. The necessary legal changes may be made either through a specific Act passed by the Karnataka Legislature that regulates the same or the pertinent rules akin to the Plastic Management Rules, 2016 may be passed by the Central Government and adopted by the Karnataka State Government under the aegis of the Environment (Protection) Act, 1986 (EPA). A clearly drafted law and genuine co-operation between all the stakeholders such as the consumers, the e-commerce companies and local municipalities will be key to ensuring its successful implementation.



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