



V | D H | Centre for
Legal Policy

IMPACT REPORT
2021-2022

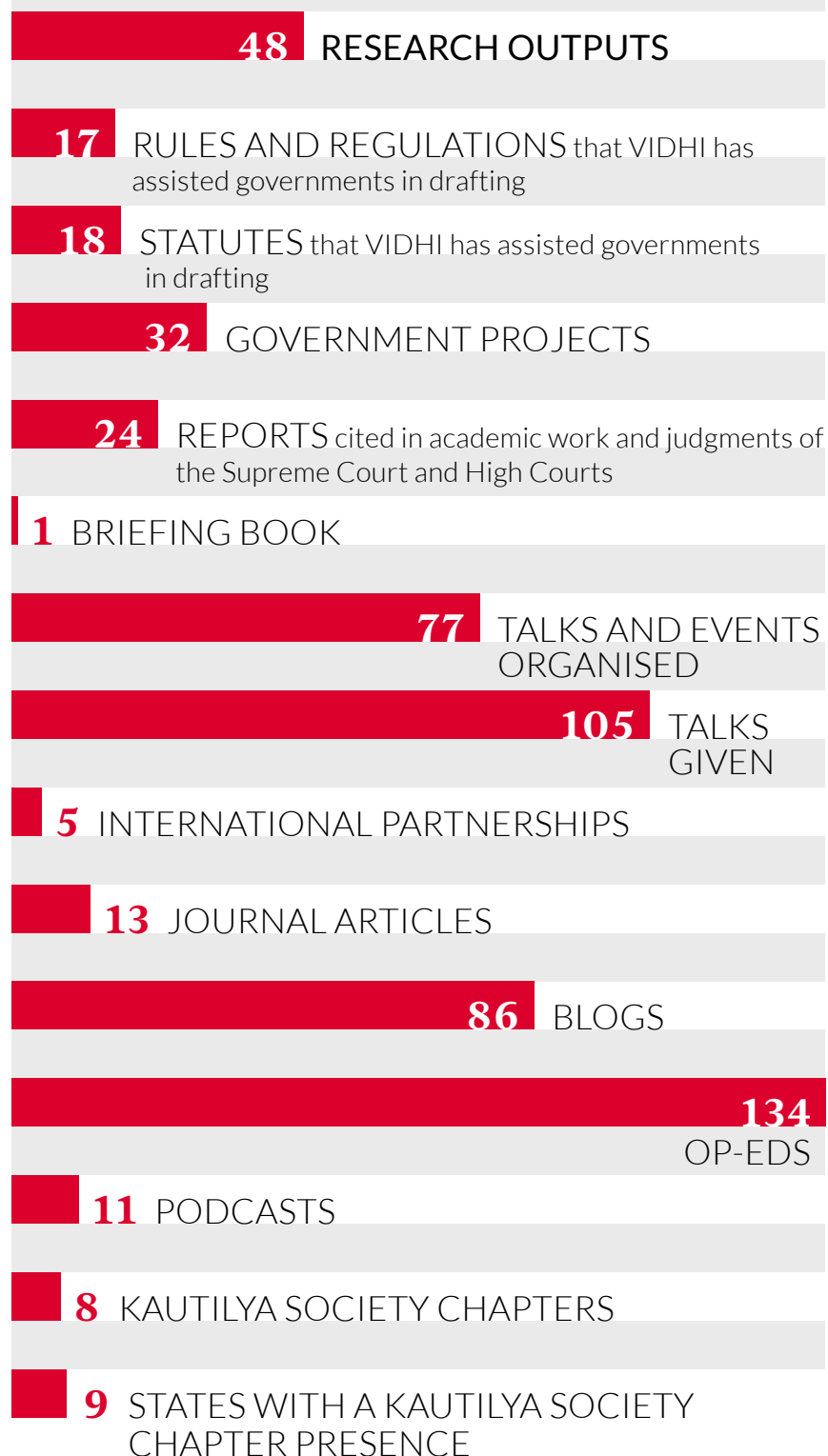
The Vidhi Centre for Legal Policy ('Vidhi')
is an independent think-tank doing legal
research to make better laws and improve
governance for the public good.



IMPACT REPORT 2021-2022
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DESIGN: ODDWORKS

2021-22 Figures IMPACT ITEM



VIDHI VIRTUOUS IMPACT CYCLE

Original research leads to active consideration of new law or changes to existing law by governments

Putting the public back in public libraries through restructuring the Karnataka Public Libraries Act, 1965.

RELATED CASE STUDY: [refer to 'Impact' section on the VIDHI website.]

Engagements with governments or public institutions to shape public discussions with issues of significant public impact

Setting the stage for a *Digital Rupee* in India through presenting a first-ever legal and policy framework to the RBI for issuing a CBDC.

RELATED CASE STUDY: *Setting the Stage for a Digital Rupee for India* [see page 8]

Original research leads to new law, or change in existing law, or favourable judgment in court

Protecting dignity at the end of life through a successful Supreme Court intervention legalising advance medical directives with a follow-up in the Ghaziabad District Court to implement the judgment.

RELATED CASE STUDY: *Ensuring Protection of Dignity at the End of Life* [see page 28]

Engagement with governments or public institutions to draft laws or propose reforms with significant public impact

Unlocking the potential for India's global leadership in coffee production through working with the Ministry of Commerce and Industry to prepare the 'Coffee (Promotion & Development) Bill', 2022.

RELATED CASE STUDY: *Unlocking the Potential for India's Global Leadership in Coffee Production* [see page 12]

Original research shapes public narrative on issues with significant public impact

Informing the sharply polarised media debate on the arrests of celebrities for cannabis possession to become the foremost voice advocating for decriminalising drug consumption under the NDPS Act.

RELATED CASE STUDY: *Reshaping the Public Narrative on Drug Laws in India* [see page 36]



2021 started with the devastation of the second wave of Covid-19 with the Delta variant upending our lives. It ended with fears of the Omicron variant wreaking havoc, particularly severely for those who had been spared earlier. Living with Covid-19 is now the reality we must accept and prepare for.

Of all the lessons Covid-19 has taught us as law and policy researchers, if we had to select one it would be the need to think and act local. In a range of sectors, if India is to remain resilient and grow, it must strengthen its grassroots governance, empower its states and local bodies and ultimately support communities in their journey towards self-reliance and prosperity.

Much of our focus at Vidhi in the last year has been in increasing our presence in state capitals. We have been clear from Day 1, that if good laws matter at the Union level, they matter even more at the state and local level where they have a real, direct impact on people.

Vidhi Karnataka has gone from strength to strength working with the Karnataka government on 6 draft laws in the last year. One of these has been enacted with the others in various pre-enactment stages. Particularly satisfying was our work on how Indian cities can be made accessible to persons with disabilities. This research culminated in our report, *Beyond Reasonable Accommodation* which looks at how the legal architecture of planning in India results in cities being designed only for able-bodied residents. We are currently engaging with the Karnataka Government to find ways to action some of the key suggestions of this report to make Bengaluru a truly inclusive city.

We have also opened a new state chapter in Maharashtra. Based out of Mumbai, our Maharashtra team has already taken up three areas of reform—devising systemic solutions to improve the plight of orphans and other abandoned children during Covid-19, *reforming public libraries in the state* including providing the blueprint for a digital public library and reviewing regulatory systems in city transport. This is only the beginning—we hope to collaborate with local stakeholders in the years to come to become a thought leader that drives better law-making in Maharashtra. Hopefully it will also provide a template that we can follow in other state capitals as we sustainably expand our presence.

Covid-19 has also shown that it is simply not enough to depend on the state for basic livelihoods—we have to help ourselves. Nyaaya, our open access digital resource that explains India's laws, set up a *Covid-19 helpline* that answered questions from citizens ranging

from how to get ex gratia compensation to possible remedies when a hospital does not release the corpse of a patient for non-payment. The helpline mobilised a volunteer base of over 300 lawyers and law students who have resolved close to 700 legal queries in 5 different languages. This is the last mile of real legal change—to help citizens secure their rights and get their due. Nyaaya is scaling this helpline into a full-fledged access to justice initiative that will come to the aid of citizens when it matters the most.

Our Impact Report captures the key highlights of our work in the last year. What we are particularly proud of in this Report is our Virtuous Impact Cycle which is a methodologically robust way to measure the impact our work has had. This, together with a some select impact stories, will give you the unmistakable flavour of what makes Vidhi distinct from any other thought leadership organisation in India—we think originally, we engage with all stakeholders fairly and most importantly we make sure that our research transcends the realm of ideas to become actual, implementable law and policy.

Thank you for being part of our journey.

Arghya Sengupta
FOUNDER

Debanshu Mukherjee
CO-FOUNDER

Alok Prasanna Kumar
CO-FOUNDER

Dhvani Mehta
CO-FOUNDER



Drafting Good Laws

Vidhi is committed to combining legal principles with evidence-based research to draft laws that work for everyone and promote socio-economic progress of the country.

SETTING THE STAGE FOR A DIGITAL RUPEE FOR INDIA

Recommending and designing the legal and policy framework for a Central Bank digital currency to reinforce India's leadership in digital payments



CONTEXT

In the **recent budget announcement**, the Finance Minister announced that India will soon issue its central bank digital currency ('CBDC') or a *digital rupee*. With this announcement, India joins several advanced and emerging economies that are exploring their own CBDC. For instance, in January 2021, according to a report by the **Bank for International Settlements** (BIS), 86% of the 67 central banks surveyed were actively researching CBDCs, and by mid- 2021, the Bahamas had launched its CBDC while China had piloted its CBDC in major cities.

As economies across the world continue to foster digital payments, it is important to ensure that retail users have access to central bank money. The conversation on CBDCs has also emerged as a response to the growth of various private digital currencies, such as cryptocurrencies and stablecoins, which can have significant impact on investor interests and financial systems.

India, however, has been missing from this conversation, with a complete absence of serious policy research in this area. Vidhi has filled this gap with research on a framework for issuing a *digital rupee* in India. Even as a CBDC is expected to promote the utility and value of central bank money in a digital economy, its issuance requires a thorough examination of risk factors, as well as financial and legal considerations.

Vidhi's working paper, ***A Central Bank Digital Currency for India | Proceeding with Cautious Optimism***, through in-depth research, including tracking CBDC developments in 43 countries, and extensive consultations with stakeholders in the ecosystem, makes necessary recommendations on these fronts. We have every reason to believe that these are currently being acted upon as India rolls out the digital rupee.

EXAMINING THE ISSUANCE OF A DIGITAL RUPEE FOR INDIA

A *digital rupee* for India presents both opportunities and challenges. It can complement efforts to promote efficiency in digital payments, reduce settlement risks, and provide continued access to central bank money in a digital world. At the same time, its impact on the potential disintermediation of the banking sector, credit provision, and possible privacy and security risks has to be carefully considered.

In this context, Vidhi's working paper tracks CBDC developments globally to examine common policy motivations that can inform CBDC issuance in India. While CBDCs can be issued for retail purposes as well as for wholesale transactions (intended for inter-bank payments), Vidhi's paper finds that the transformative nature of recent CBDC initiatives focuses on retail transactions.

Informing the design of a *digital rupee* — To ensure the effective use of a *digital rupee* for retail purposes, Vidhi identifies necessary functional features to inform its design. For instance, it must be:

- Resilient to operational disruptions, with possibility for offline features.
- Must be available on a 24X7 basis and offer real time settlement of payments.
- Minimise barriers to use and avoid excluding certain segments of the population or devices.
- Must be scalable to respond to changes in volume and value of transactions.
- Should allow interoperability among different types of users as far as possible.

Introducing a two-tiered model for the RBI — The introduction of a *digital rupee* in India may lead to the Reserve Bank of India (RBI) introducing services for the general public. This marks a departure from its existing operations, in which the RBI has no direct relationship with the end consumers. Based on an analysis of global best practices, Vidhi's working paper suggests a two-tiered model for India, where the RBI can assume a less operative role, with most consumer-facing services being outsourced to intermediaries. However, even under this model, the RBI will still need to develop monitoring, oversight and risk management functions, and establish systems to respond to potential disruptions.

Legal considerations for issuing a *digital rupee* — The introduction of a *digital rupee* also raises important legal issues. While its final design will determine the legislative interventions required, Vidhi's

working paper highlights preliminary legislative issues, including:

- First, any CBDC issuance by the RBI must be backed by law. Hence, for a retail token-based *digital rupee*, the Reserve Bank of India Act, 1934 ('RBI Act') must be amended to expressly enable RBI to issue currency in digital form.
- Second, the introduction of a two-tiered model will involve participation of actors from the private sector. This calls for designing a separate regulatory framework for supervision and regulation of such actors.
- Third, depending on the design of the *digital rupee*, other laws may have to be reviewed to facilitate its issuance, including data protection laws (in case personal information is stored), prevention of money laundering law and its applicability to the RBI, and criminal laws which deal with counterfeiting of currencies.

IMPACT

To initiate a conversation and set the public agenda for the issuance of a *digital rupee* in India, Vidhi invited T Rabi Sankar, Deputy Governor of the RBI, to a discussion on the recommendations of its working paper. It was here that the Deputy Governor **announced** for the first time that the RBI was working towards a '*phased implementation strategy*' for issuing a *digital rupee* in India, outlining the Bank's stance and work on it so far.

Being among the first research organisations to initiate a conversation on CBDC issuance in India combined with the announcement by the RBI, Vidhi's work was covered in over 100 media articles, thus establishing its primacy in setting the stage for a public discourse on this subject.

Introduction of CBDC has the potential to provide significant benefits, such as reduced dependency on cash, higher seigniorage due to lower transaction costs, reduced settlement risk. Introduction of CBDC would possibly lead to a more robust, efficient, trusted, regulated and legal tender-based payments option. There are associated risks, no doubt, but they need to be carefully evaluated against the potential benefits.

— T RABI SANKAR, DEPUTY GOVERNOR, RBI
SPEAKING AT VIDHI'S DISCUSSION ON CBDC

दो हजार रुपये



RESERVE
GUARANTY

मैं धारक को
दो हजार रुपये
अदा करने का
बचन देता हूँ।

उर्जित जार पेटल
गवर्नर

I PROMISE TO
PAY THE BEARER
THE SUM OF TWO
THOUSAND RUPEES


GOVERNOR



8

400

UNLOCKING THE POTENTIAL FOR INDIA'S GLOBAL LEADERSHIP IN COFFEE PRODUCTION

Dismantling colonial controls and focusing on the stakeholders of the coffee market by replacing the Coffee Act, 1942 with a modern law



CONTEXT

Three hundred years ago, during the Age of Enlightenment, the coffee house became the centre of innovation.

— PETER DIAMANDIS

As India has urbanised, the number of coffee houses have proliferated, and the cultivation of coffee has grown by 1667.8% from 1950-51 to date.

For instance, in 2020/21, India produced a total of 3,34,000 metric tonnes of coffee beans. It had exported coffee valued at Rs. 6,044.66 Crores – 75% of the total coffee cultivated internally – making it the 6th largest exporter in the world.

Yet the regulations for the coffee market in India are still from the era of the British Raj. In 1942, at the height of World War II, when global markets were extremely volatile for various commodities such as sugar, rubber, grains etc., the colonial government introduced The Coffee Act. Through this Act, the Coffee Board ('Board') was set up and given complete control over the entire value chain, starting from cultivation till export.

In the post-liberalisation era, the Board continues to possess a wide variety of regulatory powers on paper to *control* the market as opposed to *promoting* and *developing* the burgeoning coffee sector in India. The law is out of tune with the reality of the Board's functioning and the needs of the coffee industry.

To address this, Vidhi **worked** closely with the Ministry of Commerce and Industry to prepare a draft law – the 'Coffee (Promotion & Development) Bill, 2022 ('Bill')'.

Above: *Drying coffee on raised beds to ensure even air circulation.*

Image courtesy: Classic Coffee

DEVELOPING THE COFFEE SECTOR

Drawing on key concepts from the International Coffee Agreement, 2007, the Bill has introduced specific suggestions on how the Coffee Board can accelerate the development of the coffee sector in India.

For instance, in Ghana, digital and remote-sensing technology has been transferred to farmers to enable them to create farm development plans based on environmental conditions and production levels. In India, a similar process could empower small scale coffee growers, who are responsible for approximately 80% of the coffee cultivation, to produce more efficiently by planning ahead.

Further, on the lines of the role played by the Brazilian government in leading research and awareness efforts on eliminating pests that harm coffee production, making Brazil the largest coffee producer in the world, the Bill mandates a similar role for the Coffee Board in India.

PROMOTING EASE OF DOING BUSINESS IN THE COFFEE SECTOR

One of the goals of the proposed Bill is to abolish the colonial vestiges of the License Raj system. It proposes that coffee growers will no longer be required to register with the Board while curers of coffee will have to register only once. Further, coffee exporters can voluntarily apply for International Coffee Organisation (ICO) Certificates of Origin, only if the export destinations require it.

The Bill also decriminalises the coffee sector by converting criminal fines levied for offences (such as failure to obtain a licence) to civil penalties. These measures will reduce the regulatory burden on the coffee players significantly.

IMPACT

By decriminalising the coffee industry and dismantling the licence raj system of colonial India, the proposed Bill will help in the evolution and growth of the coffee sector in India.

Through the introduction of internationally recognised provisions and best practices as well as a clear understanding of ground level realities, the Bill transforms the Board from its current role of being in 'control' of the coffee sector to becoming the chief promoter and developer of Indian coffee.

If enacted into law, this Bill, with its progressive provisions in its current form, will become the standard for future regulatory statutes and is likely to make India among the top 3 coffee exporting nations in the world.

PROMOTING EASE OF DOING BUSINESS IN INDIA

**Assisting the
Central Government
in modernising,
streamlining, and
strengthening the
Companies Act, 2013,
and the Limited
Liability Partnership
Act, 2008**



CONTEXT

With over 30% of India's GDP being driven by small, medium and large businesses, entrepreneurship is the backbone of the Indian economy. Yet, it is encumbered by time consuming processes, outdated legal considerations, and copious paperwork, which leads to slower growth.

To modernise the business ecosystem and to promote ease of doing business, including incorporating international best practices, The Ministry of Corporate Affairs ('MCA') decided to reform the Companies Act, 2013 ('CA-13') and the Limited Liability Partnership Act, 2008 ('LLP Act'). Accordingly, the Company Law Committee (CLC) released a report in 2022 mooted 25 amendments to the CA-13. Vidhi engaged with the MCA to provide research and drafting assistance for this report.

PROMOTING EASE OF DOING BUSINESS

To enable swifter delivery of public services, the CLC report explicitly recommends replacing paper with electronic and hybrid modes of functioning, including for holding meetings, serving documents to members, and maintaining statutory registers. It also suggests doing away with cumbersome affidavits when dealing with the government.

FACILITATING THE ENTRY OF NEW PLAYERS

To facilitate the entry of new entrepreneurs in the market, the Report has suggested that Special Purpose Acquisition Companies ('SPACs') be explicitly recognised under the Companies Act. SPACs are a unique opportunity for Indian businesses to get listed on Indian and foreign stock exchanges without having to go through the formalities and rigours of an Initial Public Offering ('IPO').

Image courtesy:
Jasper James/Getty Images

The recent listing of Renew Power Private Limited, an Indian renewable energy company, on NASDAQ through an internationally incorporated SPAC in August 2021 speaks to its benefits.

Further, the recommendation on allowing companies to issue, hold, and trade fractional shares will enable retail investors to invest precise and predetermined budgeted amounts in companies whose shares were otherwise inaccessible due to high prices. This will consequently allow these companies to have a greater presence in the market.

IMPROVING CHECKS AND BALANCES

The CLC Report 2022 has suggested strengthening the audit framework and the regulation of auditors, which will play a crucial role in companies' corporate governance and accountability to shareholders. In the same spirit, the CLC has also recommended the constitution of a dedicated Risk Management Committee in certain companies to strengthen the Board's power to overview and supervise risk management systems.

REDUCING TRANSACTIONS COSTS

Agro-based producer institutions play a pivotal role in reducing transaction costs for producers by providing a forum to share mutually beneficial information such as details on market linkages, crop prices, fertilisers, machinery, training, and technical advice. By allowing them to be registered as LLPs (Limited Liability Partnerships) instead of companies, through the introduction of a new chapter in the LLP Act, the proposed amendment will ensure that agro-based producer organisations benefit from the range of relaxations available.

IMPACT

The recommendations of the CLC Report 2022, after public consultation, are expected to take the form of the Companies (Amendment) Bill and the Limited Liability Partnership (Amendment) Bill. If enacted, it will further boost investment and participation in the Indian economy, and encourage the spirit of enterprise.

The (Company Law) Committee's recommendations will further give a fillip to honest, law-abiding corporates and other stakeholders in the country whilst consolidating and strengthening the provisions of the Companies Act, 2013 and the Limited Liability Partnership Act, 2008.

— SHRI RAJESH VERMA, SECRETARY, MINISTRY OF CORPORATE AFFAIRS
(AS QUOTED IN THE CLC 2022)

REDUCING DELAYS IN THE SUPREME COURT

Expediting critical Constitution Bench cases in the Supreme Court through developing a first- ever comprehensive tracker



CONTEXT

Under Article 145(3) of the Constitution, matters 'involving a substantial question of law as to the interpretation of the Constitution' are required to be decided by a minimum of 5 judges. These benches of the Supreme Court, often involving 5, 7, or 9 judges, are called Constitution Benches. Over the course of India's history, Constitution Benches have settled fundamental questions involving individual rights and separation of powers between the Centre and States – thus shaping the nation's future.

While much has been written about contemporary issues of political significance awaiting judgment, there is no study about those cases which have been pending for years. To fill this gap, the **JALDI** (Justice, Access and Lowering Delays in India) Initiative at Vidhi launched a first-ever comprehensive tracker of all pending 5, 7, and 9 bench cases before the Supreme Court.

The Constitution Bench Pendency Project portal hopes to be a one-stop accessible resource, removed from legalese for an audience of law students, legal researchers, journalists, advocates and concerned citizens looking for an objective, bird's-eye view of pending constitutional cases. The tracker highlights the importance of these pending cases given that they span critical questions pertaining to religious freedoms (entry into Sabarimala), rights of women (whether Parsi women cease to be Parsi on marrying outside the community), reservations (validity of reservation for economically backward classes), property rights (legality of ceilings on rent in Mumbai), privacy (legality of WhatsApp's privacy policy), and more.

The ultimate goal of this research is to highlight the trend of the changing nature of the way the Supreme Court is prioritising its cases. From what was envisaged to be a largely Constitutional

Court, it is now reduced to a glorified court of appeal. This portal shines a light on the need for the Supreme Court to reclaim its main mandate – that of interpreting the Constitution and upholding the rights of the citizens.

FINDINGS

There are 35 main constitution bench matters pending before the Supreme Court. However, given that a specific main case is connected to multiple related matters, a total of 587 cases are pending before these benches as on March 8, 2021.

The tracker provides detailed information on each case, including a summary, timelines of events and orders, information on facts, questions of law, arguments, precedents, and legislations under challenge.

Tagged or related matters and their pendencies are also charted on the portal while the section on additional reading materials is aimed as a resource for those looking to dive in deeper.

Constitution Bench Pendency Project

The JALDI Constitution Bench Project in its first phase is this comprehensive tracker of all pending cases before the 5 Judge, 7 Judge and 9 Judge Constitution benches of the Supreme Court as on 8th March 2021. It aims to be a one-stop source to understand the importance and potential implications of these cases through systematically organised case information along with easily accessible external resources.



IMPACT

The Constitution Bench Pendency Project has achieved its goal of being the only holistic resource for understanding the importance and potential implications of pending Constitution Bench cases. It has spurred conversation among various stakeholders, and has been used extensively by **journalists**, **academicians**, and **researchers** to highlight the need for setting up a permanent Constitution Bench in the Supreme Court to resolve pending constitutional cases.

For instance, among others, Rajya Sabha member P. Wilson's tweet on the topic discussing Vidhi's research has contributed to building a public momentum on this issue.

This excellent report justifies my consistent demand for permanent regional benches & constitutional bench of #SupremeCourt. If constitution bench sits permanently all year, important constitutional matters can be decided expeditiously.

— P. WILSON, MEMBER OF PARLIAMENT, RAJYA SABHA

The Vidhi Centre for Legal Policy has developed an excellent comprehensive tracker of all the pending cases before the 5-judge, 7-judge, and 9-judge constitution benches of the Supreme Court.

— PRABHASH RANJAN, PROFESSOR AND VICE DEAN, JINDAL GLOBAL LAW SCHOOL



Strengthening Public Institutions

Vidhi is committed to working with governments, courts and regulators to improve their functioning.

ADVOCATING FOR A PARTICIPATORY APPROACH TO BUILD INCLUSIVE CITIES

Recommending reforms to build fully inclusive cities for persons with disabilities



CONTEXT

Urban planning processes have long failed to account for the needs of marginalised groups, including persons with disabilities, the elderly, and women. This renders cities inaccessible, hostile, and exclusionary. With 2.21% of the total population of India's 121 crores or 2.68 crores people deemed to be persons with disabilities, of which 31% live in urban areas, the exclusion faced by them is particularly stark.

Inaccessibility of urban spaces, for those with visible and invisible disabilities, stems from a variety of factors including poor urban design, lack of usable urban infrastructure, and lack of safety and affordability. Moreover, the most common framework of accessibility in urban planning is barrier-free design, which does not account for diversity in gender, age, and social and economic background.

To address this and to make the case for the adoption of the more progressive Universal Design approach, Vidhi's white paper titled, *Beyond Reasonable Accommodation: Making Karnataka's Cities Accessible by Design to Persons with Disabilities*, proposes several legal and policy changes to ensure inclusive planning. It particularly focuses on the state and municipal laws that are responsible for implementing disability rights and vary across jurisdictions.

REPRESENTATIVE PARTICIPATION IMPERATIVE FOR INCLUSIVE URBAN PLANNING

Urban planning needs a cross-disability perspective through participatory and representative planning with stakeholders who have thus far been marginalised. In line with this, Vidhi's research suggests specific amendments to a range of laws, including the

Above: *Police officers assist a voter in a wheelchair at a polling station during elections in Mumbai, 2019*

Image courtesy:

Dhiraj Singh/Bloomberg

Karnataka Town and Country Planning Act, 1961, the Bangalore Development Authority Act, 1976, the Karnataka Municipal Corporation Act, 1976, the Karnataka Municipalities Act, 1964, and the Bruhat Bengaluru Mahanagara Palike Act, 2020 – with a view to reviewing, updating, and streamlining the current fragmented approach to understanding accessibility standards.

Specific recommendations include:

- Empowering ward committees to function as representative local bodies and ensuring representation of women with disabilities in these committees.
- Extending preferential policy in public procurement tenders to include persons with disabilities as well as incentivising tenderers to employ persons with disabilities.
- Sensitising all parties and agencies involved in urban planning to the requirements of persons with disabilities and the applicable standards of accessibility.
- Conducting periodic reviews and audits of existing accessibility standards by empanelled professionals including persons with disabilities.
- Creating awareness, sensitisation, training and capacity building at different levels of government to ensure that accessibility is adopted as a norm in urban planning processes.

The white paper emphasises the need to adopt Universal Design as a foundational principle, which necessitates actively involving local participants in urban planning. This approach also significantly reduces the overall vulnerabilities that urban spaces create for the entire population.

While the laws examined in the white paper are specific to Karnataka, the findings and recommendations are relevant to and implementable across Indian cities.

IMPACT

As a result of the research it conducted, Vidhi is currently:

- Working with the Urban Development Department, Government of Karnataka on a series of inclusive urban reforms at the state level, and engaging with its sister agencies such as the Directorate of Town and Country Planning, the Karnataka Urban Infrastructure Development and Finance Corporation, and the Directorate of Municipal Administration.
- Working with the United Nations Resident Coordinator's Office in collaboration with the National Institute of Urban Affairs to develop a policy brief on achieving gender and disability inclusive urban development in Indian cities.

I'd like to congratulate the team at Vidhi Centre for Legal Policy on the release of their path-breaking white paper. The white paper adopts a very different approach while addressing questions concerning disability and urban planning. This would go a long way in bringing about a shift in the thinking of urban planners, to enable and evolve cities that are designed for all, including women and persons with all categories of disabilities.

— T V S BASAVARAJU, FORMER STATE COMMISSIONER, RIGHTS OF PERSONS WITH DISABILITIES ACT, GOVERNMENT OF KARNATAKA



LEVERAGING RESPONSIBLE TECH

Working towards the responsible and safe usage of AI systems through risk mitigation frameworks



CONTEXT

Artificial Intelligence ('AI') is becoming a dominant force within Indian society and the economy. According to Stanford University's AI Index Report, 2022, India ranks within the top 10 nations across the globe in AI investments, and is the top country (surpassing conventional heavyweights like the US and China), in terms of AI skill penetration.

In 2018, NITI Aayog had published India's national strategy document for the adoption of AI in healthcare, agriculture, education, smart cities, and urban mobility. The Indian state has since used AI in predictive forecasting tools in agriculture, in sophisticated detection algorithms in healthcare, and even for traffic control in urban mobility.

The vision of a more technology-centric society is adequately complemented by a conscious recognition of its risks and the need for adopting mitigation strategies. For instance, in 2021, NITI Aayog published a two-part approach paper on the responsible use of AI. The paper focused on adopting seven ethical principles (like accountability, reliability, safety, etc.) and mechanisms while deploying AI. The Centre for Applied Law & Technology Research ('ALTR') at Vidhi contributed to this paper through extensive research.

ALTR also conducted a detailed three-part study on the use of facial recognition technology ('FRT'), in particular, which identifies and verifies individuals against existing biometric and facial records in digital datasets. In India, a more contentious form of FRT usage is at the state level where local law enforcement agencies use it for monitoring and (targeted) surveillance, and in some cases reportedly even at protest rallies.

Image courtesy:
Markus Spiske/Unsplash

ALTR's research specifically examined the legal, ethical, and procedural risks through empirically studying how the **Delhi Police** used it and the potential risk of religion-based discrimination as a result. Researchers also explored the unregulated as well as opaque **involvement of private companies by law enforcement agencies** in the deployment of AI, and the unrestricted access such companies were consequently allowed.

RESPONSIBLE USE OF FACIAL RECOGNITION TECHNOLOGY IN DIGI YATRA

Digi Yatra is an ongoing project spearheaded by the Ministry of Civil Aviation, Government of India, to transform airline travel experience into a seamless, paperless, and contactless process – through creation of a traveller's digital identity using facial recognition technology (FRT) on a smartphone. The digital identity is meant to be used at different checkpoints throughout the airport with the *Digi Yatra* policy document setting out clear standard operating procedures for each stage.

However, given the risks of inaccuracies, bias, potential discrimination, etc. associated with the use of FRT, legislative, institutional, and regulatory measures safeguarding the user become necessary. ALTR prepared a two-part handbook for NITI Aayog to ensure this. The handbook provides detailed analyses of the risks associated with *Digi Yatra*'s use of FRT, suggests integration of responsible AI principles, and outlines actionable recommendations.

IMPACT

- Given that the use of AI, and specifically FRT, is likely to rise exponentially as India chases its 5 trillion USD goal, the existing principles for the responsible use of AI need to be grounded in implementable measures. The handbook prepared by ALTR serves as a larger blueprint for operationalising responsible AI principles in different contexts on a case-by-case basis with the aim of minimising risks and maximising benefits.
- The legislative recommendations in the handbook will help govern and regulate the use of FRT in different states in India. For instance, over 20 states in India are using FRT not only in law enforcement, but even, for example, in COVID-19 protocol implementation. It is crucial that such technologies are deployed through an oversight framework, with clear purpose and scope limitations through legislative or regulatory mandates.

NITI Aayog has been spearheading the idea of responsible and ethical use of AI within India. Having published principles of responsible AI for India last year, it was felt that the same must be enforced in a test case, by ensuring the responsible and safe use of facial recognition tech in the DigiYatra project. Vidhi's work with us on AI ethics last year, as well as their independent research on the risks posed by unregulated facial recognition was insightful. Consequently, NITI Aayog has commissioned a study from Vidhi's Applied Law and Technology Research team to put together a handbook document for integrating responsible AI principles into the ongoing deployment of facial recognition in DigiYatra. The study will serve as a blueprint for how these principles can practically be adopted and enforced in actual use cases.

— ANNA ROY, SENIOR ADVISOR, HEAD OF DATA MANAGEMENT AND FRONTIER TECHNOLOGIES, NITI AAYOG



ENSURING PROTECTION OF DIGNITY AT THE END OF LIFE

Working with individuals, hospitals and pediatric specialists to practically implement advance medical directives and advocate for a model end of life care law



CONTEXT

Despite the Supreme Court recognising advance medical directives – legal instruments that allow persons to refuse life sustaining treatment at a time in the future when they might lose decision-making capacity – as legally valid documents in 2018, there have been very few people who have been able to get their advance medical directives executed.

This is because the procedure prescribed by the Supreme Court is onerous and also because the authorities identified under the judgment to execute these directives (Judicial Magistrates of the First Class) are not aware of their obligations under the judgment.

Building on its intervention in the Supreme Court petition which led to the 2018 judgment, Vidhi has continued to deepen its engagement in the field of end of life care by providing practical solutions to help patients realise their rights to autonomy and dignity, and to enable doctors and hospitals to practise medicine ethically.

In particular, Vidhi has:

- Assisted in the actual execution of an advance medical directive by a young student and helped set a precedent for their execution by others.
- Helped the Manipal Group of Hospitals develop their protocol when families request a discharge against medical advice.
- Given its inputs to the Bai Jerbai Wadia Children's Hospital, Mumbai about a pediatric end of life care policy.

Above: *Government tuberculosis hospital in Gauhati, 2017*

Image courtesy: Anupam Nath/AP

EXECUTION OF ADVANCE MEDICAL DIRECTIVES

Vidhi helped a young engineering student from Ghaziabad, who feels passionately about this issue, execute his advance medical directive. Dhvani Mehta, who leads Vidhi's team on health research, assisted the student in making an administrative application before the District Judge, Ghaziabad, asking him to designate a Judicial Magistrate before whom the advance medical directive could be executed. The judge passed an order accordingly, and the student was able to use this order to execute his advance medical directive. Other persons wishing to execute their advance medical directives can now adopt the same route.

Living will is extremely important for me as it effectively prevents me from any kind of long and intolerable suffering. I didn't know how to make a living will, that's why it took 10-12 visits to court. I am among the very few people who successfully executed a living will in India. I received a great amount of help from Dhvani Mehta of the Vidhi Centre for Legal Policy. I am greatly thankful to her for helping me out.

— KESHAV ANAND, STUDENT, GHAZIABAD

DISCHARGE AGAINST MEDICAL ADVICE

In India, families often request that medical treatment be stopped abruptly. This could be because of financial constraints, a lack of trust in the treating team, or a desire that the patient receive end of life care at home. This poses a dilemma for doctors, who might be torn between their duty to act in the best interests of the patient and to continue to provide care, on the one hand, and to respect the autonomy of patients and their families to refuse medical treatment, on the other.

The sub-optimal solution that is currently devised is to discharge such patients against medical advice. In such cases, not only is life-sustaining medical treatment withdrawn, but comfort care is also taken away, leaving patients to die without appropriate medical management, and causing distress to their family members or friends. Although hospitals use 'discharge against medical advice' as a tool to avoid legal liability, it often ends up leaving them vulnerable to more litigation from relatives who are inevitably upset about the ultimate outcome of such discharge.

To address this, the Kasturba Hospital, Manipal, initiated the process of framing a more sensitive policy that would help their

doctors deal with instances where demands are made to end medical treatment. Vidhi gave its legal inputs to the hospital on developing this protocol to ensure that its doctors could act in an ethically responsible manner without fear of legal liability.

‘The Kasturba Medical College and the Manipal Academy of Higher Education are very grateful for the contribution of the Vidhi Centre for Legal Policy towards the development of procedural guidance on limiting life-sustaining treatment.’

— DR NAVEEN SALINS, PROFESSOR AND HEAD, DEPARTMENT OF
PALLIATIVE MEDICINE AND SUPPORTIVE CARE, KASTURBA MEDICAL COLLEGE,
MANIPAL ACADEMY OF HIGHER EDUCATION

END OF LIFE CARE FOR CHILDREN

The question of end of life care in children is a complex one that must be handled very sensitively. The Supreme Court’s judgment in *Common Cause v Union of India*, which laid down the law on withholding and withdrawing life-sustaining treatment, does not provide any specific guidance related to children. However, there are pioneering hospitals like the Bai Jerbai Wadia Children’s Hospital in Mumbai that are taking the progressive step of developing a humane and ethically responsible end of life care policy for their pediatric patients.

Vidhi has had several rounds of conversations with specialists at this hospital to understand their requirements and concerns and to advise them on their end of life care policy. Policies like this will have a significant impact on pediatric intensive care and will enable medical professionals to have difficult conversations with families in a sensitive way.



Realising Fundamental Rights

Vidhi is committed to articulating the content of rights and creating strong and implementable frameworks for their realisation.

MAKING EARLY CHILDHOOD EDUCATION (ECE) A LEGAL PRIORITY

Working on a legislative framework to mandate delivery of ECE and recognise it as part of formal schooling



CONTEXT

It is widely recognised that Early Childhood Education ('ECE') or play-based education catering to children between ages of 3-6 years is beneficial to children's learning across their lifetimes. The National Education Policy, 2020 ('NEP') acknowledged this, and set the goal of universalising equitable access to ECE by 2030. Yet, India lacks a clear legislative mandate to realise this.

The Right to Education (RTE) Act, 2009 only briefly references the right to pre-school education (Section 11) without establishing norms or standards for implementation, while the National Early Childhood Care and Education (ECCE) Policy, 2013 does not legally mandate implementation. Even the existing implementation of ECE is split between the Ministry of Women and Child Development ('MWCD') and the Ministry of Education ('MOE'), where the former runs the programme through its *anganwadi* centres guided by the National ECCE Policy, 2013, while the latter runs ECE classes in existing government schools.

Against this background, there is a critical need to build a holistic understanding of the current landscape of ECE delivery and the proposed mandates of various actors involved in the process. This is where Vidhi has stepped in.

ADDRESSING THE GAP THROUGH EVIDENCE

Vidhi's work in the last year focused on research and advocacy for an inclusive and comprehensive ECE legislation for India. Researchers conducted surveys and interviews with over 650 households and 55 teachers in urban Maharashtra to build empirical evidence in a study titled, *Starting from Scratch*, on the

Image courtesy: UNICEF/Kolari

delivery of ECE through state facilities during COVID-19. This continues to be one of the only studies in the Indian context to highlight challenges faced by low-income families in prioritising ECE with limited support from the State during the pandemic.

The study finds that:

- Disadvantaged households, worst hit by the pandemic, struggled to prioritise education of their children due to economic and emotional distress. Further, education of older children was prioritised over that of children in ECE.
- A blended mode of teaching proved to be most beneficial in increasing engagement of children in ECE during school closures. Specifically, this included a 'structured technological intervention', complemented by 'structured teacher support' to guide parents in using technology and helping children learn at home.

In a second study, *Passing the Baton*, researchers studied the implications of an inadequate regulatory framework for governance of non-state providers of ECE, through an in-depth analysis of centres run by NGOs (in partnership with the state), called 'balwadis' in urban Maharashtra.

The findings include:

- A lack of clarity on the division of roles and responsibilities within partnerships between state and non-state actors running balwadis resulted in many children not receiving entitlements such as mid-day meals. Parameters and mechanisms for monitoring and evaluation of non-state actors were also lacking.
- Absence of clear norms and standards for delivery of ECE meant that no clear provisions were mandated for creating inclusive classrooms for children with disabilities, including no corresponding training for teachers.

A STRONG LEGISLATIVE FRAMEWORK MANDATING DELIVERY OF ECE IS AN IMPERATIVE

To recognise ECE as part of formal schooling, the RTE Act, 2009 must act as a precursor to an exclusive legislation or be amended and applied to all ECE centres in India, with a focus on:

- Clear norms and standards for delivery of equitable, inclusive and high quality ECE, in line with the definitions of 'inclusive education' provided in the RTE and RPWD (The Rights of Persons with Disabilities) Acts, and a clear recognition of the roles of key stakeholders involved.

- Supplementing household expenditure on education through appropriate government schemes and benefits to enable parents to prioritise ECE.

Ongoing studies by Vidhi on a framework for inclusive ECE for children with disabilities, and on strengthening the position of ECE educators in India continue to build on this evidence bank, with clear recommendations for policy reform.

IMPACT

Vidhi is committed to building a conversation on the need to legislatively mandate ECE delivery and continues to share its research with a diverse range of stakeholders, including parents, teachers, school administrators, NGOs, government representatives, advocacy groups and more.

For instance, leading organisations working in this field such as Brookings Institution, Central Square Foundation, Leadership for Equity, Akanksha Foundation, and Indian Institute of Management – Ahmedabad have participated in discussions on Vidhi’s research.

Researchers have also taken these findings to conferences at the University of Michigan, Comparative Education Society of India (CESI), Jindal School of Government and Public Policy, Lisbon Economics and Statistics of Education, and IARIW in Luxembourg.

‘... [T]hat you have taken a deep dive in one area and one specific geography... allows for the emergence of details which we otherwise don’t get to see and hear about. On that account it is truly a report that I think would make a significant contribution in this discussion around public private partnerships.’

— PROF. ANKUR SARIN, PUBLIC SYSTEMS GROUP,
INDIAN INSTITUTE OF MANAGEMENT, AHMEDABAD
(ON VIDHI’S REPORT, ‘PASSING THE BATON’)

Image courtesy:
Key Education Foundation



RESHAPING THE PUBLIC NARRATIVE ON DRUG LAWS IN INDIA

**Advocating for
decriminalising
drug consumption
in the NDPS Act
and focusing on
a rehabilitative
approach for drug
users instead**



CONTEXT

As per government estimates, over 3 crore Indians use cannabis and over 2 crore use opioids in one form or the other. Around 1.5 crore of such users are dependent on drugs. Increasing drug abuse has thus become a pressing public health concern for society in general and the government in particular.

The response, however, has been inefficient and almost entirely reliant on criminal law. Specifically, the Narcotic Drugs and Psychotropic Act, 1985 ('NDPS Act'), which drives the framework of drug law in India, punishes the consumption of drugs with imprisonment for up to one year, which, as Vidhi's research shows, ends up exploiting small time users while traffickers continue to operate.

Over the past two years, in particular, consumption of drugs in India has attracted substantial government and public attention due to arrests of high-profile Bollywood celebrities in cases involving consumption of cannabis. This has been an opportune moment for Vidhi to drive the public narrative towards reforming the NDPS Act to ensure that the law brings cartels and traffickers to book while rehabilitating drug users who need support instead of harsh punishment.

CRIMINALISATION OF DRUG CONSUMPTION UNDER THE NDPS ACT IS EXPLOITATIVE

To analyse how the NDPS Act uses an overtly punitive approach towards drug consumption, Vidhi published three pieces of research:

Image courtesy:
Chandan Khanna/AFP

Criminalisation Leads To Exploitation: The Mumbai Story No One Knows About studies the use of section 27 of the NDPS Act in Mumbai to showcase how ill-conceived and loosely drafted laws facilitate arbitrary police action. It specifically demonstrates how criminalisation of drug use has become a tool to target and exploit the poor and young cannabis consuming population in the city. For instance, the research showed that more than 97% of all cases under the NDPS Act in Mumbai involved personal consumption of drugs and 88% of those arrested were under 40 years of age.

The research also highlights how the justice system worked in convoluted ways, where 99.7% of those accused eventually pleaded guilty to the offence they were charged with, leading to a very high conviction rate. Most of these persons were daily or manual labourers.

Another report by Vidhi on the ***Case for Decriminalising Cannabis Use in India*** argued that the law overwhelmingly victimises the marginalised and the poor, without having any real impact on drug consumption. This research found that even though the United States of America ('US') pushed for drug prohibition across the world in the last century, 26 states in the US have now decriminalised and eleven states have legalised possession and consumption of small amounts of cannabis. The report emphasises that drug prohibition has its roots in racist American policies that India must shun.

The third report by Vidhi, ***Sikkim's Alternative Model to Tackle Drug Abuse: An Analysis of the Sikkim Anti-Drugs Act, 2006***, analysed Sikkim's approach towards increasing drug abuse. The research showed that decriminalising drug use and dealing with addiction as a health problem reduced the stigma attached to it. It helped drug addicts access de-addiction and other healthcare services without fear of arrest, and importantly, the number of undertrials for drug offences in Gangtok Central Jail reduced dramatically from over 200 to just 66. Thus, the researchers argued for a similar public health based approach that focuses on prevention, de-addiction, and treatment, to replace the current criminalised response to drug abuse.

IMPACT

As the arrest of Bollywood celebrities for cannabis consumption made headlines and gripped public imagination, Vidhi intervened and shaped the public narrative through drawing on its extensive research to inform the sharply polarised debate.

Researchers wrote for leading newspapers and digital platforms, and participated in numerous public debates on the issue of criminalisation of drug use and the need to revisit the NDPS Act, establishing their point through hard-hitting data.

Vidhi's findings were quoted widely, including by the Times of India in its editorial, the India Today Magazine in its editor's note and cover story, and on prime time shows on television, among others.

Taking forward its path breaking work in *From Addict to Convict: Working of the NDPS Act in Punjab*, published in 2018 which analysed the deployment of the NDPS Act in Punjab in-depth, Vidhi has today become the leading authority on the drug law in India and the country's foremost voice advocating for decriminalisation of drug consumption. It has been approached by state governments to provide first drafts of a law that will decriminalise drug consumption.

A recent Vidhi Centre for Legal Policy study notes several aspects of the ban including driving sales underground, leading to dangerous adulteration and boosting more potent psychoactive drugs.

— TIMES OF INDIA, EDITORIAL OPINION

This Act has seen the State invest disproportionate resources into prosecuting consumers. A study last year by the Vidhi Centre for Legal Policy noted that most people arrested for cannabis possession are the poor and marginalised, while the bigger sellers escape unscathed.

— AROON PURIE, EDITOR-IN-CHIEF INDIA TODAY

Facing page: *Care home*

Image courtesy:

Brent Stirton/Getty Images for the GBC



IMPACT AT HOME

Vidhi is young, dynamic and believes in harnessing the energy of every individual through ensuring that work remains their happy place. The organisational culture is inclusive, gender-equal, sensitive and supportive in its approach.

MENTAL HEALTH SUPPORT – The uncertainty, fear, and worry caused by the COVID-19 pandemic impacted mental health at large. To support its teams through these unprecedented times, Vidhi tied up with 1to1help, an ISO-certified mental health service provider (MHSP), to provide 24*7 mental health support to anybody at the organisation who needed it. This included telephonic and online counseling, webinars/workshops on dealing with workplace issues, and manager training programmes, among others. Since its launch, 50% of Vidhi's staff registered for the service, and 25% of the staff used the counseling services through different modes such as telephonic, virtual, and online sessions. The overall utilisation of the platform was 61.25%, which is much higher than the industry standard of 8%.

PLATFORM FOR YOUNG RESEARCHERS – Vidhi is proud to be a platform for many young researchers who, over the past 8 years, have been admitted for higher education to top institutions abroad. Shashank Atreya from the Vidhi Karnataka team started his Master's In Public Administration at the Columbia University in 2021, while Kanika Arora and Amrita Jacob from the Nyaaya team will pursue their LLMS from the University of Cambridge and the



Facing page: VIDHI file photo from 2017

London School of Economics and Political Science respectively in 2022. Akshat Agarwal and Akriti Gaur who have completed their LLMS from Yale Law School will be starting their SJD programmes at Yale in 2022.

SHAPING THE NEXT GENERATION – Vidhi has set up Kautilya Societies – student initiatives in universities across the country aimed at exploring public policy as a career path. So far, 9 such societies have undertaken various activities, including conducting legal research, hosting discussions and events on relevant legal policy developments, collaborating on events with Vidhi such as on a series of discussions on the constitution, writing for the Vidhi blog, as well as running their own blogs, newsletters, and podcasts. For instance, the Kautilya Society at National Law School of India University (NLSIU), Bengaluru, runs a blog, which has been cited in The Diplomat, The Print, Social Change Journal, etc. while members of the Society at the National University of Juridical Sciences (NUJS), West Bengal, were invited by the Parliamentary Select Committee to present their views on the draft data protection law.

Other Kautilya Societies are based out of NALSAR University of Law, Hyderabad, National Law University, Odisha, Symbiosis Law School, Pune, Dr. Ram Manohar Lohiya National Law University, Lucknow, Hidayatullah National Law University, Raipur, Gujarat National Law University, Gandhinagar, and Rajiv Gandhi National University of Law, Patiala.



VIDHI'S TEAM

The following people were part of the Vidhi Centre for Legal Policy as on 31 March 2022/ during FY21-22.

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VIDHI'S PATRONS

We are grateful to our patrons who have supported Vidhi and its specific programmes in 2021-22:

ATE Chandra Foundation (ATECF) supports Vidhi's fundraising and communication efforts. ATECF also supported our work on reforming judicial systems and making courts more inclusive for women.

Azim Premji Philanthropic Initiatives (APPI) supports the Samvidhaan Fellowship to make justice systems more comprehensible and accessible to the common citizen.

Gourab Banerji, Senior Advocate, Supreme Court of India, has instituted the Milon K. Banerji Fellowship for research in constitutional law.

HT Parekh Foundation supported our research paper "Beyond Reasonable Accommodation" on making Karnataka's cities accessible by design to persons with disabilities.

Kotak Mahindra Bank Ltd. supports the 'Kotak -Vidhi Inclusive Education Programme'.

Lal Family Foundation (LFF) has been supporting Vidhi institutionally from its inception with a particular interest in reforming the criminal justice system.

Mekin Maheshwari, Founder of Udhyam Learning Foundation, has supported Nyaaya, an open access digital resource that provides simple, actionable, reliable, and accessible legal information.

Nandini Piramal, Executive Director, Piramal Enterprises, supports Vidhi institutionally, with a specific interest in talent development and improving HR processes for the organisation.

Pirojsha Godrej Foundation, has been supporting Vidhi institutionally since its inception.

Prashanth Prakash, Investor, and Partner in Accel, supports our work at the state level in Karnataka.

Radha Kishan Damani, investor and founder of DMart, supports Vidhi institutionally, with a specific focus on good governance and a well-functioning legal system.

Rainmatter Foundation, a nonprofit initiative of Zerodha, supports our Climate and Ecosystems programme.

Rohini Nilekani Philanthropies has been supporting Vidhi institutionally from its inception. Rohini Nilekani also supports Nyaaya, an idea she conceived that is incubated at Vidhi.

Sandeep Singhal, Managing Partner at Westbridge Capital, supports our Climate and Ecosystems programme.

TCG Centres for Research and Education in Science and Technology (TCG CREST) supports our Justice, Access, and Lowering Delays in India (JALDI) project.

Tree of Life Foundation (TOLF) supports our Justice, Access, and Lowering Delays in India (JALDI) project as well as our work at the state level in Maharashtra.

Vinay Toshniwal Memorial Trust, supports Vidhi institutionally with a particular interest in our work on making the justice system speedier and more accessible.

Better laws|
better governance

VIDHILEGALPOLICY.IN
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