

**Briefing Book
for 2021**

Fifteen Suggested Legal Reforms for Maharashtra

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Vidhi Maharashtra

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The Briefing Book is a list of recommended reforms for the State of Maharashtra. In 2021, we focus on the core areas that were affected by the onset of COVID-19. The pandemic has taught us the importance of our community and systems and how they might be enhanced to deal with similar situations in the future. The suggested reforms thus focus on how we as a community can learn from the pandemic and strengthen systems for the citizens of Maharashtra.

V I D H I | Centre for
Legal Policy

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

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Foreword

Dr. Justice F.I. Rebello

Former Chief Justice – High Court of Allahabad

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1. Each of the topics dealt with in the present briefing book deal with an important aspect of governance. While they traverse a number of subject areas, they address issues that have important implications on social justice and state administration. Many of these areas, such as enhancing measures for access to justice and education for marginalized groups, desperately need state intervention to ensure that these concepts do not remain mere abstract ideals but practical realities. This is a key step towards practically ensuring the equality of citizens, that is one of the foundational principles of the Indian Republic.
2. The four proposals on 'creating a model gender court', 'safeguarding the right to education for transgender children', 'reimagining rehabilitation through borstal schools' and 'ensuring inclusivity of digital education in Maharashtra' are both reminders and starting points for moving towards reform in these areas. Some of the proposals set out appear to be simple to implement, and may help make more meaningful use of state resources. For example, the suggestion for removing gender and language barriers in borstal schools is a small change that could have a large impact on the lives of many 'young offenders'. Such proposals should be looked at with the utmost seriousness and speed for their adoption and implementation.
3. The briefing book also has interesting suggestions on use of collectors land, property tax administration, managing litigation of the municipal corporation, regulation of street vendors etc. These are issues that will have a large impact on the daily interaction between the citizen and the state. The underlying ideas behind the various suggestions– to make these interactions less arbitrary and less onerous on citizens, must undoubtedly be the key drivers of discussion.
4. Much work always needs to be done in the field of governance and policy– this briefing book starts many conversations on what that work needs to be, and how it needs to be carried forward.



Dr. Justice F.I. Rebello



Introduction

The COVID-19 pandemic changed how governance structures will interact with the community and environment around them permanently. While frontline workers and the government worked hard to ease the crisis, archaic laws that deterred their efficiency were also brought to our notice. This prompted governments to amend the legal framework for health systems, labourers, and industries. The pandemic reminded us that an efficient system requires both a prompt redressal of pressing issues and a periodic evaluation of laws to ensure that they remain dynamic.

The Vidhi Centre for Legal Policy (Vidhi) was set up as an independent think-tank in 2013 to provide legal research for improving laws and governance. Vidhi has worked with departments of the Indian Government and collaborated with civil society members to assist in drafting laws and policies. While Vidhi had started its work in Delhi by researching on the Union's laws, the need for legal reform was also realised for State laws and local bodies. Consequently, a Bengaluru office was set up in 2017 to work on issues affecting Karnataka. In 2020, Vidhi decided to expand further and opened a Mumbai office to address legal reform in Maharashtra (Vidhi Maharashtra).

Through the COVID-19 pandemic, the larger role of the State Government was underlined. Maharashtra is the second most populated state in the country and the largest contributor to the country's GDP. Keeping in mind Maharashtra's important position, the need for a conversation on legal reform in the State

is imperative. With this vision, as its first initiative, Vidhi Maharashtra is publishing this Briefing Book on *Fifteen Suggested Legal Reforms for Maharashtra*.

Maharashtra alone accounted for nearly one-third of India's total COVID-19 cases, and the pandemic brought us close to issues of governance that affect us the most. From large issues of health and the environment to core issues of labour and education we have seen several fault lines in our systems. Change was seen through courts becoming virtual and Maharashtra climbing up to Rank 2 in the Innovation Index. However, the role of third tier governance became more imperative and scope for change widened in this regard. We hope that the ideas for legal reform presented here will form part of public debate, academic discussion and civil society engagement leading eventually to stronger communities based on strengthened systems. Our aim, as always, remains better laws through better governance.



Table of Contents

Health	
1. Drafting a State Public Health Law for Better Public Health Governance and Public Health Emergency Management	10
2. Building a Community Based Mental Health Workforce	13
Environment	
3. Curbing Water Pollution through Water Resource Management	16
Labour	
4. Making the Streets More Friendly for Street Vendors	19
Education	
5. Safeguarding the Right to Education for Transgender Children	22
6. Ensuring Inclusivity of Digital Education for Children with Disabilities in Maharashtra	25
Judicial Reforms	
7. Creating a Model Gender Court	28
8. Improving Virtual Access to Courts in a Post Pandemic Maharashtra	31
Prison Reform	
9. Reimagining Rehabilitation through Borstal Schools	34
Local Governance	
10. Efficiently Managing Municipal Corporation Litigation	37
11. Putting the Public Back in Public Libraries	40
Land	
12. Proposing a Uniform Lease Renewal Policy for Collector's Land	43
13. Making Property Tax Administration More Efficient	46
Innovation and Skill	
14. Designing a Legal Framework for Digital Innovation in Maharashtra	49
15. Increasing Investment by Backing Skill Based Platforms	52
References	55



01

Drafting a State Public Health Law for Better Public Health Governance and Public Health Emergency Management

- » Ministry: Directorate of Health Services, Ministry of Health and Family Welfare
- » Legislative Competence: Seventh Schedule, List II, Entry 6
- » Key Law: The National Health Bill, 2009

Problem

The COVID-19 pandemic has brought to light the insufficiencies of the legal framework in dealing with public health emergencies (PHEs), as well as the lack of infrastructure needed to control the spread of such diseases. As a developing nation, India is faced with the additional burden of rising trends in non-communicable diseases (NCD/s). Maharashtra, specifically, has a relatively high proportion of NCDs and contributes to “68.6 per cent of total NCD-attributed deaths in the country”.

The existing health related legislations in Maharashtra touch upon subjects such as drug control and treatment of sewage. Municipal laws and regulations contain provisions limited to certain aspects of public health - for instance, Chapters XII and XIII of *The Maharashtra Municipal Corporations Act, 1949* deal with sanitation and water supply. These are not, however, comprehensive in terms of the areas of public health covered, or the stipulation of rights and obligations of the public or the State; they also fail to provide for community engagement in the promotion and monitoring of public health.

This lack of a detailed framework was an additional challenge during the ongoing COVID-19 pandemic, when there was an urgent need for strong public health infrastructure, including well-functioning disease surveillance systems, and a coordinated PHE response protocol. With Maharashtra often topping the list

of States with the highest number of COVID-19 cases, the capacity of the public healthcare system was strained. The Central and State Governments’ response to the pandemic, in Maharashtra and elsewhere, was largely ad-hoc, in the form of executive orders under the *Epidemic Diseases Act, 1897* (EDA) and *The Disasters Management Act, 2005* (DMA). This multiplicity of laws created ambiguity around the authority of various government actions and at the various levels of government, as reflected in the case of *Hospitals’ Association, Nagpur v Government of Maharashtra*, wherein the Bombay High Court set aside a State Government order restricting the rates charge-able by private healthcare facilities, for the treatment of ‘non-covid’ patients, under the purported authority of the EDA, DMA, and several State laws cited in the notification.

Solution

On 31 August 2020, the Supreme Court passed an Order in *Sachin Jain v Union of India*, recognising the need for immediate reform in the area of public health. The Supreme Court called upon State Governments to frame a legislative and executive plan to reform the public health legal and governance framework in States, keeping in mind the principles and structure of *The National Health Bill, 2009*.

Maharashtra needs a coherent legal framework that can form an effective vehicle for the improvement of public health administration. As per Goodman et. al., "Laws establish and delineate the missions of public health agencies, authorize and delimit public health functions, and appropriate essential funds." The 2017 World Health Organization (WHO) report, '*Advancing the right to health: the vital role of law*' emphasises the need for creation of legal capacity by governments to facilitate better public health governance. As per the Lancet Commission on the legal determinants of health, legal capacity for health has three important aspects:

- i. An effective legal environment (including the infrastructure required to draft, implement, and enforce laws that promote health, as well as the fair resolution of grievances)
- ii. A strong and growing evidence base, built on rigorous monitoring and evaluation of the implementation of existing laws
- iii. An empowered, transdisciplinary, health law workforce - which includes networks of well-trained professionals (legal and non-legal), who share information and strategies, and provide technical legal assistance

These three elements of legal capacity can be built through the framework of an overarching state public health law.

Implementation

In pursuance of the Supreme Court's 31 August 2020 Order and to overcome governance gaps in Maharashtra's public health system, it is suggested that the State Government draft a State public health law that, *inter alia*:

- Outlines a clear set of objectives and guiding principles;
- Creates a governance framework, identifying public actors and assigning them functions;
- Articulates the rights and duties of the public and delineates the powers and functions of the Government and State agencies;
- Establishes a system of evidence-based decision making, as well as proportionality and accountability as regards State action;
- Establishes PHE protocols;
- Provides for capacity building and training for health workers and, in particular, for reserve workers for PHEs;
- Provides for clear and effective enforcement and grievance redressal mechanisms.



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02

Building a Community Based Mental Health Workforce

- » Ministry: Directorate of Health Services, Ministry of Health and Family Welfare
- » Legislative Competence: Seventh Schedule, List II, Entry 6
- » Key Law: The Mental Healthcare Act, 2017

Problem

The Mental Healthcare Act, 2017 (the Act) moved away from some archaic practices by decriminalising the attempt to die by suicide, emphasising community and home-based care for the mentally ill, and giving the patient the agency to decide their form and style of care.

Section 18 of the Act highlights the importance of community-based intervention in the field of mental healthcare. Section 31 emphasises the importance of increasing human resources to deliver medical health interventions and training medical officers to provide basic and emergency mental healthcare.

In 2011, the Vidarbha Stress and Health Programme (VISHRAM) was started in response to the farmer suicide crisis. It was a model based on community advocacy and intervention that asked for volunteers from villages to step up as mental health workers, training them to recognise signs of weakening mental health or other impending symptoms.

The programme was adapted by the State Government in 2015 as the Prerna Prakalp Programme, which trained Accredited Social Health Activists (ASHAs) to do the work of identifying potentially suicidal and mentally ill villagers and referring them to the nearest psychiatrist or psychiatric ward.

The Prerna Prakalp Programme, though noble in ideation, has seen many pitfalls.

There is a severe lack of psychiatrists in the State, and the State Government's goal of one psychiatrist per district is currently unfeasible and unmet. The ASHAs themselves have not all been trained in this work. Just 45.48% of ASHAs were trained for mental healthcare from April 2018 to August 2019, according to available data. The ASHAs are overworked and are often also not paid in time for this work.

The COVID-19 pandemic has drastically increased the number of people that require counselling, placing a burden on existing resources. The pandemic has also intensified the work of ASHAs. They are continually working to assist families to maintain village health and sanitation, along with additional work such as conducting tests and ensuring quarantine is followed. Some ASHAs have paid for their own masks, sanitisers and testing.

ASHA workers in Maharashtra were paid around INR 2000 as a basic payment with an additional sum of money for their performance. In 2018, the Central Government included ASHAs in Government welfare schemes. In 2020, protests from ASHAs led the State Government to compensate them with an additional INR 2000, above their fixed and variable salary. However, the amount of money paid to them is still not commensurate with their responsibilities and risks, especially during the pandemic.

Solution

Recognising the undeniable and severe negative impact of the COVID-19 lockdown on livelihoods and in turn on mental health, we recommend that the Government of Maharashtra under the National Rural Health Mission (NRHM), increase the human resource availability by recruiting and training additional ASHA workers as a community of lay counsellors.

To build this community of counsellors, a new cadre of mental health volunteers needs to be trained in each district under the existing ASHA programme and in keeping with the requirements of Section 31 of the Act. Under the aegis of the Directorate of Health Services, Maharashtra, training for medical officers has been conducted in collaboration with National Institute of

Mental Health and Neurosciences (NIMHANS), Bengaluru for medical officers in Maharashtra and can be extended to provide “gate-keeper training” to the ASHAs. Through the gate-keeper training attempts to suicide can be prevented at the first instance.

The Maharashtra Institute of Mental Health (MIMH), Pune or institutions such as NIMHANS can also create a psychotherapy course for mental health volunteers. This course will ensure that such volunteers do not act solely as a point of first contact but in some instances can serve as counsellors themselves. They can be paid as ASHAs are paid for mental health work, but with the focus switched to counselling rather than referral.

Implementation

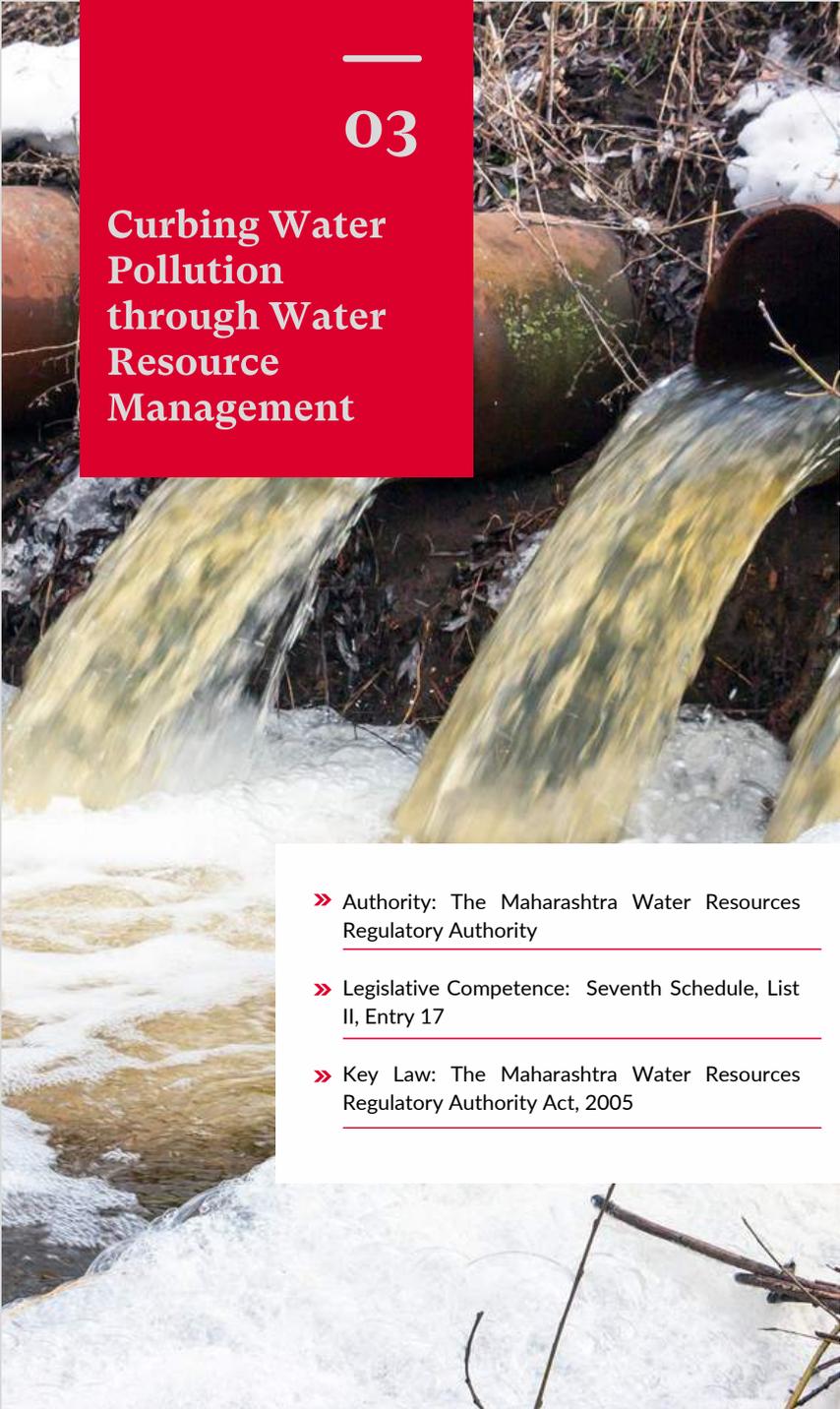
To implement the suggested solutions, it is necessary to:

- Allow for additional hiring of ASHA workers under the NRHM, along with a revised pay structure in keeping with their increased responsibilities;
- Increase the budgetary allocation to recruit and train the required number of mental health volunteers;
- The Directorate of Health Services, Maharashtra can arrange a gate-keeper training program and a course on psychotherapy for mental health volunteers through institutions such as NIMHANS, Bengaluru or MIMH, Pune.

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03

**Curbing Water
Pollution
through Water
Resource
Management**

- » Authority: The Maharashtra Water Resources Regulatory Authority
- » Legislative Competence: Seventh Schedule, List II, Entry 17
- » Key Law: The Maharashtra Water Resources Regulatory Authority Act, 2005





Problem

Maharashtra, the most industrialised State in India, also holds an abysmal record of water pollution. According to government data, amongst all States, Maharashtra recorded the highest number of river stretches where industrial effluents were dumped between 2008 and 2012. Additionally, it has been reported that Maharashtra has the maximum number of towns and cities alongside polluted river stretches. In the water scarce regions of Maharashtra, water shortage and difficulties in accessing safe drinking water are further exacerbated due to water pollution. Water pollution puts in grave danger the lives and livelihoods of people who stay in the vicinity of such polluted river stretches.

It has been reported that while the Maharashtra Pollution Control Board (MPCB) issues directives and notices against erring industrial units, it does not enforce them. In *Nikolas H. Almeida v State of Maharashtra*, the Bombay High Court via its Order dated 22 December 2011, also reprimanded the MPCB over granting relaxations to erring industries that were causing water pollution.

Solution

Considering the systemic and functional challenges in enforcement of water quality regulations by the MPCB, the possibility that the Maharashtra Water Resources Regulatory Authority (MWRRA) may play a more active role in the control of water pollution in Maharashtra, may be considered.

The MWRRA was established in 2005 to regulate water resources within the State. 'Judicious, sustainable and equitable' management of water resources is the key aim of the MWRRA. Under Section 12 (5) of *The Maharashtra Water Resources Regulatory Authority Act, 2005* (the Act) the MWRRA is envisaged to 'support and aid the enhancement and preservation of water quality within the state in close coordination with the relevant State Agencies and in doing so, the principle that 'the person who pollutes shall pay' shall be followed.

The Act has provisions that would permit the MWRRA to supplement the role of the MPCB. The Act empowers the MWRRA to establish a water tariff system and determine criteria for water charges at the sub-basin level, river-basin level and at the State level. Further the MWRRA is empowered to lay down criteria and monitor the issuance of entitlements to water user entities. Section 30 of the Act empowers the State Government to issue rules in furtherance of the purposes of the Act. Section 31 allows the MWRRA to issue rules under the Act on prior approval of the State Government.



We propose that the MWRRRA integrate the polluter pays principle while setting the criteria for establishment of water charges. It may coordinate and take technical assistance from the MPCB in setting of such charges and depend on the MPCB's water quality data. This may provide incentive to polluters to pollute less and establish more efficient wastewater treatment systems at local, and at regional levels.

Implementation

In furtherance of this objective, the MWRRRA should:

- Issue rules, under Section 30 or Section 31 of the Act respectively, rules in furtherance of Section 12 (5) of the Act, determining the coordination mechanisms between the MPCB and MWRRRA for enhancement of water quality in the State;
- Issue rules to operationalise the polluter pays principle. In doing so, it should set out the criteria for issuance of water pollution charges. The aim should be to incentivise the following of environment norms by accounting for environmental externalities in calculation of charges and entitlements.

|
04

Making the Streets More Friendly for Street Vendors

- » Department: Urban Development Department
- » Legislative Competence: Article 19; Seventh Schedule, List II, Entry 5
- » Key Laws: The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014; The Street Vendors (Protection of Livelihood and Regulation of Street Vending) (Maharashtra) Rules, 2016; National Policy on Urban Street Vendors, 2009

Problem

Street vending or hawking forms a large part of the informal economy in India. According to reports, there are around 2,50,000 street vendors in Mumbai, and roughly 4% of the country's population are part of this workforce. *The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014* (the Act) enumerates certain rights for street vendors. However, Maharashtra has implemented only six out of the recommended steps, causing significant losses to street vendors. During the COVID-19 induced lockdowns, the Maharashtra Government denied permission for hawking and street vending which further affected their livelihood.

Other inconsistencies between the Act and *The Street Vendors (Protection of Livelihood and Regulation of Street Vending) (Maharashtra) Rules, 2016* (the Rules) have also negatively impacted the street vendors. Rules 22 (10) and (11) of the Rules allow the Municipal Commissioners and the State Government to overrule Town Vending Committee (TVC) proposals that are not in consonance with any Acts or provisions. Such veto powers may be misused and affect the devolution of powers to TVCs.

The Bombay High Court, in the case of *Azad Hawkers Union v Union of India*, stated that the *National Policy on Urban Street Vendors, 2009* (2009 Policy) must

be followed while conducting a survey as required under Section 3 of the Act. The 2009 Policy requires a census like survey conducted by a professional agency. In the case of Mumbai, an application type survey was conducted wherein the vendors themselves had to fill the form and deliver it to the Brihanmumbai Municipal Corporation (BMC) without the assistance of a professional agency, which did not comply with either the Act or the 2009 Policy. These surveys need to be done in the prescribed manner as the same is crucial in identifying and accommodating vendors.

Another issue faced by street vendors is that the State Government has a domicile eligibility requirement. This creates further eliminations as only 5,000 out of the 23,265 eligible vendors (after verification of documents) were given licenses by the BMC. This requirement is not prescribed by the Act and is thus *ultra vires* its provisions.

The State has also failed to frame a scheme for street vendors as required under Section 38 of the Act and has failed to establish the committee for dispute resolution, as required under Section 20 of the Act.

The State has thus been unable to implement to the full extent the benefit of the Act for which several changes need to be brought about in the Rules.

Solution

A thorough review of the Rules are required to identify the extent to which the provisions of the Rules are inconsistent with those of the Act. This review should be conducted in a participatory manner, including all representatives affected by any amendments. The review should also account for the challenges faced by street vendors during the various phases of the lockdowns, and account for specific measures to deal with similar public health emergency situations.

Implementation

To address the problems faced by street vendors, the following solutions are proposed:

- Amend Rules 22 (10) and (11) of the Rules to ensure the decentralised form of governance provided in the Act, which redistributes powers held exclusively by municipal bodies and the police between street vendors, market associations and local residential associations via TVCs;
- Frame a comprehensive State-level scheme in accordance with the provisions of Section 38 and the Second Schedule of the Act which will protect vendors from illegal tax and license collection, seizure of goods and sudden eviction;
- Conduct a survey in accordance with Section 3 of the Act or the 2009 Policy as directed by the Bombay High Court;
- Remove the requirement in the BMC scheme for a domicile certificate as it prevents several street vendors from being eligible for licenses and registration;
- Establish the committee as mandated under Section 20 of the Act;
- Frame specific rules to deal with public health emergency like situations in the future.

Safeguarding the Right to Education for Transgender Children

- » Ministry/Department: Ministry of Technical Education; School Education and Sports Department
- » Legislative Competence: Seventh Schedule, List III, Entry 25
- » Key Laws: Maharashtra Right of Children to Free and Compulsory Education Rules, 2011; Maharashtra Prohibition of Ragging Act, 1999; Maharashtra Child Policy, 2014; National Education Policy, 2020

Problem

Six years since the landmark *National Legal Services Authority v Union of India* (NALSA) judgment, where the Supreme Court directed states to recognise the transgender community as “socially and educationally backward”, the community still struggles to access education. A study on the transgender community reported 60% have never attended schools, and for those who do, retention rates are low. There are two barriers to inclusion of transgender children in schooling - access to, and their experiences in school.

Access

Almost 98% of transgender people are likely to be run-aways or abandoned. Many enter Hijra communities, *guru-chela* homes, or live on the streets, even as children.

Under Rule 2(e) of the *Maharashtra Right of Children to Free and Compulsory Education Rules, 2011* (RTE Rules), the State reserves the right to define categories of children afforded affirmative action. Of defined categories, “out-of-school children” (OOSC) - children never enrolled in schools, not completed elementary education, or having been absent from schools for more than a month - is most likely to capture the 98% of transgender children. In its current definition however, OOSC fails to address unique barriers of access for children living without support or legal guardianship.

In the absence of a legal guardian, the onus of bringing these children into schools lies with the State. For these children, accessing schooling without appropriate personal documentation can be difficult. Section 14(2) of *The Right of Children to Free and Compulsory Education Act, 2009* (RTE Act)

states, “No child shall be denied admission in a school for a lack of age proof”. Accordingly, Rule 9 of the RTE Rules provides options for alternative documentation such as declarations from hospital of birth, anganwadis attended, or parents of the child. These provisions, however, are likely to exclude transgender children.

Experience

For transgender children enrolled in schools, discrimination, harassment and bullying, including physical and sexual violence, impede retention.

Rule 5(5) of the RTE Rules, Part 4 of the *Maharashtra Child Policy, 2014* (Child Policy) and fundamental principles of the *National Education Policy, 2020* (NEP) direct the State to take affirmative responsibility in ensuring every child has access to school environments free from abuse, discrimination, hostility and indignity. The *Transgender Persons (Protection of Rights) Act, 2019* (Transgender Act) further defines inclusive education as “a system of education wherein transgender students learn together with other students without fear of discrimination, neglect, harassment or intimidation...” Despite this, the National Human Rights Commission reported more than 50% of transgenders faced harassment by peers, and 40% faced harassment by adults on school premises.

The few laws addressing bullying at educational institutions in the State - *Maharashtra Prohibition of Ragging Act, 1999* (Ragging Act) and *CBSE Guidelines for prevention of Bullying and Ragging in Schools* - do not cover all schools and are yet to explicitly prohibit identity-based ragging.

Solution

Rule 5(4) of the RTE Rules on ensuring “no child is subjected to class, caste, religious or gender abuse in the school”, does identify transgender students (or OOSCs) as possible targets of discrimination, or abuse. Building on this, Rule 5(5) of the RTE Rules provides guidelines against discrimination and segregation of ‘disadvantaged groups’, “in class, during mid-day meals, on the playground, at common drinking facilities or while using common toilet facilities and in the cleaning of toilets or classrooms”. No such provision identifies spaces of harassment specific to these children such as gendered toilets, or residential hostels and dorms.

Keeping in mind the mandate of the Transgender Act, the Maharashtra Government should evaluate existing legislative provisions related to transgender persons and education from the perspective of the Transgender Act, with a view to protecting rights under this Act, the objectives of the NEP, as well as fulfilling the spirit of the NALSA judgment. Safeguarding the rights of transgender children to education requires explicit legislative recognition of the specific barriers that are unique to the experience of transgender children in accessing education.

Implementation

Removing barriers to enrolment:

- Amend Rule (2)(l) of the RTE Rules to create a category of OOSC as those living outside parental homes and without guardianship, explicitly including transgender and gender non-conforming children living in homes outside their residence of birth;
- Amend Rule 9 of the RTE Rules to prohibit denial of admission to children unable to submit any form of age-proof or identification.

Removing barriers to retention:

- Amend Rule 5(4) of the RTE Rules to include transgender abuse;
- Amend Rule 5(5) of the RTE Rules to prohibit discrimination based on gender

(including transgender) and sexual orientation of children in common/gendered toilets, and residential hostels/dorms;

- Institutionalise mandatory sensitisation against bullying on grounds of gender (including transgender) in all schools, for students, teaching, non-teaching staff and parents of students;
- Amend Section 2(a) of the Ragging Act to include secondary schools and junior colleges;
- As per Section 8(1) of the Ragging Act, make a rule to prohibit discrimination on basis of gender (including transgender) and sexual orientation.

06

Ensuring Inclusivity of Digital Education for Children with Disabilities in Maharashtra

» Department: School Education and Sports Department; Social Welfare Department; Directorate of Information Technology, General Administration Department

» Legislative Competence: Seventh Schedule, List III, Entry 25

» Key Laws: Maharashtra Right of Children to Free and Compulsory Education Rules, 2011; Draft Maharashtra State Policy for Inclusion of Persons with Disabilities, 2017; The Rights of Persons with Disabilities Act, 2016

Problem

The COVID-19 pandemic and subsequent school closures increased reliance on digital education across the country, resulting in a stark 'digital divide' in education accessibility. Children with disabilities (CWDs) in India are more likely to belong to poorer and rural households and are thus among the worst affected.

Key barriers to access for CWDs across the country have been non-availability of accessible materials and modes of instruction, unaffordability of personal devices (smartphones/computers), and lack of sufficiently trained teachers. CWDs struggled to cope with online learning during the pandemic and are at a higher risk of dropping out.

In Maharashtra, CWDs account for around 6.84 lakh children (between 5-19 years), who witnessed an apathy in delivery of education, even prior to the pandemic. During the pandemic, there is ample evidence pointing to a 'digital divide' in Maharashtra. A Maharashtra State Council of Educational Research and Training (MSCERT) and UNICEF survey found only 59.8% students attending government schools in the State had access to smartphones, and only 57% had internet connectivity.

During the pandemic, the Maharashtra Government encouraged use of information and communication technology (ICT) in State-run schools, through a range of programmes - from

use of the Centre's DIKSHA (Digital Infrastructure for Knowledge Sharing) platform to collaborations with Zoho, Google, and other private partners' Corporate Social Responsibility (CSR) initiatives. The State has further cited its use of the DIKSHA platform as a means of delivering education for CWDs specifically.

However, this platform as well as other private and public digital platforms, has several issues with access and navigation, particularly as regards the accessibility standards for students with visual impairments. Similarly, e-learning centres and mobile applications set-up for CWDs reflect a continued reliance on digital modes of teaching despite the fact that 70% CWDs in Maharashtra reside in rural areas where internet connectivity is a problem.

Solution

There is a need for a dedicated State-level policy on making education-related ICT accessible for CWDs. This policy should be based on evidence, gathered by the State, on the full extent of inaccessibility for students with disabilities. Educational surveys conducted by the State and other independent studies on the status of digital education in Maharashtra should capture specific challenges of CWDs in accessing these digital resources.

This policy should then be operationalised and made effective through legislative rules under *The Right of Children to Free and Compulsory Education Act, 2009* (RTE Act) and *The Rights of Persons with Disabilities Act, 2016* (RPWD Act). Further, other existing national policies (like the 2012 policy on ICT in school education) and guidelines on online digital content creation (like the guideline for development of e-content for school and teacher education) with respect to making educational content accessible should be adopted.

Implementation

Amendments to the *Maharashtra Right of Children to Free and Compulsory Education Rules, 2011* (RTE Rules):

- Include digital education aids and equipment as a part of special learning and support material as specified in Rule 5 of the RTE Rules.

Giving effect to the RPWD Act:

- Notify rules for implementation of the RPWD Act with respect to enabling inclusive education;
- Formulate a standardised policy/guideline, in line with Section 42 of the RPWD Act, on

making digital education technologies and content accessible for CWDs. These guidelines should then be made mandatory for all ICT service providers of education, including private partners of the State.

Allocation of resources:

- Make schemes for affordable access to ICT under Point 7 (c) of the *Draft Maharashtra State Policy for Inclusion of Persons with Disabilities, 2017* applicable to the educational needs of CWDs.

Creating a Model Gender Court

- » Department: Law and Judiciary Department
- » Legislative Competence: Seventh Schedule, List II, Entry 65; List III, Entry 11-A
- » Key Laws: Article 15, Article 227 of the Constitution

Problem

For an ordinary litigant in India, often the first point of contact with the judiciary are the district courts. However, the very mention of district courts suggests a landscape of neglect and apathy. Currently 44,71,659 cases are pending at the level of District and Taluka courts in Maharashtra. These staggering numbers tell a tale of ill-equipped courts unable to cater to the rising needs of the judiciary.

While gaps in infrastructure affect all litigants and the overall performance of the court, victims of gender-based violence/vulnerable witnesses bear the brunt of this in an almost cruel way. The courtroom as a space and associated court processes have been found to be very hostile to the needs of the victims. The judges and the staff are untrained to cater to the sensitivities of such parties, thereby exacerbating their suffering, rather than serving as avenues for relief.

Further, courts are understaffed not only with regard to judges but also when it comes to the administrative staff and registry officials who assist the judges. In addition to being understaffed, the District Judiciary is not adequately gender diverse. This is particularly true at the cadre of District Judges.

Recently while granting bail to a rape accused, a judge of the Karnataka High Court observed that it was “unbecoming of an Indian woman” to fall asleep after she had been “ravished”. The Judge further expresses his reservations about the genuineness of the complaint and also questioned the delay in approaching

the court on behalf of the complainant.

A study conducted on rape cases decided between 2013-2018 in Delhi notes that courts often discard the testimonies of the prosecutrix as unreliable and not inspiring confidence.

According to data released by the National Crime Records Bureau for 2019, the incidences of violence against women in Maharashtra have consistently been rising with 31,979 cases reported in 2017, 35,497 in 2018 and 37,144 in 2019. Additionally, 94% of cases related to crimes against women are pending in the courts and the conviction rate in such cases is as low as 13.7% compared to the aggregate 49% conviction rate across all *The Indian Penal Code, 1860* (IPC) offences. This data demonstrates the need, more than ever before, to ensure courts that function better for women.

Solution

With Maharashtra tabling the two Shakti Laws for women empowerment - *SHAKTI Criminal Laws (Maharashtra Amendment) Act, 2020* and *Maharashtra Exclusive Special Courts (for certain offences against Women and Children under SHAKTI Law) Act, 2020*, the creation of a model gender court is the practical next step.

High Courts must take ownership of the district courts under their jurisdiction and ensure that not only are courts accessible, but they are also mindful of the needs of



vulnerable witnesses.

Some district courts in Delhi such as Karkardooma, Saket and Dwarka, have operationalised vulnerable witness deposition complexes. These special complexes ensure that vulnerable witnesses are allowed a separate entry into a complex and do not come in contact with the accused. The complexes have been equipped with all the facilities for audio-visual exchange. This ensures that while the witness, the accused and the presiding officer can communicate effectively, the witness does not have to face the accused. High acquittal rates in sexual offences is often attributed to witnesses turning hostile.

Given that judges carry the prejudices endemic in Indian society, it is also important that judicial officers and judges undergo rigorous sensitisation exercises which make them more aware of the rights of women.

In addition, court processes can be improved by regularly monitoring data collected on the case information systems. If cases related to gender-based violence are separately tracked and analysed, a lot of specific inefficiencies can be identified and addressed. An efficient case management system would help identify the gaps in the criminal justice process from the pre-trial stage itself. To fully utilise the gains of case flow management, the software for entering case data should be designed in a manner that generates periodic reports with regard to the progress of cases and assists the judges dealing with such cases in improving the response of the judiciary.

Implementation

To make district courts more accessible for women the following solutions are proposed:

- Identify one district court in Maharashtra for creating a blueprint of a model gender court;
- Specifically formulate gender sensitisation programs for judges

court staff dealing with gender related cases;

- Institute a case management system that identifies cases involving gender-based violence so that they can be tracked from the pre-trial stage till completion.

08

Improving Virtual Access to Courts in a Post Pandemic Maharashtra

- » Department: Department of Law and Judiciary; Directorate of Information Technology, General Administration Department
- » Legislative Competence: Seventh Schedule, List II, Entry 65; List III, Entry 11-A
- » Key Law: Article 227 of the Constitution

Problem

The High Court, district courts and other tribunals in Maharashtra operated virtually during the COVID-19 induced lockdown. The use of virtual courts allowed for the filing of documents electronically and hearing arguments over video-conferencing facilities. From 24 March to 29 October 2020, 47,65,262 cases were e-filed across all subordinate courts in India and 22,46,565 were virtually heard and disposed of. These numbers reflect that the e-filing system was used extensively even though courts were hearing a limited number of cases during the lockdown period.

In Maharashtra, tribunals such as the Maharashtra Real Estate Regulatory (MahaRERA) Adjudicating Authority and the MahaRERA Appellate Tribunal continued to function virtually. Additionally, a special virtual court was inaugurated in Katol (Nagpur district) in November 2020 by the Supreme Court's e-Committee for the e-filing of traffic challan cases.

However, the widespread use of virtual courts hit some roadblocks. A major issue, as identified in the *103rd Interim Parliamentary Report on the Functioning of Virtual Courts through Video Conferencing*, is the problem of connectivity. This has been listed as the primary hindrance to the functioning of virtual courts. Since courts have employed bandwidth-heavy and varied software such as Cisco WebEx and Vidyo for video conferencing, lawyers and litigants residing in remote

areas or from different financial backgrounds often do not have access to the required information and communication technology (ICT) to utilise such software.

Another issue faced in the functioning of virtual courts is the lack of uniformity of e-filing procedures across the different courts and tribunals that has caused further inconsistencies for lawyers and litigants.

Further, not all parties prefer virtual hearings. For example, in intellectual property disputes, the amount of evidence to be presented is more significant than that of summary or interim proceedings. Further, during cross-examination of witnesses and in criminal cases, litigants and lawyers prefer to have physical hearings.

These roadblocks need closer examination since the Government has announced its intention to assess ICT requirements for the functioning of virtual courts and tribunals even after the lifting of the COVID-19 induced restrictions.

Solution

During the lockdown, the Supreme Court of India created an efficient e-filing system for lawyers where they can file cases, amend documents, and request the court for mentionings. Additionally,

under the Supreme Court's e-Committee, an e-resource initiative called Nyay Kaushal has been inaugurated in Nagpur in November 2020. This initiative aims to assist in facilitating the process of e-filing of cases before any court across the country.

To deal with connectivity issues, countries such as Singapore and the United Kingdom completed dry runs and used their indigenously developed software to run their virtual courts system. Singapore has shifted most of its mediation, negotiation and motor vehicles claims online and has launched a dedicated website for e-filing and virtual hearing of cases for all their tribunals, thus easing the current infrastructure burden.

In India, to remedy the lack of access to ICT, e-Sewa Kendras have been launched as a pilot project by the Supreme Court's e-Committee in the High Courts and district courts across the country. The e-Sewa Kendra enables litigants to obtain information with respect to case status, obtain copies of judgments and orders and do e-filings. The e-Committee intends to equip all courts with e-Sewa Kendras to ensure that anyone approaching the court can avail of these facilities.

These initiatives need to be implemented appropriately and efficiently by the State High Courts.

Implementation

To assist in the smooth transition of courts and tribunals in the State from a physical only to a hybrid and/or virtual format, the following solutions are recommended:

- Approach the Bombay High Court to ensure implementation of the Supreme Court's e-Committee initiatives across the courts and tribunals of Maharashtra;
- Get quasi-judicial bodies and tribunals to model their e-filing software based on the Supreme Court's system. This will create a uniformity in filing that can be applicable to courts and tribunals across the State. Adopting a common system will also be more cost-effective;
- Extend the services of the Nyay Kaushal e-Resource initiative to facilitate e-filing of cases in all courts, tribunals and other quasi-judicial bodies;
- Equip e-Sewa Kendras to provide facilities for video conferencing allowing any lawyer or litigant to utilise the services for virtual hearings before all courts and tribunals.

Reimagining Rehabilitation through Borstal Schools

- » Department: Maharashtra Prison Department
- » Legislative Competence: Seventh Schedule, List II, Entry 4
- » Key Laws: The Bombay Borstal Schools Act, 1929; Maharashtra Borstal Schools Rules, 1965; Prison Criminal Manual, High Court of Bombay, 1961

Problem

The objective of *The Bombay Borstal Schools Act, 1929* (the Act) is to promote the reformation and rehabilitation of offenders from the ages of 15 or 16 to 21 years. There are several examples of young offenders, accused of petty crimes, turning to more serious crimes once they have been detained in a prison meant for adult prisoners. The institution of Borstal Schools seeks to prevent this and focusses on the reformation of offenders rather than punishment.

At present, there is only one Borstal School in Maharashtra, located in Nashik – a facility meant for 105 but currently being occupied by only 12 persons. The National Crime Record Bureau (NCRB) Crime Report of 2019 records that 88.6% of juveniles were held guilty for their crimes. Even with a high conviction rate, there is still a severe underutilisation of the Borstal School facility.

One of the reasons for this is the framing of Rule 2A, which disallows the admission of female offenders and non-Marathi speaking offenders into Borstal Schools. Rule 2A states that female offenders are not permitted in Borstal Schools till the State does not establish specific Borstal Schools for women. Since the State does not have any designated Borstal Schools for female offenders, by default the Rule becomes discriminatory as it makes no provisions for accepting female offenders into the existing infrastructure of Borstal Schools. In contrast to this, States such as

Uttar Pradesh and Madhya Pradesh have explicit provisions to permit female offenders. Further, Himachal Pradesh and Kerala have the capacity to lodge female offenders in their Borstal Schools.

On the issue of language, Rule 2A states that offenders who cannot take and follow instructions in Marathi cannot be ordered to be detained in Borstal Schools. This Rule restricts a whole gamut of young offenders from being admitted into these Schools. Other States, such as Tamil Nadu, do not have a language barrier for admittance into Borstal Schools.

Another issue is that Inspectors-General, as defined under Section 3(b) of the Act, seldom utilise their power, under Section 11 of the Act, to transfer young offenders from prisons to Borstal Schools, even if they are eligible for the same. This is in part due to a lack of awareness of these provisions and also an over-burdening of responsibilities on the Inspectors-General.

Additionally, the *Prison Criminal Manual, High Court of Bombay, 1961* (the Manual) specifically discourages Borstal School detention in case of some specific offences. Chapter X of the Manual forbids youth convicted of sexual offences, such as those relating to outraging the modesty of a woman, sexual offences, or offences related to marriage, from being detained in Borstal

Schools. Further, adolescents convicted of single offences of violence in a moment of passion, are also forbidden from being detained in Borstal Schools. This renders a large proportion of youth ineligible to be admitted to these Schools.

One of the objectives of the Borstal Schools is to rehabilitate the young offenders and prepare them for entry back into society. However, rehabilitation programmes in Borstal Schools are hindered by the lack of coordination between the Schools and the institutions offering vocational training, such as Industrial Training Institutes (ITI). A lapse in the functioning and staffing of the Borstal Schools for skill training has prevented the Schools from fulfilling their objectives.

Solution

The State should review the Act, the *Maharashtra Borstal Schools Rules, 1965* (the Rules) as well as the Manual to update them and bring them in line with contemporary standards of rehabilitation and reformation. Further, the State should mandate a study to analyse cases related to juveniles to see whether judges are adequately using their powers to send young offenders to Borstal Schools. In addition to this, it is recommended that the State formulate awareness and sensitisation programmes for all relevant officials involved with the administration of the Act and Rules, to bring them in sync with the philosophy of the Act.

Implementation

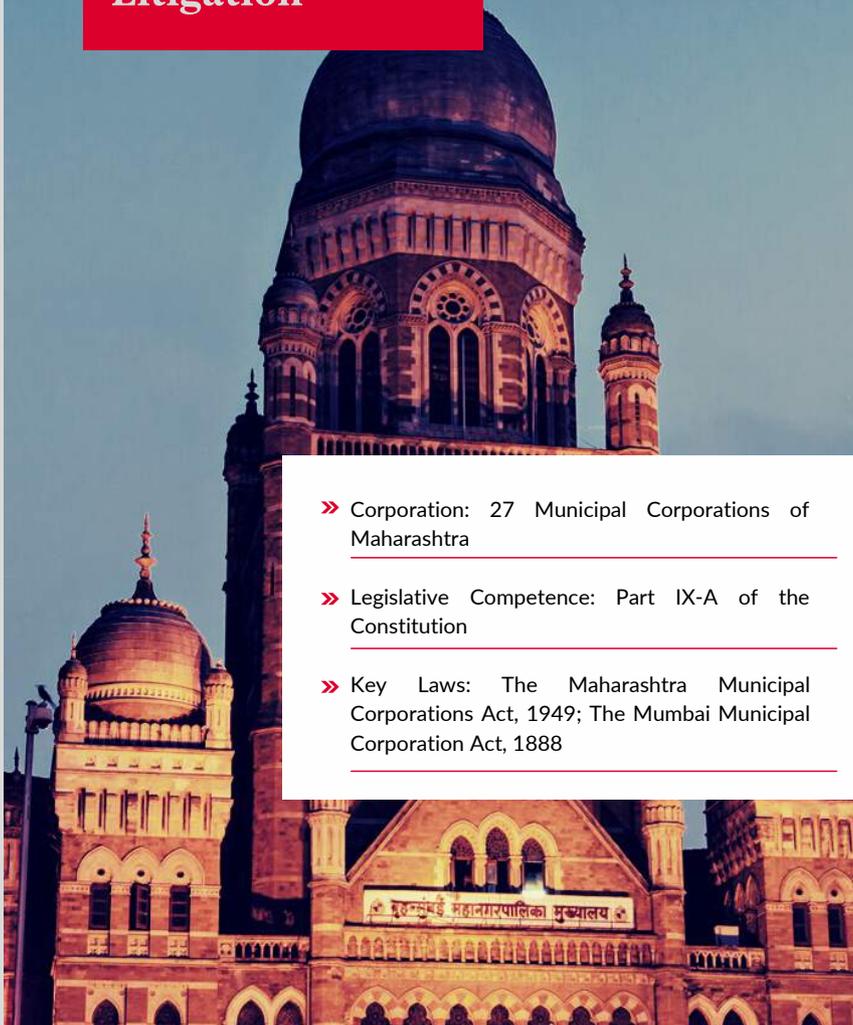
To address the problem of making Borstal Schools more inclusive and increasing their utilisation, the following solutions are proposed:

- Amend Rule 2A to ensure gender parity and eliminate the discrimination based on language;
- Create a training module for the Inspectors-General, for awareness regarding the existence of several provisions under the Act and Rules;
- Amend Paragraphs 4 and 5 of Chapter X in the Manual to allow sexual and other offenders to be detained in Borstal Schools, relying on evidence that such offenders are likely to benefit from such detention. This can be supplemented with data from the analysis of cases in which Maharashtra courts have recorded special reasons for not ordering this detention;
- Improve coordination between the Schools and the ITIs and other similar institutions that provide vocational training to ensure better functionality for Borstal Schools.

10

Efficiently Managing Municipal Corporation Litigation

- » Corporation: 27 Municipal Corporations of Maharashtra
- » Legislative Competence: Part IX-A of the Constitution
- » Key Laws: The Maharashtra Municipal Corporations Act, 1949; The Mumbai Municipal Corporation Act, 1888



Problem

The Municipal Corporation of Greater Mumbai (MCGM) is known as India's richest civic body. However, reports in 2019 suggest that the MCGM has been facing an economic downturn driven by various factors, including but not limited to, the slump in the real-estate sector and the loss of octroi income due to the introduction of a uniform Goods and Services Tax (GST). The COVID-19 pandemic has added to its economic distress. Changes of this nature have an overall effect on the resource availability of corporations.

While the MCGM has several issues on its plate, there is an additional responsibility that stems from the work it is legislated to do – litigation and disputes arising from its civic activities. At present, the MCGM is dealing with over 70,000 cases in different courts and/or tribunals and authorities in the city of Mumbai, across the State and throughout the country too. The continuous litigation has an effect on the availability of manpower and the finances of the corporation.

Litigation not only puts a burden on the resources of the municipal corporations but also adds to the case load of the judiciary. Further, litigation is a long drawn out, time consuming and expensive process, in terms of human resources and finances – both of which are strained in the MCGM. This is true not only of MCGM but also of all municipal corporations in Maharashtra which face a large volume of cases.

Solution

It is necessary to introduce a case management system that specifically caters to the requirements of the municipal corporations of the State. This case management system can be modelled on the Legal Information Management and Briefing System (LIMBS) that has been promulgated by the Department of Legal Affairs under the Ministry of Law and Justice. The case management system should include classifications like case categories, jurisdiction allotments, complete case details, allocation of work and cost effectiveness. Such a system would make all necessary information available through one portal and allow for the efficient management of pending litigation. Further, having all this information available in one space would allow corporations to exchange data and seek assistance seamlessly across corporations in order to better resolve similar disputes being faced in the State.

With the promulgation of such a system, litigation management will improve within the corporation. As necessary case data information will be readily available, it will increase efficiency in managing the various disputes. Further, data would be made available in terms of case pendency, duration, number of adjournments and delays. With interaction between corporations also becoming a possibility over this system, it will assist in dealing with common issues more effectively. Overall, the system would thus work towards efficiently managing municipal corporation litigation.



Implementation

It is therefore recommended that the corporations should:

- Commission a study of the litigation faced by the corporations in the State. This study should comprise of an analysis of the case data available with the corporations and provide recommendations on how the caseload on the corporations may be reduced through streamlining of the various processes by which litigation is handled within the corporations. The study should also include data on the overall financial burden of these disputes;
- Mandate the development of a case management software for the efficient management of pending litigation in all the corporations across the State.

Putting the Public Back in Public Libraries

- » Department: Department of Higher and Technical Education
- » Legislative Competence: Seventh Schedule, List II, Entry 12; Eleventh Schedule, Entry 20
- » Key Law: The Maharashtra Public Libraries Act, 1967; The Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961

Problem

Libraries are spaces of lifelong learning and therefore, their establishment, maintenance and continuous upgradation is a key component for developing social, cultural and economic skills in a community. At present, the literacy rate in Maharashtra is 82.3% and the library can become a space to further enhance this literate population. Libraries thus require an environment to grow in and facilities to reach a larger number of people.

The Maharashtra Public Libraries Act, 1967 (the MPLA), while it provides for most of the aspects that are required to set-up libraries in the State, tends to over-regulate itself leading to difficulties in implementation. One of the hindrances is the composition of the State Library Council (SLC) under Section 3 of the MPLA. The SLC is statutorily required to comprise a sizeable number of members. The primary function of the SLC is to advise the State Government on all matters connected with the administration of the MPLA, and therefore, the large number of members, without whom the SLC cannot function, makes it difficult to implement the mandate of the SLC.

Further, the funding allotted for public libraries is dismal. Section 18 sets up the Library Fund that is to receive funding, inter alia, of a sum of not less than INR 25 lakhs from the State Government (Section 20) and through special grants to this fund by the State Government

(Section 21). The *Fourth Maharashtra Finance Commission Report* shows that the funds allotted for public libraries were not used in their entirety. A lack of sufficient funding directly affects the maintenance and development of libraries in the State.

In Maharashtra, libraries face a gap in the implementation of existing laws and a deficit in funding that prevents the mandated maintenance, organisation and development of libraries in the State. Further, during the COVID-19 induced lockdowns, community spaces like public libraries became inaccessible. At such a time, the absence of an e-library was significant. Even the website of the Directorate of Libraries has not been updated with most of the data being obsolete.

Solution

To allow the SLC to better advise the State Government on the administration of the MPLA, the composition of the SLC should be changed. The number of members should be reduced, with a focus on representative members and members with expertise in allied fields. A smaller SLC, composed of core members, would make this process more efficient and focussed.

A large part of being able to achieve the goals of the MPLA are connected to the



better disbursement of funds. The Finance Commission Report also recommends the devolution of financial powers to Urban Local Bodies (ULBs) and in the case of libraries, suggesting that the Zilla Parishad supervise all district level libraries aided by the State Government.

With the onset of the COVID-19 induced lockdowns, community spaces became inaccessible and knowledge became restricted to the virtual. With this shift in forms of access to knowledge, the State must start a dialogue around the creation of a digital public library for the State of Maharashtra. This digital library can be implemented at a State-level, which would

also be more cost-effective and accessible.

The IFLA/UNESCO Public Library Manifesto lists supporting and participating in literacy activities and programmes as a mission. In keeping with this, the Government should consider setting up a committee with the expanded remit of promoting libraries that can serve a twofold objective: improving literacy in the State and encouraging the growth of local language authors; thus, becoming vehicles for local language empowerment.

Implementation

To address the issues afflicting public libraries in the State, the Government should:

- Amend the MPLA to reconstitute the SLC by reducing the overall number of members required to form the SLC;
- Amend *The Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961* to further devolve financial powers to the Zilla Parishads specifically in the case of public libraries;
- Establish an e-Library Committee, under the Directorate of Libraries, with the specific mandate to create a digital public library for Maharashtra;
- Notify e-libraries to be recognised as a part of the defined libraries under Section 2 of the MPLA;
- Establish a committee with the expanded remit of promoting local language authors.

12

Proposing a Uniform Lease Renewal Policy for Collector's Land

- » Department: Revenue and Forest Department
- » Legislative Competence: Seventh Schedule, List II, Entry 18
- » Key Laws: The Maharashtra Land Revenue Code, 1966; The Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971

Problem

Leases that are on Collector's land are legislated under *The Maharashtra Land Revenue Code, 1966* (MLRC). Around 3,000 housing societies in Mumbai and 22,000 in the rest of Maharashtra stand on Collector's land which is leasehold land.

A lease deed is a written contract on terms negotiated and entered into between the lessor and the lessee. The land regulated by such lease deeds is termed as leasehold land. Pre-independence lease deeds for varying periods of leases, viz. 99 years, 50 years, 30 years etc., also contained renewal clauses and clauses relating to lease rent on such renewal. Post-independence, the Collector became the custodian for leases and was bound by these contracts.

There have been several Government Resolutions (GRs) regarding leasehold lands beginning from the 1950s till present. The GRs provide for the State Government policy on renewal of leases along with the rules for the computation of lease rent of the expired leases on Collector's land.

In 1986, the State Government passed a GR stating that the renewal of leases should take place at the existing market value, which was a substantial increase from the existing contractually agreed rates being paid prior to their expiry. This

was challenged and the Bombay High held in *Ratti Palonji Kapadia and Ors. v State of Maharashtra and Ors.* (Ratti Kapadia) that the State Government must disclose the basis on which the increased lease rent amount was computed. The GR was thus set aside as being arbitrary. The State Government then passed new GRs, which were again litigated and set aside by the courts.

On 12 December 2012, a fresh GR was issued which gave the option to convert all leasehold lands to freehold land at market value. Further, it provided that if this was not opted for, then the computation of leasehold rent would be done on a percentage of market value. This GR was also challenged. In 2018, the State Government amended the GR to reduce the lease rate calculation based on different criteria. This was also challenged.

There have been several GRs issued by the State Government over time, all of which have been challenged, and parts of which have been set aside. As a result of this, the State Government has been losing out on a source of revenue. Due to the pending of renewal of leases, neither regularisation nor eviction steps can be taken where lessees are in violation of leases. This problem is caused due to the lack of a uniform lease renewal policy.

Solution

The methodologies adopted in these GRs have been challenged time and again as being arbitrary. If the various judgments of the Bombay High Court are followed there would be fewer challenges to these GRs. The benefit to the State in terms of a uniform lease renewal policy would garner continuous annual revenue, and premiums on unearned income would add additional revenues.

The Bombay High Court judgment in the case of Ratti Kapadia continues to be good in law. The reasoning used in the judgment is that lease rent should be computed keeping in mind factors and components particular to every property. This should be applied by the State Government in making a GR.

The additional advantage of having a uniform lease renewal policy would be that land at present that does not have a

valid lease would be renewed and the State Government would be able to collect lease rent from these properties along with regulating the development of such land, collect premiums and transfer charges on subsequent transfers, leading to a constant flow of revenue.

Another possible solution is to allow for the conversion of leasehold land to freehold land at a percentage of the market value. This has been proposed in the GR of 2012 and can be considered as a standalone solution. The part of the GR of 2012 that has been challenged pertains to the renewal of lease rents linked to market value.

Implementation

Collector's land lease rent is a source of revenue for the State Government. Therefore, this resource should be tapped. The State Government should:

- Propose a GR in keeping with the observations of the Bombay High Court in its 1992 judgment that set aside the GR of 1986;
- Collect the existing lease rent up to the date of renewal of the lease;
- Compute the renewed lease rent for each property keeping in mind factors and components of valuation particular to every property, such as location, composition of occupiers, amenities, infrastructure, size of holding and period of holding;
- Allow for the conversion of leasehold land to freehold land at a percentage of market values.

Making Property Tax Administration More Efficient

PROPERTY TAXES

- » Department/Corporation: Urban Development Department; Directorate of Municipal Administration; Individual Municipal Corporations; Rural Development and Panchayat Raj Department
- » Legislative Competence: Parts IX and IX-A of the Constitution; Articles 243H, 243J, 243X and 243Z
- » Key Law: The Maharashtra Municipal Property Tax Board Act, 2011

Problem

In light of the rising pace of urbanisation and the devolution of administrative functions pursuant to the 74th Constitutional Amendment, local governments are being tasked with providing an increasing number of services, despite resource constraints. In particular – deficiencies in governance, infrastructure, and finances, are some of the major challenges faced by urban local bodies (ULBs) in India.

Property tax is a key source of revenue for ULBs, and the law empowers municipalities to collect and recover this tax. However, property tax collection by ULBs has traditionally been low. Estimates indicate that national property tax collections as of 2020 were approximately INR 20,000 crore – much below that of “peer countries” and short of the amounts needed to fund the requisite urban infrastructure. In 2017-18, Maharashtra’s property tax revenue was just 0.34% of Gross State Domestic Product, and in 2015-16, Mumbai’s property tax revenue was only 8% of its own revenue.

These low revenue collection rates may be attributed, *inter alia*, to poor administrative systems and infrastructure and inadequate maintenance of property records. This results in widespread exclusion of properties from the rolls and/or inaccurate records with respect to area and mapping, as well as inadequate enforcement of tax collection and recovery by ULBs. Further, as Awasthi and Nagarajan point out, “smaller ULBs in

ULBs in general do not have the resources or capacity to administer strong, ICT platform-based property tax administrations”. Modern tax administration systems, that run on information and communication technology (ICT) platforms, can be more efficient and provide better services to the taxpayer.

The Maharashtra Municipal Property Tax Board Act, 2011 (the Act) provides for a Maharashtra Property Tax Board (Property Tax Board), to act as an auditing, advisory, and mediating body, however, this structure has certain shortcomings: (i) the Property Tax Board is not adequately empowered to perform its oversight duties under the Act independently, and (ii) the various functions of the Property Tax Board are to be exercised, for the most part, at the direction of the State Government, with the exception of its auditing and record keeping activities – thus resulting in a largely advisory body with a rather weak and limited mandate.

Solution

Eliminating the various barriers to efficient property tax administration, as discussed above, is essential to improving collection rates. Several reports, over the years, including the Report of the 15th Finance Commission, Awasthi and Nagarajan’s paper, and the others referenced herein, have suggested various measures to improve



property tax administration, however, as highlighted by Weist et al, equity is also an important aspect of a tax system. In order to improve tax collection without unfairly increasing the burden on tax-compliant members of the community, the following measures suggested in the foregoing papers, may be implemented: (i) the creation of a comprehensive digital database linking the various land records maintained by different authorities, (ii) the utilisation of technology to create more accurate property rolls, and (iii) the institution of an appropriately constituted and adequately empowered State-level body to facilitate property tax administration at the various levels of government in the State.

Implementation

In order to empower the Property Tax Board to facilitate efficient property tax administration in the State, it is recommended that the Act be amended to:

- Transform the existing Property Tax Board into a State-level body tasked with overseeing property tax administration in the State, advising State and local governments, forming committees to achieve short-term, system overhauls, and facilitating effective property tax collection by smaller local bodies through capacity building and technical assistance;
- Clearly delineate the powers and functions of the Property Tax Board, and empower it to carry out its functions as an independent oversight and technical body, apart from its advisory functions vis-à-vis the State Government;
- Provide for adequate funding of the Municipal Property Tax Board Fund so as to enable the Property Tax Board to fulfil these additional duties.

14

Designing a Legal Framework for Digital Innovation in Maharashtra

- » Department: Directorate of Information Technology, General Administration Department
- » Legislative Competence: Seventh Schedule, Multiple Entries Under List II and List III
- » Key Laws: Maharashtra State Innovative Start-up Policy, 2018; Fintech Policy, 2018

Problem

Home to leading industries and financial institutions, Maharashtra also has the highest number of recognised start-ups under the Start-up India Initiative. The NITI Aayog India Innovation Index 2021 (Innovation Index) ranks Maharashtra at the 2nd place. Therefore, the State has the potential to serve as the budding ground for a vibrant start-up ecosystem for innovative businesses.

With the COVID-19 pandemic accentuating the role of digital innovation across several sectors, an ecosystem to foster innovation is critical. This requires conducive laws and policies. Presently, Maharashtra is at the 7th position on the parameter of 'Safety and Legal Environment' in the Innovation Index. A rigid legal framework will adversely impact the scalability, adoption, and viability of innovative businesses in the State.

While Maharashtra has undertaken commendable initiatives such as the Maharashtra State Innovative Start-up Policy (Start-up Policy), Fintech Policy, Maharashtra State Innovation Society and the Mumbai Fintech Hub, there is substantial headroom for growth. Very often, laws fail to keep pace with the evolution of technology, creating regulatory barriers for such innovative businesses and depriving consumers from the benefits of innovation. Further, legislators often do not have the necessary information about the potential benefits and risks of such evolving technologies. This creates challenges in designing appropriate regulatory responses for evolving technologies or

business models. This is particularly relevant in case of recent innovations relating to cab aggregators, bike taxis, online gaming, gambling, and online education platforms, where the speed of innovation has challenged existing legislative arrangements. Any knee-jerk reaction to new technology will lead to unsuitable laws which may stifle innovation, competition, and efficiency without mitigating the actual risks. This calls for a data driven and evidence-based approach towards law and policy making.

Existing initiatives in Maharashtra focus on creating adequate infrastructural facilities and encourage industry collaborations, without a mechanism for addressing regulatory barriers. The State Start-up Policy which seeks to "lighten regulatory compliance" only envisages a review of the State laws by the Government without a concrete regulatory action plan.

Solution

The desire to attract investment, promote innovation and drive competition in markets has motivated different regulators in several countries, including India to set up a regulatory sandbox. Recently, Karnataka enacted a law to set up an Innovation Authority to promote and regulate innovative technologies through a regulatory sandbox model. A regulatory sandbox allows for the testing of innovations in a



live market subject to ongoing supervision from regulators. A key feature of this framework is exemption or relaxation from applicable laws provided to participating entities. This must not be confused for complete deregulation since any regulatory relaxation or exemption is for a specific duration and subject to certain conditions. Countries like United Kingdom, Russia and Germany are using regulatory sandboxes to test innovations in sectors such as aviation and transportation while Singapore is using it for testing innovations in telemedicine.

Regulatory sandboxes have distinct advantages for policymakers, businesses, and consumers. First, it provides first-hand empirical evidence on the benefits

and risks of emerging technologies, enabling policymakers to take a considered view on designing laws that support useful innovation. It is viewed as a positive signal to the market regarding the openness of the government to innovation. Second, participating entities can test the viability of their products or services in a limited manner without an expensive roll-out. Third, it allows consumers to access tested innovative products and services. A regulatory sandbox must be distinguished from the industry sandbox operated by the Mumbai Fintech Hub, which is a platform for financial institutions and fintech companies to exchange data through application programming interfaces.

Implementation

To promote innovative technologies in identified areas, Maharashtra should consider enacting a 'Maharashtra Digital Innovation Authority Act' to:

- Set up a Digital Innovation Authority to promote and regulate innovative technologies in Maharashtra. The authority should be constituted with representatives from the relevant State departments currently implementing different policies for the start-up ecosystem and domain experts;
- Empower the authority to operate a regulatory sandbox, grant relaxation or exemption from an applicable State law and recommend changes to existing laws based on results of sandbox testing;
- Delineate the conditions under which participants in a regulatory sandbox must operate;
- The authority should be empowered to run regulatory sandbox programs in cohorts with each cohort focusing on innovation in specific sectors within the legislative competence of the State for example, urban mobility, online gaming, agriculture, education, and health. The Innovation Society and the Mumbai Fintech Hub may be allowed to operate to the extent that they do not encroach upon the jurisdiction of this Authority.

15

**Increasing
Investment by
Backing Skill
Based Platforms**

- » Department: Skill Development Employment and Entrepreneurship Department; Industries, Energy and Labour Department
- » Legislative Competence: Seventh Schedule, List II, Entry 34
- » Key Law: The Maharashtra Prevention of Gambling Act, 1887

Problem

In 2020, India surpassed the United States of America to become the world's largest fantasy sports market by user base. Despite the initial absence of sporting events due to the COVID-19 lockdown, and conflicting stances of State Governments regarding its legality, the industry's gross revenues stood at around INR 2,400 crore for the financial year 2020 compared to approximately INR 920 crore in 2019.

India does not have laws specifically governing online fantasy sports. Each State has their own gaming laws which do not cover online fantasy sports. Many online gaming platforms have been operating under archaic State laws modelled after the pre-independence era law, the *Public Gambling Act, 1867*. The *Maharashtra Prevention of Gambling Act, 1887* (Maharashtra Gambling Act) also does not account for online gaming. States such as Nagaland and Sikkim have legalised fantasy sports, but Andhra Pradesh and Telangana have banned them. This has led to a lot of uncertainty surrounding its legality, which has in turn curbed investment in the sector.

Another issue is that fantasy sports are often associated with betting and gambling despite being a game of skill. Therefore, they are prima facie considered as being illegal. This association with gambling and games of chance has led to many Governments avoiding regulating and promoting it within their States. However, consumers of fantasy sports games are required to

create their teams online after a rigorous analysis of various circumstances, like analysing data from different matches, making them games of skill rather than those of chance.

Further, States have responded differently on the question of whether fantasy sports constitute games of skill or games of chance. The gaming Acts of States like Nagaland and Sikkim have legalised online fantasy games, however, they have imposed restrictions such as obtaining of licenses, paying license fees and using an intranet within the State. Over-regulation by these States has failed to boost innovation and investment in online gaming to its full potential. With States like Andhra Pradesh and Telangana banning them, and Assam and Odisha not permitting games of skill associated with monetary gains, there is a lot of uncertainty on the legal position of online fantasy games.

Solution

According to a PricewaterhouseCoopers India report, the fantasy sports industry has the potential to contribute Goods and Services Tax (GST) revenue of INR 3,000 to 3,500 crore over the next five years. By legalising fantasy sports for its residents, Maharashtra can accrue the benefit of collecting a greater portion of the GST. Thereby generating additional revenue for the State.

Nagaland and Sikkim have amended their



gaming Acts to list online games that can be operated legally. The Maharashtra Government can consider similar amendments to the Maharashtra Gambling Act. This will provide clarity and stability for fantasy sports operators, increasing their confidence in investing in the State.

To ensure that fantasy sports are played as a game of skill in the absence of any regulation, the Federation of Indian Fantasy Sports (FIFS), a self-regulatory body, was created in 2017. The FIFS has a Charter that lays down guidelines to ensure that fantasy sports are only played as games of skill, and not as games of chance. A Rajasthan High Court judgment legalising fantasy sports for Rajasthan had noted that the FIFS ensures that its members, such as Dream 11, abide by the rules of its Charter and regulates the gameplay autonomously. Till date, the FIFS

has not been recognised as a self-regulating body by any State Government. Adopting the Charter of the FIFS or recognising it as a self-regulatory body for fantasy sports will ease the burden of the State in ensuring that fantasy sports are only played as games of skill.

In December 2020, the NITI Aayog published its *Draft Guiding Principles for Uniform National-level Regulation of Online Fantasy Sports Platforms in India* (NITI Aayog Draft). The NITI Aayog Draft too mentioned the need to provide a safe harbour for fantasy sports in India by creating a stable legal framework to remove fear of prosecution or loss of investment and recognise self-regulating bodies such as the FIFS.

Implementation

To capitalise on the revenue generated by online fantasy sports in line with the NITI Aayog Draft, the State Government should:

- Amend the Maharashtra Gambling Act to list permissible skill-based games;
- Recognise the FIFS as a self-regulating body.

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