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Who Should Plan for the City?

A Briefing Note on the Constitutional and Legal framework for Urban Planning in Bengaluru

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The Bangalore Development Authority (BDA) published the Draft Revised Master Plan for Bengaluru for public comments in November 2017 and has received around 14,000 objections and suggestions from the public. While most of these responses deal with individual concerns regarding land use categorisation in specific localities in Bengaluru, questions regarding the legitimacy of the BDA to plan for the city have also been raised. Two Bengaluru based citizens groups- Namma Bengaluru Foundation and Citizens Action Forum- have filed Writ Petitions in the High Court of Karnataka challenging the constitutional authority of the BDA to prepare the Master Plan. In October 2017, a division bench of the High Court had passed an interim order restraining the Government of Karnataka from approving the Master Plan without the permission of the Court.²

The petition, originally filed in 2014, challenges the constitutionality of Section 9 of the Karnataka Town and Country Planning Act, 1961 among other provisions, as it provides for the preparation of the master plan without any reference to the constitutionally mandated regional planning body- the Metropolitan Planning Committee (MPC). The petitioners have argued that the MPC was constituted as per Article 243ZE of the Constitution for preparing the Development Plan and hence this task cannot be undertaken by the BDA. The petition has also challenged the constitutionality of the Bangalore Metropolitan Planning Committee Rules, 2013. The State Government has however argued that the draft Development Plan, which is to be prepared by the MPC, is different from the Master Plan prepared by the BDA. Given the lack of clarity in terms of the constitutional and legal framework for planning in Bengaluru, this briefing note seeks to examine and clarify the roles of the MPC, BDA and the Municipal Corporation in urban planning.

¹This Briefing Note partly draws from the “Planning for Bengaluru” series published in *The Hindu* which also had Champaka Rajagopal as a co-author.

² “Karnataka government restrained from approving 2031 master plan”, *The Hindu*, October 17, 2017. Available at <http://www.thehindu.com/news/cities/bangalore/karnataka-government-restrained-from-approving-2031-master-plan/article19873421.ece>

Who has the statutory authority to prepare the Master Plan (i.e., a land use plan) for Bengaluru?

As per Section 9(1) the Karnataka Town and Country Planning Act, 1961 (KTCP Act), in every area notified as a Local Planning Area, the Government shall constitute a Planning Authority which shall be responsible for preparing the Master Plan.³ While the KTCP Act prescribes how the Planning Authorities across the State are to be constituted, the local planning authority for Bengaluru is not constituted under these provisions. Section 81B of the KTCP Act provides that “the Bangalore Development Authority shall be the Local Planning Authority” for the local planning area of Bangalore.⁴ This provision has vested the BDA with all the powers of a Local Planning Authority under the KTCP Act. However, this was introduced as an amendment by the BDA Act in 1975, before the enactment of the 74th Constitutional Amendment. It is based on this statutory authority that the BDA has prepared the Revised Master Plan 2031 for the local planning area of Bengaluru. The BDA had also prepared the Comprehensive Development Plan of 1985 and 1995 and the Revised Master Plan 2015.

Under the KTCP Act, land use and development within the local planning area of Bengaluru should conform to the provisions of the Master Plan. Section 12 of the KTCP Act provides that the Master Plan “shall consist of a series of maps and documents indicating the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning Authority are to be carried out and regulated” and shall include zoning of land use, zonal regulations, street patterns, traffic circulation patterns and areas reserved for various purposes.⁵ The Master Plan is required to be revised once in 10 years as per Section 13D of the KTCP Act.

³ Section 9(1) states that “Every planning authority shall, as soon as may be, carry out a survey of the area within its jurisdiction and shall, not later than two years from the date of declaration of the local planning area, prepare and publish in the prescribed manner a master plan for such area and submit it to the State Government, through the Director, for provisional approval.”

⁴ Section 81-B of the KTCP Act states that “the Bangalore Development Authority shall be the Local Planning Authority for the local planning area comprising the City of Bangalore with jurisdiction over the area which the City Planning Authority for the City of Bangalore had jurisdiction immediately before the date on which the Bangalore Development Authority is constituted” and further states that “the Bangalore Development Authority shall exercise the powers, perform the functions and discharge the duties under this Act as if it were a Local Planning Authority constituted for the Bangalore City”

⁵ Section 12 of the KTCP Act provide a that “the Master Plan shall consist of a series of maps and documents indicating the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning Authority are to be carried out and regulated, such plan shall include proposals for the following, namely:-

(a) zoning of land use for residential, commercial, industrial, agricultural, recreational, educational and other purposes together with Zoning Regulations;

What are the territorial jurisdictions for which plans are made for Bengaluru?

While the jurisdiction of Bengaluru's Municipal Corporation- the Bruhat Bengaluru Mahanagar Palike (BBMP)- is 712 sq.km., BDA has a larger territorial jurisdiction covering 1,306 sq.km. It is for this area, excluding the parts coming under Bangalore-Mysore Infrastructure Corridor Planning Authority, that the BDA prepares the Master Plan. The BDA area is the territorial jurisdiction of Bengaluru's Metropolitan Planning Committee (MPC) as well. However, the BDA is not the only authority planning for Bengaluru. There is also the much larger Bangalore Metropolitan Region (BMR) of 8004 sq.km, consisting of the districts of Bengaluru Urban, Bengaluru Rural and Ramanagara, which comes under the jurisdiction of the Bangalore Metropolitan Region Development Authority (BMRDA).

While the BDA is responsible for drawing the 'Master Plan' for 1219 sq.km, the BMRDA is responsible for preparing the 'Structure Plan' for 8004 sq.km.⁶ BDA and other Local Planning Authorities coming within the jurisdiction of the BMR have to submit their plans to the BMRDA for approval. However presently there is little coherence between these plans. While the present jurisdiction of MPC is that of the BDA, considering Bengaluru's urban expansion, the Kasturirangan Committee Report on Bangalore's Governance (2007) and the B.S. Patil-led Expert Committee on BBMP Restructuring (2015) recommended that the ideal geographic scale of Bengaluru's MPC would be the 8004 sq.km coming under the jurisdiction of BMRDA.

(b) a complete street pattern, indicating major and minor roads, national highways, and state highways, and traffic circulation pattern, for meeting immediate and future requirements with proposals for improvements;

(c) areas reserved for parks, playgrounds, and other recreational uses, public open spaces, public buildings and institutions and area reserved for such other purposes as may be expedient for new civic developments;

(d) areas earmarked for future development and expansion;

(e) reservation of land for the purposes of Central Government, the State Government, Planning Authority or public utility undertaking or any other authority established by Law, and the designation of lands being subject to acquisition for public purposes or as specified in Master Plan or securing the use of the landing in the manner provided by or under this Act;

(f) declaring certain areas, as areas of special control and development in such areas being subject to such regulations as may be made in regard to building line, height of the building, floor area ratio, architectural features and such other particulars as may be prescribed;

(g) stages by which the plan is to be carried out."

⁶ Section 9 (ii) of the BMRDA Act vests the BMRDA with the responsibility "to prepare a structure plan for the development of the Bangalore Metropolitan Region"

Who is vested with the function of urban planning under the 74th Amendment?

The KTCP Act was enacted before the 73rd and 74th Constitutional Amendments came into force in 1993. The 74th Amendment mandates that democratically elected Municipalities- in the form of Municipal Corporations, Municipal Councils and Nagar Panchayats- are to be created and empowered to work as effective “institutions of self-government”.⁷ The Amendment inserted the Twelfth Schedule to the Constitution to guide states in assigning various functional responsibilities to the Municipalities. The very first item on the list of 18 functions in the 12th Schedule, is “urban planning including town planning”. The list also includes functions like “regulation of land-use and construction of buildings” and “planning for economic and social development”.

In the case of Bengaluru, the elected urban local body which is supposed to carry out the functions listed in the 12th Schedule is the city’s Municipal Corporation- the BBMP. Hence as per the constitutional scheme, it is the BBMP which should be vested with the functions of urban planning and land-use regulation. However, presently the BBMP has a very limited role in performing these planning functions. Instead the BDA, which is a statutory authority accountable only to the State government and not the Municipal Corporation, continues to be responsible for preparing the Master Plan for the local planning area of Bengaluru. Both the Kasturirangan Committee and the BBMP Restructuring Committee have recommended that the BDA be divested of its planning and regulatory functions. Further, in states such as Maharashtra, Gujarat and Kerala, municipal corporations have an active role in the planning process.

What role does the 74th Amendment envisage for the MPC?

The 74th Constitutional Amendment also requires the constitution of a Metropolitan Planning Committee for metropolitan areas with a population over ten lakhs, spread across more than one Municipality. At least two-thirds of the members of the MPC are to be elected by, and from, the elected members of the urban and rural local bodies within

⁷ Article 243-W of the Constitution provides that “Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule

the metropolitan area. However, Bengaluru did not have an MPC for 20 years and it was constituted in 2014 due to the intervention of the Karnataka High Court.

The Constitution states that the MPC should prepare a 'draft development plan' for the metropolitan area, while paying attention to the plans prepared by the urban and rural local bodies within its jurisdiction.⁸ This draft development plan must be prepared once in 5 years and is required to be submitted to the State government. The essential task of the MPC as per the Constitution is the "co-ordinated spatial planning" and sharing of resources in a metropolitan area whereby the needs of multiple local bodies in the region are balanced.

Hence, under the constitutional scheme, while a Municipal Corporation like BBMP is expected to make the city-level land use-based master plan, the MPC has to provide for the metropolitan-level development plan which integrates all plans prepared by the local elected bodies in the metropolitan area. So, the MPC is not the constitutionally mandated authority for preparing master plans or land use plans. Instead, it aggregates and consolidates existing plans for the larger metropolitan jurisdiction. To effectively play this role it may issue broad development and planning guidelines to the local planning authorities and subsequently integrate these plans.

How should urban planning be reorganised in the light of the 74th Amendment?

The fundamental issue with present institutional framework for planning is that the BDA Act and the KTCP Act have not been suitably amended to reflect the ideas envisaged in the 74th Amendment. BDA, whose primary responsibility is the provision of infrastructure, housing and land sites, is not the appropriate planning authority for Bengaluru under the constitutional scheme. The 74th Amendment envisages the urban planning function to be carried out by the Municipal Corporation.

⁸ Article 243-ZE of the Constitution provides that "There shall be constituted in every Metropolitan area Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole" It further provides that: "Every Metropolitan Planning Committee shall, in preparing the draft development plan,

(a) have regard to

- (i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;
- (ii) matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;
- (iii) the overall objectives and priorities set by the Government of India and the Government of the State;
- (iv) the extent and nature of investment likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify."

To uphold the spirit of decentralised democracy envisaged by the 74th Amendment, the KTCP Act must be amended to ensure that the BBMP and other local authorities replace the BDA as the planning authority responsible for preparing the master plan for the city. The MPC should be designated as the body responsible for integrating the plans for the larger metropolitan area presently under the jurisdiction of BMRDA. It should make a development plan every 5 years giving due consideration to the plans made by BBMP and other elected urban bodies under its jurisdiction. The BMRDA could act as the administrative arm of the MPC giving effect to the political decisions taken by the MPC.

An urban planning system which upholds the spirit of decentralised democracy envisaged in the 74th Amendment would provide for planning to be exercised at the ward, city and metropolitan levels. For planning to be responsive to the varied needs of each locality, Ward Committees should be made part of the planning process whereby they can prepare local plans and forward it to the BBMP.⁹ Similarly, the master plans prepared by the BBMP and other local bodies within the metropolitan area should inform the metropolitan development plan made by the MPC.

A useful framework for multi-scalar urban planning has already been provided under the Urban Development Plans Formulation and Implementation (UDPFI) Guidelines, which also included a Model Regional and Town Planning and Development Law.¹⁰ Further, the BBMP Restructuring Committee Report, 2015 has made considerable progress in laying a framework for multi-scalar planning and delineating functions across the various levels of government through an activity mapping exercise. As the High Court of Karnataka adjudicates whether the BDA or the MPC should have the power to make the Master Plan for Bengaluru, this Briefing Note seeks to clarify that it is the Municipal Corporation which should be primarily responsible for urban planning and regulation of land use as per the 74th Constitutional Amendment.

⁹ We have argued elsewhere that such a decentralised ward level planning model is both desirable and feasible in contemporary Bengaluru. See: "Towards demand-led planning for Bengaluru", *The Hindu*, March 26, 2017. Available at: <http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/towards-demand-led-planning-for-bengaluru/article17665908.ece>

¹⁰ While most states have failed to adopt the principles provided in the UDPFI guidelines in their planning legislation, states like Kerala, through The Kerala Town and Country Planning Act, 2016, have incorporated the key provisions of the Model Law. See: Easow, Jacob (2016) Kerala Town and Country Planning Act: A Democratic Spatial Planning Law for States in India, Spatio-Economic Development Record, Vol. 23 No.