Towards A Post-Covid India

25 GOVERNANCE CHALLENGES AND LEGAL REFORMS

Towards A Post-Covid India

25 GOVERNANCE CHALLENGES AND LEGAL REFORMS

with a foreword by the Chief Justice of India

Published in June 2020 by
Vidhi Centre for Legal Policy
A-232, Defence Colony
New Delhi 110024

Designed by Ananya Khaitan

Set in GT Super Text by Grilli Type
and Lato by tyPoland

Printed by Naveen Printers
F-11/B, Okhla Phase I
Okhla Industrial Area
New Delhi 110020

This briefing book is an organisation-wide publication of the Vidhi Centre for Legal Policy.

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

AUTHORS

Aditya Ranjan
Aishwarya Satija
Akash C Jauhari
Akhileshwari Reddy
Akriti Bopanna
Akriti Gaur
Akshat Agarwal
Alok Prasanna
Ameen Jauhar
Aniruddh Nigam
Arghya Sengupta
Astha Pandey
Chitrakshi Jain
Damini Ghosh
Debadityo Sinha
Debanshu Mukherjee
Deepika Kinhal
Dhvani Mehta
Esha Rana
Jinaly Dani
Kadambari Agarwal
Kevin James
Kim D'Souza
Kriti Pradhan
Kritika Chavaly
Lalit Panda
Malavika Rajkumar
Manjushree RM
Manmayi Sharma
Megha Neelakshi
Naina S
Naveed Mehmood
Neha Singhal
Nikhil Kapoor
Oitihjya Sen
Pooja Pandey
Pranay Modi
Reshma Sekhar
Ritwika Sharma
Shashank Atreya
Shehnaz Ahmed
Shonottra Kumar
Shreya Garg
Shreya Shrivastava
Shreya Tripathi
Shyama Kuriakose
Sneha Visakha
Sneha Yanappa
Sreyan Chatterjee
Sumeysh Srivastava
Sunetra Ravindran
Tarika Jain
Trishi Jindal
Vaidehi Misra
Vedika Mittal
Vidushi Gupta
Vinti Agarwal
Yeesha Shriyan
Yogini Oke

COORDINATORS
Neha Singhal
Arghya Sengupta
Naveed Mehmood
Sreyan Chatterjee

FINANCE TEAM
Alakto Majumder
Archana Khanduri
Bhavya Arora

ADMINISTRATIVE TEAM
Abhishek Pyase
Amit Chindaliya
Kailash Chandra Pant
Mohit
Raju
Shyamal Mukherjee
Manish

COMMUNICATIONS TEAM
Richa Bansal
Sonali Verma
Himani Baid

Foreword

Justice Sharad Arvind Bobde
Chief Justice of India

In Sanskrit, there is a phrase "स्वस्मै स्वल्पं समाजाय सर्वस्वं"—a little bit for oneself, everything for society. The coronavirus pandemic has reaffirmed the wisdom underlying this phrase. This epochal event has demonstrated that as individuals we are trifling in comparison to the forces of nature. It is only through our resilience and discipline as families, neighbourhoods, cities, countries and the world itself, that we can collectively overcome our common tribulations.

It is this spirit of collective reform that I find pervades through this book. There is little doubt about the fact that the coronavirus pandemic has forced everyone to look inwards into the changes that are needed to restore, renew and reinvigorate ourselves. It is no different for law and governance institutions in India. At the Supreme Court, we have been successfully operating virtual courts through the pandemic. Several High Courts have done the same. Some of these changes would have been unthinkable six months ago. But they have been implemented and are now providing access to justice to our countrymen and women in these trying times.

These changes are only the tip of the iceberg. It is inevitable that more reforms will follow. This book, with its careful research, suggests structural changes to the law and governance frameworks in India. The suggested reforms aim to strengthen public health systems, protect the vulnerable, make governance smart, kick-start

the economy and think digital first. Each of these reform suggestions deserve close consideration of the concerned ministries of the Government of India and State Governments.

Particularly at this time, we have to find a way to quickly and efficiently settle disputes that will arise. Compulsory mediation and other forms of online dispute resolution are the need of the hour and, therefore, must be explored so that India can be at the vanguard of global advancements in this regard. To facilitate this, the need to make internet coverage 100% and bring in relevant legislative changes hardly requires any debate. This book contains some useful and well-researched recommendations in this regard.

Just over a century back, in 1918, as the Spanish flu was ravaging India, in Kheda district of Gujarat, which was suffering from a near-famine, Mahatma Gandhi began a satyagraha with Sardar Vallabhbhai Patel and others to suspend the revenue assessment for that year. The Mahatma demonstrated how to channel one's inner strength for the collective good. It is time for all of us, a century later, to follow his example. I commend Vidhi for its efforts in this direction.

Introduction

Sumit Bose
Chairman, Board of Directors

The COVID-19 pandemic has exposed and compounded the deep-rooted inequality in our society. It has led to a trifecta of a health emergency, an unimaginable humanitarian crisis and an unprecedented economic fallout. It is imperative that we recognise these and respond effectively through thoughtful and empathic laws and policy decisions which places the most vulnerable and marginalised at the forefront. There is a tendency in all of us to want to 'return to normalcy', but perhaps we are instead seeing a 'new normal' arise. This is as an opportunity to examine the structural reasons that have exacerbated the hollowness of the rights and freedoms of the marginalised citizenry and attempt to address these at the core. Prof. Frank M. Snowden says that "epidemics are a mirror for humanity, reflecting the moral relationships that people have toward one other". It forces us to question our priorities, lifestyle and privileges. In this case, while the dark side of our society stands completely exposed, it has also brought attention to the everyday heroes who are otherwise unrecognised.

Based on its stellar research and analysis, the researchers of Vidhi Centre for Legal Policy in its briefing book for the year 2020 suggests 25 legal reforms that must be carried out to equip our institutions to face crises such as the pandemic and address the socio-economic challenges that have been thrown up. In order to

build a more resilient and equitable India, Vidhi has identified five core areas of reform and has made recommendations to strengthen existing systems, create new frameworks where these are missing or falling short, raise resources for emergencies and adopt sustainable practices during and post the pandemic. The suggested legal reforms are accompanied by implementation strategies. All levels of government, central, state and local bodies and all citizens have a stake in the changes proposed.

Pandemics have shaped history and facilitated large-scale changes in laws, policies, politics and social order. The Black Plague caused a paradigm shift in the previously rigid feudal European society. The abysmal handling of the 1918 flu pandemic by the British in India had a significant influence on India's freedom movement. The COVID-19 pandemic has given us the time to pause and think. The need of the hour is for each of us to contribute and raise the level of public discourse to offer meaningful and actionable ideas. After all, it is We the People who are at the core of it all.

Ideas change the world.

Contents

Strengthen Health Systems

3

Draft a Public Health Emergency Preparedness and Response Law

ATTENTION:
Ministry of Health and Family Welfare
Departments of Health, State Governments
Departments of Medical Education, State Governments

PROBLEM Experts have, for the past decade and more, warned of the looming threat of what may be called an age of pandemics, owing in part to globalisation, urbanisation, and climate change. According to the World Health Organization, as of 2017, India had attained most core capacities under the International Health Regulations, 2005 in relation to public health emergencies (PHEs). Despite this, the COVID-19 pandemic appears to have caught India off-guard, prompting an ad-hoc response and stretching available legal provisions to authorise improvised executive action.

The laws employed in the ongoing crisis are the Epidemic Diseases Act, 1897 (EDA) and the Disaster Management Act, 2005 (DMA). Unfortunately, neither of these constitutes an effective legal framework for PHE preparedness and response. Although the EDA principally empowers states to take action necessary to contain an outbreak, some state regulations under the Act have ceded control by treating Central Government advisories as binding directions under the EDA. In turn, the Central Government, which, under the EDA, has powers restricted to the inspection and detention of vessels and passengers at ports, has relied on the DMA to issue directions that are much wider in scope, ranging from mass containment measures to price controls for testing in private laboratories. However, it is clear from the scheme of the DMA that it contemplates

natural and man-made disasters and not disease outbreaks or PHEs.

In what is presumably an attempt to update the EDA, the Public Health (Prevention, Control and Management of Epidemics, Bio-terrorism and Disasters) Bill, 2017, also falls prey to the flawed approach of heavy-handed policing provisions, while failing to define the roles and functions of government, ensure the protection of patient rights, and institute swift and accessible dispute resolution processes.

An effective legal framework goes towards ensuring that PHE preparedness and response plans stand independent of political and economic fluctuations. The absence of a strong public health system and PHE legislation in India has resulted in extreme containment measures and coordination and communication failures, leading to large-scale displacement of migrant workers, inadequate supply of protective equipment to healthcare workers, misuse of police power, and patients absconding from isolation facilities.

SOLUTION A clear and decisive legal framework, delineating the rights and duties of various stakeholders needs to be put in place to facilitate an effective PHE response. Such a response ought to empower the government to manage the PHE, while safeguarding patient rights and reducing friction between the various organs and levels of state machinery.

IMPLEMENTATION

- Enact a central Public Health Emergency Law that:
  - delineates the powers and functions of the various levels of government
  - establishes a clear PHE communication and command structure
  - defines and categorises PHEs and creates a mechanism to modify the PHE response accordingly
  - defines the scope and limits of governmental powers
  - safeguards the rights of individuals
- Empower states to create rules and PHE response plans appropriate to their needs
- Dedicate a component of the health budget for PHE preparedness.

Guarantee the Occupational Health and Safety of Healthcare Workers

ATTENTION:
Ministry of Labour and Employment
Departments of Labour and Employment, State Governments
Departments of Health, State Governments

PROBLEM In the battle against the Covid-19 pandemic, the lack of Personal Protective Equipment (PPE) for healthcare workers has itself turned into a significant public health risk. While the lack of PPE has often been highlighted, it is the incidents of violence against healthcare workers that have received the most attention. To address this, the Central government passed an ordinance amending the Epidemics Diseases Act, 1897 to make violence against healthcare workers during an epidemic a cognizable and non-bailable offence with enhanced punishment.

This is an understandable political response. But it is inadequate in protecting health workers from the gamut of obstacles that they face. As far as the issue of violence itself is concerned, the ordinance protects healthcare workers only during an epidemic, although it is clearly a systemic problem that exists outside of the current situation. It also fails to recognise that violence in healthcare settings cannot be deterred by criminal punishment alone, but needs more structural reforms.

More importantly, other critical facets of occupational health and safety such as the mental well-being of healthcare workers (exacerbated during this time), clean and hygienic workplaces, quarantine facilities for healthcare workers who have direct contact with patients, and an adequate supply of PPEs remain unaddressed. This is because there is no legal

framework to guarantee occupational health and safety for healthcare workers, unlike other sectors.

The Government of India introduced the Occupational Safety, Health and Working Conditions Code, 2019 (Code) in Parliament last year. The Code attempts to consolidate and amend thirteen different laws that regulate the occupational health and safety of persons employed in an establishment. It provides a broad legislative framework under which occupational safety standards can be framed for different sectors. Though an establishment under the Code includes all places with ten or more employed workers where any industry, trade, business, manufacture or occupation is carried on, it is unclear whether it extends to healthcare establishments.

SOLUTION Healthcare workers must have a dedicated occupational health and safety framework. The International Labour Organisation mandates that all member nations shall establish a national system for occupational safety and health, which shall include laws and regulations as well as an authority responsible for occupational health and safety. While the re-hauling of the occupational health and safety framework by the Code is a step in the right direction, its application to the health sector is the need of the hour to ensure safe working conditions for healthcare workers and to provide protection from occupational hazards likely to cause death or serious physical or mental harm. This is the least we can do for our frontline health workers.

IMPLEMENTATION

- Extend the applicability of the Code to healthcare establishments.
- Ensure representation for healthcare workers on National and State Occupational Safety and Health Advisory Boards proposed to be established under the Code.
- Issue enforceable occupational safety standards for the health sector under the Code once it is enacted.
- Update requirements for healthcare establishments under other laws and schemes to reflect these standards. This includes updating the Indian Public Health Standards, which set norms for healthcare establishments under the National Health Mission as well as standards under the National Board for Accreditation of Hospitals and Healthcare Providers and the Clinical Establishments (Registration and Regulation) Act, 2010.

Reinvigorate the Practice of Clinical Ethics

ATTENTION:
Ministry of Health and Family Welfare

PROBLEM Clinical practice can be an ethical minefield for healthcare professionals. Difficult decisions must be taken on a daily basis. In India, these decisions are made even more difficult because of the chronic scarcity of public health services and the unaffordability of private healthcare for a significant section of the population. Should doctors allow the withdrawal of life-sustaining treatment when they know that the patient has refused it for financial reasons? Should they even offer expensive treatment options to those for whom it might be an economic burden? What about treatment demanded by a patient that the doctor believes will not be beneficial? Resolving problems like this is the core of clinical ethics.

The Covid-19 pandemic has sharpened such dilemmas. Doctors the world over are preparing to ration limited supplies of life-saving equipment and attempting to balance their duty of care to patients against the risk to their own lives. India, however, does not have any clinical ethics guidelines to help doctors in these scenarios. The World Health Organisation checklist for pandemic influenza risk and impact management lists as an essential component, the establishment of ethics committees that can advise on pandemic preparedness and response. India's draft Action Plan (developed to manage A H1N1) does not address any ethical issues at all, leave alone create special-

ised ethics committees. The absence of ethical guidance is an added source of stress for healthcare professionals who are already under a great degree of strain, and who are not equipped to deal with hard, ethical questions. Their inability to tackle clinical ethics dilemmas diminishes public confidence in them and can ultimately be a factor in provoking violence in healthcare settings.

Studies conducted in India to test the level of awareness of clinical ethics among healthcare professionals reveal poor training. In one study conducted at a government hospital in Chennai, 40 percent of the professionals surveyed could not name a single clinical ethical principle. Although new changes to the medical curriculum have introduced ethics competencies, there is still no proactive thinking about clinical ethics issues. The ethics regulations of the Indian Medical Council focus primarily on professional misconduct and have not been updated since 2002 to account for the latest medico-legal developments such as a recent Supreme Court judgment on the withholding and withdrawal of life-sustaining treatment. While the Indian Council of Medical Research has a dedicated Bioethics Unit, it focuses primarily on biomedical research ethics and has published little guidance related to clinical ethics.

SOLUTION Healthcare professionals in India should receive clinical ethics support in their daily practice. The need for such support, which is distinct from that provided by research ethics committees, has been acknowledged in other countries. This support should be two-fold—first, in the form of authoritative guidance that is mindful of the realities of the Indian health system; second, through the provision of individual decision-making support within healthcare establishments by an interdisciplinary group of experts trained in clinical ethics.

IMPLEMENTATION

- Establish a dedicated Clinical Ethics Unit within the Indian Council of Medical Research that can conduct research on, and issue guidance on clinical ethics issues.
- Educate healthcare professionals regarding guidance issued by this Unit through coordination with the Ethics and Medical Registration Board of the National Medical Commission, once it is constituted.
- Develop guidelines for the provision of different kinds of clinical ethics support services, such as consultations with healthcare teams, facilitating shared decision-making between patients and healthcare professionals, conducting audits of clinical practices.
- Identify tertiary care hospitals in the public and private sector that are likely to benefit from clinical ethics support services and assist them in setting up clinical ethics committees.
- Gradually introduce standards related to clinical ethics support services as requirements for the accreditation or registration of select categories of healthcare establishments.

Make Patient Rights Effective

ATTENTION:
Ministry of Health and Family Welfare
Departments of Health, State Governments

PROBLEM During a pandemic, patient rights, which draw heavily on autonomy, can conflict with public health interests. For instance, compulsory isolation is antithetical to the notion of informed consent. While restrictions like this might be necessary in public health emergencies, it is vital that other patient rights continue to be respected if trust in the doctor-patient relationship and the health system is to be maintained.

There have been serious erosions of this trust during the COVID-19 pandemic. Patients have had medicines thrown at them, been refused admission without a COVID-19 test, been slapped with inflated bills, and made to run from pillar to post hunting for beds. Hospitals have failed to display treatment charges, denied admission to persons in need of emergency treatment, and discriminated against Muslim patients. These actions are in breach of the Patient Rights' Charter drawn up by the National Human Rights Commission and partially endorsed by the Ministry of Health and Family Welfare. The original version of the Charter lists 17 patient rights, including the rights to dignity and non-discrimination, quality care, access to records and emergency medical care, the availability of alternative treatment options, and the right to seek redressal.

Some of the obligations created by these rights, especially in relation to confidentiality, informed consent and clinical

research are already binding through common law or regulation. However, most of the others lack teeth. As a result, a variety of enforcement tools has been deployed during the course of the pandemic, from criminal complaints to threats to cancelling the registration of healthcare establishments to inquiries by authorities like state health secretaries, chief medical officers and district magistrates (with all three ordering separate inquiries in one case). These are of limited effectiveness—the rights in the Charter have not been incorporated into standards that must be observed by healthcare establishments, and the Charter itself has no legal backing.

Even when these rights can be enforced, the remedies are unimaginative and inappropriate. Suspending a hospital's licence, even outside a pandemic, impedes access to health. Criminal action is too slow to have any real deterrent value. And as the relatives of a pregnant woman who died after being refused admission by hospitals in Noida and Ghaziabad remarked, 'A penalty on hospitals is not justice. Giving the family a monetary compensation is not the remedy. A patient should get admitted in a hospital and get treatment.'

SOLUTION Patient rights are only effective if they prompt behavioural change among healthcare workers and trigger systemic change in the functioning of healthcare establishments. Criminal prosecution or action under the Consumer Protection Act or a regulatory fine does not necessarily compel establishments to acknowledge their mistakes, audit their internal processes, and take action to correct them. To fill this gap, other countries, especially Scandinavia, have used the office of an Ombudsman. An Ombudsman does not usually award compensation or take penal action against healthcare establishments, but acts as a facilitator to help patients enforce their rights, whether this is by demanding a formal apology from the establishment or requiring it to take steps to improve safety and quality for patients who might come after.

In addition to existing internal grievance redressal processes at individual establishments, India should create the office of the Health Ombudsman to operate at the central, state and district levels and to oversee health functions corresponding to these different levels of government. For example, an Ombudsman at the central level might respond to patient rights violations in a national clinical trial, a state Ombudsman could investigate budgetary allocations to healthcare, while a district Ombudsman would hold inquiries at individual hospitals.

IMPLEMENTATION

- Codify existing patient rights through a central law that also establishes the office of the Ombudsman.
- Introduce patient rights modules in healthcare curricula.
- Require hospitals to demonstrate that they have processes in place to protect patient rights as a pre-condition to registration and accreditation.

Create a Model Public Health Administrative Architecture for States

ATTENTION:
Ministry of Health and Family Welfare
Departments of Health, State Governments
National and State Health Systems Resource Centres

PROBLEM Kerala's robust healthcare system has served it well during the COVID-19 pandemic. It ranked first on the Niti Aayog's Health Index-2018, which compared health outcomes and systems across states. The Index assessed some facets of 'governance' and 'key inputs and processes', using several indicators, such as the proportion of functioning healthcare facilities against required norms and the completeness of the Integrated Disease Surveillance Programme. Although it is difficult to compare the responses of different states to the pandemic, it is evident that the quality of public health administration(s) ('PHA') has a bearing on the effectiveness of their responses. The National Health Systems Resource Centre identifies decentralisation, integration and convergence being three prominent challenges to strengthening PHA. Even as the 74th Amendment to the Constitution nudges states to delegate public health and sanitation functions, states in India have undertaken limited decentralisation. For instance, in Karnataka, urban local bodies have the statutory responsibility for the management of public health. However, owing to the multiplicity of state/central level authorities contributing towards the management of epidemics in the district, it is the Deputy Commissioners ("DC") and her officers, who become the people 'truly in charge'. In the absence of a defined process for coordination and management during epidemics, containment becomes individual/DC specific. This points to a

need for well-defined coordination processes for seamlessness in PHA.

Outside of an epidemic, public health outcomes may be adversely affected by a lack of inter-sectoral coordination. This has been observed in relation to maternal health in Gujarat and with respect to child nutrition.

A similar lack of convergence is seen in the operation of multiple public health schemes and programmes, sometimes challenging the individual state capacity to monitor their outcomes. Even in states where the policy design is imaginative of such convergences, gaps in implementation are observed due to 'limited supervisory mechanisms'.

Poor PHA has a direct impact on the right to health. The higher judiciary has repeatedly recognised the implementation failures of health schemes as violations of the right to health under Article 21 of the Constitution, whether in relation to maternal care, healthcare for the elderly or primary healthcare in general. Although Indian Public Health Standards under the National Health Mission set basic norms for healthcare delivery, they are specific to particular institutions like community health centres and district hospitals. They are not system-related governance norms and do not have any legal backing.

SOLUTION The right to health requires states to create a PHA that respects good governance principles by furthering accountability, transparency, non-discrimination and public participation. This requires a legal framework that can define the powers and functions of public health officials and coordinate the activities of different levels and branches of government.

While public health is a state subject, given the centralised nature of key health missions and programmes, the central government should lead in setting minimum governance standards for PHA, which can then be adopted through state-level legislation with modifications. States may create a nodal agency to administer such legislation, accounting for the need to reduce fragmentation in healthcare delivery, while recognising that the right to health also includes its underlying determinants like nutrition and sanitation.

IMPLEMENTATION

- Develop good governance indicators and audit all schemes related to public health on this basis, using the National Health Systems Resource Centre.
- Draft a model, rights-based public health law that sets enforceable, system-based standards for public health administration and establishes a nodal agency to ensure observance of these standards. The nodal agency should also promote and supervise inter-sectoral coordination at all levels through appropriate mechanisms. The nodal agency should comprise health experts as well as representatives of sectors related to the underlying determinants of health.
- Build the capacity of public health officials to adhere to and implement good governance standards.

Protect the Vulnerable

Create a National Wildlife Protection Authority

ATTENTION:
Ministry of Environment, Forest and Climate Change

PROBLEM The conservation of wildlife in its habitat has assumed greater importance because of COVID-19. Studies indicate that 60% of Emerging Infectious Diseases (COVID-19, HIV, Ebola) affecting humans are zoonotic, with approximately 72% of them originating in wildlife.

Territorial Forests (TFs) are crucial to wildlife conservation. They harbour nearly all of India's 36 endemic mammals. They are important connectors with the more strongly guarded but scattered network of Protected Areas (PAs) across the country. At the same time, TFs are also one of the most human-dominated wildlife areas, prone to heightened human-wildlife conflict and poaching.

Despite their ecological importance, TFs remain neglected under India's patchwork of laws. The Wildlife Protection Act, 1972 (WPA) has limited applicability to TFs. Wildlife habitats within TFs are not strongly protected. Except for the National Tiger Conservation Authority (NTCA), which protects tiger reserves, it is unusual for agencies under the WPA to intervene in wildlife habitat protection in such areas. This is in contrast with PAs, which are specifically designated under the WPA. Any activity involving the use of PAs requires the prior recommendation of the National and State Boards of Wildlife (SBWL/NBWL).

Further, bodies like the Wildlife Crime Control Bureau (WCCB) cannot exercise

independent authority to curb poaching in TFs, but are reliant instead on state forest officers. Other bodies like the National Biodiversity Authority and State Biodiversity Boards under the Biodiversity Act, 2002, and the National and State Boards of Wildlife are advisory in nature and lack teeth to take measures to protect TFs.

The standard approach to wildlife conservation in India focuses on saving particular species from extinction, using the tool of PAs. PAs now exist as forest islands in a mosaic of human settlements. Ironically, strong protection within PAs has meant that the wildlife populations in these areas have flourished so much that the carrying capacity of these areas has been exceeded, consequently forcing wildlife to move beyond their administrative boundaries. This makes the protection of habitats outside PAs even more important.

SOLUTION The future of wildlife conservation in India depends on how well governments are able to manage TFs. This requires a systematic and scientific approach and sufficient resources. The working plans of all TF divisions in India should compulsorily include wildlife conservation plans, efficient monitoring mechanisms and measures for mitigating human-wildlife conflicts. Such comprehensive management requires an expert body that can assume primary responsibility for the protection of wildlife habitats, and advise governments on all matters related to wildlife management and human-wildlife interaction.

IMPLEMENTATION

- Establish a 'National Wildlife Protection Authority' (NWPA) under the WPA, with powers similar to the NTCA, but with wider jurisdiction for the protection of all scheduled wildlife species and their habitats, irrespective of the ownership of land. The NWPA should have at least 10 regional headquarters representing each biogeographic zone.
- Bring all wildlife-related departments and agencies (including the NTCA, the NBWL and the WCCB) under the authority of the NWPA.
- Confer appellate jurisdiction on the NWPA regarding decisions taken by the National and State Boards of Wildlife.
- Confer powers on the NWPA to approve working plans and other management activities proposed by forest divisions. The NWPA must ensure their compatibility with regional wildlife requirements, prevent ecologically unsustainable land use, frame guidelines, facilitate research, organise the training of frontline staff in the management of human-wildlife interaction and facilitate community-driven conservation efforts.

Restructure India's Labour Law Framework

ATTENTION:
Ministry of Labour and Employment
Departments of Labour and Employment, State Government

PROBLEM The COVID-19 pandemic has demonstrated the failures of India's labour law framework. Despite having an extensive network of legislation intended to protect the rights of workers, there has been little to no relief in the form of job security or economic buffers in these times of uncertainty. In an effort to contain the infection, there have been wholesale closures of factories, industries and workplaces. Despite clear government advisories requesting the retention of contractual workers, allowing sick leave, and payment of full wages; employers have still proceeded with retrenchment orders, resulting in one in four Indians being unemployed.

The gradual relaxation of the lockdown has resulted in several State governments suspending labour laws for a few years. This has been done in the hope of attracting capital investments and reducing the socio-economic unrest associated with widespread unemployment. This is a knee-jerk response. Its constitutional soundness and economic efficacy in attracting long term capital and reducing unemployment has not yet been established.

Before suspending the existing labour law framework, governments should question whether and how a flexible labour regime would incentivise additional capital investment, creating more employment.

SOLUTION Empirically, it has been demonstrated that flex-

ibility in labour laws has no correlation with capital investments which create jobs. Simply diluting or removing worker rights does not appear to have a significant impact on unemployment rates. Conversely, there is evidence that a well-protected and productive workforce triggers capital inflows into new industries. In India, workplace protection has been through a network of government enforced-rights rather than by empowering labour collectives. The focus has been on a compliance framework, which has suffered from a lack of implementation.

Substantive changes are required to refocus the regulatory lens from stringent employer compliances in workplace infrastructure to empowering labour collectives and allowing them to negotiate for their wages and working conditions in a fair, flexible, and transparent manner. This could have the effect of allowing both employers and workers to engage to re-calibrate their terms of work in line with existing economic conditions in a manner best suited to both parties. Better working conditions, job security and a guarantee of wages would incentivise Indian workers to return to core manufacturing regions and thus provide the necessary long-term safety net, not just in times of crises, but also during business-as-usual.

IMPLEMENTATION

- Amend the four labour codes to facilitate free and fair negotiations between investors and labour collectives - thus spurring the creation of humane jobs. These amendments should aim to incentivise investors to establish new factories.
- The manner of drafting such amendments should align with India's international labour law obligations. Particularly, India should comply with Convention 144 (Tripartite Consultation) and involve all three stakeholders (governments, employers, and employees) in framing changes to the existing labour regulation.
- While the exact contours of the restructured legislation will depend on the results of the tripartite consultation, certain principles such as representative labour collectives, collective bargaining and equitable treatment of employers and employees could form the foundation of the changes.

Devise Legal Protections for App-Based Workers

ATTENTION:
Ministry of Labour and Employment.
Departments of Labour and Employment, State Governments

PROBLEM The COVID-19 pandemic has highlighted the significance of app-based workers in maintaining stability and supply of essential goods and services in the wake of lockdowns in urban centres. However, the law does not appear to protect them as such. Employers of app-based workers claim immunity from labour law obligations because these platforms are legally structured as aggregators and intermediaries. Their contract-based relationship with app-based workers does not fit within traditional definitions of employment, and the disaggregated nature of app-based work makes collective bargaining with platforms difficult. As a result, traditional labour law in India, which exists as a dispersed set of statutes, has not been applied to most platforms. The new Labour Codes proposed in 2019, which are intended to simplify labour law in India, have also left out safeguards related to occupational safety, health and wage protection for this class of workers. Where they have been acknowledged, the protections are vague and do not offer any immediate solutions or tangible protections.

SOLUTION A distinct blueprint of legal measures to effectively improve the conditions of app-based workers is urgently required. It is imperative that interventions cater to the distinct nature of app-based work,

including ensuring autonomy for workers through increased transparency regarding fees earned and ability to choose work. At the same time, it should clarify minimum obligations of platforms towards enhancing worker welfare, especially concerning health, safety and skill development.

The draft Labour Code on Social Security, 2019 is the first to recognise labour protections for 'gig workers' and 'platform workers'. It provides the Central Government with the discretion to create a social security fund specifically for gig and platform workers, and devise social security schemes specifically tailored to such workers, such as those covering insurance, health and maternity benefits. In this regard, it is necessary that the discretionary power to devise these schemes is converted to a mandatory obligation. Further, these schemes ought to prescribe the extent of specific benefits such as pensions, provident funds, employees' state insurance and health and maternity benefits that apply to them. While the Draft Code is currently under consideration in the Lok Sabha, it should be amended to provide concrete protections and clarify these requirements. Additionally, these schemes must ensure adequate health insurance covers considering the heightened exposure to COVID-19 for last-mile workers, and the responsibility of the platforms in providing these.

The other Codes covering occupational safety standards, minimum wage regulation and protecting workers' right to collective bargaining must similarly provide protections to app-based workers through protections tailored to the unique nature of their work.

The draft Industrial Relations Code should be revised to include protections for interest groups and other workers collectives for app-based workers. The newly enacted Code on Wages, 2019 should be amended to provide principles for platforms to set internal standards for minimum fees per task, and mandate disclosure of fee payment structures and incentive programs for app-based workers. Finally, platforms should be placed under actionable legal duties to comply with safety and health standards such as provision of safety and hygiene kits through suitable amendments under the draft Occupational Safety, Health and Working Conditions Code, 2019.

IMPLEMENTATION:

- The legal protections to app-based workers under the proposed Code on Social Security 2019 should be effectuated by prescribing specific protections that will be applicable to platform workers and enacting schemes under this code as soon as possible.
- The proposed Labour Codes on Industrial Relations, and Occupational Safety, Health and Working Conditions and the newly enacted Code on Wages 2019 should be amended to suitably recognise app-based workers and provide appropriate legal protections for them.

Make Digital Education Inclusive

ATTENTION:
Ministry of Human Resource Development
Ministry of Social Justice and Empowerment
Departments of Education, State Governments
Departments of Social Welfare, State Governments
Disability Commissioners

PROBLEM Education models and regular classes are rapidly shifting to digital modes, especially during COVID 19. Learners with disabilities, constituting a population of about 40 lakhs in the age group of 5-19 years (Census 2011), have been disproportionately impacted by this disruption. Although the central government recently announced that the PM E-Vidya platform will have a dedicated education channel for learners with visual and hearing impairment, there is no public information that addresses how digital education, including online classroom teaching, will generally be made accessible. This lack of information recently forced law students to file a petition to direct the government to set up effective mechanisms to provide accessible educational material to learners with disabilities.

Access to technology can assist persons with disabilities in getting better educational, socio-cultural and economic opportunities. Making digital education accessible, both from the perspective of infrastructure and design, is a binding international and domestic legal obligation. Article 9 of the Convention on the Rights of Persons with Disabilities requires states to ensure that persons with disabilities can access information, communication and technology ("ICT") systems. Section 42 of the Rights of Persons with Disabilities Act, 2016 directs governments to ensure that all content

available in audio, print or electronic media is in an accessible format.

However, the extent to which this obligation is being implemented is unclear. Although there are programmes to extend the reach of ICT in general (an example of this is the USO Fund on enabling ICT accessibility in rural areas), there is very little data regarding their use by persons with disabilities.

In any case, the manner in which digital education is being made accessible is outdated and uncoordinated. In 2012, the Ministry of Human Resources Development (MHRD) published a National Policy for ICT in School Education, which is silent on universal design principles for digital education and does not refer to the most up-to-date Web Content Accessibility Guidelines ("WCAG 2.0") that were released in 2018. The MHRD Policy itself does not find any mention in the set of recommendations released by the Telecom Regulatory Authority of India ("TRAI") in 2018 on Making ICT Accessible for Persons with Disabilities. Moreover, the inter-ministerial steering committee proposed to be set up under the TRAI recommendations does not include the MHRD, indicating that the question of accessibility of digital education is being addressed in silos.

Most telling of this fragmentation is the fact that the Right of Children to Free and Compulsory Education Act, 2009 ("RTE Act") itself provides norms and standards only for physical infrastructure in schools. The Schedule to the RTE Act simply states that teaching and learning equipment will be provided to each class as required, without considering that such equipment might have to be digital, and if digital, that it must be inclusive.

SOLUTION There should be a coordinated approach to inclusive education that makes universal accessibility norms an integral part of the content creation process rather than a supplementary exercise.

The MHRD should coordinate with the Ministry of Electronics and IT and the Department of Empowerment of Persons with Disability to devise standardised guidelines for digital education infrastructure for learners with disabilities that are in accordance with the Rights of Persons with Disabilities Act.

These guidelines should then be made mandatory for all ICT service providers of education.

IMPLEMENTATION

- Make all government websites accessible for persons with disabilities in accordance with the 2018 TRAI recommendations.
- Review and update the National Policy for ICT in School Education as part of a larger exercise to develop comprehensive guidelines on the accessibility of digital education.
- Amend the Schedule to the RTE Act to include norms and standards on inclusive digital education that are applicable to schools.
- Notify accessibility standards for ICT in education under section 40 of the Rights of Persons with Disabilities Act.

Facilitate Domestic Violence Complaints

ATTENTION:
Ministry of Women and Child Development
Departments of Women and Child Development, State Governments

PROBLEM Severe restrictions on the movement of people, imposed as a response to the COVID-19 pandemic, has made women in abusive relationships increasingly vulnerable to their partners. The United Nations Population Fund has estimated an additional 15 million cases of gender-based violence for every three months of the lockdown. In India, the National Commission for Women has reported more than a two-fold increase in complaints of domestic violence in April alone. Disrupted access to institutional structures like the judiciary, social and medical services has added to the woes of abused women. This pandemic has highlighted an entrenched systemic failure in the State's ability protect women from intimate partner violence.

Under the Protection of Women from Domestic Violence Act, 2005 ("DV Act"), Protection Officers ("PO") are a crucial liaison between aggrieved women and courts, police, lawyers and other support services. Rules under the Act ("DV Rules") require POs to seek immediate assistance of the police in emergency situations to help protect women from domestic violence. This has not been possible during the lockdown.

Further, even if it were possible in some cases, there are simply not enough POs in the country. In the fifteen years of the Act's existence, different states have shown varying commitment towards appointing POs. For example, Maharashtra

has created 358 posts of POs for 36 districts covering all 358 talukas, while Delhi has only 18 POs for 11 districts. Further, POs are often appointed on a part time basis and hold additional responsibilities. POs were expected to be the lynchpins in ensuring the objectives of the DV Act were met. The reality has, however, woefully trailed these expectations.

SOLUTION Since restrictions on free movement are likely to continue, women will need an effective and safe mechanism to report complaints. The DV Act empowers states to appoint as many POs per district as they need. States must notify such number of additional POs during the pandemic, who can be deployed to periodically monitor the homes of women who have reported domestic violence. This needs to be accompanied by well-publicised government campaigns to spread awareness about the legal rights of victims and the available avenues for seeking support. The government, through national, state, local and social media should publicise the helpline numbers victims can call, as well as the contact information of POs. DV Rules require POs to assist in transportation of aggrieved women and their children to shelter homes and medical facilities. POs should be legally allowed to access police vehicles that can make such transportation possible. Depending on numbers, States should consider converting some hotels into shelter homes so that women can be removed from abusive households and kept in a place of safety.

IMPLEMENTATION

- States should notify additional POs as per the power accorded to them under section 8 of the DV Act.
- The central government should amend the DV Rules to provide for a minimum number of POs based on the number of households in any given district. The Rules should also provide for a limit to the maximum number of households within the jurisdiction of each PO.
- The central and state governments should mandate national, state and local media to publicise victim helpline numbers and contact information of POs.
- State governments should pass orders to provide accommodation to aggrieved women in hotels within their jurisdiction, observing requisite social distancing protocols.

Make Governance Smart

Allow Equity-Based Crowd-Funding

ATTENTION:
Ministry of Corporate Affairs
Ministry of Finance
Securities and Exchange Board of India

PROBLEM As the market for bank loans and traditional finance shrinks in the aftermath of the Covid-19 pandemic, start-ups and small businesses will be severely constrained in their ability to raise finance. On account of onerous regulatory and screening requirements, such ventures often find it difficult to raise finance through traditional methods (such as private and public equity offerings and debt financing) even under normal circumstances. The pandemic will only aggravate their problems.

In this backdrop, crowd-funding, through its use of a digital platform and greater public reach, could be a useful tool for improving their access to finance. While donation-based crowd-funding has generated substantial public funds for Covid-19 related issues, businesses are not allowed to raise money through equity-based crowd-funding. While the Securities and Exchange Board of India (SEBI) had issued a Consultation Paper in 2014 to initiate discussion on a regulatory framework for allowing crowd-funding in India, it eventually decided against the idea. The aftermath of the Covid-19 pandemic provides changed circumstances that should prompt SEBI to reconsider its view.

SOLUTION

Given the role an online securities market can play in supporting economic recovery and growth of small businesses in a post-Covid world, the

Union Government should consider developing a new framework for allowing equity-based crowd-funding of small businesses and start-ups. Countries such as the United States of America, Australia, Italy and Malaysia have already put in place specific regimes governing equity crowd-funding.

Such a law should allow such businesses to (a) raise equity-finance from the public-at-large, (b) offer securities through regulated online 'crowd-funding platforms' and (c) carve out exclusions and exemptions from the law governing securities offerings in general without undermining the rights of investors.

Keeping in view the risks of crowd-funded enterprises, the legal framework should prescribe well-defined eligibility and disclosure requirements concerning the company and its business plan. Such platforms could also be required to conduct 'online appropriateness tests' to check for whether investors are risk-aware. To ensure that any loss to investors is small and bearable, the law should set limits on the maximum amount of funds that may be invested by any individual. Crowd-funding platforms could also leverage social media platforms to facilitate constant dialogue between investors and issuers, with appropriate disclosure requirements.

IMPLEMENTATION

- Design a framework law enabling equity-based crowd-funding to the public-at-large
- Appropriate exclusions should be introduced under the Companies Act, 2013, as it does not allow a private company to offer securities to more than 200 persons in a financial year, and requires public offering of securities, should the number of offerees exceed 200.
- Suitable exclusions should be introduced to the Securities Contracts Regulation Act, 1956 and relevant rules and regulations of the Securities and Exchange Board of India Act, 1992 as regards public offer of securities and concerning compliances for recognition of the crowd-funding platform.

Modernise the Management of Information for Supply Chains of Essential Goods

ATTENTION:
Ministry of Consumer Affairs, Food and Public Distribution

PROBLEM Ordinarily, the modern economy is characterised by distributed supply chains and sophisticated networks for trading; where administrative decisions in one region affect broader systems of logistics and transportation. This was exemplified in the early days of the pandemic, with the imposition of lockdowns and prohibition of manufacturing activities leading to multiple disruptions in the supply of essential goods, and a heightened sense of uncertainty about their immediate availability. An uninterrupted supply chain, especially in relation to essential goods such as foodstuffs, pharmaceuticals and hygiene products, is essential for social welfare and the stability of economic activity. Therefore, there is a need for an integrated approach to organise information related to supply chains of essential goods.

Currently, Indian law regulates nodes of supply chains of essential goods through various sector-specific laws. These laws cover many of the constituent entities of supply chains, but they do not make effective provisions for the collection, management, and accessibility of supply and distribution information from these entities. The Essential Commodities Act, 1955 grants powers for control over production and supply of certain goods but does not enable a system of managing information related to these goods. Other laws require various entities such as registered warehouses and licensed phar-

maceutical sellers to maintain detailed records of their transactions, but do not mandate consolidation of this information into a larger database.

SOLUTION Uncertainty regarding the availability of essential goods could perhaps have been avoided with appropriate administrative planning, bolstered by the presence of a database containing up to date information about the distribution and supply of essential goods. To improve preparedness for future crises, the benefits of modern information management systems for supply and distribution networks of essential goods are needed. The law has a crucial role to play in achieving this objective. Identification of an updated, comprehensive list of essential goods and the law governing them is required to develop an integrated approach to collecting and managing this information.

Modern technology should be leveraged to enable the efficient organisation of information. In order to do this, the law should require the collection of relevant data at appropriate levels of the supply chains of essential goods. It should prescribe standards for the management of this data to allow granular insights about these supply chains. This requires an integrated legislative approach across sector-specific laws – unifying the processes of data collection into a centralised approach towards the management and presentation of this information.

The development of an integrated platform for the management of this information would further benefit planners and policymakers. Some existing initiatives have created interfaces for the management of similar information. For instance, the Food Corporation of India (FCI) operates the Integrated Information System for Food Grains Management, an electronic record of food stocks kept with depots of the FCI. Similarly, the National Health Mission in Assam operates a Drugs Stock Availability System, which is an online record of drug availability at public health institutions at the sub-district level. An integrated platform which combines standalone systems of this kind with related information from other sources and different sectors would greatly facilitate the uninterrupted supply of essential goods in times of crisis.

IMPLEMENTATION

- Existing legislation related to various nodes of the supply chain of essential goods should be identified, reviewed and amended to require the collection of relevant data, create an integrated approach to the management of data and prescribe standards in this regard.
- An integrated electronic platform for the management of this information should be developed to organise it at a suitably granular level, using state-of-the-art technology in compliance with data protection and security norms.

Legalise Crisis Cartels

ATTENTION:
Ministry of Corporate Affairs
Competition Commission of India

PROBLEM In the aftermath of the Covid-19 pandemic, many industries are likely to face "overcapacity", a situation where an industry is designed to supply more than what is consumed. This is structural in nature and cannot be remedied by the interplay of market forces alone. In such times, market players, instead of altering their own capacity in line with the market's demand, may continue production in full-scale in an attempt to induce rivals to exit the market. Persistent overcapacity of this nature, if left unaddressed, will result in over-investment of capital, over-employment, reduced returns for producers, and failure to achieve efficiency.

SOLUTION A solution to structural overcapacity, is the legalisation of private industrial restructuring agreements. These agreements are also known as "crisis cartels"- a term used to describe agreements between, or concerted actions taken by, competitors during or as a result of an economic crisis, in an attempt to find a joint solution to their common difficulties. In times of overcapacity, this may be achieved by agreeing on quantities of production, facilitating the opportune exit of a few players from the market and/or setting "fair" prices to avoid some industry players from going bankrupt.

While cartels are generally prohibited due to their ability to harm competition

and consumer welfare, such cartels, when effectuated cautiously during times of overcapacity, can have significant benefits. Such agreements can optimise disrupted levels of demand and supply, facilitate orderly exit of companies, and enable firms that remain in the market to overcome losses and thereby enhance overall consumer welfare. In light of these benefits, the European Court of Justice has previously held such agreements to be legal in the Synthetic Fibres case, (Case IV/30.810), and the Dutch Bricks case, (Case IV/34.456) in times of structural overcapacity. This is a deviation from their otherwise strict scrutiny of cartelisation.

The civil aviation industry in India, for instance, is expected to suffer from severe structural overcapacity. With the industry already operating under losses prior to the pandemic, any lasting improvement in passenger occupancy rates in the medium or long-term looks unlikely, especially in light of the forecasted economic downturn. Therefore, in order for the industry to survive, market players should be allowed to collaborate and collectively reduce internal capacity. This can be brought about by agreeing on routes to be served, coordinating schedules and frequency of operation and, if necessary, retiring parts of their aircraft fleets.

IMPLEMENTATION

At present, the Competition Act, 2002 ("Act"), treats cartels as per se anticompetitive. Given the relative nascency of the Act, there is no antitrust jurisprudence in India that addresses the nuances of crisis cartels. Therefore, in order to legalise, regulate and reap the benefits of such agreements, the following steps should be taken:

- The Competition Commission of India ("CCI") must survey the various sectors that are likely to suffer from structural overcapacity and produce empirical evidence regarding it.
- Based on such evidence, the CCI, in consultation with the Ministry of Corporate Affairs, ("MCA") should issue detailed guidance regarding the manner in which such agreements shall be assessed. Such guidance must clearly lay down the criteria for qualifying as a restructuring agreement, the time period for which such arrangements are permissible, and factors and their relevant weightage in demonstrating efficiency in times of crises.
- A suitable notification regarding exemption for certain types of cartels for a defined period of time may be issued by the MCA using powers conferred on it under the Act.
- As cartels are presumptively harmful for competition, the CCI must also ensure that it proactively monitors such restructuring agreements to ensure that coordination between players does not go beyond the intended purpose of capacity reduction.

Empower the Third-Tier

ATTENTION:
Ministry of Panchayati Raj
Ministry of Housing and Urban Affairs
Departments of Finance, State Governments
Departments of Panchayati Raj, State Governments
Departments of Urban Development, State Governments

PROBLEM The 73rd and 74th Constitutional Amendments, 1992 mandated the creation of Panchayats and Municipalities in every State, but left the issue of the extent of devolution of functions, and empowerment of these bodies to the discretion of the states. Articles 243G (for Panchayats) and 243W (for Municipalities) nudge States to delegate their responsibilities with respect to the matters listed in the Eleventh and Twelfth Schedules. Most State-specific Panchayati Raj and Municipalities' laws, amended pursuant to the constitutional amendments, do not clearly demarcate functions, leading to an overlap in the domains of the State and local governments. For instance, the Uttar Pradesh Panchayati Raj Act, 1947 devolves an array of functions to Gram Panchayats, across matters ranging from agriculture to rural electrification. The matters listed under the Act are, by and large, a replication of entries under the Eleventh Schedule, without a clear delineation of the functions of Gram Panchayats. Such laws do not reflect the spirit of the Constitution, resulting in a third-tier that is disempowered and depoliticised institutionally.

The scheme of fiscal devolution augments the disempowerment of the third-tier. The power to determine the revenue-base for local bodies lies with States, who specify the taxes local bodies can levy and collect. As the revenues generated by local bodies fall short in meeting their expenditures, they rely heavily on devolution of funds from the Central and State Governments in the form of grants and transfers, rendering them unable

to embark upon developmental activities of their own accord. Consequently, the third-tier remains largely confined to performing traditional civic functions.

Kerala's handling of the COVID-19 outbreak has emerged as a model for emulation, partly for its reliance on resilient local governments and robust community participation. This has reaffirmed the need for empowering the third-tier.

SOLUTION The Constitution must be appropriately amended to ensure that State Governments mandatorily devolve certain functions to local governments. Simultaneously, local government being a State subject, it is imperative that State Legislatures amend their respective laws for effective functional devolution, clearly delineating functions between the State and local governments. The Kerala Panchayat Raj Act, 1994 can lead by example. It categorically confers Village Panchayats with exclusive power to administer certain matters including, notably, running of dispensaries and primary health centres within their areas. Likewise, the Kerala Municipalities Act, 1994 creates representative ward committees, with detailed provisions for their functioning and facilitating community participation.

To complement functional devolution, Panchayati Raj institutions must have more avenues for revenue generation and access to untied funds. A welcome step will be to allow only local bodies to levy and collect professional tax. Currently, in certain States (Kerala, Tamil Nadu), the proceeds of professional tax go to local bodies, whereas in others (West Bengal, Andhra Pradesh), the proceeds are channelled to the State Governments. For greater financial decentralisation and autonomy, States must also implement the recommendations of the Fifteenth Finance Commission and duly apportion basic grants (which are untied funds) to local bodies.

IMPLEMENTATION

- Articles 243G and 243W must be amended to provide that State Legislatures shall, by law, mandatorily vest Panchayats and Municipalities with such powers and authority as necessary to enable them to function as institutions of local self-government, including in respect of matters listed in the Eleventh and Twelfth Schedules respectively.
- The release of Central grants to States for local bodies (as recommended by the Fifteenth Finance Commission) must be tied to States:
  - amending their laws to ensure effective devolution of functions and facilitating community participation at the local level, and
  - apportioning basic grants (untied funds) to rural and urban local bodies.
- Article 276 must be amended to provide that the proceeds of professional tax go directly to local bodies (Panchayats and Municipalities). Correspondingly, State Acts should be amended to allow only local bodies to levy and collect professional tax, within the ceilings set by Parliament.

Equip Prisons with Technological Capabilities

ATTENTION:
High Courts
Department of Prisons, State Governments

PROBLEM As the COVID-19 pandemic advances, prisons in India are fast becoming hotbeds for the infection. Overcrowding in prisons, difficulty in implementing social distancing and often abysmal health facilities make prison inmates and authorities particularly vulnerable to the virus. General neglect, squalor and inadequate budgetary allocation render prisons unable to handle any public health crisis, let alone one of such a massive scale. As on 27 May 2020, at least 19 prisons across India have reported COVID-19 outbreak.

In March, the Supreme Court, in an attempt to contain the spread of the virus in prisons, ordered states and union territories to consider releasing all convicts who had been jailed for up to seven years on parole and under-trials awaiting trial for offences entailing maximum sentence of seven years on bail on the recommendation of a High Powered Committee ("HPC"). The order also directed that the presence of undertrials in legal proceedings be ensured through video conferencing ("VC").

However, the process of decongestion through bail and parole is a complicated one. Technological constraints like bandwidth availability have restricted the functioning of courts to urgent matters and only a few benches have been able to conduct hearings. Further, many courts do not consider bail proceedings to fall within the ambit of urgent matters. Hence,

even after a nod from the HPC, courts are struggling to decongest prisons.

On 3rd May 2020, the Ministry of Home Affairs asked all states to suspend prison visits and limit the mobility of people within prisons. As prison visits remain suspended, some states such as Kerala, Karnataka, Jammu and Kashmir and Chandigarh have asked prison authorities to allow VC for family interactions. However, VC facility is not available uniformly across prisons. These restrictions and the fear of the pandemic has resulted in rising anxiety and isolation amongst inmates. This fear and anxiety has even led to a prison riot in Kolkata.

SOLUTION Phase II of the e-courts project has equipped prisons with VC facility, primarily to record evidence in sensitive cases, expert evidence and legal aid matters. This existing facility can be utilised and leveraged to help decongest prisons. VC facilities in prisons should be bolstered to accelerate bail and parole proceedings. All such applications should be addressed by a fast-track court within a limited time-period to effectively reduce overcrowding in prisons. Further, all prisons should consider making video calls available to prisoners to contact their family members. Such measures are necessary to reduce anxiety and isolation amongst inmates.

Additionally, the facility of telemedicine should be introduced in prisons to improve medical care of inmates. Telemedicine uses information and communication technology for medical diagnosis and treatment. Telemedicine has already been implemented in the prisons across Maharashtra to address security concerns during medical visits. Such a facility will provide quality medical care to the inmates, limit their movement, and reduce their vulnerability to the virus. The use of existing VC facilities can be leveraged to speed-up the implementation of telemedicine.

IMPLEMENTATION

- High Courts should issue guidelines to District Courts under their supervision to conduct fast track hearing through VC facilities for parole and bail applications as per the recommendations of the HPC.
- The Director General, Prisons should issue directives to prisons to extend the use of VC for family and lawyer interaction.
- The Director General, Prisons should issue directives to make required arrangements for telemedicine facility in prisons.

Kick start the Economy

Create a Crisis Management Agency for the Financial Sector

ATTENTION:
Department of Economic Affairs, Ministry of Finance

PROBLEM The financial sector in India is fragmented into various sectoral regulators and authorities, each focusing on their own regulatory domains. Although such a fragmented structure enables specificity and expertise in regulation, it often compromises macro-economic considerations in sectoral policies. The widespread economic impact of the COVID-19 crisis has demonstrated the need for coordinated responses across sectors to assess and manage financial crises.

In the aftermath of the 2008 global financial crisis, the government undertook some measures such as setting up the Financial Stability and Development Council ("FSDC") under the Ministry of Finance in 2010 to institutionalise and strengthen mechanisms for maintaining financial stability and inter-regulatory coordination, amongst other objectives. Though the establishment of the FSDC was a step in the right direction, the structural framework within which it operates has certain shortcomings such as its non-statutory status, which preclude it from functioning as an independent body responsible for assessing systemic risk, making recommendations and monitoring the financial system in a holistic manner. This has resulted in the need to create a streamlined statutory system dedicated to a more formal and cohesive approach to financial crisis management in India. Such a mechanism will be important not

only for managing the ramifications of the current crisis more effectively, but also for ensuring that India is better prepared to deal with future crises.

SOLUTION A financial crisis management agency should be set up to replace the FSDC as a statutory body under the Ministry of Finance with the objective of ensuring adequate mechanisms for accountability and transparency and for filling the gaps where current structures have proved inadequate. This agency's focus should primarily be two-fold: macro-prudential and supervisory. Its functions should include developing periodic assessments of macro-economic risks, monitoring the functioning of the economy, international coordination, anticipating potential risks, and performing functions such as supervision and monitoring in coordination with concerned regulators in a balanced manner. The structural framework of the agency must ensure that it has financial and operational autonomy, and that its board has adequate representation from relevant ministries of both central and state governments, external experts, heads of regulatory bodies and an executive committee for managerial and administrative control.

Guidance may be sought from structural frameworks adopted by other jurisdictions: in the United States of America, the Financial Stability Oversight Council comprises heads of various regulatory agencies and government representatives; in the United Kingdom, the Financial Planning Committee, located within the Bank of England, has diverse representation from the Bank of England, the Financial Conduct Authority, private sector and academia; and the European Union has established a European Systemic Risk Board consisting of central bank representatives from member-states and the European Union financial regulators. The overarching consideration in formulating the organisational design for the agency should be to ensure that its functions are primarily recommendatory and supervisory in nature and that there are effective mechanisms in place to ensure coordination between concerned authorities as well as compliance with basic principles of the rule of law.

IMPLEMENTATION

- A crisis management agency for the financial sector should be established as a statutory body under the Ministry of Finance.
- The proposed statute setting up the agency would indicate, inter alia, its establishment, powers, composition of its board, executive committee, eligibility of its members, mechanisms for coordination with concerned regulators, risk assessment, risk management, supervision and monitoring.
- The statutory framework should ensure that the agency is an independent body with transparency in its functioning and adequate representation from central government, state governments and relevant regulatory bodies.

Enact a Financial Relief and Protection Legislation

ATTENTION:
Ministry of Corporate Affairs

PROBLEM As the Indian economy gears up to reopen, policymakers need to focus on preserving jobs and promoting economic activity to avoid an economic depression in the near term. After the current moratorium on repayment of debts, as facilitated by the Reserve Bank, is lifted, many businesses are likely to come under severe financial distress. Although the government has announced several measures to encourage greater availability of credit for supporting business continuity, such schemes will not be enough to encourage new lending or protect viable businesses from going bankrupt. Given the current economic environment, lenders entrusted with ensuring credit delivery to the business community at scale remain deeply worried about the recovery prospects for both preexisting and prospective loans. This kind of risk aversion in the face of such unprecedented uncertainty is not inexplicable.

From the borrowers' perspective, since a large number of them were severely indebted even before the crisis started, it is very likely that any new financing provided to them will get utilized to service past debts and create a debt overhang with no real benefits to the economy in the near term. Under normal circumstances, if a limited number of firms were facing such challenges, an efficient bankruptcy system could have solved the problem (at least partially) through a court-sanctioned

moratorium and statutory priority for any new financing. However, subjecting all distressed businesses to the regular bankruptcy system in the present economic environment is likely to overburden the system severely and lead to a large number of liquidations. The government recently exempted debtors whose defaults are primarily attributable to the ongoing crisis from the application of the bankruptcy code. Nevertheless, this will not be enough for avoiding the debt overhang and preserving jobs.

SOLUTION The problems outlined above can be mitigated by designing a law that encourages lenders to lend more freely to viable borrowers, protects debtors from debt enforcement action (in relation to old debts) and ensures that the proceeds of new debts are utilized for preserving businesses. This law should be seen as a temporary protective window for the economy in general and not as an insolvency resolution tool for specific businesses. The key elements of the system should include a debt moratorium for a specified period, allowing the debtor to remain in control of the business during the protection, providing super-priority for all new financing, imposing end-use restrictions on such financing, preventing termination of essential supplies for business continuity, prohibiting termination of employment contracts (beyond a threshold) and lastly, providing definite exit alternatives depending on the financial position of the debtor when the moratorium is lifted. The exit options must also include resolution or liquidation under the regular bankruptcy process to avoid misuse of the process by recalcitrant debtors.

The proposed mechanism will provide financial relief to businesses and sectors that need such relief urgently and also help in preserving jobs and businesses until the situation stabilizes. The super-priority (which should be honored both within and outside insolvency) will provide comfort to lenders that are currently reluctant to lend because of the uncertainties attributable to the crisis.

IMPLEMENTATION

- This scheme should be implemented through a separate legislation under the Ministry of Corporate Affairs.
- The administrative authority in-charge of implementing it should have representation from the government, lending community and the industry to facilitate balanced outcomes.
- Debtors with pre-crisis non-performing loans should not be eligible for this protection. Delaying debt enforcement, resolution or liquidation in such cases will only aggravate losses for the affected stakeholders.
- The scheme will also have to be backstopped appropriately to ensure that lenders whose loans remain unpaid during the protection period do not end up with solvency issues of their own.
- The roll-out should be implemented in phases (starting with businesses or sectors that are most vulnerable or those that employ the maximum number of employees, etc.).

Issue
Bharat Navnirmaan Bonds for Management of National Emergencies

ATTENTION:
Department of Economic Affairs, Ministry of Finance

PROBLEM The COVID-19 pandemic has led to an extraordinary economic crisis, tackling which inevitably involves substantial spending. While such expenditure is unavoidable, finding sustainable and innovative ways for raising capital is crucial for protecting India's long-term financial health.

The Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) has been set up to facilitate voluntary donations from individuals and organisations to fund a pandemic response. However, such funds only utilise the potential of raising finances from the public in a limited way. This is because significant donations are likely to be made only by privileged sections of the population that have enough to fall back on during the crisis. Alternatives to donations as a method for raising public funds must be found.

SOLUTION An innovative way of raising finances for responding to this crisis is by issuing bonds or debt instruments to the public-at-large. Such instruments may be issued by the Central Government as debt securities, which allow individuals and organisations to support the Government's response as long-term investments and not donations.

One might take inspiration from wartime bonds issued in the United States (US) and United Kingdom (UK) for funding responses to national emergencies.

In the US, the Liberty Loans Acts allowed the Secretary of Treasury to issue bonds called 'liberty bonds', to aid funding for the First World War. These bonds were designed to allow investments at low values and included interest payments and tax exemptions for investors. Similarly, the UK issued bonds to finance the Napoleonic war and the First World War.

Raising funds in this manner will help the government in mobilising funds from a large section of the population and build a national financial war chest for tiding over the crisis. As long as the bonds are accompanied by appropriate disclosures and guarantee repayment or interest payments (even if it takes place over several years), the programme should ensure adequate participation. If implemented successfully, it will help in managing the ongoing crisis better, and also contribute to the development of bond markets in India.

IMPLEMENTATION

- Enact a legislation to empower the Central Government to issue Bharat Navnirmaan Bonds for the management of national emergencies like the current pandemic. A framework laying down the key parameters for exercise of such powers should be created with appropriate checks and balances.
- The bond offering should include disclosures about the terms of issue, including end-use restrictions, and repayment schedule (staggered or otherwise), subject to the economic conditions of the country. Further, the Government may consider designing such bonds to be perpetual bonds for certain classes of investors, wherein interest is mandatorily paid but there is no obligation to repay the principal amount.
- Once issued, these bonds should be tradeable in the capital market to ensure adequate liquidity for investors.
- In order to encourage wider participation, appropriate tax exemptions may also be provided.
- Finally, to create a sustained demand for such instruments, large-scale public awareness campaigns may be launched.

Introduce a Special Framework for Resolving Insolvency of MSMEs

ATTENTION:
Ministry of Corporate Affairs
Ministry of Micro, Small and Medium Enterprises

PROBLEM During a macro-economic crisis, such as the one caused by the Covid-19 pandemic, micro, small and medium enterprises ("MSMEs") are particularly susceptible to distress and failure. This is because of limited access to new lines of credit, undiversified business structures, over-dependence on counter-parties and inability to downsize operations efficiently. In our assessment, a large number of MSMEs are likely to face severe solvency issues in the near term. Being the backbone of the economy and the second-largest source of employment, it will be crucial to resolve distressed MSMEs swiftly in a cost-effective manner for mitigating large-scale losses for the economy.

Modern insolvency laws are designed to revive economically viable debtors that are temporarily undergoing financial distress. However, globally, insolvency proceedings of MSMEs more often result in liquidations than successful revivals, as they cannot afford the costs of prolonged and complicated insolvency procedures. In India, corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 ("Code"), is designed as a creditor-friendly process, that envisages displacement of the existing management and promoters upon commencement of insolvency proceedings. Such displacement can be permanent if the creditors decide to bring in new owners as part of a resolution plan.

While this approach has been effective in resolving large recalcitrant borrowers, it may produce sub-optimal results in the case of MSMEs. This is because promoters and managers of MSMEs are often indispensable for their survival, owing to their personal relationships with other stakeholders in the business, which can be crucial for ensuring business continuity during insolvency. Further, MSMEs are also prone to inadequate record-keeping, which can hinder value discovery and third-party takeovers in the auction conducted under the regular insolvency process. The Code also recognises these limitations and empowers the government to make appropriate modifications to the processes for insolvency resolution of MSMEs. However, this power has never been invoked.

SOLUTION To provide an effective rescue mechanism for distressed MSMEs, a separate insolvency resolution framework should be designed by making appropriate modifications to the Code processes.

Notably, Chapter IV of Part II of the Code already provides for a "fast-track corporate insolvency resolution process" ("fast-track CIRP") for smaller debtors. However, this framework has not been utilised much, as, apart from mandating a shorter time-line, the process does not provide any significant relaxations or exemptions that may be beneficial for smaller debtors. Therefore, re-designing the fast-track CIRP, might be an effective way of providing relief to the MSME sector without disturbing other parts of the Code. The re-designed framework should envisage a simple and debtor-friendly process that results in swift and cost-effective resolutions. To achieve this, the existing management of an MSME debtor should be permitted to initiate proceedings even before a default occurs and allowed to remain in control during the process. Further, to allow the business to be run by the same management even after resolution, existing promoters may be provided a right of first refusal to retain control after completion of the regular bidding process. This right may be subject to a requirement of a specified premium over the best bid received in the auction to ensure that the promoters do not abuse the process at the cost of creditors.

IMPLEMENTATION

- Chapter IV of Part II of the Code, which lays down a framework for fast-track CIRP, should be amended to make it more debtor-friendly for the purpose of MSME insolvencies.
- Specifically, the amended fast-track CIRP framework should provide for a debtor-in-possession model, wherein the existing management can retain control over the corporate debtor, during the pendency of the resolution process.
- While the bidding process applicable to regular insolvency proceedings may be followed (with appropriate modifications to make it simpler), promoters should have the right to retain control as long as they submit better resolution plans in comparison to those submitted by third-party resolution applicants.

Leverage Digital Banking to Improve MSME Financing

ATTENTION:
Department of Financial Services, Ministry of Finance
Ministry of Micro, Small and Medium Enterprises
Reserve Bank of India

PROBLEM In 2019, the credit gap for micro, small, and medium enterprises (MSMEs) was estimated at ₹20 – 25 trillion. The ongoing pandemic has dealt an additional blow and placed MSMEs under conditions of significant financial distress. MSMEs are critical drivers of the Indian economy, both in terms of gross domestic product and employment generation. However, the formal banking sector has traditionally failed to cater to their credit needs.

This may be partly attributed to the informal nature of MSMEs, which creates challenges for banks conducting their credit risk assessments. This risk aversion to MSME financing is exacerbated by traditional banks' outdated credit appraisal systems that rely predominantly on balance sheets and collaterals that may not truly reflect the ability of a borrower to repay. This outdated underwriting process also leads to high turnaround time for credit disbursal. This calls for leveraging technological disruptions to meet the financing needs of the MSME sector. While the Government has recently announced several reforms along with financial stimulus for the crisis-hit MSMEs, as a long-term measure, there is a need for a renewed approach to encourage a technology-driven banking framework to meet the credit needs of the underserved MSME sector.

SOLUTION Incentives for technology adoption, increased competition, and heterogeneity in the formal banking sector can be strengthened by permitting the entry of 'digital banks' that provide banking services through digital means (as opposed to physical branches). Unlike financial technology (fintech) companies that currently partner with traditional banks to provide technological support to banking services, proposed digital banks will be specifically licensed by the RBI to provide banking services. Further, to encourage MSME focused digital banking, the RBI may consider issuing a separate category of licenses for digital banks that cater exclusively to MSMEs. This may enable serious technology players in the market that have structured their business models in serving the MSME sector to apply for such a license.

Licensing of digital banks with innovative business models will add dynamism to the banking landscape and facilitate the creation of suitable and affordable financial solutions for MSMEs. Such digital banks can provide banking services at a lower cost compared to incumbents due to their internet-only infrastructure. They are unencumbered by legacy infrastructure and may leverage technology rapidly. Such technology-driven banks are better equipped to address issues related to lack of collateral and formal bookkeeping systems, by employing innovative methods of risk assessment based on alternative data that provide an accurate borrower risk profile. They can promptly meet MSME financing needs, by boosting the convenience of opening and operating accounts, facilitating seamless payments, offering transfer and remittance solutions, and packaging other personalized value-added services (including accounting, reconciliation). By providing a larger suite of digital banking services, such banks may enhance MSMEs' ability to digitise and consequently formalise their own operations, thereby addressing what has often been the biggest impediment that MSMEs face in accessing formal credit.

IMPLEMENTATION

- In line with its approach of providing a 'differentiated banking license', the RBI should release guidelines for the licensing of digital-only banks in India, including digital banks that will be permitted to accept deposits, provide loans, and banking services only to MSMEs.
- In assessing the eligibility for such banks, RBI should require applicants to demonstrate the application of innovative technology to serve customer needs.
- With a view to encourage technology or fintech companies, the eligibility criteria should also specify that at least one entity in the applicant group should have a track record of operating a business in the technology or e-commerce field.
- Regulations for digital banks must account for such prudential and conduct regulation, taking into account a technology-neutral and risk-based approach, addressing systemic, operational, and consumer risks that arise from the digital-only nature of such entities.

Think Digital First

Digitise Compliance, Administration and Enforcement Processes under the Income Tax Framework

ATTENTION:
Department of Revenue, Ministry of Finance
Central Board of Direct Taxes

PROBLEM The outbreak of COVID-19 and the consequent implementation of a nationwide lockdown, has had a debilitating effect on the economy's consumption and income generation capabilities. India thus saw a sharp decrease in tax collection. The government is said to have missed its downward revised net direct tax collection target for 2019-20 by INR 1.42 lakh crore. Moreover, the pandemic has placed limitations on physical contact. Given that several processes under the income tax administration framework depend heavily on physical contact, there is a pressing need for a reevaluation.

At this stage, it is imperative to optimise tax collection to bolster revenue. However, this has to be done cautiously as aggressive tax collection is bound to create disaffection for the government at a time of economic crisis. These twin requirements—augmenting revenue while improving taxpayers' experience interacting with the income tax system—in addition to the constraints on physical contact, present the perfect opportunity for policy intervention to redesign and digitise compliance, administration and enforcement processes under the Income Tax Act, 1961 (IT Act).

SOLUTION The revamp of existing processes under the IT Act must focus on two primary principles - automation, and promoting presence-less

interactions between taxpayers and tax authorities.

Automation of compliances that are typically viewed as tedious, would not only improve taxpayer morale, but it would also increase efficiency. For instance, most countries auto-populate a substantial portion of taxpayers' income tax returns based on information that is already available with the tax authorities. The adoption of pre-filled returns in India would encourage voluntary compliance, and create transparency between taxpayers and the tax authorities. By disclosing upfront the information that would typically be used by authorities to identify incorrect declarations and prosecute taxpayers, this would pave the way for a trust-based relationship between taxpayers and tax authorities.

The IT Act in its current form is riddled with provisions that allow administrative discretion. Coupled with physical interactions, this increases the prevalence of corruption and rent-seeking. Notably, some measures have been taken to address the issue. For instance, the implementation of the 2019 faceless assessment scheme was a step in the right direction. However, such reforms have been implemented on a small-scale. The introduction of an assessment framework that is presence-less and targets resources towards high risk cases at population scale is necessary to increase the efficiency of India's income tax structure.

IMPLEMENTATION

- Amend the IT Act to build trust between taxpayer and tax authorities.
- Automate processes such as filing of returns, allotment of registration, issuance of refunds etc.
- Eliminate physical interaction between tax authorities and taxpayers.
- Give taxpayers the opportunity to rectify genuine errors and alter the compliance risk strategy to focus on high risk taxpayers.

Promote Online Dispute Resolution for Lockdown-Related Disputes

ATTENTION:
Department of Justice, Ministry of Law and Justice
E-Committee, Supreme Court of India

PROBLEM The COVID-19 induced lockdown has forced the judiciary to work at sub-optimal capacity exacerbating the access to justice problem. It would be tragic if the suffering of parties who require judicial redress is heightened because of lack of effective access to dispute resolution mechanisms.

To its merit, the Indian judiciary has been quick to adopt technology solutions to keep the system accessible. More importantly, the Supreme Court has displayed the kind of progressive leadership expected from it by making it amply clear that some form of virtual courts is here to stay, with or without the need for social distancing. However, the Indian judiciary is still some distance away from achieving this vision at the scale required to cater to its already existing backlog. In addition, a surge in civil disputes as a direct result of the COVID-19 induced lockdown is broadly expected in employment, commercial, tenancy, consumer and family disputes. Experts predict enforceability of force majeure clauses in contracts becoming a vehemently contended issue. For these, a customised solution needs to be found.

SOLUTION At this critical juncture, it is imperative that the judiciary calls its reliable alter-ego, Alternative Dispute Resolution (ADR), into action. A strategic nudge towards ADR mechanisms- negotiation, mediation and arbitration, for categories of disputes where

an upsurge of cases is anticipated will ensure efficient dispute resolution without overburdening the courts. Further, the nudge shouldn't be towards traditional ADR mechanisms but ADR mechanisms implemented in an online form.

In fact, anticipating a similar rise in disputes due to the pandemic, a few jurisdictions have already adopted tailor-made ADR schemes. One such is the 'COVID-19 Online Dispute Resolution ("ODR") Scheme' by Hong Kong's Department of Justice. Simply put, ODR is ADR enabled by technology. It completely dispenses with face-to-face interaction and allows for communication that need not happen in real-time, thereby allowing parties to engage in the process at their convenience. ODR can be court-annexed or provided through independent private platforms operating outside the courts. Both these forms are already commonplace in several jurisdictions for consumer disputes, domain name disputes and small cause cases among others.

Along the lines of what has been established in Hong Kong, the government along with the judiciary, should design a scheme to resolve these specific disputes through ODR.

IMPLEMENTATION

The Department of Justice, Ministry of Law and Justice, should formulate a new ODR scheme to resolve COVID-19 induced disputes in the above-mentioned sectors. Such a Scheme should encompass the following features:

- Set up a fund to facilitate legal industry, ADR institutes and centres to procure IT systems and provide training to arbitrators/ mediators and lawyers to conduct remote hearings.
- Co-opt existing ODR platform/s to provide cost and time effective dispute resolution. Over time, court-annexed ODR capability needs to be developed.
- Cap ODR fee and fix timelines based on categories of disputes.
- Tap into private dispute resolution professionals and institutions as well as the court-annexed centres for additional capacity.
- Provide legal aid and a helpline number to assist the parties in effectively participating in ODR processes. Final year law students could be co-opted as paralegals for this purpose.

Modernise the Regulatory Framework for Digital Payments

ATTENTION:
Department of Economic Affairs, Ministry of Finance.
Reserve Bank of India

PROBLEM The ongoing pandemic has brought digital payments into sharp focus, as governments and citizens exercise abundant caution in limiting person-to-person contact. The need for resilient and scalable digital payment systems is underscored by the requirement to reduce reliance on cash exchanges and facilitate a smooth transfer of stimulus funds to beneficiaries.

This calls for a legal framework that can better facilitate the promotion of and greater reliance on new modes of digital payments to meet changing consumer demands. However, the existing framework under the Payment and Settlement Systems Act, 2007 (PSS Act) is not best equipped to leverage digital payments to meet such needs. This is for three reasons. First, while the PSS Act primarily focuses on regulatory oversight, it remains silent on critical issues such as consumer protection, promotion of competition, and innovation. These issues are sought to be addressed through a gamut of subordinate legislation, creating regulatory uncertainty. Second, the PSS Act fails to adopt a risk-based approach to the regulation of payment systems. By including all payment, clearing, settlement systems, and payment services within the definition of 'payment systems', the PSS Act does not account for the risk profile that may be associated with different kinds of digital payments. Third, while the Reserve Bank of India (RBI) has launched a regulatory

sandbox to promote innovation in the digital payments space, amongst other things, it fails to provide an enabling framework to scale up digital payment solutions. The new normal of curtailed physical interaction with an emphasis on digital-first is likely to lead to greater demand for integrated or cross-sectoral financial products that combine a bouquet of services like payments, lending, insurance, etc. This calls for an inter-regulatory coordinated approach to encourage innovation in financial technologies and scale up existing solutions.

SOLUTION The regulatory framework for digital payments under the PSS Act must be re-designed, to allow it to adapt to new payment product and service offerings. This will require amending the PSS Act and enacting a new, modernised legislation built on a risk-based approach that distinguishes between payment services and clearing and settlement systems from a systemic perspective and imposes regulation in a proportionate manner. This will lower the barrier of entry for low-risk products and services, and allow regulatory resources to be focused on the most systemically important actors. Further, critical issues pertaining to obligations of payment service providers towards consumers, open access, and interoperability that is currently scattered across different sets of subordinate legislation should be addressed through such a statutory framework.

IMPLEMENTATION

- Enact a separate legislation to streamline the governance of payment services in India (Proposed Law). The Proposed Law should be technology-neutral and must be based on payment activities rather than payment products. It must provide a clear, graded framework within which emerging products and services along the payments value chain can be nested.
- The Proposed Law must incorporate a risk-based framework, that distinguishes payment activities on the basis of the risk that they pose to the financial system.
- The enactment of the Proposed Law will also require an amendment to the existing PSS Act to carve out such services from the ambit of the PSS Act. The PSS Act will continue to regulate clearing and settlement systems. It may also be used to regulate systemically important payment systems as may be designated by the RBI.
- The Proposed Law must be supplemented with the enactment of a standalone legislation that creates a structured mechanism for inter-regulatory coordination between the financial sector regulators to test fintech innovations that fall under the purview of more than one regulator.

Streamline Usage of Health Data in Public Emergencies

ATTENTION:
Ministry of Electronics and Information Technology
Departments of Urban Development, State Governments
Department of Health, State Governments
Departments of Medical Education, State Governments

PROBLEM Health data has been crucial in formulating effective policy interventions under the COVID-19 crisis. Urban local bodies (ULBs) and private clinical establishments are crucial to collecting and providing such health data to relevant state and central departments. The Twelfth Schedule to the Constitution grants municipal bodies control over matters of public health, subject to any existing state legislation. For example, in Karnataka, ULBs are vested with the powers to promote public health and welfare under the Karnataka Municipal Corporation Act, 1976 and the Karnataka Municipalities Act, 1964. Additionally, the Karnataka Private Medical Establishments Act, 2007 requires all private medical establishments to actively participate in implementing all national and state health programmes as and when the state specifies so. However, these have not kept abreast with the digitisation of data and health records which prevent efficient real-time sharing of health patterns, and lack legal processes and norms to facilitate data sharing through ULBs. As such, privacy and confidentiality norms for health data disclosures remain absent for these local bodies.

SOLUTION This issue requires redress at both the Union and state levels. First, there is a need for a data protection legislation including safeguards for health data, which estab-

lishes minimum standards to apply across the country. To this end, the forthcoming Personal Data Protection (PDP) Bill, 2019 and the regulations framed under it are expected to provide legal standards for health data disclosures. The Bill contains two provisions which allow processing of personal information and sensitive personal data for prompt action in certain cases, one of which is an epidemic.

State laws governing medical establishments should also be compliant with the Electronic Health Record Standards, and prescribe data disclosure norms in line with the standards prescribed under the forthcoming PDP Bill framework. Local Health Officers appointed under state municipal laws can also be tasked with ensuring accountability in maintaining data disclosure norms prescribed by the centre and the state from time to time. For this, the Karnataka Municipalities Act and the Karnataka Municipal Corporations Act need to be amended to prescribe the specific duties of ULBs in managing such data.

The disclosure norms devised must define the need and context in which non-consensual data sharing is allowed, the purposes for which this is done, the designated authorities/ health officers that may access the data, and their responsibilities in handling the data. They must also be tailored to suitably reflect the extent of data disclosures required for communicable and non-communicable diseases. These norms should further include minimum standards for anonymisation, and the limited instances where de-identification at the local levels is permitted. A defined procedure for requiring disclosures from medical establishments and further sharing of this data with state and centre-level repositories should be outlined. The state laws must further specify and publish the procedure to settle grievances vis-a-vis health data disclosures, and the authority or officer tasked with this responsibility.

IMPLEMENTATION

- The Data Protection Authority created under the Personal Data Protection Bill should formulate Codes of Practice for the protection and sharing of health data in line with the provisions of the Bill and in collaboration with sectoral regulators. These should provide minimum standards for state and local government bodies to further integrate within state laws on managing health data.
- The Karnataka Municipal Corporation Act and Karnataka Municipalities Act should be amended to specify the roles and responsibilities of Health Data Officers in maintaining data disclosure norms prescribed by the centre and state.
- The Karnataka Private Medical Establishments Act should be amended for all private hospitals to submit health data to designated officers/ authorities only as per laid down disclosure norms and procedures.

Make Internet Coverage 100%

ATTENTION:
Ministry of Electronics and Information Technology
Ministry of Corporate Affairs
Department of Telecom, Ministry of Communications

PROBLEM Despite appearances, quality internet access is a privilege in India. As per latest data shared by the Telecom Regulatory Authority of India, at the end of 2018, 578.2 million persons, less than 50% of India's population, has access to broadband internet. The Government of India has been running the BharatNet project, which seeks to provide internet connectivity to all Gram Panchayats ("GP") in India, 2.5 lakh in total. The project has missed multiple deadlines and is now currently slated to be completed by August 2021. As of January 2020, only 7.45% of the 1.5 lakh GPs targeted under phase 2 of the project are service-ready. Delays in its implementation have a cascading effect on the lived realities of rural citizens denying them access to the internet, even more vital in the wake of the coronavirus pandemic and lockdown.

SOLUTION To provide universal internet coverage requires focus on two aspects; bolstering infrastructure and creating demand. With a lot of state governance and service delivery functions also moving online, states have an equal stake in this, and need to be given a primary role in infrastructure creation. The centre should limit its role to funding, monitoring and coordination between different union departments and allow states to actually deal with on-ground implementation. For example, the

centre can work with the Department of Space to allocate unused or underutilised satellite bandwidth to areas which cannot be connected through optical fibre due to issues with the terrain. Similarly, states would be better placed to deal with right of way issues, which have plagued the implementation of BharatNet across the country. While the centre can provide an overall framework focussing on quality, accessibility and maintenance standards, states should be given the freedom to decide the implementation model, whether they want to build infrastructure through state PSUs or invite the private sector to create infrastructure in a Public-Private partnership model.

Currently, per user data consumption on BharatNet is 0.14 Gb per month, which is not enough to incentivise private operators to start providing services. Demand creation is important because BharatNet is supposed to generate revenue and is designed to create plug and play infrastructure, where telecom operators can use the infrastructure created to provide services. The solution here is two-fold. First, the government needs to ramp up its digital literacy programme and increase the coverage target from the currently modest figure of six crore citizens. This should be supplemented by incentivising CSR investments in digital literacy. As levels of digital literacy increase, people will get acquainted with navigating the internet and the benefits accruing from it and this will lead to an increase in demand.

Secondly, to ensure that no citizen gets left behind, the government should consider subsidising telecom operators to provide mobile internet services to segments of the population below the poverty line and living in areas where commercial services are currently not viable due to lack of demand. The Universal Service Obligation Fund ("USO Fund") should be utilised to this effect. It is important that a subsidy programme of this nature have a sunset clause, because the purpose here is not affordability, the aim is to create demand.

IMPLEMENTATION

- Restructure BharatNet and allow states to takeover infrastructure creation, funded and monitored by the Centre.
- Add an entry in Schedule VII of the Companies Act 2013 focussing specifically on digital literacy.
- Design a subsidy programme targeted towards subsidising mobile internet access to below poverty line households. This should be initiated as a pilot programme in rural areas of the states with the lowest tele-density. Funding for the pilot can be routed through the USO Fund.

Ministry Index

State Department Index

Other Authorities Index

References

Draft a Public Health Emergency Preparedness and Response Law

- Peter Daszak, Andrew A. Cunningham, Alex D. Hyatt 'Emerging Infectious Diseases of Wildlife-Threats to Biodiversity and Human Health', (2000 Vol 287, Science, 443); Prof. Tim Benton, Chatham House, 'Coronavirus: Why are we catching more diseases from animals?' (BBC News, 31 January 2020) *<https://www.bbc.com/news/health-51237225> accessed 22 May 2020.*
- World Health Organization – Strengthening health security by implementing the International Health Regulations (2005) *<https://www.who.int/ihr/procedures/monitoring/en/> accessed 22 May 2020; <http://gamapserver.who.int/gho/interactive_charts/ihr/monitoring/atlas5.html?indicator=i5> accessed 22 May 2020.*
- National Disaster Management Authority, Order No. 1-29/2020-PP (Pt.II) dated 24 March 2020; Ministry of Home Affairs Order No. 40-3/2020-DM-I(A) dated 24 March 2020.
- Clause 15, Delhi Epidemic Diseases, COVID-19 Regulations, 2020; Clause 16, Bihar Epidemic Diseases, COVID-19 Regulations, 2020; Ministry of Health and Family Welfare, Guidelines for Covid-19 testing for private laboratories in India (21 March, 2020) *<https://www.mohfw.gov.in/pdf/NotificationofICMguidelines-forCOVID19testinginprivatelaboratoriesIndia.pdf> accessed 24 May 2020.*
- Vikas Pandey 'Coronavirus: India's race against time to save doctors' (BBC News, Delhi, 13 April 2020) *<https://www.bbc.com/news/world-asia-india-52215071> accessed 27 May 2020;* Omar Rashid 'Coronavirus | U.P. villages tense as many skip quarantine' (The Hindu, Lucknow, 03 April 2020) *<https://www.thehindu.com/news/national/coronavirus-up-villages-tense-as-many-skip-quarantine/article31251008.ece> accessed 27 May 2020.*

Guarantee the Occupational Health and Safety of Healthcare Workers

- Epidemic Diseases (Amendment) Ordinance, 2020.
- Standing Committee on Labour (2019-20), 'Fourth Report- the Occupational Safety, Health and Working Conditions Code, 2019' (February 2020).
- Article 4, Promotional Framework for Occupational Safety and Health Convention, 2006.

Reinvigorate the Practice of Clinical Ethics

- World Health Organisation, A checklist for pandemic influenza risk and impact management: Building capacity for pandemic response (2018).
- World Health Organisation, A checklist for pandemic influenza risk and impact management: Building capacity for pandemic response (2018).
- Medical Council of India, Attitude, Ethics and Communication (AETCOM) Competencies for the Indian Medical Graduate

(2018).

- Common Cause v Union of India AIR 2018 SC 1665.
- Anne Slowther, Chris Bunch, Brian Woolnough and Tony Hope, 'Clinical Ethics Support in the UK: A review of the current position and likely development' (The Nuffield Trust, 2001); Fatemeh Hajibabaee, Soodabeh Joolaee, Mohammad Ali Cheraghi, Pooneh Salari and Patricia Rodney, 'Hospital/clinical ethics committees' notion: an overview' (2016) 9 Journal of Medical Ethics and History of Medicine 1-9.

Make Patient Rights Effective

- Lata Mishra, 'SevenHills Hospital authorities admit retaining housekeeping staff has been a struggle' (Mumbai Mirror, 14 April 2020) *<https://mumbaimirror.indiatimes.com/coronavirus/news/sevenhells-hospital/articleshow/75131808.cms> accessed 18 June 2020.*
- Sidharth Ravi and Nikhil M Babu, 'Price of admission at Delhi's private hospitals' (The Hindu, 14 June 2020), *<https://www.thehindu.com/news/cities/Delhi/price-of-admission/article31829015.ece> accessed 18 June 2020.*
- Scroll Staff, 'Meerut hospital demands negative Covid-19 result to admit Muslim patients, UP police launch probe' (Scroll.in, 19 April 2020), *<https://scroll.in/latest/959607/meerut-hospital-demands-negative-covid-19-result-to-admit-muslim-patients-up-police-launch-probe>accessed 18 June 2020.*
- Scroll Staff, 'Coronavirus: Mother, newborns die in Dehradun after four hospitals refuse treatment, inquiry ordered' (Scroll.in, 13 June 2020), *<https://scroll.in/latest/964601/coronavirus-mother-newborns-die-in-dehradun-after-four-hospitals-refuse-treatment-inquiry-ordered> accessed 18 June 2020.*
- PTI, 'Ensure no patient is denied admission: Kin of Noida woman who died shuttling between hospitals' (The New Indian Express, 8 June 2020), *<https://www.newindianexpress.com/nation/2020/jun/08/ensure-no-patient-is-denied-admission-kin-of-noida-woman-who-died-shuttling-between-hospitals-2153779.html> accessed 18 June 2020.*

Create a Model Public Health Administrative Architecture for States

- Niti Aayog, The World Bank, Ministry of Health and Family Welfare, 'Healthy States, Progressive India: Report on the Ranks of States and Union Territories. (June 2019) *https://niti.gov.in/writereaddata/files/document_publication/Healthy-States-Progressive-India-Report_0.pdf> accessed 26 May 2020.*
- Mavalankar DV and others, "Maternal Health in Gujarat, India: A Case Study" (2009) 27 Journal of Health, Population, and Nutrition *<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2761782/> accessed 24 May 2020.*
- Chandrakant Lahariya, Rajesh Khanna & Deoki Nandan, 'Primary Health Care and Child Survival in India' (2010) 77 Indian Journal of Paediatrics *<https://link.springer.com/content/pdf/10.1007/s12098-010-0036-y.pdf> accessed 28 May 2020.*
- Niti Aayog, 'Health Systems for a New India: Building Blocks' (November 2019) *<http://www.indiaenvironmentportal.org.in/files/file/health%20system%20in%20India.pdf> accessed 24 May 2020.*

- Sunny S. Kim and others, 'Understanding the role of intersectoral convergence in the delivery of essential maternal and child nutrition interventions in Odisha, India: a qualitative study' (2017) 17 BMC Public Health *<https://link.springer.com/article/10.1186/s12889-017-4088-z> accessed 28 May 2020.*
- Laxmi Mandal v Deen Dayal Harinagar Hospital 172 (2010) DLT 9; Moba Changkai v State of Nagaland and Others MANU/GH/0916/2019.
- Dr Ashwani Kumar v Union of India and Others (2019) 1 SCC (LS) 465.
- Snehalata Singh and Others v State of Uttar Pradesh and Others MANU/UP/1205/2018.
- Gunilla Backman and others, 'Health Systems and the Right to Health: An Assessment of 194 Countries' [2008] 372 The Lancet 2047.
- Roger Magnusson, 'Right to Health: Advancing the Vital Role of Law', World Health Organization 2017, 60 *<https://www.who.int/healthsystems/topics/health-law/health_law-report/en/> accessed 24 May 2020.*

Create a National Wildlife Protection Authority

- 'Forest Policy and Legislative Framework', India's Forests *<http://ifs.nic.in/Dynamic/book/page3.pdf>*, accessed 30 May 2020.
- Jones KE and others, "Global Trends in Emerging Infectious Diseases" (Nature News, 21 February 2008) *<https://www.nature.com/articles/nature06536>, accessed 30 May 2020.*
- Krishnan P and others, 'Conservation Across Landscapes India's Approaches to Biodiversity Governance' (United Nations Development Programme, 2012) *<http://fes.org.in/studies/conservation-across-landscapes-india-approaches-to-biodiversity-governance.pdf>, accessed 30 May 2020.*
- Mathur P and Sinha P, 'Looking beyond Protected Area Networks: a Paradigm Shift in Approach for Biodiversity Conservation' (2008) 10 International Forestry Review 305.

Restructure India's Labour Law Framework

- India's labour law framework consists of a complex web of legislation and executive orders, which has recently been consolidated into four labour codes: the Code on Wages; the Occupational Safety, Health and Working Conditions Code; the Code on Social Security; and the Industrial Relations Code, *<https://labour.gov.in/labour-codes>, accessed 25 May 2020.*
- The Hindu Data Team, '96% migrant workers did not receive rations' (The Hindu, 20 April 2020) *<https://www.thehindu.com/data/data-96-migrant-workers-did-not-get-rations-from-the-government-90-did-not-receive-wages-during-lockdown-survey/article31384413.ece>* accessed 25 May 2020 (stating that over 90% of workers did not receive rations from the government nor their earned wages from their employers during the first phase of the lockdown)
- Ministry of Labour & Employment, (D.O No.M-11011/08/2020-Media) 20 March 2020, *<https://labour.gov.in/sites/default/files/Central_Government_Update.pdf>, accessed 25 May 2020.*
- The unemployment figures at the end of April 2020 stand at a mind-boggling 25%, Centre for Monitoring

Indian Economy <*https://www.cmie.com/kommon/bin/sr.php?kall=warticle&dt=2020-04-07%2008:26:04&msec=770*>, *accessed 25 May 2020*.

- PTI, 'Labour laws suspension by states to pull businesses out of crisis: ISF' (The Economic Times, 11 May 2020), *https://economictimes.indiatimes.com/news/economy/policy/labour-laws-suspension-by-states-to-pull-businesses-out-of-crisis-isf/articleshow/75674928.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 25 May 2020*.
- Amrit Amirapu and Micheal Gechter, 'The Cost of Labour Regulations in India' (Voxdev, 27 November 2017) <*https://voxdev.org/topic/firms-trade/cost-labour-regulations-india*>, *accessed 25 May 2020*.
- Dr. Sanjay Upadhyay and Pankaj Kumar, 'An Analytical Impact Assessment of Labour Law Amendments and other Labour Reform Initiatives Undertaken by State Governments of Rajasthan, Andhra Pradesh, Haryana and UP' (V.V. Giri National Labour Institute, 2017) <*https://vvgnli.gov.in/sites/default/files/122-2017%20-%20Sanjay%20Upadhyaya.pdf*>, *accessed 25 May 2020*.
- Atulan Guha, 'Labour Market Flexibility in Indian Manufacturing, Institute for Studies in Industrial Development', <*http://isid.org.in/pdf/aGuha2006.pdf*>, *accessed 25 May 2020* (stating that the economic analysis of labour law flexibility in Indian states show no co-relation to increased investment and employment)
- Anamitra Roychowdhury, 'A Reality on the Labour Market Flexibility Argument in India' <*http://www.macroscan.org/fet/feb14/pdf/Labour_Market.pdf*>, *accessed 25 May 2020*.
- Somesh Jha, 'Ensure That Changes to Indian Labour Laws to Global Standards: ILO' (The Wire, 14 May 2020), <*https://thewire.in/labour/ilo-india-labour-laws-covid-19*>, *accessed 25 May 2020*; Nileena MS, 'Trade Unions protest against Modi's "pro-corporate" and "anti-people" labour reforms' (The Caravan, 06 January 2019) <*https://caravanmagazine.in/policy/trade-unions-against-modi-labour-policies*>, *accessed 25 May 2020*; International Labour Organisation, 'C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)', <*https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C144*>, *accessed 25 May 2020*.

Make Digital Education Inclusive

- Prateek Sharma and Ors v Union of India and Ors, Writ Petition (Civil)No. 3199/2020
- Ministry of Human Resource Development Government of India, 'National Policy for Information and Communication Technology (ICT) in School Education' (2012) <*https://mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/revised_policy%20document%20ofICT.pdf*> *accessed 22 May 2020*.
- Telecom Regulation Authority of India, 'Recommendations on Making ICT accessible for Persons with Disabilities' (2018) <*https://trai.gov.in/sites/default/files/RecommendationsICT09072018,%20.pdf*> *accessed 22 May 2020*.

Facilitate Domestic Violence Complaints

- UNFPA, 'Impact of the COVID-19

Pandemic on Family Planning and Ending Gender-based Violence, Female Genital Mutilation and Child Marriage' (UNFPA, 24 April 2020) *<https://www.unfpa.org/sites/default/files/resource-pdf/COVID-19_impact_brief_for_UNFPA_24_April_2020_1.pdf> accessed 10 June 2020.*

- Scroll Staff, 'Domestic Violence cases reported to NCW nearly double in last 25 days', (Scroll.in, 17 April 2020) *<https://scroll.in/latest/959515/covid-19-lockdown-domestic-violence-cases-reported-to-ncw-nearly-double-in-last-25-days> accessed 20 May 2020.*
- Shalini Nair, 'State to finally appoint protection officers in Talukas' (Indian Express, 30 January 2015) *<https://indianexpress.com/article/cities/mumbai/state-to-finally-appoint-protection-officers-in-talukas/> accessed 11 June 2020.*
- List of Protection Officers in Delhi *<http://www.environment.delhigovt.nic.in/wps/wcm/connect/doit_wcd/wcd/Home/Women+Empowerment/Protective/List+of+Protection+Officers> accessed 11 June 2020*
- Child Development Project Officers have been appointed as Protection Officers in Punjab *<https://sswcd.punjab.gov.in/en/the-protection-of-women-from-domestic-violence-act-2005> accessed 11 June 2020.*

Allow Equity-Based Crowd-Funding

- Securities Exchange Board of India, Consultation Paper on Crowdfunding in India, 2014, *<https://www.sebi.gov.in/sebi_data/attachdocs/1403005615257.pdf> accessed 15 May 2020.*
- Vidhi Centre for Legal Policy, 'Response to the SEBI Consultation Paper on Crowdfunding in India' (16 July 2014) *<http://vidhilegalpolicy.in/wp-content/uploads/2019/05/VidhiCrowdfundingPaper.pdf> accessed 15 May 2020.*
- The International Organisation of Securities Commissions, 'Crowdfunding 2015 Survey Responses Report', December 2015, *<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD520.pdf> accessed 15 May 2020.*
- European Commission Financial Services User Group, 'Crowdfunding from an Investor Perspective', Final Report, 17 July 2015. *<https://www.oxera.com/wp-content/uploads/2018/07/160503-study-crowdfunding-investor-perspective_en.pdf.pdf> accessed 16 May 2020.*
- Consultative Group to Assist the Poor, 'Crowdfunding and Financial Inclusion', Working Paper, March 2017, *<https://www.cgap.org/sites/default/files/Working-Paper-Crowdfunding-and-Financial-Inclusion-Mar-2017.pdf> accessed 16 May 2020.*
- Lynda Y. de la Vina, Stephanie Lee Black, US Equity Crowdfunding: A Review of Current Legislation and A Conceptual Model of the Implications for Equity Funding, The Journal of Entrepreneurship, 2017, *<https://journals.sagepub.com/doi/pdf/10.1177/0971355717738600> accessed 16 May 2020.*
- Karsten Wenziaff, 'Developing a Policy Framework for Emerging Crowdfunding Ecosystems', ORF Issue Brief, Issue No. 302, July 2019, *<https://www.orfonline.org/research/developing-a-policy-framework-for-emerging-crowdfunding-ecosystems-52971/> accessed 17 May 2020.*
- CMS, 'Crowdfunding: European Parliament steps up investor protection in its amendments to proposed regulation'

(CMS, 02 April 2019, *<https://www.cms-lawnow.com/ealerts/2019/04/crowd-funding-eu-parliament-steps-up-investor-protection-in-its-amendments-to-proposed-regulation> accessed 17 May 2020.*

- Legalink, Equity Crowdfunding and Peer-to-peer Lending, 1st Edition, October 2019

Modernise the Management of Information for Supply Chains of Essential Goods

- Warehousing (Development and Regulation) Act 2007, s 8; Drugs and Cosmetics Act 1940, s 18B.

Equip Prisons With Technological Capabilities

- In re: Contagion of COVID 19 virus in prisons Suo Moto Writ Petition (C) No. 1/2020
- Sonam Saigal, 'Jails turn into hotbeds of disease' (The Hindu, 25 May 2020). *<https://www.thehindu.com/news/cities/mumbai/jails-turn-into-hotbeds-of-disease/article31666835.ece?fbclid=IwAR0iLrF9p-9PUDgdFm9z8qjTKdC4RyuoXVZawHe_r0pHhkdr1gWUcPwdWtNk> accessed 28 May 2020.*
- PTI, 'MHA asks states to take precautions against COVID-19 in jails, other detention facilities' (The New Indian Express, 04 May 2020) *<https://www.newindianexpress.com/nation/2020/may/04/mha-asks-states-to-take-precautions-against-covid-19-in-jails-other-detention-facilities-2138870.html> accessed 28 May 2020.*
- Himadri Ghosh, 'Coronavirus Fears Spark Riots in Dum Dum Central Jail, Prisoners Demand Release on Bail' (The Wire, 21 March 2020) *<https://thewire.in/government/kolkata-central-jail-riots-coronavirus> accessed 28 May 2020.*
- Gautam S. Mengle, 'Prison telemedicine project completed: govt.' (The Hindu, 07 August 2017) *<https://www.thehindu.com/news/cities/mumbai/prison-telemedicine-project-completed-govt/article19440953.ece> accessed 28 May 2020.*

Issue Bharat Navnirmaan Bonds for Management of National Emergencies

- Adrija Chatterjee and Pragya Srivastava, Interview with Mr. Rathin Roy, Director at the National Institute of Public Finance and Policy (Cogenics, 2 May 2020) *<http://www.cogencis.com/newssection/chome/rathin-roy-says-covid-specific-bond-to-help-tackle-crisis/> accessed 5 June 2020.*

Introduce a Special Framework for Resolving Insolvency of MSMEs

- Ronald B. Davis et al, 'The Modular Approach to Micro, Small, and Medium Enterprise Insolvency'(2016). *<https://pdfs.semanticscholar.org/05c9/693f-58307be6bf1d9d60f156d40c8f3cadce.pdf> accessed 26 May 2020*; Organisation For Economic Co-Operation And Development, 'The Impact of the Global Crisis on SME and Entrepreneurship Financing and Policy Responses' *<https://www.oecd.org/cfe/smes/43183090.pdf> accessed 26 May 2020.*
- Business Standard Staff, 'MSME sector is largest provider of employment after agriculture: 73rd Round of National Sample Survey (NSS)' (Business Standard, 24 June 2019) *<https://www.business-standard.com/article/news-cm/msme-sector-is-largest-provider-of-employment-after-agriculture-73rd-round-of-national-sample-survey-*

nss-119062400656_1.html> accessed 26 May 2020.

- World Bank, 'Saving Entrepreneurs, Saving Enterprises: Proposals on the Treatment of MSME Insolvency' (2008) *<http://documents.worldbank.org/curated/en/989581537265261393/pdf/Saving-Entrepreneurs-Saving-Enterprises-Proposals-on-the-Treatment-of-MSME-Insolvency.pdf> accessed 26 May 2020.*

Leverage Digital Banking to Improve MSME Financing

- Expert Committee on Micro, Small and Medium Enterprises, 'Report of the Expert Committee on Micro, Small and Medium Enterprises' (2019) *<https://rbidocs.rbi.org.in/rdocs//PublicationReport/Pdfs/MSMES24062019465CF8CB30594AC29A7A010E8A2A034C.PDF> accessed 21 May 2020.*

Promote Online Dispute Resolution for Lockdown-Related Disputes

- Express News Service, 'SC hears 390 urgent matters through video conferencing, gives 41 judgments during lockdown' (The Indian Express, 25 April 2020) *<https://indianexpress.com/article/india/390-cases-41-judgments-supreme-court-video-conferencing-6379185/> accessed 19 May 2020.*
- Dhananjay Mahapatra, 'Combination of virtual, physical courts will be way forward: CJI' (The Times of India, 18 May 2020) *<https://timesofindia.indiatimes.com/india/combination-of-virtual-physical-courts-will-be-way-forward-cji/articleshow/75796059.cms> accessed 22 May 2020.*
- Richard Susskind, Online Courts and the Future of Justice (OUP, 2019) 63; Richard Susskind, The End of Lawyers?: Rethinking the Nature of Legal Services (OUP, 2008) 42-52; Richard Susskind, Tomorrow's Lawyers: An Introduction to Your Future (OUP, 2017) 32-42.
- Richard Susskind, Online Courts and the Future of Justice (OUP, 2019) 62.
- Cyril Amarchand Mangaldas, 'Coronavirus, Force Majeure and Impact on Commercial Contracts' (Bloomberg Quint, 23 March 2020) *<https://www.bloombergquint.com/coronavirus-outbreak/covid-19-coronavirus-force-majeure-and-impact-on-commercial-contracts> accessed 19 May 2020.*

Make Internet Coverage 100%

- Aashish Aryan, "BharatNet Phase Two: About 7.45% of 1.5 Lakh Gram Panchayats Service Ready so Far" (The Indian Express, 21 January 2020) *<https://indianexpress.com/article/technology/tech-news-technology/bharatnet-phase-two-only-7-45-per-cent-of-1-5-lakh-gram-panchayats-service-ready-6225281/>accessed 28 May 2020.*
- Rishi Ranjan Kala, 'Broadband Connectivity in Villages under Bharat Net Fails to Pick Up' (The Financial Express, 15 November 2018) *<https://www.financialexpress.com/economy/broadband-connectivity-in-villages-under-bharat-net-fails-to-pick-up/1382155/> accessed 28 May 2020.*
- Sumeysh Srivastava, 'BharatNet Implementation Has Been Slow, riddled with Shortcomings; Needs Urgent Remedial Action to Democratise Internet Access' (Firstpost Tech2, 26 December 2019) *<https://www.firstpost.com/tech/news-analysis/bharat-net-implementa-*

tion-has-been-slow-riddled-with-shortcomings-needs-urgent-remedial-action-to-democratise-internet-access-7827681.html> accessed 28 May 2020.

- Salman SH, 'BharatNet Has Missed 3 Deadlines, While Costs Have Doubled' (MediaNama, 18 July 2017) *<https://www.medianama.com/2017/07/223-bharatnet-deadline/> accessed 28 May 2020.*
- Telecom Regulatory Authority of India, 'Highlights of Telecom Subscription Data as on 31st January 2020', Press Release No. 29/2020.
- Standing Committee on Information Technology, Progress of Implementation of BharatNet, (LS 2017-2018, 50), *<https://eparlib.nic.in/handle/123456789/763783?view_type=search>, accessed 28 May 2020.*

Afterword

Dr. Arghya Sengupta
Research Director

As law and public policy scholars, we've long known that governments must never let a serious crisis go to waste. Crises present opportunities for unprecedented reform overcoming governance gridlocks and strategic delaying tactics by opponents. The coronavirus pandemic is no exception. India is staring at a recession, our first in three decades. Our healthcare system is at full capacity with limited ability to deliver further. The return of migrant workers to their villages has demonstrated the failed promise of our welfare state.

The Prime Minister has called for sweeping reforms encompassing land, labour, liquidity and laws. Several Chief Ministers have already started this process. Such reforms, whether at Union or State level, must be deep, structural and meaningful rather than merely ideological or superficial. This Briefing Book has recommended 25 reforms to the Government of India and State Governments to build a resilient post-Covid India.

The suggested reforms are designed to achieve five policy objectives—first, strengthen public health systems most critically through the passage of a public health emergency preparedness law in the monsoon session of Parliament; second, protect the vulnerable including by making new forms of digital education accessible to the differently abled; third, make governance smart by empowering the third

tier of local self-government directly; fourth, kick-start the economy by enacting a financial relief and protection legislation; and fifth, think digital first which can only be done through concerted efforts to achieve 100% internet coverage in the country.

Each of the 25 reform suggestions has been made after comprehensive research, weighing of pros and cons, acknowledgement of comparative efforts in other countries and a clear pathway for effective implementation.

Sant Kabir had said,

धीरे धीरे रे मना,	*Dheere dheere re mana,*
धीरे सब कुछ होय,	*dheere sab kuch hoye,*
माली सींचे सौ घड़ा,	*maali seenche sau ghara,*
ऋतू आए फल होय।	*ritu aaye, phal hoye.*

"Slowly, slowly, O my mind,
Everything happens slowly,
The gardener waters a field with a hundred pails,
But the fruit comes only in its season."

Everything happens at its anointed time. Now is the time for the fruit of reform to grow and prosper to create a resilient post-Covid India. It is our view that the 25 reforms suggested in this book, if taken up and implemented, will slowly but surely lead us there.

Our research fellows will be happy to work with the identified nodal ministries to start the process of converting these reform suggestions into actionable laws and rules.

Acknowledgements

We would like to sincerely thank Adrija Ghosh, Anjali Anchayil, Nipuna Varman, Rathin Roy and Professor Mark J. Roe for their valuable inputs and guidance in research. Without their support, this book could not have been compiled.

vidhilegalpolicy.in

vclp@vidhilegalpolicy.in
linkedin.com/Vidhi Centre for Legal Policy
facebook.com/vidhilegalpolicy
twitter.com/@vidhi_india

V | D H | Centre for Legal Policy