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MAHARASHTRA

NIMUSHAKAVI VASANTHI*

Introduction

The Maharashtra Legislative Assembly and the Maharashtra Legislative Council met thrice in the year 2023. It met for the Budget session for just less than one month from 27th February to 25th March, for three weeks for the monsoon session from 17th July to 4th August, and for 14 days for the winter session from 7th to 20th December 2023. The reports of the sitting of the Houses and business transacted were available in Marathi.

The 14th legislative assembly of Maharashtra constituted in 2019 saw three alliances hold office as no single party had a majority and consequently, three chief ministers were sworn in. The first to hold office was the Nationalist Congress Party–Bharatiya Janata Party (NCP-BJP) alliance headed by Devendra Fadnavis, which was sworn into office in the middle of the night on 23 November. This lasted for barely 5 days, and resigned as it did not have the numbers to form a government. Consequently, the Shiv Sena-NCP-INC (Indian National Congress), Maha Vikas Aghadi, was sworn in on 28 November 2019 with Uddhav Thackeray as the Chief Minister. In June 2022 the Thackeray-led Maha Vikas Aghadi government was ousted, and a new Shiv Sena-BJP combine under the leadership of Eknath Shinde took over the government after a split in the Shiv Sena. In July 2023, the NCP, under the leadership of Ajit Pawar also split and joined the BJP-Shiv Sena alliance. Unlike the Shiv Sena, the NCP did not approach the court to disqualify its members.

The crossing over of MLAs from one party to the other, both in the Shiv Sena and the NCP, resulted in a slew of petitions filed before the Speaker, in the High Court and the Supreme Court, raising important questions about the role of the Governor and the Speaker in constituting the government. the Supreme Court ¹ directed the Speaker to decide on the

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¹ Jayant Patil v. The Speaker, Maharashtra Legislative Assembly W.P.(C) No. 1077 of 2023 dt. 30 October 2023.

disqualification petitions pending before him by 10 January 2024. The Speaker had not decided on the disqualification petitions for 18 months. Earlier,²the Supreme Court held that the Governor had not acted beyond the scope of his authority by inviting the BJP-Shiv Sena alliance to form the government. The petitioner claimed that the disqualification petitions filed before the Speaker should have been heard before the floor test was conducted, as the disqualified members could not participate in the floor test to prove their majority. The Supreme Court did not agree with the petitioners and held that the disqualification petitions didn't need to be decided before the floor test was held to show that the Eknath Shinde group had the majority to form the government even though it urged the speaker to decide within a reasonable period.

Following this order, in January 2024, the Speaker decided to regard the Shinde-led group as the real Shiv Sena and refused to disqualify the MLAs. He stated that it could not be a reason for disqualification if MLAs were incommunicado. The Constitution of India, 1950, Schedule X, Para 2 clause(a) prescribes that an elected legislator may be disqualified for being a member of the house on the grounds of having voluntarily given up membership of such party. In subsequent developments on 6 February 2024 the Election Commission recognised the Ajit Pawar faction as the real NCP. Thus, both the breakaway groups were legitimized by the legal processes, one in the Supreme Court and the other through the Election Commission.

The year under review had the breakaway Shiv Sena led by Eknath Shinde as the Chief Minister and was soon joined by the breakaway NCP led by Ajit Pawar. The priorities of this government are visible in the laws that were passed and the bills that were proposed but were not passed. This political turmoil also saw erratic reporting on legislative activity. Several Bills were passed by the house but were not published and not notified.

The compilation of Bills and Acts proved an arduous task as the official source for legislation i.e. the Legislative Assembly had incomplete information. To further complicate the process, the numbering of bills in the legislative assembly and the legislative council and the official gazette was different. The Assembly section lists bills as V.S.V.SI.No. and has bills numbered between 1 and 62. Internally these are named as L.A. In the Legislative Council section, there are three types of bills, 1. Bills passed by the Legislative Council which lists 3 bills, 2.re-established bills which are not available in English, and 3. Legislative Assembly Bills passed by the Legislative Council numbered between 1 and 62 with several numbers

² Subhas Desai v. Principal Secretary, Government of Maharashtra, 2023 SCC Online SC 607.

missing. These bills had to be cross tabulated with the publication in the official gazette to compile the full list.

To give an example of why this process was so difficult. L.A. 1 of 2023 is listed as V.S.V Sl.No.1 in the Legislative Assembly and is dated 22nd February, which is before the date of the first session for the year which started on 27th February. This was passed as Act 14 of 2023 on 23rd March after receiving the assent of the Governor.

India Code does not list any of the state acts of Maharashtra in 2023. The e-gazette for the year lists 62 Bills as being introduced. Some of these Bills were passed by both houses and some were notified in the year 2023 and others in 2024 and some are pending notification. They have been indicated as TBN (to be notified). 47 Acts were notified in 2023 of which 17 Acts were notified from January to February, before the sessions for the year began on 27th February 2023. These were bills introduced and passed in the previous year. That leaves 30 Acts that were notified in the year under review. Nine Ordinances were promulgated which were later passed as Acts which were given effect to from the date of promulgation of the Ordinance. All the Bills introduced, Acts passed and Ordinances promulgated have been uploaded on the drive.

The Acts which have a clause “Shall come into force on such date as the State Government may by notification appoint” have been listed as TBN (to be notified). The Acts which have a date on which the Act shall come into force have been mentioned as such. The Acts which have neither clause have been listed as coming into force on the date of publication.

All the Bills and the Acts were English translations published after obtaining the approval of the Governor. Two legislations were published after the assent of the President. The MESMA (Maharashtra Essential Services Act) 2023 and the Maharashtra Agricultural Land Leasing Act, 2017 (which will have a retrospective effect once notified) have both received presidential assent in 2023 but neither of them have been notified.

Quantitative Survey

62 Government Bills and 7 private Bills were introduced in the Legislative Assembly. Of these 46 Acts passed by both houses and 33 Acts were brought into force. 9 Ordinances were promulgated. This information is sourced from a summary of the proceedings of the Legislative Assembly which was published in Marathi and translated into English. This summary provides a session wise breakup of the number of bills presented and accepted by the Assembly and the Bills the Council has agreed. In the budget session 17 Government Bills were presented and all of them were accepted. In the Monsoon session 24 Bills were

presented and 16 of them were accepted. In the winter session 17 Bills were presented and all of them were accepted.

The following 6 bills were referred to a Joint Committee:

1. L.A.34 of 2023 The Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) and Maharashtra Private Security Guards (Regulation of Employment and Welfare) (Amendment) Act, 2023
2. L.A.40 of 2023 The Maharashtra Payment of Compensation to Farmers (for loss caused due to adulterated, non-standard or misbranded seeds, fertilisers or insecticides) Act, 2023.
3. L.A.41 of 2023 The Insecticides (Maharashtra Amendment) Act, 2023.
4. L.A.42 of 2023 The Seeds (Maharashtra Amendment) Act, 2023
5. L.A.43 of 2023 the Essential Commodities (Maharashtra Amendment) Act, 2023.
6. L.A.44 of 2023 The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing of Essential Commodities (Amendment) Act, 2023.

These Acts cover areas such as Education, Health, Municipal Corporations and Village Panchayats, Taxation, Animal Welfare, Fire Prevention, temples, co-operatives, Police, Agriculture, Slum Area Development, Industry and Trade facilitation, Town Planning, Trees and Civil Courts. A table detailing the Acts, the corresponding bills introduced in the Legislative Assembly (L.A.) and some introduced in the Legislative Council (L.C.), date of notification, and whether the Act was first introduced as an Ordinance follows this section. The table also contains a list of the Bills introduced and published in 2023.

Bills introduced in 2023 and notified in 2024 include Acts 1 to 8 of 2024. The significant Acts notified in 2024 have been:

1. The Maharashtra Private Universities (Establishment and Regulation) Act, 2023 Act VIII dt 19 January 2024
2. The Maharashtra Public Universities (Amendment) Act, 2023 first introduced as an Ordinance No VIII of 2023 and passed as Act II of 2024 with effect from 23 October 2023
3. the Maharashtra Casinos (Control and Tax) (Repeal) Act, 2023 repealed with effect from 3 January 2024
4. The Maharashtra Apartment Ownership (Amendment) Act, 2023 which was first introduced as an Ordinance No IX of 2023 passed as Act III of 2024 with effect from 23 October 2023

The List of Legislations Published in 2023

Notified on	Act No	Published on	Title
24-Nov- 2022	Mah. Act No. I of 2023	3-Jan-23	Mumbai Municipal Corporation (Second Amendment) Act, 2022
22-Nov-2022	Mah. Act No. II of 2023	3-Jan-23	Maharashtra Agricultural Produce Marketing (Development and Regulation) (Amendment) Act, 2022
TBN	Mah. Act No. III of 2023	5-Jan-23	Universal Ai University, Karjat Act, 2022
TBN	Mah. Act No. IV of 2023	6-Jan-23	JSPM University, Pune Act, 2022
TBN	Mah. Act No. V of 2023	6-Jan-23	Pimpri Chinchwad University, Pune Act, 2022
24-Nov- 2022	Mah. Act No. VI of 2023	11-Jan-23	Yashwantrao Chavan Maharashtra Open University, Kavi Kulaguru Kalidas Sanskrit Vishavidyalaya (University) and Maharashtra Public Universities (Amendment) Act, 2022
12-Sep- 2022	Mah. Act No. VII of 2023	11-Jan-23	Maharashtra Zilla Parishads and Panchayat Samitis (Third Amendment) Act, 2022
13-Jan-23	Mah. Act No. VIII of 2023	13-Jan-23	Maharashtra Creation of Supernumerary Post and Appointment of Selected Candidates (Amendment) Act, 2022
13-Jan-23	Mah. Act No. IX of 2023	13-Jan-23	Regularisation of Unauthorised Developments in the City of Ulhasnagar (Amendment) Act, 2022.
TBN	Mah. Act No. X of 2023	20-Jan-23	ITM Skills University, Navi Mumbai Act, 2022 (Mah. Act No. X of 2023),
23-Jan-23	Mah. Act No. XI of 2023	23-Jan-23	Maharashtra Police and Maharashtra Cinemas (Regulations) (Amendment) Act, 2022
13-Mar-23	Mah. Act No. XII of 2023	13-Mar-23	Maharashtra (Supplementary) Appropriation Act,2023.
17- Mar-23	Mah. Act No. XIII of 2023	17-Mar-23	Maharashtra Medical Goods Procurement Authority Act, 2023
23-Mar-23	Mah. Act No. XIV of 2023	23-Mar-23	Mumbai Municipal Corporation and Maharashtra Municipal Corporations (Amendment) Act, 2023
23- Mar-23	Mah. Act No. V of 2023	23-Mar-23	Maharashtra Village Panchayats (Amendment) Act, 2023
24-Mar-23	Mah. Act No. XVI of 2023	24-Mar-23	Dr. Babasaheb Ambedkar Technological University and Maharashtra COEP Technological University (Amendment) Act, 2023
29-Mar-23	Mah. Act No. XVII of 2023	29-Mar-23	Maharashtra Appropriation Act, 2023
1-May-23	Mah. Act No. XVIII of 2023	6-Apr-23	Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2023

1-Apr-23	Mah. Act No. XIX of 2023	6-Apr-23	Maharashtra State Tax on Professions, Trades, Callings and Employments (Amendment) Act, 2023
11-Apr-23	Mah. Act No. XX of 2023	11-Apr-23	Maharashtra Labour Laws (Amendment) Act, 2022
21-Apr-23	Mah. Act No. XXI of 2023	21-Apr-23	Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) (Amendment) Act, 2023
26-Apr-23	Mah. Act No. XXII of 2023	26-Apr-23	Maharashtra State Board of Technical Education (Amendment) Act, 2023
TBN	Mah. Act No. XXIII of 2023	28-Apr-23	Maharashtra Goseva Ayog Act, 2023
TBN	Mah. Act No. XXIV of 2023	11-May-23	the Maharashtra Fire Prevention and Life Safety Measures (Amendment) Act, 2023
22-May-23	Mah. Act No. XXV of 2023	22-May-23	Pandharpur Temples (Amendment) Act, 2023
7- Jun-23	Mah. Act No. XXVI of 2023	7-Jun-23	Maharashtra Co-operative Societies (Amendment) Act, 2023
21-Jun-23	Mah. Act No. XXVII of 2023	21-Jun-23	Maharashtra Police (Amendment) Act, 2023
TBN	Mah. Act No. XXVIII of 2023	27-Jun-23	Maharashtra Agricultural Land Leasing Act, 2017
TBN	Mah. Act No. XXIX of 2023	20- Jun- 23	Maharashtra Essential Services Maintenance Act 2023
28-April-23	Mah. Act No. XXX of 2023	28-Apr-23	the Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act, 2023
27-July-23	Mah. Act No. XXXI of 2023		Maharashtra(Second Supplementary) Appropriation Act, 2023.
28-July-23	Mah. Act No. XXXII of 2023	28-Jul-23	Maharashtra Goods and Services Tax (Amendment) Act, 2023
23-February 2017	Mah. Act No. XXXIII of 2023	7-Aug-23	Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) (Amendment, Re-enactment of Rules and Notification of Apex and other Grievance Redressal Committees and Validation) Act, 2023.
3-July-23	Mah. Act No. XXXIV of 2023	14-Aug-23	Maharashtra Industry, Trade and Investment Facilitation Act, 2023
10- July-23	Mah. Act No. XXXV of 2023	14-Aug-23	Maharashtra Temporary Extension of Period for Submitting Validity Certificate (for certain elections to Village Panchayats, Zilla Parishads and Panchayat Samitis) Act, 2023
19- June-23	Mah. Act No. XXXVI of 2023	14-Aug-23	Maharashtra Regional and Town Planning (Amendment) Act, 2023

TBN	Mah. Act No. XXXVII of 2023	14-Aug-23	Maharashtra Payment of Compensation for Loss, Injury or Damage Caused by Wild Animals Act, 2023
TBN	Mah. Act No. XXXVIII of 2023	18-Aug-23	MIT Vishwapravayag University, Solapur Act, 2023
TBN	Mah. Act No. XXXIX of 2023	18-Aug-23	DES Pune University, Pune Act, 2023
21-Aug-23	Mah. Act No. XL of 2023	21-Aug-23	Maharashtra, Animal and Fishery Sciences University (Amendment) Act, 2023
TBN	Mah. Act No. XLI of 2023	24-Aug-23	Laxminarayan Innovation Technological (LIT) University, Nagpur Act, 2023
10-July-23	Mah. Act No. XLII of 2023	24-Aug-23	Maharashtra Co-operative Societies (Third Amendment) Act, 2023
25-Aug-23	Mah. Act No. XLIII of 2023	25-Aug-23	Maharashtra (Urban Areas) Protection and Preservation of Trees (Amendment) Act, 2023
25-Aug-23	Mah. Act No. XLIV of 2023	25-Aug-23	Maharashtra Municipal Corporation of the City of Pune Taxation (Enactment and Amendment of Taxation Rules with retrospective effect and Validation) Act, 2023
3-Oct-23	Mah. Act No. XLV of 2023	3-Oct-23	Maharashtra National Law University (Amendment) Act, 2023
TBN	Mah. Act No. XLVI of 2023	20-Nov-23	Bombay City Civil Court (Amendment) Act, 2023

Qualitative Survey

Three significant pieces of legislation have been proposed in the year under review. The first is the Maharashtra Goseva Ayog Act, the second is the Maharashtra Private Universities (Establishment and Regulation) Act, 2023 and the third is the MAITRI Act.

Cow Protection

Maharashtra Assembly passed the L.A. 17 of 2023 The Maharashtra Goseva Ayog Act, 2023 on 23 March 2023. The Bill was published on 28th April 2023 and has been brought into force from 10th May 2023.³ The Gau Seva Ayog Bill in Maharashtra follows similar Acts in Rajasthan 1995, Uttar Pradesh 1999, Uttarakhand 2007 and Haryana 2010. The Haryana Government has enhanced support for Gau Seva Ayog's to 400 crores in 2023.⁴ The Times

³ For more information, see Department of Animal Husbandry and Dairying, Maharashtra Goseva Ayog, <https://dahd.maharashtra.gov.in/en/organization/maharashtra-goseva-ayog/>

⁴ Sushil Manav, *More moo-lah for cow welfare: Haryana govt hikes Gau Seva Aayog budget 10x to Rs 400cr*, Print, February 24, 2023, available at <https://theprint.in/india/more-moo-lah-for-cow-welfare-haryana-govt-hikes-gau-seva-aayog-budget-10x-to-rs-400-cr/1395712/> (Last visited on April 1, 2024).

reports that in July 2023 the Gau Seva Ayog in Uttarakhand proposed stricter punishments of imprisonment of up to 7 years for beef storage and smuggling cows.⁵

The Maharashtra Bill has many provisions in common with these legislations although it leaves out some aspects. The Maharashtra Act largely follows the Uttarakhand legislation, the Protection of Cow Progeny Act, 2007, which contains several provisions that confer power to maintain institutions, levy fee, compound offences on private bodies on par with the State.

The legislation directs the establishments of institutions, both state and NGO, to take care of uneconomic cow progeny and allows the charging of fees. This fee may be prescribed by the government or the NGO. The stated objective of the Act is to provide for the supervision of Institutions engaged in the preservation, protection and welfare of cattle and this is common to all the legislations. The term cattle has been defined to mean cows, cow-bulls, bullocks and cow-calves of indigenous (Desi) breed and also includes the non-descript breed. The Act proposes a commission, Goseva Ayog, to supervise institutions. The Ayog shall be headed by a “Chairperson” who will be a non-official member nominated by the State Government and has experience in the areas of cattle welfare, veterinary science, dairy development and allied areas. The member can also be a person who has experience in law or social work. The Ayog will have 9 such non-official persons or representative- members from Non-Governmental Organizations (NGOs) or Gosadan, Goshala, Panjarpol and Gorakshan Sanstha, and others. or their federations. These are 14 ex-officio members of the Ayog including the Commissioners of Animal Husbandry, Agriculture, Dairy Development, a nominee of the DGP not below the rank of a DIG of Police, Directors of Agricultural Universities as well as nominees of the Home Department, Forest Department, Urban Development and others.

The Maharashtra Act carries the same definition of cattle, and also proposes to set up a body to regulate all the institutions including companies, societies and charitable institutions but does not specify a NGO. The composition of the body is similar to the Uttarakhand Act. The panel includes non-official members such as NGO's although a NGO is not defined.

The Uttarakhand legislation prohibits cow slaughter and the possession of beef and imposes stringent penalties such as a maximum of 10 years with a minimum penalty of 3

⁵ Gau Seva Aayog proposes stricter cow protection law; punishment up to 7 yrs for beef storage, smuggling of cows, Times of India, Dehradun, July 2, 2023, available at <https://timesofindia.indiatimes.com/city/dehradun/gau-seva-aayog-proposes-stricter-cow-protection-law-punishment-up-to-7-yrs-for-beef-storage-smuggling-of-cows/articleshow/101427468.cms> (Last visited on February 8, 2024).

years. It contains an exception for the slaughter of diseased cows. The offences are cognisable and non-bailable. The stringent penalties are imposed only if the offence goes to trial. The offence has been made compoundable by Mukhya Nagar Adhikari or Executive Officer or the Police Officer of the local police station not below the rank of Sub-Inspector. It prohibits vagrancy of cows but does not prescribe a penalty for this. The Maharashtra Bill does not have provisions on penalties, nor does it prohibit cow slaughter or possession of beef. The focus of the Act is the preservation, protection and welfare of the cattle and the development of indigenous breeds.

The ban on cow slaughter and the beef ban was brought in 2015, by Maharashtra Amendment Act 5 of 2015, to the Maharashtra Animal Preservation Act IX of 1977. This was an Amendment act of 1995 which got presidential approval after 20 years in 2015. The Act extended the ban on the slaughter of cows and calves to bulls and bullocks and prohibited the transport of cattle as well as the sale, purchase, and disposal of cattle for slaughter. The Act also prohibited the possession of beef and its possession *per se* irrespective of whether it was slaughtered in another state.

The Mumbai High Court upheld the ban and the prohibition of possession of beef that was slaughtered in contravention of the Act,⁶ it struck down the provisions on possession *per se*, i.e. no person shall possess beef even if the slaughter was outside the state as well as the provision that reversed the burden of proof of a person in possession to prove that the slaughter, transport and export, sale, purchase and possession was not in contravention of this Act. The court invoked the right to privacy, including the right to eat food of one's choice, to strike down these provisions.⁷

While cow slaughter and protection is legislated upon in several states, the model in each of these states is different, with a lot of variation in the extent of regulation as well as the nature of penalties.

Privatisation of Higher Education

The second significant piece of legislation is the Maharashtra Private Universities (Establishment and Regulation) Act, 2023 (hereafter, MPU (E and R)).

⁶ Sheikh Zahid Mukhtar v. State of Maharashtra 2016 SCC Online Bom 2600

⁷ Ibid: "As far as the choice of eating food of the citizens is concerned, the citizens are required to be let alone especially when the food of their choice is not injurious to health. As observed earlier, even a right to sleep is held as a part of the right to privacy which is guaranteed under Article 21 of the Constitution of India. In fact the State cannot control what a citizen does in his house which is his own castle, provided he is not doing something which is contrary to law. The State cannot make an intrusion into his home and prevent a citizen from possessing and eating food of his choice." ¶192.

A major part of law making in the year under review was on privatisation of higher education. 10 new universities were proposed to be set up and amendments were passed in 5 other University Acts.⁸ A regulating act proposing to regulate all self-financing private Universities, the MPU (E and R) was passed in the winter session of the Legislative Assembly.

This Act comes along with a series of developments over the past years particularly since 2018 when the UGC GAR Rules 2018 were introduced in a move that set the ball rolling as far as self-financing courses were concerned. These courses introduced in Public Universities were resisted by both students and teachers.⁹ There has been a critical discussion on the consequences of these moves which in the name of autonomy are justifying the decreasing expenditure by the government on education.¹⁰ The Maharashtra Act brings together two different ideas, one of self-financing and the other is private education. The Universities Grants Commission (UGC) has categories of Central, State, Private and Deemed Universities. There is no category of self-financing private universities. There are private and aided colleges and schools which receive support from the Government but not Universities. The idea of private schools and colleges was to enable society to participate in the important function of education, which is primarily the function of the State. Since private institutions were sharing the function of the State, there was an

⁸ Universal AI University, Karjat Act, 2022 (Mah. Act No. III of 2023), JSPM University, Pune Act, 2022 (Mah. Act No. IV of 2023), Pimpri Chinchwad University, Pune Act, 2022 (Mah. Act No. V of 2023), ITM Skills University, Navi Mumbai Act, 2022 (Mah. Act No. X of 2023), MIT Vishwavidyalaya University, Solapur Act, 2023 (Mah. Act No. XXXVIII of 2023), DES Pune University, Pune Act, 2023 (Mah. Act No. XXXIX of 2023), Laxminarayan Innovation Technological (LIT) University, Nagpur Act, 2023 (Mah. Act No. XLI of 2023), Universal Skilltech University, Vasai, Bill, 2023 (L.A. XLI of 2023), G. H. Raisoni International Skill Tech University, Pune Act, 2023 (L.A. LVI of 2023), G. H. Raisoni Skill Tech University, Nagpur Act, 2023 (L.A. LVII of 2023), Dr. Babasaheb Ambedkar Technological University and Maharashtra COEP Technological University (Amendment) Act, 2023 (Mah. Act No. XVI of 2023), Yashwantrao Chavan Maharashtra Open University, Kavi Kulaguru Kalidas Sanskrit Vishwavidyalaya (University) and Maharashtra Public Universities (Amendment) Act, 2022 (Mah. Act No. VI of 2023), Maharashtra, Animal and Fishery Sciences University (Amendment) Act, 2023 (Mah. Act No. XL of 2023), Maharashtra National Law University (Amendment) Act, 2023 (Mah. Act No. XLV of 2023), Maharashtra International Sports University (Amendment) Act, 2023 (L.A. LIII of 2023).

⁹ Shreya Roy Choudhury, *Government wants more self financed courses but they are run by exploiting temporary teachers*, Scroll, June 17, 2017, available at <https://scroll.in/article/840762/government-wants-more-self-financed-courses-but-they-are-run-by-exploiting-temporary-teachers>; Mallica Joshi, *Self financed courses and why they had DU teachers up in arms last week*, Indian Express, New Delhi June 27, 2017, available at <https://indianexpress.com/article/education/du-admission-2017-du-ac-in-self-financed-courses-and-why-they-had-du-teachers-up-in-arms-last-week-4723501/> (Last visited on March 26, 2024).

¹⁰ Saikat Ghosh, *Autonomy for Universities, Government move to privatise is exclusionary*, Economic and Political Weekly (Engage), Vol. 53, Issue No. 13, March 31, 2018, available at ISSN (Online): 2349-8846 <https://www.epw.in/index.php/engage/article/autonomy-universities-governments-move-privatise> (Last visited on March 26, 2024).

obligation on the State to support them. This can also be seen in the constitutional guarantees of Cultural and Educational Rights under Arts. 29 and 30 of the Constitution of India. The idea of private and self-financing seems to imply that these institutions will be granted more leeway in the fee that they charge. It is also interesting to observe that at least two of the legislations (Act III and IV of 2023) passed in early 2023 only mentioned self-financing Universities and not private Universities. These Acts also made explicit reference to the University Grants Commission (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003, the Maharashtra Unaided Private Professional Educational Institutions (Regulations of Admissions and Fees) Act, 2015, and the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987.

The MPU(E and R) is intended to unify, consolidate and amend the laws relating to the self-financed private universities in the State of Maharashtra and to provide for establishment, incorporation and regulation of self-financed private universities in the State for development and advancement of higher education in the State. The Act proposes that any sponsoring body including a private institute can submit a proposal to establish a self-financing private University. The sponsoring body has been defined to mean a society, a public trust or a company.¹¹ The sponsoring body has a wide range of powers, including the power to appoint and remove the president of the University (§ 17 and 18), 5 members of the Governing Body not including the President who is appointed by the sponsoring body and appointees of the President (§ 27). Similarly, 8 members of the Board of Management are appointed by the sponsoring body (§ 28). There is little scope for the Governing body or the Board of Management functioning independently of the sponsoring body. The sponsoring body may dissolve the University (§ 46).

The Act provides that the University will adopt policies and orders of the Government on reservation for scheduled castes, scheduled tribes, de-notified tribes, nomadic tribes and other backward classes, special backward category and economically weaker sections. Similarly, it provides that no citizen shall be excluded either from holding a position or being admitted to a course (§11).

But this provision is followed by §12 of this Act which provides that the University established under this Act will not be entitled to any financial assistance from the State

¹¹ §2(y) “sponsoring body” in relation to a university established under this Act means,—

- (i) a society registered under the Societies Registration Act, 1860; or
- (ii) public trust registered under the Maharashtra Public Trusts Act; or
- (iii) any Educational Institution established under section 25 of the Companies Act, 1956 or a company registered under the Companies Act, 2013;

Government and that students admitted to these Universities shall not be entitled to claim any type of financial assistance, scholarship or fee reimbursement from the State Government.

While the UGC Regulations 2003 and the Maharashtra Act on capitation fee are explicitly referred to in the Act, it does not seem to be generating any confidence in students who believe that this is a move to deny opportunities to underprivileged categories. Student Unions have been protesting against this Act, which seeks to unify, consolidate and amend the laws relating to self-financed private universities in the State, as it virtually excludes students from economically weak backgrounds from being admitted to these Universities.¹²

This move is symptomatic of the move towards the privatisation of higher education in the country. The move towards privatisation done in the name of autonomy of these institutions is actually a disinvestment of state funding in higher education. This process has been set in motion since University Grants Commission's Graded Autonomy Regulation (GAR) (notified through the union gazette, 12 February 2018). This has the inevitable consequence of hiking fees as institutions are expected to fund their own courses and expect no funding from the Government. The autonomy here is less managerial and more financial.¹³ The All India Survey of Higher Education (AISHE) 2019-20 shows that the number of private universities in India have almost doubled in just four years.¹⁴

Ease of Doing Business

The third significant legislation is L.A.IV of 2023, Maharashtra Industry, Trade and Investment Facilitation Act, 2023 (referred to as the *MAITRI* Act), which was introduced in the Legislative Assembly on 28 February 2023. The Bill was passed on 3 March 2023 and sent to the Legislative Council. The Government then felt the need to make modifications and withdrew the bill. According to newspaper reports, the bill was withdrawn due to differences over the jurisdiction of agencies. The jurisdiction of the MIDC (Maharashtra Industrial Development Corporation) and the Principal Secretary, Department of Industries, was not clear. The bill was promulgated as an Ordinance No. IV of 2023 on 3 July 2023 and

¹² Dheeraj Bengrut, *Student Unions oppose new bill on private universities*, Hindustan Times E-paper, January 20, 2024, available at <https://www.hindustantimes.com/cities/pune-news/student-unions-oppose-new-bill-on-private-universities-101705693349028.html> (last visited on March 26, 2024).

¹³ Saikat Ghosh, *Autonomy for Universities, Government move to privatise is exclusionary*, Economic and Political Weekly (Engage), Vol. 53, Issue No. 13, March 31, 2018, available at <https://www.epw.in/index.php/engage/article/autonomy-universities-governments-move-privatise> (last visited on March 26, 2024).

¹⁴ Kritika Sharma, *With 131 new institutions in 4 years, its boom time for private universities in India*, The Print September 6, 2021 available at <https://theprint.in/india/education/with-131-new-institutions-in-4-years-its-boom-time-for-private-universities-in-india/726908/> (last visited on March 26, 2024).

brought into effect immediately. The Ordinance was then introduced as L.A.22 of 2023 and was deemed to have come into force on 3 July 2023. The Act is primarily intended to give a statutory status to the Maharashtra Industry, Trade, and Investment Facilitation Cell (MAITRI) that was set up in 2014 to redress the grievances of investors.¹⁵ The *Statement of Objects and Reasons* of the Act states that the Government of Maharashtra has, by Government Resolution, converted MAITRI into a State Single Window System, and in order for this to function effectively MAITRI needed to be empowered with additional powers. The changing nature of the State is referred to here. It states that the role of the Government in the overall business ecosystem has changed due to rapid growth and innovation across industries and service sectors and “*In these circumstances, the government must play the role of a business ecosystem developer and not only play the role of a regulator.*” This Act is intended to complement the efforts of the central government which has launched the National Single Window System (NSWS¹⁶).

The Act creates a single window for all clearances and permissions required to establish and operate Industries. The term “permission” under the Act means any approval, no-objection certificate, clearance, allotment, consent, registration, enrolment, license or the like by any Competent Authority in connection with the setting up or operating an industrial undertaking in the State and includes all such permissions as are required under any relevant law.¹⁷ It is expected that this move will enhance competitiveness in trade and investments and create an eco-system that ensures ease of doing business. The Act also sets up a grievance redressal mechanism.

This mechanism is provided under §5 and §7 of the Act. These sections state that if the Competent Authority fails to dispose of an application within the specified time, the Nodal Agency shall transfer the matter to the Empowered Committee which will make decisions as per the relevant law. The Empowered Committee can also ask for reasons for the delay or rejection of the application and require the personal appearance of the Competent Authority. It can also appoint an enquiry officer to investigate the delay or grievances of the

¹⁵ Vallabh Ozarkar, *MAITRI Bill to be introduced in House for speedy implementation of projects*, Indian Express, Mumbai, February 2, 2023, available at <https://indianexpress.com/article/cities/mumbai/maitri-bill-to-be-introduced-in-house-for-speedy-implementation-of-projects-8416363/> (Last visited on February 10, 2023).

¹⁶ The NSWS is a national digital platform to apply for approvals. More information is available at <https://www.nsws.gov.in/> (Last visited on April 1, 2024).

¹⁷ §2(h)

applicant.¹⁸ It can refer the matter to the Supervisory Committee which can recommend disciplinary action.

The Act provides for rationalisation of Inspections which will be based on random selection, and for an overriding effect of the Act over any other legislation that is in force in the State.¹⁹ §12 provides for the constitution of a Supervisory Committee consisting of the Secretary (Industries) as chairperson, who will give directions to the empowered committee, including any issues regarding Ease of Doing Business in the State. §6 provides for the constitution of an empowered committee with the Development Commissioner (Industries) as chairperson. This Committee will supervise Nodal Agency i.e. MAITRI set up by §14 of the Act.

Other Substantial Areas

Agricultural Land Leasing

The Maharashtra Agricultural Land Leasing Act, 2017 received presidential assent in 2023 (Mah. Act No. XXVIII of 2023) but has still not been notified. This Act along with the proposed L.A. Bill 52 of 2023 Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 2023 which seeks to amend the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 are important steps in the direction of making agricultural land available for non-agricultural purposes. The Land Leasing Act is modelled on the Model

¹⁸ Maharashtra Industry, Trade and Investment Facilitation Act, 2023, §5. (1) Notwithstanding anything contained in relevant law, if the Competent Authority fails to dispose off an application within specified time limit, then the Nodal Agency shall transfer such application to the Empowered Committee for taking necessary action under the relevant law:

Provided that, only those applications, for which the powers for disposal of applications under the relevant law are conferred on the competent authorities under the State Government, shall be transferred to the Empowered Committee.

(2) On transfer of the application under sub-section (1) to the Empowered Committee, the Competent Authority shall cease to have the powers to deal with such application under the relevant law.

§7. The Empowered Committee shall have the following powers, namely :—

(a) to consider and dispose off applications for permission under any relevant law in cases where the Competent Authority has failed to process and dispose off such applications, within the specified time limit;

(b) to invite any officer or expert as it deems necessary, to participate in the meetings of the Empowered Committee;

(c) to ask for reason for delay in disposal of application or rejection of application and to call for necessary information and to require personal appearance of concerned Competent Authority;

(d) to appoint any officer to inquire into the reason for delay in disposal of applications by the Competent Authority or the grievances raised by the applicant

(e) such other powers as may be prescribed.

¹⁹ Maharashtra Industry, Trade and Investment Facilitation Act, 2023 § 16

Agricultural Land Leasing Act proposed by the NITI Ayog.²⁰ §15 of the Act provides for an overriding effect over all other laws, which could impact a host of laws on Land and Agricultural land in particular such as the Maharashtra Tenancy and Agricultural Lands Act, 1948 ("MTAL"), and the Maharashtra Land Revenue Code, 1966 ("MLRC"). While the Act is called the Maharashtra Agricultural Land Leasing Act, 2017, and is being brought into force in 2023, §15 (clause 2) provides that the Act shall not have any retrospective effect, and that existing protected tenants and sharecroppers under existing Tenancy Laws will remain unaffected.

Local Bodies

The Mumbai Municipal Corporation and Maharashtra Municipal Corporations (Amendment) Act, 2023 L.A. 1 of 2023 passed by both houses on 2 and 13 March respectively and notified as Act 14 of 2023 on 23 March amends §5 of both acts to increase the number of nominated councillors from 5 to 10.

This amendment is in addition to the Mumbai Municipal Corporation (Second Amendment) Act, 2022 (Mah. Act No. I of 2023) which was first promulgated as an Ordinance, Ord. XII of 2022, is in effect from 24 November 2022. This amendment ensured that the capital value of buildings or land would not be revised and would remain the same. This amendment introduced during the covid pandemic was intended to provide relief to taxpayers by not enhancing the value of buildings and land. This was further extended to the next year 2022-23 also.

The Maharashtra Village Panchayats (Amendment) Act, 2023 L.A.II of 23 was passed by both houses on 28 February and 13 March respectively and became Act 15 of 2023 on 23 March. The Act increases the penalties prescribed under the Act from 300 rupees to 1500 rupees. The earlier penalty was either 300 rupees or imprisonment for one month or with both. The Act does away with imprisonment but hikes the penalty by 5 times. In clause (ii) the penalty of 500 rupees or 6 months of imprisonment or both is hiked to 5000 rupees which is 10 times the existing penalty.

Essential Services Maintenance Act 2023

The Maharashtra Assembly has passed a new ESMA in 2023 but has not notified the Act yet. It will be in effect for a period of five years. The legislation has received presidential assent. The Act repeals the MESMA (Maharashtra Essential Services Act) 2017.

²⁰ Report of the Expert Committee and Model Law on Agricultural Land Leasing, NITI Ayog Government of India, 2016, available at <https://www.niti.gov.in/sites/default/files/2023-02/Report-of-the-Expert-Committee-and-Model-Law-on-Agricultural-Land-Leasing.pdf> (Last visited on March 29, 2024).

Fire Safety

Major amendments have been recommended to the Maharashtra Fire Prevention and Life Safety Measures Act, 2006. The new amendments provide for an enhanced fire and emergency services fee. The fee is now levied at a rate that is linked to the built-up area of the building. Traders associations have represented to the Government that the burden will ultimately be borne by the end customer and lead to decrease in investment in the State. The Times of India reports that major fires in Kurla, Dadar and Malad have prompted the state government to take this measure.²¹ The bill provides for the appointment of a fire safety officer and for an IOT (Internet of Things) based sensor which must be mandatorily installed in major public buildings. The High Court of Mumbai had constituted an expert committee to suggest safety measures which have been pending with the government. On 6 December 2023, the High Court pulled up the government for not notifying the safety rules to curb man-made disasters in vulnerable buildings such as in Girgaon in which a century old building caught fire leading to the death of two persons. Frequent fire accidents have occurred in the past and PIL's have been filed regarding a fire at Kamala Mills. A PIL was filed in 2019 regarding special regulations for buildings which are vulnerable to man-made disasters. Draft regulations have been pending since 2009. The amendment Act has not been notified.

Ordinances

9 Ordinances were promulgated in 2023. These included amendments passed to 6 legislations (Maharashtra Apartment Ownership Act, Maharashtra Public Universities Act, Maharashtra Goods and Services Tax Act, Maharashtra Co-operative Societies, the Maharashtra Regional and Town Planning, Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis Act). These amendments to statute raises a serious concern regarding the use of Ordinances to bring about long-term changes. Arts. 213 and 123 of the Constitution of India, 1950 provide for ordinances to be made at a time the Legislative Bodies are not in session and are usually intended as stop gap arrangements. The Supreme Court in *Krishna Kumar v. State of Bihar* (2017) 3 SCC 1 deplored the need for ordinances to bypass legislative action. Increasingly, however, it has been observed in the Indian context that there is no real difference between the exercise of the Ordinance making power and the legislative power except that Ordinances come into

²¹ Chittaranjan Tembekar, *Mobile alerts for fire safety in bill passed by Maharashtra Assembly*, March 24, 2023, available at <https://timesofindia.indiatimes.com/city/mumbai/mobile-alerts-for-fire-safety-in-bill-passed-by-house/articleshow/98956071.cms> (Last visited on February 16, 2024).

effect immediately. The significance of using the Ordinance route as demonstrated by the repeal of Ordinance 7 is that an Ordinance can be repealed at any time and as held in the Krishna Kumar case would not always create enduring rights. In the year under review, the Maharashtra Temporary Extension of Period for Submitting Validity Certificate (for certain elections to Village Panchayats, Zilla Parishads and Panchayat Samitis) Ordinance is the only Ordinance which was created for a specific purpose and loses any significance after the purpose is served. It creates no lasting or enduring rights unlike a legislation which is designed to do so. The lack of any distinction between an Ordinance and Legislation is also seen in the way that a major legislation that has the effect of nullifying the powers of several competent authorities under various statutes, the MAITRI Act, was initially proposed as a statute, and since it could not be passed, took the route of an Ordinance and then converted into a statute and given effect to from the date of the Ordinance.

It was very clear that the Government used the Ordinance route to fast-track legislative action. All the Ordinances converted into statutes were given effect to from the date of the Ordinance. These Ordinances included some drastic amendments such as the amendment to the Maharashtra Apartment Ownership Act, allowing for the forcible eviction of members obstructing redevelopment.

Only one Ordinance was withdrawn, Ordinance 7 of 2023, as it was rendered redundant by the Repeal of the Casinos Act, 1976. The Ordinance was later converted into a Bill No L.A.48 of 23 as the Maharashtra GST (second amendment) Act 2023 and proposed to levy 28% GST on gaming, betting, casinos, horse racing and lottery. However, after the Maharashtra Assembly passed an Act to repeal the Maharashtra Casinos (Control and Tax) Act, 1976, the ordinance was withdrawn. The repeal of the legislation that was in place since 1976 is also interesting as this legislation was never brought into force. The Law repealing the Casinos Act was passed two days after the High Court was approached by Casino owners to direct the Government to release the regulation of casinos that were drafted under this Act²²

Proposals Referred to the Joint Committee

Several important legislations were not passed but referred to the Joint Committee. These include several legislations on farmers' issues. The Maharashtra Payment of Compensation to Farmers (for loss caused due to adulterated, non-standard or misbranded seeds, fertilisers or insecticides) Act, 2023, was not passed and instead referred to a joint

²² Rosy Sequeira, *State must decide on notifying law on casinos: Plea in HC*, Times of India Mumbai, January 2, 2024, available at <https://timesofindia.indiatimes.com/city/mumbai/maharashtra-must-implement-law-on-casinos-plea-in-hc/articleshow/106463398.cms>(Last visited on March 29, 2024).

committee. Similarly, amendments to the Seeds Act, the Insecticides Act and the Mathadi Act were not passed. The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing of Essential Commodities, Act which proposed to add offenders such as fertilizer offender and insecticide offender is also before the joint committee. Maharashtra passed the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons and Video Pirates Act in 1981. These amendments are proposed to this Act.

Retrospective Effect to Legislations

One of the significant aspects of law making this year is the retrospective effect given to both legislation and rules. The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) (Amendment, Re-enactment of Rules and Notification of Apex and other Grievance Redressal Committees and Validation) Act, 2023 was given effect from 2017.

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 was amended twice in the year 2023. The first was to give retrospective effect and to validate the Grievance Redressal Committee that was set up under the Act and secondly to reduce the period that allottees under the redevelopment plan had to wait before they could sell their flat

The first amendment was required as the Grievance Redressal Committee was set up without any provision in the Act. The amendment was made after the High Court pointed it out in litigation around the Grievance Redressal Committee. §9 of the amendment act provides that notwithstanding any judgment, decree, or order of any court, tribunal or authority relating to the notification that constituted the committee, the committees will be deemed to have been duly and validly re-enacted with retrospective effect and would be deemed to be operative at all times.

The second amendment to the Act L.A. 62 The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) (Second Amendment) Act, 2023 allows those allotted flats in the slum area redevelopment plan to sell their flats after a 5 year waiting period. The waiting period to sell a flat has been reduced from 10 to five years by amending §3(E). L.A. 21 of 23 had initially provided that the period be reduced to 7 years but by the second Bill the period was further reduced to 5 years.

The other legislation making a provision for a retrospective effect is Act XLIV of 2023, Maharashtra Municipal Corporation of the City of Pune Taxation (Enactment and Amendment of Taxation Rules with retrospective effect and Validation) Act, 2023. This Act has not yet been notified but proposes to make amendments to the way the determination

of rateable value of buildings or land in the Municipal Corporation of Pune shall be made or deemed to have been made from the 1 of April 1970. The amended rule provides that 15% of the annual rent shall be allowed as a deduction, and in case the owner exclusively occupies the building, then the rate of deduction shall be 40%.

Regional Development Imbalances in Maharashtra

Art 371(2) of the Constitution of India was introduced to address imbalances in equitable allocation of funds and access to education and employment opportunities. The provision states that the President may provide for special responsibilities of the Governor to establish separate development boards for Vidharbha, Marathwada and the rest of Maharashtra. The imbalances in per capita income between the regions has been noted in the Economic Survey of Maharashtra. Similarly, the imbalances in FDI (Foreign Direct Investment) is also evident. IT Parks are concentrated in and around Mumbai while there are none in Amaravati and just 3 in Aurangabad.²³

Despite this specific mandate Regional Boards have not been constituted since April 30, 2020.²⁴ The Deputy Chief Minister claimed that Vidharbha and Marathwada received more funds than when the Statutory Development Boards were in place.²⁵ Despite this claim he also maintained that a letter was sent to the central government with a request to expedite the process for reorganisation of the Vidharba, Marathwada and rest of Maharashtra statutory development boards. The Boards have been in existence since 1994 and have only lapsed since 2020.

Conclusion

The year under review saw legislative activity on several important issues. The priorities of this legislature were facilitation of trade and investment which saw rapid action overriding

²³ Dilip Chaware, *Development Boards have failed to develop*, available at <https://www.theresource24x7.com/monitor/development-boards-have-failed-to-develop/> (Last visited on April 1, 2024).

²⁴ *Govt reconstitutes development boards for Marathwada, Vidarbha, other areas*, The Indian Express, 6 October 2022, available at <https://indianexpress.com/article/cities/mumbai/govt-reconstitutes-development-boards-for-marathwada-vidarbha-other-areas-8176961/>; Vaibhav Ganjapure, *Why statutory boards' proposal was delayed*, High Court to Centre, TOI, Nagpur, March 7, 2024, available at <https://timesofindia.indiatimes.com/city/nagpur/why-statutory-boards-proposal-was-delayed/articleshow/108280352.cms> (Last visited April 1, 2024).

²⁵ Vaibhav Ganjapure, *Vidharba, Marathwada got more funds than allotted*, TOI Nagpur, 15 December 2023, available at <https://timesofindia.indiatimes.com/city/nagpur/vidarbha-marathwada-got-more-funds-than-allotted/articleshow/106006229.cms> (Last visited on April 1, 2024).

other legislations and areas such as farmers rights which did not see a quick response. While several bills were proposed on important areas such as fire safety, they were not speed tracked like the Apartment Owners Act which has drastic measures for eviction of tenants. A trend that is visible from the earlier survey also indicates that the use of the Ordinance route is resorted to speed track some issues. Bills are proposed as Ordinances and passed with immediate effect. As observed in the earlier survey as well, there are no field restrictions on what issues may be addressed through ordinances and what needs legislative deliberations. The lack of a separation of executive and legislative law-making power is observable in this year as well.