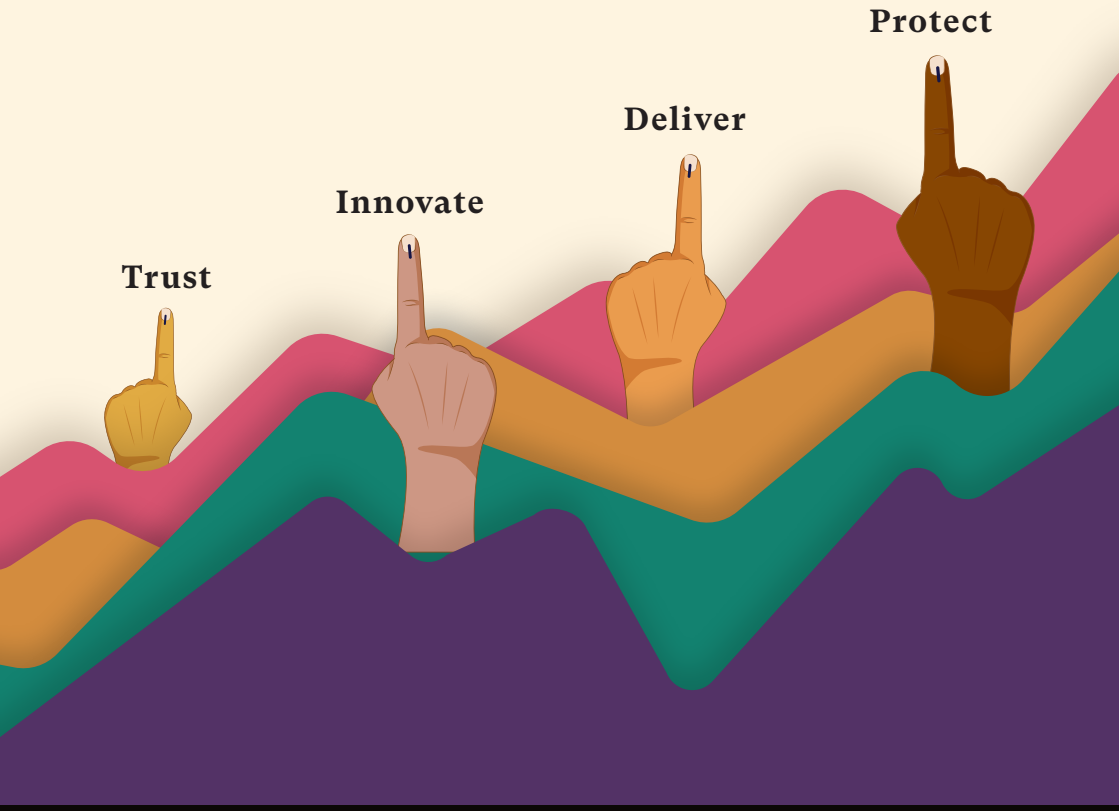
The State *Shall*

VIDHI Centre for Legal Policy



25 REFORM IDEAS FOR 2024

VIDH | Centre for Legal Policy

THE STATE SHALL

Trust | Innovate | Deliver | Protect

25 REFORM IDEAS FOR 2024

Published in December 2023
by the Vidhi Centre for Legal Policy,
A-232 Ratan Lal Sahdev Marg, Defence Colony, New Delhi
110024

Designed by: Nandita

Printed by: Archana Enterprises,
29, Sahipur, Village, Shalimar Bagh, New Delhi-110088

This briefing book is an organisation-wide publication of the Vidhi Centre for Legal Policy - an independent think-tank doing legal research to make better laws and improve governance for the public good.

People of Vidhi

Vidhi's Briefing Book is a collective effort of the organisation. In particular, the following researchers have contributed to this edition:

A

Aarushi Malik
Aditya Phalnikar
Aditya Prasanna Bhattacharya
Akash Chandra Jauhari
Alok Prasanna Kumar
Ameen Jauhar
Atishya Kumar

D

Daksh Aggarwal
Damini Ghosh
Debadityo Sinha
Debanshu Mukherjee
Deepika Kinhal

I

Isha Prakash

J

Jinaly Dani
Jyotika Randhawa

K

Kanav Narayan Sahgal
Kim D'Souza

L

Lakshita Handa
Lalit Panda

M

Manmayi Sharma
Manvi Khanna

N

Namrata Mukherjee
Naveed Mehmood Ahmad
Neha Lodha
Neha Singhal

P

Parimal Kashyap
Pragya Singh
Prathiksha Ullal
Priyamvadha Shivaji

R

Raghunandan Sriram
Rakshita Goyal
Rituparna Padhy
Ritwika Sharma

S

Sagarika Parab
Shehnaz Ahmed
Shreya Garg
Shreya Tripathi
Shreyashi Ray
Shuchi Agarwal
Somya Jain
Sunetra Ravindran
Surbhi Sachdeva

V

Varini G
Varsha S. Banta

Research Assistants

Divyanshi Sharma
Khushboo Abrol
Kritika Oberoi

Coordinators & Editors

Aditya Prasanna Bhattacharya
Arghya Sengupta
Dhvani Mehta
Shireen Yachu

Human Resources

Sagarika Mathur
Shankar Ramamurthy
Simran Kumar

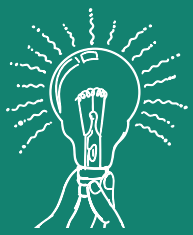
Finance Team

Alakto Majumder
Archana Khanduri
Jagannath Pati
Ranajoy Saha

Administrative & IT Team

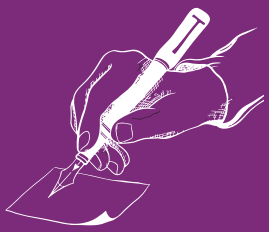
Ajay
Amit
Ashish Arya
Inderpal Singh
Kapil
Kailash Chandra Pant
Mohit
Raju
Sanjay
Saradindu Baidya
Shyamal Mukherjee
Sonu

The State Shall *Trust*



The State Shall *Innovate*

The State Shall *Protect*



The State Shall *Deliver*

Introduction

We need to make laws matter more to the ordinary citizen. Often, laws are seen as the business of lawyers and judges, not the concern of the common person. This is reflected in manifestos of political parties—while some laws are promised, they are usually ideological in nature (abrogation of Article 370 is a notable example). Other than those, manifestos are mostly about government schemes, welfare measures, and anti-corruption crusades.

In the run-up to the 2024 General Elections, this briefing book has been written with a view to change this state of affairs. At Vidhi, we believe that laws matter to citizens much more than one thinks. What if there were a law that provided basic social security to caregivers of persons with disability? That would both be a recognition of their value in society as well as incentivise caregiving for the disabled as a specialised sub-stream within nursing.

What if a law were to abolish the Court Fees Act, 1870 making justice truly free? That would make the courts far more accessible to the poor than they are today. It would also ensure that the judicial system becomes financially prudent, not contingent on citizens paying for justice.

Finally, laws can contain new ideas for a new India. Why should fintech companies not have a unified licence to offer fintech services like banks? Given the pace of urbanisation of the country, is it not time for an urban right to work programme on the lines of MGNREGA? Can we reduce our insistence on criminal penalties and imprisonment as we mature as a democracy?

> *Modern India needs to have such modern laws*

This book suggests 25 law reforms to be incorporated by all political parties for their manifestos in the lead-up to the General Elections. Laws were never just dense jargon that lawyers fought over and on which judges pronounced verdicts. They are powerful tools that can vastly improve our lives, our society, and our nation.

We hope that whoever comes to power will act on these reform ideas that will give citizens the laws they deserve.

1.

The State shall *trust* its citizens.

Shift towards principle-based criminal law-making

Attention: Ministry of Home Affairs | Ministry of Law and Justice

Problem

The Bharatiya Nyaya Sanhita Bill, 2023 ('BNS'), the Bharatiya Nagarik Suraksha Sanhita Bill, 2023 ('BNSS') and the Bharatiya Sakshya Bill, 2023 ('BSB') were recently tabled in Parliament to decolonise India's criminal laws. Together with the Jan Vishwas Act, 2023 ('JV Act'), these Bills aim to shun the baggage of antiquated laws, streamline India's criminal justice system and move towards creating a citizen-centric system. 75 years post-independence, it is crucial to break from the shackles of the authoritative colonial regime that used criminal laws and repressive policing methods to further their agendas.

Unfortunately, the colonial policy of using criminal laws arbitrarily has continued post-independence and into these 3 Bills. Colonial tools fashioned as a means to control and coerce the conduct of citizens, like the offence of sedition, have been retained in the Bills. Similarly, provisions rooted in Victorian morality that criminalise acts such as obscenity, miscarriage, and enticing a married woman have also been retained.

However, there is more to it than meets the eye. Criminal provisions are a consistent feature across central laws that govern a wide range of issues, encompassing labour relations, industries, banking, contractual agreements, societal institutions, etc. A staggering 6,000 offences across more than 400 central laws evidence an over-dependence on criminal law in matters of daily governance.

For instance, minor acts and commissions like flying kites dangerously and failing to keep accounts in a particular manner are criminalised and dealt with jail terms. Moreover, there is a noticeable lack of rationale and consistency in the punishments prescribed for these offences. For instance, while an act of assault or use of criminal force can lead to a 3-month jail term, dangerously flying a kite might result in two years of imprisonment.

This is primarily because there is no clear policy or principles guiding criminalisation. Even the JV Act proceeds to selectively decriminalise offences in over 40 laws without any clear rationale.

> ***"This can be achieved by conceptualising a comprehensive set of principles that guide criminalisation and prescription of punishments"***

Approach

Decolonisation of India's criminal justice system ('CJS') will require making India's criminal law-making practices less arbitrary, policing more responsible, and punishments proportionate and evidence-based.

This can be achieved by conceptualising a comprehensive set of principles that guide criminalisation and prescription of punishments. These principles should serve as the foundation, recognising the fundamental values that criminal laws should protect. Offences that breach these values and to what extent will determine whether they amount to crimes. In doing so, these principles can inherently define the limits within which criminal laws should be enacted.

Countries such as Albania, Croatia, and Slovenia have identified these values within the criminal and penal code itself. For instance, in Croatia and Slovenia, criminal sanctions can only be prescribed for acts threatening or violating personal liberties and human rights.

Additionally, to balance the need for criminalisation and the potential impact of criminalisation, the law should provide for pre-legislative tests and impact assessments. This will ensure enacted laws are enforceable, proportionate, and fiscally responsible. Interestingly, India already has a pre-legislative consultation policy to evaluate the social and financial costs of every proposed legislation. However, these procedures are rarely followed through.

Furthermore, the law should provide a periodic review mechanism to declutter the existing criminal law landscape and maintain the efficacy of the CJS. This mechanism should ensure that criminal laws are aligned with evolving societal norms.

The Government's approach to decolonise India's CJS, mainly through the 3 Bills, must be revisited. Before these Bills are passed, or any further attempt is made at decolonising India's CJS, the Government must holistically assess the problems and lay down a clear vision for modern India's CJS.

Implementation

Set up a Committee of Experts on 'Decolonisation of Criminal Laws and the Criminal Justice System'. The Committee should:

- Examine the existing criminal law landscape in the country;
- Evaluate laws that over-criminalise and provide arbitrary punishments;
- Lay down scope and objectives of criminal laws in India, and set limitations on the Government's power to criminalise;
- Conceptualise pre-legislative fiscal, justice, and community impact assessments for criminal laws;
- Provide an objective framework for prescribing punishments; and
- Lay down a mechanism for periodic review of the implementation and impact of criminal provisions.

To discuss how to implement this reform, please write to **Naveed Mehmood Ahmed** at naveed.ahmad@vidhilegalpolicy.in

Develop human-centric, responsible Artificial Intelligence for all

Attention: Ministry of Electronics & Information Technology

Problem

In recent years, the world has witnessed astonishing progress in the field of artificial intelligence ('AI') and its uses. NITI Aayog published India's national AI strategy document in 2018, identifying 5 sectors for the deployment of responsible AI. The term responsible AI was further enunciated to conform to what are now universal principles of AI ethics, including transparency, accountability, reliability, and human-centricity.

Yet, despite all the talk around the responsible deployment of AI systems in India, there is a conspicuous lack of robust AI governance. The Government of India has put out feelers by publicising its much-touted Digital India Act ('DIA') as an omnibus legislation that will also cover some form of AI regulation. However, there is no clarity on what principle-based regulation will look like.

The fundamental motivation behind the government's proposed hands-off approach to AI governance is driven by a desire to be conducive to India's AI start-ups. However, such an assumption might be inaccurate – even in 2022, the United States and China have continued to outpace India in terms of private investments in AI significantly. Even in terms of policy and governance, the United States of America ('USA') has tabled and discussed the most amount of AI-related bills, while the European Union ('EU') continues to negotiate unprecedented comprehensive AI legislation.

Despite all the talk about responsible AI deployment, India is presently in a legislative limbo. There is an absence of a clear direction in terms of how responsible AI governance will occur, what high-risk systems will be regulated, and how the government aims to bolster India as a hub of responsible AI innovation. The recent report published by the Ministry of Electronics and Information Technology ('MeitY'), a step in the right direction, needs to be backed into action.

> ***"For the incoming government, resolving India's AI landscape must be a priority"***

Approach

For the incoming government, resolving India's AI landscape must be a priority.

Enact the DIA and codify responsible AI principles – The DIA has remained an arcane legislative agenda for the last year, and needs to be put in the public domain for discussion and subsequent enactment. Pertinently, the DIA must codify responsible AI principles in the form of defined rights of AI users and affected persons and obligations of AI developers and deployers.

Identifying high risk systems and developing a cross-sectoral approach to their regulation – While the DIA codifies core rights and obligations, it should be the sectoral regulators that work with their respective ecosystems to develop requisite AI governance frameworks, particularly for high-risk AI systems within their domain(s). MeitY must evolve a clear framework to ensure AI governance across sectors operates in cohesion and avoids overlaps and conflicts over jurisdiction.

Identifying and developing a self-regulation body – Given the government's inclination to promote self-regulatory bodies for AI governance, it would be essential to identify a specific sector and pilot this approach. MeitY, along with any other sector-specific ministry or department should examine potential models for self-regulation and, based on the sector's requirements, establish a self-regulatory organisation ('SRO'). The SRO should aim to bring balance between innovation and governance and regulate high-risk AI use cases in its designated sector.

Implementation

A phased approach should be adopted for implementing the above mentioned solutions:

- **Phase 1:** MeitY must prioritise the finalisation and passage of the DIA. With its passage there will be more clarity in the legislative framework for developers, deployers, users and affected persons impacted by the AI ecosystem.
- **Phase 2:** MeitY must also organise a plan of action to identify the various sectoral efforts to regulate AI systems. Once this has been identified a high-level committee should be constituted to coordinate information among these relevant sectors and come up with a national blueprint for coordinating cross-sectoral AI governance.
- **Phase 3:** After identifying the different sectoral AI governance frameworks, MeitY and other pertinent government ministry(ies) or department(s) should pilot an SRO in one of the key sectors.

To discuss how to implement this reform, please write to **Ameen Jauhar** at ameen.jauhar@vidhilegalpolicy.in.

Abolish court fees in civil suits

Attention: Ministry of Law and Justice, State Law Departments, Supreme Court of India, High Courts of all states

Problem

The practice of charging fees for the administration of justice in India is a British import. Before 1782, the administration of justice was considered an inherent duty of the state to be undertaken free of cost. The Madras Regulation 3 of 1782, ostensibly introduced by the British became another way to tax Indians by imposing a court fee. Upon independence, India chose to retain the Court Fees Act of 1870, instead of revisiting its need.

As per the Act, an injured party is expected to pay a percentage of the subject-matter value to get their foot in the courthouse door. Access to justice becomes contingent on payment. While court fees were introduced to curb vexatious litigation, over 200 years of experience proves that it has not succeeded. On the contrary, high costs deter honest litigants from seeking legal relief, especially in civil suits where the court fee is determined ad valorem.

Another reason used to justify court fees is that it is needed to recover administrative costs incurred by the courts. As per the 14th Law Commission, however, committees around the world agreed that it is challenging to develop a fee structure that reflects the actual costs incurred. The Court Fees Act, and the state legislations, detail the aspects of a suit on which court fees would be levied. However, the cost factors that inform the fee structure or the grounds on which they are determined have not been disclosed, resulting in a lack of transparency. As a result, in its 189th Report, the Law Commission remarked that court fees had stopped being a service fee and started assuming the form of 'tax on justice'.

This 'tax' is levied at different rates in different states. There are no reasons provided for why some states like Maharashtra choose to cap ad valorem fee at Rs. 50,000, while for others, there is no cap, and the court fee can go up to 10% of the valuation of the suit. Even if there is a fee, the cost of justice cannot be different in different states.

> ***"It is recommended that court fees are abolished across the country as currently, they only hinder access to justice for economically weaker sections of society"***

Approach

Article 8 of the Universal Declaration of Human Rights and Article 2 of the International Covenant on Civil and Political Rights, to which India is a party, states that every person has a right to an "effective remedy" to establish their rights. Hence, if a litigant is unable to afford court fees to initiate the process of litigation, in effect, there is no access to justice for them. Access to justice must remain the primary consideration while determining whether to charge court fees.

Further, there are more effective means to prevent frivolous cases from being filed. For instance, Courts often impose costs on litigants while dismissing cases without any merit as a penalty for wasting judicial time. This power can be used to deter vexatious litigation as the cost levied can be quite hefty, and the amount can be determined by the court as per the facts of the case. Furthermore, a few states like Tamil Nadu, Maharashtra, and Rajasthan have vested powers in the Advocate General of the State to file an application in the court to declare any person as a vexatious litigant.

Implementation

It is recommended that:

- Court fees are abolished across the country as currently, they only hinders access to justice for economically weaker sections of society. To achieve this, the Court Fees Act, 1870 and the respective state legislations should be repealed;
- The judiciary uses its power to impose costs on vexatious litigants and litigants who file frivolous suits, which can offset administrative costs of the court on account of time wastage;
- A well-thought-out national legislation to prevent false cases should be drafted, and laws in jurisdictions like the United Kingdom and Australia be looked into. This law should have sufficient safeguards against abuse of powers by the State.

To discuss how to implement this reform, please write to **Atishya Kumar** at atishya.kumar@vidhilegalpolicy.in

Develop a multi-level grievance redressal mechanism for healthcare facilities

Attention: Ministry of Health and Family Welfare, Government of India, Ministries of Health and Family Welfare of all states in India

Problem

A review of the available adjudicatory mechanisms under consumer, civil, and criminal law reveals that patients do not have access to an effective and time-efficient grievance redressal mechanism. Consumer cases deal overwhelmingly with questions of medical negligence involving issues with diagnosis or treatment rather than with grievances like overcharging, poor hygiene, and lack of healthcare workers. Regulatory frameworks like the Clinical Establishments (Registration and Regulation) Act, 2010 cover government hospitals but do not envisage a grievance redressal mechanism for patients. The state laws that do establish such mechanisms exclude government facilities from their purview.

Some government programmes provide an elaborate mechanism for grievance redressal for beneficiaries and other aggrieved persons but have proven grossly inadequate. For instance, 98% of the complaints received through the grievance redressal mechanism under Ayushman Bharat Yojana in its first 3 years of operation have not been addressed. A majority of the addressed complaints have been disposed of much after the prescribed turnaround period of 30 days. These systems set up authorities at district, state, and central levels but are not codified under law, making it unclear how they will interact with existing regulations on healthcare facilities.

> *"...it is critical that the law provides for an overarching grievance redressal framework for government and private healthcare facilities"*

Approach

While government hospitals like AIIMS have been developing their own grievance redressal systems, it is critical that the law provides for an overarching grievance redressal framework for government and private healthcare facilities. We propose the establishment of a multilevel healthcare grievance redressal system under existing healthcare legislation, which:

- redresses grievances at the point of occurrence, i.e. public and private healthcare establishments;
- incorporates an appeals process;
- ensures that different categories of grievances are addressed at the appropriate forums, i.e., either within the grievance redressal system, or by consumer fora, or by courts of competent jurisdiction.

This can be achieved through the following 4 tools:

Grievance redressal cells – to address individual complaints – cconstituted at every public and private healthcare establishment and staffed with an in-house grievance redressal officer and an external patient facilitator. The post of the patient facilitator could be staffed through Hospital Management Committees (also called 'Rogi Kalyan Samitis') under the National Health Mission to incorporate community participation and oversight.

Ombudspersons – to be appointed at the district and state levels to address complaints from internal whistle-blowers and members of the public regarding the overall functioning of, and violations by, healthcare establishments, as well as hear appeals from decisions of institutional grievance redressal cells.

Categorising complaints according to the forum most appropriate to their resolution (categories clearly defined under the law).

Cases amenable to immediate resolution and remedy through corrective action may be referred to institutional grievance cells and ideally addressed before they escalate into serious infractions or conflicts (like overcharging, denial of service, failure to provide patients with access to their records, and others). On the other hand, (i) cases involving complex or severe issues of medical negligence or deficiency of service and requiring formal adjudication, and (ii) issues that persist despite being complained against may be raised directly in such a forum.

Publishing grievance redressal data requiring institutional grievance redressal cells to submit reports of complaints received, redressed, action taken, and other pertinent details to the District Ombudsperson for collation and publishing with the State Ombudsperson being tasked with oversight duties and granted appropriate powers to ensure compliance.

Implementation

- Amend the Clinical Establishments Act, 2010 (central) and existing state healthcare regulations to incorporate the 4 tools for grievance redressal outlined above.
- Where existing legislation contemplates a grievance redressal system (e.g., the Rajasthan Right to Health Care Act, 2022), it can be incorporated through rules issued under the Act.
- Allocate appropriate funds to public health institutions to support the functioning of the institutional grievance redressal cells, the appointment of the patient facilitator, and the office of the Ombudsperson at the district and state levels.
- Create and operationalise programs for public and private establishments to sensitise healthcare providers and employees to the needs and concerns of patients and reduce conflict in the healthcare context.

To discuss how to implement this reform, please write to **Rituparna Padhy** at rituparna.padhy@vidhilegalpolicy.in

Enact a new law to enhance reproductive autonomy

Attention: Ministry of Health and Family Welfare, Government of India

Problem

The Medical Termination of Pregnancy ('MTP') Act, 1971 enables registered medical practitioners ('RMPs') to conduct safe and legal abortions. However, non-adherence attracts penalties to the pregnant person, their guardian, and the abortion provider, except in cases necessary to save the pregnant person's life. The fear of prosecution amongst RMPs has led to a disturbing trend of seeking judicial authorisation for abortions, even when not required - at any stage of pregnancy. The MTP Act, regrettably, approaches abortion from the perspective of criminality and not accessibility.

The core provisions of the MTP Act, including its rigid gestational system, unclear categorisation for 20-24 weeks, and the varying requirements for RMPs' opinions at different stages of pregnancy lack clarity and flexibility. This leads to delays, confusion, and potential harm to those seeking reproductive healthcare services.

These provisions are not aligned with global best healthcare practices which prioritise patients' needs and, as a result, infringe upon essential reproductive rights. This constitutes a violation of personal liberty, a fundamental right acknowledged under Article 21 of the Indian Constitution by the Supreme Court of India ('SC'). The failure of the MTP Act is underscored by persistent litigation over the past 5 decades, marked by repeated petitions seeking the enforcement of fundamental rights.

Despite an amendment in 2021, constitutional courts in India continue to issue inconsistent judgments oftentimes to the detriment of petitioners. In 2023, a 2-judge SC bench granted a woman the right to terminate her 25-week pregnancy to safeguard her mental health but then issued a split verdict upon review two days later. To resolve the split verdict, a 3-judge bench of the SC was constituted, and on October 16, it upheld the judgement. Her clear intent for an MTP did not influence the legal outcome and she was forced to carry the pregnancy to term.

In the same year, the Gujarat High Court denied a minor rape survivor's request for an MTP, while the Allahabad High Court, in a similar case, delivered an opposite verdict. This arbitrariness highlights the need for comprehensive reform to ensure a consistent, rights-based approach. Legal restrictions on late-stage abortions to prevent foeticide and unnecessary harm to a viable foetus are not unfounded. However, while striving to protect viable foetal life, the mother's well-being should not be deprioritised.

Approach

Despite calls from multiple stakeholders, the MTP reforms have been fragmented and fail to address the systemic challenges encountered by pregnant individuals, especially those on the margins. Given the structural deficiencies in the law and its adverse impact on the justice system, it is advisable to to repeal the MTP Act and replace it with a new law - the Reproductive Freedom and Health Act (RFHA), which prioritises the needs of the pregnant person and reduces the unnecessary involvement of the courts in determining choices, regardless of personal implications.

> ***"...repeal the MTP Act and replace it with a new law - the Reproductive Freedom and Health Act (RFHA), which prioritises the needs of the pregnant person and reduces the unnecessary involvement of the courts in determining choices, regardless of personal implications"***

Implementation

The RFHA should:

- **Be delinked from the Indian Penal Code -** it should penalise abortions performed without the informed consent of the pregnant person or their guardian. Additionally, abortions violating the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ('PC-PNDT Act') should be penalised.
- **Permit abortion at all stages of pregnancy with the approval of an RMP -** the existing restrictions on abortions based solely on gestational limits are arbitrary and lack a scientific and legal basis. Permitting late-stage abortions should not be construed as diluting the PC-PNDT Act.
- **Legalise medical abortions -** make them available upon request with the opinion of a single RMP.
- **Eliminate medical boards -** despite not being mandated, third-party authorisations are invoked as an extra-legal measure for complex cases. Their removal will streamline the process of accessing reproductive healthcare.
- **Establish clear guidelines for the termination of late-term pregnancies -** in alignment with the WHO Safe Abortion Guidelines 2022, these guidelines should be routinely updated and based on evidence-based research and global best practices.

To discuss how to implement this reform, please write to **Kanav Narayan Sahgal** at kanav@nyaaya.in

2.

The State
shall ***innovate.***

Enact a law to protect foreign investments

Attention: Ministry of External Affairs, Ministry of Commerce & Industry

Problem

Foreign Direct Investment ('FDI') into India has declined by 30% over the last financial year, in line with a trend that has emerged over the last two years - characterised by a sharp decline in cross-border mergers & acquisitions (92% decline in the first half of 2023) and FDI forming a decreasing percentage of India's GDP. The pandemic has little to do with this, as India had attracted FDI in 2020-21 despite the global slowdown.

This reduction in FDI has coincided with a shift in India's strategy towards international investment law ('IIL'). After suffering heavy losses in several prominent investor-state disputes, India began unilaterally terminating most of its Bilateral Investment Treaties ('BITs') in 2017. Since then, India has signed a series of Free-Trade Agreements ('FTAs'). Although these FTAs address international trade law ('ITL') - the area that regulates trade in goods and services between countries (e.g., when customs duties can be legitimately imposed), they do not contain any provisions on IIL - the area that protects investments made in foreign countries (e.g., the protections available to a foreign investor if the host country decides to take over the sector where the investment has been made).

In the absence of a BIT, if an FTA does not contain any IIL provisions, an investor is left unprotected and remediless - causing a decline in investor confidence. India cancelled its BIT with Mauritius in 2017, and the FTA, which the two countries signed in 2021, does not contain any IIL provisions. During the same time, FDI from Mauritius has slowly fallen and, in the financial year 2023, it declined by over Rs. 20,000 crores compared to the previous financial year. While causation may be difficult to attribute, the correlation between the lack of investor protection laws and declining investment is apparent.

> ***"This will send a strong signal to prospective and existing investors, ultimately boosting FDI in India."***

Approach

India's termination of BITs is part of a trend towards the 'domestication' of IIL - adopted by countries like South Africa. Domestication involves bolstering domestic laws instead of relying on remedies under international law. It also involves passing domestic laws in the nature of BITs to protect the interests of foreign investors and to establish a domestic investor dispute resolution framework. India does not have such a law at the moment.

In 2015, South Africa terminated most of its BITs and enacted the Protection of Investments Act. Akin to a BIT, this law has a broad definition of 'investment' and imposes various obligations on the state. Crucially, however, it is subservient to the South African Constitution, overall public interest, and principles such as redressal of historical inequalities, preservation of cultural and natural heritage, realisation of socioeconomic rights, etc. It develops a domestic dispute resolution framework and enables investors to access South African courts and tribunals with the same constitutional rights as South African citizens enjoy. After a decline until 2015, FDI inflows into South Africa rose steadily, and after a short dip due to the pandemic, have increased dramatically since 2021.

Since India is also seeking to decouple ITL and IIL, a new law on protection of foreign investments is the need of the hour. This law should contain suitable variants of all the traditional investor protection clauses traditionally found in BITs - e.g., most-favoured-nation treatment (the obligation on the host nation to treat all investors from all foreign countries the same). This will send a strong signal to prospective and existing investors, ultimately boosting FDI in India.

Implementation

Currently, India's legal framework on FDI is disparate, governed by the Foreign Exchange Management Act, 1999 ('FEMA') and a series of subordinate instruments made under it. To rectify this and to adequately protect foreign investments, the following steps should be taken:

- Remove the provisions on foreign investments from the FEMA (which should be limited only to regulating forex) and shift them to a new law on the protection of foreign investments;
- Set up an efficient mechanism for existing and future investor-state disputes that are being and may be contested under the BITs, which have been cancelled but continue to apply to existing investments;
- Establish a world-class dispute resolution mechanism for new investor-state disputes to be filed under the new law in sync with India's emerging commercial mediation environment.

To discuss how to implement this reform, please write to **Aditya Prasanna Bhattacharya** at aditya.prasanna bhattacharya@ vidhilegalpolicy.in.

Create a unified non-bank fintech company license

Attention: Ministry of Finance, Reserve Bank of India

Problem

A banking licence allows banks to provide several services, including deposits, lending, payments, and offering different financial products. This is authorised by the Reserve Bank of India ('RBI'). Currently, the Payment and Settlement Systems Act, 2007 ('PSS Act') envisages different categories of authorisations for different types of payment system operators ('PSO'), such as card networks, prepaid payment instruments ('PPIs'), and payment aggregators. Further, two separate categories of non-bank financial company ('NBFC') licenses have been created for peer-to-peer lending platforms and account aggregators pursuant to RBI's powers under the Reserve Bank of India Act, 1934 ('RBI Act').

This fragmented licensing and oversight approach should be revisited with the expansion of non-bank financial technology ('fintech') companies into different business lines and greater adoption of fintech by customers.

India is the third largest fintech market in the world. The fintech adoption rate in India is 87% - far higher than the global average of 64%. While fintech has made considerable advancements in the payments sector, there is headroom for its growth and expansion in small and medium enterprises ('SME') lending, embedded finance, and wealth tech advisory. This calls for a more coordinated approach towards fintech regulation.

Approach

An innovation-friendly and coordinated regulatory framework for fintech must be based on two principles. First, it should facilitate seamless scaling of fintech businesses into different segments currently underserved by traditional banks. Second, as fintech's charter into regulated space, the light touch regulatory approach should be replaced by proportionate regulatory and oversight requirements. This may be conceived as a two-stage intervention.

> ***"The first stage will involve creating a unified payment license that allows "non-bank" fintech companies to obtain a single authorisation to operate any type of payment system in India"***

The first stage will involve creating a unified payment license that allows "non-bank" fintech companies to obtain a single authorisation to operate any type of payment system in India. With this single authorisation/ license, an entity will be able to offer any payment service under the PSS Act, as opposed to obtaining separate authorisations.

The second stage will involve creating a new category of non-bank fintech company license similar to the NBFC license under the RBI Act. This license should be designed specifically for fintech's to carry out designated financial business as defined by RBI. The "designated financial business" may be defined to include lending, payment, wealth management and such other activities as may be deemed appropriate by RBI.

The need for creating a new class of license is to allow RBI to curate a licensing requirement framework unique to the characteristics of fintech. This will be reflected in the criteria for management, shareholding, capital and liquidity requirements, risk management strategies, and interconnectedness with other financial institutions or systemically essential players in the financial market. Even with the unified license, fintech's should continue to be subjected to activity-based regulation. For instance, fintech's providing payment aggregator, PPI, and peer-to-peer lending services should continue to comply with specific requirements for providing these services. The unified license allows fintech's with a credible track record in the financial space to scale up and expand into other regulated segments.

Implementation

A phased implementation in the manner discussed below must be adopted:

- RBI may issue a circular pursuant to section 10(2) read with section 18 of the PSS Act, to set out the contours of the Unified Payments License, including eligibility criteria for entities who can apply for such a license and the process for allowing existing PSOs to transition to this license. Currently, capital and net worth requirements vary for different types of PSOs;
- Based on the response to the Unified Payments License and stakeholder consultation, RBI may amend the RBI Act to include a new chapter (along the lines of the chapter on NBFCs) to create a licensing framework for a new category of non-bank fintech companies that can provide "designated financial services" as may be defined by RBI.

To discuss how to implement this reform, please write to **Shehnaz Ahmed** at shehnaz.ahmed@vidhilegalpolicy.in

Update the Indian insolvency regime to encompass crypto-related bankruptcies

Attention: Ministry of Corporate Affairs, Ministry of Finance

Problem

The Indian crypto-asset service provider ('CSP') market comprises mainly cryptocurrency exchanges and online trading platforms. It is imperative to note that crypto-assets are an emerging asset class with investor demands for a competitive rate of return, as provided by more traditional asset classes. Often, CSPs overextend their liabilities (through leverage or otherwise) to meet growing investor expectations through investments in research and development or business expansion. This may lead to a shortfall between the CSP's assets and liabilities, given that they are generally asset-light and built on value projections as opposed to actual revenue. This makes them vulnerable to bankruptcies.

The bankruptcy of FTX US and Voyager Digital Holdings, Inc. in 2022 and its impact on investors raises questions about the readiness of the Indian ecosystem to deal with insolvency resolution of failing CSPs in India. However, the Insolvency and Bankruptcy Code, 2016 ('IBC') may not be automatically applicable to CSPs. Even if it were made applicable to them, given the lack of clarity around the legal nature of crypto-assets, it may not be possible to resolve CSP-related bankruptcies under the regular IBC process. Additionally, there is no clarity on whether crypto-assets are owned by holders of crypto-assets ('Accountholders') or the CSP, raising questions about their treatment in insolvency proceedings, i.e., whether they form a part of the insolvency estate when held 'in trust' by a CSP.

Crypto assets pose another challenge. Unlike traditional assets, they suffer from extreme price fluctuations. Their volatile nature makes assigning a real-world value to them an uphill task. If an Indian CSP were to go into insolvency any time soon, any delay in resolving it would only add uncertainty to the process and may likely result in dramatic fluctuations in the asset value, causing more losses to the Accountholders.

Approach

Assuming that no separate regulatory regime is introduced for the regulation of crypto-assets in India in the near term, the characterisation of crypto-assets as a 'commodity' or 'security' under India's securities laws, if accepted, would bring CSPs within the regulatory ambit of the Securities and Exchange Board of India ('SEBI'). On becoming regulated entities, they can be recognised as financial service providers ('FSPs') as per Section 3(17) of the IBC and resolved under the legal framework for resolution of FSPs notified under Section 227, suitably altered to meet the requirements of CSP bankruptcies.

Moreover, it is necessary to decode the legal status of crypto-assets to determine who can exercise ownership rights, which will be critical for resolving CSPs effectively under the insolvency system. India can adopt the approach proposed by the International Institute for the Unification of Private Law ('UNIDROIT') in this regard. The UNIDROIT, in its Draft Principles on Digital Assets and Private Law 2023 ('Draft Principles'), recommends excluding crypto-assets from the insolvency estate of the CSP if it consents to maintain them on behalf of Account Holders under a custody agreement. This essentially makes the account holders effective owners of the asset.

> ***"On becoming regulated entities, they can be recognised as financial service providers ('FSPs') as per Section 3(17) of the IBC and resolved under the legal framework for resolution of FSPs notified under Section 227, suitably altered to meet the requirements of CSP bankruptcies"***

Implementation

Principally, two enabling measures will be required:

- Declaring crypto-assets as commodities or (debt) securities under the securities law to bring legal certainty around the regulator responsible for overseeing CSPs;
- Invoking Section 227 of the IBC, the Central Government can notify CSPs as FSPs for the purpose of their insolvency and liquidation proceedings under the IBC in consultation with SEBI. Admittedly, given the unique nature of CSPs and crypto-assets, the existing framework for the resolution of the FSPs notified under Section 227 may have to be altered to meet the unique nature of CSP bankruptcies. Further guidance for designing these measures may be sought from the Draft Principles.

To discuss how to implement this reform, please write to **Daksh Aggarwal** at daksh.aggarwal@vidhilegalpolicy.in and **Varsha S. Banta** at varsha.banta@vidhilegalpolicy.in

Draft a legal framework to host data embassies in India

Attention: Ministry of Electronics and Information Technology and Ministry of External Affairs

Problem

In the Budget speech delivered on 1 February 2023, India's Finance Minister announced the establishment of 'data embassies', at least initially, in the Gujarat International Finance Tec-city - India's first International Financial Services Centre. A data embassy is a kind of data centre for storing copies of critical state information extraterritorially in case domestic servers get compromised. A new development in public international law, they have only recently gained prominence among countries that find themselves vulnerable to uncertainties such as threats to their sovereignty, cyberattacks, and natural disasters.

This presents an opportunity for India to elevate its global standing in the data infrastructure landscape, aligning with its commitment to building a comprehensive data-driven digital ecosystem. From a strategic lens, it has the potential to redefine India as a secure data haven at an international level, ultimately strengthening international relations through cyber-diplomacy. With geopolitical uncertainties prompting countries to seek overseas data backup, India can position itself as a trusted partner, fostering cooperation and providing extra security guarantees to e-residents of countries contemplating setting up a data embassy in India. To fully capitalise on this opportunity, India must prioritise two key aspects: first, developing the required infrastructure, and second, establishing an overarching legal framework. While the Digital Personal Data Protection Act 2023 governs digital personal data, the unique nature of data embassies necessitates a bespoke legal framework.

Globally, data embassies are typically established through intergovernmental agreements between countries. For e.g., the world's most notable data embassy, located in Luxembourg, was set up in furtherance of an Agreement in 2017 between Estonia and Luxembourg on the hosting of data and information systems. In 2021, Luxembourg signed an agreement with Monaco to create a data centre in Luxembourg for Monaco's exclusive use. While these precedents primarily concern the storage of critical state information, jurisdictions like Bahrain have enacted a Cloud Computing Law that encourages foreign parties, both state and commercial, to store data in Bahrain's data centres. This data is subject to the domestic laws of the foreign country.

Approach

To position India as a hub for data embassies, it is imperative to provide clarity regarding the country's offerings. Taking a cue from Bahrain's Cloud Computing Law, this objective can be achieved by implementing a legal framework for establishing data embassies, with the aim of encouraging foreign countries to set up such embassies in India. This framework should include specifics such as limits to the application of domestic law, the jurisdiction of the foreign country itself, and other potential benefits that may be eventually designed. To address the existing uncertainty on the nature of data being hosted, it is crucial to clarify whether the intention is only to host sovereign data, commercial data, or both.

The legal framework should contain provisions regarding the provision of premises and exemptions extended to such premises in terms of search and attachment, security measures for the protection of the premises and data, and mechanisms in case of data breach.

Considering the diplomatic relations involved in establishing such embassies, the framework should align with the Vienna Convention on Diplomatic Relations, 1961. It should account for principles of sovereignty for stored data, equipment, and premises. It should also lay down a dispute resolution mechanism between the host and other parties.

> ***"This objective can be achieved by implementing a legal framework for establishing data embassies, with the aim of encouraging foreign countries to set up such embassies in India"***

Implementation

The Ministry of Electronics and Information Technology, in consultation with the Ministry of External Affairs, should enact a central Data Embassy Legal Framework. The Data Embassy Legal Framework should, among other things:

- Define the scope of data embassies;
- Delineate responsibilities of the host country in relation to the stored data;
- Establish a dispute resolution mechanism

The Central Government should be empowered to create further rules and lay down the technical requirements regarding such data centres and their operating models.

To discuss how to implement this reform, please write to **Shreya Garg** at shreya.garg@vidhilegalpolicy.in

Integrate biodiversity offsetting principles in afforestation policies

Attention: Ministry of Environment, Forests, and Climate Change

Problem

Compensation for environmental damage has been a settled practice under the Polluter Pays Principle. It represents the final option within the mitigation hierarchy, preceded by avoidance and restoration, for activities causing environmental damage. In India, compensatory afforestation ('CA') under the Forest (Conservation) Rules, 2022, is being used as a means of offsetting the loss of forests for developmental activities through plantation. In practice, CA has evolved to focus primarily on tree planting for economic purposes or the selection of fast-growing tree species, which are often non-native to the target ecosystem with significant adverse impacts on local ecosystems and livelihood. For instance, a report submitted by a Supreme Court-appointed Expert Committee highlighted how Prosopis juliflora, an invasive exotic species, is planted on rich alluvial lands as part of CA. It is taking over the grasslands, which are a lifeline for numerous local livelihoods and support native biodiversity. A sensible alternative needs to be found.

> *'Biodiversity offsetting' stands as a valuable tool in global conservation strategies, designed to counterbalance the inevitable adverse impacts of development projects on species and ecosystems and, ideally, to achieve a net increase in biodiversity.*

Approach

'Biodiversity offsetting' stands as a valuable tool in global conservation strategies, designed to counterbalance the inevitable adverse impacts of development projects on species and ecosystems and, ideally, to achieve a net increase in biodiversity. Incorporating 'biodiversity offsets' into the existing CA policies and other government-led afforestation schemes can bring about systemic and substantial reforms in the way afforestation is executed on the ground. These reforms go beyond conventional indicators like tree count and carbon sequestration, offering biodiversity net gains and ecosystem benefits to local communities. They also contribute to the long-term sustainability of compensation efforts, fostering greater accountability for the allocation of public funds in a socially responsible manner.

As per the World Bank, 3 core principles of biodiversity offsetting are- Additionality, Equivalence, and Permanence.

- **Additionality:** Biodiversity offsets must deliver conservation gains beyond those that would be achieved by ongoing or planned activities that are not part of the offset.
- **Equivalence:** Biodiversity offsets should conserve the same biodiversity values (species, habitats, ecosystems, or ecological functions) as those lost to the original project.

- **Permanence:** Biodiversity offsets are generally expected to persist for at least as long as the adverse biodiversity impacts from the original project.

For example, in the case of a port development project harming the habitat of Leatherback Sea Turtles along a coastal region, mitigation efforts will involve the establishment and preservation of a new habitat. If a similar habitat for the same species is unavailable, the compensatory measure should focus on creating and safeguarding habitat for the most closely related turtle species within a similar ecosystem. This compensation should not be substituted with different species (e.g. tigers in Central Indian forests) nor should it be undertaken in a place where the species is already found or well conserved. If the compensatory site already has some pre-occurring population of the target species, the focus should be to improve the habitat, and show a net gain in the population of the species, and maintain it at the cost of user agency until the life of the port.

Implementation

- The National Biodiversity Authority ('NBA') should collaborate with leading research institutions to develop a National Biodiversity Offsetting Framework. This framework should establish core principles and processes for CA programs in India, considering factors like local ecological history, species representativeness and rarity, and the ecosystem service requirements of communities. Additionally, a separate guidance manual on biodiversity offsetting should be available for voluntary adoption by other plantation programs, including those under government schemes and Corporate Social Responsibility ('CSR') initiatives;
- The Ministry of Environment, Forest, and Climate Change should amend the Forest (Conservation) Rules and the Compensatory Afforestation Act to make 'biodiversity offset' a mandatory requirement for evaluating the success of all CA projects; Additionally, privately funded plantations must be incentivised for 'biodiversity offsetting' by amending the proposed Green Credit Programme Implementation Rules 2023;
- NITI Aayog, in consultation with the NBA, should establish biodiversity richness as a Key Performance Indicator (KPI) within the Aspirational Districts Programme. The Central Government should then use this KPI to allocate funds to local bodies in the annual budget. This approach will motivate and incentivise local bodies and states to prioritise biodiversity in their forest management plans and afforestation initiatives.

To discuss how to implement this entry, please write to **Debadityo Sinha** at debadityo.sinha@vidhilegalpolicy.in

Create a body to coordinate across Digital Public Infrastructure

Attention: Ministry of Electronics and Information Technology, Ministry of Finance, Reserve Bank of India, Securities and Exchange Board of India, Pension Fund Regulatory and Development Authority, Insurance Regulatory and Development Authority of India, International Financial Services Centres Authority, Ministry of Commerce and Industry, Ministry of Health and Welfare, Ministry of Agriculture and Farmers Welfare

Problem

The Indian Digital Public Infrastructure ('DPI') ecosystem has been pivotal in unlocking the power of identity through Aadhaar, enabling seamless Unified Payments Interface payments, and facilitating data sharing to foster a more inclusive digital Indian economy. Looking ahead, data-sharing DPIs like Account Aggregators, Open Network for Digital Commerce, Ayushman Bharat Digital Mission and Agristack are poised to power the Indian economy.

However, as these DPI initiatives mature, the predominant challenge lies in the absence of a central facilitative body with a sector-agnostic mandate that can revisit DPI initiatives and ensure their integration with the wider digital economy. Without this, there might be several unintended consequences: first, lack of interoperability, regular information exchange and coordination amongst DPI initiatives; second, a siloed approach in building similar infrastructures resulting in duplication of efforts and waste of resources; and third, lack of seamless communication of learnings and findings through a common platform, thereby reducing overall efficiencies.

On the global stage, the benefits of having a centralised facilitative body for DPI governance are well documented. The United Kingdom's proposal to establish a Smart Data Council ('SDC'), with the stated aim of bringing together all bodies leading sectoral delivery of smart data initiatives, underscores the need for a coordinated approach in driving multifaceted growth. Similarly, in Australia, the 2022 Report by the Australian Government resulting from its 'Statutory Review of the Consumer Data Right' has shed light on the gap and necessity for cross-sectoral functions in the Australian Consumer Data Right Board - the lack of which leads to back and forth between regulators.

> ***A DPI Coordination Council may be set up with the primary objective of aiding regular information exchange amongst key governance institutions across DPI ecosystems***

Approach

A DPI Coordination Council may be set up with the primary objective of aiding regular information exchange amongst key governance institutions across DPI ecosystems. There should be inherent flexibility to expand membership to representatives from sectors in which DPIs will be rolled out in the future. Given the complexities associated with inter-regulatory and inter-authority consultations in India, this body would play a pivotal role in ensuring effective coordination and information exchange and promoting a whole-of-government approach to DPI deployment, thereby unlocking the full potential of the Indian DPI ecosystem. This central body for DPIs should primarily focus on developing recommendations to ensure coherence in the development of DPIs in various sectors. The body should remain advisory in nature, allowing individual sector DPIs the autonomy to consider these recommendations independently.

Setting up a central facilitative body is not unprecedented in India. Previously, at the national level, the Financial Stability and Development Council ('FSDC') was established by the Government of India in 2010 to enhance inter-regulatory coordination and institutionalise the mechanism for maintaining financial stability. FSDC includes representation from various government ministries and regulators.

Implementation

- A DPI Coordination Council should be established with the objective of aiding regular information exchange amongst key governance institutions across all DPI ecosystems. The proposed body should have a horizontal and sector-agnostic mandate with in-built flexibility to expand membership;
- Its composition should include adequate representation from relevant Central Government ministries (e.g. the Ministry of Electronics and Information Technology), regulators of sectors in which DPIs have been rolled out, i.e., finance, commerce, health, and agriculture, along with the governing/coordinating entity of the DPI;
- Its functions should be advisory in nature and focus on ensuring (i) interoperability between various DPI initiatives, (ii) strategic and timely rolling out of DPI initiatives nationally and internationally, (iii) improved coordination and information exchange to minimise investing in duplicative infrastructures and (iv) carrying out periodic Regulatory Impact Assessments of the legal frameworks applicable to various DPIs.

To discuss how to implement this entry, please write to **Shreya Garg** at shreya.garg@vidhilegalpolicy.in, **Manjushree RM** at manjushree@vidhilegalpolicy.in, and **Manvi Khanna** at manvi.khanna@vidhilegalpolicy.in

This entry is based on a recommendation that appeared in Vidhi's independent report titled 'Nurturing A User-Driven Governance Entity (N.U.D.G.E.) for the Account Aggregator Ecosystem' authored by Manjushree RM, Manvi Khanna, & Aakanksha Mehta.

Enact a Model Family Law Code

Attention: Ministry of Law & Justice, Ministry of Social Justice & Empowerment, Parliamentary Standing Committee on Personnel, Public Grievances, and Law & Justice, Law Commission of India, and the Committee chaired by the Cabinet Secretary which is to be set up to examine marriage equality

Problem

The majority of Indian family law - the branch that deals with marriage, divorce, adoption, custody, and succession is housed within 'personal' law, which applies to persons depending on their religious identity. Drawn largely from classical religious texts, these personal laws discriminate on the basis of gender and are based on outdated conceptions of the family. They run counter to the constitutional guarantee of equality. The following examples are illustrative:

- When a childless Hindu woman dies, all her property (except property obtained from her parents) goes to her husband. If she was a widow, then it goes to her husband's heirs. Her parents do not inherit anything. But when a childless Hindu man dies, his wife and his mother share his property equally. If he was a widower, then his mother would get everything. His wife's heirs do not inherit anything.
- If an unmarried and childless Hindu person dies without making a will, then their mother inherits all their property - their father does not get anything. If an unmarried, childless Christian person dies without making a will, their father inherits the entire property - their mother does not get anything.
- When a Muslim man dies, his son inherits 2/3 of his estate, while his daughter inherits 1/3.

Approach

The ideal Indian family is understood to consist of two persons of opposite sexes - united by marriage and related by biology to their children. Unsurprisingly, Indian family law is designed around this unit. With time, there has been an acceptance of modern families characterised by non-heterosexual relationships and non-traditional family structures. As a result of judicial intervention, certain areas of law, like criminal law, have kept up with this trend (Navtej Singh Johar v Union of India), but not family law. The lack of alignment with modern social realities and gender-based discrimination within personal law points to the need to reform Indian family law.

> ***"India must enact a comprehensive, non-discriminatory, and inclusive model code on family law"***

Socio-legal reform occurs through two routes - legislative or judicial. Thus far, the judiciary has been unable to use the Constitution as a touchstone to reform uncodified personal law - largely owing to the 1952 decision of the Bombay High Court in State of Bombay v Narasu Appa Mali - which effectively excluded uncodified personal law form the scope of a fundamental rights challenge. Scholars and practitioners alike have argued that this decision is squarely responsible for denying women their fundamental rights in family law. Judges have doubted its correctness on several occasions. Until Narasu is set aside, legislative intervention remains the only viable route to reform Indian family law.

India must enact a comprehensive, non-discriminatory, and inclusive model code on family law.

Implementation

While laying down a non-discriminatory framework of family law, this code should:

- **Recognise diverse adult relationships** - 'hijra gharanas' across the country function as families but are not recognised as such by law. This restricts access to the right to designate persons to make healthcare decisions, the right to inherit assets, etc. The model code should accommodate such atypical families.
- **Make the institution of marriage accessible to all** - today, based only on their gender and/or sexual orientation, queer individuals are denied the right to marry and the resultant socioeconomic rights to spouses. The Supreme Court reaffirmed this position in its 2023 decision in the marriage equality case, holding that Indian law permits marriage only between a man and a woman, observing that legislative intervention is the only viable route. Taking this cue, the model code should make marriage accessible to all, irrespective of gender identity and sexual orientation.
- **Provide for joint ownership of property acquired during a marriage** - presently, women are not regarded as contributors in matrimonial property. The model code should recognise the assets acquired by both spouses during the subsistence of their marriage as 'joint matrimonial property' that should, in the usual course of things, be equally divided at the time of divorce.
- **Recognise social parenthood** - currently, motherhood is determined by biology and fatherhood through marriage to the birth mother. This excludes persons displaying a clear intention to parent a child by performing all relevant duties and responsibilities without being a biological parent. The model code should recognise 'social parenthood' and bring queer parents and non-marital parents within its fold.

To discuss how to implement this reform, please write to **Aditya Prasanna Bhattacharya** at aditya.prasanna bhattacharya@ vidhilegalpolicy.in

3.

The State
shall ***protect***
its citizens
from hardship.

Enact a comprehensive equality & anti-discrimination legislation

Attention: Ministry of Social Justice & Empowerment, Ministry of Women & Child Development, Ministry of Minority Affairs, Ministry of Tribal Affairs, National Commission for Scheduled Castes, National Commission for Scheduled Tribes, National Commission for Backward Classes, National Commission for Women, National Commission for Minorities, Chief Commissioner for Persons with Disabilities, Commissioner for Linguistic Minorities, National Human Rights Commission, National Council for Transgender Persons

Problem

Contentious matters of identity and discrimination have been central to modern India's history. These include colonial rule and its racial basis, partition and communal violence, regional disparities and the formation of states, India's unique formulation of secularism, the evolution of caste-based and religious politics, and struggles for the rights of tribals, women and queer persons. Even today, a number of India's most taxing socio-political conflicts revolve around similar questions.

These concerns are not restricted to governmental action. Discrimination by private individuals has been widespread in various critical areas of social life, such as housing, employment, labour markets, agricultural credit markets, and access to healthcare. Discrimination negatively impacts individual income levels, opportunities, and social mobility, not to mention the nation's macroeconomic growth and productivity. In their most severe and immediate form, discrimination is also seen in violent hate crimes, like lynchings and vandalism, and hate speech, including in religious conclaves and on news channels.

Despite the centrality of these issues to Indian society, protection against discrimination in Indian laws is seriously inadequate. First, relevant constitutional provisions do not address the many forms of private discrimination described above. Where such discrimination is mentioned (e.g., in relation with access to public places), it is underenforced. Second, while some statutes do deal with private discrimination, they each deal in different ways only with some areas of discrimination (e.g., caste atrocities, disability rights, employment conditions of women, etc.) to the exclusion of others (e.g., religious discrimination in housing, hate crimes against individuals on grounds other than caste, racial or sexual orientation discrimination etc.). Third, these laws and constitutional provisions both only cover a limited list of grounds to the complete exclusion of others (e.g., nationality, marital status, socioeconomic status, political affiliation, age, etc.). Fourth, constitutional courts are responsible for dealing with discrimination in governmental action but are overburdened, face difficulties in laying down consistent rules, and are not equipped to regularly deal with either isolated

discriminatory acts by individual public officials or complex forms of discrimination involving contextual and socioeconomic evidence. Lastly, courts are neither empowered nor equipped to consider claims on exclusion from affirmative action schemes.

Approach

Given that Indian laws on discrimination have inconsistent and incomplete coverage and are enforced by institutions with low capacity, a comprehensive anti-discrimination law is uniquely suited to meeting the challenge. It is strongly recommended by international organisations and, recently, by judges of the Supreme Court as well.

Such a law must prohibit discrimination by both private persons and public officials in all relevant areas and grounds, including those left unaddressed by constitutional provisions or in India's patchwork of anti-discrimination laws. As a comprehensive legislation, it would not only be able to protect various groups that have so far fallen through the cracks but also offer valuable guidance in relation to groups that enjoy some protections already, defining discrimination and its forms (e.g., direct and indirect discrimination) more clearly than courts have been able to, excusing justified actions and impacts, setting modern and comprehensive standards for hate crimes and hate speech, and spelling out positive duties on affirmative action, accessibility, and diversity.

Most significantly, the legislation offers the opportunity to establish an institutional mechanism for the regular, consistent, and specialised enforcement of anti-discrimination law. For example, an Equality Commission (or federated structure) may be established and empowered to hear civil complaints or take suo motu action alongside courts handling criminal matters.

Given that Indian laws on discrimination have inconsistent and incomplete coverage and are enforced by institutions with low capacity, a comprehensive anti-discrimination law is uniquely suited to meeting the challenge

Implementation

While drafts have previously been formulated for such a proposal, further development will require consultations and deliberation to make informed choices on a range of detailed considerations, such as the private persons it would place duties on and appropriate remedies for various different wrongs. Additionally, the relationship of this law with existing anti-discrimination laws, affirmative action policies, and empowered bodies will have to be defined. An assessment of the financial expenditure for this proposal may be a significant consideration in defining its contours, but the regularity and gravity of related social issues should determine its uptake.

To discuss how to implement this reform, please write to **Lalit Panda** at lalit.panda@vidhilegalpolicy.in.

Legislate to protect conflict-induced Internally Displaced Persons

Attention: Ministry of Home Affairs

Problem

At least 7 lakh Indians are currently displaced from their homes due to violent conflict. More than 1/10 of these conflict-induced Internally Displaced Persons ('IDPs') emerged from the violence in Manipur in 2023. This figure continues to rise at an alarming rate.

IDPs arise from 3 different situations – conflict, natural disasters, and industrial projects. They are arbitrarily deprived of their fundamental right to life and liberty under Article 21 of the Constitution, including their rights to shelter, nutrition, healthcare, and livelihood. Currently, Indian laws cover rehabilitation and relief measures for IDPs due to disasters and projects under the Disaster Management Act 2005 ('DMA') and the Land Acquisition, Rehabilitation, and Resettlement Act 2013 ('LARR'). However, there is no coverage for conflict-induced IDPs.

This glaring gap has led to disjointed and piecemeal action. For Manipur, the Supreme Court and State Government issued incremental orders to protect displaced persons' property, issue new identity documentation, and implement a permanent housing scheme.

Similarly, resettlement schemes have differed in type and quantum – IDPs in Assam were re-employed under the MGNREGA, but those in Tripura did not receive similar benefits. Compensation packages in different states have varied from 25 thousand rupees to 7.5 lakh rupees, indicating the lack of a standard formula. Such inconsistent and sporadic action gives rise to a problem of "too little, too late" for conflict IDPs. Along with inter-state coordination problems that emerge from IDPs migrating to and resettling in other states, this prevents their effective rehabilitation and resettlement.

Approach

The lacuna of a law for conflict IDPs warrants immediate legislative action. The scope of the DMA should be expanded to include the protection and rehabilitation of conflict IDPs. DMA has already instituted national, state, and district-level disaster management authorities, along with dedicated disaster response funds for the relief and rehabilitation of disaster IDPs. These existing institutions are equipped to bring the protection and rehabilitation of conflixxqct IDPs within their ambit.

Inclusion in the DMA's central/state mechanisms will tackle the issues of delayed action and disparity in outcomes for conflict IDPs. As a standard legal mandate, it will help to separate a State Government's political allegiances from its protection and rehabilitation efforts. Lastly, it will ensure that inter-state coordination for migratory IDPs is more systematic.

Implementation

The DMA's definition of a 'disaster' in section 2(d) should be amended to include "violent conflict" as a cause of the disaster, besides the existing natural and manmade causes.

> ***The lacuna of a law for conflict IDPs warrants immediate legislative action***

Further, the State Disaster Management Authorities ('SDMA') and State Executive Committees functions must be amended to include the preparation and enforcement of a contingency plan for conflict IDPs within their State Disaster Management Plan. The plan will be amenable to customisation by the concerned SDMA(s) immediately in response to conflicts that have a potential for mass displacement. It is to cover all contingencies of conflict-induced displacement and contain the following elements, as outlined in the DMA. Such a contingency plan is to necessarily have the following elements:

- **Recognition of conflict-IDPs' primary right to voluntary return, safely and with dignity, to their homes.** Concurrently, it must recognise the right to seek safety in another part of the country, along with their right to be protected against forced return to a place where their life, liberty, and/or health would be at risk;
- **Define protection priorities during all displacement phases:** lay special emphasis on threats to life and safety, conflict-related sexual violence, and protection of the IDPs' original homes against destruction and unlawful use;
- **Set up protection monitoring mechanisms:** track displaced persons, continuously maintaining records on their name, age, gender, ethnicity, displacement patterns, and protection concerns;
- **Provide immediate interim relief:**
  - Establish relief camps and settlements with adequate food, water, sanitation, and medical facilities in accordance with international standards;
  - Track missing persons and reunite separated families;
  - Issue new identification documents.
- **Incorporate the restoration and rehabilitation strategies learned from Manipur:**
  - Recognise IDPs' property rights and designate funds to rebuild houses;
  - If voluntary return is not possible due to threats to life/safety, enable permanent resettlement and integration into a new region.

To discuss how to implement this reform, please write to **Surbhi Sachdeva** at surbhi.sachdeva@vidhilegalpolicy.in and **Aditya Phalnikar** at aditya.phalnikar@vidhilegalpolicy.in

Develop a framework for equal opportunity and non-discrimination at workplaces

Attention: Department for the Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice and Empowerment; Ministry of Corporate Affairs

Problem

The right to equality and non-discrimination are fundamental rights secured by the Constitution and reinforced by the United Nations Convention on the Rights of Persons with Disabilities (Article 9). The Rights of Persons with Disabilities Act, 2016 ('RPWDA') also guarantees the right to non-discrimination and reasonable accommodation. Under Section 21, it mandates the adoption of an equal opportunity policy ('EOP') in all 'establishments,' which are defined under section 2(i) to include government and private establishments.

Despite this, persons with disabilities are significantly underrepresented in India's workforce, with nearly 64% (~1.7 crores) reported to not form part of the employment ecosystem. While 1.3 crore persons with disabilities are employable, only 34 lakh are employed. Even where employment is secured, discrimination against persons with disabilities at the workplace remains rampant and pervasive.

The dearth of equal opportunities and persistent discrimination can, in part, be attributed to the absence of workplace equal opportunity mandates aimed at fostering inclusion and accommodation of persons with disabilities in employment. Where such policies do exist, they are redundant, outdated or lack implementation. This is compounded by the absence of an effective redressal mechanism against workplace discrimination, with the primary means for redress under the RPWDA being approaching the Chief/ State Commissioner for Persons with Disabilities, whose orders are non-binding and recommendatory or petitioning courts, which is lengthy and expensive.

Approach

The problem requires a two-pronged approach: implementation of preventive measures and establishment of a post facto redressal mechanism.

- Introduction of a robust standard of compliance in the form of a model 'Equal Opportunity Policy' ('EOP'), which details minimum and specific reasonable accommodations for a barrier-free workplace like accessible washrooms, ramps and lifts, clear visual signages, quiet rooms; digital infrastructure like screen-reader friendly documents; and sensitivity training for other members of the workplace. These should be indicated along with details for preferential transfers and postings, special leaves and other provisions, as detailed under rule 8(3) of the Rights of Persons with Disabilities

Rules, 2017 ('RPWD Rules') and laid down in various judgments of the Supreme Court.

- A cost and time-effective structure to address and prevent discrimination at the workplace, akin to the 'internal complaints committee' under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ('POSH').

> *The problem requires a two-pronged approach: implementation of preventive measures and establishment of a post facto redressal mechanism*

Implementation

The Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice and Empowerment ('DEPWD') should:

- Develop a model EOP to serve as a guiding framework for establishments to adhere to when formulating their respective EOPs
- Amend section 21 of the RPWDA to prescribe a maximum time-period within which all establishments should frame and register their EOPs with the Chief/State Commissioner for persons with disabilities
- Amend section 21 of the RPWDA to require establishments to disseminate EOPs within their workforce through regular training, periodic reviews and updates

The DEPWD should also:

- Amend the RPWDA to mandate the constitution of a 'disability committee' to ensure non-discrimination and equal opportunities through reasonable accommodations to persons with disabilities
- Amend rule 8 of the Rights of Persons with Disabilities Rules, 2017 to delineate the nature, roles and responsibilities of the internal complaints committee and outline the procedures for handling such complaints

The Ministry of Corporate Affairs should:

- Amend the Companies (Accounts) Rules, 2014 ('CA Rules') to introduce a provision for disclosure of EOP in the company's board report and the website, akin to rule 9 of the CA Rules, requiring disclosure of Corporate Social Responsibility Policy, with non-compliance of the proposed provision attracting appropriate punitive action commensurate to the nature & size of the company, in line with company law.
- Amend rule 8(5) of the CA Rules requiring every listed company and every other public company (as provided under rule 8(4)) to include a statement of compliance with the requirement of constituting a disability committee in its board report, with failure attracting the prescribed penalties under company law.

To discuss how to implement this reform, please write to **Aarushi Malik** at aarushi.malik@vidhilegalpolicy.in and **Somya Jain** at somya.jain@vidhilegalpolicy.in.

Reimagine the rescue, rehabilitation, and reintegration of sex workers

Attention: Ministry of Women and Child Development, Ministry of Social Justice and Empowerment

Problem

While the exact number of sex workers in India is unavailable, the Ministry of Health and Family Welfare estimated around 12.63 lakh female sex workers in 2011. The Immoral Traffic (Prevention) Act, 1956 ('ITPA') is the primary legislation regulating sex work in India. It intends to prevent human trafficking for sexual exploitation. As such, while running a brothel and soliciting in public spaces are criminalised, sex work performed privately and consensually is not illegal per se. Despite this legal distinction, in practice, consensual sex workers are often conflated with trafficked victims. This deprives such workers of their rights and agency, especially in instances of rescue and rehabilitation.

Sections 15 and 16 of the ITPA provide for the rescue and rehabilitation of sex workers. Under these provisions, police raids are frequently and randomly conducted in brothels to rescue individuals. Furthermore, under Section 10-A, rescued individuals can be detained at a corrective institution ('CI') for 2-7 years. Several studies like 'Raided', a 2018 report by grassroots organisations working with sex workers, indicate that these provisions lead to widespread human rights abuses since rescue and detention are not subject to the consent of sex workers, and they are forcefully separated from their families, homes, and lives. The report also found that around 79% of the sex workers interviewed in CIs did not wish to be rescued and were voluntarily engaging in sex work.

Moreover, CIs do not have basic facilities, let alone sufficient resources to upskill for alternate employment. Upon release, individuals are left with massive debts due to the loss of livelihood during incarceration. Studies show that rescued individuals, including trafficked victims, often returned to sex work after release.

In 2022, the Supreme Court reiterated that voluntary sex work is not illegal and recognised the right of sex workers to a dignified life under the Constitution. The court also passed important directions regarding their rehabilitation until suitable legislation was enacted by Parliament. Among others, the directions prohibited police action and arrest in cases of voluntary sex workers and ordered states to survey their CIs and release workers detained against their will. However, due to a lack of awareness and willpower, a year and several adjournments later, most States have not complied with these directions.

> ***One way to achieve this is by ensuring that rescue and rehabilitation involve social workers meaningfully engaging with and taking inputs from the concerned person regarding consent***

Approach

A cursory reading of the ITPA reveals its underlying paternalistic and puritanical values and some contradictory notions. A victim is treated like a criminal, rescues are forced, and punishment is provided in the name of care. The ITPA needs adequate provisions for the rescue, rehabilitation, and reintegration of trafficked victims and sex workers who wish to quit their profession. These provisions should place the individual, their agency, and rights at the forefront.

One way to achieve this is by ensuring that rescue and rehabilitation involve social workers meaningfully engaging with and taking inputs from the concerned person regarding consent. Instead of forced institutionalisation and displacement, community-based care can be explored. This can be either outside or within an institution but must necessarily allow access to families and healthcare. Separate plans must be prepared for each rescued individual regarding their mental and physical well-being, housing, economic, and employment assistance, which continues after their release. The creation of a continuum of care, taking into consideration the unique needs of each individual, is crucial.

Implementation

To ensure the effective rehabilitation and reintegration of sex workers:

Parliament must amend the following provisions of the ITPA:

- **Section 2 (definitions)** to create a distinction between trafficked individuals and voluntary sex workers. This should be reflected in all other substantive provisions;
- **Section 10-A (detention in a corrective institution)** to remove the mandatory and punitive nature of rehabilitation and account for the consent of sex workers;
- **Section 21 (protective homes)** to introduce measures such as community-based rehabilitation and care.

The Central Government must:

- Work with social workers and sex worker unions to conduct a door-to-door survey and collect data on sex workers in India for future planning and welfare schemes;
- Work with non-governmental organisations to provide community-based care to sex workers and improve facilities in CIs;

  Sensitise law enforcement agencies towards sex workers.

To discuss how to implement this reform, please write to **Isha Prakash** at isha.prakash@vidhilegalpolicy.in

Develop a framework for caregivers of persons with disabilities

Attention: Department of Empowerment of Persons with Disabilities (Ministry of Social Justice and Empowerment), Ministry of Health and Family Welfare, Department of Personnel and Training, National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities

Problem

Caregivers play a crucial role in providing essential care and rehabilitation for persons with disabilities ('PwDs'). The definition of 'care-giver' under the Rights of Persons with Disabilities Act, 2016 ('RPWDA') and the Mental Healthcare Act, 2017 ('MHCA') recognises paid (formal) or unpaid (informal, family-based) provision of care to a PwD.

Caregiving in India is disproportionately performed by informal caregivers. There are ~2.68 crore PwDs in India, of which 62.02% require caregivers. As of 2018, 81.4% of caregivers of PwDs were informal caregivers. These informal caregivers face multiple challenges- rising financial costs, caregiver burnout, loss of employment, and social isolation. These challenges are compounded by limited protections. Instead, they rely on discretionary exemptions from government agencies, such as easing transfers of government employees (Department of Personnel & Training) or relaxed working hours for parents of children with benchmark disabilities (State Government of Kerala).

Despite these challenges, reliance on formal caregiving is low due to poor quality, high cost, and guilt and stigma associated with outsourcing the care of family members. Lack of information about formal caregiving and inadequate regulation makes such services inaccessible. Additionally, existing schemes for these services under the National Trust Act envision formal caregiving only for the disabilities covered under this law. Similarly, though the MHCA includes protections for caregivers (like financial assistance and mental health services), these extend to caregivers of persons with mental illness and are not reflected under the RPWDA.

> *A standardised, empathetic, viable, and accessible ('SEVA') caregiving framework should...introduce meaningful protections for informal caregivers*

Approach

A standardised, empathetic, viable, and accessible ('SEVA') caregiving framework should:

Introduce meaningful protections for informal caregivers to -

- recognise informal caregivers as a specific category of stakeholders for financial assistance in the form of caregiver insurance and allowances/remuneration (in line with international best practices, where they train to become agents of the formal care system and avail monetary compensation);
- formalise their inclusion in decision-making bodies pertaining to PwDs;
- provide therapy, support groups, and local self-help group sessions to address social isolation;
- integrate existing provisions for caregivers, such as, easing employment requirements (flexible working hours, work-from-home) and expand the scope of existing training schemes under the National Trust Act, 1999 to create a skilled workforce to support informal caregivers;
- build caregiver capacity by providing training and information on caregiving practices for specific disabilities, and financial assistance for such training.

Standardise formal caregiving to improve availability and quality and to reduce the onus on informal caregivers by:

- certifying and registering formal caregivers to develop a skilled and reliable workforce while expanding the scope of existing formal caregiving schemes to cover all caregivers under the RPWDA, MHCA, and the National Trust Act;
- providing focused and funded development of respite care services to provide short or medium-term care to PwDs and temporary relief to informal caregivers;
- providing financial support and incentives to avail formal caregiving, such as rehabilitation allowance, insurance schemes, and income tax exemptions;
- destigmatising formal caregiving by generating awareness on adverse effects of long-term informal caregiving. This will aid in addressing the guilt felt by informal caregivers and create trust and reliance on formal caregiving.

Implementation

The DEPWD should spearhead the task of designing a SEVA caregiving policy. This policy must be implemented through a coordinated effort between relevant authorities at the State and Central levels and private institutions, including the DEPWD, the MoHFW, the National Trust, and the DoPT;

In the long-term, such a policy can be formalised into a concrete legislative framework, where the above-identified stakeholders work in tandem as part of a 'Nodal Agency', to implement the framework. The Nodal Agency will designate State governments and local bodies as the 'appropriate authority' to ensure local-level implementation, including the training, registration, and certification of caregivers;

On recognising caregivers as a distinct category of stakeholders whose rights are to be protected, caregiving can be treated as a specific item in the healthcare and disability budget.

To discuss how to implement this reform, please write to **Sagarika Parab** at sagarika.parab@vidhilegalpolicy.in and **Manmayi Sharma** at manmayi.sharma@vidhilegalpolicy.in

Regulate ed-tech companies and ban predatory practices

Attention: Ministry of Education, Ministry of Electronics & Information Technology

Problem

As Education Technology ('ed-tech') continues to permeate classrooms and post-classroom learning experiences, regulation plays a pivotal role in ensuring that these innovations are harnessed responsibly. Education is a public good that enables upward social mobility. In the name of upward mobility, however, many ed tech companies are reeling in parents and indulging in practices such as mis-selling and harassment of parents and students by allowing access to free premium modules by enabling the auto-debit feature. Such a feature also allows children to access paid services without realising that they can no longer access the promised free premium subscription. Then, there are aggressive sales strategies along with deceptive advertising and marketing.

In India, ed-tech is regulated in a piecemeal fashion in an already fragmented regulatory landscape. In relation to issues such as predatory marketing strategies, data breach violations, quality and control issues regarding the curriculum and qualifications of educators, it is under-regulated. This is despite these posing considerable risks to the public in the form of child privacy violations and risks to the financial health of the consumers. It is also over-regulated by multiple regulators trying to govern different aspects of the sector. As ed-tech cuts across multiple laws that govern it, such as the Consumer Protection (e-commerce) rules and the Digital Personal Data Protection Act, 2023 ('DPDP Act, 2023'), there is a possibility of a considerable overlap of contradictory regulatory compliances. This fragmented framework also leads to fragmented oversight without a single regulator to verify compliance and monitor the industry.

Additionally, there is no independent grievance redressal mechanism for consumers other than judicial recourse. The courts have been inconsistent in protecting consumer welfare with differences in views as to whether ed-tech companies provided services. As a result, consumers are often left in the lurch.

> ***The present regulatory approach in India warrants legislation by the Union Government to establish a central regulator***

Approach

The present regulatory approach in India warrants legislation by the Union Government to establish a central regulator. Although the subject of education features in List III (Concurrent List) of the Seventh Schedule, the Union Government is better positioned to regulate the ed-tech industry. This is mainly due to the inter-state reach of these entities owing to their online presence. Enacting multiple different state regulations may cripple the industry in terms of having to comply with various other mandates. The regulator must regulate the sector based on a unique model. Such a model must entail self-regulation limited to the ed-tech companies framing rules but the mechanism to mandate accountability and enforceability shall flow from oversight by an independent regulator.

An independent regulator with expertise in regulating education and technology is crucial. Tech regulation is a highly dynamic field with newer and evolving risks each day. Government departments may fall short of the capacity, expertise, and relevant tech infrastructure to govern such entities. This gives impetus to the idea of self-regulation with a broad central regulatory authority to enforce the guidelines agreed by the consortium of ed-tech platforms.

A potential ed-tech regulation in India should be envisaged on a three-tiered model of regulation through legislation following the framework under the IT rules for digital media intermediaries. The proposed framework:

(i) self-regulation by ed-tech entities

(ii) self-regulation by associations of ed-tech entities (IEC)

(iii) broad oversight by a central regulator

The regulatory authority can also set up an effective grievance redressal mechanism for consumers. Regulation of the ed-tech industry is a cross-ministry effort; it is essential to place nodal officers from the regulatory authority in relevant ministries and bodies to oversee regulatory compliance.

Implementation

An independent central regulatory authority should monitor the industry, laying out a code of conduct while mandating regulatory areas for the ed-tech consortiums. The code should be drafted upon extensive stakeholder consultations so as not to stifle innovation while protecting consumer rights.

The ed-tech industry in India holds the second largest market size after the United States of America and is expected to grow by $10 billion by 2025. The time is ripe for India to adopt a balanced regulatory approach.

To discuss how to implement this reform, please write to **Prathiksha Ullal** at prathiksha.ullal@vidhilegalpolicy.in

Follow due process in cases of demolitions

Attention: State Governments and municipal-level authorities

Problem

Increasingly, houses of persons from minority communities are being demolished in a targeted manner as a means of collective punishment for alleged criminal offences such as rioting.

Most municipal-level laws, which confer the power of demolition, provide that no such order of demolition should be made without giving adequate notice and affording the affected person a reasonable opportunity to show cause. However, in recent cases of demolition, notices are either not served or are served in ambiguous language. Municipal officials, who work in conjunction with the police force, often use physical force to evict people from their dwellings, resulting in physical injuries and trauma. Further, no efforts are made to engage meaningfully, provide compensation to, or immediately rehabilitate affected persons. Officials that order such demolitions enjoy complete impunity under 'good faith' clauses in municipal laws.

> ***There is a need to re-imagine the powers provided to municipal officials in classifying building(s) as unauthorised constructions and consequently exercising the power to raze them***

Demolition without following due process runs contrary to the spirit of Article 21 of the Constitution of India, which recognises the right to housing as a corollary of the right to life and bears the potential to disparage India's reputation at the global level.

Approach

There is a need to re-imagine the powers provided to municipal officials in classifying building(s) as unauthorised constructions and consequently exercising the power to raze them. To ensure compliance with the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement, 2019, 'unauthorised and illegal constructions' should be clearly defined in municipal laws.

There is also a need to shift the burden of proof from affected persons to the State. The current notice and show cause regime entirely places such a burden on the affected person. Considering such persons, who are often from low-income groups and vulnerable communities, may lack resources to respond to notices effectively, show cause or seek timely judicial intervention.

Hence, the notice and show cause regime may be expanded to include meaningful engagement with affected persons on issues such as rehabilitation - per the guidelines and

principles enunciated by the Supreme Court and various High Courts. Stringent safeguards before, during, and following the demolition should be included in all municipal laws, along with additional safeguards for the demolition of large settlements. Suitable mechanisms to affix personal liability in cases of malicious exercise of power municipal powers should also be envisaged.

Implementation

Existing provisions on demolition should be supplemented with additional legal safeguards by way of amendments, particularly in instances where large settlements are proposed to be demolished.

A tripartite process should precede such demolitions: (i) publication of the intent to demolish a settlement on the website of the municipal body and at least two newspapers (including those in vernacular language) in circulation in that area explaining reasons for such proposed demolition; (ii) consideration of such demolition by an independent committee constituted by the State Government with adequate representation from judicial experts and civil society organisations; and (iii) community consultation with affected persons on the demolitions and consequent rehabilitation under alternative housing schemes. Prior to the tripartite process, local authorities must survey the designated demolition area, giving due consideration to the special needs of vulnerable groups, including women, children, senior citizens, and persons with disabilities.

Further, there should be at least a month between the decision to demolish houses and demolition to enable affected persons to retrieve their belongings. At the time of carrying out the eviction process, no physical force must be used, and the deployment of bulldozers should be avoided until after the eviction. The costs incurred towards resettlement, including travel expenses, should be duly compensated by the municipal body within a week of such eviction. The laws should incorporate a mandate to compile disaggregated data on instances of demolitions for differential impacts of evictions and displacement on vulnerable groups. A grievance redressal mechanism to hold municipal officers who disregard due process accountable by way of disciplinary proceedings and pecuniary penalties should also be incorporated.

Contemporaneous with legal reforms, public campaigns should additionally push for robust judicial action, including suo motu cognizance of such cases while bearing in mind that such violations are not individualised but systemic.

To discuss how to implement this reform, please write to **Lakshita Handa** at lakshita.handa@vidhilegalpolicy.in

4.

The State
shall efficiently
deliver services.

Ensure efficient administrative adjudication by financial sector Regulatory Authorities

Attention: Ministry of Corporate Affairs, Ministry of Finance

Problem

The increase of regulatory authorities ('RA') since 1990 enabled new and effective governance methods in the financial sector in India. The statutory design of RAs grants them organisational and managerial independence from the government. RAs play a pivotal role in developing and enforcing regulated market norms and oversee the implementation of these norms by constantly monitoring market activities. They are also empowered to take corrective actions such as issuing restorative directions, imposing penalties, and disgorging unlawful gains. These actions are carried out by an adjudicatory process by its officials, during which parties are heard, and a binding order is issued based on evidence collected. This process can be called 'administrative adjudication' ('AA').

AA has become increasingly crucial in regulating financial markets because it affects the rights of regulated subjects and third parties. However, the law only requires adherence to basic principles of natural justice while exercising RA's power to issue corrective measures. While some statutes identify designated officials for issuing orders, others only guarantee the identification of a specific person to conduct AA. Further, they do not establish guidelines for the separation of functions such as evidence collection. Therefore, concerns are raised about the AA in RAs regarding the separation of functions, compliance with due process, and quality of the orders. Recently, the Supreme Court constituted a committee that also urged for an effective enforcement policy for a regulator.

The root of the problem is an ad-hoc approach of lawmakers and RAs toward AA by only providing basic powers in the statute to issue corrective measures. It neither focuses on organisational structure for ensuring efficiency nor provides guiding principles for laying down norms. A structured approach in RAs is limited to the innovations observed through subordinate legislation. Further, separate functions between officials are done by RAs without explicit norms. Though these skeletal powers help RAs navigate the limited resources at their disposal, they fail to ensure certainty and transparency of the process. This defeats the very purpose of AA.

> ***"Rather than focusing on limited norms to maintain the sanctity of AA, measures are needed to improve its efficiency"***

Approach

Rather than focusing on limited norms to maintain the sanctity of AA, measures are needed to improve its efficiency. Dedicated individuals should perform the functions of AA within RAs, separate from those involved in policy execution and evidence collection. It will ensure that AA is conducted efficiently while maintaining fairness and impartiality. People performing AA should have skills that include the appreciation of evidence and legal reasoning to determine the occurrence of wrongdoings and evaluate the effectiveness of corrective measures.

Establishing appropriate eligibility criteria based on experience and training (including continuous learning) is crucial to ensure that the adjudicators are fully equipped to make proper decisions and have the requisite skill set.

Implementation

The approach distinguishes between the substance and form of AA. The substance, concerning the power and extent of corrective measures, is governed by the parent law establishing RAs, and the form of AA for different types of RAs is governed by a special statute. This is similar to the position in the United States of America, wherein the Administrative Procedures Act provides uniform standards for conducting adjudication at federal agencies.

The special law should include the following features:

- Developing a class of adjudicators (either RA's officials or independent) to perform AA exclusively;
- The following appointment and removal norms for adjudicators should be tailored for respective RAs:
  - Eligibility requirement
  - Continuing education funded by respective RAs
  - Cross-appointments
  - Periodic performance review
- Guidelines for AA of respective RAs, like objective decision-making, avoiding bias and conflict of interest;
- Initially, be limited to financial sector RAs with an enabling power to expand it to non-financial sectors.

To discuss how to implement this reform, please write to **Akash Chandra Jauhari** at akash.jauhari@vidhilegalpolicy.in.

Redraw the boundaries of India's electoral constituencies

Attention: Election Commission of India

Problem

India abides by the 'one person, one vote, one value' principle, meaning that the value of one person's vote cannot be greater than another's. Today, however, the value of a vote in North India is much lower than in South India. Delimitation, which would redraw India's electoral constituencies, is meant to equalise this vote value. However, as a result, it will lead to a significant increase in the number of constituencies in the northern states, increasing their presence in Parliament disproportionately. This, it is feared, will reduce the visibility of southern states and their concerns on the national stage.

Delimitation impacts the representation of states as well as individual voters in Parliament. Article 81 of the Constitution mandates that each state receive seats in proportion to its population and allocate those seats to constituencies of roughly equal size. Since the 1970s, there has been no redrawing of Lok Sabha constituencies. In 1976, the 42nd Amendment to the Constitution froze, up to 2001, the delimitation of Lok Sabha constituencies as per the 1971 census. This was done to address concerns of those states that successfully controlled their population and faced the prospect of reducing their Lok Sabha seats. In 2001, any change in the number of Lok Sabha seats was further pushed to 2026, with the relevant population figures to be sourced from the 2031 census.

It was recently indicated that the next census and subsequent delimitation will be conducted after the 2024 general elections. The impending delimitation will have to contend with distortions in population growth between the north and south. Further, on account of trends in migration, population growth also differs across rural and urban areas. Urban population has been increasing faster, which means that the votes of urban inhabitants do not carry the same value as those of rural voters.

Approach

Readjusting the boundaries of India's electoral constituencies should be a time-intensive, deliberative exercise, with technical inputs from politicians, and subject-matter experts, such as psephologists, political scientists, and statisticians. It cannot and must not be done hastily.

Delimitation is pitting two constitutional values against each other – the 'one person, one vote' principle on the one hand and federalism on the other. To reconcile these values, the Rajya Sabha can serve as a more viable forum for state representation, while the Lok Sabha ensures equal value for each vote. The Rajya Sabha can have equal representation for all states, irrespective of their size, similar to the United States Senate. To ensure that Rajya

Sabha members are familiar with and can advocate for their respective state's concerns, parties should be able to nominate only those persons who have been ordinarily resident in that state. Simultaneously, and given the astronomical rise in India's population, the size of the Lok Sabha must be increased to ensure that constituencies are of manageable size and Members of Parliament remain responsive to their constituents. The newly inaugurated parliament building, with its increased capacity, might be indicative of the potential enlargement of both Houses.

Further, adjustment of boundaries must follow one of the established methods for delimitation. Previous delimitation commissions have been criticised for not specifying which method they chose and, in some cases, for prioritising administrative convenience over geographic or community-specific concerns. It is essential to transparently adopt and customise an appropriate method for India.

> ***"Readjusting the boundaries of India's electoral constituencies should be a time-intensive, deliberative exercise, with technical inputs from politicians, and subject-matter experts, such as psephologists, political scientists, and statisticians"***

Implementation

While delimitation by itself will be time-intensive, deliberations around it must start immediately. Delimitation must be made a subject of consideration for the Ram Nath Kovind-led High-Level Committee ('HLC') which is examining the issue of simultaneous elections. A study of delimitation methods, constitutional implications of redrawing boundaries, and constitutional and legislative amendments required to effect delimitation must be added to the Committee's terms of reference.

The HLC must be expanded to comprise state representatives as well through the creation of a sub-committee which has two representatives from each state legislature - one each from the treasury bench and the opposition. This can ensure that the HLC's deliberations are informed by views from across the political spectrum, including those of regional political parties. This will ensure that a reform as far-reaching as delimitation enjoys broad-based consensus.

To discuss how to implement this reform, please write to **Ritwika Sharma** at ritwika.sharma@vidhilegalpolicy.in

Strengthen the para-legal volunteers framework

Attention: Ministry of Law & Justice, National Legal Services Authority, State Legal Service Authorities, District & Taluk Legal Service Authorities

Problem

Legal aid plays a crucial role in enabling access to justice by actively reaching out to persons who would not otherwise have the means to do so. Currently, multiple challenges in the Indian legal aid ecosystem hinder meaningful justice delivery. The Legal Services Authorities Act (1987) ('LSA') does not adequately account for Para-Legal Volunteers ('PLV') who play the critical role of cultivating legal awareness and de-mystifying complex procedural aspects of the system.

PLVs are the first point of contact for most litigants. They fall under the ambit of the National Legal Services Authority ('NALSA'), whose 2009 (Revised) Scheme for Para-Legal Volunteers lays out the scope of their duties. Under this scheme, every Taluk Legal Services Committee ('TLSC') and District Legal Services Authority ('DLSA') must have a maximum of 25 and 50 PLVs respectively on their rolls at any given time.

While there are no specific qualifications, the scheme identifies groups of persons who may be selected as PLVs. Excluding law students, all other categories (eg: teachers, non-political non-governmental organisation members, prisoners with good behaviour) require periodic legal training. PLVs usually serve for a year and undertake activities such as conducting sensitisation camps, resolving local disputes, assisting with jail visitations, and being deployed at various institutions including legal service clinics.

The 2009 Scheme lacks an updated minimum requirement for the number of PLVs in proportion to local populations. Although NALSA notes that approximately 14246 PLVs were deployed across India as of June 2023, a state-wise breakdown shows that the distribution is inadequate as against each state's population requirements. Further, the scheme lacks a clear demarcation for the number of PLVs required to be deployed at various institutions, leading to uneven deployment. For example, 14 out of 37 states and Union Territories do not have a single PLV deployed at their Juvenile Justice Boards/Child Welfare Centres.

Without formal recognition in the 1987 Act, PLVs are unable to make meaningful contributions on the ground. Training programs are infrequent, and the lack of mandated targets ensures that there is no incentive to improve the quality of legal aid rendered by them. This is compounded by the absence of monetary benefits. Unfortunately, PLVs only receive an inadequate honorarium of Rs. 250 per day irrespective of services rendered. Reimbursement for expenses incurred is limited and covers only 'reasonable travel expenses limited to the lowest classes by road/rail/steamer'. This amount has not been revised, owing to the LSAs' budgetary constraints. The scheme fails to ensure the continued involvement of passionate and dedicated volunteers.

Approach

While the 'volunteer' aspect of the PLV network must not be dismantled, it is high time that PLVs are given a more formal, structured role within the legal aid system. For example, paralegals in Canada are full-time salaried employees of the legal aid boards.

The scope of work to be undertaken can also be expanded where although they ought not to be a substitute for lawyers, they may take up more litigant-facing roles in rendering assistance. Australia sees paralegals as crucial to relate better with clients and provide alternative solutions. PLVs may additionally help with community work, case investigations, interviews, and alternate dispute resolution strategies.

To do so, PLVs would require comprehensive and regular training. A cue can be taken from the Philippines, where paralegal training includes legal literacy and skills training, including legal assistance-based skills such as gathering evidence, making affidavits, etc.

> ***"While the 'volunteer' aspect of the PLV network must not be dismantled, it is high time that PLVs are given a more formal, structured role within the legal aid system"***

Implementation

- Amend the LSA to ensure that PLVs are given formal recognition;
- Draft a revised scheme for better identification, holistic modules for legal training, revised monetary benefits in line with present-day requirements and additional non-monetary incentives, and accountability through clear demarcation of the scope of work and targets to be achieved;
- Involve DLSAs and TLSCs to take into account regional variations in requirements.

To discuss how to implement this reform, please write to **Priyamvadha Shivaji** at priyamvadha.shivaji@vidhilegalpolicy.in

Develop an integrated health emergency response in India

Attention: Ministry of Home Affairs, Ministry of Health & Family Welfare, Ministry of Telecommunications, Ministry of Women & Child Development

Problem

Over the years, multiple helplines have been operationalised in India for various kinds of emergencies at the national, state, and local levels. In 2015, the Telecom Regulatory Authority of India allotted '112' as a single emergency number in India for emergencies requiring ambulance services, fire emergency services, police support, and women & child safety measures.

The current system, albeit commendable, suffers from the following issues:

- **Limited functionality:** Restricting health emergency response to ambulance services neglects other crucial, life-saving aspects. These include immediate assessment, first-aid advice, basic counselling, and understanding the kind of healthcare required in a particular situation. The current system is neither trained nor capacitated to perform these functions, and lacks efficient linkage to suitably equipped healthcare establishments.
- **Lack of interdepartmental integration:** Although a single helpline number has been established, the system lacks meaningful integration of various organs that should collaboratively address a complex emergency (e.g. a medico-legal case of child abuse which requires medical assistance as well as police support and welfare services).
- **Missing links:** The helpline lacks the option to report symptoms during public health emergencies, or access crucial information regarding availability of medical facilities and supplies.

These issues were exacerbated and highlighted during the COVID-19 pandemic, when the nature of health emergencies required coordination among multiple departments across state borders. The 112 helpline was unable to respond effectively, necessitating a multitude of short-term, ad hoc response systems at various levels across the country. Many of them offered useful localised solutions but struggled to integrate interdepartmental or inter-state response since they were run by separate district-level bodies or by civil society organisations ('CSOs'). Such piecemeal approaches further led to haphazard allocation of scarce resources.

Approach

A revamped integrated helpline, which takes into account the highlighted issues, is essential for creating a forward-looking and meaningful health emergency response system for India. In addition to its existing services, it should offer support for basic first-aid and counselling, provide crucial information regarding available resources, connect users to relevant state or allied response systems, deploy teams to address the emergency, and ensure follow-ups where necessary. Specialised central or local helplines, such as Tele MANAS which offers mental health services, or hyperlocal support

networks, should continue to function and are not intended to be replaced by the integrated helpline.

The helpline should be revamped through focus on the following:

- **Collaboration of allied response systems:** this would include relevant government departments/authorities and CSOs where deemed useful. Dynamic records on resources (e.g. beds, ambulances, medical supplies) and their allocation should be collated centrally to prevent information lapses and issues in real-time resource allocation.
- **Adequate capacity-building:** responders should be trained in basic medical or paramedical support and preliminary counselling during physical and mental health emergencies. Regular capacity-building of responders on location-specific and time-sensitive information should be ensured during public health emergencies. Owing to the nature of their work, they should be provided adequate mental health support.
- **Adherence to applicable norms:** the response system must adhere to applicable accessibility standards pertaining to persons of diverse ages, with diverse disabilities, and from various locations across the country. Further, privacy and confidentiality norms must be followed while allowing for location tracking and line identification as necessary.

> *A revamped integrated helpline...is essential for creating a forward-looking and meaningful health emergency response system for India*

Implementation

- **Amendment:** The Nationwide Emergency Response System Guidelines, 2015 should be amended in line with the proposed solution. Further, clause 6 should be amended so that the committees set up under the guidelines include civil society representatives;
- **Consultation:** Indian and international best practices on integrated response systems should be examined. Regular consultation should be ensured with marginalised communities to understand and address issues faced by them in using the helpline.
- **Compatibility:** Holistic and regular compatibility review of all helplines, schemes, and laws across India which deal with health emergency response, should be conducted for suitable harmonisation;
- **Resource allocation:** The 112 helpline is currently operationalised through a combination of departmental funds, special funds such as the Nirbhaya Fund, and CSO support. Line items for allocating resources to the integrated helpline should be added to annual budget plans within relevant programmes under relevant ministries. Funds should also be mobilised under Corporate Social Responsibility programmes and partnerships with international and local CSOs.

To discuss how to implement this reform, please write to **Shreyashi Ray** at shreyashi.ray@vidhilegalpolicy.in

Expand social security net for unorganised workers

Attention: Ministry of Labour and Employment

Problem

Unorganised workers constitute around 90% of the Indian workforce and largely fall outside the scope of labour protections, including social security. The International Labour Organisation's notion of social security includes 9 core components: medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity, and survivor's benefits. The recent Social Security Code, 2020 ('SS Code') is a missed opportunity to strengthen the social security net.

As far as the unorganised sector is concerned, the SS Code mirrors the failed Unorganised Worker Social Security Act, 2008 ('2008 Act') which has been criticised for being a paper tiger and for its poor implementation. Like the 2008 Act, the SS Code follows a welfare-based approach towards social security by imposing a duty on governments to frame and notify social security schemes 'from time to time.' Thus, social security coverage is contingent on the government framing a scheme. Second, there is no clarity on who has the duty to fund these schemes. Schemes 'may' be funded by the Central Government, the State Government, Corporate Social Responsibility funds, and aggregators in the case of gig and platform workers. Failure to clearly identify the source of funding and the absence of a binding obligation to fund schemes sets the Code up for failure. Third, the Code imposes a discretionary duty on the government to set up critical facilities such as worker helplines and worker facilitation centres. Such facilities play an important role in identifying vulnerable workers and assisting them in registering for benefits and should have been mandated by the Code.

Approach

Social security coverage is crucial to mitigate the precarious status of unorganised workers. At a policy level, this requires two things. First, universalisation of social security to ensure workers across all sectors are covered by social security guarantees. Second, a rights-based approach towards social security to ensure it is an enforceable entitlement and not a matter of state benevolence as reflected in the present scheme-based model.

Further, the nature of, and approach towards social security, would require a thorough study of the various segments of the unorganised sector. For instance, in its 2007 Report, the National Commission for Enterprises in the Unorganised Sector ('NCEUS') had recommended 2 comprehensive yet separate social security legislations to cover unorganised workers in the agriculture sector and non-agricultural sectors to address the specific issues in each sector. Second, any law on social security must provide for a mandatory

scheme in relation to core components of social security which are critical to mitigating worker impoverishment and exploitation. Finally, given the absence of clear employer-employee relations, the presence of multiple employers, and the seasonal nature of work in the unorganised sector, the state must play a proactive role in supervising, funding, and delivering social security benefits.

> *Social security coverage is crucial to mitigate the precarious status of unorganised workers*

Implementation

An expert committee with representation from the labour movement must be set up to identify and inform changes to the SS Code. It must ensure -

- Stakeholder consultations are carried out with trade unions, civil society, labour experts and State Governments to ensure that the law is informed by evidence and is effective, rational, and comprehensive;
- The coverage of existing social security schemes is expanded to cover unorganised workers. An attempt has been made by the SS Code which empowers the Central Government to bring unorganised workers within the coverage of Employees' Provident Fund and Employees' State Insurance Corporation;
- Coverage is universal and provides for a minimum floor of core social security entitlements which are portable;
- Through the E-Shram portal, unorganised workers can register themselves to avail social security benefits. To ensure effective coverage through proper documentation, local level agents such as worker facilitation centres, Gram Panchayats, Urban Local Bodies, district officers, and labour inspectors must be tasked with identifying and registering workers. Further, where feasible, such as in the case of platform-based and gig workers, enterprises should be required to register themselves and their workers on the portal;
- Provisions on funding must clearly identify and impose timebound obligations on the Central and State Governments and employers to contribute towards the funding of social security benefits.

To discuss how to implement this reform, please write to **Namrata Mukherjee** at namrata.mukherjee@vidhilegalpolicy.in and **Rakshita Goyal** at rakshita.goyal@vidhilegalpolicy.in

Enact an urban right to work programme

Attention: Ministry of Housing & Urban Affairs

Problem

In India, urban unemployment rates exceed those in rural areas. Additionally, the urban poor grapple with higher inflation due to the elevated cost of city living. Although cities generally offer more job prospects, they lack an employment guarantee like the Mahatma Gandhi National Rural Employment Guarantee ('MGNREGA') programme, which aims to alleviate rural unemployment.

Rural unemployment is seasonal in nature as programmes such as MGNREGA are applicable during the agricultural off-season. Post-COVID, a reverse migration phenomenon occurred as people sought rural areas for the perceived safety net of MGNREGA. Despite an added stimulus to the rural employment scheme, they failed to provide work for up to 39% of the card holders.

India's urban population is continuously growing and the United Nations predicts that by 2035, 43% of the Indian population will be urban. India is staring at a massive urban unemployment problem with lack of quality living as well as a minimum wage guarantee.

Approach

Several states have introduced urban employment schemes in response to the pandemic-induced reverse migration. These programs resemble MGNREGA, offering urban employment guarantees. However, the approach must be to ensure it does not overburden the existing metro city infrastructure as a new employment scheme will further attract more people towards the cities creating a moral hazard problem.

Therefore, such an employment programme must be focused only on non-metro cities in the country. As mentioned above, given that one of the problems is the lack of steady urbanisation across the country, an urban employment programme focused on non-metro cities will provide a unique opportunity to attract people towards urban agglomerations closer home. Currently the structure of urbanisation in India is such that the state capitals are metropolitan cities that are the centres of urbanisation for the whole state.

> ***"Implementation of such a right to work guarantee will help with ensuring a wage guarantee in urban areas while also reducing the unevenness of urbanisation in India"***

For example, in the state of Karnataka, urban agglomeration has remained the same while Bengaluru has grown over the years, i.e, although Bengaluru is growing and expanding, the rest of the state has not seen a similar rise in urbanisation. Maharashtra faces the same challenge as Mumbai continues to grow and Pune, the state's second largest city, has less than 1/3rd of Mumbai's population. This is a pan-India phenomenon. Hence a programme enacted at the Union government level similar to MGNREGA, for employment in non-metro cities, ought to be considered.

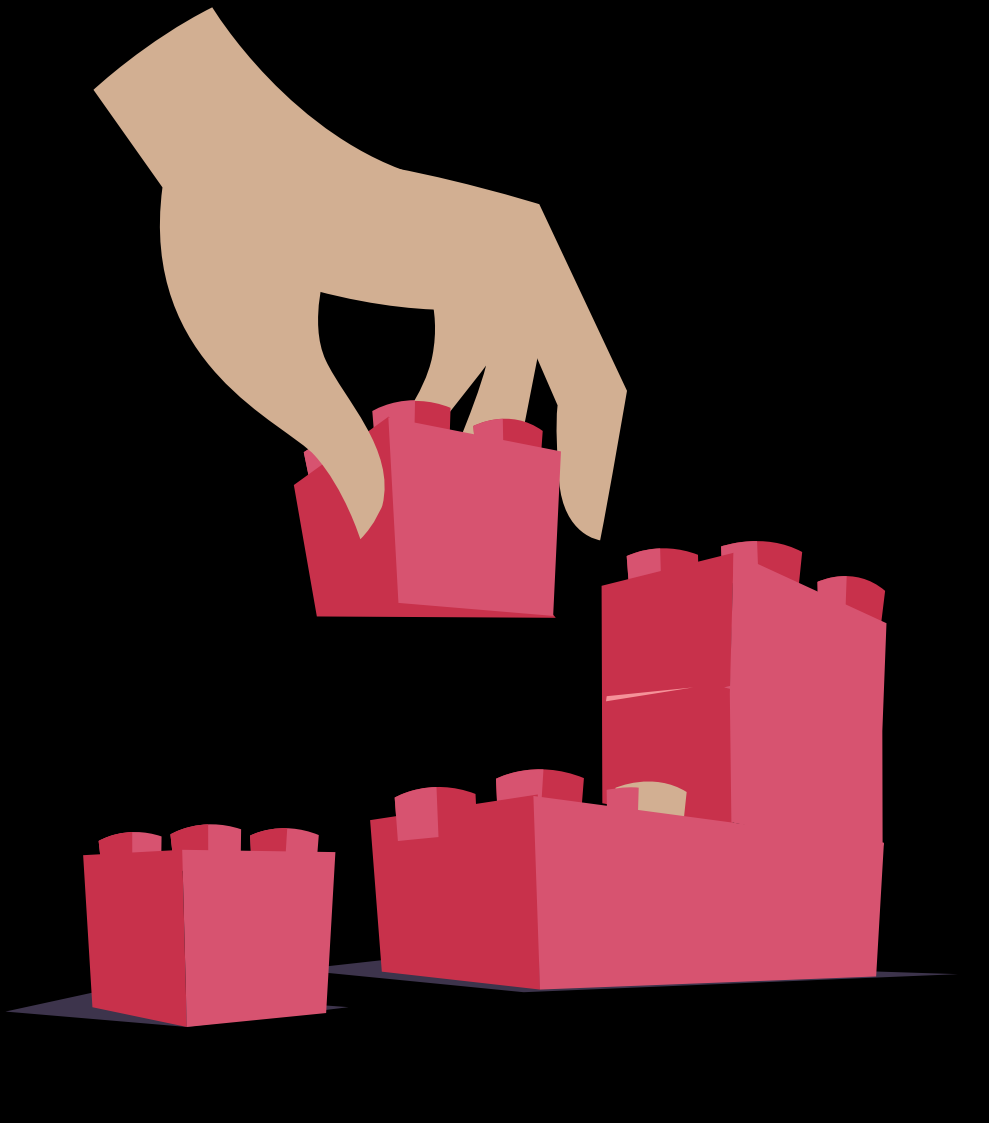
Moreover, given that government schemes for employment guarantee primarily focus on infrastructural work that require informal labour, it provides an opportunity to improve infrastructure across different urban centres outside of the state capitals. Non-metro cities are seeing an increase in infrastructure work and it would thus be easier for the government to promise employment.

Implementation

The enactment of such a scheme needs to happen at the Union Government level whereas the implementation needs to be a co-operative effort between governments at all levels akin to the MGNREGA. The Union Government already has the expertise of implementing such a large-scale programme therefore is the best institution to carry out an urban employment program. Urban Local Bodies of cities will have to work with the Union and State Governments in order to implement the scheme - the way the Gram Panchayats do for MGNREGA.

Implementation of such a right to work guarantee will help with ensuring a wage guarantee in urban areas while also reducing the unevenness of urbanisation in India.

To discuss how to implement this reform, please write to **Varini G** at varini.g@vidhilegalpolicy.in



From Vidhi's Blueprint to *India's Reality*

Annexure 1:
From Vidhi's *Blueprint* to India's *Reality*

The proposal	*Action taken by stakeholder(s)*

2014

An overhaul of India's insolvency framework with the objectives of limiting judicial discretion and making the system as objective as possible by considering modern day practices at a global level.	The Insolvency and Bankruptcy Code, 2016 came into existence, consolidating the law on reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner.
A holistic reform to the legal framework governing tribunals in India to first, ensure uniformity in appointment, terms and conditions of service and retirement of tribunal members, and second, to abolish defunct tribunals.	In 2021, Parliament enacted the Tribunal Reforms Act to achieve precisely these two aims.
Enactment of a legal framework which ensures net neutrality and prevents preferential/ discriminatory treatment of online content by internet service providers.	The Telecom Regulatory Authority of India prohibited discriminatory tariffs for accessing or transmitting data over the internet. In 2018, the Department of Telecommunications issued rules on Net Neutrality providing free and fair access to the internet.

This year marks the 10th anniversary of the Vidhi Centre for Legal Policy. Each year, Vidhi has published a briefing book containing proposals for legal reform. This is a list of 10 proposals which have been fully or partially by the relevant stakeholder(s).

The proposal	*Action taken by stakeholder(s)*
Ensuring safer clinical trials by enacting new rules under the Drugs and Cosmetics Act, 1940, consolidating scattered provisions relating to clinical trials and incorporating the recommendations of the Ranjit Roy Chaudhury Committee to protect trial participants.	The New Drugs and Clinical Trials Rules were enacted in 2019. These rules are a standalone legal instrument dedicated to the regulation of clinical trials. They incorporate 3 recommendations from Vidhi's briefing book regarding the audio-visual recording of informed consent (the Rules limit this to new molecular entities), the constitution of Technical Review Committees, and setting timelines for different phases of the clinical trial review process.
2015	
Enactment of a comprehensive code applicable to e-commerce transactions, updating existing norms to meet the changes in technology, and creating new legal definitions of terms such as 'online marketplace' and 'service', which have hitherto not been clearly defined in Indian law.	The Department of Industrial Policy & Promotion released the draft national e-commerce policy proposing setting up a legal and technological framework for restrictions on cross-border data flow and also laid out conditions for businesses regarding collection or processing of sensitive data locally and storing it abroad.

The proposal	*Action taken by stakeholder(s)*
2017	
Legalisation of advance directives, allowing persons with terminal illness to specify the types of medical intervention they would not wish to receive, with such a directive coming into play when the person in question loses decision-making capacity.	The Supreme Court of India, in Common Cause v Union of India gave legal validity to advance medical directives. Vidhi had filed an intervention application in this matter, parts of which were relied on by the Court. In 2023, through an application for clarification of the judgement, Vidhi supported the Indian Society of Critical Care Medicine in simplifying the execution of advance directives.
Replacement of the system of ad-hoc tribunals under the Inter-State Water Disputes Act, 1956 and enactment of a new legislative framework geared towards quick and effective resolution.	The Inter-State River Water Disputes (Amendment) Bill, 2017 was introduced which proposed a single tribunal with multiple benches (instead of the existing framework of multiple tribunals) along with a mechanism to amicably resolve disputes through negotiation.
2018	
The creation of a regulatory sandbox - a legal framework which allows businesses to explore and experiment with new and innovative products, services or businesses under a regulator's supervision.	Vidhi engaged with the Department of Electronics Information Technology, Biotechnology and Science & Technology of the State Government of Karnataka to draft the Karnataka Innovation Authority Act, 2020 and the Karnataka Innovation Authority Rules to enable the implementation of regulatory sandboxing in the State.

The proposal	*Action taken by stakeholder(s)*
2019	
A modification in the appointment process of Independent Directors to make these persons truly 'independent' from controlling shareholders, thus encouraging greater participation of institutional investors.	The Securities and Exchange Board of India introduced an alternative method for the appointment and removal of independent directors geared towards reducing the influence of promoters over these directors, thus making them truly independent.
The development of an Urban Open Data Policy aimed at enabling the State Government of Karnataka in identifying trends and best practices in urban governance through the use of data, and facilitate innovation by the public and private sector in solving urban governance problems through openly sharing non-personal data which is available with the government at the urban level.	Vidhi engaged with the Karnataka Urban Infrastructure Development Finance Corporation to develop a Draft Karnataka Urban Open Data Policy to prescribe measures to implement Open Data at the level of Urban Local Bodies and parastatal agencies. It seeks to ensure that data held by agencies and bodies at the local level is made available in accessible and usable formats to the public.

Annexure 2:
Stakeholder Index

Union of India and Pan-India Regulators	
Chief Commissioner for Persons with Disabilities Enact a comprehensive equality and anti-discrimination legislation	42
Commissioner for Linguistic Minorities Enact a comprehensive equality and anti-discrimination legislation	42
Committee chaired by the Cabinet Secretary to be set up to examine marriage equality Enact a Model Family Law Code	38
Department of Personnel and Training Develop a framework for caregivers of persons with disabilities	50
Election Commission of India Redraw the boundaries of India's electoral constituencies	60
Insurance Regulatory and Development Authority of India Create a body to coordinate across Digital Public Infrastructure ecosystems	36
International Financial Services Centre Authority Create a body to coordinate across Digital Public Infrastructure ecosystems	36
Law Commission of India Enact a Model Family Law Code	38
Ministry of Agriculture and Farmers Welfare Create a body to coordinate across Digital Public Infrastructure ecosystems	36

Ministry of Commerce & Industry • Enact a law to protect foreign investments • Create a body to coordinate across Digital Public Infrastructure ecosystems	26 36
Ministry of Corporate Affairs • Develop a framework for equal opportunity and non-discrimination at workplaces • Ensure efficient administrative adjudication by financial sector Regulatory Authorities • Update the Indian Insolvency regime to encompass crypto-related bankruptcies	46 58 30
Ministry of Education Regulate ed-tech companies and ban predatory practices	52
Ministry of Electronics & Information Technology • Develop human-centric, responsible artificial intelligence for all • Draft a legal framework to host data embassies in India • Create a body to coordinate across Digital Public Infrastructure ecosystems • Regulate ed-tech companies and ban predatory practices	16 32 36 52
Ministry of Environment, Forests, and Climate Change Integrate biodiversity offsetting principles in afforestation policies	34
Ministry of External Affairs • Enact a law to protect foreign investments • Draft a legal framework to host data embassies in India	26 32

Ministry of Social Justice & Empowerment • Enact a Model Family Law Code • Enact a comprehensive equality and anti-discrimination legislation • Develop a framework for equal opportunity and non-discrimination at workplaces • Reimagine the rescue, rehabilitation, and reintegration of sex workers • Develop a framework for caregivers of persons with disabilities	38 42 46 48 50
Ministry of Telecommunications Develop an integrated health emergency response in India	64
Ministry of Tribal Affairs Enact a comprehensive equality and anti-discrimination legislation	42
Ministry of Women & Child Development • Enact a comprehensive equality and anti-discrimination legislation • Reimagine the rescue, rehabilitation, and reintegration of sex workers • Develop an integrated health emergency response in India	42 48 64
National Commission for Backward Classes Enact a comprehensive equality and anti-discrimination legislation	42
National Commission for Minorities Enact a comprehensive equality and anti-discrimination legislation	42
National Commission for Scheduled Castes Enact a comprehensive equality and anti-discrimination legislation	42
National Commission for Scheduled Tribes Enact a comprehensive equality and anti-discrimination legislation	42
National Commission for Women Enact a comprehensive equality and anti-discrimination legislation	42
National Council for Transgender Persons Enact a comprehensive equality and anti-discrimination legislation	42

National Human Rights Commission Enact a comprehensive equality and anti-discrimination legislation	42
National Legal Services Authority Strengthen the para-legal volunteers framework	62
National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Develop a framework for caregivers of persons with disabilities	50
Parliamentary Standing Committee on Personnel, Public Grievances, and Law & Justice Enact a Model Family Law Code	38
Pension Fund Regulatory and Development Authority Create a body to coordinate across Digital Public Infrastructure ecosystems	36
Reserve Bank of India • Create a Unified non-bank fintech company License • Create a body to coordinate across Digital Public Infrastructure ecosystems	28 36
Securities and Exchange Board of India Create a body to coordinate across Digital Public Infrastructure ecosystems	38
Supreme Court of India Abolish court fees in civil suits	18

State & the Third Tier	
State Law Departments Abolish court fees in civil suits	18
State Governments Follow due process in cases of demolition	54
High Courts Abolish court fees in civil suits	18
State Ministries of Health and Family Welfare Develop a multi-level grievance redressal mechanism for healthcare facilities	20
Urban Local Bodies Follow due process in cases of demolition	54
Village Panchayats Follow due process in cases of demolition	54
State Legal Services Authorities Strengthen the para-legal volunteers framework	62
District & Taluk Legal Services Authorities Strengthen the para-legal volunteers framework	62

Annexure 3:
Global Best Practices

ALBANIA

AUSTRALIA

BAHRAIN

CANADA

CHINA

CROATIA

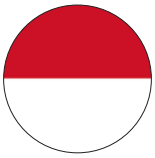
ESTONIA

IRAQ

LUXEMBOURG

While preparing the reform proposals in this briefing book, the authors have relied on best practices in the following countries:

MALI



MONACO

NEW ZEALAND

PHILIPPINES

SLOVENIA

SOMALIA

SOUTH AFRICA

UNITED KINGDOM

UNITED STATES OF AMERICA

Annexure 4:
References

The State shall trust its citizens.

1. *Shift* towards principle-based criminal law-making

- Aircraft Act 1934, s 11; Delhi Police Act 1978, s 94
- The Prize Competitions Act 1955, s 10
- Indian Penal Code 1860, s 352
- Criminal Code of Croatia 1997, art 1; Criminal Code of the Republic of Albania 1995, art 1/b; Criminal Code of the Republic of Slovenia 2005, art 2
- Ministry of Law & Justice, 'Pre-Legislative Consultation Policy' (Legislative Department, February 2014) <https://lddashboard.legislative.gov.in/documents/pre-legislative-consultation-policy> accessed 15 November 2023

2. *Develop* human-centric, responsible Artificial Intelligence for all

- Nestor Maslej et al., The AI Index 2023 Annual Report, Institute of Human-Centered AI (Stanford University), 2023, <https://aiindex.stanford.edu/report/> accessed 25 October 2023
- European Commission, 'Proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts', COM (2021) 206 final
- Ministry of Electronics and IT (MeitY), IndiaAI 2023: Expert Group Report First edition, MeitY (Government of India), (2023),<https://www.meity.gov.in/content/indiaai-2023-expert-group-report-%E2%80%93-first-editionthe-ministry-electronics-and-information> accessed 25 October 25 2023

3. *Abolish* court fees in civil suits

- 'Law Commission of India: Fourteenth Report- Reform of Judicial Administration, Vol. I, Chapter 1-29' (1958) <http://indianculture.gov.in/reports-proceedings/law-commission-india-fourteenth-report-reform-judicial-administration-vol-i> accessed 15 November 2023.
- 'Law Commission of India: 189th Report on Revision of Court Fees Structure (February 2004) <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081043.pdf> accessed 15 November 2023.
- Anupama Kumar, 'Court Fees In India : When Justice Comes At A Heavy Price' (17 June 2019) <https://www.livelaw.in/columns/when-justice-is-pricey-court-fees-in-india-145706> accessed 15 November 2023

- 'Vexatious Litigants: How the Law Deals with People Whose Hobby Is Suing | Seddons Solicitors' (24 July 2018) <https://www.seddons.co.uk/our-thinking/vexatious-litigants-how-law-deals-people-whose-hobby-suing> accessed 15 November 2023accessed 25 October 25 2023

4. Develop a multi-level grievance redressal mechanism for healthcare facilities

- Shreya Garg, Dhvani Mehta, 'Grievance Redressal Mechanisms in Public Healthcare Establishments Overview of The Legal Framework and Recommendations for Reform' <https://vidhilegalpolicy.in/wp-content/uploads/2019/05/170413_GrievanceRedressalMechanisms.pdf> accessed: 17 October 2023
- Shreyashi Ray and Dhvani Mehta, 'The Rajasthan Right to Health Act, 2023' <https://vidhilegalpolicy.in/research/the-rajasthan-right-to-health-act-2023/> accessed: 17 October 2023
- Shreya Shrivastava, Tarika Jain, Rituparna Padhy, Nihal Sahu, Shreyashi Ray, Kim D'Souza, 'Holding Healthcare Providers Accountable' (Vidhi Centre for Legal Policy 2023, forthcoming)
- Comptroller and Auditor General of India, 'Performance Audit on Ayushman Bharat – Pradhan Mantri Jan Arogya Yojana (AB-PMJAY)', Report 11 of 2023 (8 August 2023) <https://cag.gov.in/en/audit-report/details/119060> accessed: 17 October 2023
- 'AIIMS, GGSIP announce collaboration for Patient Grievance Redressal System' Business Standard (13 August 2023) <https://www.business-standard.com/education/news/aiims-ggsip-announce-collaboration-for-patient-grievance-redressal-system-123081300273_1.html> accessed: 17 October 2023

5. Enact a new law to enhance reproductive autonomy

- 'Advocacy Manual on Legal Regulation of Abortion in India: Complexities and Challenges' (Centre for Justice Law and Society and Jindal Global Law School, 16 May 2023) <https://www.cjls-jgu.in/s/Advocacy-Manual-on-Legal-Regulation-of-Abortion-in-India-Complexities-and-Challenges.pdf> accessed 15 November 2023
- X v. Principal Secretary, Health and Family Welfare, Govt of NCT Delhi Special Leave Petition (Civil) No 12612 of 2022
- 'Ensuring Reproductive Rights: Reform to Address Women's and Girls' Need for Abortion After 20 Weeks in India' (Center for Reproductive Rights, 23 February 2018) <https://reproductiverights.org/wp-content/uploads/2020/12/Post-20-Week-Access-to-Abortion-India-0218.pdf> accessed 15 November 2023
- Alok Prasanna Kumar, 'Abortion and the Bharatiya Nyaya Sanhita' Economic and Political Weekly (September 23, 2023) <https://www.epw.in/journal/2023/38/law-and-society/abortion-and-bharatiya-nyaya-sanhita.html> accessed 15 November 2023
- 'Abortion care guideline' (World Health Organization, 2022) <https://iris.who.int/handle/10665/349316> accessed 15 November 2023

The State shall innovate

6. Enact a law to protect foreign investments

- MK Venu, Precipitous Decline in FDI in Last Two Years of Modi's Tenure, The Wire (15 July 2023) <https://thewire.in/economy/precipitous-decline-fdi-last-two-years-modi-tenure#:~:text=Speaking%20on%20CNBC%20TV18%2C%20a,(both%20calendar%20and%20financial).> accessed 21 November 2023
- Prabhash Ranjan, 'Prabhash Ranjan on India's new stance on trade agreements: It takes India back to the pre-reforms era', Indian Express (10 April 2023) <https://indianexpress.com/article/opinion/columns/prabhash-ranjan-on-indias-new-stance-on-trade-agreements-it-takes-india-back-to-the-pre-reforms-era-8547596/#:~:text=The%20domestication%20or%20de%2Dlegalisation,on%20it%20with%20some%20mistrust.> accessed 21 November 2023
- Simon Hartmann & Rok Spruk, 'The impact of unilateral BIT terminations on FDI: Quasi-experimental evidence from India', The Review of International Organisations (17 June 2022)
- Abhishek Dwivedi, 'India's Flawed Approach to Bilateral Investment Treaties', The Diplomat (4 December 2020) <https://thediplomat.com/2020/12/indias-flawed-approach-to-bilateral-investment-treaties/> accessed 21 November 2023

7. Create a unified non-bank fintech company license

- EY, 'Global FinTech Adoption Index 2019' (2019) <https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/banking-and-capital-markets/ey-global-fintech-adoption-index.pdf> accessed 6 October 2023.
- Reserve Bank of India Act, 1934
- Payment and Settlement Systems Act, 2007

8. Update the Indian insolvency regime to encompass crypto-related bankruptcies

- EY, 'Global FinTech Adoption Index 2019' (2019) <https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/banking-and-capital-markets/ey-global-fintech-adoption-index.pdf> accessed 6 October 2023.
- Reserve Bank of India Act, 1934
- Payment and Settlement Systems Act, 2007

9. Draft a legal framework to host data embassies in India

- 'Speech of Nirmala Sitharaman, Minister of Finance' (India Budget, 1 February 2023) <https://www.indiabudget.gov.in/doc/budget_speech.pdf> accessed 20 October 2023
- Agreement between the Republic of Estonia and the Grand Duchy of Luxembourg

on the hosting of data and information systems <https://www.riigiteataja.ee/aktilisa/2280/3201/8002/Lux_Info_Agreement.pdf> accessed 20 October 2023

- Legislative Decree No. 56 of 2018 In Respect of Providing Cloud Computing Services to Foreign Parties <https://bahrainbusinesslaws.com/laws/Law-of-Providing-Cloud-Computing-Services-to-Foreign-Parties> accessed 20 October 2023

10. Integrate biodiversity offsetting principles in afforestation policies

- 'IUCN Policy on Biodiversity Offsets' (2016) <https://www.iucn.org/resources/file/iucn-policy-biodiversity-offsets> accessed 2 November 2023
- World Bank, 'Biodiversity Offsets: A User Guide' <http://hdl.handle.net/10986/25758> accessed 2 November 2023
- 'Biodiversity Offsets and the Mitigation Hierarchy: A Review of Current Application in the Banking Sector' <https://www.unepfi.org/industries/banking/biodiversity-offsets-and-the-mitigation-hierarchy-a-review-of-current-application-in-the-banking-sector/> accessed 2 November 2023
- Expert committee (2022). Compensatory Conservation in India: An Analysis of the Science, Policy and Practice, Report submitted to the Hon'ble Supreme Court by the 7-Member Expert Committee pursuant to the directions dated 25th March, 2021 in Special Leave Petition (Civil) No. 25047 Of 2018, New Delhi, India
- Tambe S and others, 'Compensatory Afforestation Policy in India: An Analysis Using an Eco Restoration Lens' (2022) 24 International Forestry Review 607

11.Create a body to coordinate across Digital Public Infrastructure ecosystems

- Department for Business, Energy and Industrial Strategy, 'Smart Data Working Group Spring 2021 report' (GOV.UK, June 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/993365/smart-data-working-group-report-2021.pdf> accessed 19 October 2023
- Department of the Treasury (Australia), 'Statutory Review of the Consumer Data Right: Report' (29 September 2022) < https://treasury.gov.au/sites/default/files/2022-09/p2022-314513-report.pdf> accessed 19 October 2023, pages 35-38
- Ministry of Finance, Creation of Financial Stability and Development Council' (F. No. 14/33/20I0-EM, 30 September 2010) <https://dea.gov.in/sites/default/files/Gazette%20Notification%20December%2010.pdf> accessed 19 October 2023
- Knowledge for Policy European Commission, Glossary Item 'Whole-of-Government Approach' <https://knowledge4policy.ec.europa.eu/glossary-item/whole-government-approach%C2%A0_en>accessed 19 October 2023
- Nagle F, 'Strengthening Digital Infrastructure: A Policy Agenda for Free and Open Source Software' (Brookings, 19 May 2022) <https://www.brookings.edu/research/strengthening-digital-infrastructure-a-policy-agenda-for-free-and-open-source-software/> accessed 19 October 2023

12. Enact a Model Family Law Code

- Aditya Prasanna Bhattacharya et al, Model Code on Indian Family Law, Vidhi Centre for Legal Policy (20 July 2023) <https://vidhilegalpolicy.in/research/model-code-on-indian-family-law-2023/#:~:text=It%20provides%20for%20inclusion%20of,family%20structures%20prevalent%20in%20India.> accessed 23 November 2023
- State of Bombay v Narasu Appa Mali AIR 1952 Bom 84
- Supriyo @ Supriya Chakraborty v Union of India 2023 INSC 920

The State shall protect its citizens from hardship

13. Enact a comprehensive equality and anti-discrimination legislation

- United Nations Office of the High Commissioner for Human Rights, Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation (6 December 2022) <https://www.ohchr.org/en/publications/policy-and-methodological-publications/protecting-minority-rights-practical-guide> accessed 14 November 2023
- Anti-Discrimination and Equality Bill 2016 (Bill No. 289 of 2016 introduced in the Lok Sabha)
- Oxfam India, India Discrimination Report 2022 (15 September 2022) <https://www.oxfamindia.org/knowledgehub/workingpaper/india-discrimination-report-2022> accessed 14 November 2023
- Sukhadeo Thorat, Nitin Tagade, Vinod K. Mishra, Khalid Khan and Rajesh Raushan, Study Report on Inter Group Inequality in Wealth Ownership in India (Indian Institute of Dalit Studies, 2020) <https://www.dalitstudies.org.in/media/cpafco3k/study-report-on-inter-group-inequality-in-wealth-ownership-in-india.pdf> accessed 14 November 2023
- Sam Asher, Paul Novosad and Charlie Rafkin, "Intergenerational Mobility in India: New Measures and Estimates Across Time and Social Groups" American Economic Journal: Applied Economics (Forthcoming), draft available at <https://paulnovosad.com/pdf/anr-india-mobility.pdf> accessed 14 November 2023

14. Legislate to protect conflict-induced Internally Displaced Persons

- UN OCHA, 'Guiding Principles on Internal Displacement' (E/CN.4/1998/53/2, 1998)
- Internal Displacement Monitoring Centre, '2023 Global Report on Internal Displacement' (2023)
- Brookings Institution, 'Protecting Internally Displaced Persons: A Manual for Law and Policymakers' (2008)
- UNHCR, 'Global Report on Law and Policy on Internal Displacement' (2022)
- Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, Third Schedule

15. Develop a framework for equal opportunity and non-discrimination at workplaces

- Rights of Persons with Disabilities Act 2016, ss 2(i), 3(5), 21, 20(2), 75 and 80
- PTI, 'Half of people with disabilities population in India employable: Report' The Economic Times, (India, 14 July 2021) <https://economictimes.indiatimes.com/news/india/half-of-people-with-disabilities-population-in-india-employable-report/articleshow/84418292.cms?from=mdr> accessed 29 September 2023
- Rights of Persons with Disabilities Rules 2017, r 38
- Companies (Accounts) Rules 2014, rr 8(4), 8(5) and 9
- Vikash Kumar v Union Public Service Commission & Ors 9 (2021) 5 SCC 370; Ravinder Kumar Dhariwal & Anr v Union of India 2021 SCC OnLine SC 1293; Deaf Employees Welfare Assn & Anr v Union of India & Ors (2014) 3 SCC 173; Begum Sultana Rajia & Ors v State of Assam & Ors 2018 SCC OnLine Gau 1458

16. Reimagine the rescue, rehabilitation, and reintegration of sex workers

- Aarthi Pai, Meena Seshu, and Laxmi Murthy, 'Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices' (Sampada Grameen Mahila Sanstha 2018) <https://www.sangram.org/resources/RAIDED-E-Book.pdf> accessed 25 October 2023
- Budhadev Karmaskar v. State of West Bengal, 2022 SCC Online SC 704.
- Aarthi Pai and others, 'Status of Women in Sex Work in India' (National Alliance of Women's Organisations 2014) <https://ruralindiaonline.org/en/library/resource/status-of-women-in-sex-work-in-india/> accessed 25 October 2023
- Kimberly Walters, 'Moral Security: Anti-trafficking and the Humanitarian State in South India' (2020) 93(3) Anthropological Quarterly <https://www.academia.edu/86299226/Moral_Security_Anti_trafficking_and_the_Humanitarian_State_in_South_India> accessed 25 October 2023
- Sanjog India, 'Freedom Communities' (2021) <https://www.sanjogindia.org/wp-content/uploads/2021/04/Freedom%20Communities_Exploratory%20Analyses_CBR.pdf> accessed 25 October 2023

17. Develop a framework for caregivers of persons with disabilities

- Renu Addlakha, 'Kinship Destabilized: Disability and the Micropolitics of Care in Urban India' (2020) 61(21) CA <https://www.journals.uchicago.edu/doi/pdfplus/10.1086/705390> accessed 9 November 2023
- Rakesh K. Chadda, 'Caring for the family caregivers of persons with mental illness' (2014) 56(3) IJP 221, 227 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4181176/> accessed 9 November 2023.

- Hareesh Angothu and Santosh K. Chaturvedi, 'Civic and Legal Advances in the Rights of Caregivers for Persons with Severe Mental Illness Related Disability' (2016) IJSP 32(1) 28, 34 <https://journals.lww.com/ijsp/Fulltext/2016/32010/Civic_and_Legal_Advances_in_the_Rights_of.6.aspx> accessed 9 November 2023.
- Vivienne C. Riches et al., 'A study of caregiver support services: Perspectives of family caregivers of persons with intellectual disabilities in Singapore' (2023) JPPID 20(1) 117, 131 <https://onlinelibrary.wiley.com/doi/full/10.1111/jppi.12441> accessed 9 November 2023.
- Francesca Colombo et al., Help Wanted: Providing and Paying for Long-Term Care (2011, OECD Publishing, Paris) 121, 158 <https://www.oecd.org/els/health-systems/47884889.pdf> accessed 9 November 2023

18. Regulate ed-tech companies and ban predatory practices

- Terri Chapman, 'Social mobility in India: Determinants and recommendations for change' (ORF, 19 March 2020) : <https://www.orfonline.org/research/social-mobility-in-india-63480/#:~:text=Education%20is%20often%20considered%20one,access%20to%20high%2Dquality%20education>accessed 9 November 2023
- Trisha Shreyasi & Renu Gupta, 'India's ed-sector needs stronger laws' The deccan herald (17 May 2023) <https://www.deccanherald.com/opinion/india-s-edtech-sector-needs-stronger-laws-1219459.html> accessed 9 November 2023
- RCM Reddy, Devika Rae Chandra, 'Regulation and Ed Tech', Indian Express (5 August , 2023) <https://www.financialexpress.com/opinion/regulation-and-edtech/2618018/>accessed 9 November 2023
- Anirudh Chakradhar,'EdTech in India needs stronger regulation'(IDR, 2 September 2022)
- <https://idronline.org/article/education/edtech-in-india-needs-stronger-regulation/>accessed 9 November 2023
- Kalyani Balagopal and Nissy Solomon,' Evolving Landscape of Regulatory Overlaps in Ed-tech'(Centre for Public Policy Research, 22 July 2022) <https://www.cppr.in/articles/evolving-landscape-of-regulatory-overlaps-in-ed-tech>accessed 9 November 2023

19. Follow due process in cases of demolitions

- Sudama Singh v. Govt. of Delhi, WP(C) No. 8904/2009
- Ajay Maken v. Union of India, W.P.(C) 11616/2015
- United Nations Human Rights, Office of the High Commissioner, 'Basic Principles and Guidelines on Development-based Evictions and Displacements', (2007) Special Rapporteur on adequate housing as a component of the right to an adequate standard of living <https://www.ohchr.org/sites/default/files/Guidelines_en.pdf> accessed 10 October 2023
- Housing and Land Rights Network, 'Forced to the Fringes, Disasters of Resettlement in India', (2014) <https://www.hlrn.org.in/documents/Forced_to_the_Fringes_(combined).pdf> 3 November 2023

- Jean du Plessis, 'The growing problem of forced evictions and the crucial importance of community based, locally appropriate alternatives' (2005) <https://journals.sagepub.com/doi/pdf/10.1177/095624780501700108> accessed 15 October 2023

The State shall efficiently deliver services

20. Ensure efficient administrative adjudication by financial sector Regulatory Authorities

- Report of the Expert Committee, constituted in Vishal Tiwari v Union of India, Writ Petition(s) (Civil) No(s). 162/2023 (Supreme Court of India)

21. Redraw the boundaries of India's electoral constituencies

- AK Verma, 'Delimitation in India: Methodological Issues' (4-10 March 2006) 41(9) Economic and Political Weekly 794, 795
- Alok Prasanna Kumar, 'Of Delimitation, Demography and Democracy' (17 February 2018) 53(7) Economic and Political Weekly 10, 10
- Milan Vaishnav and Jamie Hintson, 'India's Emerging Crisis of Representation' Carnegie Endowment for International Peace (14 March 2019) <https://carnegieendowment.org/2019/03/14/india-s-emerging-crisis-of-representation-pub-78588> accessed 31 October 2023
- Akhilesh Singh, 'Census, delimitation soon after Lok Sabha polls, any 'flaw' in Bill can be rectified later: Amit Shah' The Times of India (New Delhi, 21 September 2023) <https://timesofindia.indiatimes.com/india/census-delimitation-soon-after-ls-polls-any-flaw-in-bill-can-be-rectified-later-amit-shah/articleshow/103822431.cms?from=mdr> accessed 6 October 2023
- Editorial, 'Delimitation: A Tale of Missed Opportunities' (14 June 2008) 43(24) Economic and Political Weekly 5, 5
- Shahid Faridi, 'Power Games: Government likely to raise Lok Sabha strength to 848' The New Indian Express (24 April 2023) <https://www.newindianexpress.com/nation/2023/apr/24/power-games-government-likely-to-raise-lok-sabha-strength-to-848-2568848.html> accessed 31 October 2023

22. Strengthen the para-legal volunteers framework

- National Legal Services Authority, Scheme for Para-Legal Volunteers (Revised) (2009) <https://nalsa.gov.in/acts-rules/preventive-strategic-legal-services-schemes/scheme-for-para-legal-volunteers> accessed 13 November 2023
- Para Legal Volunteers Report, 'Para Legal Volunteers, April 2023 to June 2023' (National Legal Services Authority) <https://nalsa.gov.in/statistics/para-legal-volunteers-report/para-legal-volunteers-april-2023-to-june-2023> accessed 8 November 2023

- United Nations Office on Drugs & Crime & , Global Study on Legal Aid: Country Profiles (November 2016) 406-418 (Canada) <https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/GSLA_-_Country_Profiles.pdf> accessed 8 November 2023
- Mary Anne Noone, 'Paralegals and Legal Aid Organizations' (1988) 4 J.L. & Soc. POL'y 146
- Philippines Clinical Legal Education Program, 'Courses' (CLEP) <https://clep.leb.gov.ph/courses/> accessed 11 November 2023

23. Develop an integrated health emergency response in India

- 'Emergency Response Support System in India' <https://112.gov.in/> accessed 25 October 2023
- Shreyashi Ray, 'Did COVID-19 Helplines Help People During Lockdown? Here's an Insider Account' (The Quint, 29 August 2023) <https://www.thequint.com/voices/blogs/did-covid-19-helplines-help-people-during-lockdown-heres-an-insider-account> accessed 10 November 2023
- 'About Tele MANAS' (National Tele Mental Health Programme of India) <https://telemanas.mohfw.gov.in/#/about> accessed 25 October 2023
- 'Nationwide Emergency Response System (NERS) Guidelines' - (Ministry of Home Affairs, Government of India) <https://www.mha.gov.in/sites/default/files/2022-08/NERSGuideline_2100815%5B1%5D.pdf> accessed 25 October 2023

24. Expand social security net for unorganised workers

- National Commission for Enterprises in the Unorganised Sector, Social Security (2009) <https://www.im4change.org/nceus_reports/Reports-on-Social-Security.pdf > accessed 16 November 2023
- National Commission for Enterprises in the Unorganised Sector, Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector (2007) <http://sanhati.com/wp-content/uploads/2013/10/NCEUS-2007-Report-on-conditions-of-work-and-promotion-of-livelihoods-in-the-unorganised-sector.pdf> accessed 16 November 2023
- Dr. Shyam Sundar and Rahul Suresh Sapkal, 'Social Security Code: Another Historic Opportunity Missed!' The Leaflet (11 October 2020) <https://theleaflet.in/social-security-code-another-historic-opportunity-missed/> accessed 16 November 2023
- International Labour Organisation, Extending Social Security to Workers in the Informal Economy (2021) <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_749431.pdf> accessed 16 November 2023
- Standing Committee on Labour, 17th Lok Sabha, Code on Social Security, 2019 (2020) <https://prsindia.org/files/bills_acts/bills_parliament/2019/SCR-Code%20on%20Social%20Security,%202019.pdf> accessed 16 November 2023

25. Enact an urban right to work programme

- Anil Kumar Vaddiraju, 'Challenges of Urbanization in South India: Diverse Patterns and Different Trajectories' (2022) 19 Journal of Leadership, Accountability and Ethics <https://articlegateway.com/index.php/JLAE/article/view/5048> accessed 9 November 2023
- Kala Seetharam Sridhar, 'Costs and Benefits of Urbanization: The Indian Case' (27 October 2016) <https://papers.ssrn.com/abstract=2892925> accessed 9 November 2023
- 'Exploring Social Security for Urban Poor: Study of the Ayyankali Urban Employment Guarantee Scheme in Thiruvanantapuram, Kerala' (National Law School of India University) <https://www.nls.ac.in/publications/exploring-social-security-for-urban-poor-study-of-the-ayyankali-urban-employment-guarantee-scheme-in-thiruvanantapuram-kerala/> accessed 29 September 2023
- URBANET, 'Urbanisation in India: Infographics' (Urbanet, 31 July 2018) <https://www.urbanet.info/urbanisation-in-india-infographics/> accessed 9 November 2023
- 'India's Unemployment Rate Rises to 7.45% in January, Rural Areas Take a Hit: CMIE Data' The Economic Times (1 March 2023) <https://economictimes.indiatimes.com/news/economy/indicators/indias-unemployment-rate-rises-to-7-45-in-january-rural-areas-take-a-hit-cmie-data/articleshow/98323857.cms?from=mdr> accessed 9 November 2023

https://vidhilegalpolicy.in

vclp@vidhilegalpolicy.in

Vidhi Centre for Legal Policy

vidhilegalpolicy

vidhi_india

vidhi_india

> The proposals for reform in this Briefing Book are ambitious but viable, brief but to-the-point. They chart out a ready roadmap for the new government which will assume charge at the centre. I hope that this book generates discussion in the public domain and that the proposals are duly considered by the concerned stakeholders
>
> **Ram Sevak Sharma, Former CEO, National Health Authority**

> Vidhi's ten-year record of research and impact underlines the need to modernise old laws to reflect social reality and advances. By adhering to the highest standards of research rigour, while questioning long-held assumptions, Vidhi's systematic and scholarly approach is unique. The outcome of its exploration of laws and assumptions, are subject to seminars and public scrutiny, a process which ensures fine tuning any proposed modifications, to reconfirm and reflect social reality.
>
> In this context, the list of issues proposed to be explored in this Briefing Book, are likely to add significant value to public discussions around governance in the lead-up to the 2024 General Elections. Laws matter and I hope that the reforms presented in this book are part of the manifesto promises of all major political parties. Good governance, after all, is the business of all.
>
> **Dr. Ashok S. Ganguly, Former Member of the Rajya Sabha**

Vidhi Centre for Legal Policy
A-232, Ratan Lal Sahdev Marg, Defence Colony, New Delhi-110024
+91-11-43102767