Maharashtra Moving Forward

Fifteen Legal Reforms for the State

Briefing Book 2023

VIDH | Centre for Legal Policy

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

The Briefing Book is a list of recommended reforms for the State of Maharashtra. In 2023, we focus on fifteen reforms that would enable the sustainable and inclusive development of the State. These suggested reforms are categorised under three themes in the book: sustainability, inclusivity, and robust institutions and up-to-date laws.

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Foreword

by Justice Sujata Manohar (Retd.)

Vidhi Centre for Legal Policy's Briefing Book 2023 has fifteen suggestions for legal reforms for the State of Maharashtra, all of which are of vital importance for a proper solution of some basic issues facing not just Maharashtra, but the entire country. It will help many public spirited groups struggling for preservation of our irreplaceable heritage or our natural environment or striving to help those unable to access public amenities to advocate appropriate legal remedies.

The suggestions are on various independent issues. The set of suggestions under "sustainability" contain suggestions for securing some important immediate requirements for wildlife protection. In these

days of rapid urbanisation and expanding transportation, wildlife corridors have become essential for the security and safe movement of wildlife as their territories are encroached upon on account of our various measures for economic progress. The other victims of this "progress" are forests & trees that sustain our climate, our environment and our fantastic variety of life forms. The solution asks for an imaginative use of Section 36C of the Wildlife Protection Act by declaring "community reserves" for protecting the fauna, flora & traditional or cultural conservation practices and values.

There are suggestions for effective legal protection to grass-lands and trees in Maharashtra, public parks and open spaces in Mumbai, responsible pet ownership and treatment of strays, preventing fires etc.

The part on "Inclusivity" covers legal measures for human rights like health of prisoners or quality of pre-school education, protection to the discriminated and a social audit law.

The legal briefs are diverse and have focused on some immediate social needs. Under "Robust Institutions and Up To Date Laws" there are some interesting briefs on making local government more effective. A functioning democracy that enforces Rule of Law needs laws that are based on Justice, that secure human rights values and good governance. An effective democracy requires informed public inputs into the laws that govern the people, and a periodic examination and repeal of laws that have become out of date or unsuitable. I am happy that these briefs voice such informed inputs by legally knowledgeable persons. The briefs need to be studied and acted upon. I hope these Briefing Books encourage more informed public debates and lead to appropriate solutions to our problems in a rational, scientific and legal way.

Sujata Manohar

Justice Sujata Manohar (Retd.)
Former Judge, Supreme Court of India
Former Chief Justice, Bombay & Kerala High Courts
Former Member, National Human Rights Commission

Mumbai,
1st May 2023

Introduction

A cursory look at our surroundings today would show that Mumbai and, indeed Maharashtra, is being rebuilt. A variety of long-term infrastructure projects have been undertaken by the State Government with an aim to improve inter and intra-state connectivity and consequently, economic activity. In fact, the latest State budget allocated the highest outlay—over Rs. 50,000 crores—towards infrastructure development. This focus on infrastructure and economic growth is justified in any modern-day State. However, it is imperative that we minimise the cost of such development to our natural and built environments as well as ensure that the fruits of such development reach all. Keeping this aim in mind, the Vidhi Centre for Legal Policy (Vidhi) presents its second Briefing Book for the State of Maharashtra.

Vidhi was set up as an independent think-tank in 2013 to undertake 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 felt 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 (Vidhi Maharashtra) to address legal reform in Maharashtra.

In 2021, Vidhi Maharashtra came out with its first Briefing Book for the State. This book focussed on certain core areas such as health, labour and education, which were affected by the onset of the COVID-19 pandemic. In our second Briefing Book we have suggested fifteen legal reforms which would enable the sustainable and inclusive development of Maharashtra. This is apt since the year 2023 marks the halfway point in the implementation of the sustainable development goals formulated by the United Nations.

The suggestions for legal reform in this book are categorised under three themes: sustainability, inclusivity and robust institutions and up-to-date laws. Development is sustainable if it is able to meet the needs of the present generation without compromising the needs of the future generations. All the legal reforms suggested under the theme of sustainability embody this principle. Inclusive development promotes the well-being of all individuals. The legal reforms under the second theme suggest that we achieve this goal by reducing inequalities, increasing accessibility in various forms for vulnerable communities and encouraging participatory and representative decision-making at all levels of governance. Needless to say, development would stall if laws are not commensurate with today's day and age and institutions which enable development are not empowered. These ideas are reflected in the suggestions made under the third theme. Since Maharashtra is one of the most urbanised states of the country, any conversation on legal reform would be incomplete without talking about the State's cities. For this reason, some of the reforms suggested under all three themes focus on making development in Mumbai and other urban areas of the State sustainable, safe, resilient and inclusive for all its residents.

We hope that Maharashtra, moving forward, can benefit from the suggestions put forth in this book. Our aim, as always, remains better laws and better governance.

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PART 1

Sustainability

I

Securing the Wildlife Corridors of Maharashtra

Department(s)
Revenue and Forest Department

Legislative Competence
Seventh Schedule, List III, Entry 17B

Key Law(s)
Maharashtra Wildlife (Protection) Rules, 2014

Problem

In India, State Governments can notify areas with high concentrations of wildlife as 'protected areas' under the Wild Life (Protection) Act, 1972 ("**WPA**"). By doing so, they can restrict development activities within such areas to ensure long-term conservation. However, wild animals often migrate to habitats outside the protected area's limits to meet their ecological needs. These migration routes are commonly known as 'wildlife corridors'.

Wildlife corridors are important since they permit the safe migration of animals to different habitats for sustenance, safety and breeding. Compromising such corridors impacts the long-term needs and, consequently, conservation of wildlife. One way in which the corridors can be legally protected is by recognising

them as 'ecologically sensitive zones' ("**ESZ**") under the Environment Protection Act, 1986. However, the declaration of ESZs usually faces backlash from local communities as it places restrictions on development and felling of trees in such zones. As a result, in the past, governments have purchased the land around protected areas to secure wildlife corridors. For example, the Maharashtra Government purchased private land around the Lonar Park Sanctuary to extend the protection of the WPA to the habitat outside the sanctuary's limits. However, this method may not be practical and financially feasible in all instances.

The third alternative available then is to declare a wildlife corridor as a 'conservation reserve' under the WPA. Such a declaration, often identified as a middle path, enables the government to introduce restrictions similar to those in protected areas, albeit with less burden on the local communities. The Maharashtra Government has declared twelve areas spanning a total area of 1000 km^2 as conservation reserves in the State.

However, only government land can be notified as a conservation reserve under the WPA. Wildlife corridors that pass through privately or community owned lands cannot be notified as a conservation reserve by the government. For example, large areas of the Sahyadri-Konkan corridor are owned by private individuals and communities. Despite consistent efforts by the State Government to declare the government land in this corridor as conservation reserves, protection of wildlife has been limited. In fact, monoculture plantations, traditional agriculture and unplanned developmental activities on such private lands have resulted in the degradation of the wildlife corridor ecosystem.

Solution

Section 36C of the WPA permits the State Government to declare any private or community land that is not within a national park, sanctuary or a conservation reserve, as a 'community reserve' for protecting the fauna, flora and traditional or cultural conservation values and practices. Unlike ESZs, community reserves are created by way of a voluntary memorandum of understanding between the landowners and the Government. As a part of this understanding, landowners agree to use their land in a commercial but eco-

friendly manner e.g., for eco-tourism. After the land's use has been identified for a community reserve, only a 'Community Reserve Management Committee' can permit its change. This five-member committee, which is composed of representatives from the village panchayat/tribal community or private owners as well as the State Government, also prepares and implements a management plan for the community reserve. This is reflective of an inclusive approach to conservation, wherein the needs of both the local community/private owner and wildlife are addressed.

As of January 2023, 220 community reserves have been declared by nine states in the country. However, there are no community reserves in Maharashtra. In 2015, the State Government had published guidelines for the creation of 'community nature conservancies'. However, the guidelines provided only a skeletal framework for a concept similar to community reserves. The guidelines did not contain any provisions in relation to the Community Reserve Management Committee, management plans or indeed, the possible activities which may be permitted in the community nature conservancy.

Maharashtra must issue a concrete legal framework for community reserves. Since community reserves can only be declared if landowners voluntarily approach the government, a legal framework will provide them with much needed certainty. It could potentially encourage them to offer their lands for conservation.

Implementation

To effectively conserve wildlife corridors by way of community reserves, we recommend that the State Government:

- Amend the Maharashtra Wildlife (Protection) Rules, 2014 and include provisions for community reserves.
- Through these provisions, stipulate possible uses of land in community reserves, functioning of the Community Reserve Management Committee, preparation and implementation of management plans and financial support, if any, which may be provided to the community/private individual owning the land in a community reserve.

II

Conserving the Grasslands of Maharashtra

Department(s)
Revenue and Forest Department

Legislative Competence
Seventh Schedule, List III, Entry 17A

Key Law(s)
Maharashtra Forest Rules, 2014; Indian Forests (Maharashtra) (Regulation of Assignment, Management and Cancellation of Village Forests) Rules, 2014

Problem

Maharashtra's vast grassland cover is spread across Marathwada, Vidarbha and Western Maharashtra regions. Aside from sustaining diverse vegetation, this grassland cover serves as an important habitat for endangered species such as the great Indian bustard and lesser florican. In many parts of Maharashtra, the grassland ecosystem is intricately connected to the local village communities. Many nomadic communities have been grazing their flocks in grasslands for generations. However, grassland cover across India, including Maharashtra, is considered a common resource for people at large and is not granted any specific legal protection.

Although they are an important ecosystem, grasslands are classified by Central and State Governments

as 'wastelands'. For instance, the Wasteland Atlas of India 2019 ("**Wasteland Atlas**"), which is published by the Ministry of Rural Development and maps 'wastelands' in each State, classifies pasture/grazing lands, scrublands and degraded forests as wastelands. Despite the ecological or socio-economic benefit provided by such ecosystems, the Wasteland Atlas recommends the diversion of such ecosystems for agricultural or industrial use to increase productivity. Unfortunately, even the Centre's Draft National Forest Policy published in 2018 failed to acknowledge the ecological value of grasslands and suggested measures such as afforestation of such lands to increase forest cover.

Such policy measures have resulted in considerable loss of grassland cover in the past decades. It is estimated that India lost 31% of its grassland cover between 2005 and 2015. As noted by the Wasteland Atlas, Maharashtra's wasteland cover, especially that of 'under-utilized or degraded forest (scrub dominated)' area, reduced considerably between 2008-2016.

Solution

Forests and wastelands in Maharashtra are protected under the Indian Forest Act, 1927 ("**Indian Forest Act**"). This law allows the State Government to declare any forest land or wasteland, over which it has proprietary rights, as a reserve forest or protected forest. The Maharashtra government has enacted the Maharashtra Forest Rules, 2014 ("**Maharashtra Rules**") to protect and limit access to reserve and protected forests in the State.

The Indian Forest Act also allows the State Government to assign the management of reserve forests or protected forests to any village community. All such assigned forests are called 'village forests'. In 2014, the Maharashtra government enacted the Indian Forests (Maharashtra) (Regulation of Assignment, Management and Cancellation of Village Forests) Rules, 2014 ("**Village Forest Rules**") detailing the duties and responsibilities of the village community to protect and conserve village forests.

However, the Indian Forest Act, Maharashtra Rules and the Village Forest Rules do not provide any definition for 'forest', 'grassland' or 'wasteland'. This lack of clarity has prevented the Forest Department and village communities from undertaking

targeted and indeed customised conservation efforts for these different eco-systems. In fact, there have been instances in the State where grasslands have been afforested with exotic flora alien to the area and with trees to mitigate climate change.

Therefore, there is a need to define 'forest', 'grassland' and 'wasteland' ecosystems under the Maharashtra Forest Rules along with providing for specific provisions for the protection of grasslands. The Village Forest Rules should also be amended to increase participation of gram sabhas or village committees in the management and conservation of grasslands.

Implementation

To effectively manage and conserve grasslands in Maharashtra, it is recommended that the State Government:

- Define 'forests', 'grasslands', 'wastelands' under the Maharashtra Forest Rules and provide specific protection to grasslands.
- Amend Rules 4 and 10 of the Village Forest Rules to provide for the increased participation of gram sabhas or village committees in grassland conservation.

III

Aligning the Legal Frameworks for Protecting Trees in Maharashtra

Department(s)
Revenue and Forest Department; Urban Development Department

Legislative Competence
Article 243W; Seventh Schedule, List II, Entry 5

Key Law(s)
Maharashtra Felling of Trees (Regulation) Act, 1964; Maharashtra Land Revenue Code, 1966; Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975

Problem

According to the latest India State of Forest Report released by the Ministry of Environment, Forests, and Climate Change, Maharashtra has the fifth-largest forest cover as well as the highest extent of trees outside such forest cover in the country. However, such tree cover outside of the forest area is only 8.73% of the total geographical area of the State. Information placed before the State Legislative Council in March 2022 indicates that as many as 2,84,171 trees were illegally chopped in the State in the last four years. Overall, the value of the green cover loss was approximately Rs. 21.95 crores. The cost to the environment, however, was immeasurable.

In Maharashtra, the protection of trees and regulation of their felling is governed by three separate laws. The Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 ("**1975 Act**") governs tree-felling in urban areas. 'Urban areas' mean areas within the limits of a municipal corporation or a municipal council and includes areas for which a planning or a development authority is constituted under the State town-planning law. The Maharashtra Felling of Trees (Regulation) Act, 1964 ("**1964 Act**") governs felling of scheduled trees in areas other than urban areas i.e., rural areas. As such, no permits are required for felling non-scheduled trees. In addition to these two laws, the Maharashtra Land Revenue Code, 1966 ("**LRC**") and its underlying rules also contain provisions regulating tree-felling. In order to prevent soil erosion, the LRC prohibits the felling of trees in certain areas such as on the banks of any water body or on any uncultivable land, without prior government permission.

The procedure for felling trees under the 1964 Act and the 1975 Act are distinct. The two laws are also implemented by two different administrative departments of the State Government—the 1964 Act falls under the remit of the Forest Department and the 1975 Act falls under the remit of the Urban Development Department. Since both laws aim to preserve trees and regulate their felling, it raises the question as to why two distinct legal frameworks for trees are required in the State. This is particularly concerning because the 1975 Act operating in urban areas offers far more comprehensive protections to trees than the 1964 Act which operates in the rest of the State.

For example, under the 1964 Act, an application for felling of trees is to be granted by the tree officer appointed under the Act. In contrast, under the 1975 Act, permissions for tree felling are granted by tree authorities constituted by urban local bodies. These authorities are required to be composed of government officials, corporators as well as members of non-governmental organisations having an interest as well as at least 10 years of experience in the field of tree conservation. Further, an application for felling more than 200 trees of age five years or more is to be necessarily forwarded to the State Tree Authority constituted under the 1975 Act. The same is true for felling of heritage trees having an

age of 50 years or more. Moreover, to ensure public participation, any felling of trees is usually preceded by a public notice in the local newspaper inviting objections as well as a notice affixed on the trees to be felled. Such provisions are conspicuously absent under the 1964 Act. Lastly, provisions with respect to reporting and monitoring, penalties and compensatory planting on account of felling are also stronger under the 1975 Act when compared to the 1964 Act.

Solution

Felling of trees must be uniformly and strictly regulated in all parts of Maharashtra in order to protect, and indeed extend the State's tree cover. Fundamental protections and principles of conservation for trees should not be different for urban and rural areas. As such, the provisions of the 1964 Act should be strengthened and aligned with the provisions under the 1975 Act. Alternatively, the State could even consider enacting one law for felling and preservation of trees which would apply to all of Maharashtra. The provisions with respect to tree felling under the LRC could also be incorporated under this law.

Implementation

To strengthen tree preservation, we recommend that the State Government:

- Amend the 1964 Act in line with the improved protections granted under the 1975 Act.
- Establish tree authorities constituting, amongst others, experts/villagers knowledgeable about trees and conservation, in all rural areas of the State.

IV

Maintaining Public Parks and Other Open Spaces in Mumbai

Department(s)/Authority(ies)
Urban Development Department; Brihanmumbai Municipal Corporation

Legislative Competence
Article 243W; Seventh Schedule, List II, Entry 5

Key Law(s)
Mumbai Municipal Corporation Act, 1888

Problem

Open spaces like parks, gardens, recreational grounds and playgrounds offer a much needed break in fast paced, crowded and polluted cities. Whereas, increasing the number of such open spaces in Mumbai is a big ask, the poor condition of the existing public parks and open spaces in the city is distressing.

In 1991, the Brihanmumbai Municipal Corporation ("**BMC**") drafted an open space policy for Mumbai which envisaged an adoption model and a caretaker model for the development and maintenance of public parks, gardens and recreation grounds. Adopters were permitted to maintain a plot while caretakers were allowed to construct on 25% of the land. A tweak to this policy in 1992 allowed the Municipal Commissioner to allot public green plots to private entities

under both models. The rationale behind involving private entities in the maintenance of public parks and open spaces was two-fold. Firstly, such involvement would save the corporation's funds and secondly, it would increase public participation in upkeep of open spaces. All subsequent policies for open spaces, including the latest policy of 2016, have envisaged private-sector participation based on this same rationale. The BMC is currently discussing a new open space policy for the city.

Despite a now 30-year-old policy of involving private entities in the upkeep of open spaces, Mumbai's parks and gardens are in a poor condition. The BMC cites a paucity of funds for this issue. However, even though the BMC's overall budget indicates a growing trend, the same is not reflected in the allocations to the Garden Department that maintains these open spaces. Additionally, since 2013-14, the BMC has consistently spent less than the budgeted estimate for expenditure on parks and gardens.

The Mumbai Municipal Corporation Act, 1888, which details the powers, authorities and responsibilities of the BMC, categorises the laying out or maintenance of public parks, gardens and recreation grounds in the list of matters which 'may' be provided for by the BMC at its discretion. Additionally, wards committees, which represent wards within every municipality and are closer to the public, are neither consulted by the BMC for drafting open space policies nor are they given funds for maintaining parks, gardens and open spaces.

Recently, newspapers reported that the BMC's Garden Department had pinned a notice outside parks which stated that visitors will no longer be able to use the parks for workouts, yoga, sports and music classes. Additionally, they will not be allowed to use the amphitheatres in such parks for rehearsals and performances. This, the BMC argues, is to prevent the commercial exploitation of parks by people who conduct various classes for a fee. However, through such a notice, the BMC has created a barrier to access public spaces for recreation.

Solution

The Karnataka Parks, Play-Fields and Open Spaces (Preservation and Regulation) Act, 1985 casts an obligatory duty on the concerned local authority (which includes a municipal corporation or municipal

council) to maintain all parks, playfields and open spaces belonging to or vested in it in a clean and proper condition. Similarly, laying out or maintenance of public parks, gardens and recreation grounds should be an obligatory duty for the BMC.

The BMC should mandatorily devise a plan for the development and maintenance of each park, garden and open space in consultation with the respective wards committees. Funds earmarked for the Garden Department can be allocated to the respective wards committees for the maintenance of public parks.

Open spaces are not just places for children to play or the public to exercise, they are also spaces to seek respite. For example, domestic workers often have their afternoon meals on park benches, contractual and gig workers rest under the shade of a tree in gardens. While rules restricting the use of loudspeakers and curbing other nuisances are justified, any rule which places an unreasonable restriction on the public in accessing open spaces or using them for recreational activities should be avoided.

Implementation

To improve the condition of public parks and gardens in the city as well as increase accessibility to such open spaces for the public, we recommend that the State Government:

- Amend the Mumbai Municipal Corporation Act, 1888 to cast an obligatory duty upon the BMC to maintain parks, gardens and other open spaces.
- Permit wards committees to use the funds available with the Garden Department for the maintenance of public parks and other open spaces.
- Reduce unnecessary barriers for the legitimate use of open spaces by only restricting activities that are a public nuisance.

V

Promoting Responsible Pet Ownership

Department(s)/ Authority(ies)
Agriculture, Animal Husbandry, Dairy Development and Fisheries Department; Urban Development Department; Co-operation, Marketing and Textile Department; All Urban Local Bodies

Legislative Competence
Article 243W; Seventh Schedule, List III, Entry 17

Key Law(s)
Mumbai Municipal Corporation Act, 1888; Maharashtra Municipal Corporations Act, 1949; Maharashtra Co-operative Societies Act, 1960

Problem

Recent media reports indicating a rise in the incidence of stray dog attacks have flared up debates between groups that feed and care for stray dogs and those which believe that such practices make the stray dog menace worse. According to the recent Animal Birth Control Rules, 2023 ("**ABC Rules**"), 'stray dogs' or 'street dogs' are homeless dogs that are not owned by individuals. These could refer to dogs that were never owned by individuals i.e., free ranging domestic dogs as well as pet dogs abandoned by their owners. State-wide statistics on dogs, stray or otherwise, are currently unavailable.

While stray dogs are a frequent topic of debate, the rising number of abandoned pets is often ignored. From 2018 until the beginning of the pandemic, Animal Welfare Organisations ("**AWOs**") in Mumbai rescued and rehomed at least 450

dogs. Around 30% of this number were abandoned pets. Pet owner deaths and migration drove up abandonment cases during the pandemic.

However, pet abandonment is neither a Mumbai specific issue nor entirely related to the pandemic. On a daily basis, AWOs receive alerts of approximately 10-12 dogs abandoned on the streets. Pets are abandoned when they become old, when they can no longer be used for breeding, when they develop behavioural or health issues, when owners fall ill or because the pet dog was a reckless purchase. Abandoned pets add to the burden of AWOs that are small in number. Abandoning animals is also a form of cruelty under the Prevention of Cruelty to Animals Act, 1960 ("**PCA**"). However, the PCA is poorly implemented and lacks teeth when it comes to detecting cases of abandoned animals.

The Mumbai Municipal Corporation Act, 1888 ("**MMC Act**") contains provisions for licensing of pet dogs. As per these provisions, once a nominal amount of tax is paid by the dog owner each year, a licence with a number ticket is granted for keeping the dog. This number ticket must be attached to the dog at all times, in the absence of which, the dog may be seized by the Brihanmumbai Municipal Corporation. Despite such provisions, licensing of pet dogs is fairly poor in the city. In fact, in practice, a copy of the licence under the MMC Act is shared with the applicant over email instead of a physical number ticket. In such instances, if an owner abandons their dog, it is virtually impossible to trace the dog back to them.

In areas other than Mumbai, pet dog licensing remains largely unregulated barring some exceptions. The Maharashtra Municipal Corporations Act, 1949 which governs other urban local bodies ("**ULBs**") in the State does not contain any licensing provisions.

Solution

The ABC Rules encourage feeders to coordinate with ULBs for vaccinating stray dogs. While this is a praiseworthy step, ULBs must strive to play a more active role in the licensing and welfare of dogs. In addition to mandating licensing of all pet dogs in the State, they must provide the service of microchipping of such dogs at a cost to be paid by the owner. The microchip must contain details of the owner, details of the

breeder or pet shop where the dog was bought from or the AWO where the dog was adopted from along with complete medical records of the dog. These microchips can then be efficiently utilised to not just trace owners of abandoned dogs but also detect illegal breeders and pet shops for investigation under the PCA. Microchipping would also deter pet owners from recklessly abandoning pets on the streets and nudge them to place the pet for adoption through AWOs in genuine cases.

Implementation

To promote responsible pet ownership, we recommend that the State Government:

- Conduct a State-wide survey of all dogs including pet dogs.
- Amend Sections 191A-191D of the MMC Act on licensing to mandate microchipping of all dogs. Similar provisions should also be inserted under the Maharashtra Municipal Corporations Act, 1949.
- Amend the Model Bye-laws for Co-operative Housing Societies under the Maharashtra Co-Operative Societies Act, 1960 to encourage the managing committee to notify the respective ULB of all pet dogs in its premises.

VI

Reinforcing Heritage Conservation in Maharashtra

Department(s)/ Authority(ies)
Urban Development Department; All Urban Local Bodies

Legislative Competence
Article 243W; Seventh Schedule, List II, Entry 5 and Entry 12

Key Law(s)
Mumbai Municipal Corporation Act, 1888; Maharashtra Municipal Corporations Act, 1949; Maharashtra Regional and Town Planning Act, 1966; Development Control and Promotion Regulations

Problem

According to the Archaeological Survey of India, there are approximately 286 ancient and historical monuments protected by the Central Government in Maharashtra. Monuments have to be at least 100 years old in order to qualify as monuments of national importance, deserving Central Government protection. Separately, there are approximately 244 monuments in Maharashtra which are protected by the State Government. Monuments have to be at least 50 years old in order to qualify for State Government protection. For this reason, a significant number of the State's heritage structures which fall short of meeting the criteria specified by the Central or State law remain outside their direct purview. These structures nonetheless form a part of the State's history and

cultural heritage, either on account of being associated with a historical figure/event or owing to their unique architectural design.

The Maharashtra Regional and Town Planning Act, 1966 ("**MRTPA**") stipulates that the development plan for any particular region of the State must identify, amongst other things, places of historical, natural, architectural and scientific interest as well as heritage buildings and heritage precincts. Additionally, the development control regulations issued under the MRTPA provide for the listing and grading of Grades I, II and III heritage structures, restrictions on development/redevelopment and repairs of such structures, and, most importantly, the constitution of a heritage conservation committee ("**HCC**").

The HCC is a body composed of members appointed by the State Government as well as experts. It is to be consulted by the municipal commissioner (or his equivalent officer in a zilla parishad, municipal council, any other local authority) before granting any development permission for listed heritage structures. However, the role of the HCC is purely advisory in nature.

Indeed, the advice of the HCC can also be overruled by the municipal commissioner. Furthermore, specifically in the case of Mumbai, reconstruction and redevelopment of Grade III heritage structures, including heritage precincts, requires no say of the HCC. Municipal corporations/ councils/other local bodies, which do have a final say, are not obligated to conserve heritage under their respective municipal laws. As a result of this, the city's heritage precincts have reduced drastically over the years. In some cases, precincts have been reduced to almost half of their original area on account of redevelopment.

Solution

Maharashtra with its vast number of historical monuments, heritage structures and indeed the highest concentration of UNESCO world heritage sites in India has been a pioneer in introducing a heritage conservation law in the country. However, over the years, the powers of the HCC have been diluted. Recently, the State Government announced the establishment of a separate corporation for the conservation and reconstruction of forts. While this is an important policy decision, the State Government

should also consider strengthening its pre-existing institution for heritage conservation namely, the HCC.

The HCC should be empowered by making their decisions binding on the municipal bodies. This was also suggested by the Central Government in its model building bye-laws, handbook for conservation of heritage buildings and model heritage regulations in 2016, 2013 and 2011, respectively. According to these Central Government suggestions, no development, redevelopment or modification of a listed heritage building should be permitted except with the prior permission of the municipal officers of the State, who shall consult with the HCC before granting the permission. The municipal officers shall act according to the advice provided by the HCC. Only in exceptional cases, the municipal officers shall refer the matter back to the HCC for a reconsideration. The decision of the HCC after such reconsideration shall be binding on the municipal officers.

Implementation

To preserve the State's heritage, we recommend that the State Government:

- Amend the development control regulations issued under the MRTPA to make the decisions of the HCC binding.
- Amend all municipal legislations to make heritage conservation an obligatory duty of the municipal corporations, municipal councils and other local government bodies in the State.

VII

Preventing Fire Accidents in Maharashtra's Buildings

Department(s)
Urban Development Department; Industries, Energy and Labour Department

Legislative competence
Article 243W

Key Law(s)
Maharashtra Fire Prevention and Life Safety Measures Act, 2006; Maharashtra Fire Prevention and Life Safety Measures Rules, 2009; Development Control and Promotion Regulations

Problem

Maharashtra witnessed numerous fire incidents in 2023 leading to loss of life, injury and damage to property. Between 2017 and 2022, the Mumbai Fire Brigade alone received 22,764 fire-related calls.

The Maharashtra Fire Prevention and Life Safety Measures Act was enacted in 2006 ("**Act**"). Section 3 of the Act requires the owners/occupiers of buildings to provide fire prevention and life safety measures ("**Fire Safety Measures**"), maintain these measures in good condition at all times and obtain fire safety approvals applicable to the building. The Director of Maharashtra Fire Services ("**Director**") authorises licensed agencies to install Fire Safety Measures in buildings. Additionally, the Director or the Chief Fire Officer of every local authority/planning

authority is empowered to enter and inspect buildings to ascertain the adequacy of such Fire Safety Measures and identify contraventions, if any. Development control regulations of municipal corporations, which impose checks on municipal planning and development to prevent illegal or unauthorised development, further help to enforce the provisions of the Act and its underlying rules.

In comparison to other states, Maharashtra's fire safety laws are comprehensive. However, the Act mainly emphasises supervision and audits of high rises in the State. For example, a provision under the Act, intended to prevent fire hazards, requires owners/occupiers to appoint a fire officer or fire supervisor for certain categories of buildings. An amendment to the Act in 2023 made this requirement applicable to residential buildings, albeit only residential buildings which were more than 70 metres in height (approximately 22 floors). Recent fires have occurred in tall and smaller buildings alike. Therefore, it is unclear as to why this requirement was introduced only for high rises. Under the Act, licensed agencies were empowered to biannually inspect all buildings to ensure compliance with Fire Safety Measures. However, as a government resolution issued by the Urban Development Department in 2021 noted, such inspections were ineffective. This is because the same licensed agencies that installed faulty fire safety equipment in buildings were being authorised to subsequently issue certificates vouching compliance with the Fire Safety Measures under the Act. To address this anomaly, the 2023 amendment has introduced the concept of third party audits every two years. Again, such audits are not mandated for all buildings in the State. Third party fire audits will only be required for certain buildings, including residential buildings more than 70 metres in height. This would mean that for other residential buildings, licensed agencies would continue to conduct fire inspections.

Lastly, about 70% of the fires in Mumbai have occurred due to an electrical short circuit. Currently, no law mandates an electricity audit in the State. The Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations 2010 ("**Regulations**"), make owners/occupiers of multi-storeyed buildings responsible for ensuring that electrical installations and works

inside the building are carried out and maintained in such a manner so as to prevent fire hazards. The Regulations also specify that inspections have to be carried out by the Electrical Inspector in buildings whose height is greater than 15 metres and which meet a certain threshold for connected load and voltage. The form and manner of the inspections and their enforcement is left to the discretion of the State Governments. Maharashtra has not specified the thresholds or the form and manner of such inspections till date.

Solution

Fire Safety Measures and fire safety audits are necessary for all buildings irrespective of their height. Maharashtra should consider lowering the current 70 metre threshold for appointment of fire safety officers/ fire supervisors. Additionally, in no case should a licensed agency that has provided Fire Safety Measures in any building certify such measures.

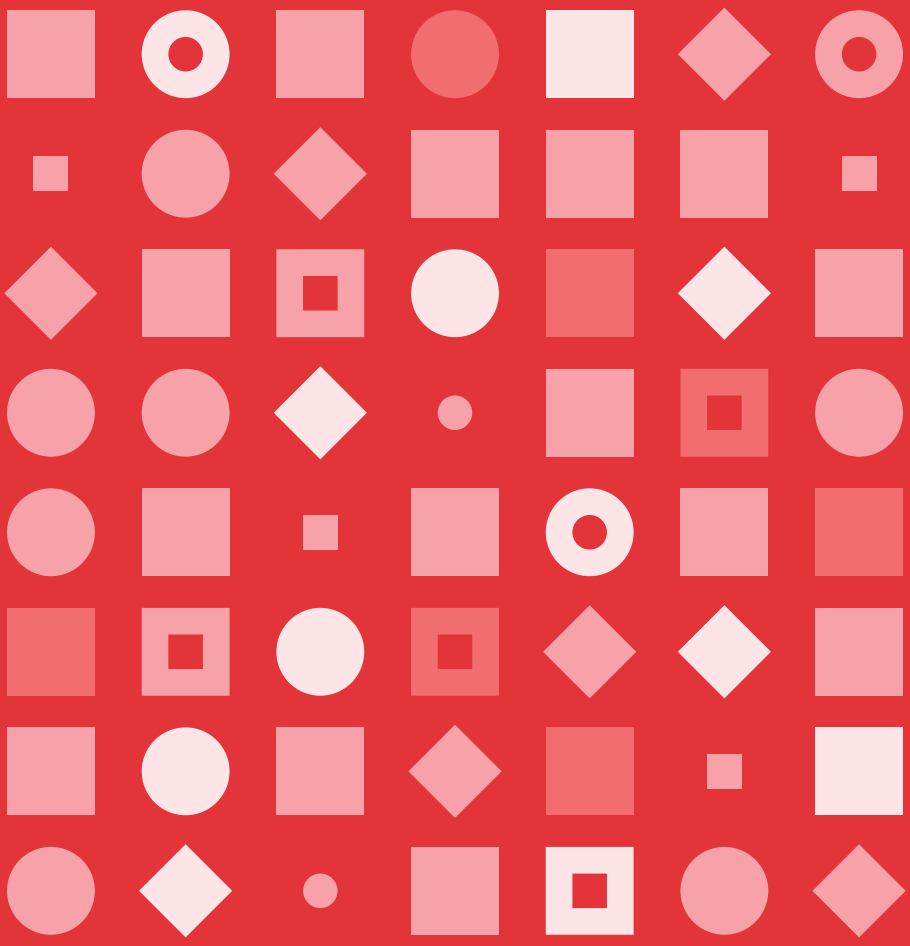
Finally, the Maharashtra Electricity Regulatory Commission ("**MERC**") is empowered under the Electricity Act, 2003, to lay down and enforce electrical quality standards in the State. The State Government through the MERC must also issue detailed regulations providing for electrical safety standards and audit measures in the same fashion as the Fire Safety Measures are laid down under the Act.

Implementation

To prevent additional fire accidents in Maharashtra, we recommend that the State Government:

- Amend the Act and underlying rules to introduce a third party audit to be undertaken regularly for all buildings in the State.
- Through the MERC, issue electrical safety and audit regulations that mandate a regular audit of the electric circuits in buildings. The development control regulations of all municipalities must mandate adherence to such safety standards and audit measures for all development within their jurisdiction.

PART 2



Inclusivity

VIII

Reducing Hurdles for Scheduled Castes and Scheduled Tribes in Obtaining Social Status Certificates

Department(s)
Tribal Development Department; Social Justice and Special Assistance Department

Legislative Competence
Seventh Schedule, List III, Entry 15 and Entry 20

Key Law(s)
Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 and underlying rules

Problem

A person desirous of availing any benefits extended to Scheduled Castes, Scheduled Tribes, Other Backward Classes in Maharashtra must possess a caste/tribe certificate (hereinafter "**social status certificate**") issued and verified under the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 ("**Act**").

The prerequisites for securing benefits accruing to reserved categories are a social status certificate issued by the Competent

Authority and a validity certificate issued by the Scrutiny Committee validating the social status certificate. Arguably, this dual requirement exists to tackle the rampant problem of bogus certificates issued in Maharashtra. However, there is a significant overlap of powers and functions between the Competent Authority and the Scrutiny Committee. For example, the documents required before both authorities are largely identical, and they make similar inquiries, with the only exception that the Scrutiny Committee can take the assistance of the Vigilance Cell to make its inquiry.

Besides the dual process, the Act and its rules do not contain a clear and objective criteria for inquiries that both authorities can make in deciding an applicant's claim. The list of documents required from the applicant is also not exhaustive and authorities have often been found referring to executive circulars (issued before the commencement of the Act) for guidance.

Lastly, both authorities enjoy wide discretionary powers while deciding applications and conducting their inquiries. In some cases, social status certificates were rejected since the applicant had a different surname from the community name, spoke 'impure' Marathi and followed Hindu rituals. Moreover, the burden of proof at both stages i.e., application and verification, is on the applicant, treating them as a suspect until proven otherwise.

Solution

A stringent inquiry process is required to ensure that benefits meant for reserved categories are extended only to those individuals who genuinely belong to such categories. However, duplicating inquiries and processes may not be the appropriate solution for this. Instead, the process for obtaining a social status certificate can be simplified without compromising on rigour.

Furthermore, applicants should not be treated as suspect throughout the entire process of obtaining the social status certificate. Once documents are thoroughly vetted, adequate inquiries are made and the social status certificate is issued by the Competent Authority, the applicant should be discharged of the burden of proof. Verification of the certificate should only be required if an individual or agency raises an objection to the social status claim

of the certificate holder. And in such instances, the burden of proof should be on the objecting person or entity. For example, in Chhattisgarh, the District Level Certificates Verification Committee can verify a social status certificate either on its own motion or on receipt of information or upon a reference made to it by a third party. A verification is not mandatory in all cases. Odisha and Karnataka have similar processes. In Karnataka, the burden of proof is on the applicant only at the issuance stage and not at the verification stage.

Implementation

To ease the hurdles in obtaining a social status certificate, we recommend that the State Government:

- Amend the rules under the Act to empower the Competent Authority to make all inquiries before issuing the social status certificate. The Vigilance Cell must also be involved for inquiry at the application stage.
- Amend Section 6 of the Act on verification of social status certificates to apply only in cases where there is some apprehension that a person has either wrongfully or fraudulently obtained the social status certificate. Additionally, the burden of proof at the verification stage must be shifted to the person or entity objecting to the genuineness of the social status certificate.
- Curtail the discretionary powers of both authorities under the law by providing for an exhaustive list of documents that can be produced by the applicants and the detailed matters that can be enquired into by the authorities for granting a social status certificate.

IX

Safeguarding the Right to Health of Prisoners in Maharashtra

Department(s)
Prisons Department

Legislative Competence
Seventh Schedule, List II, Entry 4

Key Law(s)
Maharashtra Visitors of Prisons Rules, 1962; Maharashtra Prisons (Staff Functions) Rules, 1965; Maharashtra Prisons (Prison Hospital) Rules, 1970

Problem

As of April 2023, Maharashtra has 60 prisons including nine central, 28 district and 19 open prisons amongst others. These prisons house over 40,514 prisoners against the sanctioned strength of 25,393, indicating 60% overcrowding. Maharashtra has consistently ranked amongst the top five states with regard to the number of prisoners and undertrials.

Besides issues caused by overcrowding, the lack of adequate essential and medical facilities for prisoners has also been a cause of concern in the State. In the recent past, prisoners have filed petitions requesting for, amongst other things, medical treatment, quality medicines, sufficient sleeping space, mattresses and mosquito nets. Recently, the Bombay High Court noted the

condition of one of the State's central prisons and directed the Inspector General of Prisons ("**IGP**") to provide a report on the status of medical facilities in all State prisons and to ensure that prisoner grievances in this regard are resolved. In 2021, Maharashtra reported 131 deaths in its prisons—sixth highest in the country. A large number of these deaths were on account of illnesses, as opposed to ageing or unnatural causes, indicating that reforms are required to improve the medical facilities in prisons.

Prisons are regulated under the central Prisons Act, 1894 and the underlying rules passed at the State level. Medical facilities in prisons are dealt with under the Maharashtra Prisons (Prison Hospital) Rules, 1970 ("**Hospital Rules**"). These contain detailed provisions with respect to, *inter alia*, prison hospitals, medical staff and their duties, prisoner checkups and treatment. However, since these rules are poorly implemented, judicial intervention has been sought over the years. Such intervention has also been sought because State rules contain an inadequate grievance redressal and accountability mechanism in prisons. Currently, under the Maharashtra Prisons (Staff Functions) Rules, 1965 ("**Staff Function Rules**"), prisoner concerns and complaints can be raised with prison officials such as the Superintendent and the Jailor. Separately, under the Maharashtra Visitors of Prisons Rules, 1962 ("**Visitors Rules**"), prisons may constitute a Board of Visitors ("**BOV**") (comprising *ex officio* members and members nominated by the State Government). This BOV is required to conduct inspections of their respective prisons and hear prisoner grievances.

Solution

The Supreme Court has repeatedly ruled that the State has an obligation to preserve life, irrespective of whether an individual is innocent or guilty. Upholding the right to health and hygiene as a part of the right to life, the Court noted that prisoners suffer a 'double handicap'. This is because prisoners lack access to the medical expertise free citizens have, and are also more vulnerable due to the conditions of their incarceration.

One way to secure the right to health of prisoners would be to align the Hospital Rules with the Model Prisons Manual issued by the Central Government in 2016 ("**Model Manual**"). While the Hospital Rules

contain vital provisions with respect to medical facilities in prisons, they can be made more comprehensive and commensurate with today's time. For example, the provisions on leprosy and segregation of prisoners suffering from leprosy under these rules can be substituted by a general chapter on infectious diseases in light of modern advancements in the treatment of the disease. Similarly, mental health provisions on professional counselling, psychiatric treatment and regular evaluations must be added under the Hospital Rules.

Secondly, since rights without remedies are mere ideals, the Staff Function Rules and the Visitor Rules must provide for an institutional grievance redressal mechanism (internal check) and a mandatory and independent BOV (external check). With regards to the grievance redressal mechanism, there should be a permanent committee in every prison. It should comprise prison officials as well as representatives of the prisoners. The committee's work, including the number of complaints received and addressed, must be reported to the IGP and made public. Separately, in line with the Model Manual and to increase transparency, the BOV should include a member of the State Human Rights Commission and two social workers. For the same reason, the Government must consider placing BOV inspection remarks in the public domain.

Implementation

To effectively secure the right to health of prisoners, it is recommended that the State Government:

- Align the Hospital Rules with the Model Manual.
- Amend the Staff Function Rules to provide for the constitution and functioning of a permanent grievance redressal committee which would resolve prisoner complaints, including complaints regarding medical facilities.
- Amend the Visitor Rules to compulsorily set up a BOV for every prison comprising social workers as well as a representative from the State Human Rights Commission.

X

Regulating Pre-school Education in Maharashtra

Department(s)

Women and Child Development Department; School Education And Sports Department

Legislative Competence

Seventh Schedule, List III, Entry 25

Key Policies

Maharashtra Early Childhood Care and Education Policy, 2019; National Education Policy, 2020

Problem

Regulation of pre-school education or early childhood education ("**ECE**") for children between the ages of two and six years falls outside the purview of the Right of Children to Free and Compulsory Education Act, 2009. In Maharashtra, ECE is regulated by more than one department. Play-based education for infants and young children is provided through anganwadi centres ("**AWCs**") which fall under the purview of the Women and Child Development Department ("**WCD**"). Separately, pre-schools operating in municipal corporation schools and offering foundational or preparatory learning are supervised by the education departments of the State Government or the municipal corporations ("**Education Department**"). Lastly, private pre-schools are not regulated by any State agency.

Due to lack of clear regulations for ECE, including age criteria and delivery standards, there are wide discrepancies in terms of how young children are enrolled and imparted pre-school education in the State. For example, there have been instances where children as old as five and six years are undertaking play-based learning at AWCs while children as young as two years are being enrolled in municipal pre-schools. While AWCs are not adequately equipped and trained to provide ECE, municipal schools, on the other hand, may not have provisions for play-based learning. To compound the problem for children and parents, private pre-schools remain unregulated leading to safety and fraud related incidents.

In 2017, even the Bombay High Court expressed its disappointment with the absence of a comprehensive framework for ECE in the State. It directed the State Government to enact a policy in this regard. Subsequently, the State Government published the Early Childhood Care and Education Policy, 2019 ("**ECCE Policy 2019**"), which mandated compulsory registration, accreditation and monitoring of all pre-schools in Maharashtra. It also suggested the creation of municipal-level coordination committees between the Education Department and the WCD for effective monitoring of ECE services.

Although four years have passed since the publication of the ECCE Policy 2019, its provisions have not been implemented in the State. For instance, portals and committees which had to be established under the ECCE Policy 2019 have not been set up. A study conducted by Vidhi in 2021 found that non-profit organisations providing pre-primary education in Mumbai were not even aware of the existence of this policy. A government resolution issued by the WCD in October 2022 acknowledged that the policy was poorly implemented and attributed the same to poor inter-departmental coordination between the WCD and the Education Department.

Solution

Regulation of all aspects of ECE through the enactment of a law is the need of the hour in Maharashtra. A law, as opposed to a policy, is enforceable on account of sanctions and justiciable in a court of law since it creates binding rights and obligations.

In 1996, the State Government had taken an initiative towards drafting a law for pre-schools. However, the Maharashtra Pre-school Centres (Regulation of Admission) Act, 1996 was later repealed without having been implemented. Presently, the Union Territory of Delhi regulates the recognition and management of pre-schools by way of a law. Recently, the State of Uttar Pradesh has also committed to enacting rules for the regulation of pre-schools.

Maharashtra is currently in the process of implementing the National Education Policy, 2020 ("**NEP**"). The NEP suggests that states set standards for qualification of teachers, curriculum and infrastructure of pre-schools along with the universal provisioning of ECE. Compliance with these provisions would require the enactment of a new and effective law for ECE. This law should cover, *inter alia*, provisions for registration, regulation and monitoring of pre-schools, set standards for teacher qualifications and curriculum, as well as lay down sanctions for violations. Since inter-departmental coordination was identified as one of the key obstacles in regulating ECE, the State may also consider setting up a committee composed of members from the WCD, Education Department, municipal corporations and other relevant departments to monitor the implementation of this law.

Implementation

To regulate ECE, we recommend that the State Government:

- Enact a law for the registration, regulation and monitoring of all pre-schools, whether private, government or run by non-profit organisations in Maharashtra. The law will also include sanctions for non-compliance of its provisions.
- Create a committee composed of members from the WCD, the Education Department, municipal corporations and other relevant departments. This committee can oversee different aspects of ECE delivery in the State as well as monitor the implementation of an ECE law.

XI

Making Maharashtra's Cities more Inclusive for Persons with Disabilities

Department(s)
Persons with Disabilities Welfare Department; Urban Development Department

Legislative Competence
Article 243W; Seventh Schedule, List II, Entry 5, Entry 9 and Entry 18

Key Law(s)
Maharashtra Regional and Town Planning Act, 1966

Problem

India has ratified the United Nations Convention on the Rights of Persons with Disabilities, 2006 which requires the meaningful inclusion of persons with disabilities ("**PwDs**") in all state action. On account of the country's obligations under this convention, the Parliament has enacted the Rights of Persons with Disabilities Act, 2016 ("**RPwD Act**"). The RPwD Act places several obligations on State Governments, including obligations with respect to ensuring accessibility for PwDs to the physical environment, transport as well as information and communications technology. It also directs State Governments to formulate rules to carry out the provisions of the Act within six months of its enactment.

As per the 2011 Census of India, Maharashtra has the second highest

number of PwDs in the country. At least 29,63,392 PwDs constituting 2.64% of the total State population reside in Maharashtra. However, despite repeated nudges from the Supreme Court, the State is yet to frame rules under the RPwD Act.

In 2018, a public interest litigation was filed before the Bombay High Court concerning the non-implementation of the RPwD Act by the State Government, the Indian Railways, the Mumbai Metropolitan Region Development Authority and the Brihanmumbai Municipal Corporation. The petition observed that several government and private establishments in and around the city of Mumbai were inaccessible to PWDs. This violated not just the development control regulations of the city and the RPwD Act but also the right to life with dignity for PwDs enshrined under Article 21 of the Indian Constitution. Regrettably, while this matter remains pending before the court, Mumbai and other cities of Maharashtra continue to remain detached from the needs of its differently-abled residents.

Solution

Development of any city begins with planning. In Maharashtra, planning, in various forms, is undertaken by a variety of planning authorities such as the municipal corporations, the Mumbai and Nagpur Metropolitan Region Development Authorities, the Maharashtra Housing and Area Development Authority, the Slum Rehabilitation Authority, the Maharashtra Industrial Development Corporation etc. and constitutional bodies such as the district planning committees and the metropolitan planning committees.

The Maharashtra Regional and Town Planning Act, 1966 ("**MRTPA**"), which is the primary legislation regulating development planning and use of land in the State, provides that once a draft development plan is prepared by the planning authority, it must be published in the gazette inviting objections and suggestions from the public within a period of 60 days. These objections are to be heard by a planning committee which shall submit a report to the planning authority. After considering this report, the planning authority may make modifications to the draft development plan, if necessary. This provision, then, reflects the only instance under the MRTPA where the public is involved in the development planning of its city.

The Urban and Regional Development Plans Formulation and Implementation Guidelines, 2014, issued by the Ministry of Housing and Urban Affairs, has rightly suggested that the approach to development planning should shift from a top-down to bottom-up approach. For this, public participation in development planning should improve so as to ensure that future cities are relevant to its inhabitants. Such participation assumes even more significance in the case of vulnerable communities such as PwDs. In the past, the Brihanmumbai Municipal Corporation has constituted an advisory committee on gender to ensure that its development plan was gender sensitive. Separately, while preparing the Development Plan (2014-34), it has also conducted multiple thematic consultations with various city organisations and resident-groups. However, such proactive initiatives by planning authorities remain few and ad-hoc since the process for public participation under the MRTPA places the onus on resident individuals to send objections and suggestions for the draft development plan.

Maharashtra should incorporate principles of inclusive and participatory planning under the MRTPA. Tools such as community charrettes, focus group discussions, advisory committees, accessibility audits should be made an integral part of development planning under the MRTPA so as to take into consideration the needs of all resident-communities and especially vulnerable communities such as PwDs.

Implementation

To make Maharashtra's cities more inclusive for PwDs, we recommend that the State Government:

- Frame the State rules under the RPwD Act.
- Amend Section 26 of the MRTPA to incorporate the principle of participatory planning. Specifically for PwDs, suggestions from an advisory committee of representative PwDs or a focus group discussion with representative PwDs should be introduced as a mandatory step in the preparation of the development plan. Periodic accessibility audits should also be made mandatory to ensure that public spaces in cities remain barrier-free.

XII

Enacting a State Social Audit Law

Department(s)

Rural Development and Panchayat Raj Department; Employment Guarantee Scheme Department; Planning Department

Legislative Competence

Seventh Schedule, List II, Entry 9; List III, Entry 20, Entry 23 and Entry 24

Key Law(s)

Mahatma Gandhi National Rural Employment Guarantee Act, 2005; Mahatma Gandhi National Rural Employment Guarantee Audit of Schemes Rules, 2011

Problem

A welfare State aims to safeguard its citizens against adversities, including poverty, unemployment, illness, injury, disability, old-age and death by offering support through an array of programmes and schemes. However, these initiatives often fail to reach the intended beneficiaries. For example, in 2021, a field verification initiated by the Planning Department of the Maharashtra Government revealed that several beneficiaries were excluded from the ten relief schemes offered by the State during the Covid-19 pandemic. This was on account of, *inter alia*, poor awareness amongst beneficiaries, barriers to access such as distant enrolment centres, online or cumbersome registrations and lack of accountability amongst implementing agencies. Instances such as these highlight the importance of social audits of welfare schemes.

A social audit of welfare schemes will require public officials to assess the delivery and consequently, impact of the underlying benefits by speaking to citizens directly. It is a process by which both the government and beneficiaries jointly and systematically compare the real benefits of a scheme as against the planned or claimed benefits. Aside from increasing transparency and accountability, social audits aid in creating awareness amongst people about their rights and entitlements under welfare schemes. Direct citizen participation and feedback in social audits help identify gaps, implementation or otherwise, which would otherwise be overlooked in financial and performance audits of schemes. It also facilitates speedy grievance redressal by the government.

Currently, there exist a variety of welfare schemes in Maharashtra for different categories of people. These schemes are funded by either the Central Government or the State Government or jointly by the Central and State Government. One such scheme, namely the rural employment scheme under the central Mahatma Gandhi National Rural Employment Guarantee Act, 2005 ("**MGNREGA**"), was the first in the country to legally mandate social audits by independent State social audit units. Pursuant to this requirement, Maharashtra has constituted a social audit unit under the Employment Guarantee Scheme Department for MGNREGA and a few other schemes such as the Mid-Day Meal Scheme. However, as per a recent finding of the National Institute of Rural Development and Panchayati Raj, Ministry of Rural Development, this unit has been plagued with several issues. Firstly, the unit lacks funds and manpower to carry out its functions. Secondly, in the context of MGNREGA, the unit does not have financial and administrative independence in managing its day-to-day activities. This is because members of the implementing agency of MGNREGA serve as office bearers of the unit. This has affected the quality and indeed, even the number of social audits undertaken by this unit. For example, data released by the Ministry of Rural Development indicates that for the year 2022-23, social audits under MGNREGA were conducted only for 3.85% of the total number of gram panchayats in the State.

Solution

Maharashtra should enact a social audit law so as to provide an institutional framework for

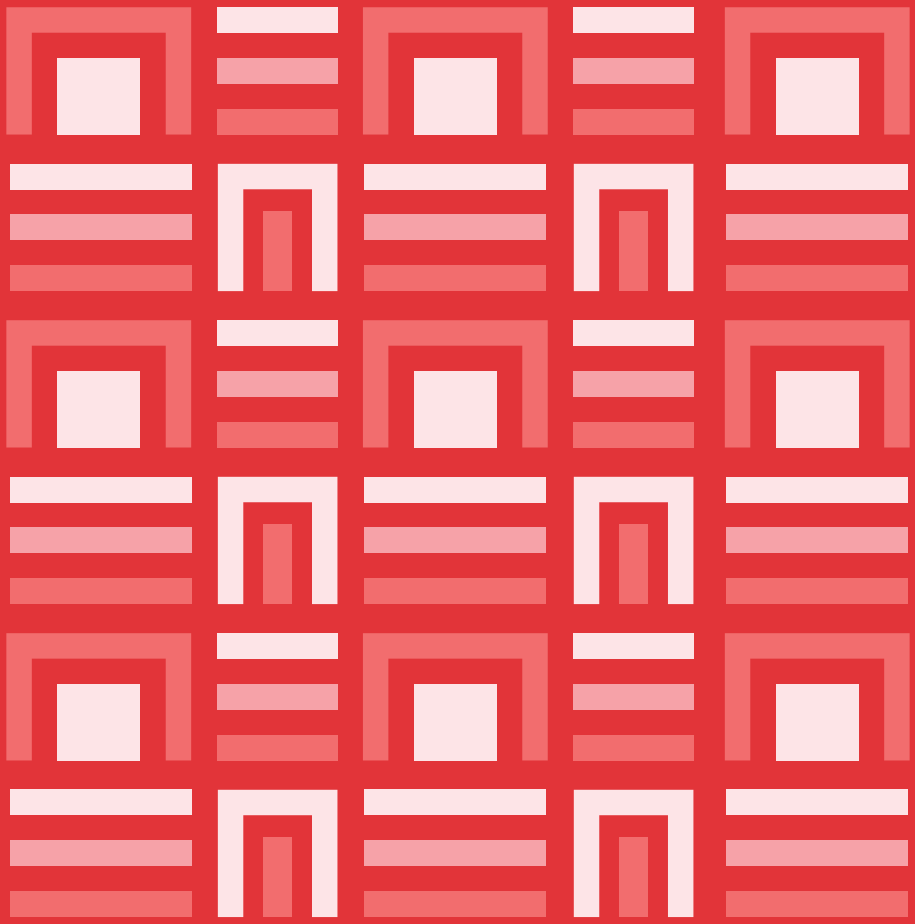
social audits of all welfare schemes implemented by the State Government and third-tier local bodies. This law should set up an authority which would be functionally and financially independent of any department implementing welfare schemes in the State. Initiatives of a similar nature have been undertaken by Meghalaya and Rajasthan, which can be referred to by the Maharashtra State Government.

Implementation

To enable transparency, accountability and direct citizen participation in all welfare schemes, it is recommended that the State Government enact a social audit law which will, *inter alia*, provide for:

- An independent authority that will be empowered to facilitate and conduct social audits of all welfare schemes being implemented in the State.
- A process for conducting social audits, from planning to execution, including the constitution of district and village level monitoring bodies and appointment of social auditors or civil society organisations who will conduct and facilitate social audits.
- Verification of records and interaction with beneficiaries through door-to-door visits and locality meetings by social auditors.
- Public hearings (*jan sunwai*) open to all residents, where findings from the verification exercise and grievances are discussed and forwarded to the relevant department implementing the welfare scheme under audit.
- A mechanism to ensure enforceability where the relevant department takes action against errant officials, if any, and submits an action taken report to the social audit authority. These reports should be accessible to the public.

PART 3



Robust Institutions & Up-to-date Laws

XIII

Empowering Urban Local Bodies to Ensure Holistic Urban Planning

Department(s)
Urban Development Department

Legislative competence
Seventh Schedule, List II, Entry 5

Key Law(s)
Maharashtra Regional and Town Planning Act, 1966

Problem

Urban gridlocking, air pollution and poor infrastructure are some of the problems arising from haphazard urban planning in Maharashtra. In larger and densely populated cities like Mumbai, Pune and Nagpur, the city's urban development and planning is a routine topic of debate owing to, *inter alia*, poor drainage systems, condition of roads and dearth of public parks and parking spaces.

The Constitution (Seventy-fourth) Amendment Act, 1992 empowers democratically elected urban local bodies ("**ULBs**") such as municipal corporations to prepare and implement urban development plans. However, State Governments parallelly notify development or planning authorities as Special Planning Authorities ("**SPAs**") to undertake a part of such urban

planning. Such SPAs are notified in the State under the Maharashtra Regional and Town Planning Act, 1966 ("**MRTPA**"). SPAs prepare development plans that regulate land use and development in notified underdeveloped areas. More importantly, under the MRTPA, the development plans prepared by the SPAs are approved directly by the State Government without consulting the ULBs. For instance, the City and Industrial Development Corporation of Maharashtra has been notified as an SPA for the industrial development of certain towns. However such a notification, which empowers other authorities to create development plans within the jurisdictional areas of ULBs, has two negative outcomes.

Firstly, it leads to unnecessary fragmentation of an area under different authorities and hampers holistic development of an area because planning authorities may have divergent priorities. This was observed by the Comptroller and Auditor General of India in a recent report on the State and has also been highlighted in recent litigations involving urban local bodies. For example, in a public interest litigation filed before the Bombay High Court regarding recurring potholes, the Brihanmumbai Municipal Corporation submitted that not all roads within its jurisdictional limits are under its control. Several other authorities, including development authorities, such as the Mumbai Metropolitan Region Development Authority are tasked with the upkeep and maintenance of these roads. Therefore, the municipal corporation suggested that all roads in Greater Mumbai be handed over to it. While the Court endorsed this suggestion, it left the final decision with the State Government.

Secondly, multiple planning authorities also hinder effective and democratic third tier governance. This is because the MRTPA allows SPAs to override the development plans of ULBs which have democratically elected representatives. SPAs are bureaucratic agencies that have no directly elected representatives. They are also popularly known as parastatals i.e., statutory authorities that indirectly act as organs of the State Government. The concept of parastatals was started during the British period to parallelly govern cities alongside municipal corporations during the time of the plague. While the British were primarily concerned with the

governance of the areas where they resided, they believed that 'native' areas were the predominant cause for the spread of the disease and needed better governance. Accordingly, they circumvented the jurisdiction of the local bodies by creating parastatals, such as the Bombay Improvement Trust, for the governance of such 'native' areas. While these trusts are not present anymore, the concept of parastatals has continued till date through the establishment of development authorities.

Solution

To truly enable ULBs to function as institutions of self-government, it is crucial that they are empowered to govern how they undertake development in their territorial jurisdiction. Therefore, development within the territorial jurisdiction of a ULB, should be governed by the ULB itself.

In special circumstances where a development project spans multiple municipalities and ULBs, the presence of an SPA may be justified. However, even in such cases, the ULB's approval must be mandated to ensure proper coordination and successful execution of projects.

Implementation

To ensure systematic and holistic development of all urban areas in Maharashtra, we recommend that the State Government:

- Amend Section 40 of the MRTPA to enable ULBs to supervise and approve development projects by SPAs that fall within their geographical limit.

XIV

Strengthening Wards Committees and Area Sabhas in Maharashtra

Department(s)
Urban Development Department

Legislative Competence
Seventh Schedule, List II, Entry 5

Key Law(s)
Mumbai Municipal Corporation Act, 1888; Maharashtra Municipal Corporations Act, 1949; Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965

Problem

The provisions on wards committees were introduced under the Mumbai Municipal Corporation Act, 1888 ("**MbMC Act**"), Maharashtra Municipal Corporations Act, 1949 ("**MMC Act**") and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 ("**MMCNPIT Act**", and together with the MbMC Act and MMC Act, the "**Municipal Laws**") in 1994 pursuant to the Constitution (Seventy-fourth) Amendment Act, 1992. However, despite the passage of three decades, there exist a number of gaps in the constitution and the functioning of the State's wards committees.

In 2017, a public interest litigation filed before the Bombay High Court argued that the number of wards committees in Mumbai were significantly inadequate. This was

because the committees were formed on the basis of the city's administrative wards rather than its electoral wards. Moreover, some committees were formed by combining two or more wards, resulting in a situation where each committee was serving a population of at least seven-eight lakh people. This undermined the very purpose of the committees, which were introduced to enhance public participation in urban governance and reduce proximity between citizens and their elected councillors.

Compounding the structural problem of wards committee are other implementation issues. For example, the Comptroller and Auditor General of India recently observed that some municipal bodies of the State had not constituted the required number of committees. If constituted, committees were also not holding enough meetings.

In states like Kerala and West Bengal, wards committee members are drawn from a wide variety of stakeholder groups such as educational institutes, commercial establishments; and experts in health, agriculture, trade unions, engineering etc. In Maharashtra, the composition of the committees is limited. Members consist of all councillors representing the electoral wards within the territorial area of the committee, the ward officer and not more than three members from amongst members of non-governmental organisations nominated by the councillors. Aside from councillors, there is no other direct representation of citizens in the wards committees. Such direct representation is important because an electoral ward is usually constituted by a large and diverse body of citizens. In Mumbai, for example, most electoral wards consist of at least 50,000 citizens. It is therefore difficult for a single councillor to meaningfully represent the needs of all their citizens. Given this context, the role of an area sabha – the urban counterpart of a gram sabha, composed of all persons registered in the electoral rolls of the area – gains significance. However, the provisions on area sabhas, introduced under the Municipal Laws in 2009, have not been notified yet.

Solution

Underlining the various institutions of local governance is the principle of subsidiarity. As highlighted by the Second Administrative Reforms Commission, this principle stipulates that what can be done best by a lower

authority should not be centralised by a higher authority. If possible, government functions should be carried out closest to its citizens by the smallest unit of governance. The subsidiarity principle places citizens at the centre of all governance. This promotes not just democratic and effective decision-making (since citizens would be best placed to decide on their own interests) but also self-reliance, greater responsibility and an enlightened citizenry willing to take hard decisions.

Given this understanding, it is then imperative for Maharashtra to strengthen its provisions for wards committees and area sabhas. This can be done by linking the number of wards committees with its electoral wards, especially for the Brihanmumbai Municipal Corporation. Wards committees under the MbMC Act are entrusted with functions such as grievance redressal and making recommendations with respect to water supply, solid waste management, sanitation, development works, etc. Associating them with each electoral ward is likely to increase accountability for the councillors. Secondly, the composition of wards committees under all Municipal Laws must be amended to reflect a more diverse set of stakeholders residing in the ward. Like Kerala, the State could consider having elected members such as individuals from resident associations/ neighbourhood groups in the committee.

Implementation

In order to strengthen the institutions of wards committees and area sabhas, we recommend that the State Government:

- Amend Section 50-TT of the MbMC Act to enable the constitution of wards committees for each electoral ward of the body.
- Amend Section 50-TT of the MbMC Act, Section 29A of the MMC Act and Section 66A of the MMCNPIT Act to include different categories of stakeholders in the wards committee, such as in the case of Kerala and West Bengal.
- Notify the provisions for area sabhas under the Municipal Laws and enact rules for their functioning.

XV

Repealing Obsolete State Laws

Department(s)
All departments; Law and Judiciary Department

Legislative Competence
Article 246

Key Laws(s)
Maharashtra Repealing Act, 2016; Maharashtra Repealing (Second) Act, 2016

Problem

Laws that are no longer relevant are ineffective and a source of confusion for citizens. Such laws add an additional burden to the list of compliance activities for businesses and impact ease of doing business. In most cases, certain conditions render old policies unwise, changing customs legitimise what was once outlawed and lack of enforcement of certain laws make them inoperative in action. Enforcing these obsolete laws gives room to the executive to misuse their provisions for extraneous reasons.

The Law Commission of India in its reports on this subject matter has recommended the repeal of laws if: (i) a later law conflicts with the older law; (ii) the purpose of the law has been fulfilled; or (iii) the subject matter of the law is archaic and no longer needs legislation. However, these metrics may not be a sufficient test for identifying and repealing

obsolete laws. This is because the first metric laid down by the Commission requires subjective and value based determinations. Secondly, the three metrics do not assess whether the law continues to be relied upon in litigation.

In 2002, the Maharashtra State Law Commission released a series of reports suggesting repeal of more than 191 State laws. Subsequently, the Maharashtra Legislature repealed several obsolete and redundant laws. The Maharashtra Repealing Act, 2016 and the Maharashtra Repealing (Second) Act, 2016 (passed in 2017) have repealed 376 laws in the State, including several appropriation laws. Despite these measures, several archaic and redundant laws continue to exist in Maharashtra's statute books. For instance, the Peint Laws Act, 1894 provides that all laws applicable to the district of Nashik should be made applicable to the territory of Peint and such laws which were applicable to the territory of Peint should be repealed. The territory of Peint was earlier a 'scheduled district' under the Scheduled District Act, 1874. Under this law, the British Government could extend any act in force in British India to a scheduled district. By way of the Peint Laws Act, 1894, the territory of Peint ceased to be a scheduled district and laws applicable to Nashik were made applicable to Peint. Needless to say that 75 years after independence, this law and other such similar laws are obsolete. The State Law Commission had also recommended the repeal of this law. Yet, it continues to be in the State's statute books.

Solution

Repealing old laws is necessary to prevent the dangers that arise from their sporadic enforcement by the executive. Even if these laws are not enforced, they should be repealed to avoid confusion among the public and promote ease of living and doing business.

Maharashtra must identify archaic laws that are obsolete and regularly repeal such legislations. For this purpose, the State must identify whether laws in force are in fact, laws in use. A law is not use when (i) no recent judgement/order of a court of law makes a reference to the law; (ii) no subordinate legislation has recently been framed, no notification, order, circular or other similar instrument has been issued under the law; (iii) the law in toto has been implicitly repealed; and (iv) no other usage of

the law has been identified by the department enforcing it.

A prospective solution for the issue of obsolete laws, is to add a sunset clause provision to laws for the automatic expiration of the law after a fixed amount of time unless the legislature makes an affirmative act of reauthorisation. The primary idea behind the addition of a sunset clause is to ensure that every future law, which may eventually become archaic, automatically ceases to exist subject to certain criteria. Approaches towards sunset clauses can be to set an expiry date, which would automatically cease the operation of the law and/or to lay down a criterion under which the sunset clause would trigger and the law would cease to exist. Sunset clauses assure efficiency in repealing laws as the provision allows for the automatic abrogation of redundant laws and prevents the need for the legislature to undertake a case-by-case exercise for each law.

Implementation

To prevent misuse of obsolete laws, we recommend that the State Government:

- Identify all laws in force in the State of Maharashtra.
- Identify which of the above identified laws are not in use as per the metrics set out above.
- Repeal all obsolete laws which are not in use, including laws identified by the Maharashtra State Law Commission.
- Introduce sunset clauses in existing and new laws.

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