

Compiled thoughts on how to proceed with KAOA+KOFA

Original thought	Remarks	My comments
Here are some first thoughts on the key prayers in a PIL. These are the major ones I can think of in KAOA. Ideally, we should look at KOFA and add anything relevant as well.		

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<p>1. Direct the Registrar of Cooperative Societies (Cooperative department) to assume the role of competent authority and to notify procedures for actions as described in section 11(2), 12(2) and 16</p>	<p>Well, the Cooperative Societies Act is written to regulate manufacturing, industrial, or commercial activities. It is actually a replacement of Companies Act for the cooperative sector.</p> <p>That's why it is too heavy-weight for our purpose, and many of the provisions are not applicable to us at all.</p> <p>So I recommend the following:</p> <ol style="list-style-type: none"> <li>1. We should benchmark against CSA and short list the clauses that are needed, and add them to the definition of bye-laws and code of conduct specified in the KAOA.</li> <li>2. Also, KAOA should stipulate that when the DoD is registered, the association is deemed as a registered <b>housing cooperative society</b>, with the bye-laws and code of conduct that are submitted to the registering authority.</li> </ol> <p>The main advantage is that while an AOP has to pay Income Tax directly on the earned interest (as TDS), a co-operative society's tax is based on the remainder (after deducting expenses and depreciation).</p>	<p>CSA applies to only six welfare measures/activities; does not apply to maintenance and management of a condominium .DOD should be first registered before selling apts. Does not cover the ownership of common areas and common assets</p>
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<p>2. Direct the Inspector General of Stamps and Registration to ensure compliance with KAOA and KOFA. By this, one intends that the sale agreement and deed to be registered by reviewed to check which type of community the builder/promoter has envisaged and agreed upon with prospective buyers, whether a coop society or a company or ans Association under KAOA.</p> <p>For cases where an association under KAOA is envisaged, a Deed of Apartment is to be registered as per KAOA. No Deed of Apartment to be registered without a Deed of Declaration being registered first and entered into the book called “ Register of Declarations and Deeds of Apartments under the Karnataka Apartment Ownership Act, 1972” and Index relating thereto. All Deed of Apartments also to be registered in said register. (Refer section 13 of KAOA.</p>	<p>Instead of this, the Real Estate Authority (REA) is a better agency, which is anyway supposed to deal with such issues on a full-time basis.</p> <p>However, the current Real Estate Bill has precisely the same issues. We have already raised the following issues with the Select Committee:</p> <ol style="list-style-type: none"> <li>1. The real estate business is actually managed by various agencies at central, state and ULB levels. The REA must have judicial powers, so that it can demand information from these diverse agencies.</li> <li>2. The REA must be headed by a senior officer with a full-fledged infrastructure, instead of a minor officer moonlighting on this job.</li> </ol> <p>To see all comments on the Bill, follow this <a href="#">link</a>.</p>	<p>I agree</p>
<p>3. To clarify and direct Registrar of societies to not register apartment associations as ill disguised welfare societies</p>	<p>Yes, but this will be meaningful ban only when a viable alternative is offered, in the form of REA.</p>	<p>since none of the objectives are coming under CSA,ROCS should direct the G of Regn and stamps not register under CSA</p>

<p>4. Clarify Clause 2: <i>This Act applies only to property the sole owner or all of the owners of which submit the same to the provisions of this Act by duly executing and registering a Declaration as hereinafter provided:</i></p> <p><i>Clarify that a full reading of the act and rules makes it clear that the term "owner or owners" in the context of this act refers to the builders/developers/promoters of the project.</i></p>	<p>No it does not. In case the property is taken out of KAOA, and then re-inducted in KAOA, it refers to the existing owners. So the wording is fine, but subject to misinterpretation by even the lawyers; which can be exploited.</p> <p>What we need is an FAQ that reinforces these concepts, and also exposes all the existing malpractices. The FAQ must also explain who is fault for each issue, and how to remedy the situation.</p> <p>For example,</p> <ol style="list-style-type: none"> <li>1. My builder says that our property is not submitted to KAOA. Is that ok?</li> <li>2. My builder says there is no DoD. Is this OK? How am I affected?</li> <li>3. My builder does not share the DoD. What should I do?</li> <li>4. My builder has sold extra car slots to some owners. What should I do?</li> </ol> <p>Such a FAQ would spread like wildfire, especially if prominently shared by the community portals such as CommonFloor, Apna Complex and Apartment Adda.</p> <p>To make it authentic and visible,</p> <ol style="list-style-type: none"> <li>(a) we should get it vetted by a panel of lawyers</li> <li>(b) get it released by a senior officer (e.g. Lokayukta) through a public function</li> </ol> <p>The <b>Namma Bengaluru Foundation</b> can help us in both these things.</p> <p>The confidence will be boosted even further if we can pray to HC that it should direct the authorities to hold mass camps for common problems.</p>	
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<p>We need to split our activity into multiple buckets.</p> <p>A. First piece is a PIL approach (unless there is a viable alternative that everybody agrees with). A PIL can only revolve around existing legislation and the shortcomings in implementation. Amendments and improvements are not within the scope of the judiciary nor should we try to make it.</p> <p>B. Second piece is amendment: This needs serious push, via all available channels. Amendment should not be linked to implementation of existing law.</p> <p>C. Thirdly, an important piece is repair. There are many properties with varying levles of compliance with existing law. The number of people involved is huge. There is a need for clear remedy for such affected persons so that they can become compliant.</p> <p>D. Education: People should know the right process and insist on it so that the law is implemented as intended.</p>	<p>As I see it, the issues fall in three categories, each of which needs a different treatment:</p> <table border="1" data-bbox="1108 212 2074 509"> <thead> <tr> <th>Category</th><th>Treatment</th></tr> </thead> <tbody> <tr> <td>Absence of law</td><td>File a PIL that our fundamental rights are affected in absence of a law. The court can direct the state to enact a law.</td></tr> <tr> <td>Ineffective laws</td><td>File a PIL that our fundamental rights are affected because of a lacuna in the law. The court can direct the state to amend a specific law.</td></tr> <tr> <td>Non-Compliance</td><td>Complain to Lokayukta about the violation</td></tr> </tbody> </table> <p><i>Public education</i> is a separate dimension, and we will need to do that regardless of how we tackle the problems.</p> <p>Another idea I have is to hold corrective camps for each problem. Anyone who has one type of problem should register, and the authorities must call them to solve that one issue.</p> <p>For example,</p> <ol style="list-style-type: none"> <li>1. If the builder has not made a DoD, all such RWAs can register themselves, and the respective builders are issued a notice to make a DoD within x days and get it registered.</li> <li>2. If the builder has sold off some visitors' car parks, he is asked to correct the DoD, Sale Deeds and khata within a specified time period.</li> </ol> <p>If the officers play any mischief, the authority must book them with criminal misconduct.</p>	Category	Treatment	Absence of law	File a PIL that our fundamental rights are affected in absence of a law. The court can direct the state to enact a law.	Ineffective laws	File a PIL that our fundamental rights are affected because of a lacuna in the law. The court can direct the state to amend a specific law.	Non-Compliance	Complain to Lokayukta about the violation
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<p>How to calculate UDS?</p> <p>The UDS is based on the percentage of the super built up area of the apartment to the total super built-up area of all the flats. For instance, if 4 equally sized apartments of 1000 sq ft were built on one ground of land which measures 2400 sq ft, the UDS will be calculated as below:</p> <p>UDS = Super built-up area of individual flat / Sum of all flats' built-up area X Total land area</p> <p>UDS = 1000 X 2400 / 4000</p> <p>UDS of individual flat = 600 sq ft. -</p>	<p>This formula is NOT correct, on two counts:</p> <ol style="list-style-type: none"> <li>1. KAOA formula is based on valuation, not area.</li> <li>2. This formula is not affected if someone claims ownership of extra slots.</li> </ol> <p>For example, assume that your apartment has 100 slots, and some people claimed extra 20. If you simply total up the areas claimed by everyone, your formula will hide the problem that your complex does not have 120 slots officially.</p> <p>Literally, KAOA defines the UDS in common areas as:</p>								

	<p>UDS = <math>\frac{\text{value of (your apartment+limited common areas)}}{\text{value of the whole property}}</math></p> <p>Note that this formula is flexible: It freely allows us to assess the values based on the carpet area, without attaching any premium to certain apartments.</p> <p>Note that the denominator value is independently counted, not as a sum of all claims. That's why if someone claims extra property, it is highlighted immediately.</p>
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<p>We have to implead the Chief Secretary of Karnataka Government also in the PIL.</p> <p>In the RTI case filed by Mr. C. N. Kumar with Karnataka Information Commission (having the same status of High Court Judge}, the UDD has taken the responsibility of implementing <b>the KOFA</b>. KAOA is supplementary act of KOFA which one will understand by Please reading together the Rule 5 of KOFR and explanations to this rule, Section 3 and Section 10 of KOFA.} In this case the Commission has directed the respondents as follows.</p> <p><b>“Commission directs the Respondents to ensure that the proposed amendments in the model bill are examined by the Government and after incorporation of the suggested amendments in the bill, if any, to the existing Act, the rules are framed with the assistance of Department of Parliamentary Affairs and Legislation at the earliest for effective implementation of the Act”.</b></p> <p><b>All respondents have collectively failed to implement the directions of the KIC.(Resopndents</b> -(Housing Department, State Finance Department, Department of parliamentary affairs and legislation, Urban Development Department, State Cooperative Department}</p> <p><b>We can also implede all the respondents in the above case in addition to the officials mentioned in your email.</b></p> <p>The need of the hour is to find out a good senior advocate. We have sufficient materials and court judgments with us.</p> <p>I hope, our group members meet at an early date and decide on the step to be followed for filing of PIL. We should also explore the possibilities of meeting RC and RG and through them the UDD Minister, Mr. Sorake and the Chief Minister.</p>	<p>Yes. This case gives us a good head-start.</p>
<p>In the list of OPs, not to forget to additionally include, CREDAI (central/state), the representative body of most leading promoters/builders, being the body to be targeted as mainly responsible for all the woes of buyers,on account of non-compliance with law.</p> <p>The blame, if i recall, as underlined repeatedly earlier, lies with CREDAI in having misled its members wrt compliance with the most fundamental</p>	<p>CREDAI is only a body formed for the purpose of lobbying with the government.</p> <ul style="list-style-type: none"> <li>● It not a statutory body like ICAI. In fact, out of 700 odd builders in Karnataka, hardly 200 are its members.</li> <li>● It does not entertain complaints against its members.</li> </ul>



requirement of mandated DoD!(ref. my input on Praja site)	It does not discipline its members by imposing fines or disqualifying them.
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