Centre for CIVIL SOCIETY
Social Change through Public Policy

REGULATION FOR NEW REALITIES

A CROSS-SECTORAL ANALYSIS DURING COVID-19

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Bhuvana Anand
Centre for Civil Society
15 September 2020

Introduction to this compendium

COVID-19 took the world by shock. What started as a small infection has spread across several countries, inflicting harm to millions of people and setting the global economy back by decades. As of September 2020, India adds close to 100,000 COVID-19 cases per day. Economists estimate the real Gross Domestic Product (GDP) growth to contract by at least 10.5% for 2021 (C. Kumar 2020). Q1 GDP numbers show a GDP fall close to 24% (Jebraj 2020). Unemployment in the country in the third week of September has risen to 7.2% (Centre for Monitoring Indian Economy 2020). Over 45% of households have reported a drop in income (Virmani 2001).

COVID-19 has made apparent the need for changes in the way the government regulates various sectors. The Indian economy is haunted by what Ekstein (2015) calls regulatory inertia, and many laws that have outlived their purpose. Crises have frequently provided opportunities for reforms. Ranciere (2015) found that large scale structural reforms occur "in bad times rather than during prosperous times". The liberalisation of 1991, for instance, was motivated by a balance of payments crisis (Centre for Policy Research 2020).

During the summer of 2020, we at Centre for Civil Society documented how some critically affected sectors are trying to adapt to the changing circumstances, but are fettered by the regulatory framework. We examined seven areas: health, education, labour, agriculture, technology enterprises, philanthropy, and professional certification.

All the areas of study were seemingly disparate. We used a common lens to examine the regulations in each of the areas of study and discovered that at the heart of it our regulations are not fit for purpose. In some areas, the regulatory framework is absent or muddled; in other areas overwrought. and in yet other areas, they are ambitious, but out of sync with state capacity. They are outmoded for the new reality across the board. Most of these are legacy issues, but these gaps have become stark during the pandemic.

Our regulations across sectors favour incumbents over disruptors. The regulations create strong barriers to innovation and adaptability. For instance, e-pharmacies have been operating in a vacuum, absent clarity on their obligations and liabilities. While a draft set of rules to regulate e-pharmacies were published in 2018, they are yet to be notified. This stasis is partly a result of the pressure campaigns from brick-and-mortar pharmacies. Deploying new rules requires jettisoning some pillar ideas such as the role of pharmacists in gate-keeping drug sales. The lockdown made the demand for door-step delivery of drugs significant, but the rules of the game are yet to change.

Regulations are also susceptible to capture and monopoly. Professional certification requirements for lawyers do not recognise distance-learning. This has hurt the ability of law schools to use new modes of teaching. The Bar Council, in a bid to restrict entry and increase wage premiums, have made it hard to imagine new ways of bringing legal professionals into service.

The regulatory architecture often favours a one-size-fits-all approach. For example, where democratising education may allow non-traditional learners to prosper, the regulations encourage standardisation and uniformity. Options for school exit-certification make it hard to exercise choice and to experiment with what works for parents and their children. Most Boards in India do not allow independent learners to be certified. The government did create the National Institute for Open Schooling, but it is reputationally not at par with other boards, nor is it able to offer the kind of quality curriculum that learners now demand.

Regulators in India also capitulate to public perceptions over empirical data, sometimes even making it hard to generate evidence critical for decision-making. The regulatory framework for seeds does not make it easy for technology developers to conduct field trials before making biosafety determinations. States have to issue No-Objection Certificates for testing GM seeds. Demanding that we meet thresholds of scientific evidence is not unreasonable, but it is not clear who we are helping when the government requires No-Objection Certificates to even engage in scientific discovery. Even though farmers across the country are slowly being freed from the license-permit-subsidy raj, they remain hostage to an aversion to modern science.

A regulatory framework that is ambitious but fettered by State capacity constraints can do more harm than good. Labour regulations across the country have been the subject of shrill debate for years. As we have watched our neighbours take advantage of their periods of demographic dividend, we have remained a prisoner of overwrought rules on every aspect of employing workers. During COVID-19, many states have tried to quickly tinker with labour regulations to make them flexible enough to generate mass employment. Yet, as states try to break free, the Centre's laws hold them back.

Contrastingly, **where State capacity to regulate may be limited, the market has shown us new ways to set standards and enforce rules.** Door-step delivery of food via aggregator platforms have brought us market-led regulation of hygiene and safety. Food aggregators were steps ahead of the country's food regulator in setting standards and using technology to enforce those standards. Aggregators were able to anticipate that customers would pay a premium for hygiene over time, and intermediaries could help bridge the information gap between customers and suppliers on hygiene parameters. They were able to quickly deploy systems to monitor standards, and build feedback loops for improving performance: something the food regulator has struggled to do.

Regulations that hamper innovation and create incentives for incumbents to stagnate, hurt the creative destruction process that is at the heart of generating growth and value. Creative destruction is the continuous and deliberate process of replacing outdated production processes with newer methods of anticipating and meeting consumer needs (Kopp 2019). It is the process of creating new industries that never before existed, like the railroad in the 19th century or the internet today (Alm and Cox 2020).

Through this compendium, we hope to make the case for first-principles thinking in writing the rules of the game. In each paper, we have tried to identify the challenges of the current regulations, and in some cases suggested models for reform.

A bitter pill to swallow

Regulatory confusion on e-pharmacies

Mehak Raina and Arjun Krishnan*

The authors thank Richa Avtar for research support. Richa was also an intern under the Researching Reality 2020 programme.

Executive Summary

The COVID-19 pandemic has sparked a surge in publicly available digital resources by national health institutes, health insurance companies, international corporations, and the government. E-pharmacies, e-consultations, and online resources have become crucial tools in the COVID-19 response strategy. Telehealth services use electronic technology to offer various health services remotely. These platforms have become particularly useful when social distancing is the norm. Online consultations and sales of drugs have proved to be a blessing in these difficult times.

However, e-pharmacies in India have not had an easy time with competitors, regulators and the courts. Since 2014 when the first e-pharmacies were established in the country, they have been vilified and subject to confusing regulatory signals. Currently, physical pharmacies in India comply with the Drugs and Cosmetics (D&C) Act 1940 and e-pharmacy portals and websites comply with the Information Technology (IT) Act 2000. Brick-and-mortar pharmacies and organisations like the Indian Pharmaceutical Association and All India Organisation of Chemist and Druggist have demanded a ban on e-pharmacies. There are no set regulations that govern the industry, and thus there is no clarity on the rights, obligations, and liabilities of e-pharmacy operators.

To provide specific regulations for the e-pharmacy sector, the Ministry of Health and Family Welfare (MoHFW) proposed draft rules on the sale of drugs by e-pharmacies in 2018.Government of India is yet to adopt these draft rules. Due to the lack of regulatory clarity around e-pharmacy enterprises, there is a risk of jeopardising customer safety. The regulatory uncertainty has affected the ease of doing business for e-pharmacies and could stifle investments and innovations in the sector.

This research paper outlines the current regulatory framework for e-pharmacies in India and analyses some of the ways in which the framework distorts competition. It tries to capture the perception of different stakeholders regarding the e-pharmacy sector, and understand them against the backdrop of regulatory capture and uncertainty.

We find that the regulatory vacuum has created gaps in consumer protection. We also find that incumbents are seeking the introduction of regulatory barriers to limit competition. Where e-pharmacies promise to disrupt the market for the sale and delivery of medicines, the rules are still operating based on old concepts. Pharmacists as gatekeepers may have been necessary before technology allowed us to supplant many of their responsibilities. There are also several problems of perception about the how e-pharmacies operate. Finally, we find that the rules largely regulate based on type, and not on overarching principles or based on desirable outcomes. This approach leads to consequences like reduced competition and uneven access to capital.

Introduction: E-pharmacies in India

With the growth of mobile and internet technology, telehealth services have been expanding rapidly all over the world. Since 2014, this revolution in the delivery of healthcare services has picked up pace in India. The COVID-19 pandemic has stressed the need for affordable and accessible healthcare to consumers across the country. Innovations in the health sector mean patients can get a consultation, receive a diagnosis, and buy medicines without stepping out of their house.

According to World Health Organisation, telehealth is the "delivery of health care services, where patients and providers are separated by a distance" (Global Health Observatory 2016). The Ministry of Health and Family Welfare (MoHFW) in India defines telemedicine, often used as a synonym to telehealth, as "the delivery of healthcare services, where distance is a critical factor, by all health care professionals using information and communication technologies" (Minister of Health and Family Welfare 2020).

E-pharmacies are one offering under the broader ambit of telemedicine. E-pharmacies operate as digital platforms for ordering medicines. The draft e-pharmacy rules 2018 define e-pharmacies as "the business of distribution or sale, stock, exhibit or offer for sale of drugs through a web portal or any other electronic mode" (Minister of Health and Family Welfare 2018).

Online sale of drugs in India

The Indian pharmacy market is estimated to be worth Rs. 1.2 lakh crore, with over 850,000 independent pharmacies. The Indian pharmaceutical market is the third-largest in terms of volume and 13th most valuable globally. The India Brand Equity Foundation (IBEF) expects the pharmacy industry to expand at a Compound Annual Growth Rate (CAGR) of 12.89% and reach US$55 billion by 2020 (Indian Brand Equity Foundation 2018). In fact, Prime Minister Narendra Modi, while attending a 'Non-Aligned Movement' Summit on 4 May 2020 said, "India is regarded as a pharmacy of the world, especially for affordable medicines". India is an essential part of the global drug supply chain and manufactures drugs for global consumption.

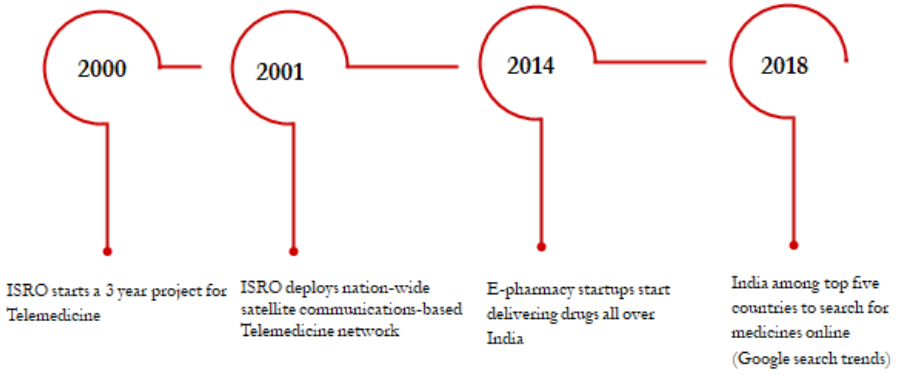


Figure 1.1: Timeline for Emergence of E-pharmacies in India
Adapted from: Kulkarni 2018 and Sood et al. 2007

E-pharmacies currently account for about 1% of medicine sales in the country; brick and mortar pharmacies are responsible for the rest. However, estimates suggest that the e-pharmacy market in India will grow at a CAGR of 63% and reach $3 billion by 2022 (Frost and Sullivan 2019). Today, there are more than 200 e-pharmacy startups in India, and the sector is estimated to grow to capture 10-15% market share by 2025 (Kulkarni 2018).

In 2020, Amazon and Reliance expanded into the Indian e-pharmacy segment. Back in 2018, Amazon US acquired PillPack, an online pharmacy for $1 billion, and in August 2020, Amazon India launched 'Amazon Pharmacy' in Bangalore.Their online pharmacy is accepting orders for both over-the-counter (OTC) and prescription-based medicines. Reliance Life Sciences, will establish pathology labs through partnerships with local entrepreneurs (Silicon India 2020). Reliance also acquired a 60% stake in Netmeds for Rs. 620 crore (M. Singh 2020). MedLife and PharmEasy have merged to form a larger entity with a valuation of over $1 billion (Abrar 2020).

Figure 1.2: Customer Perceptions about E-pharmacies
Adapted from: Jaisani et al. 2015

Controversies surrounding e-pharmacies in India

The Drugs and Cosmetics (D&C) Act 1940 and the Pharmacy Act 1948 govern brick and mortar pharmacies; however, these laws do not consider the online sale of drugs. E-pharmacies operate as e-commerce firms, regulated under the Information Technology (IT) Act 2000. In August 2018, MoHFW proposed draft e-pharmacy rules as an amendment to the Drugs and Cosmetics Rules 1945. The draft e-pharmacy rules require the registration of e-pharmacies and provide conditions for the online sale and distribution of drugs. The government is yet to notify these rules.

Regulators and stakeholders debated the content of e-pharmacy rules. Both e-pharmacies and brick and mortar pharmacies have incentives to convince the government to release rules that favour their respective industries. Both argue they have the patient's best interest in mind and are concerned about patient safety.

In May 2015, the Maharashtra Food and Drugs Administration (MFDA) filed an FIR against the CEO of Snapdeal, an e-commerce company, for selling medicines online. The MFDA commissioner, in a news report said "Regardless of whether the substance is scheduled or not, no drugs are to be sold online" (Express News Service 2015). Following this case, several e-pharmacies had court cases filed against them and courts have ruled against e-pharmacies on numerous occasions.

The NDA government indicated that they wanted to notify the draft e-pharmacy rules within the first 100 days of the second Modi government, i.e September 2019 (Thacker 2019). A year later they remain a draft.

What gaps in knowledge does this paper address?

If the draft e-pharmacy rules are implemented, the pharmacy sector will likely become more competitive. Market pressure would mean that providers need to compete by offering better services or lower prices. The draft rules would benefit consumers but the incumbents in the industry who already have a large share of customers fear that their margins are being hit due to the rising competition (Mabiyan 2019).

This paper examines current regulations and the interest-incentive-information framework that guides the actions of different stakeholders in the pharmacy industry. The paper outlines how different stakeholders view the absence of a regulatory framework surrounding e-pharmacies and their perceptions about the draft rules.

We conducted semi-structured interviews with e-pharmacy entrepreneurs and functionaries from industry bodies representing brick and mortar pharmacies like the All India Organisation of Chemist and Druggist (AIOCD) and the Indian Pharmaceutical Association (IPA). These interviews helped us understand the perception of both brick and mortar pharmacies and e-pharmacies about the current regulatory framework and their opinion about the draft rules. Interviews with the AIOCD and IPA, helped us understand their reservations about the e-pharmacy industry and their opinions on the draft rules and Foreign Direct Investment (FDI) policies.

Ambiguous and restrictive regulatory framework

The regulatory framework is confusing

MoHFW regulates the pharmacy sector in India. The Central Drugs Standard Control Organisation (CDSCO), a regulatory body under MoHFW, is responsible for inspections, recalls and market surveillance of pharmaceuticals and medical devices. The National Pharmaceutical Pricing Authority (NPPA) controls the prices of drugs. The Union government regulates licensing of imported drugs and state governments regulate licensing of pharmacies and manufacturing units.

The D&C Act governs brick and mortar pharmacies. The Act provides rules for the safe and effective sale, distribution, import and manufacturing of drugs and cosmetics. However, the Act does not mention online sale of medicines.

E-pharmacies have two components, an end-user e-commerce portal to place the order and a licensed brick and mortar pharmacy that is responsible for dispensing drugs. Like any other e-commerce entity, e-pharmacy portals and websites have to comply with the Information Technology Act 2000.

The Information Technology Act defined and legalised e-commerce. It gave "legal recognition for transactions carried out by means of electronic data interchange". The FDI Policy 2017, further fleshes out this definition: "e-commerce means buying and selling of goods and services including digital products over digital & electronic networks". The Information Technology Act also defines an 'intermediary' as "any person who on behalf of another person receives, stores or transmits any particular electronic message or provides any service with respect to that message".

E-pharmacies operate either as marketplace firms or as inventory-based firms. In an inventory-based model, one company controls both the medicines and the platform. Marketplace e-pharmacies provide a platform and act as a facilitator between buyer and seller (Frost and Sullivan 2019).

PharmEasy and 1 mg are examples of marketplace e-pharmacies, whereas mChemist is an inventory based e-pharmacy.

Currently, marketplace e-pharmacies only register as e-commerce entities. In our interviews, all e-pharmacy entrepreneurs said they comply with the Information Technology Act. Marketplace e-pharmacies argue that the IT Act sufficiently regulates its business model as an intermediary (N. C. Sharma 2019).

In July 2020, the Ministry of Consumer Affairs, Food and Public Distribution notified the Consumer Protection (E-Commerce) Rules. The Rules clarify the duties and liabilities of both marketplace and inventory based e-commerce websites. They address the minimum requirements that sellers need to meet to register on a marketplace website, including having a grievance cell.

E-pharmacies currently operate in a regulatory vacuum. There is little clarity on the rights, obligations, and liabilities of e-pharmacy operators in India. This situation will remain so until the D&C Act 1940 is amended to, at the very least, include rules for e-pharmacies. The E-pharmacy Rules, 2018, are meant to create a standard framework for the sale of drugs online. However, they create a different set of rules for e-pharmacies and brick and mortar pharmacies. Take, for instance, the inspection of the premises. The rules require an inspection every two years of the business premises for e-pharmacies. In the case of a marketplace e-pharmacy, it is not clear what to inspect. The premises of a marketplace e-pharmacy is unlikely to contain any drugs and medicines. The rules say a drug license is required to sell drugs, but it does not address the question of intermediaries.

FICCI in a press release dated 16 January 2020, noted that "the delay in the notification of e-pharmacy draft rules is causing confusion and anxiety for all the stakeholders involved in the digital health ecosystem," and the sector "has been facing certain difficulties towards ease of doing business due to regulatory uncertainty" (FICCI 2020). It signals the need to update rules according to advancements in the sector.

Table 1.1: Comparing Retail Pharmacy Laws and Draft E-pharmacy Rules

	Retail Pharmacies	**E-Pharmacies**
Registration	Pharmacy Licence, Land registration and Drug Licence are required.	Draft e-pharmacy rules require registration with the Central Licensing Authority.
Registered Pharmacists	Supply of drugs conducted only by or under the personal supervision of a registered pharmacist	Pharmacists must verify the details of the patient and doctor on the prescription before dispensing drugs
Verification of prescription and Dispensing	Registered pharmacist has to verify the prescription before dispensing drugs.	Pharmacists must validate the prescription before forwarding it to dispense the drugs.
Record Maintenance	Maintain records of the patients for 5 years	Maintain details of the drugs dispensed and the patient details.
Inspection	Inspected by an authorised Inspector, at least once a year	Premises from where the business is conducted has to be inspected, every two years.
Grievance redressal	Not Required	Customer support and grievance redressal services should run for more than twelve hours everyday

The framework gives a leg up to marketplace business model

In India, marketplace e-commerce businesses are far more common. In contrast, the top 20 e-commerce firms in a world are evenly split between pure marketplaces and hybrid or mixed e-commerce models (Merton 2020). This is in part because of how the rules treat different models.

Differences in business model determine your ability to raise capital

India has grown to become the third largest pharmacy industry in terms of volume and tenth largest in terms of value (Express Pharma 2020). This has attracted the interest of foreign investors looking at cashing in on a growing market. International and institutional investors require some regulatory stability and formalisation of business procedures before they invest. Speculative investments are already risky, and the added uncertainty of working in a regulatory vacuum puts pressure on the business to be very careful about procedural compliance.

Marketplace enterprises have access to a larger pool of capital. The Consolidated FDI Policy 2017 distinguishes between marketplace and inventory models of e-commerce. The Policy permits 100% FDI in marketplace e-commerce models but prohibits FDI in inventory-based e-commerce.

A regulatory level playing field is essential to give all firms an equal opportunity to grow, pitch for capital, and service clients. Marketplace based e-commerce companies enjoy the benefits of FDI, while inventory-based ones do not. If investments from abroad were accessible to inventory-based e-commerce and retail stores as well, they too could enjoy the benefits of access to more capital. The risk of monopolisation by marketplace players is exacerbated by limiting the ability of non-marketplace players to access global capital markets.

Different business models have different licensing requirements

Marketplace e-pharmacies currently operate under the same legal framework as e-commerce firms. But inventory-based models have to follow a different set of rules. According to the D&C Act, drug licences are required for manufacturing, distribution or stocking of drugs. Since inventory based e-pharmacies store and dispense drugs, they need a license from the Central Licensing Authority.

This confusion about licensing requirements has meant marketplace e-pharmacies, which operate without a drug license, operate in a potential grey area. In December 2018, the High Court of Delhi issued an all India ban on the online sale of medicines by e-pharmacies operating without a drug licence. Since the law does not differentiate between inventory based and marketplace based models, it is unclear whether of not marketplace based models are required to have a drug licence.

Inventory based e-pharmacies argue that their operation is valid because they have a drug license for the physical pharmacy. On the other hand, marketplace models argue that they merely provide a technology platform to connect customers to the third-party pharmacies which are licensed and registered under the D&C Act and Rules (Parikh and Sunjay 2020).

Perceptions and reality do not match

During interviews, both e-pharmacies entrepreneurs and functionaries of AIOCD and IPA said their primary concern is the safety and welfare of customers. Brick and mortar pharmacy representatives made many arguments against e-pharmacies that are not rooted in fact or logic. In

particular, there are many misconceptions about how e-pharmacies work and the safety precautions they take.

Exaggerated risk of prescription abuse

IPA wrote to CDSCO in August 2019 demanding a ban on e-pharmacies, arguing that "the dangers of online sale of medicines include risk of quality, misuse and missing aspect of pharmacist-patient interaction".

An e-pharmacy entrepreneur argued that this criticism is unfair. Despite the rules many brick and mortar pharmacies operate without a resident pharmacist, for example in states like Uttar Pradesh, and without the benefit of technology. Data from Uttar Pradesh Food Safety and Drug Administration (UPFDA) corroborates this. The UPFDA says there are only 88,065 pharmacists in Uttar Pradesh, but 1,24,632 drug stores are operational in the state (Ved 2019).

Brick and mortar pharmacies argue that customers can upload invalid prescriptions on e-pharmacy websites and buy drugs. They also argue that anyone can scan and upload a prescription on an e-pharmacy portal and since e-pharmacies cannot stamp prescriptions, a used prescription looks the same as an unused one. There is a risk of prescription abuse to procure drugs multiple times.

However, e-pharmacies say they reject invalid prescriptions and conduct more robust verifications than physical pharmacies. E-pharmacies are concerned about people reusing prescriptions and suggest that there should be an online system to connect all e-pharmacies digitally, so if a customer tries to reuse a prescription, the previous transaction from a different pharmacy is detected. E-pharmacies also push for the use of e-prescriptions, where a doctor can send the patient's prescription information directly to the pharmacy. This mechanism could prevent prescription errors, improve prescription tracking and limit the misuse and overuse of drugs (Sandy 2019).

The CDSCO monitors and tracks drug dispensation via the records maintained by pharmacies. A major challenge the CDSCO faces is poor record maintenance. Where records are maintained, most brick and mortar pharmacies keep physical, handwritten records that are difficult to process. E-pharmacies argue that they maintain digital sales records with attached patient prescriptions. These electronic records are more efficient and traceable than manual records. E-pharmacies say that they conduct regular workshops for pharmacists to educate them about new developments in the field, issue warnings in case of non-compliance, and maintain an efficient distribution process.

Unwarranted fears about the risks of delivery

Brick and mortar pharmacies argue that the D&C Act and the Pharmacy Practice Regulations require the dispensation of drugs in the presence of a registered pharmacist. When drugs are delivered, the delivery is typically done by a delivery driver. Brick and mortar pharmacies say that using a delivery service, something all e-pharmacies do, is a violation of the current rules since the drugs are not dispensed directly from pharmacist to patient. The fact that the drug is not directly dispensed, arguably, increases the risks of the incorrect drug being dispensed.

In a country like India, where customer awareness about drugs is low, the safe delivery of verified drugs is a hurdle that all pharmacies need to overcome (Vora 2017). E-pharmacies solve this problem by maintaining details of the batch number and tracking shipments from the warehouse to the medical store and finally to the customer. One respondent said they require CCTV cameras to be installed at participating pharmacies so that they can more easily address customer complaints.

These processes are particularly important when transporting expensive life-saving drugs, like cancer medication.

Allowing delivery also allows patients in less developed areas to access important, but not commonly used drugs. Less developed areas have only a few pharmacists, a patchy distribution network, unstable power supplies and inadequate storage facilities. Drug storage facilities require a prescribed minimum standard of hygiene and temperature control, including 24-hour refrigeration. Not all brick and mortar pharmacies are financially capable of offering that.

E-pharmacies have a larger, broader pharmaceutical supply chain and enjoy the benefits of the economies of scale. E-pharmacies are more likely to expand access and the speed of availability of drugs. Problems like management of drug stocks can be solved because the distribution networks of e-pharmacies are not localised.

Innovations are being held hostage by regulatory capture

At the beginning of the industrial revolution in England, 'Luddites' protested against mechanised looms and knitting frames, concerned they would replace skilled artisans and monopolise the market (Free 2014). Neo-Luddites, oppose the excess of modern technology stating that it is materialistic and destructive for the community (Kiberd 2015).

Luddites have frequently lobbied the state to issue measures against up and coming industries or new innovations (Atkinson 2015). Political actors rely on votes and constituencies and can be persuaded to block new entrants into a market, particularly disruptors, using old Luddite arguments of job losses. This has proved successful in arguments against Airbnb and Uber (Tax 2019; Browne 2019). Incumbents in an industry have incentives to prevent innovation or change since disruption may threaten profits and market share. Incumbent cab operators and small stores opposed innovations in their industry like cab aggregators and e-commerce platforms.

Regulatory Capture: The case of cab aggregators in India.

In 2007, Meru Cabs was one of the first firms to provide a "radio taxi" service in India. The entry of Meru disrupted the business of long-plying Yellow Taxi cabs at the Airports. Bombay's taxi trade union put pressure on the local government to first ban Meru cabs and subsequently make them less attractive to customers through a variety of operational barriers (Shah 2010).

In 2013, the first Uber ride took place in Bangalore. Ola had already been in the market for three years, pivoting from being a taxi operator to an on-demand service (Eshwar 2016). At the time Uber and Ola started operating, clear rules were not present for ride aggregators. Just like 7 years prior, incumbent taxi firms wanted the government to erect regulatory barriers for emerging aggregators and insisted they operate like conventional radio taxi services.

In July 2020, the AIOCD in a letter addressed to the Prime Minister requested a ban on e-pharmacies. The letter said that "FDI backed e-commerce" could "kill and wipe out" brick and mortar pharmacies. AIOCD's recent letter argued that the objective of e-pharmacies is to establish a business monopoly in the country. AIOCD argues that brick and mortar pharmacies have 8.5 lakh chemists, while e-pharmacies have hired only 30,000 employees in the past four years. Brick and mortar pharmacies contend that e-pharmacies could lead to redundancies in the sector resulting in unemployment.

Brick and mortar pharmacies along with organisations like AIOCD and IPA are trying to convince the government to stop or encumber e-pharmacy operations. Brick and mortar pharmacies remain the largest sector of the pharmacy industry. In the case of drug sales, the regulatory framework has been crafted around these incumbents. This makes it harder for newcomers to enter the market and allows the incumbents to retain control over the market and prevent competition.

Brick and mortar pharmacies have incentives that could motivate them to limit the role of e-pharmacies in the sector. Regulatory capture occurs when regulatory agencies, influenced by the industries they regulate, end up acting in ways that primarily benefit special interest groups in the industry, instead of broader public interest (Stigler 1971). Requesting regulators to ban or harshly regulate e-pharmacies in ways that would help brick and mortar pharmacies are attempts at regulatory capture.

Much like in the taxicab industry, brick and mortar pharmacies are pressuring the government to erect hurdles for e-pharmacies. For the last two years, regulators and other stakeholders discussed the contents of the e-pharmacy rules. Both e-pharmacies and brick and mortar pharmacies try to convince the government regulators to take their respective sides. Regulatory capture hurts e-pharmacies but, more importantly, negatively impacts customer choice.

One needs to take into account the growth opportunities that e-pharmacies can offer chemists. Any new industry or innovation in an existing industry is likely to create redundancies. This does not mean we should be averse to change. E-pharmacies simplify patient access to drugs, discounts, and information. Records of medicine purchases are digitally stored, making it easier to track supply chains and checking the risk of counterfeit medicines and drug abuse. Distributors and retailers are able to reduce working capital requirements and increase profit margins even as costs to consumers come down (Jaisani et al. 2015).

Information asymmetry in the pharmacy sector affects the decision making of both the pharmacists and customers. One respondent pointed out that since most customers do not have comprehensive medical training or detailed information about drugs, retail pharmacies benefit disproportionately from this information asymmetry. This information asymmetry makes it more difficult for consumers to seek alternatives, like generics or different brands. E-pharmacies increase the information available to consumers and reduce this information asymmetry.

Since most patients are not medically trained, this asymmetry is unlikely to ever become zero. However, increasing the ease of access to information and assisting customers filter out non-pertinent information means patients are more able to make informed choices.

"Pharmacists as gatekeepers" is becoming a redundant idea

Historically pharmacists have deciphered and evaluated the prescription, made decisions on contra-indications and suggested alternatives. They have also answered patient questions about the drugs, disease, diet, duration of therapy and lifestyle changes. Pharmacists often help patients use medicines, understand dosage, and increase health awareness. This is particularly true among patients who do not have access to general practitioners (Deshpande et al. 2015).

Technology is making many of these roles obsolete. First, technological advances allow more convenient methods for dispensing drugs and providing information. Automated Dispensing Cabinets that can store and dispense drugs already exist in countries like the United States. Labelling can be deciphered and communicated to patients using technology. There are medication reminder devices that provide information on dosage and medication reminders to patients

(Tahmasbi 2019). A respondent said that e-pharmacies have customer care numbers where consumers can get answers for queries about treatment protocol and drug interactions if they are unable to get their information on the website.

Second, technological advancements reduce human errors. Pharmacists can use digital systems for medication records, dispensing, ordering, and stock control (Goundrey-Smith 2014).

Finally, technology reduces costs. E-pharmacies provide increased choices to customers by providing customers with the option to select between the high priced branded drugs and cheaper generics. Customers can compare and decide on which drug they want. They can then get their prescription changed by their doctor if they had not prescribed a generic. Many e-pharmacies have parallel e-consultation services, which have doctors who can prescribe generics. This convenience is not available to brick and mortar pharmacies, which rarely have a doctor present on site.

Many pharmaceutical companies suggest that branded drugs are more effective than generic variants. The confusion about generic drug quality is further fuelled by medical professionals who indicate that they trust branded drugs more made by reputed companies (Jain 2019). This is despite evidence from The United States Food and Drug Administration found that both branded and generic drugs have the same ingredients and are bioequivalent (Paul 2019). The preference for branded drugs may stem from the incentives that pharmaceutical companies provide to doctors and retailers. It could also be based on the difference in margins between generic and branded drugs. This incentive could encourage pharmacists to not offer generic substitutions (Kaur 2019).

The Drug Controller General of India in 2018, issued instructions to all State Drug Controllers to ensure brick and mortar chemist shops have a separate rack of generic medicines (Ministry of Health and Family Welfare 2018). In 2019, the Prime Minister's Office asked the Drug Technical Advisory Board (DTAB) to make amendments to the Drugs & Cosmetics Act to allow pharmacists to substitute branded drugs with generics. The DCGI stated that initially only Jan Aushadhi Kendras would be able to substitute drugs (Kapoor 2019). Allowing all pharmacists to substitute branded drugs for generics is a reform that could have a significant impact on consumer costs.

Where do we go from here?

Principles-based clarity on the rules of the game

E-pharmacies have been operating in India for over five years, and there is still ambiguity about the rules that govern them. It is only a matter of time before some mistake requires a legal remedy. In the absence of a regulatory framework, there is uncertainty for business and customers about liability and protection.

A respondent said that e-pharmacies are not just another e-commerce entity; they deal with medicines, and errors could have significant consequences on customer safety, not to mention externalities around antimicrobial resistance. An error in service delivery could prove dangerous, and the regulatory vacuum could hurt consumers.

The regulatory framework around e-pharmacies has created a two-tiered system of e-pharmacies. Large e-pharmacies follow a voluntary code of conduct that offers levels of protection over and above what the current rules and draft rules specify. This cautiousness is, in part, out of fear of regulatory backlash in case of a mistake. However it is also to ensure customer safety, even at the cost of short-term sales. Some of our respondents suggested that smaller e-pharmacies that are only

now entering the market may not follow these voluntary rules. The risk that the sector faces is that a violation by an unsafe operator could lead to retributive rule changes that affect everyone.

Regulatory vacuum: The case of cab aggregators in India.

Following an assault on a rider by an Uber driver in 2014, the Delhi government banned Uber and shut down its offices. In December 2014, Government of India notified the Modified Radio Taxi Scheme, 2006. It required companies to get a licence to be a radio taxi service provider and an aggregator (Transport Department 2014). Uber applied for a licence in January 2015, but authorities rejected the application, and subsequently began impending vehicles (PTI 2015). The High Court of Delhi in July 2015, revoked the ban on Uber, clearing the way for the firm to operate in the capital and reapply for a licence (Eshwar 2016). In October 2015, the Ministry of Road Transport and Highways (MoRTH) issued non-binding rules for states to regulate companies like Uber and Ola, identifying them as an "on-demand information technology-based transportation aggregators" (Ministry of Road Transport and Highway 2015).

A regulatory framework informs businesses about what they are allowed to do and what they are liable for. It also informs customers of the rights they enjoy and the legal recourse they have when rights are violated. When untoward situations occur, regulations make clear who is responsible and to what extent. Clarity on liability and responsibility would mean less confusion for enterprises and their customers. There are defined penalties for mistakes and clear legal pathways to assess customer claims. Finally, a clear framework also provides courts and regulators clear guidance on what kinds of punishments are fitting for what kinds of transgressions. This reduces the arbitrariness of decisions made by regulators.

Lessons from other countries

United States

The United States has a robust legal framework that has encouraged the development of the e-pharmacy sector. Free standing kiosks that dispense drugs is one such innovation. The laws do not mandate a pharmacist to be physically present as long as the system is supervised electronically by a pharmacist.

For identifying legitimate pharmacies, a dedicated generic top-level domain name ".pharmacy" is used and managed by the National Association of Boards of Pharmacy. The"seal of quality" is built into the web address (Digital Pharmacy Accreditation). Unlike logos or symbols that can more easily be faked, if the protection is baked into the web address it is more challenging to circumvent.

The existing regulations in the US have several measures to protect against abuse. US practitioners have to issue electronic prescriptions for controlled substances, and if controlled substances require an in-person medical evaluation at least once every 24 months under the Ryan Haight Online Pharmacy Consumer Protection Act 2008 (Chalasanil 2019).

United Kingdom

All pharmacies in the UK, including those providing online services, are registered with the General Pharmaceutical Council (GPhC). Online pharmacies additionally have to be registered with Medicines and Healthcare Products Regulatory Agency (MHRA). Registered pharmacies are regulated and annually inspected to ensure the safe sale of MHRA authorised medicines. The

registration of an online pharmacy is valid for a year and renewed through the GPhC and Care Quality Commission.

The National Health Services (NHS) introduced the Electronic Prescription Service (EPS) in 2013, which sends electronic prescriptions from General Practitioners (GP) to pharmacies directly. Patients can nominate an online pharmacy to dispense their prescribed medication and get the medicines delivered at home.

Online pharmacies in the UK have the Distant Selling logo and the GPhC Internet Pharmacy logo. The GPhC logo displays a green cross, with the words 'Registered Pharmacy' and a 7-digit registration number. The logo redirects the patients to the online pharmacy's registration page on GPhC's website, which allows patients to verify the authenticity of a pharmacy (Nation Wide Pharmacies 2017).

Canada

Canada has adopted a unique model to regulate pharmacies. Federal and the provincial governments have delegated the power to regulate the profession to external bodies. It is a self-regulated profession. The National Association of Pharmacy Regulatory Authorities (NAPRA) is a national body with 14 pharmacy regulatory authorities which represent the various jurisdictions in Canada. NAPRA acts as the primary body to share information with customers about pharmacy regulation in Canada. NAPRA is also responsible for developing national standards that provincial regulators can use to create the regulations in their own jurisdictions (Loya and Joshi 2019).

Online pharmacies in Canada are required to ensure that deliveries comply with the "Model Standards for Canadian Pharmacists Offering Pharmacy Services Via the Internet in 2001". This document permits the pharmacist to only accept prescriptions verbally or via facsimile transmission by the doctor. Pharmacists are required to keep the information shared by the patients confidential.

European Union

In 2003, Doc Morris, a pharmacy company established in the Netherlands, was accused of illegally selling prescription and non-prescription drugs in Germany. The European Court of Justice ordered that while states may prohibit distance selling of prescription drugs, they can not prohibit the sale of non-prescription drugs online. Though regional laws and regulations on e-pharmacies existed in Europe before 2003, after this incident, an agreement on the online sale of drugs was established (Chalasanil 2019).

The EU adopted measures in June 2014 to ensure the safety of drugs, including a standard logo and stricter rules on tracking, tracing, and import of active ingredients. All e-pharmacies in the European Union are required to display the logo on their portals. A directive on falsified medicinal products was introduced to fight the medicine counterfeiting and ensure safe and regulated trade of drugs (Chalasanil 2019).

Conclusion

Technological development in India has contributed to the growth of businesses and the service industry. To enable a robust technological ecosystem, a clear regulatory framework that encourages innovation while protecting the interests of the public should be adopted. With the advent of new business models like ride-sharing services, food aggregators, and online pharmacies, the government and regulators must modify existing regulations and amend the regulations so they are fit for purpose (Eggers, Turley, and Kishnani 2018).

In health care, technology helps lower costs by reducing redundant tests, providing aggregate information that helps draw a picture of population health, and enabling us to see correlations in a way never before possible (Bouchard 2016). E-Pharmacies may be the first step towards bringing strong data organisation and round the clock responsiveness to the table. Comprehensive policies that address the current reality but are cognisant of future technological advancements would improve the patient's experience and ensure their safety (T. Kumar 2018). A clear regulatory framework will also allow firms to solicit more capital and encourage new players.

E-pharmacy firms exist in the intersection of e-commerce and retail drugs, and the regulatory framework ought to acknowledge this peculiarity. When regulations don't evolve to deal with new industries, consumer needs and safety suffer (Bedi et al. 2018a). For instance, in the case of cab aggregators, the rules prior to 2015 did not even mention the term "on-demand information technology-based transportation aggregators." With the advent of technological advancements in a regulated sector, regulations need to change to incorporate innovations.

The implementation of e-pharmacy rules would, as one respondent said, harmonise the rules under which they operate. Several courts in India have ruled against e-pharmacies for operating without a drug license. They continued to operate, arguing that e-pharmacies are just intermediaries, and the pharmacy dispensing the drug is licensed (Leo 2019). Notifying the draft rules at the earliest could help clear some of the regulatory uncertainty.

However, even if the rules were to be implemented, the framework has some problems. It treats both brick and mortar pharmacies and e-pharmacies differently. Though they fulfil the same purpose of providing drugs to customers, they need to follow a different set of laws, registration requirements and safety requirements. The regulations that govern pharmacies, regulate not on principle, but firm type. This could, intentionally or unintentionally, lead to certain firm types being favoured or disfavoured by the regulations.

Padmanabhan (2019) argues that regulators have tended to ban or make the licensing process highly restrictive for new industries. Regulatory agencies are reluctant to alter the structure of the industry they regulate. The current approach to regulating a sector is 'rules-based' rather than principles-based. Such regulations are not primarily concerned with outcomes. They are a list of procedures with which a regulated entity must comply. These rules tend to become obsolete with time and the evolution of technology. However, if the government does not carry out the 'catch-up' process, the regulators may hold back progress (Roy and Shah 2012).

Regulators should instead identify problems in the existing regulatory framework because technological changes often affect sectors that are already operating under a set of rules (Padmanabhan 2019). A principles-based approach can accommodate innovations and changes in the market, without compromising on the underlying objective of protecting consumers (Bedi et al. 2018a).

To eat or not to eat

Role of markets and third-party auditors

Anubhav Agarwal, Manasi Mertia, and Jayana Bedi

Executive Summary

The COVID-19 pandemic led the government to impose a nationwide lockdown in India on 23 March 2020. Despite de-lockdown many restaurants continued to remain shut owing to operational difficulties and low demand. Per a recent report, as of mid-June, India's $65 billion foodservice market was functioning at only 10% (Kashyaap and Krishna 2020).

Apart from increase in online ordering and takeaways what has changed in the food industry these last few months? Consumers now demand more information on the quality and hygiene of the food products they consume. Now more than ever, food handlers need to reassure consumers of their hygiene and sanitation practices. The demand for food safety has created an opportunity for markets to respond. Aggregators like Zomato and Swiggy have already begun competing over food hygiene.

How has the state responded to new challenges in the food industry? We track measures that the food safety watchdog—Food Safety and Standards Authority of India (FSSAI)—has taken in the past three years to remain relevant as a regulator. In 2017, fearing the rapid and unregulated growth of aggregators, FSSAI brought e-commerce Food Business Operators (FBOs) under the regulatory radar. In 2018, recognising its limited enforcement capability, FSSAI empanelled private agencies to conduct third-party audits for FBOs. This move aims to reduce the need for monitoring and encourage self-compliance. In 2019 and 2020, FSSAI introduced a series of rating schemes, guidelines and training to enforce hygiene standards. However, uptake for these schemes and ratings has been low.

How has the market responded to new challenges in the food industry? In the past two years, third party auditors and food aggregators have evolved ingenious ways to respond to the demand for food safety and protect consumer interests. In 2018, a study examined how aggregators used trust based-mechanisms to facilitate transactions on their platform (Bedi et al. 2018b). In 2019, another paper highlighted the way food aggregators meet and assure quality standards on their platform (Anand and Bedi 2019). This paper seeks to study the role played by food aggregators and auditors in complementing, and often surpassing, FSSAI's initiatives in the three ways: standard-setting, monitoring compliance and imposing sanctions.

First, to retain their market share, food-related enterprises are competing over internal hygiene standards that go beyond FSSAI's mandate. Rather than adopting a one-size fit all approach, they have tailored standards and made them better suited to various types of service offerings. Second, to gain a competitive advantage, food aggregators encourage the adoption and maintenance of high hygiene and safety standards on their platform. Third, to build their reputation as 'trusted brands', aggregators have instituted mechanisms that penalise bad-faith actors and enforce the set standards.

Efforts in all three aspects end up producing beneficial outcomes for consumers. The role that aggregators and third-party auditors have come to play in food safety management may render the traditional role of the regulator obsolete. This paper points to the merits of a co-regulatory approach.

Introduction: Doorstep Delivery of food in India

Food safety involves precautions in the handling, manufacturing, preparation, storage and transport of food to prevent the occurrence of foodborne diseases. In India, unsafe foods impose an economic burden of $15 billion annually. A recent study shows that the number of foodborne diseases in India may rise to 177 million in 2030 (Kristkova, Grace, and Kuiper 2017).

Conventional wisdom suggests that information in food markets is often imperfect, costly to collect and asymmetrically distributed between sellers and buyers. While information deficiencies characterise most economic transactions, they present a bigger challenge for food markets. Food safety is an 'experience attribute' (which consumers can only determine after consuming the product). Unless there is signaling from the seller on hygiene and safety, consumers must incur ex-ante search costs to determine if the food is safe and aligns with their preferences. (Verbeke 2005; Hobbs 2003).

Moreover, the producers of unsafe food do not incur the costs of foodborne diseases. Regulatory responses are required to address these 'market failures' and ensure food safety (Hobbs 2003). The rationale behind public regulation is often the economic benefit from improved food safety—in terms of both reduced health burden and enhanced efficiency.[1]

However, three challenges may plague the government's response to food safety. First, the government may be prone to regulatory capture by private interests. Second, rulemaking is often subject to procedural requirements and political challenges that delay response to emerging threats. Third, limited state capacity may constrain the government's ability to monitor compliance and enforce rules. When the probability of detecting deviations is low, incentives of regulated entities to comply also reduce (Fagotto 2014).

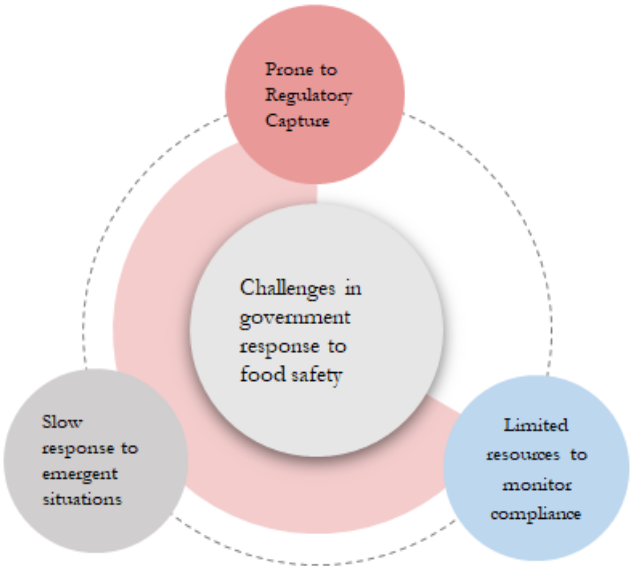


Figure 2.1: Three types of government failure. Adapted from: Fagotto 2014

International experience shows how markets have been able to bridge shortfalls in public regulation. Private food safety standards have emerged in response to consumer concerns. As these quality and hygiene standards gain credibility, players in the industry adopt them to secure a larger market share. Similarly, third-party auditing has helped to fill the gaps in government's enforcement capacity. Co-regulatory approaches, that blend private and public regulation, have gained popularity (Unnevehr and Hoffmann 2015).

1. The mycotoxin contamination of maize became a major public health issue in Kenya. There was a perception amongst consumers that marketed maize was more likely to cause illness than home-grown maize. The mistrust of marketed maize led consumers to grow their own maize, which is a staple. Improved food safety in this case may allow consumers to shift from maize and grow more profitable crops, thereby increasing overall economic efficiency (Unnevehr and Hoffmann 2015).

Over the past decade, the rise of food aggregators in India has shown that food safety management need not be the exclusive domain of the government.[2] Aggregators recognise that consumer retention is experience-driven, and small errors may drive consumers away. As a result, aggregators tend to focus on innovation and scalable models to make themselves more viable (Bhotvawala et al. 2016). Thierer et al (2015) argue that "information markets, reputational systems, and rapid ongoing innovation" play a significant role in solving information asymmetry problems, often "more efficiently than regulation".

The COVID-19 crisis has exposed the food industry to a host of new challenges in food sanitation and hygiene. Aggregators have responded nimbly and quickly to these changing market dynamics. They have monetised the premium that consumers place on hygiene, safety and quality, to produce favourable results for both buyers and sellers.

This paper examines how aggregators have leveraged technology and aligned incentives to ensure safe and hygienic food. We begin by examining how the government regulates food safety, strives to tackle emergent challenges and attempts to sustain its predominant role. Later, we explore how private players have responded to consumers' demand for "hygiene" as an additional service, and filled the vacuum in public regulation.

To understand the role played by private players in responding to the emergent circumstances and maintaining food safety standards, we conducted semi-structured interviews with:

- Three representatives of food-tech aggregators;
- A representative from the National Restaurants Association of India;
- Four third-party auditing agencies and two hygiene rating auditors empanelled by FSSAI;
- The Food Safety Commissioner of Tripura

We inquired about the different kinds of audits that restaurants on food-tech platforms undergo, nature of the audit process and mechanisms to uphold food safety and hygiene standards. The interviews helped us document the response strategy of different players and the shifts that have taken place post COVID-19.

Given state capacity constraints, and the increasing need to monitor enforcement of food safety standards, how can government agencies adopt a responsive approach to regulation? One way to accomplish this is to retreat from areas where markets are solving its objectives. Recent developments in the food industry emphasise the need for the state to transform its role—from setting standards and overseeing compliance to adjudicating disputes and penalising gross defaults.

How does FSSAI regulate food safety?

In 2006, the Parliament introduced the Food Safety Standards Act (FSSA) 2006 to streamline food safety regulations in India and establish the Food Safety and Standards Authority of India (FSSAI). In the past decade, FSSAI introduced a series of regulations on packaging and labelling, inspection and sampling of food products and the management of food quality at restaurants.

Food-tech aggregators have long operated in a regulatory vacuum. Over time, the "facelessness" of Food Business Operators (FBOs) listed on aggregator platforms raised concerns over the ease with

2. Swiggy expanded its food delivery from 8 cities in 2017, to more than 145 cities in 2019. Similarly, Zomato was only delivering in 17 cities until June 2018 and is now delivering in over 250 cities.

which they could flout hygiene norms. In 2017, FSSAI stepped up its scrutiny of food aggregators to ensure quality and safety.

2017: Food safety watchdog tightens control over food aggregators

The 2017 order mandates that e-commerce FBOs (E-FBOs) comply with FSSA 2006 and obtain Central Licensing for transportation, storage, distribution and other aspects of their supply chain.[3]

Figure 2.2: Liabilities introduced by FSSAI
Based on: Food Safety and Standards Authority of India 2017

In 2018, FSSAI passed another order directing aggregators to delist unlicensed restaurants and restaurants in violation of the provisions of FSSA 2006. Following this, Zomato and Swiggy delisted over 6500 restaurants from their platform (PTI 2018). Aggregators allow all kinds of diverse players to enter the market and meet the varied consumer preferences. Such regulations impose strict liability on aggregators and raise the stakes for innovation (Anand and Bedi 2019).

Limited bandwidth to enforce

On the one hand, FSSAI has ambitions to expand its sphere of control. On the other hand, it has limited bandwidth to monitor compliance and enforce the set standards. In 2017, an audit report on FSSAI's performance by the Comptroller and Auditor General revealed:

- *Inspections do not follow the prescribed frequency:* Of the 10 states studied, only one specified the periodicity of inspections for licensed FBOs. Other states leave it to the discretion of the

3. FSSAI released the order titled "Guidelines for Operation of E-Commerce Food Business Operators" on 2 February 2017.

District Officers. Of the 52 districts studied, 15 had not conducted any inspection between 2011 and 2016.

- *Manpower constraints:* State Food Safety Departments are understaffed. In 2016, the shortfalls of Food Safety Officers (responsible for inspections) ranged from 33% to 99% across states. Similarly, the shortfalls of District Officers ranged from 5% to 80% across 12 states.
- *Irregularities in food sampling:* Of the 10 sample states, five had not set any sampling targets. The states that had established targets did not meet them. In over half of the districts audited, Food Safety Officers lifted samples from less than 10% of registered and licensed FBOs.

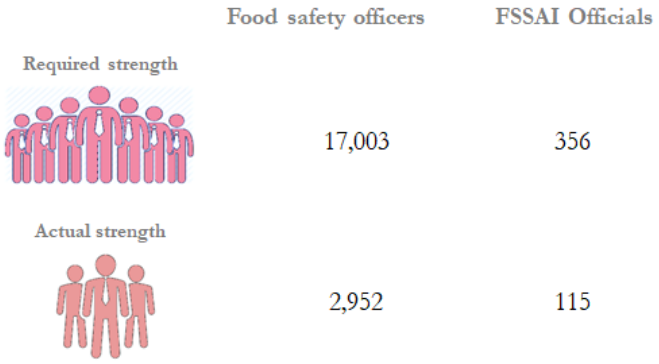


Figure 2.3: Required vs actual strength of Food Safety Officers and FSSAI officials.
Based on: Comptroller and Auditor General Audit Report 2017

2018: FSSAI introduces third party audits

Poorly enforced inspections create weak incentives for regulated entities to comply (Fagotto 2014). Further, the costs of preventing a food safety hazard through inspections may exceed the benefits (Garcia et al. 2007). FSSAI recognised its limitations in monitoring compliance and began to explore a public-private partnership to enforce its food safety standards. In the past decade, third-party audits have become a substitute for direct monitoring by the government.[4] Third-party audits help harness the private sector's auditing expertise and shift regulatory costs onto regulated entities. The government only has to deal with a smaller number of accredited auditors rather than a large number of regulated entities (McAllister 2012).

In 2018, FSSAI released the Food Safety Auditing Regulations. It mandates that all high-risk FBOs with a Central License get themselves audited by FSSAI-empanelled private auditors.[5] The auditors check for compliance with Schedule IV of the Food Safety and Standards (Licensing and Registration of Food businesses) Regulation 2011 (FSS Regulations 2011).[6] FSSAI also released an auditor manual to lay out the duties of auditors, frequency of audits (based on past performance) and man-days required per audit.

The 2018 Auditing Regulations mark a shift in FSSAI's enforcement strategy. The regulator moved from an "inspector" approach to a more collaborative one, in ensuring compliance with the FSS Act and regulations. Per the FSSAI, these regulations intend to reduce food safety inspections,

4. Third-party auditing refers to a system in which regulated entities contract private auditors (accredited by government-approved accreditation agencies) to make a regulatory compliance determination (McAllister 2012).

5. High risk includes FBOs involved in: dairy products and analogues; meat and meat products; fish and fish products; eggs and egg products; foodstuffs intended for particular nutritional uses; and prepared food (eg. catering).

6. Schedule IV of these regulations require FBOs to ensure that they handle ingredients, products and packaging materials in a suitable and hygienic environment.

strengthen food surveillance systems, encourage a culture of self-compliance among FBOs, and ensure safe food for the consumers.

2019: FSSAI rolls out Hygiene Ratings and training for food handlers

Recognising that consumers now expect hygiene signals from restaurants, FSSAI rolled out the Hygiene Rating scheme in 2019. This voluntary scheme awards restaurants a score based on their compliance with Schedule IV of FSS Regulations 2011. Interestingly, aggregators like Zomato had already begun experimenting with the concept of hygiene ratings in 2017.[7]

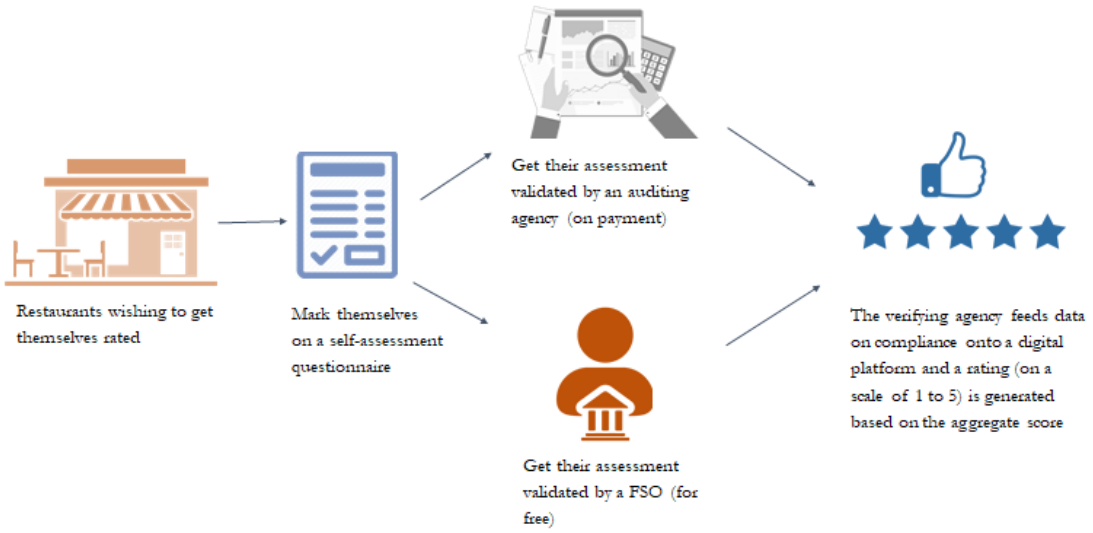


Figure 2.4: The process restaurants need to follow to obtain a Hygiene Rating. Based on Food Safety and Standards Authority of India 2018

In 2019, FSSAI also introduced the Food Safety Training and Certification (FoSTaC) programme to certify and train food safety supervisors. It mandated that all food businesses with a Central or state licence have at least one trained and certified food safety supervisor for every 25 food-handlers. The FoSTaC programme picked up soon after its launch. Our respondents stated that the program was "extremely valuable" for their food handlers. As of September 2020, 3,55,594 food safety supervisors have been trained (Food Safety and Standards Authority of India 2020).

2020: FSSAI releases pandemic guidelines and training programs

FSSAI's first response to the pandemic came in April 2020, when it released guidelines for food handlers to control the spread of COVID-19. The guidelines cover three aspects: maintenance of personal hygiene among food handlers and within the FBO premises; physical distancing; and cleaning and sanitation. Per the guidelines, FBOs must ensure that food handlers are aware of the symptoms of COVID-19 and screened before entering the premises. Further, FBOs must establish a local emergency response team with a COVID-19 coordinator "who shall be equipped with lists of local hospitals, PPE kits and disinfectants". While FSSAI has released the guidelines, there is no clarity on how FSSAI will track implementation.

In May, FSSAI also launched a mandatory COVID training programme for food handlers under FoSTaC. The programme trains food handlers on the correct way of washing hands, opening PPE

7. FBOs scoring 4 or above are eligible to apply for a "Responsible place to Eat" tag.

kits and maintaining physical distance in the kitchen. As on 5 August 2020, 70,711 individuals were trained under the programme.

How do aggregators and auditors regulate food safety?

Information asymmetry lies at the heart of the debate on whether the government should intervene to protect consumers. Proponents of increased control argue that it is not in any food provider's interest to give more information to consumers. Aggregators and their use of trust mechanisms to bridge information gaps show how markets can solve problems that were hitherto considered unsolvable without state interference.

Regulation is the "promulgation of prescriptive rules as well as the monitoring and enforcement of these rules by social, business, and political actors on other social, business, and political actors" (Levi-Faur 2010). McAllister 2014 identifies the three elements of regulation as:

1. Rule creation, or standard-setting
2. Rule implementation, i.e. deploying mechanisms for monitoring compliance
3. Rule enforcement., to correct observed deviations.

Several challenges plague all three aspects of public regulation. Rule-making is often "ossified", rule-implementation is delayed or "subject to slippages" and rule-enforcement is limited or "unreliable" (McAllister 2014).

Food aggregators, third party auditors and market associations now play a role in all three aspects of food safety regulation. These private players recognise that food safety is monetisable, and in the post-pandemic world selling 'hygiene' would be profitable. Consequently, they have devised ingenious ways to supplement, and perhaps even substitute, the efforts of the state.

Setting food safety standards: Rule-making

Industry associations and third-party agencies often set health and safety standards, to preempt new regulations and address consumer concerns (McAllister 2014). In the past three years, market associations and food aggregators in India have developed their own voluntary tags and certifications on food quality and hygiene. They have also modified FSSAI standards based on changing consumer preferences and market concerns.

Three key arguments are made in favour of private standard-setting. First, private standards are negotiated quickly and frequently to adapt to market dynamics. Second, while government regulation usually applies to high-risk sectors, private standards tend to cater to all enterprises irrespective of their risk profile. Third, private standards are often able to align incentives towards compliance. Sellers are more likely to comply with private standards that secure market access for their products, than with government regulations that invite sanctions.

Use of voluntary certifications and international best standards to remain competitive

Use of voluntary tags and certifications: Sellers use different tools to communicate the quality of their product. Some tools include: referrals, guarantees, warranties and product demonstrations. These tools build trust between buyer and seller (Klein 1998). One way for sellers to provide quality and safety assurance to consumers is by opting in for certifications and tags. These voluntary tags are often based on the widely accepted standards in the industry and serve as stamps of approval.

The National Restaurants Association of India (NRAI) is working on developing a "Safe Place to Dine" tag for the Food and Beverage industry. Given that the pandemic has commodified hygiene, this certification aims to signal an FBO's hygiene and sanitation practices.[8] The tag/certification will have quarterly validity and encompass standards on raw materials, cleaning and sanitation, storage, and other hygiene requirements. It will help consumers distinguish between quality and sub-standard food products and alleviate their concern regarding unsafe food. Consumer response, in turn, will encourage FBOs to comply with hygiene requirements and obtain this tag. NRAI also released detailed guidelines for restaurants, specifying how food must reach from"pan to plate". These guidelines are tailored to suit the needs of caterers and restaurateurs.[9]

Setting standards based on international best practices: Aggregators consistently improve their internal hygiene and sanitation practices to remain competitive and ensure survival. One recurrent area of contention in FSSAI's Schedule IV checklist is the ambiguity of certain parameters. Aggregators like Swiggy borrow learnings from international standards to make their checklists more objective. While Swiggy treats the Schedule IV checklist as a benchmark, it tailors the parameters and makes them more detailed to remove ambiguity.

Feedback loops to accommodate emergent circumstances

For food safety we need to build standards thoughtfully and adapt them to emergent situations. The pandemic demonstrates how markets anticipate consumer concerns and alleviate them.

Auditors that we interviewed mentioned that FSSAI-prescribed man-days for different kinds of audits are more than the days actually required for the audit process. This forces auditors to spend more time at the premises than they otherwise would have. This is inefficient for two reasons. First, FBOs have to bear greater cost as they pay for an audit on a per day basis. Second, auditors are left with fewer man-days to conduct other audits as they are subject to a limit of 100 man days per year. Some auditors also argued that the FSSAI prescribed audit frequency is low. Finally, auditors mentioned that the grading scheme leaves room for subjectivity.[10] Although auditors have sent their feedback to FSSAI, they are yet to receive a response.

Frequent audits and pilot runs to create a feedback loop: Aggregators have tackled some of these challenges by doing frequent audits and pilot runs. An aggregator that hires third-party auditors to audit its private brand kitchens, pilots each audit after designing the checklist.[11] Following this, the aggregator revises its checklist based on feedback received from the auditors and auditees. This cooperative approach to auditing is a stark contrast from the "command and control" approach of inspections. This feedback loop serves a two-fold purpose:

1. It allows the aggregator to check the feasibility of the audit and possible areas of contention between auditors and auditees.
2. Aggregators can then train kitchen operators on the new standards and familiarise them with the audit process.

8. NRAI took inspiration from the voluntary adoption of Wool Mark in Punjab (to certify that the product is woollen) by local manufacturers. It shows how markets accept an international standard as a benchmark to certify product authenticity.

9. NRAI guidelines include specifications on delivery packaging, body temperature of food handlers and product temperature at pick up time, uniform hygiene, infographics on kitchen high-risk touchpoints and guidelines for dine-in.

10. Auditors argued that there is no guidance on what counts as 'partial compliance' on part of the FBOs.

11. Access kitchens are 'delivery-only'. The aggregator provides the capital and infrastructure of these kitchens.

Covid-specific hygiene norms in checklists: The pandemic disrupted supply chains, audit schedules and demand for dining out. Private players were forced to ideate and innovate, and do so within a timeframe that did not render them obsolete.

Auditors and aggregators frequently modify their standards to keep them relevant for new circumstances. A Hygiene Ratings auditing agency that we interviewed, is currently doing Hygiene Ratings using a 57-point checklist as opposed to FSSAI's 47-point checklist. The agency has modified FSSAI's checklist to incorporate covid-specific hygiene standards.

An aggregator has also designed a 22-point checklist, combining FSSAI and WHO norms, for COVID compliance audits. While FSSAI released COVID-guidelines only in April 2020, the aggregator had already begun audits for COVID compliance at the end of February. This allowed FBOs on the platform to remain operational during lockdown and curtail transmission.

Dissemination of food safety standards to nudge adoption

For food safety standards to be effective, enterprises need to be made aware of the standards and encouraged to adopt them. Aggregators and auditors are complementing FSSAI's efforts to equip food handlers with training and other tools. Some ways in which aggregators and market associations nudge the adoption of safety standards include:

- Push notifications to delivery partners to remind them of the social distancing norms and enhanced hygiene protocols they need to follow;
- Training all food handler in private brand kitchens and warehouses; and
- Multilingual training through third parties to reach FBOs across the country..

Setting standards ex-ante and training delivery partners/FBOs on these standards helps anticipate and bring down consumer complaints

Monitoring compliance with standards: Rule-implementation

Rule implementation is the development and deployment of mechanisms to monitor compliance. Developing countries often face budget constraints and have undermanned public agencies—both essential for proper enforcement. Further the food industry has several small firms that become increasingly difficult to monitor (Eskeland and Jimenez 1992). We find that markets leverage technology and use incentive-based mechanisms to increase compliance with rules, including by those monitor the rules.

Inter-state variations: Implementation is at the mercy of state Food Safety Commissioners

When a regulated entity lacks trust in the bureaucracy and considers it to be corrupt, bureaucrats tend to act in accordance with these expectations while implementing rules (Mehta, Walton, et al. 2014). Our interviews reveal that a similar mistrust characterises the relationship between FSSAI and FBOs. One of our key respondents pointed out that state Food Safety Departments are highly politicised and rife with corruption. Even though food safety standards apply across states, enforcement depends on the state Food Safety Departments. How stringently a Food Safety Commissioner implements standards may vary from state to state.

In some cases, high-ranking officers are assigned the role of Food Safety Commissioner as an additional portfolio. This may reduce time on task for the Food Safety Commissioners. Respondents argued that if an official is assigned the role of a Food Safety Commissioner along with

that of a Health Commissioner, then they are likely to devote less time on food safety. While health is a big-budget department, the allocation for food safety is relatively small.

Food safety regulation in Tripura: Tripura has around 1,200 restaurants, of which only 200 are registered and licensed. All restaurants are state license holders.

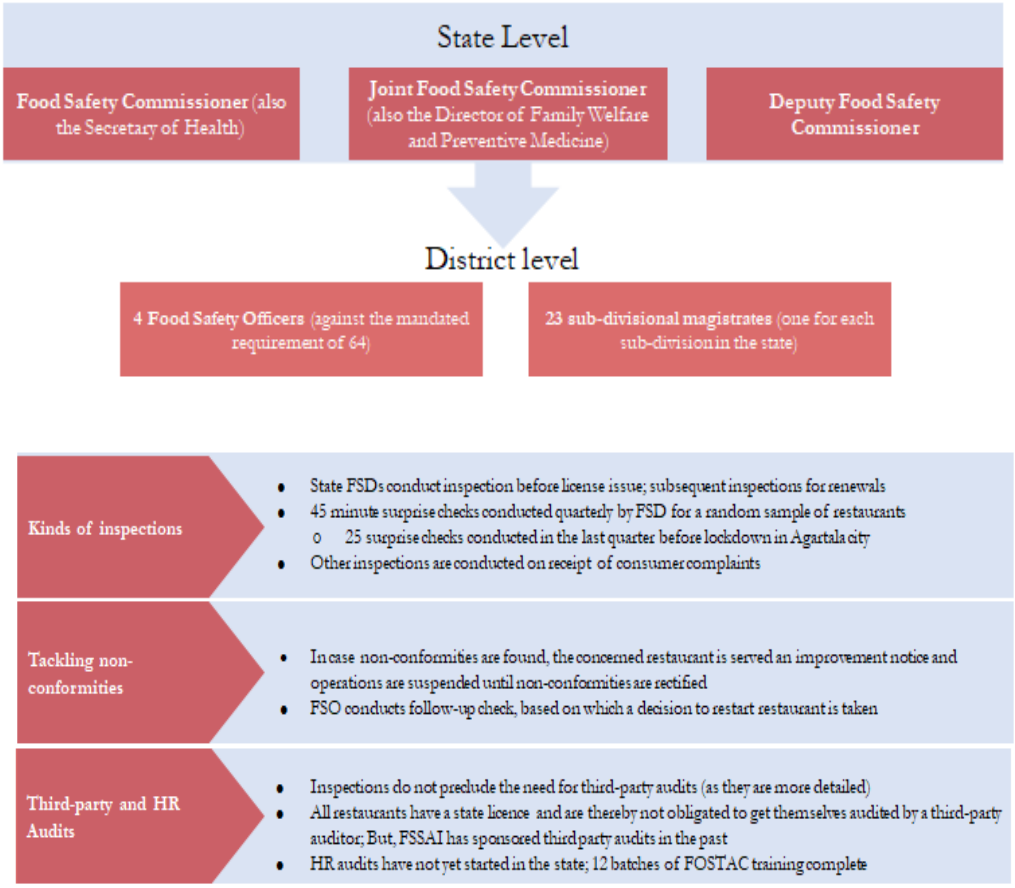


Figure 2.5: Current regulatory framework in Tripura (derived from interviews)

Aggregators deploy tech for uniform implementation across states

Unlike FSSAI, aggregators are not subject to geographical limitations in implementing rules. They leverage technology to ensure that all FBOs listed on their platform comply with their food safety standards. Tech-based solutions not only help aggregators track compliance better, but also implement standards cost-effectively.

FSSAI requires E-FBOs to ensure that sellers on their platforms are compliant with FSSA 2006 and the rules under it.[12] This mandate has pushed aggregators to move beyond match-making and assist FBOs in regulatory compliance. Some examples include:

- *Dashboards and trigger warnings for renewals:* Intermediaries such as Hungry Wheels have created dashboards where FBOs can upload their documents and get licenses issued/renewed with the assistance of a dedicated staff. Given the inter-state variations in regulations, a

12. Per FSSAI order dated 02.02.2017 on "Guidelines for operation of e-commerce food business operators".

dashboard becomes an efficient way to identify gaps in compliance. Another aggregator gives a digital trigger warning to FBOs 60 days prior to their FSSAI licence expiry.

- *Due diligence checks before listing FBOs:* Some aggregators conduct due diligence checks before listing FBOs on their platform. They ensure that the restaurant holds a valid FSSAI license and conduct a third party audit to check for non-compliance with other regulations.

Aggregators commonly use audits to monitor and encourage compliance. Third-party auditors "attest to the continuing conformity of a product, process, system, or person" (McAllister 2012). The aggregator we interviewed commissions audits at a higher frequency than what FSSAI mandates. Frequent audits help in quick trouble-shooting, particularly when consumer complaints are on the rise. Further, unlike FSSAI's Schedule IV audits which are planned in advance, these audits are often unannounced.[13] Unannounced audits check the actual level of compliance with the standards and ensure readiness of auditees at all times.

Table 2.1: Nature of audits conducted by an Aggregator

What audit?	Who undergoes?	Who conducts?	Announced?	Frequency?
Onboarding audit	Marketplace restaurants	Third-party auditors	Announced	Once (at the time of listing on the platform)
External audits	Private Brand/ Access Kitchens	Third-party auditors	Unannounced	Once every Quarter (or in response to consumer complaints)
Internal Quality Team Audit	Private Brand/Access Kitchens	Swiggy	Unannounced	Once a month
FSSAI Schedule IV audits	Private Brand/ Access Kitchens	Third-party auditors	Announced	Once a year
COVID compliance	Private Brand/ Access Kitchens	Swiggy	Unannounced	Began with: once in 3 days (on-site audits). Now: once a week (virtual audit)

Incentive based mechanisms to encourage prompt adoption of safety standards

Disclosures at the point of purchase help bridge the information gaps between buyers and sellers more effectively (Fleetwood 2019). In 2013, a survey of 2000 residents in Los Angeles showed that 91% liked the restaurant hygiene grading system, 77% noticed the grade most of the time and only 3% stated that they would frequent a low rated facility (Fielding, Teutsch, and Caldwell 2013).

Consumers should have timely access to information, be able to comprehend it, and apply it to their decision-making process. The display of hygiene ratings (referred to as "Scores on Doors" in Australia and the United Kingdom) increases transparency in food safety. These ratings summarise the findings of an inspection or audit with keywords, numbers or symbols. Experience of countries like the United States show that making inspection reports available online does little to foster this transparency. Unlike ratings, these reports are lengthy, confusing and difficult to understand.

13. Per the FSSAI auditor manual, the auditor agency must send a detailed audit agenda to the FBO at least eight days in advance.

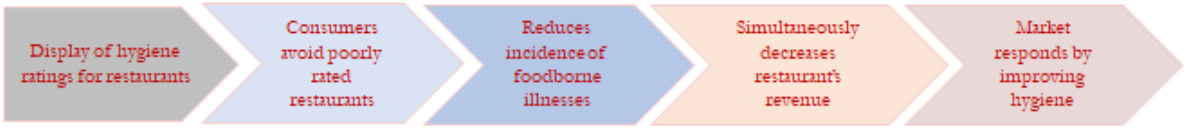


Figure 2.6: Display of ratings and its impact on hygiene.
Adapted from Fleetwood 2019

Ratings displayed to improve hygiene: Aggregators and third-party auditors have also devised mechanisms to communicate hygiene standards of restaurants on their platforms. These signals minimise information gaps on food quality and safety for the buyers and incentivise restaurants to maintain high standards to keep up their market share.

When information on hygiene and food safety is readily and freely available to consumers, they are likely to take these ratings into cognisance while choosing between restaurants. According to Zomato, "86% customers say they would only eat at a restaurant with a hygiene rating of 3 or above". A Zomato spokesperson also stated that hygiene rated restaurants fare 20% better than other restaurants on the platform.

In 2019, FSSAI rolled out Hygiene Ratings as a voluntary scheme to check a restaurant's Schedule IV compliance and award them a score. However, restaurant opt-in at the time was low. Our respondents cited three reasons for this. One, restaurants were unaware of the scheme. Two, those who were aware, were concerned about the impact of low scores on their businesses. Finally, even though the scheme allows restaurants to get themselves audited for free by a Food Safety Officer, not many restaurants exercise this option. Respondents attributed this to the general fear among restaurants that government inspectors would engage in "fault-finding" or increase rent-seeking opportunities.

Interestingly, markets have deployed various mechanisms to popularise Hygiene Ratings:

- Some aggregator platforms allow users to filter restaurants based on their hygiene ratings. Just like cuisine and price bands, this makes 'hygiene' a factor in consumer's decision-making. As a result, FBOs are encouraged to compete on hygiene for retaining their consumers.
- Some Hygiene Rating auditors have offered free food safety training to their clients. Auditors use this as a strategy to expand their market share and boost demand for Hygiene Ratings.

Even though Hygiene Rating is optional on aggregator platforms, opt-in rates have been high. Zomato, for instance, has over 10,000 hygiene rated restaurants on its platform. This figure corresponds to about 80% (by volume) of their total online ordering business (Goyal 2020). The system of Hygiene Rating has helped Zomato cut down consumer complaints about unhygienic food by about 92% (Goyal 2020).

Real-time assessment of compliance with hygiene standards: Hygiene Ratings reflect the hygiene standards being maintained by restaurants at a particular point in time. These ratings do not guarantee a restaurants' performance in the future. To tackle this, a third-party auditor, has developed the concept of Hygiene Quotient. They use LiveView technology to collect visual evidence for hygiene on a real-time basis and give instant feedback to the restaurant. Based on this, the restaurant is awarded a score on a daily basis.

How have aggregators responded to the pandemic?

COVID-19 brought the food industry to its knees. Given FSSAI's slow regulatory response, market associations and food aggregators in India stepped up to meet the new consumer needs. Business process reengineering and agility helped the food industry to reopen despite the pandemic.

Ensure COVID compliance for delivery partners: Since food businesses are largely sustaining on deliveries, aggregators have taken measures to prevent delivery partners from contracting the virus and limit the possibility of community spread. Swiggy, for instance, has revamped its order assignment algorithm to minimise waiting-time and avoid long queues of delivery partners at restaurants.[a] The aggregator modified its algorithm and made it ready to launch soon after lockdown restrictions were lifted, in May 2020. The revamped model reduced waiting time for partners by 25% (Moghe 2020). Swiggy also audits delivery partners to monitor compliance with other hygiene practices such as hand washing, wearing masks and temperature checks. This has helped Swiggy bounce back and prevent restaurant shutdowns. While regulators may be risk averse, market players are quick to rehaul old mechanisms and move with time.

Keep audit schedules on track: Since physical audits have temporarily come to a halt, aggregators and auditors are finding ways to avoid disruptions in their audit schedules. They have begun developing the tools and mechanisms required to conduct virtual audits and assign a real-time score to FBOs.

Adapt service offerings to allow business-as-usual: Other aggregators like Zomato, have introduced "contactless dining" to minimise customer contact at high touchpoints in the restaurants. Contactless dining allows customers to explore the menu of a restaurant, order their meals and make bill payments through an app (Gupta 2020).

Communicate COVID Compliance to reassure consumers: On the one hand markets are making supply-chains COVID-proof, on the other hand they are attempting to revive demand. Aggregators achieve the latter by disclosing a restaurant's safety/hygiene standard on their platform. Swiggy and Zomato award the 'Best Safety Standards' and 'Max Safety Standards' tag respectively to restaurants that comply with their COVID hygiene norms.[b] Swiggy also asks for objective evidence (documentative or pictorial) along with self declaration, before it awards the "Best Safety Standards" tag to a restaurant. These tags serve as a "reward" to restaurants that spend more on covid-compliance. As consumers begin to prioritise safety, Swiggy has been receiving more requests from restaurants to get the Best Safety Standards tag.

a. The algorithm predicts preparation time for food and travel time for the delivery partner, so they can be assigned to an order just as the preparation is done. This new algorithm seeks to connect delivery partners with the restaurants (rather than specific orders) so they can pick up any order that the restaurant has prepared and deliver it.

b. These include mandatory masks and temperature checks for employees, sanitation protocols and safe packaging of food.

Processes to monitor third-party auditors

Third-party auditing is not without challenges. First, given that regulated entities pay third-party auditors, the former may have the incentive to give payoffs to the latter for favourable ratings. This may result in a conflict of interest (McAllister 2012; Powell et al. 2012). Second, third-party auditors do not have the legal authority to close the establishment. Without a regulatory body to review reports, auditors may not report the non-compliances observed during the audit, and deficiencies

may remain unresolved (Powell et al. 2012). The pitfalls of third-party auditing highlights the need for monitoring the auditors.

FSSAI monitors the audit process in two ways. First, it reviews all audit reports that auditors mandatorily submit. Second, it conducts random verification inspections to check if auditors are auditing FBOs as per the manual. Although all auditors we interviewed claimed that they submitted their audit reports to FSSAI, they had not heard back on any problems. Further, no auditor was informed about any random verification inspection. Either the auditors we spoke to have conducted foolproof audits thus far, or the auditing process is not monitored regularly. Finally, auditors also mentioned that FSSAI was supposed to develop a link where auditors could upload their report. But, the process is still underway. Auditors continue to scan their hand-written reports and send them to the designated official. Stacking-up reports for review may delay troubleshooting.

Aggregators, on the other hand, leverage low-cost technological mechanisms to monitor auditors. For instance, the aggregator we interviewed only contracts auditors that have an online app. The online app must have geo-fencing technology, which ensures that the audit process can only begin once the auditor is within the FBO premises. Online applications, unlike the hand-written reports sent to FSSAI, allow for audit reports to be uploaded and monitored real-time. Further, the aggregator's own team undertakes random inspections to monitor the audits (and in some cases sample audits before hiring auditors).

Aggregators are also experimenting with new ideas like "mystery audits", where interns are required to visit restaurants and pose as customers to judge the quality of customer experience. This helps tackle the conflict of interest between auditors and auditees (wherein the latter pays the former).

Internal quality assurance: Auditing agencies also monitor their own auditors to curb malpractices and prevent reputation damage. Equinox, for instance, has an in-house app IRIS, custom-designed for geo-fencing, date and time stamp, and capturing images to ensure that the audit evidence is recorded. It uses the LiveView technology for a three-layer check on its auditors.

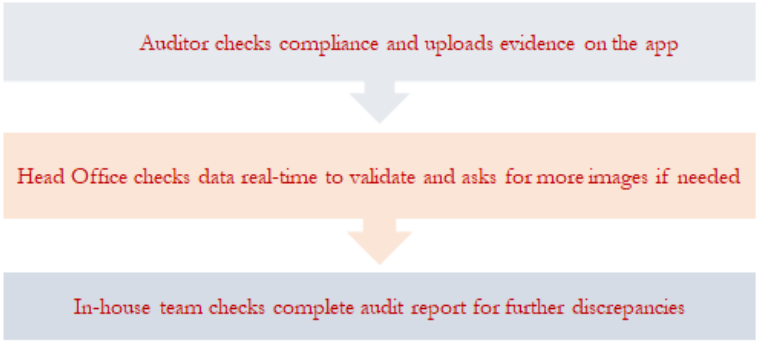


Figure 2.7: Equinox Lab's three-layered check on auditors.

Imposing sanctions for deviations: Rule Enforcement

Traditional regulatory enforcement is based on deterrence theory. Regulated entities comply with a law when the expected costs of non-compliance (i.e. cost of sanctions and probability of detection) exceed benefits. Deterrence weakens when sanctions are weak or when detection probability is low. Enforcement thereby involves imposing sanctions and correcting deviations. However, under weak enforcement regimes problems persist for longer.

Third party auditing, based on the cooperative theory of compliance, provides a useful alternative. In voluntary programs, private regulators often provide a label or recognition that can be revoked in instances of gross non-compliance. Further, third-party auditors are likely to approach a regulated entity in a cooperative manner (unlike a government inspector) and encourage greater information exchange. Auditors prevent misconduct by simply withholding approval, instead of imposing punitive sanctions. Disclosing results of audits also acts as a powerful sanction since it involves "naming and shaming" (McAllister 2014).

Enforcement strategies adopted by FSSAI

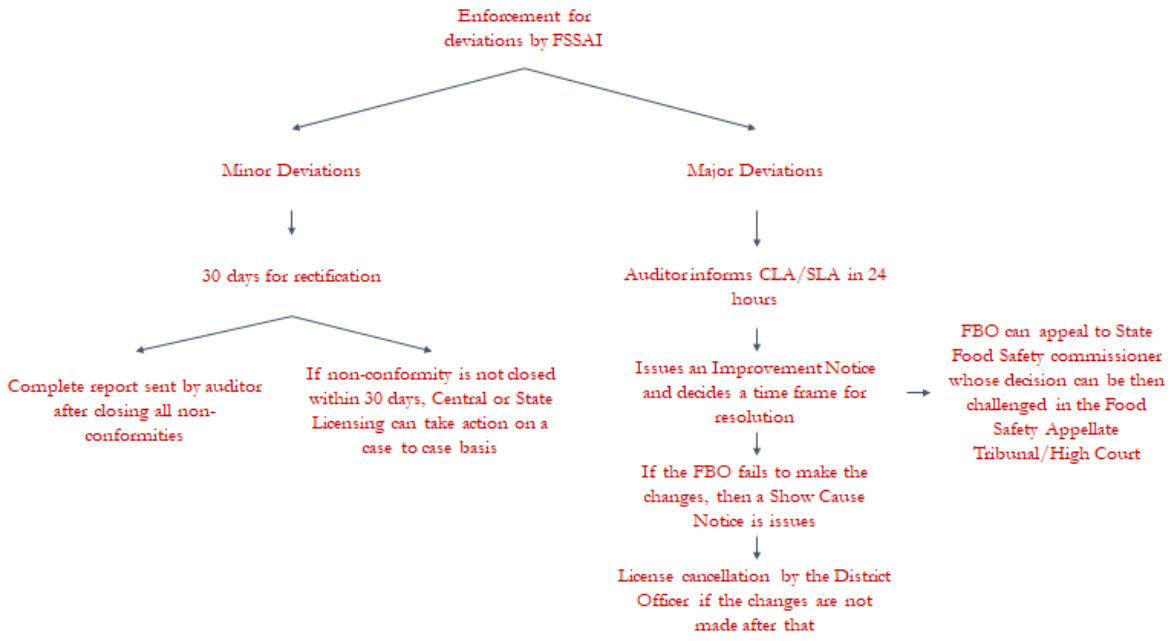


Figure 2.8: FSSAI's enforcement mechanism for minor and major deviations.
Based on: Food Safety and Standards Authority of India 2018

Sanctions by FSSAI for major deviations: Per FSSAI's Auditor Manual, an auditor needs to report major non-conformities to the Central or state Licensing Authority via email, telephone or web portals within 24 hours.[14] The Authority can then take regulatory action against the FBO depending on the gravity of the non-conformity. The auditors we interviewed mentioned that FBOs typically resolve major non-conformities. Thus far, auditors have not witnessed any case where regulatory authorities had to escalate the matter.

Sanctions by FSSAI for minor deviations: In the case of minor non-conformities, auditors give FBOs 30 days for rectification and send a complete audit report to FSSAI after checking the corrections.[15] Per the manual, auditors must report any failure to rectify minor non-conformities to the Central or state Licensing Authority. The authorities can then take action "as the case may be".

14. Major nonconformities occur when there is a serious failure in the Food Safety Management System (FSMS) of the FBO which may result in adverse health consequences or are possibly even fatal.

15. Minor non-conformities are contraventions which may not cause any adverse health consequence.

Enforcement strategies adopted by Aggregators

Consumers have become more conscious about their health and wellness. Aggregators who are competing to become 'trusted brands' need to uphold high health and hygiene standards and penalise bad-faith actors (Confederation of Indian Industry and GS1 India 2012). The aggregator we interviewed mentioned how FSSAI's Maggi ban in 2015 tainted the brand name and not the factory where the irregularity occurred.[16] The risk of reputational losses creates strong incentives for large players (like food aggregators) to strictly enforce private standards (Fagotto 2014).

At the same time, competition between aggregators keeps enforcement strategies in check. Aggregators avoid imposing stringent requirements that may drive restaurants to other platforms. They naturally attempt to balance protecting consumers and minimising compliance burden.

Speedy response to consumer complaints: Swiggy, for example, conducts unannounced audits of marketplace restaurants when multiple complaints arise. In the case of private kitchens, auditors report all non-conformities to Swiggy's Head Office. Direct involvement of the head office makes the process more "stringent". Further, the Head Office temporarily shuts down private kitchens that do not comply with even a single parameter in the COVID audit. Some aggregators also use a software to identify recurring non-compliances with a particular parameter to permanently de-list the private kitchen from the platform.

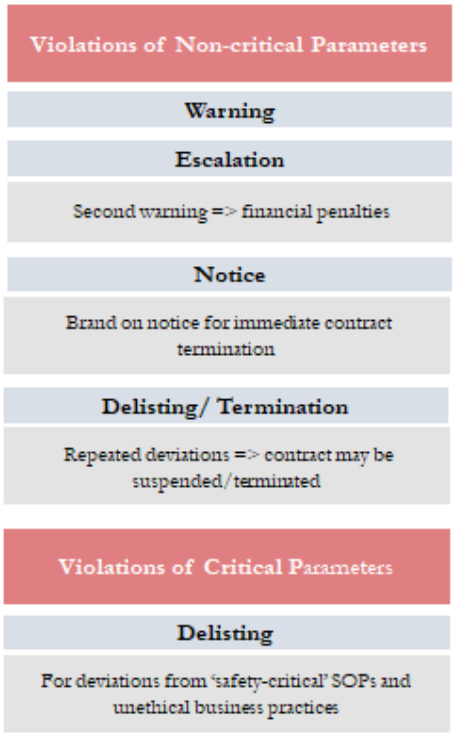


Figure 2.9: Hungry Wheel's four-tier response to non-conformities.

Use of enforcement pyramids to tackle deviations: Hungry Wheels, for example, follows a 4-step process to sanction deviations from non-critical Standard Operating Procedures (SOPs). The penalties become increasingly severe up until the fourth deviation for non-critical issues. Finally, Hungry wheels delists mobile restaurants that deviate from safety-critical SOPs.

Conclusion

For long, India's traditional response to challenges of information asymmetry and externalities in the food industry has been greater government intervention. While this may have been appropriate earlier, trends in the past three years show how markets have naturally aligned themselves to protect consumer interests. Aggregators have evolved from monetising information gaps and transaction costs to food safety and hygiene. Our paper presented how aggregators are competing as *Quasi Regulators*, given the need to retain their consumer base. This competition helps drive up standards and monitor compliance in a cost-effective way.

16. In 2015, Maggi noodles (Nestle India), was banned by FSSAI. This led the company to lose revenue worth Rs 450 crore.

Unlike government regulators, private players have been quick to absorb and respond to market feedback. As consumers begin prizing hygiene, safety, empathy and quality over discounts, ambience and variety, aggregators have also adapted their interfaces to reflect these concepts. The aggregator model serves to show how a voluntary process of encouraging quality and safety, fares against the coercive approach of imposing them (Desai 1998). Market players tend to willingly comply with standards that make them more competitive and ensure survival.

What does this mean for the food industry? Preemptive precautionary regulations are not the only way to address consumer concerns and corporate malpractices (Thierer et al. 2015). Market forces have, with minimum coercion, been able to accomplish what regulators around the globe struggle to do: align incentives to ensure that sellers protect the interests of consumers. Aggregators are doing this in two ways. First, aggregators are attempting to ensure that producing safe food becomes profitable and has monetary rewards for FBOs. Second, aggregators are creating a self-regulation model. Although consumers may still have to bear the risk of consuming unsafe foods, they do so with increasing knowledge. This departs from the caveat emptor approach.

In India, governments typically demonstrate "weak processes to absorb market feedback" (Roy et al. 2018). We also lack the accountability mechanisms that help ensure high performing regulators (Shah 2016). While the intent is to drive up profits, aggregators and third party auditors seek the same goal as government regulators—providing consumers with safe food. Can the government adapt its role and make itself more relevant as a co-regulator?

The right to sow

Regulatory limbo and farmer protests

Israr Hasan, Mozaien Tak,
Sanyam Gangwal, and Ritika Shah

Executive Summary

India has not allowed commercial use of any Genetically Modified (GM) seeds, except the initially approved varieties of Bt cotton. There is a lack of consensus and the regulatory environment is stuck in limbo. The regulatory framework is ambiguous, protests are widespread, and the future of GM seeds is unclear. Through interviews with farmers and public officials, this paper looks at the recent protests in Maharashtra and the 'No Objection' to field trials requirement.

All parties, irrespective of their position on GM seeds, have expressed dissatisfaction at how the Genetic Engineering Appraisal Committee (GEAC) and the Ministry of Environment, Forest, and Climate Change (MoEF&CC) have created uncertainty for farmers and corporations. While GEAC is responsible for the scientific appraisal of proposals to release GM seeds into the environment, MoEF&CC takes the final call. There have been multiple instances when GEAC approved a crop for environmental release, but MoEF&CC held it back under activist pressure. Science has taken a backseat to politics.

Despite the ban, farmers continue to source GM seeds from black markets. In 2019, over 1,000 farmers protested in defiance of laws that ban GM seeds. Farmers openly sowed a new, but unapproved, GM variety—HTBt cotton—in Maharashtra. Some claim this is the first pro-GM farmer protest in the world. Protesting farmers, according to our interviews, demand the freedom to access markets and technology. However, this straightforward ask is met with fierce opposition by the anti-GM coalition. Both camps—anti- and pro-GM—have labelled their struggle as satyagraha. The philosophy of the anti-GM movement is elaborated widely in academic and journalistic writing. The movement benefits from the presence of substantial national and international voices. However, the pro-GM movement in India is at a nascent stage, and the voices of farmers are largely underrepresented in academic writing. To that end, this paper attempts to capture farmers' notions of satyagraha and their reasons for participating in the movement.

We argue that the layers of bureaucracy, the involvement of multiple bodies in issuing permission for commercial use, the ambiguous and opaque regulatory procedure to obtain this 'no objection', and the ban culture inadvertently benefits the anti-GM movement. The lack of regulatory clarity or coherence puts a question mark on the purpose of the current expansive regulatory frameworks.

Farmers through protests jostle for their voices to be heard and hope to move the regulatory logjam. Global debate around GM seeds reveals that these decisions are not easy. But, this is precisely the task of a regulatory structure: reach a consensus transparently and fairly taking into account the demands of all stakeholders.

This paper presents the arguments of the pro-GM farmers as articulated by the farmers. Given the importance of farmers as stakeholders in the debate on GM regulations, we contextualise the experiences of farmers, their asks of the government, and the motivation behind using Gandhi's methods. We also look at the requirement to obtain No Objection Certificates from states, highlighting the lack of information and transparency in the state-level procedures that are likely to hinder research on such seeds.

Introduction: Seed choice in India

Modern biotechnology includes the genetic modification of plants to introduce traits such as insect and disease resistance, herbicide tolerance, and improved nutritional quality. The United States Department of Agriculture defines agricultural biotechnology as "a range of tools, including traditional breeding techniques, that alter living organisms, or parts of organisms, to make or modify products; improve plants or animals; or develop microorganisms for specific agricultural uses".

The Flavr Savr Tomato, developed in the US, was the first commercially released Genetically Modified (GM) crop in 1994 (Bruenings and Lyons 2000). In India, the government till date has approved the GM variety of only one crop, i.e., Bt cotton for commercial release. In 2012, approximately 72 lakh farmers cultivated 10.8m ha of Bt cotton, accounting for 93% of the total area under cotton cultivation (James 2012).

Figure 3.1: Global spread of GM crops.
Adapted from: International Service for the Acquisition of Agri-biotech Applications 2019b.

The use of GM seeds in India is a contentious topic with strong anti- and pro-GM voices. The anti-GM coalition has raised concerns about the potential impact of GM crops on health and the gene flow from GM seeds to non-GM crops. Although there is no conclusive evidence of harmful effects of GM crops on the environment (Agarwal 2018), some researchers like Taleb et al.(2014) argue that unless the absence of potential harm can be established with near-certainty, GM crops should not be allowed. In such cases, they argue, the environmental risk will be systemic and impossible to undo.

Opponents also raise concerns around monopolisation of the seed market by a few corporates (Specter 2014), and how that may lead to a rise in prices and unequal access. However, this argument does not hold since the higher price of such seeds hardly deters farmers. In a study of 10 major states in 2018, for example, researchers found Bt cotton adoption rate of 95% (International Service for the Acquisition of Agri-biotech Applications 2018).

Pro-GM groups present research on improved yield, reduced use of insecticides and rising farmer incomes. Raman (2017), for example, found that between 1996-2013, farm yield increased by 22%. as a result of GM crops. During this period, there was also a drop in the use of pesticides by 37% and insecticide and herbicide by 18%.

Some opponents have related the use of GM seeds with farmer suicides (Shiva and Singh 2011; Shiva 2016). However, in a rebuttal, Ian Plewis (2014), has shown that non-farmers are more likely to end their lives than farmers in six out of the nine predominantly cotton-growing Indian states. He finds a marginal decline in the suicide rate between 2001 and 2011 "consistent with a beneficial effect of Bt cotton, albeit not in every cotton-growing state".

An overview of the regulatory framework

The green revolution in the 1960s marked the first biotechnology revolution relieving us of widespread food shortages, low yields and famines (Choudhary et al. 2013). Today, India grapples with a new challenge—GM crops. The first debate on GM crops in India to get the attention of national media was the "terminator" controversy in 1998. Farmers and civil society groups argued that Monsanto's so-called "terminator genes" would make seeds sterile and force farmers to buy seeds from large seed companies every year (Brown 1999). Opponents argue it was an attempt to gain control over the global food supply (Charles 2012).

India first approved the insect-resistant Bt cotton variety in 2002, eight years after the commercial release of Bt cotton in the US, Australia and Mexico (James and Krattiger 1996). Bt cotton remains the only GM seed approved for commercial cultivation in India. While GM varieties of rice, mustard, maize, potatoes, eggplant, tomatoes, pigeon pea, and cabbage have been tested under India's biosafety regulatory system, none are approved for commercial use (Shelton 2010). Under the Environment Protection Act (EPA) 1986, MoEF&CC governs the use of genetically modified organisms and seeds. MoEF&CC distributes its responsibility to six other bodies.

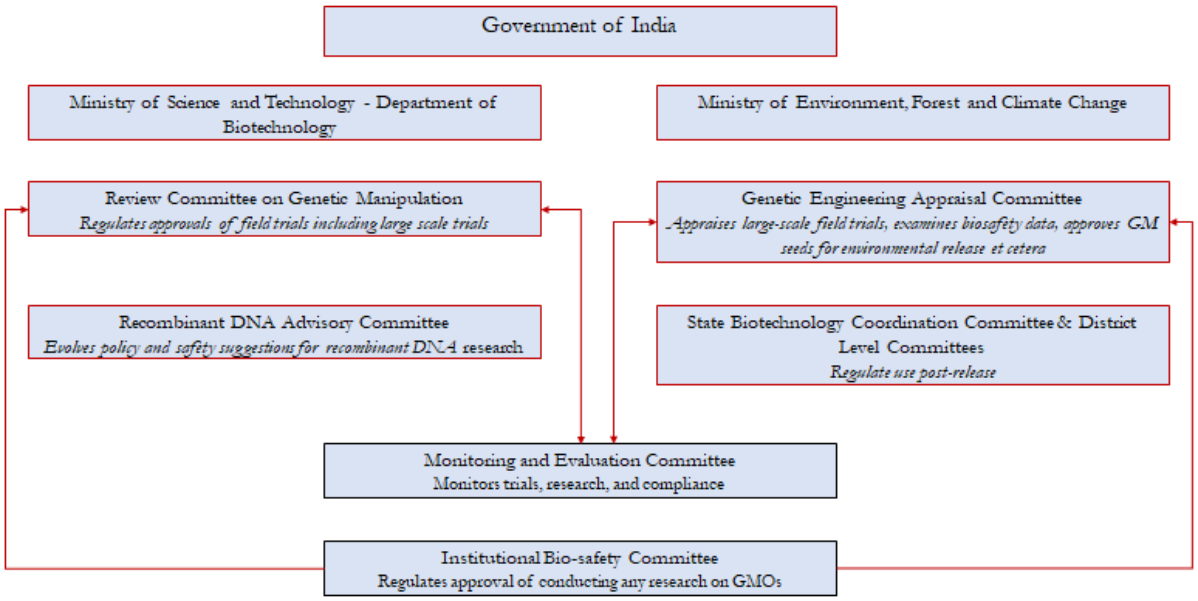


Figure 3.2: Structure of the organisations in charge of GM seeds.
Adapted from: Shukla et al. 2018.

The GEAC is the apex biotechnology regulatory body that "appraises activities involving large scale use of hazardous microorganisms and recombinants in research and industrial production from the environmental angle". [1]

Against this backdrop, this paper looks into two strands of the GM dilemma: the regulatory environment and the pro-GM protests. Within the regulatory environment, we explored how the requirement to obtain a No Objection Certificate from states has affected the regulatory framework. In the following section, we describe the philosophy, motivations and sentiments of the pro-GM farmer groups leading the protest in Maharashtra since 2019.

1. Constituted under the Rules for the Manufacture, Use/Import/Export and Storage of Hazardous Microorganisms/Genetically Engineered Organisms or Cells of EPA 1986.

The regulatory logjam around GM seeds

At least two GM crops are stuck in a regulatory logjam in India—brinjal & mustard. In October 2009, GEAC approved the commercialisation of transgenic Bt brinjal.[2] However, in February 2010, it was put on a moratorium for an unspecified period by MoEF&CC (Kameswara Rao 2010). The then Minister attributed the decision to the lack of consensus among the scientific community; opposition from 10 state governments, especially from the major brinjal-producing states; questions raised about the rigour of safety and testing processes; the lack of an independent biotechnology regulatory authority; negative public sentiment and the lack of a global precedent. He called this decision both responsible to science and responsive to society (The Hindu 2010). Brinjal growers today have to rely on the heavy use of insecticides to control crop infection (Shelton 2010).

After the controversial moratorium issued by MoEF&CC, the Ministry changed the name of GEAC from "Genetically Engineered Approval Committee" to "Genetically Engineered Appraisal Committee". The then Minister of MoEF&CC commenting on the change remarked: "It's psychological, more than a name change, it's a mindset change, people should not think they are coming for automatic approvals. They take it for granted, they must remember that we have a right to reject it as well" (The Hindu 2010).

Since this incident, at least two studies have raised issues with the inconsistencies in the role of MoEF&CC and GEAC (Kameswara Rao 2010) (Choudhary et al. 2013). GEAC has the power to appraise a GM seed for environmental release, but the appraisal is not a binding decision. MoEF&CC has the authority to change and or retract the decision of GEAC. The authors questioned this double layer of bureaucracy and necessity of a go-ahead from MoEF&CC after GEAC's appraisal and approval.

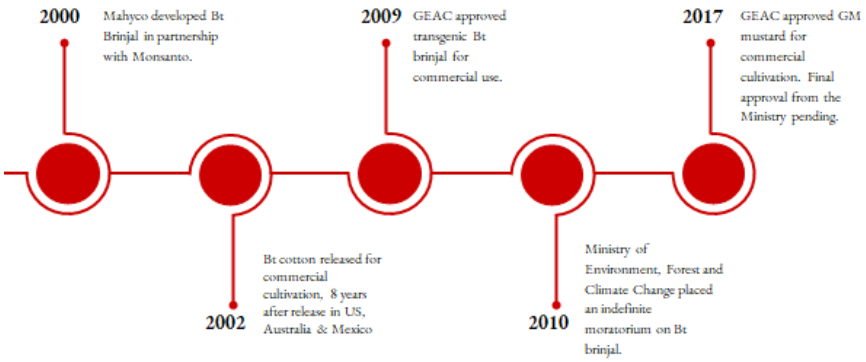


Figure 3.3: The journey of GM Crops in India.
Adapted from: Shukla et al. 2018.

In another instance, the Centre for Genetic Manipulation of Crop Plants at Delhi University had developed a transgenic mustard called DMH-11. While the crop received a green signal from GEAC in May 2017, MoEF&CC reportedly kept mum in the face of powerful opposition from the anti-GM lobby. Three mustard growing states- Madhya Pradesh, Rajasthan, and Haryana and eight other states have decided against its introduction (Jayaraman 2017). In its 136th meeting, GEAC demanded additional tests on the impact of the transgenic mustard on honeybees and other pollinators (Genetic Engineering Appraisal Committee 2018) after it cleared the crop for commercial cultivation (Koshy 2018).

2. 'Transgenic' is defined by the Oxford Dictionary as "relating to or denoting an organism that contains genetic material into which DNA from an unrelated organism has been artificially introduced".

Absent information on procedures to obtain a No-Objection Certificate from states to conduct trials

In 2011, MoEF&CC and GEAC introduced the requirement to obtain a No Objection Certificate (NOC) from states. Any applicant who desires to conduct a large scale field trial must first apply to GEAC for permission, then procure a NOC from the state government, and then present the NOC to GEAC to finally begin trials. A state government has 90 days to provide or refuse a NOC (Genetic Engineering Appraisal Committee 2016). If a state government does not respond in 90 days, the NOC is deemed approved.

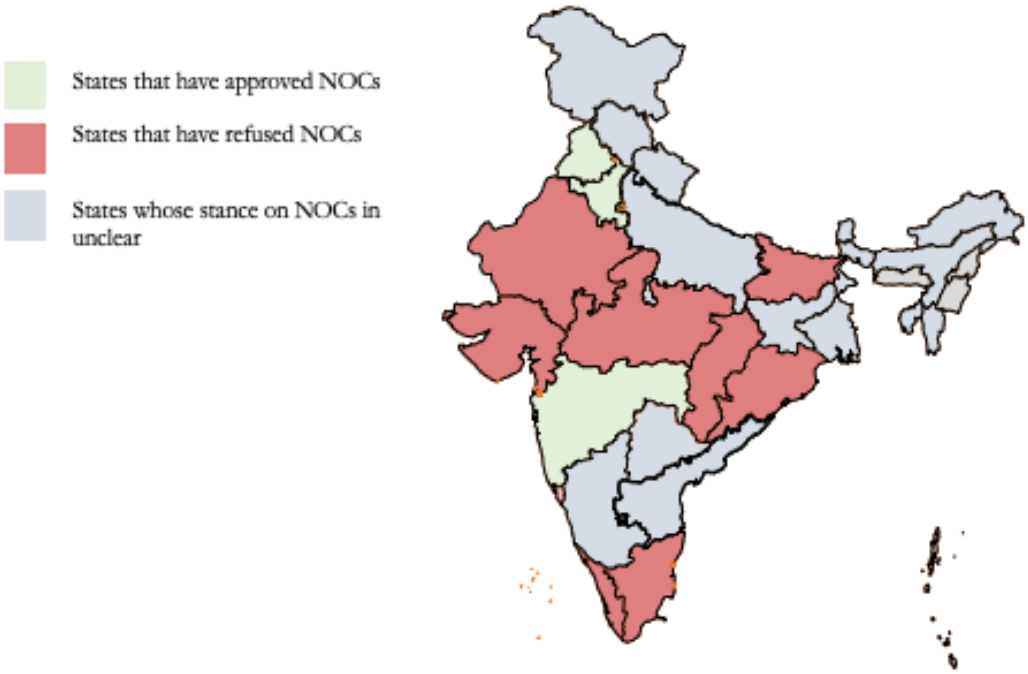


Figure 3.4: Status of NOCs across Indian states.
Adapted from: Menon 2014; Indian Environmental Portal 2014 and DNA India 2015.

Since the introduction of the state NOC in 2011, biotech firms have expressed concerns over the state governments' capacity to approve or reject field trials, the many levels of scrutiny, and the resultant delays (Jishnu 2015). We searched for the *de jure* process to obtain a NOC from any state government. However, we noted that hardly any information is available on state government websites. We reached out to the state governments of Bihar, Rajasthan, Madhya Pradesh, and Maharashtra. Only Government of Rajasthan responded. A telephonic interview with the Director of Inputs, at the Rajasthan Department of Agriculture, revealed that Rajasthan, as a policy, does not allow open field trials in the state. Per the official, the Rajasthan Department of Agricultural had taken this decision in 2011. The official informed us there had been no reconsideration of the decision and a change is unlikely. The official said that no company has applied for any field trials in the state of Rajasthan since.

The minutes of GEAC's 116th meeting, however, present a different narrative. According to the minutes, there were field trials for GM mustard in Rajasthan in 2012. GEAC had approved field trials for GM mustard in Rajasthan subject to NOC from the state Rajasthan. On 19 September 2011, the state government had already issued a NOC for three locations in Rajasthan. Between 2011-12, trials were ongoing. However, on 9 March 2012, Government of Rajasthan withdrew the NOC and ordered the firm to "terminate the trials by burning immediately". GEAC opined that

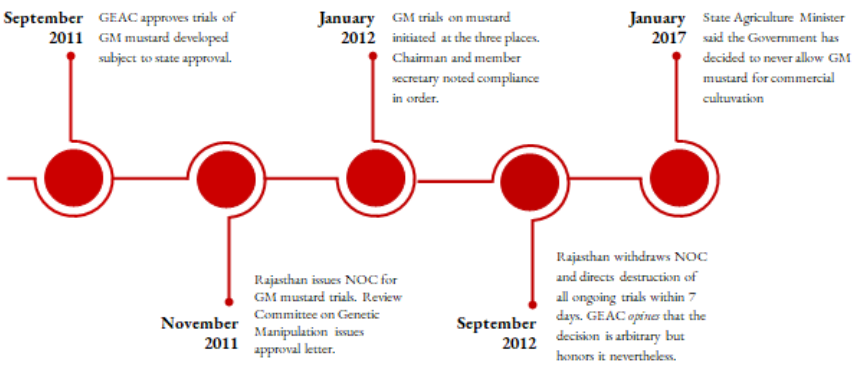


Figure 3.5: The story of GM Mustard field trials in Rajasthan.
Based on the 2012 order passed by the Department of Agriculture, Government of Rajasthan.

the decision was arbitrary and not based on new evidence or non-compliance (Genetic Engineering Appraisal Committee 2012). Trials were suspended.

Per the interview, the state currently allows the use of three varieties of Bt cotton approved for commercial use by GEAC and MoEF&CC. Before permitting commercial use, the state government verified the crops' yield potential and its adaptability to Rajasthan's soil and climatic conditions. Any company wanting to sell GM seeds in the state typically needs to get its seeds reviewed at the government's research stations for safety and submit a fee. The Institute of Clinical Research (ICR) is the leading research centre in the state, which checks for bioefficacy and approves commercial use of GM seeds in Rajasthan.

The state government compromised rule of law and went against its own orders. GEAC is right in pointing out that the regulatory system should be "transparent, consistent and predictable" (Genetic Engineering Appraisal Committee 2012). It is also likely right in honouring the role of state government in these matters. However, what then, is the role of the Union government? What is the role of GEAC? What are its powers? Is it responsible for advice or appraisal? What is the importance of a nod by GEAC? Are states required to appraise proposals transparently and fairly, or do they have absolute powers to issue a blanket objection?

Figure 3.6: A screenshot of the minutes of GEAC's 116th meeting.
Based on the 2012 order passed by the Department of Agriculture, Government of Rajasthan.

Views of the Committee on the above are as given under:

i. In the letter of the Government of Rajasthan, no new facts on non-compliance or evidence of harm were brought to their notice after the commencement of the field trials which have compelled them to withdraw their NOC. The letter, on the contrary, says –

"The matter for permitting trials of transgenic crops has indeed being fraught with concerns as no unanimity has arrived at, either in their favour or against them. ICAR too seems to be grappling with the disquiet. The government has taken a view to wait until a national consensus is evolved. It has also been decided that discussions should be held with all stake holders and to reach to a general agreement on the controversy."

This does not appear to be a good enough reason to withdraw NOC at this late stage.

ii. Any regulatory system has to be transparent, consistent and predictable. That is the best way to ensure compliance with the regulatory requirements. Once after the due process of permission to carry out experiments has been granted, then we should not withdraw it arbitrarily.

iii. Decision to withdraw permission on precautionary principles should be based on new facts indicating that biosafety measures are not being observed. However, that does not seem to be the case here.

iv. If the Government of Rajasthan does not want to give NOC in future, we will naturally honour such decisions of the Government of Rajasthan.

v. As far as the instant case is concerned, the field trials which were coming to a closure may be allowed to be completed.

Government of Rajasthan
Department of Agriculture

No. F-8(5) ATC/GM Seeds/ 2011-12/ 3159-67 Dated: 13-3-12

Order

The matter for permitting trials of transgenic crops has been under consideration of the state government. The issue indeed being fraught with concerns as no unanimity has arrived at, either in their favour or against them. The government,after considering different aspects of it, has taken a view to wait until a national consensus is evolved. It has also been decided that discussions should be held with all stake holders and to form a view in this regard keeping in mind the guidelines issued by GEAC and GoI.

In the light of the above decision no NOC should be issued for such trials and no trials of GM crops should be conducted in the State until final decision in this matter is taken .

Principal Secretary Agriculture,
Rajasthan, Jaipur

Figure 3.7: An Order stating that Government of Rajasthan will wait for "national consensus" before approving any GM seed.

How have farmers used protests to demand resolution?

The Union Government's approach to the regulation of GM crops has contributed to pro-GM protests. Some claim that these may be the world's first and the largest pro-GM farmer protests (Ramesh 2019). The protests were non-violent and used as a medium of dissent by the farmers. In June 2019, over 1,000 farmers participated in a "civil disobedience movement" in Akola, Maharashtra to protest against the ban on GM crops. Soon after, the movement spread from Akola to nearby villages in Jalna, Kolhapur and Parbhani. While farmers had been illegally planting these crops in secret for quite a few years, they decided to launch an open protest under the leadership of the Shetkari Sanghatana, a farmers' organisation from Maharashtra.

Risking a jail term of three years and a fine of Rs. 1 lakh, farmers defied the law as a sign of resistance, arguing that the ban inflicts suffering on farmers already reeling under poverty (Ramesh 2019).

Although the police did not stop the farmers from planting, they did get a warning from the Department of Agriculture, Government of Maharashtra (Menon 2019). The farmer leaders called the movement the new revolution for the fundamental "rights of the farmer" (Kuwalekar 2019).

These pro-GM protests caused outrage among anti-GM groups such as the Bharatiya Kisan Union (BKU) and Coalition of GM-free India. BKU warned farmers not to endorse such actions and requested GEAC to hold farmers who illegally plant GM seeds accountable (Menon 2019). A member of the Coalition of GM-Free India stated that "those egging on farmers to do such illegal planting of unapproved GM seeds are actually anti-farmer, or have not understood the ramifications of GM seeds on farmers, unfortunately" (Menon 2019). Other anti-GM groups and activists demanded the arrest of farmers planting GM seeds, deeming them as 'criminals' (Science 2019). Aruna Rodrigues filed a PIL against the illegal growth of Bt Brinjal and HTBt cotton across India and sought to impose a moratorium on the release of GM seeds until more comprehensive laws are introduced (Outlook India 2020).

In response to claims made by anti-GM groups, a member of Shetkari Sanghatana, said that "all the organisation wants are good seeds. Those opposing this do not have any proof that it is bad. Earlier we had hybrids. Now it's progressed to transgenics. Many scientists have endorsed Bt brinjal as safe for consumption. When the GEAC has approved, where is the question of a moratorium?" (Menon 2019).

Discontent over the handling of GM organisms (GMOs) alongside the prospect of GMOs entering the country has fueled the activism of anti-GM activists and their sister organisations. Vandana Shiva, the founder of Navdanya, argues that GMOs are dangerous for farmers (Shiva and Singh 2011; Shiva 2016). Shiva terms GM seeds as "seeds of suicide", because, she claims, "suicides increased after Bt cotton was introduced." She blames the "purchase of costly inputs such as pesticides that are forcing farmers into a chemical treadmill and a debt trap" which ultimately results in farmers taking their lives (Shiva 2016).

Shiva has termed the struggle against the actions of Monsanto and other multi-corporations as Satyagraha, styled after Mahatma Gandhi's chosen mode of protest. She argues that corporations tend to control the lives of farmers as they claim to be the creator and owner of generations of seeds (Shiva 2016). According to (Shiva 2012), seed sovereignty "includes the farmer's rights to save, breed and exchange seeds, to have access to diverse open source seeds which can be saved – and which are not patented, genetically modified, owned or controlled by emerging seed giants".

Many anti-GM activists argue that the "monopolisation" of the seed market by Monsanto may threaten the livelihoods of farmers. They argue that in time farmers will have to rely on such seeds, making the use of farm-saved indigenous hybrid varieties difficult (Sullivan 2015).

While there is significant research on the anti-GM protests, their motivations, and philosophy, little is available on the pro-GM protests. To fill this gap, we conducted semi-structured interviews with 50 farmers and farmer leaders from Maharashtra. We also interviewed a lawyer representing the Shetkari Sanghatana.

Tracing pro-GM protests

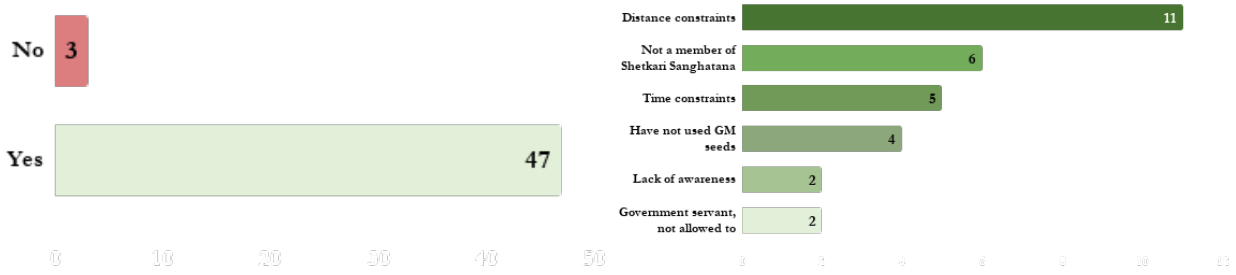
Nearly all farmers were aware of the movement

Of the 50 farmer and farmer leaders interviewed, 30 members did not participate in the movement. Their reasons included time and distance constraints, not being part of the Sanghatana or not

Table 3.1: Profile of Interviewees

Occupation	Farmer leaders (9), Farmers (41)
Gender	Male (48), Females (2)
Location	Akola (32), Ahmadnagar (2), Yavatmal (3), Buldhana (4), Nagpur (2), Jalna (1), Wardha (1), Washim (1), Parbhani (1), Amravati (2), Nanded (1)
Association with Shetkari Sanghatana	62% (31 out of 50) of all interviewees claimed to be active members of Shetkari Sanghatana.

having used the GM seeds then. Six interviewees said that they did not know that protests were happening and hence could not join.



(a) Are You Aware of Kisan Satyagraha? (b) Reasons for Non-Participation.

Figure 3.8: Farmers and Kisan Satyagraha.

Farmers participated driven by notions of freedom and hopes of economic betterment

In March 2019, the government authorities of Haryana destroyed the HTBt cotton crops of a farmer and imprisoned him for two-three days. This event agitated farmers who then started the satyagraha, under the leadership of Shetkari Sanghatana. Around 1,000 farmers participated in the movement openly sowing the illegal HTBt cotton seeds as defiance to the 'unjust' law.

When asked why they participated in the protest, interviewees cited lack of freedom to use technology, consequent inability to access higher yields, and hopes of reduced input costs as reasons for participation. We organised the reasons in the order of importance and based on frequency.

Freedom to access the market and to choose a technology: A majority of the farmers wanted the freedom to participate in the market and access modern technology. This demand was brought up 14 times.

Of the 20 farmers who protested, 12 farmers wanted the freedom to grow and sow the seeds of their choice without government intervention. Farmers saw this movement as a tool to break free from the tyrannical laws of the government, be able to choose the technology of choice, and participate in markets that enabled these choices.

Economic benefits: Farmers cited hopes of higher yield and reduced costs of inputs from the use of GM seeds as reasons for active participation in the movement. There are different aspects to this argument:

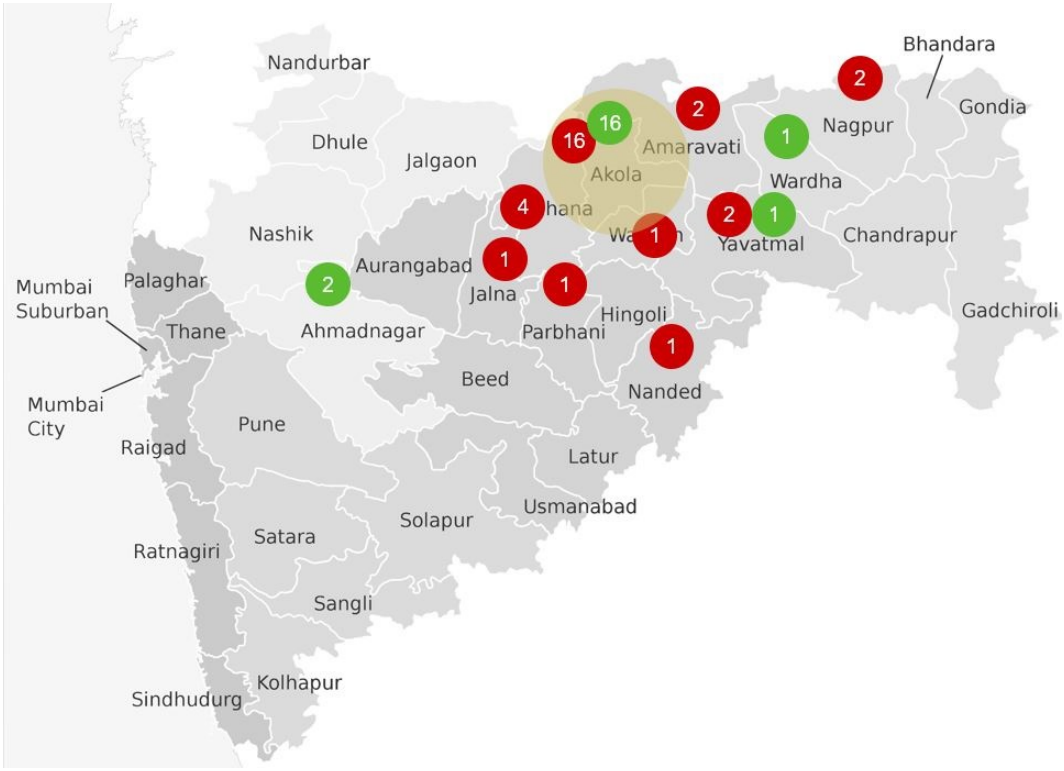


Figure 3.9: Location of Protests.

Absence of an open market: Interviewees mentioned that they have for long used illegal varieties of HTBt cotton. The ban has forced them to buy seeds from the black market. As a result of these underground transactions, farmers are exposed to fraud and low quality seeds. The farmers also argued that if GM seeds are allowed for commercialisation, they would be able to access better quality seeds from the market.

Need for modernisation: Farmers highlighted the distress in the farming economy and the need to galvanise to make the farming business profitable again. The President of Shetkari Sanghatana highlighted the problems of stiff competition due to globalisation. He said farmers around the world are using new technologies that have considerably reduced input costs. If the farmers of the country wish to compete in the global market, they will have to adopt new technologies. He also spoke about how the use of Bt cotton has reduced pesticide intake of farmers by over 70% and has led to India becoming one of the biggest exporters of cotton in the world. Farmers also argued that the country is not conducting enough tests and trials for GM seeds. One farmer was of the view that if hazards of GM seeds can be scientifically established, he would be willing to forego his stance.

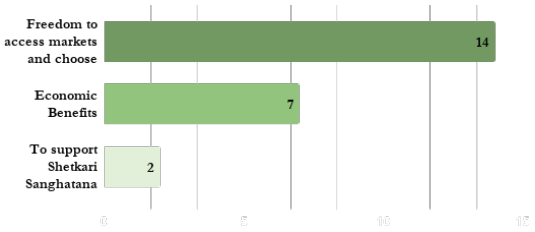


Figure 3.10: Reason for Support.

Import of GM crops: In addition to these reasons, a few farmers highlighted the fact that India imports a variety of GM soybean Oil; over 70% of total soybean oil consumption in India is imported from foreign countries. However, manufacturing the same in the country would be illegal. A farmer from Akola said, "If India can import GM products from all over the globe, why cannot

we allow that technology for our farmers and move towards self-reliance". Farmer leaders felt that Indian farming is in desperate need of modernisation.

Reduce manual weeding: A female farmer leader argued that the new variety of HTBt cotton has the potential to reduce demand for physical labour. She said that the demand for manual weeding spikes up in the select periods, disproportionately affecting females. She perceived the movement as a fight for women empowerment. According to her, "...weeding was conventionally done by females making them susceptible to various physical injuries and hazards... with these new technologies, the tasks for women of these farmers will reduce".

Tackle malnourishment: A farmer leader also said that GM seeds can help India solve the problems of malnourishment. She gave the example of a variety of GM, Golden Rice that has all the nutrients like carbohydrates and minerals needed at cheap qualities to help the poor.

In support of Shetkari Sanghatana: Two farmers said they participated to show their support to Shetkari Sanghatana's work and vision for farmers. They said that they trust the Sanghatana and if it was not for them, the agricultural situation would not have changed in the last decade.

Farmers juxtapose protests against government's tyranny with Gandhi's Salt Satyagraha

We asked the 20 farmers and farmers leaders who led and participated in the protests what "satyagraha" meant to them. Many farmers stated that satyagraha meant freedom from unjust restrictions and the right to choose technology and inputs of their choice. In particular, two responses outlined the unfair control of the government on farmers' choices. One farmer identified fighting for his rights as a "duty". Another farmer related this to women's empowerment.

The importance accorded to freedom was evident when a farmer leader said, "We just want freedom. I want to remain free. If someone tries to cage my choices, we have to fight against that. This is a hope for freedom". He also pointed out that while the collective raises slogans like "Jai Jawan, jai Kisan and Jai Anusandhaan", we continue to impose restrictions on farmers and development of agricultural science. He asked, "What is the point of these big slogans and mottos then if we do not give them the complete freedom they deserve?"

Figure 3.11: Quotes from Farmers.

The Anti-GM movement is seen as anti-science, lacking evidence, and understanding of farming

Of the 50 farmers and farmer leaders interviewed, 32 farmers had heard about the anti-GM protests. Evidence of the harms of GM seeds not taken into account: Farmers perceived the anti-GM movement as lacking evidence. They also argued that the chemical industry lobbies support the movement. According to a farmer leader of the movement, "Vandana Shiva is not listening to scientists who have dedicated 40 years of their lives to GM research. Scientific consensus is not taken into account by the anti-GM movement. Indian farmers have very small land holdings. I have to feed my entire family through this land. I can't believe stories. I will believe in science. This is how we will move forward."

Three farmers claimed that supporters of the anti-GM movement are misled and cannot differentiate between right and wrong. They argued that if farmers in these groups had used GM seeds and experienced its benefits, they would not have opposed its use.

Some argued that harm to human health should not be the basis for a ban. Just as tobacco and alcohol have proven health hazards but are still sold in the market, GM seeds must be allowed. Besides, they pointed out that there is no proof of the health hazards of GM technology.

Lack of understanding of farming and its challenges: Four farmers claimed that activists are not aware of the plight of farmers. They claimed that these leaders do not visit farms themselves. Seven farmers spoke about how the anti-GM groups like the Bhartiya Kisan Sangh are not aware of the benefits of GM crops.

Organic farming can not meet the food needs of the country: Farmers also argued that the philosophy of organic farming could not meet the food needs of the Indian population. A farmer leader cited the example of the pre-1960s when only organic farming was practised. He said that India could not feed its population then. A couple of activists labelled the anti-GM movement as 'eco-terrorism'.

Concerns over imagery created by the anti-GM movement: Two farmers expressed their concerns over the anti-GM imagery by pro-GM activists and chemical lobbies.

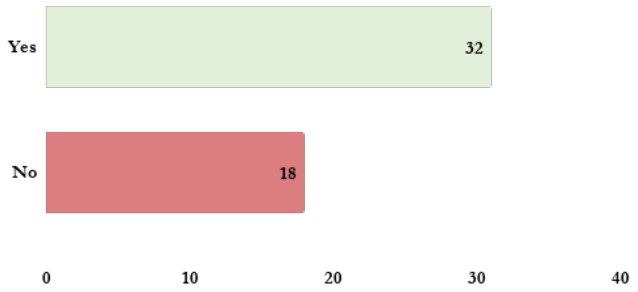


Figure 3.12: Are you aware of Anti-GMO protests?

Of the 50 farmers interviewed, only one farmer leader had interacted directly with someone from the anti-GM movement. According to the leader, "An activist from the anti-GM camp said she wanted organic plants in the farms. I also want organic plants, but I also need these plants to meet my needs. I don't see what is inorganic about GM seeds. Such crops have many benefits. If they are worried about foreign companies monopolising Indian markets, they should allow research trials by Indian companies."

A farmer leader mentioned that before the first satyagraha in Akot, they publicly announced that they are going to defy the law and plant the hitherto unapproved HTBt seeds. They made it clear that the officials could take any action they want, but the farmers would still use the seeds. The state responded harshly at first; the Nagpur Bench of the Bombay High Court constrained the government's power.The lawyer, representing Shetkari Sanghatana, spoke about the FIRs filed against 10 farmers who participated in the movement. The Agricultural officer of Panchayat Samiti, Akot had filed the FIRs. The charge sheet invoked the Seeds Act 1966, the Seeds (Control) Order

1983 and the Environment Protection Act 1986. In addition to these, a charge of cheating under Indian Penal Code Section 420 was also filed. Some of these deal with the powers of government officers, others limit private action on the use and distribution of seeds. Of importance are:

1. The Seeds Act: Section 7 prohibits a person from carrying the "business of selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed" which is not approved by the government;
2. The Environmental Protection Act 1986: Section 7 prohibits any individual from carrying activities that involve "large emission of gases or other substances which may lead to excess environmental pollution";
3. The Environmental Protection Act 1986: Section 7 prohibits dealing in "hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed"; and
4. The Environmental Protection Act 1986: Section 15 empowers the government to punish a defaulter "with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention".

The activists challenged the FIR in the Nagpur Bench of Bombay High Court. The Court asked the Maharashtra government to immediately stop any coercive actions against the farmers who protested in June 2019. The lawyer mentioned that farmers again planted HTBt cotton in 2020, but this time no charges were filed. One respondent mentioned that the police have supported not only the farmers but also offered necessary protection. While the court order restraining the government's action may be seen as an interim win, it further dilutes the regulatory framework governing GM seeds. If GM seeds are banned, but the government cannot take action against those who plant it, where does it leave us?

Conclusion

As the debate surrounding GMOs rages on, it is interesting to see how the collective experiences of a nation's colonial past are evoked in the slogans chanted, tools of protest employed, and the general lexicon of the anti- and pro-GM movement.

While both camps disagree on the impact of GM crops on human health and environment, they agree that government inaction is harmful (Jayan and Jadhav 2019). An anti-GM activist argued that government inaction against farmers violates Indian laws and is also antithetical to the international Cartagena Protocol on Biosafety. In contrast, a biotechnologist argued that the indecisiveness hurts farmers who want to adopt GM seeds.

Our interviews with farmers and farmer leaders revealed that for the pro-GM movement, the dissent is against the laws they believe are tyrannous. Farmers juxtaposed the British government's trampling of civil liberties against the current regulatory framework governing GM seeds that inhibits seed use. They call the movement a fight for the truth and demand 'seed freedom'.

The 'seed freedom' can only be realised when there is a consideration of farmer voices, and consequently, regulatory clarity. In their demand for freedom, farmers say that they are open to considering the evidence against GM seeds. They argue that the current setup does not give precedence to scientific evidence and inhibits trials.

The chain of events around GM seeds makes it clear that the government needs to clarify the rules around trials and use of such seeds and be transparent in its proceedings. The back and forth on rules on NOC and commercial use of GM seeds, indicates that the government is unwilling to take tough decisions. MoEF&CC has more than once disregarded the appraisal of evidence by GEAC in favour of anti-GM noise. While public opinion is essential to any decision making, it should not be at the cost of scientific evidence. Currently, it is not clear what the process around these decisions are and by when will the government be able to end the "indefinite" moratorium.

The government needs to carry out a cost-benefit analysis, consider the externalities that emerge with the use of GM crops and present ways to compensate for them. For example, GM seeds raise the risk of contamination of non-GM crops. To mitigate this, those who want to adopt GM seeds may need to ring fence their lands. Besides issuing limits on private action, if GM seeds are approved, the government will have to develop appropriate institutional arrangements. This includes assignment of property rights, defining the accepted level of cross-pollination, development of an ex-ante regulatory framework and an ex-post redressal mechanism (Lusser et al. 2013).

The argument that GM seeds should be not used in the absence of near absolute evidence on their safety is a reversal of a basic principle of modern jurisprudence—innocent until proven guilty. Besides, the argument is applied selectively. For example, there is liberal violation of the principle when it comes to drug testing. In the case of India, the moot question remains: how will evidence of no harm be collected if the Indian government is hesitant in permitting trials?

The only party that benefits from the foot-dragging on approvals is the anti-GM group. As is evident, the lack of clarity affects farmers and technology developers negatively but also raises questions about the accountability and purpose of the multiple regulatory bodies involved.

Besides a gradual erosion of trust in the regulatory system, the lack of approvals has also given rise to a second-order problem: black markets and low quality of seeds for farmers. Although selling or sowing unapproved varieties of GM seeds remains illegal and with penalties attached, farmers are still able to access these in the markets. There is little information on how many farmers consciously buy illegal GM seeds, and whether the seeds result in increased yield.

While India remains stuck in a regulatory paralysis, Bangladesh has become the first developing nation to approved the Bt brinjal variant for commercialisation (International Service for the Acquisition of Agri-biotech Applications 2019a). Incidentally this variety was developed in India but is on moratorium since 2010. Cultivation of Bt brinjal in the country increased from 20 farmers in 2014 to over 27,000 farmers in 2018 (International Service for the Acquisition of Agri-biotech Applications 2019b). The ban in India also rolls the shutter on information—we do not know how many farmers in India use GM varieties or how many consumers consume GM food.

The recent farmers' protests are a way to move this regulatory logjam and introduce a sense of finitude on government's actions and "indefinite" moratorium. The emerging movement pushes the reconsideration of the "illegality" label attached to GM seeds. While there were no FIRs on protestors who defied the law in 2020, the moot question remains: between the government's ban, farmer's defiance of the ban and the court's order putting a halt on coercive action by the state, what is the legal status of GM seeds? By when will the government have an answer?

Labour pains

Status check on reforms in employment protection legislation

Sargun Kaur, Sarvnipun Kaur, and Bhuvana Anand

Executive Summary

Governments introduce employment protection legislations to mitigate risks of worker exploitation, discrimination in hiring and working policies, and unfair dismissal practices (World Bank 2020). However, labour regulations are often rigid. These regulations take away the ability of enterprises to tailor employment contracts per their needs, prevent workers and enterprises from setting working hours mutually, and hinder the movement of workers out of lower-productivity firms (World Bank 2020; OECD 2020).

India's labour protection framework is particularly inflexible. Under the Indian Constitution, both the Centre and states have the authority to legislate on labour. India has over 44 central laws and 387 state laws regulating different aspects of hiring, working conditions, and retrenchment. An analysis of Indian labour laws highlights that they are complex, hamper flexibility, and encourage an inspector raj. The Economic Survey 2018-19 highlights that Indian states with lower labour market flexibility are unable to create enough employment or attract adequate capital, and have lower wages and productivity. Dougherty (2014) argues that "state-level reforms can help to mitigate the detrimental effects that strict federal labour laws have on industrial outcomes in the organised Indian manufacturing sector".

Since 2018, India's working-age population has grown larger than the dependent population. India has a 37-year demographic dividend window. But to reap the benefits of a young demographic, India must create mass employment opportunities. COVID-19 has disrupted economic growth. By many measures, India now faces an economic crisis. The Centre for Monitoring Indian Economy website states that the total unemployment rate increased from 8.75% in March 2020 to 23.52% in April 2020. Global Alliance for Mass Entrepreneurship's (2020) task force report suggests that 30-40% of Indian MSMEs may perish in the next year.

These disruptive times have emphasised for allowing enterprises greater flexibility to make decisions regarding their operations and stay afloat. The Centre has collapsed labour laws into four Labour Codes, and the Codes have been passed in both the Houses of the Parliament. The pandemic has also given states an opportunity to undertake some labour regulation reforms. These reforms are meant to facilitate the ease of doing business and to encourage enterprises, particularly micro, small, and medium enterprises (MSMEs) to resume operations and create jobs.

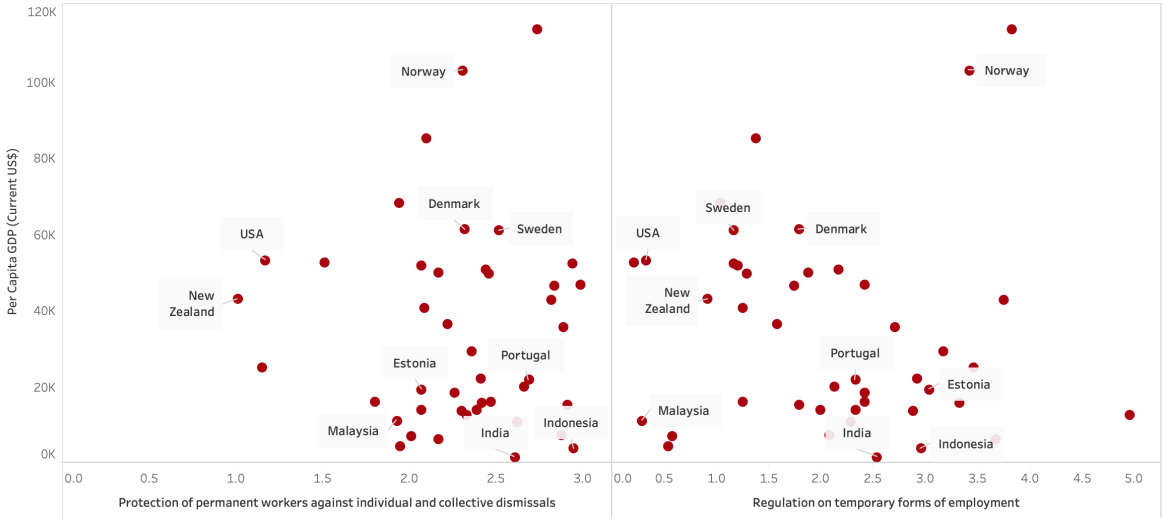
Against the backdrop of these reform announcements, we create a dataset on state-wise indicators of labour regulation flexibility. We develop a 13-indicator dataset of important provisions in key labour laws that encourage enterprises to remain dwarves or stay informal. Based on this dataset, we are able to identify areas in which states have reformed and to understand if states have become less rigid over time. Our findings show that the states have done some of the heavy lifting on labour reforms, particularly by increasing the threshold of applicability of different restrictive laws. However, states continue to remain prisoners of the Centre's first draft. Even in areas where they have reformed, states stay close to the bounds of the Central law. Reform measures at the Centre or at the state level are not accompanied by any justification or cost-benefit analyses.

Introduction: Labour protection framework in India

India has a profusion of labour protection, including 44 different Central laws and 387 state laws.[1] In a single year, formally registered enterprises in India have to consider 27,158 labour-related compliance requirements (Teamlease 2019). There are more than 1,200 minimum wage rates across India (Varkkey and Korde 2012). Non-compliance can lead to monetary fines and imprisonment.

Indian labour laws are much more protective of workers than the international average (World Bank 2004). Overtime premium is twice the normal wage compared to the International Labour Organisation's (ILO) recommendation of 1.25 times the normal wage. For regular contracts, Indian labour laws are stricter than all but two OECD countries (Dougherty 2008). India is one of 100 regions (out of 202 surveyed by the World Bank) to require firms to notify and seek approval from the government before firing even one employee. India is the most restrictive country in the protection of permanent workers against (individual) dismissals after Indonesia (OECD 2013b).

Figure 4.1: Relationship between GDP per capita and labour protection provisions.



Source: Adapted from World Bank 2013, and OECD 2013a.

While employment protection legislations (EPLs) are designed to protect workers, in practice they preserve existing jobs rather than help workers move to better jobs (OECD 2020). Rigid labour regulations take away the ability to tailor employment contracts based on market considerations, prevent workers, and enterprises to set working hours more freely, and dampen the movement of workers from low-productivity to high-productivity firms (World Bank 2020; OECD 2020).

Dougherty (2008) argues that "job security regulations limit job turnover in sectors that for technological or market structure reasons need more frequent adjustment of employment to be competitive". Since both excessive and insufficient regulation may have an impact on productivity, the government's policy interventions must be on a "plateau" between these two extremes (Beegle, Hentschel, and Rama 2013).

1. The Centre has collapsed these laws into four Labour Codes: Code on Wages, Code on Social Security, Industrial Relations Code & Occupational Safety, Health and Working Conditions Code. The Code on Wages was passed in Parliament in 2019, while the other three Codes have been passed by both the Houses of the Parliament in the monsoon session, 2020.

Rigid EPLs incentivise firms to stay small. Employing workers beyond a certain threshold level dramatically increases the compliance burden and associated costs in India. For example, the Industrial Disputes Act (IDA) 1947 mandates that any firm which employs more than 100 workers has to seek permission from the government before retrenching employees (for reasons other than disciplinary action). The compliances associated with the Factories Act 1948 apply to establishments employing 10-20 or more workers, in effect penalising growth. Analysis of Indian enterprises shows the peculiar phenomenon of 'dwarfism'. Dwarves are small firms (<100 workers) that never grow beyond their size despite ageing. The Economic Survey 2018-19 estimates that dwarves' account for more than half of all organised firms in manufacturing in India, but their contribution to employment is 14% and to productivity is 8%.

Rigid EPLs may encourage informality. Enterprises tend to hire informally to meet the requirements of their business rather than battle labour regulators (World Bank 2020). In a single year, formally registered enterprises in India have to fulfil 27,158 compliance requirements and make 1,400 filings related to labour alone (Teamlease 2019). Enterprises likely choose not to register given the compliance burden associated with formalisation. Close to 95% of Indian enterprises are sub-scale and informal; they have limited job-creation capabilities and are able to offer only low wages (Global Alliance for Mass Entrepreneurship 2020). Informality comes with its own costs: firms cannot access formal credit and labour is casualised.

Rigid EPLs lower productivity and prevent firms from being nimble. Dismissal protection causes enterprises to retain unproductive workers and screen new hires more stringently. Bjuggren (2018) and Bartelsman (2016) show that strict dismissal regulation is linked with fewer innovative activities and weaker multi-factor productivity growth. In India, plants in labour-intensive industries in states where labour markets are more flexible, are 25.4% more productive than plants in states that continue to have labour rigidities (Dougherty, Frisancho, and Krishna 2014).

Tracking cross-state variation in labour regulations

Cross-country analyses that compare labour regulation flexibility include data sets compiled by the OECD and the World Bank. OECD (2020) scores countries on the basis of stringency of their EPLs, and the World Bank's Ease of Doing Business Report presents a descriptive dataset on labour regulations across countries[2].

India is a union of states, many of which are larger or more populous than some countries in the world. Labour is a concurrent subject in Indian Constitution; both the Union and state governments have the power to make laws on it. In case of a conflict, the state law prevails if it has been passed later and received Presidential assent. The number and sheer size of states make a sub-national analysis of labour regulation flexibility essential. Such analysis allows us to track impact of flexibility on different indicators of growth and development.

Besley and Burgess (2004) attempted to carry out such a sub-national analysis for India by scoring states as pro-employer/worker or neutral and concluding that pro-worker regulations led to lower economic outcomes like employment and productivity. Studies criticise the scoring methods in Besley and Burgess (2004) for misinterpretation, ignoring the gradient of impact on labour flexibility, and misleading results (Bhattacharjea 2009).[3]

2. The methodology and dataset of the Employing Workers indicator was available on the Doing Business website at the time of writing this paper. However, these are no longer available on the site.

3. Bhattacharjea criticised scoring methods as they aggregated incommensurable pro-worker and pro-employer amendments occurring in the same year to give a summary score of + 1 or -1 to a state for that year.

Subsequently, Dougherty (2008) compiled an index to reflect reduction in transaction costs due to labour law changes. The index used state-level surveys with 50 questions across eight acts/processes and gave a score based on binary responses.[4] The study gave a quick view of all reforms that experts have long agreed as essential. Dougherty (2014) uses the 2008 index to analyse impact of regulation at the plant level, and finds smaller private enterprises engaged in labour-intensive manufacturing "tend to benefit the most from relaxation of state labour laws" and "state-level reforms can help to mitigate the detrimental effects that strict federal labour laws have on industrial outcomes in the organised Indian manufacturing sector".

The Economic Survey of India 2018-19 updated Dougherty (2008) to cover the period until 2014 to explain inter-state variation in economic outcomes using flexibility of labour regulations, and shows that states with lower labour market flexibility have lower investment, wages and productivity. States that made labour regulations more flexible have seen an increase in employment. For instance, the average number of workers per factory in Rajasthan increased at the rate of 4.17% in 2016-17 (i.e. after it introduced labour reforms in 2014) as compared to -8.9% in 2011-12.

In the last six months, we observe more inter-state variation. This offered us an opportunity to build a descriptive dataset on state-wise labour regulation flexibility. There is no updated, easy-to-read dataset that records the variation in labour regulations across Indian states. Moreover, tracking inter-state variation may not require scoring and one could use individual metrics to track variation. To conduct our study, we could have updated the data in Dougherty 2008 with the latest data. However, we chose to work with the World Bank's Employing Workers Indicator list given that the parameters are more generic in nature, and relevant even if the laws change. Using the dataset, this paper provides a simplified view of changes in labour regulations carried out by states and allows comparison in labour regulation flexibility metrics across states over time.

Measuring labour regulation flexibility in the Indian context

Using the World Bank's "Employing Workers Indicator" as a base, we built a sub-national dataset to trace labour regulation flexibility across Indian states on select metrics. We define flexibility as a composite of ease of hiring, flexibility of working hours and ease of firing. We do not include the benefits and social safety protections or measures that reduce compliance costs in this data set. We read Central and state laws and detailed each selected metric for different states based on measurable, non-interpretative criteria. We resolved inconsistencies in information by consulting with legal experts.

The dataset captures labour reforms based on three time phases. The first phase includes the data for the year of introduction of an Act or a provision within it. The second phase includes data for the time period between the introduction of the provision up until 25 March 2020. The third phase captures data for the time period after 25 March 2020 when Government of India announced the national lockdown. Following the imposition of the lockdown, many states released notifications amending their labour laws.

We selected states based on the 73rd round of the National Sample Survey (NSS)(Ministry of Statistics and Programme Implementation 2017). NSS provides the state wise distribution of the total number of MSMEs and the number of people they employ. We selected the 10 states with the highest number of MSMEs and employment. In addition, we selected Telangana and Punjab. Telangana was carved out of Andhra Pradesh in 2014 and Punjab recently passed the Right to

4. Two of the 50 questions were not binary.

Business Act. These 12 states cover 81.67% of the total number of MSMEs in India. For each state, we plotted information on each metric in our dataset framework.

Dataset Component 1: Ease of Hiring

The World Bank uses the "Ease of Hiring" index on the basis of variables such as the availability of a fixed-term contract, the probationary period and the mandatory minimum wage paid to the workers to measure flexibility in hiring regulations. Hiring workers on contracts of varying lengths gives enterprises the flexibility to rescale their operations as per their requirements. We focus on regulatory provisions that govern temporary work contracts and the ease with which employers can access these contracts. We exclude minimum wages from our analysis as the criteria for fixing minimum wages varies widely across states[5].

In India, the Contract Labour Act (Regulation and Abolition) Act (CLA) 1970 regulates the employment of contract labour and the Industrial Employment (Standing Orders) Central Rules, 1946 regulate fixed-term employees.[6][7][8]These hiring alternatives save enterprises time and costs associated with permanent employment. Fixed-term employment, as opposed to contract labour, allows an employer to hire workers directly for a shorter period without going through a contractor.

Employers and state governments have used the Contract Labour Act as the principal means to increase flexibility within the existing regime (Ahsan, Pages, and Roy 2008). Employers use this Act to avoid hiring permanent employees given the restrictiveness of the Industrial Disputes Act (IDA) 1947 and the benefits framework. Just as it provides a get-around, the Contract Labour Act also allows the government to use discretion to prohibit or limit employment of contract labour in any process/establishment. Fixed-term employment helps employers in setting the period of employment per their requirements. When enacted, The Industrial Employment (Standing Orders) Central Rules, 1946 only regulated fixed-term employment in apparel manufacturing. In 2018, the Union Government amended the central rules to allow fixed-term employment in all sectors.

Dataset Component 2: Flexibility of working hours

Often, permanent workers prefer that employers increase the working hours per employee rather than switch to contractual hiring. This poses a challenge since working hours are deeply regulated with upper ceilings and mandates on wage rates. To capture the flexibility in legislations governing working hours, the World Bank's Employing Workers Indicator set tracks length of the work week, restrictions and premiums on non-regular working hours, and length of paid annual leave.

In India, the Factories Act, 1948 regulates provisions related to workers' safety, physical condition of factories, and working hours. Provisions under the Act set upper limits on length of the working week, permissible overtime hours, overtime pay rates and prohibition on employing women workers during night-time operations. In our analysis of flexibility of working hours across Indian states,

5. In some states the minimum wage is fixed according to skill sets while in others according to geographic zones.

6. A workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.

7. A "fixed term employment workman" is a workman who has been engaged on the basis of a written contract of employment for a fixed period: Provided that- (a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent workman; and (b) he shall be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute.

8. Parent Act: Industrial Employment Standing Orders Act 1946.

we focus on maximum permitted working hours, restrictions on night and overtime work, and overtime premium as per the Factories Act along with the threshold size at which these regulations apply to enterprises.

Dataset Component 3: Ease of Redundancy

Several studies confirm that rigid dismissal regulations lower job and worker flows (movement of workers into and out of jobs) (Bentolila and Bertola 1990; Garibalidi and Brixiova 1998; OECD 2020). They lead to misallocation of the resources of an enterprise by providing older workers with job stability while leaving the less experienced workers vulnerable (World Bank 2020). According to the Doing Business Report (2020) , priority rules are most widespread in low-income economies; 70% of low income economies have priority rules.

The Employing Workers Indicator set tracks the ease with which employers around the world can scale down their workforce. The indicators summarise the approval requirements prior to retrenchment, retraining obligations, and priority rules for dismissal and re-employment.

In India, the Industrial Disputes Act (IDA) 1947 regulates redundancy procedures. Some provisions of the Act restrict enterprises from making independent decisions regarding retrenchment and layoffs.[9] For example, the Act requires employers with 100 or more employees to seek permission from the government before retrenching an employee. It determines the order in which workers can be retrenched by providing that the employer first retrench the last person employed. Such priority rules give preference to seniority over aptitude and skill.

9. Retrenchment is defined as termination by the employer of the service of a workman for any reason, otherwise than a punishment inflicted by the way of a disciplinary action. Layoff is defined as failure, refusal or inability of an employer to give employment to a worker whose name is on the muster rolls of his establishment.

Table 4.1: Variables selected for analysis along with the associated sections of Act

Ease of Hiring		
Size at which enterprises need to be licensed to hire contract labour	CLA	Section 1(4)(a)(b)
Turnaround times for granting registration and license to employ contract labour	CLA	Section 7(3) / Rule 18
Government discretion in prohibiting use of contract labour	CLA	Section 10
Constraints on the use of fixed-term employment contracts	IE rules	Schedule 1 & Rule 3
Flexibility of Working Hours and Wages		
Size at which firms have to comply with restrictions on work hours	FA	Section 2(m)
Maximum regular working hours permitted per worker in a factory	FA	Sections 51 & 54
Maximum overtime hours permitted per worker in a factory and wage premium for overtime	FA	Sections 65(3)(iv) & 59
Constraints on women working in factories during night time	FA	Section 66(1)(b)
Ease of Redundancy		
Size at which firms have to seek permission before individual or collective dismissals	IDA	Section 25 (k)
Priority rules for retrenchment and rehiring	IDA	Sections 25(g) & 25(h)
Window for raising a dispute	IDA	Section 2A(3)
Retrenchment compensation	IDA	Sections 25F(b) & 25N(9)

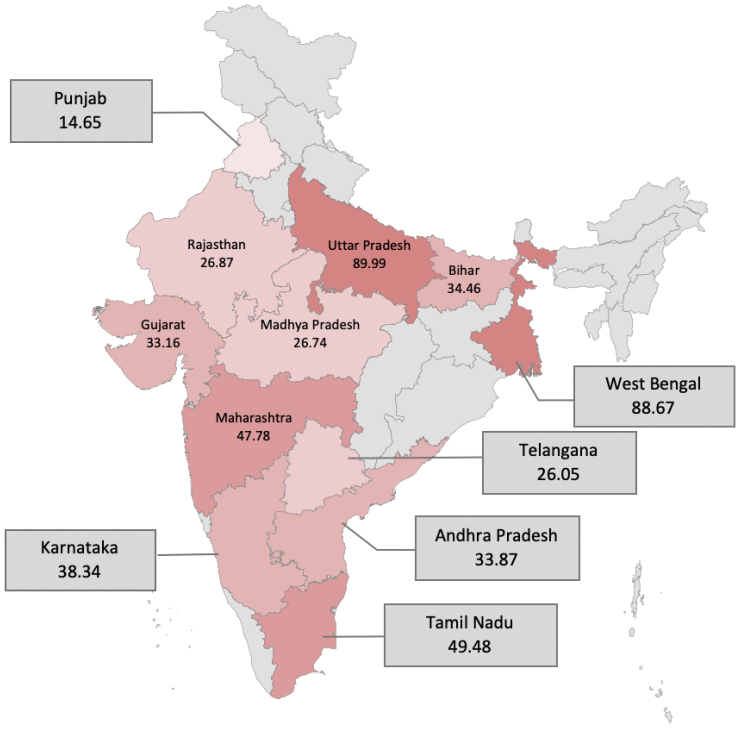


Figure 4.2: States analysed based on number of MSMEs
Source: Ministry of Micro, Small and Medium Enterprises 2019

How rigid are labour regulations in India's states?

Ease of Hiring

Under this component, we document the inter-state variation over time on the size threshold at which employers have to register and seek approval for employing contract labour, bounds on the government to grant such approvals, discretionary powers in the hands of the state government to prohibit use of contract labour, and the constraints around fixed-term employment.

1. Size at which enterprises need to be licensed to hire contract labour

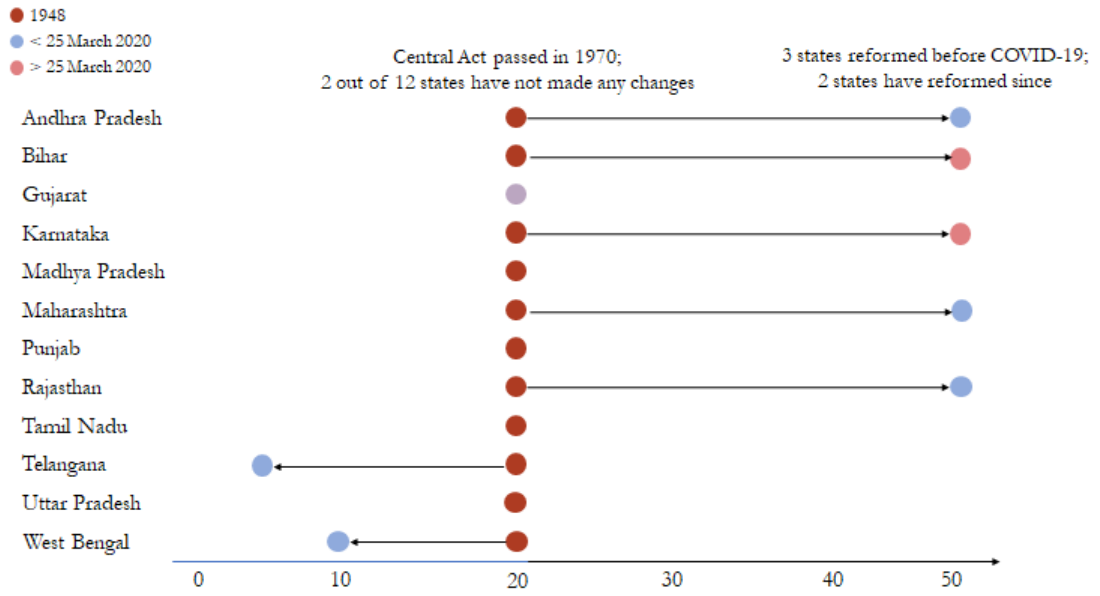


Figure 4.3: Number of workers at which the Contract Labour Act becomes applicable, 1948-2020.

Section 1(4)(a)(b) of the Contract Labour (Regulation and Abolition) Act 1970 states that the Act applies to every establishment which has employed 20 or more contract workers in the past year. Once a firm crosses the threshold, it has to maintain registers,[10] file returns and provide canteens, restrooms, and first aid for contract labour. For instance, according to the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules 1971, a Principal employer in Andhra Pradesh is required to maintain a register of contractors, wages, deductions, overtime, fines and advances along with muster roll and wage slips. She has to maintain the registers in English and Telugu, preserve them for three years, and produce them on demand before the inspector. Non-compliance can lead to heavy penalties including an imprisonment term of up to three months.[11].

In 2014, Rajasthan increased the threshold at which the Contract Labour Act would kick in from 20 to 50 contract workmen employed in an establishment in the previous year. Andhra Pradesh, Maharashtra and Uttar Pradesh followed suit in 2015, 2016, and 2017 respectively to remove enterprises with up to 49 contract workers from the purview of the Act. In 2020, Karnataka, Bihar and Gujarat also increased the threshold. No state in India has increased the threshold beyond 50 contract workmen.

10. Refer Section 29 of Contract Labour (Regulation & Abolition) Act, 1971 requiring the employer to maintain a record of particulars, nature of work, wages, hours of work and other other information that may be prescribed.
11. Refer Section 23 of the Contract Labour (Regulation & Abolition) Act 1971.

2. Turnaround times for granting registration

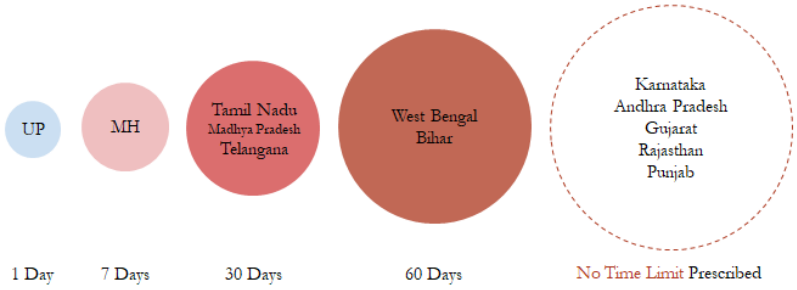


Figure 4.4: Time limit for granting registration under the Contract Labour Act, 1970.

The Contract Labour Act 1970 does not set out clear accountability metrics for the labour department to ensure that license approvals are given promptly. Section 7 of the Contract Labour Act 1970 mandates that all establishments to which the Act applies register themselves within the period prescribed by the appropriate government. The Central Act is silent on the time limit within which the registering officer must grant registration. Debroy and Bhandari (2008) suggest that such lack of procedural accountability likely overpowers any benefits of the substantive law.

Some states inserted Section 7(3) in their respective state Contract Labour Acts to prescribe time limits on granting registration to establishments while others provided these timelines in their rules. Of the 12 states in our analysis, seven states prescribe limits ranging from 1 day in Uttar Pradesh to 60 days in Bihar. The registration is deemed to be granted when these limits expire.

3. Government discretion in prohibiting employment of contract labour

Section 10 of the Contract Labour Act empowers the Union or state governments to prohibit the employment of contract labour in any process or firm based on its discretion. Section 10 provides that, "the appropriate government may, after consultation with the Central Board or a State Board, prohibit the employment of contract labour in any process, operation or other work in any establishment".

Examples of processes barred from hiring contract labour at the Union level include clearing in catering establishments and pantry cars in Railways, coal loading and unloading in mines, typists, clerks and data-operators in the Oil and Natural Gas Commission, and sweeping, cleaning, dusting and watching of buildings owned or occupied by the central establishments[12].

Andhra Pradesh and Telangana are the only two states that have amended this section to limit government discretion in deciding the operations which cannot hire contract labour. These states now allow the government to prohibit the use of contract labour only in "core activities" of the establishment. The laws in both states, however, are silent on the definition of "core activities".

4. Permitting fixed-term employment and constraints on the use of fixed-term contracts

Fixed-term employment enables a firm to hire workers for a temporary period of time without serving a notice of termination at the end. These contracts are useful for enterprises engaged in seasonal manufacturing and may need more workers during high-demand periods. Fixed-term contracts save enterprises the time and costs associated with permanent employment.

12. Notifications issued under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970.

In India, hiring through contractors was the only available option for temporary employment. However in 2016, the Union Government amended the Industrial Employment (Standing orders) Central Rules 1946. This was done to allow fixed-term employment contracts for the apparel manufacturing sector, to further India's aspiration of becoming a textile manufacturing powerhouse. In 2018, the Union Government amended the Rules further to allow fixed-term contracts in all sectors. This reform allowed enterprises to hire workers directly without the mediation of contractors, saving them the compliance associated with the Contract Labour Act. To dull the impact of this reform, the Union Government prohibited enterprises from converting posts of permanent employees to fixed-term contracts. The government also mandated that the work hours and benefits of fixed-term employees be similar to that of permanent employees.

Uttar Pradesh follows the Central Rules in regulating fixed-term employment for all the sectors. Gujarat follows Bombay Industrial Employment (Standing Orders) Rules 1959 which were also amended to allow fixed-term employment in all sectors. In both the states[13], fixed-term employees have similar benefits and working hours as those of permanent employees. Whereas in Uttar Pradesh, the posts of permanent employees cannot be converted to fixed-term, in Gujarat, they can be converted to fixed-term contracts as the Rules do not strictly prohibit it.

Table 4.2: Fixed-term Employment Regulations, September 2020

	Fixed-term employment permitted	Permanent employee positions convertible to fixed-term	Similar benefits and work hours for permanent and fixed-term employees
Centre	✓	×	✓
Uttar Pradesh	✓	×	✓
West Bengal	×	×	×
Tamil Nadu	×	×	×
Maharashtra	×	×	×
Karnataka	✓	✓	✓
Bihar	✓	×	✓
Andhra Pradesh	×	×	×
Gujarat	✓	✓	✓
Rajasthan	×	×	×
Madhya Pradesh	×	×	×
Punjab	✓	×	✓
Telangana	×	×	×

In response to the COVID-19 crisis, Karnataka, Bihar, and Punjab amended their rules to allow fixed-term employment. The benefits and working hours of a fixed-term employee in all three states are the same as those of a permanent employee. In Bihar and Punjab, permanent employee posts cannot be converted to fixed-term contracts. In Karnataka, the amendment does not expressly prohibit such conversion.

13. We were unable to find the date on which Gujarat amended the Bombay Industrial Employment (Standing Orders) Rules 1959 to allow fixed-term contracts.

Flexibility of working hours and wages

Under this component, we document the inter-state variation over time on the size threshold for the Factories Act 1948 at which the employers have to comply with restrictions on work hours and overtime hours, prohibition on employing women in factories at night time and overtime premium.

1. Size at which firms have to comply with restrictions on work hours

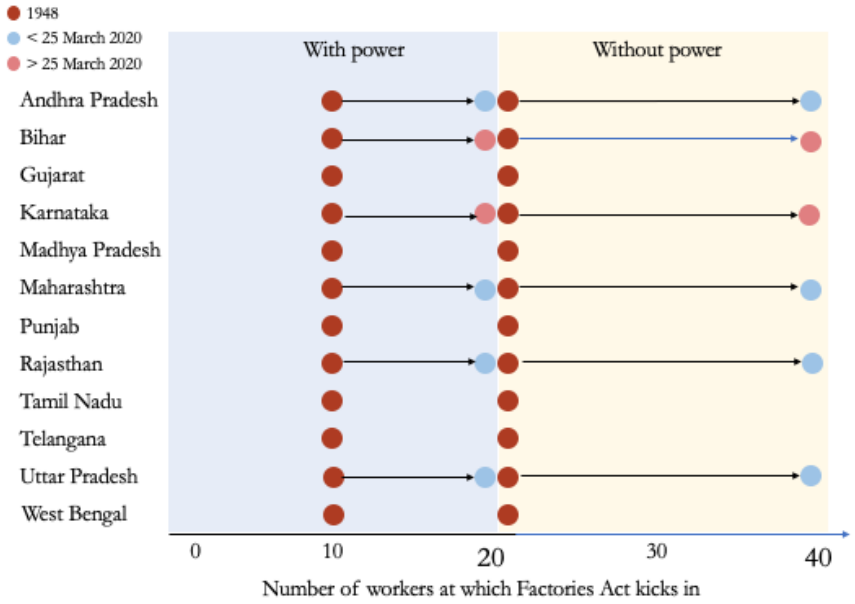


Figure 4.5: Number of workers at which Factories Act applies, 1970-2020.

The Factories Act 1948 was introduced to protect workers in factories and regulate workers' safety, physical condition of factories, and working hours. The Act empowers a Chief Inspector (appointed by the appropriate government authority) to make examinations, seize records and report violations related to painting, internal walls, toilets, cool drinking water, etc. (Chikermane 2018). Based on the nature of these violations, the Chief Inspector can recommend imprisonment ranging from 6 months to 7 years. The Act applies to factories with 10 or more workers where the manufacturing process is carried out with the aid of power and to factories with 20 or more workers where it is carried out without the aid of power.[14]

The Union Government tabled an Amendment Bill in 2014 to raise the thresholds, which was referred to a Parliamentary Standing Committee. The committee rejected the increase in the threshold size as they felt that it would leave 70% of factories outside the purview of the Act (Yadav 2015). In 2019, the government introduced Occupational Safety, Health and Working Conditions Code[15] which collapses 13 different labour laws into one single Act, including the Factories Act, 1948. The Code retains the thresholds of the Factories Act 1948.

In 2014, Rajasthan amended this section under the state law and enhanced these thresholds from 10 workers to 20 workers for factories with power and from 20 workers to 40 workers for factories

14. Section 2(m) of the Factories Act 1948.

15. Both the Houses of the Parliament have passed the Occupational Safety, Health and Working Conditions Code 2019 along with the Code on Social Security and the Industrial Relations Code in the Monsoon Session 2020. The Code on Wages 2019 was passed in the Parliament in 2019.

without. Between 2015 and 2017, Andhra Pradesh, Maharashtra, and Uttar Pradesh followed suit. Since 25 March 2020, Karnataka and Bihar have also increased their thresholds to the same levels.

2. Maximum regular working hours permitted per worker

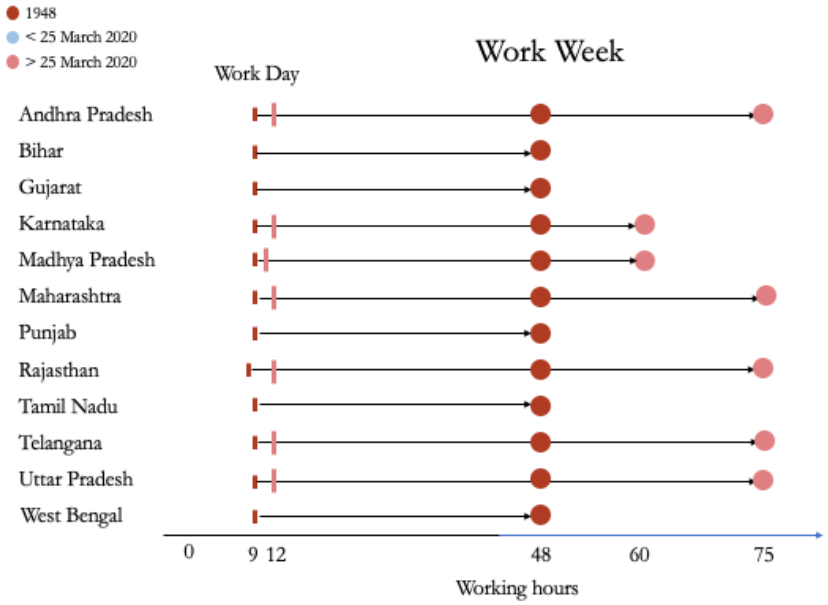


Figure 4.6: Maximum working hours permitted per day and week under Factories Act, 1948-2020.

Sections 51 and 54 of the Factories Act 1948 state that no worker is required or allowed to work in a factory for more than 9 hours a day and 48 hours a week. All factories covered under the Act have to follow these restrictions on the working hours. Any employee working beyond these hours is entitled to overtime wages. These provisions leave no room for firm-level negotiation, especially during high-demand seasons, and encourage substitution of permanent employees with contract workers or fixed-term employees.

The standard workday for Rajasthan varies from industry to industry but we take it to be 8 hours.[16] In the other 11 states in our dataset, the standard work day is 9 hours.

After the lockdown was imposed, eight state governments issued notifications to allow for an increase in the normal working hours for a time period of three months. As per Government of Rajasthan, this was done to restore the supply of goods and ensure minimal presence of people in the factories to follow the social distancing norms[17]. While Karnataka extended the work hours from 9 to 10 hours per day, Andhra Pradesh, Madhya Pradesh, Maharashtra, Rajasthan, Punjab, Telangana and Uttar Pradesh initiated a 33.3% increase by raising the limit from 9 hours to 12 hours per day.[18] This is a temporary but revolutionary measure which eases the burden on enterprises, particularly MSMEs.

Uttar Pradesh, Bihar, Madhya Pradesh, and Gujarat also extended the weekly work hours permitted from 48 hours to 72 hours. Maharashtra and Karnataka raised this limit to 60 hours per week, and Rajasthan and Punjab have made no announcements on this. Section 65(3) of the Factories Act

16. We assume this to be 8 hours because the Rajasthan Government issued a notification on 11/04/2020 raising regular working hours permitted per day from 8 hours to 12 hours.
17. Refer Order dated 11/04/2020.
18. Uttar Pradesh, Karnataka and Rajasthan withdrew these temporary relaxations later on.

allows state governments to increase the weekly work hour limit only to 60 hours. The notifications by Uttar Pradesh, Bihar, Madhya Pradesh, and Gujarat may be inconsistent with Section 65(3).

3. Maximum overtime hours permitted and wage premium for overtime

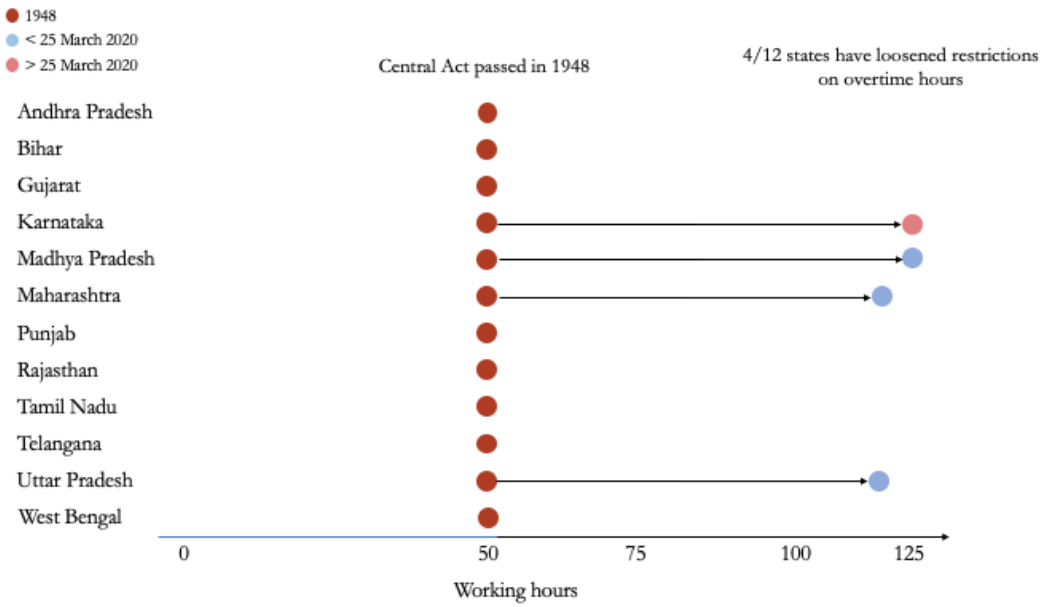


Figure 4.7: Maximum hours of overtime work permitted in a quarter under Factories Act, 1948-2020.

Overtime refers to the extra hours worked by an employee over and above the regular work hours, for which the employee is entitled to a wage premium. The Factories Act puts a cap on the maximum overtime hours of an employee in a quarter. Section 64(4)(iv) allows state governments to make Rules with respect to overtime hours such that "the total number of hours of overtime shall not exceed fifty for any one quarter". Section 65(3)(iv) of the Act also allows state governments to raise this limit to 75 hours per quarter by issuing an executive order in the cases of exceptional workload for the factories. Hence, we take the upper limit to be 75 hours of overtime allowed per quarter.

Countries like the Czech Republic, Hungary, and Poland have allowed swaps of working hours between peak periods and slow periods, if the total hours of work remained constant (World Bank 2005). However, the Indian labour laws do not allow such flexibility in working hours.

A few state governments have initiated amendments to raise the limit of Section 65. In 2015, Maharashtra and Madhya Pradesh increased the maximum overtime hours in a quarter to 115 hours and 125 hours respectively. Uttar Pradesh followed Maharashtra in 2017 to extend the maximum number of overtime hours in a quarter to 115 hours.

After the pandemic struck, most states maintained the status quo, but Karnataka increased this limit to 125 hours per quarter. 125 hours is a 66% increase from the previous restriction on maximum permitted overtime.

The Factories Act 1948 puts a hard limit on the maximum regular working hours permitted per worker. A worker who works beyond regular hours is entitled to an overtime premium of twice the normal rate of wage under Section 59 of the Factories Act. The Occupational Safety, Health and

Working Conditions Code, 2019 states the same wage rate for overtime as Section 59 of Factories Act, 1948. According to ILO Conventions No.1 and No.30, the overtime wage should be 1.25 times the normal wage rate. No state government has amended the Act to reduce overtime premium.

4. Permitting women to work in factories during night time

Section 66(1)(b) of the Factories Act states that "no woman shall be required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m". Industries/firms operate during the night to avoid disruptions in their production process. The National Commission for Women published a report acknowledging the importance of allowing females to work at night for equal participation in the economic processes (ASSOCHAM 2006).

An Amendment Bill was introduced in Lok Sabha in 2014 to permit the employment of women in factories at night time subject to adequate safety measures in the factory premises. The Bill was referred to a parliamentary standing committee and the standing committee cautioned the government against undermining "the import of safety provisions and leave any loopholes in the safeguard and protective Clauses for such vulnerable women workers" (Ministry of Labour and Employment 2015).

The Occupational Safety, Health and Working Conditions Code 2019, in Chapter 10 enlists the special provisions relating to the employment of women. Under Section 43 of the proposed Code, a woman is to be allowed to work in an establishment between the hours of 7 PM and 6 AM and the employer has to take care of the safety conditions that may be prescribed by the appropriate government. However, Section 44 allows the government to restrict women from working in any employment that they deem to be dangerous for the health and the safety of women.

Table 4.3: States that permit women to work in factories at night

	Women permitted to work in factories during night time
Centre	✗
Uttar Pradesh	✓
West Bengal	✗
Tamil Nadu	✓
Maharashtra	✓
Karnataka	✓
Bihar	✗
Andhra Pradesh	✓
Gujarat	✓
Rajasthan	✗
Madhya Pradesh	✓
Punjab	✗
Telangana	✗

Section 66 of the Factories Act has also been challenged in various High Courts on the ground that it discriminates on the basis of sex. Andhra High Court (2001), Gujarat High Court (2013), Madras High Court (2000) have struck down this section as unconstitutional. States like Maharashtra and Uttar Pradesh introduced amendments in their respective Factories Act to allow women to work in factories during night time in 2015 and 2017, respectively. States like Madhya Pradesh and Karnataka issued Executive orders to allow the same in 2015 and 2019, respectively.

Ease of Redundancy

Under this component, we document the inter-state variation over time on the size threshold at which employers have to seek permissions for dismissals, priority rules, timeframe for raising a dispute and the retrenchment compensation. Redundancy provisions are largely governed by the Industrial Disputes Act (IDA) 1947.

1. Size at which firms have to seek permission before individual or collective dismissals

The Industrial Disputes Act 1947 consists of two thresholds at which requirements around redundancy kick in. One threshold requires enterprises with 50 or more workmen employed in the previous month to "notify" the government of their decision to retrench a worker.[19] The second threshold, introduced in 1976 under Chapter VB of Industrial Disputes Act 1947, mandates that firms employing more than a 100 workers "obtain permission" from the government before closing down an undertaking and/or retrenching even one worker.[20][21]

When the employer does not seek permission, she can be punished with an imprisonment term of up to 6 months and/or fine up to Rs. 5,000.[22] Fallon (1991 and 1993) calculated that after the introduction of Chapter VB of Industrial Disputes Act, formal employment for a given level of output declined by 17.5%.

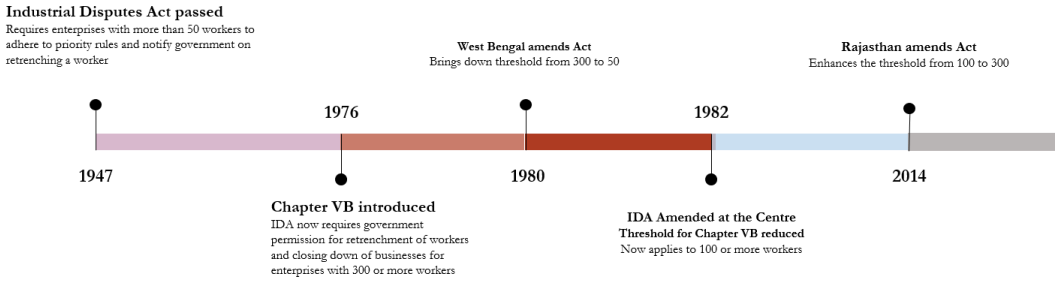


Figure 4.8: Evolution of the Industrial Disputes Act, 1947-2014.

In 2014, Rajasthan increased the threshold for the applicability of the Chapter VB of the Industrial Disputes Act 1947 from 100 to 300 workmen. In 2015, Madhya Pradesh and Andhra Pradesh, and in 2020, Karnataka, Bihar, and Gujarat also increased this threshold to 300 workmen. On the other hand, West Bengal continues to have the lowest threshold of 50 or more workmen since 1982.

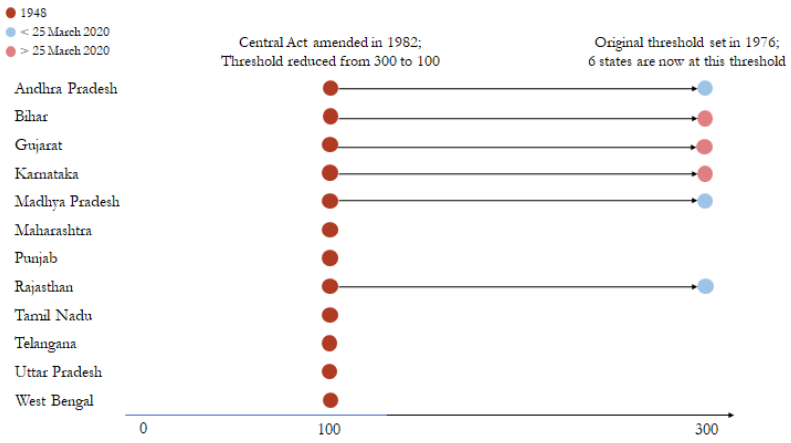


Figure 4.9: Size at which firms have to seek permission before dismissals
Source: Chapter VB of the Industrial Disputes Act 1947, 1982-2020.

19. Refer Section 25 F of the Industrial Disputes Act 1947.
20. Refer Section 25 K of the Industrial Disputes Act 1947.
21. In 1976, it was applicable only to enterprises with 300 or more workmen but in 1982, this threshold was reduced to 100 and more workers. West Bengal reduced the threshold for Chapter VB of Industrial Disputes Act 1947 from 300 workmen in 1976 to 50 workmen in 1980.
22. Refer Section 25 R of the Industrial Disputes Act 1947.

Simply enhancing the threshold for the applicability of Chapter VB, however, may not be sufficient. As per Section 25F of the Act, enterprises with 50 or more workers still have to notify the government when retrenching workers, even if Chapter VB of the Industrial Disputes Act 1947 is not applicable to them. The purpose of serving such a notice to the government remains unclear.

2. Priority rules for retrenchment and rehiring

Priority rules for dismissal require that the order of retrenchment be on the basis of attributes like seniority, marital status, or number of dependents. Priority rules for reemployment require that a firm must first offer any position that becomes available to workers previously dismissed for redundancy. Sections 25G and 25H of the Industrial Disputes Act require that the employer retrench the last employed person first and give preference to previously dismissed workers when hiring more employees. Out of the 202 regions surveyed by the World Bank, India is one of 79 to have priority rules for redundancies and one of 76 to have priority rules for re-employment.

All 12 states in our study continue to retain sections under the Industrial Disputes Act that set priority rules for retrenchment and rehiring. In fact, some states like West Bengal and Andhra Pradesh have modified their laws to introduce more priority rules for reopening closed ventures. Whereas, in the other eight states the law prescribes priority rules for dismissal and re-employment, West Bengal and Andhra Pradesh prescribe them for re-opening of closed enterprises as well. Enterprises that close down their operations in these states are required to give an opportunity to previously employed workers to apply for employment whenever their venture is re-opens.

3. Window for raising a dispute

The Industrial Disputes Act specifies a multi-tier conciliation and adjudication system. The lowest tier consists of a Conciliation Officer who either settles the disputes or sends a "failure report" (Ahsan, Pages, and Roy 2008). Then the dispute goes to labour courts and industrial tribunals. Section 2A(3) of the Industrial Disputes Act provides that the terminated worker should make an application to raise a dispute to a labour court or tribunal within 3 years of termination of services. Contrastingly, in OECD countries the median maximum time for lodging a dispute claim is 2 months from the effective date of dismissal (OECD 2013b).

Gujarat amended Section 2A(3) of the Industrial Disputes Act to reduce the time frame within which an employee can raise a dispute to one year. Whereas, this section requires that an application be made only to a labour court or tribunal before the expiry of three years. Madhya Pradesh amended it to provide that a terminated worker can raise a dispute not only to a labour court/ tribunal but also a Conciliation Officer within three years of termination of services.

4. Retrenchment compensation

The Industrial Disputes Act defines retrenchment as termination of services by the employer for any reason except disciplinary action. It prescribes that an employee at a job for more than six months is entitled to retrenchment compensation of 15 days average pay for every completed year of service based on the size of the enterprise.[23] Compared with India, the US, UK and Canada have no redundancy payment mandate.

23. Section 25F(b) of the Industrial Disputes Act prescribes the compensation paid at the time of retrenchment of workmen for enterprises with 50 workmen to 299 workmen and section 25 N (9) prescribes it for enterprises with 300 and more workmen.

In 2015, Madhya Pradesh changed the retrenchment compensation for enterprises with 50 to 299 workers to the higher of 15 days average pay for every year of service or three months average pay.[24] Rajasthan changed the compensation payment in enterprises with more than 300 workers to 15 days average pay for every year of service and three months average pay.[25] In Madhya Pradesh, not only does an enterprise with 50 to 299 workers have to notify the government and the worker before retrenchment, but also has to pay at least 3-month's average pay as retrenchment compensation. In Rajasthan, an enterprise with 300 or more workers has to take permission from the government before retrenchment and pay 3 month's average pay along with 15 days pay for every year of service.

Have states become more flexible over time?

The pre-independence coalition between the nationalists and mill workers created an expansive role for the state in Indian labour regulations. Some researchers argue that big businesses traded labour market flexibility for import protection (Ahsan, Pages, and Roy 2008). The 1990s liberalisation reforms reduced import barriers and subsequently industries, economists and the media have demanded liberalisation of labour regulations (Ahsan, Pages, and Roy 2008).

Singh and Tembey (2020) explain how India's peers have revised labour laws to be less rigid. Labour reforms of the 1990s including flexible provisions for managers in special economic zones, allowed China to reap the benefits of low-cost manufacturing. In Bangladesh, unionisation is now legally impermissible in export processing zones. Vietnam (a beneficiary of production relocation from China in 2020) is set to bring a new labour policy in 2021 which makes dispute settlement more flexible by emphasising conciliation procedures over state intervention. Labour regulation flexibility in these countries allowed enterprises to employ more workers without increasing compliance costs.

In India, labour reforms by the Union government have been stalled by parties that have vested interest in preserving an inflexible market. The Union government has in fact, at times modified labour laws to be more restrictive. For example, in 1976, Chapter VB of the Industrial Disputes Act 1947 mandated prior government permission for retrenchments for enterprises employing more than 300 workers. In 1982, the Union government expanded the scope of this provision by bringing establishments with 100 to 299 workers under its ambit.

States are trying to break free, some more than others

Individual states, however, have independently amended labour law provisions to improve flexibility. Between 1980 and 2018, states sporadically introduced labour reforms like increasing thresholds for applicability of different acts, allowing fixed-term contracts, and permitting women to work in factories at night. Responding to the pandemic, some states have undertaken bold reforms, some have given out mixed signals and some have maintained status quo.

Karnataka and Bihar have pursued reforms with a clear intent of easing regulatory burden on enterprises. Both states increased the thresholds of Contract Labour Act 1970, Factories Act 1948 and Industrial Disputes Act 1947 allowing more enterprises to be exempt from compliances, fillings and penalties under these Acts. They amended their Industrial Employment (Standing orders) Rules 1946 to allow employers and workers to enter into fixed-term employment contracts. This encourages small enterprises to hire more workers in response to an increase in demand without worrying about the costs and compliances associated with permanent employment.

24. By amending section 25F(b) of the Industrial Disputes Act in its application to Madhya Pradesh.
25. By amending section 25 N(9) of the Industrial Disputes Act in its application to Rajasthan.

States like Gujarat and Madhya Pradesh have given mixed signals. During the pandemic, Madhya Pradesh exempted all factories that come under the ambit of the Industrial Disputes Act from the provisions of the Act for 1,000 days, barring provisions related to procedures for closing down an undertaking (Section 25O), conditions related to the retrenchment of workmen (Section 25N), penalties for lay-offs and retrenchment without prior permission (Section 25Q) and penalties for closure (Section 25R). Some of these provisions have been criticised for being very restrictive (Ahsan, Pages, and Roy 2008). The state has in effect exempted factories from the Industrial Disputes Act while continuing to subject them to the problematic provisions of the Act.

Similarly, the Gujarat High Court in 2013 passed an order declaring Section 66 (barring women from working in factories at night time) of the Factories Act as ultra vires. On 17 April 2020, Gujarat Labour and Employment Department prohibited female workers from working in a factory between 7.00 PM and 6.00 AM. While the provision was meant to be valid only for three months, the notification violates the order of the Court. Such restrictions incentivise discrimination against women during hiring.

States like West Bengal and Tamil Nadu have not introduced any amendments in labour laws to improve flexibility during this time.

Yet, states continue to remain prisoners of the first draft

As states reformed their labour laws to increase flexibility, several editorials cautioned against the "radical" nature of the reforms. We observe that since states are only able to reform their labour laws after receiving presidential assent, they **stay close to the bounds of the Central laws** and are unable to introduce bold reforms. For example, the original threshold for Chapter VB of the Industrial Disputes Act when it was introduced was 300 or more workmen. In 2020, restoring the threshold from the 1982 limit of 100 to the original threshold of 300 is being termed "radical".

Since the Centre looms large in labour regulations and provisions in central laws work as a reference for states, the Union government ought to be more ambitious when amending or replacing current laws. The latest Occupational Safety, Health and Working Conditions Code 2019 retains the thresholds of the Factories Act at 10 and 20 workers based on the use of power. It is not clear whether the Centre is suggesting thresholds based on cost-benefit analysis or merely to avoid conflict.

The Centre's approach is encouraging states to only **compete at the margins.** While there is competitive pressure on states to reduce labour regulation rigidity, this pressure is largely to **play catch-up**. Our dataset shows that most states have reformed their laws as per the reforms already introduced by Rajasthan in 2014. For example, states that enhanced the threshold for Contract Labour Act to apply have only increased it to 50 contract workers. No explanation for this choice of threshold has been provided by any state. States have also continued to **retain the problematic portions of labour laws** such as priority rules for dismissal and rehiring, government notification for individual dismissals and allowing the government to prohibit use of contract labour in industries and processes.

Pre-COVID Dataset (NA = Not Applicable)

Indicators	**Centre**	**UP**	**WB**	**TN**	**MH**	**KA**	**BR**	**AP**	**GJ**	**RJ**	**MP**	**PB**	**TG**
Size at which enterprises need to be licensed to hire contract labour	20 workers	50 workers	10 workers	20 workers	50 workers	20 workers	20 workers	50 workers	10 workers	50 workers	20 workers	20 workers	05 workers
Turnaround times for granting registration	No	1 day	60 days	30 days	7 days	No	60 days	No	No	No	30 days	No	30 days
Government discretion in prohibiting employment of contract labour	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Limited	Unlimited	Unlimited	Unlimited	Unlimited	Limited
Fixed-term employment permitted	Yes	Yes	No	No	No	No	No	No	Yes	No	No	No	No
Permanent employee positions convertible to fixed term	No	No	NA	NA	NA	NA	NA	NA	Yes	NA	NA	NA	NA
Permanent and fixed-term employees have similar benefits and work hours	Yes	Yes	NA	NA	NA	NA	NA	NA	Yes	NA	NA	NA	NA
Size at which firms(**with power**) have to comply with restrictions on work hours	10 workers	20 workers	10 workers	10 workers	20 workers	10 workers	10 workers	20 workers	10 workers	20 workers	10 workers	10 workers	10 workers
Size at which firms (**without power**) have to comply with restrictions on work hours	20 workers	40 workers	20 workers	20 workers	40 workers	20 workers	20 workers	40 workers	20 workers	40 workers	20 workers	20 workers	20 workers
Maximum regular working hours permitted per worker per day	9 hours	9 hours	9 hours	9 hours	9 hours	9 hours	9 hours	9 hours	9 hours	8 hours	9 hours	9 hours	9 hours
Maximum regular working hours permitted per worker per week	48 hours	48 hours	48 hours	48 hours	48 hours	48 hours	48 hours	48 hours	48 hours	48 hours	48 hours	48 hours	48 hours
Maximum overtime hours permitted in a quarter	75 hours	115 hours	75 hours	75 hours	115 hours	75 hours	75 hours	75 hours	75 hours	75 hours	125 hours	75 hours	75 hours
Overtime premium	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate
Permitting women to work in factories during night time	No	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No	No
Size at which firms have to seek permission before individual or collective dismissals	100 workers	100 workers	50 workers	100 workers	100 workers	100 workers	100 workers	300 workers	100 workers	300 workers	300 workers	100 workers	100 workers
Third party notification if a worker is dismissed	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Priority rules for dismissals	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Priority rules for re-employment in existing venture	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Priority rules for employment re-opening of a venture	No	No	Yes	No	No	No	No	Yes	No	No	No	No	No
Window for raising a dispute	3 Years	3 Years	3 Years	3 Years	3 Years	3 Years	3 Years	3 Years	1 Year	3 Years	3 Years	3 Years	3 Years
Retrenchment Compensation for enterprises with 50-299 employees (per year of service)	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	Higher of 15 days avg or 3 months avg pay	15 days avg pay	15 days avg pay
Retrenchment Compensation for enterprises with 300 and more employees (per year of service)	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg +3 months avg pay	Higher of 15 days avg	15 days avg pay	15 days avg pay

COVID Dataset (NA = Not Applicable; * = Temporary Provision; ** = Provision Withdrawn)

Indicators	**Centre**	**UP**	**WB**	**TN**	**MH**	**KA**	**BR**	**AP**	**GJ**	**RJ**	**MP**	**PB**	**TG**
Size at which enterprises need to be licensed to hire contract labour	20 workers	50 workers	10 workers	20 workers	50 workers	50 workers	50 workers	50 workers	20 workers	50 workers	20 workers	20 workers	05 workers
Turnaround times for granting registration	No	1 day	60 days	30 days	7 days	No	60 days	No	No	No	30 days	No	30 days
Government discretion in prohibiting employment of contract labour	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Limited	Unlimited	Unlimited	Unlimited	Unlimited	Limited
Fixed-term employment permitted	Yes	Yes	No	No	No	Yes	Yes	No	Yes	No	No	Yes	No
Permanent employee positions convertible to fixed term	No	No	NA	NA	NA	Yes	No	NA	Yes	NA	NA	No	NA
Permanent and fixed-term employees have similar benefits and work hours	Yes	Yes	NA	NA	NA	Yes	Yes	NA	Yes	NA	NA	Yes	NA
Size at which firms(**with power**) have to comply with restrictions on work hours	10 workers	20 workers	10 workers	10 workers	20 workers	20 workers	20 workers	20 workers	10 workers	20 workers	10 workers	10 workers	10 workers
Size at which firms (**without power**) have to comply with restrictions on work hours	20 workers	40 workers	20 workers	20 workers	40 workers	40 workers	40 workers	40 workers	20 workers	40 workers	20 workers	20 workers	20 workers
Maximum regular working hours permitted per worker per day	9 hours	12 hours**	9 hours	9 hours	12 hours*	10 hours**	12 hours*	9 hours	12 hours*	12 hours**	12 hours*	12 hours*	9 hours
Maximum regular working hours permitted per worker per week	48 hours	72 hours**	48 hours	48 hours	60 hours*	60 hours**	72 hours*	48 hours	72 hours*	48 hours	72 hours*	48 hours	48 hours
Maximum overtime hours permitted in a quarter	75 hours	115 hours	75 hours	75 hours	115 hours	125 hours	75 hours	75 hours	75 hours	75 hours	125 hours	75 hours	75 hours
Overtime premium	Twice the normal wage rate	Exempted**	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate	Exempted*	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate	Twice the normal wage rate
Permitting women to work in factories during night time	No	Yes	No	Yes	Yes	Yes	No	Yes	No*	No	Yes	No	No
Size at which firms have to seek permission before individual or collective dismissals	100 workers	100 workers	50 workers	100 workers	100 workers	300 workers	300 workers	300 workers	300 workers	300 workers	300 workers	100 workers	100 workers
Third party notification if a worker is dismissed	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Priority rules for dismissals	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Priority rules for re-employment in existing venture	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Priority rules for employment re-opening of a venture	No	No	Yes	No	No	No	No	Yes	No	No	No	No	No
Window for raising a dispute	3 Years	3 Years	3 Years	3 Years	3 Years	3 Years	3 Years	3 Years	1 Year	3 Years	3 Years	3 Years	3 Years
Retrenchment Compensation for enterprises with 50-299 employees (per year of service)	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	higher of 15 days avg or 3 months avg pay	15 days avg pay	15 days avg pay
Retrenchment Compensation for enterprises with 300 and more employees (per year of service)	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg pay	15 days avg + 3 months avg pay	higher of 15 days avg or 3 months avg pay	15 days avg pay	15 days avg pay

Conclusion

India has already entered its window of demographic dividend (Thakur 2019). In order to reap the benefits of this window, labour force participation in formal enterprises must increase. While labour laws are meant to protect the jobs of workers, they often inhibit large scale employment. These regulations, meant to enhance labour protection, are in reality deleterious to worker welfare.

India's labour laws have incentivised firms to stay small, encouraged informality and lowered productivity. Literature confirms that regions whose labour regulations are more rigid are associated with lower economic outcomes. A state amendment that increased the costs of retrenchment above the cost stipulated by the Central Act resulted in declines in manufacturing employment and output in that state (Ahsan, Pages, and Roy 2008).

During the lockdown, the centre and many state governments amended labour laws with the intention of facilitating ease of doing business. Many states increased the threshold for the applicability of various stringent acts such as the Contract Labour (Abolition and Regulation) Act and Chapter VB of Industrial Disputes Act 1947. However, the expected gains from these reforms must be taken with a pinch of salt.

Four labour codes were drafted in 2019 with the intention of improving ease of doing business and safeguarding worker interests. While the Code on Wages was passed in the Parliament in 2019, the other three Codes have been passed by both the Houses of the Parliament in the Monsoon Session, 2020. The Industrial Relations Code consists of clauses on standing orders (Chapter IV) along with layoff, retrenchment and closure (Chapter IX & X). The Occupational Safety, Health and Working Conditions Code contains clauses on hours of work (Chapter VII) and contract labour (Chapter IX). While we have not analysed the codes in detail, a quick review shows that they do not substantially improve the ease of doing business in India. For instance, the Occupational Safety, Health and Working Conditions Code continues to empower the government to prohibit the employment of contract labour in any process or firm based on its discretion (Clause 57). Industrial establishments with more 50 or more workers will still have to notify the government before retrenching a worker (Clause 70) and those with 100 or more workers will need the government's permission before retrenching a worker (Clause 79).

The codes do not make substantive changes in indicators that would lead to an improvement in the ease of doing business for enterprises, particularly MSMEs. For instance, the Occupational Safety, Health and Working Conditions Code continues to empower the government to prohibit the employment of contract labour in any process or firm based on its discretion (Clause 57). Industrial establishments with more 50 or more workers will still have to notify the government before retrenching a worker (clause 70) and those with 100 or more workers will need the government's permission before retrenching a worker (clause 79). These regulations continue to prescribe stringent priority rules and third party notifications on dismissals, and are mired with internal inconsistencies. Instead of a gradual and piecemeal approach to reform these laws, the state and Union governments must undertake a comprehensive reform of the Indian labour laws.

To enable Indian enterprises to take advantage of economies of scale, labour laws need an overhaul. The Centre should either be ambitious in its reform proposals, or recede from regulating labour. The latter will allow states to exercise their judgment and encourage competitive federalism.

The difficulty of doing good

Raising foreign funds for non-profit organisations

Shruti Vinod, Vidhi Arora, and Prashant Narang

Executive Summary

Foreign Contribution Regulation Act 2010 (FCRA 2010) is one of the most important laws regulating foreign funding of Non-Profit Organisations (NPOs) in India. NPOs need FCRA registration to acquire funding from foreign donors. But this certification is difficult to obtain and retain. Without FCRA registration, NPOs cannot raise funds from foreign sources for their operations. India has seen a 40% decline in foreign contribution since 2014 (Bhagwati et al. 2019). In the last five years, thousands of NPOs have lost their FCRA registrations for non-compliance.

Funding is crucial for an organisation to achieve its goals and it is dependent on three major sources: foreign funding, private donations and corporate funding. These sources are governed by the Foreign Contribution (Regulation) Act 2010, and the Income Tax Act 1961 (IT Act). This paper examines the history and objectives of FCRA and compares it to the Income Tax Act 1961 on the ease of compliance and the administrative discretion.

FCRA reporting process requires online quarterly and annual compliance. Through our interviews, we note that NPOs take more time (6-8 weeks) to prepare the document for income tax reporting than to prepare the documents for the FCRA intimation (1 to 3 weeks). But since an NPO is required to file 4 quarterly reports and an annual report, an NPO spends more time on FCRA intimation over the course of a year.

FCRA 2010 works on a 5-yearly renewal basis. The time taken to prepare the documents for renewal takes 1 to 3 weeks. Renewal is complete only when the FCRA certificate is re-issued, which may take 4 to 6 months from the date of application. Income Tax Registration is permanent and requires no renewal. However, following the footsteps of the FCRA 2010, the Finance Act 2020 has also made this registration for income tax exemption 5-yearly.

Both FCRA 2010 and IT Act provide NPOs with a reasonable opportunity of being heard and mandate reasoned orders. But we find that FCRA 2010 leaves large scope for misuse of discretion. Conditions such as "engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends" and "likely to use the foreign contribution for personal gains or divert it for undesirable purposes" are vague.

The government's acknowledgement of the relief activities carried by NPOs during the COVID-19 pandemic is reassuring. Alongside, the government should also acknowledge that giving is personal. A recipient is first accountable to the donor. Therefore, the rationale of regulation must be clear and legitimate. Even if the purpose is to discourage money-induced religious conversion, non-religious NPOs should be outside the purview of stringent regulations. Another objective is to check terror-financing. But there are other laws in place to check terror financing. Foreign funding of political NPOs may be a legitimate purpose. However, it becomes crucial to clearly define what a political NPO is. FCRA is vague at differentiating the political NPOs from the rest. FCRA regulates all NPOs including non-political NPOs with an iron-fist approach. An atmosphere of mistrust is bound to make the relationship between the NPOs and the Union government hostile. Reforming the FCRA can be the first step in mending this relationship.

Introduction: Foreign funding to non-profits in India

In the last 25 years, the State's perception of Non-Profit Organisations (NPOs) has undergone a seachange, from partners in growth to national security threats. In the early 90s, governments across the globe appreciated NPOs for their work in education, health, and economic development (Salamon 1994). The "War on Terror" after 09/11 changed that perception (US Department of State 2001). In particular governments increasingly distrust foreign contributions to domestic NPOs (Rutzen 2015).

Alongside, foreign funding began to invite greater global and public scrutiny of governance, corruption and human rights violations taking place in the country (Dupuy, Ron, and Prakash 2016). This has tempted governments to restrict funding of NPOs, particularly of those NPOs that bring scrutiny to government action, question government or protest against the government (Hafner-Burton 2008). Governments claim that foreign funding can foment political instability and affect the political capital of the ruling party (Dupuy, Ron, and Prakash 2016; Bob 2005). Foreign funding and support enable NPOs to protest and criticise government policies.

Foreign funding to NPOs in India has been tightly regulated since 1976. Foreign Contribution Regulation Act 2010 (FCRA 2010) is one of the most important laws regulating foreign funding of non-profit operations (NPOs) in India. FCRA 2010 replaced the FCRA 1976. NPOs need FCRA registration to acquire funding from foreign donors. But this certification is difficult to obtain and retain. Without FCRA registration, NPOs are unable to raise funds from foreign sources for their operations.

COVID-19 in India has led NPOs to an "existential crisis" (Srinath and Karamchandani 2020). NPOs face unprecedented competition from the recently launched Prime Minister's Citizen Assistance and Relief in Emergency Situations (PM CARES) fund – a public trust fund by the Prime Minister's Office (PMO) to attract relief donations during COVID from corporations and celebrities (V. Singh 2020). Foreign funding is more likely to be home-country oriented instead of flowing outwards to developing countries. NPOs in India live in fear of the government cancelling their licenses under the FCRA for minor non-compliance as well (Sundar 2020).

This paper argues that FCRA is stringent and assigns wide discretionary powers to the executive. The paper compares the FCRA 2010 with the Income Tax Act 1961 on two parameters: (a) ease of compliance; and (b) executive discretion. The IT Act is similar to FCRA in its provisions of annual reporting of funds, and between them, the two laws comprise a bulk of the annual compliance requirements for non-profits. Besides, both laws have a large bearing on an NPO's ability to raise funds. We also interviewed NPOs with active FCRAs, income tax registrations and charitable contribution deduction certifications.

The first section of the paper traces the evolution of FCRA 2010. The second section compares provisions of the FCRA with relevant clauses of the IT Act that are applicable to NPOs. The last section briefly discusses the recent regulatory developments during the pandemic.

Tracing the Development of the FCRA in India

Prelude to the 2010 law

In India, the government regulates NPOs using processes of certification, reporting compliances, and annual assessments under various laws such as Religious Trusts Act 1860, Indian Trusts Act 1882, Societies Registration Act 1860, Foreign Contribution Regulation Act 2010, Income Tax Act 1961, and Companies Act 2013. NPOs need to comply with the provisions of these laws and report to the Ministry of Home Affairs, the Ministry of Finance, the Ministry of Corporate Affairs and the state government of their respective locations. FCRA regulates the flow of funding from overseas to non-profits and is monitored by the Ministry of Home Affairs.

The fear that foreign-funded NPOs are being used as a channel for terror funding spurred the government to replace FCRA 1976 with a stricter and more comprehensive law. The statement of Objects and Reasons of the Bill before it was turned into law stated, "significant developments have taken place since the enactment of the Act of 1976 and its amendment in 1984 such as change in internal security scenario in the country, ever increasing influence of voluntary organisations, spread of use of communication and information technology, quantum jump in the amount of foreign contribution being received resulting growth in the number of registered organisations. This, according to the Government, has necessitated large scale changes in the existing Act" (Rajya Sabha 2008).

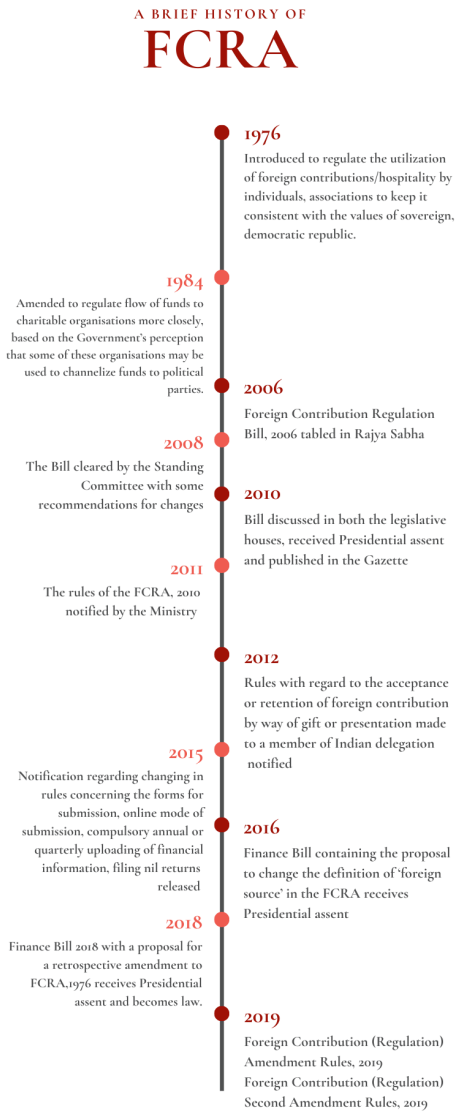


Figure 5.1: History of FCRA.

The draft Bill was introduced in Rajya Sabha in 2006 and was immediately referred to a Standing Committee (PRS Legislative Research 2010). The 2006 Standing Committee on Home Affairs held public and stakeholder consultations on the draft Bill. The Committee submitted its report in 2008 as the 134th Report. The Bill received Presidential assent in 2010 and became an Act.

FCRA 2010 introduced many significant changes in the regulation of foreign funding to nonprofits. Per the Additional Secretary in the Ministry of Home Affairs, the draft Bill sought "to facilitate foreign contribution for genuine activities", encourage "transparency in decision making process", "strengthens the monitoring of receipt and utilisation of foreign contribution" and "prevents diversion of foreign contribution for activities detrimental to national interest" (Rajya Sabha 2008). Some scholars have linked the statutory objective to counter religious conversions and to address the ill of fictitious/benami organisations (Rao 2020; PTI 2010).

PRELUDE TO THE 2010 LAW

Objectives of the Foreign Contribution (Regulation) Bill, 2006

- To regulate the acceptance, utilization and accounting of foreign contribution and acceptance of foreign hospitality by a person or association of companies
- To prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest and to replace the present Foreign Contribution (Regulation) Act, 1976.

Witnesses from NPOs included

Representatives of

- Catholic Bishop's Conference of India
- National Councils of Churches in India
- National Council of YMCA in India
- Voluntary Action Network India
- Institute of Chartered Accountants of India
- Chairpersons of the four expert groups set up to draft the National Policy on Voluntary Sector

Process

- December 2006:
  - Foreign Contribution (Regulation) Bill tabled in Rajya Sabha
  - Referred to the Committee to examine and report within three months
- June 2007:
  - Delayed by Committee due to other priorities
  - Extensions granted by the Chairman, Rajya Sabha
  - Meetings held with different stakeholders
- July 2008:
  - Draft report considered and adopted

Issues Raised by the Standing Committee

Definition of **'foreign source'**

Provision for **scholarship/ stipend etc**

Provision for **'time-bound post decisional hearing'**

Unclear definition of **'foreign hospitality'**

Provision to seek prior permission to **'transfer of foreign contributions to others'**

Undefined **'administrative expense'**

Provision for **'time limit for registration and grant of certificate'**

Proposed threshold limit for **'reporting for suspicious transactions'**

Recommendations taken into consideration in FCRA, 2010

'Scholarship/stipend or any payment of like nature' added to clause 4

Time Limit to make the order specifying an organization of a political nature not being a political party set as **'within 120 days of notifying the organisation'**

Transfer of foreign contribution with the **prior approval** of the central government.

Central Government to prescribe what is **'administrative expense'** and how it shall be calculated

Decision on an application for **grant of certificate of registration** is to be taken within **'90 days' of receiving the application**

Time limit for **renewal of certificate** set **'within 90 days** from the date of receiving the renewal application'

SOURCE: THE STANDING COMMITTEE REPORT, 2008

Figure 5.2: How the FCRA 2010 came into existence.

Key Changes in FCRA 2010

Switching from permanent validity to periodic renewal

FCRA 1976 gave the registration certificate a lifetime-validity. However, FCRA 2010 made the validity of registration time-specific. The registration certificate now requires renewal every five years. The periodic renewal is meant to filter defunct NPOs (Rajya Sabha 2008). NPO representatives and other witnesses to the Standing Committee objected to the renewal requirement arguing it would "lead to uncertainty for an organisation". Banks and financial institutions favoured regular monitoring through an electronic system and unique identification numbers over five-year renewal.

Cap on administrative expenses introduced

The 2006 Bill laid down that an NPO's administrative expenses could not be more than 50% of the foreign funds received. The cap on administrative expenses was meant to ensure good governance and refusal grounds would bring in transparency. The 1976 Act had no such caps. Dr Bimal Jalan, then Member of Parliament, expressed concern that for some organisations salaries form the bulk of expenses and it would be difficult "to differentiate between administrative expenses and other expenses, like salaries" (Rajya Sabha 2008). Political parties found a limit of 50% too high and wanted the Committee to bring it down to 25%. NPO representatives also highlighted that the term 'administrative expenses' was not defined clearly in the Bill. FCRA Rules 2011 now specify a list of heads to define administrative expenses.[1]

"Foreign source" now includes Indian companies with majority foreign holding

Witnesses appearing before the Standing Committee had suggested excluding Indian companies with majority foreign holding from the definition of 'foreign source' since such foreign holding was permitted under FDI/FII norms. But the Parliament in 2010 did not accept this recommendation. However, in 2016, the Parliament amended the Act to exclude Indian companies with majority foreign holding from the definition of "foreign source". This was after the High Court of Delhi found the ruling party and the main opposition party to have received funds from Indian companies with foreign holding in excess of 50% (Association for Democratic Reforms 2014).[2]

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1. Rule 5. Administrative expenses. - The following shall constitute administrative expenses:-(1) Salaries, wages, travel expenses or any remuneration realised by the Members of the Executive Committee or Governing Council of the organisation; (2) All the expenses towards hiring of personnel for management of the activities of the person of the organisation along with the salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel shall come in the category of administrative expenses. (3) All expenses related to consumables like electricity and water charges, telephone charges, postal charges, repairs to premise(s) from where the organisation or Association is functioning, stationery and printing charges, transport and travel charges by the Members of the Executive Committee or Governing Council and expenditure on office equipment (4) cost of accounting for and administering funds; (5) expenses towards running and maintenance of vehicles; (6) cost of writing and filing reports; (7) legal and professional charges; and (8) rent of premises, repairs to premises and expenses on other utilities.

2. In 2014, the Delhi High Court found the two leading national parties of India in violation of the FCRA regulations by accepting foreign contributions. This was followed by an amendment to the FCRA through the Finance Act, 2016 changing the definition of what is a 'foreign source'. Through this move, 'foreign companies' were redefined as "Indian" if their ownership in an Indian entity was within the foreign investment limits prescribed by the government for that sector. The foreign sources from where the political parties in question had sourced contributions were now no longer deemed as foreign sources, thereby. Another amendment through the Finance Bill, 2018 repealed the FCRA 1976 and was re-enacted as the FCRA 2010. While these amendments have helped the NPOs to source more domestic funding, they have also assisted the political parties to get away from the scrutiny of the foreign funds accessed by them (Srivas 2018)

Presumption of innocence reversed

NPO representatives raised an objection before the Standing Committee that the Act is in direct contrast to a fundamental principle of natural justice 'innocent until proven guilty'. The Bill bars an NPO from receiving foreign funds if the NPO is facing any prosecution even before conviction. Hence, false cases and accusations leading to prosecution can bar even genuine beneficiaries from receiving funds.

Objectives overlapping with the anti-terror funding provisions in other laws

NPO representatives also contended that other laws such as Foreign Exchange Management Act (FEMA) 1999, Prevention of Money Laundering Act (PMLA) 2002 and IT Act 1961 deal with terror funding and prevention of misutilisation of foreign contribution. Nevertheless, provisions such as the suspension of a certificate, seizure of accounts, disposal of assets along were still retained in the FCRA 2010.

How does FCRA 2010 compare to IT Act 1961 on ease of compliance and administrative safeguards?

FCRA 2010 and IT Act 1961 are two of the main laws governing funds for NPOs. FCRA regulates foreign funding but IT Act regulates receipt and proper utilisation of funds. Both laws mandate the filing of annual returns. This section compares FCRA 2010 and the Income Tax Act 1961 on two main parameters:

- ease of compliance: we compare the de jure and de facto processes for intimation, reporting, and renewal in both the laws; and
- administrative safeguards: For comparing administrative safeguards, we analyse the criteria, process and penalties in both the laws.

Ease of Compliance

For a comparison between the FCRA and IT Act on the ease of compliance, we look at the reporting requirements and the renewal requirements.

Reporting

FCRA involves two main types of reporting:

1. Declaration: An NPO needs to declare the receipt of foreign funds on both quarterly basis as well as annual basis. The 2015 amendment to the FCR Rules 2011 introduced a quarterly declaration of foreign fund receipts. Per Rule 13(b), an NPO has to declare the details of foreign funds received in the previous quarter on a quarterly basis. The declaration should have details of donors, amount and the date of receipt. The deadline is within 15 days of the following quarter. Per Rule 13(a), an NPO also needs to place the audited accounts including income and expenditure statement, receipt and payment account and balance sheet, either on the NPOs website or the Government-specified website. The deadline is within nine months of the following financial year.

2. Intimation: Per Rule 17 of FCR Rules, an NPO needs to submit a Chartered Accountant-certified report annually along with scanned copies of income and expenditure statement; receipt and payment account; and balance sheet.

The deadline for this report is within nine months of the next financial year. Even if an NPO did not receive any foreign funds during a financial year, the NPO needs to furnish a "Nil" report. An NPO is also required to report unutilised foreign funds. In addition, an NPO is required to upload the audited accounts within nine months of the closing of the financial year online, either on its website or the government website.[3]

According to our respondents:

- Preparing the documents for FCRA intimation usually takes one to three weeks.
- For the FCRA intimation report, the cash-basis financial statement is the most time-taking document to prepare.
- The process of preparing a balance sheet for FCRA takes time.
- Documents such as the details of the donor, the details of utilised and unutilised foreign contributions are not easy to compile.

	FORM FOR INTIMATION/ REPORTING	DUE DATE OF FILING ANNUAL INTIMATION/ REPORT	RENEWAL OF CERTIFICATE
FCRA, 2010	Form FC-4: Annual Intimation Form FC	31st December of the year in assessment	5 year validity since the date of issue
INCOME TAX, 1961	FORM 10b: Audit of Charitable Trusts and Institutions Form ITR - 7: Filing Income tax Returns	30th October of the assessment year (as amended by Finance Act 2020, earlier it was 30th September)	Lifetime-Validity (Before March 2020) Renewal of exemption certificate every five years (as per Finance Bill 2020)

Figure 5.3: FCRA 2010 Vs IT 1961.

Under Section 139(4A) of the IT Act, an NPO has to file a return if the annual income exceeds the tax exemption limit (Rupees 2.5 Lakhs since 2016). The NPO needs to collate documents specified by the Income Tax department, prepare a return and get it audited by a Chartered Accountant before filing. A respondent shared that preparing the balance sheet and the asset register takes considerable time. The computation of the income tax and voucher verification also take a "lot of time" because the balance sheet and asset register need to include all transactions carried out by the NPO in a given financial year, along with relevant receipts, bills, vouchers and donation records. Three out of four of the interviewed NPOs hired an external auditor to audit their ITR report. The auditing process is subject to the external chartered accountant's availability. This process takes six to eight weeks.

3. Rule 13, FCR Rules 2011.

Renewal

An NPO is required to complete the FCRA renewal process six months before the expiration of the current registration. Per respondents, preparing the documents for FCRA application renewal takes one to three weeks. However, the process of application renewal is completed only when the FCRA certificate is re-issued. This typically takes four to six months from the date of application. To stay registered, an NPO should ideally apply one year in advance. In case, the FCRA is not renewed before the expiry date for the delay on the part of the government, the NPO will not be able to raise funds.

For NPOs, the most time-consuming compliance for renewal is assembling the details of key functionaries. In September 2019, the Ministry of Home Affairs made it mandatory for the "office bearers and key functionaries and members" of the NPOs to declare before the government that they have not been "prosecuted or convicted" for "conversion" from one faith to another and for creating "communal tension and disharmony". Additionally, every member of an NPO has to, through an affidavit, certify that they have never been involved in "diverting" foreign funds or propagating "sedition" or "advocating violent means" (PTI 2019).

Income Tax registration, on the other hand, is permanent and does not require any such compliance. However, the Finance Act 2020 has introduced the five-yearly renewal requirement for IT Act registration. Owing to the COVID-19 pandemic, this deadline for existing NPOs is 31 December 2020 (Economic Times 2020).

Administrative Safeguards in the two Acts

Administrative safeguards include hearing before an adverse decision, reasoned order, appeal, absence of arbitrariness, guided discretion and proportionate penalties. Both Acts mandate hearing before cancellation, require reasoned order to be passed and provide for an appeal.[4] However, they differ on administrative discretion and stringency of penalties. This part assesses both laws on the vagueness (/arbitrariness) of cancellation grounds and stringencies of the penalties imposed for violation of the respective Acts.

Section 14(1) of FCRA lists five grounds for cancellation of FCRA certificate. Sub-sections (c) and (e) in particular are vague. Section 14(1)(c) allows the Union Government to cancel the FCRA certificate if "necessary in the public interest". FCRA or the rules do not define the phrase "necessary in the public interest" or "public interest", essentially giving a long leash to the executive. Section 14(1)(e) provides for cancellation if the NPO has not undertaken "any reasonable activity in its chosen field for the benefit of the society for two consecutive years". Defining reasonable activity is subjective. Allowing the government to cancel the FCRA certificate based on such subjective grounds could lead to its misuse.

4. The Union Government cannot cancel the FCRA registration of an NPO without giving them a reasonable opportunity of being heard. Similarly, the principal commissioner cannot cancel the IT registration without hearing the NPO (Section 12AA). Per Section 16(3) of FCRA, the Union Government must communicate the reasons for rejection. Similarly, Section 23 of FCRA requires the Union Government to record the reasons for initiating an investigation against an NPO. The government is bound to share the report with NPO for its response. Following the response, the Union government may either suspend or cancel the certificate. Under Section 12AA of the IT Act, the government has to provide a written notice cancelling the registration of the NPO. Per FCRA 2010, an NPO can appeal against the MHA decision (grant, renewal or cancellation of license) before the High Court within sixty days. For an appeal against asset seizure, an NPO can approach the Court of Session or the High Court within one month of the order of seizure. Under the IT Act, an aggrieved taxpayer can appeal to the Commissioner (Appeals) and then to the Income Tax Appellate Tribunal.

FCRA consists of vague grounds for cancellation

Section 14(1)(b) and (d) overlap. Clause (b) is about violation of terms and conditions of renewal and (d) is violation of FCRA provisions, rules or orders. Conditions of renewal or registration as given in section 12 are part of the Act. These two provisions do not seem to be vague. However, both the provisions allow for cancellation on the ground of violation of section 12(4)(f). Section 12(4)(f) lists vague terms such as "the security, strategic, scientific or economic interest of the State", "public interest", and "harmony between religious, racial, social, linguistic, regional groups, castes or communities".

Figure 5.4: Vague terms in FCRA 2010.

Section 3 of FCRA prohibits an NPO of political nature to accept foreign funds. The Union Government can notify an organisation of political nature based on: the activities, ideology propagated, programme, or association with the activities of a political party. One of the determinants is whether the NPO objectives advance "political interests". The Supreme Court in Indian Social Action Forum (INSAF) v Union of India agreed that the phrase 'political interests' used in Rule 3(v) is vague and can be misused. But the Court refused to strike it down for the "possibility of abuse". The Court observed that the organisations working for the social and economic welfare of the society are not covered under Rule 3(v) unless they are into active politics or party politics. Similarly, for Rule 3(vi), the Court read down the provision and held:

> *"Support to public causes by resorting to legitimate means of dissent like bandh, hartal etc. cannot deprive an organisation of its legitimate right of receiving foreign contribution. It is clear from the provision itself that bandh, hartal, rasta roko etc., are treated as common methods of political action. Any organisation which supports the cause of a group of citizens agitating for their rights without a political goal or objective cannot be penalised by being declared as an organisation of a political nature. To save this provision from being declared as unconstitutional, we hold that it is only those organisations which have connection with active politics or take part in party politics, that are covered by Rule 3 (vi)."*

Under the IT Act, Section 12AA allows for the cancellation of registration if the activities are not "genuine", or not carried out as per NPO objectives. However, both are questions of fact and can be objectively determined.

Penalties under FCRA are more stringent than the IT Act

The penalties in the FCRA 2010 are much more stringent than those in the IT Act 1961. In case of submission of a false or incorrect statement, an organisation can lose its FCRA registration but for the purpose of IT Act, an NPO will have to pay a fine of ten thousand rupees (Section 271J of IT Act).

Delay in filing of annual returns under FCRA leads to cancellation of the certificate. Several organisations have had their FCRA licences cancelled due to delay in filing of annual returns. Per

the IT Act, an audit report without the Income Tax Return is considered to be defective but it does not lead to the withdrawal of exemptions under Section 11 (Fogla et al. 2019).

Provisions in Practice

Under the powers conferred by Section 13 and Section 14 of the FCRA 2010, the Union Government has suspended and cancelled the FCRA licences of several organisations for failing to comply with the regulatory provisions under FCRA 2010.

To understand this provision in practice, we collated suspension and cancellation orders issued to five NPOs by MHA from the MHA website. Figure 7.5 traces five key orders of suspension and cancellation to understand the various grounds of suspensions/cancellations cited in the notices.

Four out of the five organisations received a suspension notice after the primary hearing on the accounts reported by Gazetted officers for a period of 180 days. The licenses of the organisations were cancelled at the end of the 180-day time period. The suspension notices stated the sections and rules violated, and allowed the organisation another opportunity to present their case. The suspension period is crucial for organisations to finish the ongoing activities, considering organisations can use the funds that they currently have after taking permission and approving the activities from MHA.

The MHA found Kerala Catholic Charismatic Renewal Services 'Emmaus' guilty of violating Section 7, 18 and 19 of the FCRA 2010. The organisation accepted the allegations, apologised and filed an official request to the MHA asking them to not cancel the certificate. But the certificate of Kerala Catholic Charismatic Renewal Services "Emmaus" was cancelled, and their accounts were immediately seized.

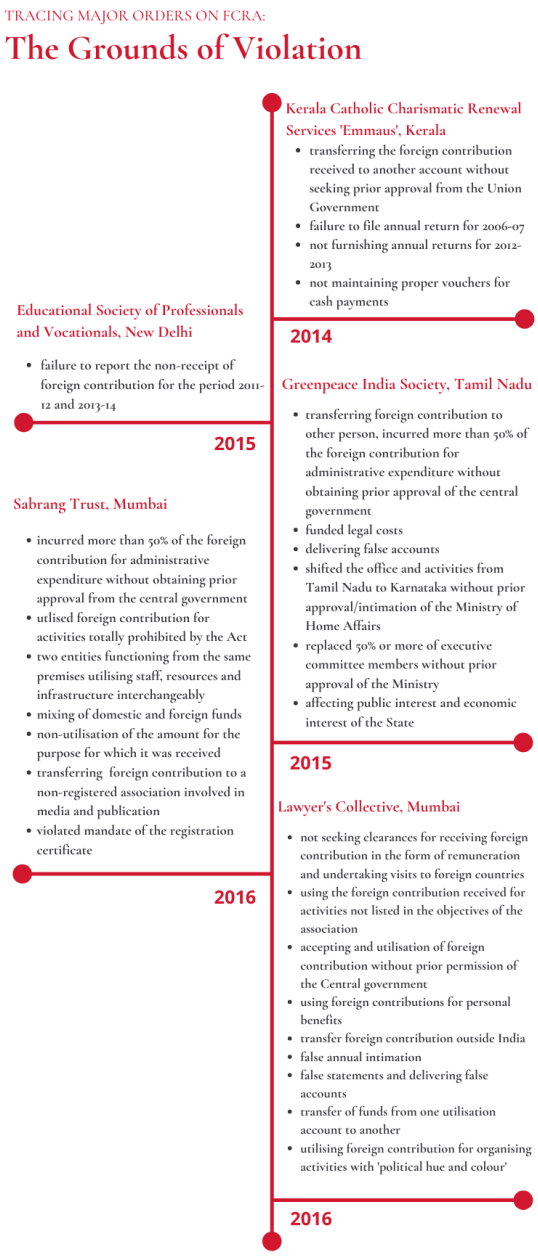


Figure 5.5: Grounds of Violation. Adapted from: FCRA website

Educational Society of Professionals and Vocationals (ESPV) lost its FCRA registration because the organisation did not file a "nil" report. ESPV assumed that no report is to be filed if no foreign funds were received (Ministry of Home Affairs 2015). The organisation later filed an intimation for the requested period, yet the certificate was cancelled.

Table 5.1: Offenses and Penalties under FCRA 2010

Offence	**Penalty**
Offence punishable under section 35 for accepting any hospitality in contravention of section 6 of the Act	Rs.10,000/-
Offence punishable under section 37 for transferring any foreign contribution to any other person in contravention of section 7 of the Act or any rule made thereunder	Rs. 1, 00,000/- or 10% of such transferred foreign contribution, whichever is higher
Offence punishable under section 37 for defraying of foreign beyond fifty per cent of the contribution received for administrative expenses in contravention of section 8 of the Act.	Rs. 1, 00,000/- or 5% of such foreign contribution so defrayed beyond the permissible limit, whichever is higher
Offence punishable under section 35 for accepting foreign contribution in contravention of section 11 of the Act	Rs. 1, 00,000/- or 10% of the foreign contribution, received, whichever is higher
Offences punishable under section 37 read with section 17 of the Act for - (a) receiving foreign contribution in account in his application for grant of certificate	Rs. 1, 00,000/- or 5% of the foreign contribution received in such account, whichever is higher
(b) non-reporting the prescribed or source and manner of such remittance by banks and authorised persons	Rs. 1, 00,000/- or 3% of the foreign contribution received or deposited in such account, whichever is higher
(c) receiving & depositing any fund other than foreign contribution in the account or accounts opened for receiving foreign contribution or for utilising the foreign contribution	Rs. 1, 00,000/- or 2% of such deposit, whichever is higher
Offence punishable under section 37 for non-furnishing of intimation of the amount of each foreign contribution received and the source from which and in the manner in which, such foreign contribution is received as required under section 18 of the Act	Rs. 1, 00,000/- or 5% of the foreign contribution received during the period of non submission, whichever is higher
Offence punishable under section 37 for not maintaining the account and records of foreign contribution received and manner of its utilisation on required section 19 of the Act	Rs. 1, 00,000/- or 5% of the foreign contribution during the relevant period of non maintenance of accounts, whichever is higher.

The proportionality of offence to the punishment under FCRA is often incongruous. Under the FCRA Rules, the MHA could have fined Educational Society of Professionals and Vocationals and Kerala Catholic Charismatic Renewal Services 'Emmaus' with Rs. 1, 00,000/- or 3% of the foreign contribution received or deposited in such account, whichever is higher, for not reporting on time, yet the MHA did not.

Sabrang Trust run by Teesta Seetalvad received a cancellation notice on 16 June 2016 for violation of Section 3, 7, 8(1) (a) and (b) and 17(1). In response to the allegation, the organisation denied using funds for personal gain and also claimed that they did not use more than 50% for administrative purposes. They believed that the interpretation of FCRA Rules by the MHA was 'arbitrary' and the allegations 'baseless' (Citizens for Justice and Peace 2017).

The MHA cancelled the FCRA license of Lawyer's Collective for violating Section 3, 6, 7, 8, 11, 17, 18 and 33 of the Act. Their license was cancelled in 2016 and a case was filed in Supreme Court by the Central Bureau of Investigation against Indira Jaising and Anand Grover for fraud and misuse and of foreign funds (Indian Express 2019).

Similarly, the MHA also cancelled the license of Greenpeace for violating Sections 7, 8, 12, 17, 18, 19 and 33. A representative of the Greenpeace Society was called to account for the allegation and file a response with the MHA. However, upon scrutinising the accounts and responses, the MHA found them unsatisfactory and consequently cancelled their registration. Greenpeace India is currently struggling to carry out its operations and has started laying off its staff. Through the cancellation of FCRA license, the NPO's reputation has also taken a hit and consequently, its domestic donations are also declining (Chakravarti 2019).

Conclusion

76% of registered NPOs are directly engaged in COVID-19 relief work (CSIP Ashoka University 2020). The Ministry of Home Affairs, Government of India on 1 April 2020, through a letter, appealed to these organisations to mobilise their support for COVID-19 related activities as their "outreach and assistance in society may complement government's endeavours". The letter issued by the Ministry of Home Affairs addressed "the Chief Functionaries of all FCRA Association as per the List and e-mail address". Acknowledging the "valuable contributions" made by the NPOs, the letter sought to "mobilise their support to complement the Government's endeavours." The letter also listed the areas to which the NPOs can contribute to support the government. This announcement was followed by an order from the Ministry of Home Affairs on 7 April 2020 to nonprofits registered under the Foreign Contribution Regulation Act (FCRA) requesting them to provide information on their organisation's COVID-19 relief efforts via the FCRA portal by the 15th of every month.

The social sector has had a mixed response to this order. Approximately 90,000 NPOs have received this letter from the Ministry of Home Affairs, as per various news reports. Some NPOs are worried because they did not receive the same letter from the Ministry and of those who have received the letter, some organisations are not directly involved in COVID-19 relief work. The Ministry has, however, not commented on the criteria for selecting the NPOs

"It is not mandatory but better to file it": All the four respondent NPOs have been reporting their COVID-19 relief work on the FCRA site monthly. The reporting format did not specify whether only the foreign contribution is to be reported. On seeking advice from different legal and regulatory experts in the field, NPOs decided to report both - the foreign funding as well as the domestic funding. NPOs are being extremely cautious out of fear of non-compliance and repercussions.

Pandemic made the compliance difficult: The pandemic has also affected the sector's ability to comply with regulatory norms. The auditing process emerges to be the worst-hit amongst the regulatory compliances. Due to the lockdown, many organisations have not been able to complete their auditing procedures. As the physical files were locked in the office and individuals have been working from home, the auditors have been unable to access the physical files. A respondent said: "It is the compliances like making financial statements, calculating TDS that require physical documents, which are at the moment in our offices." Therefore, all compliances that are dependent on financial statements are pending. Due to all this, there has been a 2-3 month delay in audit reporting as compared to last year.

The paper looked at the history and the objectives of the FCRA 2010. It then compared the FCRA with relevant provisions of the IT Act 1961. The paper found that FCRA involves multiple compliance requirements such as quarterly and annual intimation and annual returns, as compared to annual return filing requirements under the IT Act. Although it takes more time (6-8 weeks) to prepare the document for Income Tax Reporting than to prepare the documents for the FCRA intimation (1 to 3 weeks), multiple processes mean spending more time on FCRA compliance over the course of a year. It is not clear how these multiple compliance requirements are helpful. More compliance implies more costs, not just for NPOs but also for the concerned department to enforce compliance. FCRA requires periodic renewal but the IT Act did not. The purpose of renewal is also not clear. The government claimed that it was to weed out defunct NPOs. But the requirement of filing a 'nil' report also achieves the objective. Cancellation for non-compliance with annual requirements is a sufficient filter. Periodic renewal imposes huge enforcement costs on both the NPOs as well as the department. The paper finds that the MHA may take 4 to 6 months from the date of application to decide renewal application.

FCRA has a long list of vague and broad terms such as 'political nature' and 'public interest'. It allows the authorities to misuse discretion and allege breach of legal provisions. Penalties are also disproportionate to the breach. For a minor violation such as failure to file a 'nil' report may result in cancellation. The power to cancel the FCRA registration even for a minor breach can be misused to silence political dissent. An NPO may approach courts for a remedy against motivated cancellation. However, FCRA suspension during the pendency of judicial proceedings and the stigma of being in bad books of the government makes it difficult for the NGO to survive.

An education without an exit

School-leaving certifications for non-traditional learners

Guntash Obhan, Nirikta Mukherjee,
and Tarini Sudhakar

Executive Summary

The COVID-19 pandemic has caused a significant setback in school education (Choudhary 2020). Schools across India have been closed for nearly seven months. Nevertheless, the pandemic has provided an opportunity to rethink the current K-12 education system (S. Sharma 2020).

In India, school education typically culminates in key-stage examinations for grade 12 conducted by school Boards. These exit-examinations give learners the opportunity to signal their skills for both higher education and the job market.

Over 60 school Boards conduct exit-examinations for school education and certify students in India, including Central Board of Secondary Education (CBSE) and Council for the Indian School Certificate Examination (CISCE) (Bhattacharji and Kingdon 2017). Most of these Boards only affiliate schools, and do not directly certify independent learners.

Some learners choose to opt-out of the "schooling" system for reasons including disability, financial constraints, and dissatisfaction with mainstream schooling. Due to the unique nature of their studies, these non-traditional learners tend to have fewer options for exit-certifications than those who enrol in regular schooling.

Homeschoolers are one kind of non-traditional learner in India. In this paper, we attempt to document how non-traditional learners perceive the certification options available to them. In particular, we focus on how the National Institute of Open Schooling (NIOS) matches up to the demands of non-traditional learners on flexibility and quality curriculum.

We find that non-traditional learners prefer NIOS for the flexibility it offers in appearing for examinations and choosing subjects. In addition to this, NIOS fees are lower than that of other available Boards. Learners also choose NIOS for guaranteeing their entry into higher education. However, these offerings are not accompanied by high-quality curriculum or learning. Non-traditional learners choose NIOS not because it is aspirational but because it is easy.

One of the key recommendations of the National Education Policy 2020 is to expand and strengthen NIOS. But to make it a viable alternative to regular schooling, we need to improve the offering of its exit-certification. Unless NIOS updates and improves its content and reach, it will risk not imparting relevant skills and information to its affiliated learners.

All learners, enrolled in mainstream or non-traditional schooling, should be able to access exit-certification on an equal footing. Improving the viability of NIOS certification for non-traditional learners is necessary for the democratisation of education (Sudhakar and Anand 2020).

The paper is divided into four sections. The first section introduces the problem of exit-certification for non-traditional learners. The second section traces the evolution of state policies on non-traditional learners. The third section presents the exit-certifications available to non-traditional learners and how they perceive them, and the fourth section details how NIOS matches up to these perceptions.

Introduction: School exit-certification in India

School education in India culminates in key-stage examinations for grade 12 conducted by school Boards. Such exit-examinations certify and signal the achievements of students. Many universities admit students to undergraduate programmes based on their performance in these examinations. Plus these exit-certifications are crucial for ensuring entry into the job market, especially for government jobs (Bishop 1999; Bhattacharji and Kingdon 2017).

There are over 60 school Boards that conduct exit-examinations for school education and certify students in India (Bhattacharji and Kingdon 2017). Of these, Central Board of Secondary Education (CBSE) and Council for the Indian School Certificate Examination (CISCE) are the most prominent national-level Boards (Jain et al. 2014). Alongside these, 28 states and Union Territories in India provide for Boards at the state level (state Boards). Foreign Boards such as the International Baccalaureate (IB) and Cambridge Assessment International Education (CAIE) are also available. Most of these Boards only affiliate schools, and do not directly grant certification to independent learners.

Why does this become an issue? Some learners choose to opt-out of the "schooling" system for reasons including disability, financial constraints, and dissatisfaction with mainstream schooling.

For this paper, we call these students non-traditional learners. In India, non-traditional learners have fewer options for exit-certification than those who go to a regular school. Some Boards specifically cater to non-traditional learners who do not have a school affiliation but wish to appear for exit examinations. The National Institute for Open Schooling (NIOS) is one such option provided by the Union government.

From 2010 to 2016, the number of non-traditional learners appearing for exit-certification from open school Boards, both NIOS and state open Boards, in India rose by 42%, from 3.05 crores to 4.33 crores (Ministry of Human Resource Development 2016). The National Education Policy 2020 recognises the large number of non-traditional learners in the country, and the role played by Boards that cater to them. NEP 2020 proposes to expand and strengthen programmes offered by NIOS "for meeting the learning needs of young people in India who are not able to attend a physical school".

Before we embark on reform, we must understand how non-traditional learners perceive and select their exit-certifications.

Homeschoolers are one kind of non-traditional learner in India. In this paper, we document the factors that homeschoolers take into account while choosing exit-certification. In particular, we focus on NIOS. Our study is based on semi-structured interviews with 27 homeschoolers and expert comments from heads of three homeschooling associations in India.

Government approach to non-traditional learning

Multiple schemes catering to non-traditional education since the 1960s

Government of India initially focused on adult literacy when it came to non-formal education (Mitra 2008). The first National Policy on Education in India released in 1968 reflected this stance. It did not lay down any recommendations on accommodating other learners, such as children who had left mainstream schooling.

In 1974, the Ministry of Education and Social Welfare released a report on schemes for non-formal education for the Fifth Five Year Plan. The report argued that the education strategy was to focus on consolidating mainstream education with non-traditional methods since the former was not "sufficient for the achievement of major educational objectives". The report also proposed that non-traditional education should not follow the same pattern as the mainstream system, but should adopt "new flexibilities and adaptations to real learning needs". One of the leading programmes envisioned by the report was "non-formal education for non-school going children in the age group of 6 to 14". By 1978, all existing schemes on non-formal education were consolidated under a single programme that also brought working children, school dropouts and over-age children under its purview (Planning Commission 1998).

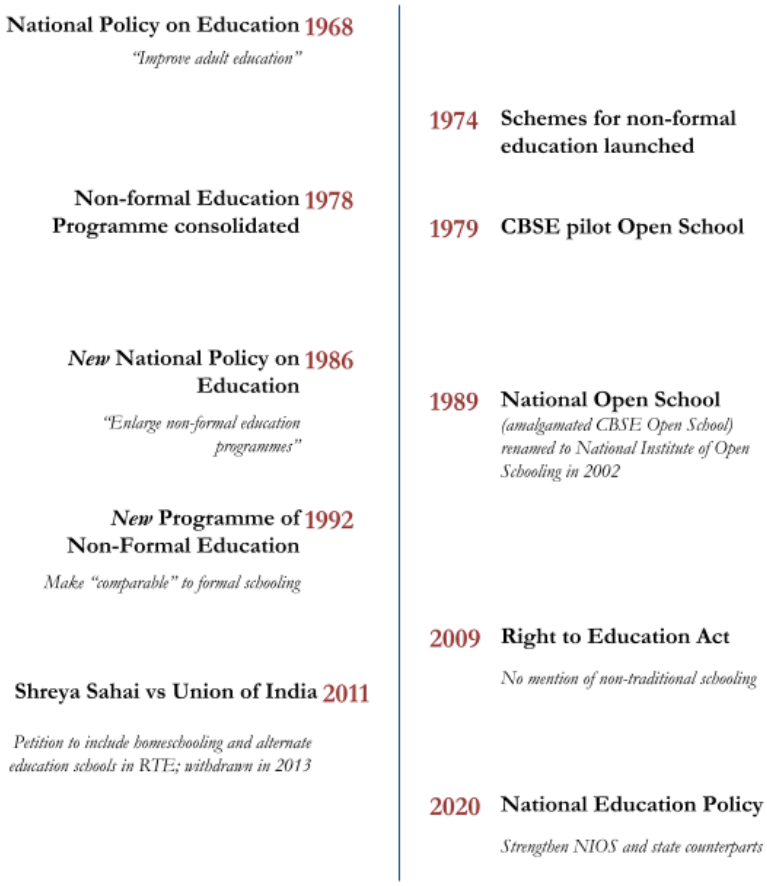


Figure 6.1: Evolution of policies for non-traditional learners.

The National Policy on Education 1986 recognised the need to strengthen alternatives for non-formal education, especially open schooling, to achieve universal enrolment and retention. Based on this recommendation, in 1989, the government established the National Open School (later renamed as National Institute of Open Schooling). The National Programme of Action in 1992 focused on improving the non-formal learning environment by investing in technology. The Programme also emphasised "organisational flexibility, relevance of curriculum, diversity in learning activities to relate them to the learners' needs, and decentralisation of management" that contributed to the unique nature of non-formal education.

No mention of non-traditional education in Right of Children to Free and Compulsory Education Act 2009

The Parliament of India passed the Right of Children to Free and Compulsory Education (RTE) Act in 2009. The Act focussed on mainstream or regular schooling and did not recognise any alternative models or pathways for education. With this nudge, NIOS announced that it would discontinue its Open Basic Education (OBE) programme on elementary education by 2015 (Bhalla 2018).

Shreya Sahai, a homeschooled child, filed a petition on both these issues in 2011. She argued for including homeschooling and alternative education schools under the RTE and allowing NIOS to provide education to children aged 6-14 years, with no academic dilution. The High Court of Delhi dismissed the petition stating it did not have the authority to ask the government to amend any Act as this was the prerogative of the government and legislature. It remained silent on the OBE programme offered by NIOS.

Since then, the Ministry of Human Resource Development (MHRD)[1] has successively extended the OBE for ages 6-14. In 2017, it was extended till 31 March 2020 "subject to NIOS showing regular progress on mainstreaming children as per Section 4" of the RTE Act. Section 4 of the RTE reads as

> *"When a child over six years of age has not been admitted to any school or though admitted could not complete his or her elementary education, then he or she shall be admitted in a class appropriate to his or her age."*

What MHRD means by mainstreaming children remains unclear. In February 2020, it yet again extended the operations of the OBE programme till 31 March 2025.

National Education Policy 2020 proposes strengthening open schooling facilities yet again

Recently, the government tabled two Committee reports on the National Education Policy: that of the Subramanian Committee in 2016 and the Kasturirangan Committee in 2019. Both Committees argued for expanding and strengthening the open schooling facilities for non-traditional learners. But their focus was limited to students who were cut off from mainstream schools due to financial or bodily constraints. The Kasturirangan Committee also departed from past policies by proposing to strip affiliation powers from Boards and only allowing them to function as examination bodies.

> *"More than one BOA may operate in all states including some that operate nationally, including the existing Central BOAs (e.g., CBSE, ICSE, NIOS). This will offer a liberalised system for school leaving certification, with multiple choices available. BOAs will not affiliate schools but will offer their services for schools and students to choose; schools may decide which Board(s) of Assessment they use, based on the curricula they set."*

The National Education Policy 2020 does not explicitly recognise different models of alternative education. However, it recommends expanding the scope of school education to facilitate learning for all students, with particular emphasis on socio-economically disadvantaged groups, involving both formal and non-formal education modes. In particular, it proposes strengthening the Open and Distance Learning (ODL) Programmes offered by NIOS and State Open Schools.

1. Now renamed as the Ministry of Education.

"National Institute of Open Schooling and State Open Schools will offer the following programmes in addition to the present programmes: A, B and C levels that are equivalent to Grades 3, 5, and 8 of the formal school system; secondary education programmes that are equivalent to Grades 10 and 12; vocational education courses/programmes; and adult literacy and life-enrichment programmes. States will be encouraged to develop these offerings in regional languages by establishing new/strengthening existing State Institutes of Open Schooling."

Which exit-certifications do non-traditional learners choose?

Since non-traditional learners do not enrol in a regular school, they need to gain their exit-certification independently. They typically appear for exit-examinations as "private candidates". In this section, we explore the regulatory structure under which Boards operate and the exit-certification options they offer non-traditional learners.

Non-traditional learners are trying to step away from the constraints of mainstream schooling

Out of 27 respondents in our survey, 19 opted for homeschooling because they were dissatisfied with the regular schooling environment. Parents felt that mainstream schooling was moulded around examinations and based solely on rote-learning methods. Other issues with mainstream schooling included attendance requirements, methods of teaching, rigid curriculum and absent customisation around the child's needs (Holt 1982).

Parents also believed that the straitjacketing in schools made it difficult for children to discover their authentic self. "Every child is unique and the outcomes are also not proportional to the amount of time and effort spent in schools", one of the homeschoolers responded.

All these factors go into deciding which exit-certification non-traditional learners will choose.

Boards provide exit-certifications for non-traditional learners selectively

CBSE, CICSE and NIOS are the main national-level Boards in India. Of these, only NIOS caters to non-traditional learners without any entry restrictions. IB and CAIE are the most commonly chosen foreign Boards; only CAIE allows non-traditional learners to appear for exit-examinations as private candidates. Some restrictions that non-traditional learners face on their choice of Boards also stem from the Council of Boards of School Education and Association of Indian Universities, two non-statutory bodies in India that recognise Boards and the validity of their exit-certifications.

Council of Boards of School Education (COBSE) is a voluntary association of Boards and institutions that are set up by a statutory Act or an executive order and follow the National Curriculum Framework or CBSE (National University of Educational Planning and Administration, n.d.). Few foreign Boards also form part of this network as associate members[2]

2. Seven foreign Boards are associate members of COBSE, as of September 2020: National Examinations Board (Nepal), Mauritius Examination Syndicate, Bhutan Council For School Examinations & Assessment, The Aga Khan University Examination Board, Inter Board Committee Of Chairmen (IBCC), Edexcel and Northwest Accreditation Commission, USA. No respondent in our survey opted for these Boards.

In 2013, MHRD authorised COBSE to verify genuineness/recognition of school Boards in India[3] The High Court of Delhi, in 2019, clarified that seeking COBSE recognition or membership is not mandatory.

Association of Indian Universities (AIU) is a voluntary association that comprises higher education institutions in India. It accords "academic equivalence" to school-level exit certifications for all Boards, Indian and foreign. AIU matches exit-certifications issued by COBSE members with CBSE's grading system[4] Since CBSE is a government-provided exit-certification, learners with CBSE certification do not face any challenges in proving its validity for entry into higher education.

AIU also grants equivalence to degrees awarded by foreign Boards but bars learners not affiliated to a school. Per its equivalence bye-laws, AIU does not certify any student who has "completed their education through home studies/private candidate".

Table 6.1: Premier Boards in India and their provisions for non-traditional learners.

Board	Provisions for non-traditional learners
Central Board of Secondary Education	Only the following can appear examinations as "private" candidates: • A candidate who had *failed* the All India Senior School Certificate Examination conducted by CBSE • *Teachers* serving in educational institutions affiliated to the Board, who have already qualified/ passed Secondary or an equivalent examination at least two years before taking the Senior School Certificate Examination. • Regular candidate(s) of the previous year who have enrolled for the exam but could not appear for it due to *medical reasons* except for a shortage of attendance as prescribed
Council for the Indian School Certificate Examination	Private candidates are *not permitted to appear* for either of the three examinations: Indian Certificate of Secondary Education (grade 10); Indian School Certificate (grade 12); and Certificate in Vocational Education (grade 12)
International Baccalaureate	Does *not certify* private candidates
Cambridge Assessment International Education	Students *can appear* as private candidates if they do not attend a Cambridge school. Such learners need to find a Cambridge school in their country that accepts private candidates and register with them to take the Cambridge exams. But certain subjects are not available for private candidates.
State Boards	Differ according to different states. • Maharashtra allows learners to appear as private candidates but requires them to opt for a *second and third language* as part of their subjects. • Tamil Nadu Board of Higher Secondary Education does not allow private candidates to appear for subjects with a *practical component*.
National Institute of Open Schooling	Caters to non-traditional learners in India
State Institutes of Open Schooling	State counterparts for NIOS that cater to non-traditional learners

3. MHRD OM No. 2-35/2011- Sch.3 dated 7 September 2012 and Ministry of Personnel, PG & Pensions OM No. 14021/1/2012- Estt.D dated 6 March 2013.
4. D.O. No. DS:C:47:91 dated 30 October 1991.

NIOS is the preferred exit-certifier for non-traditional learners

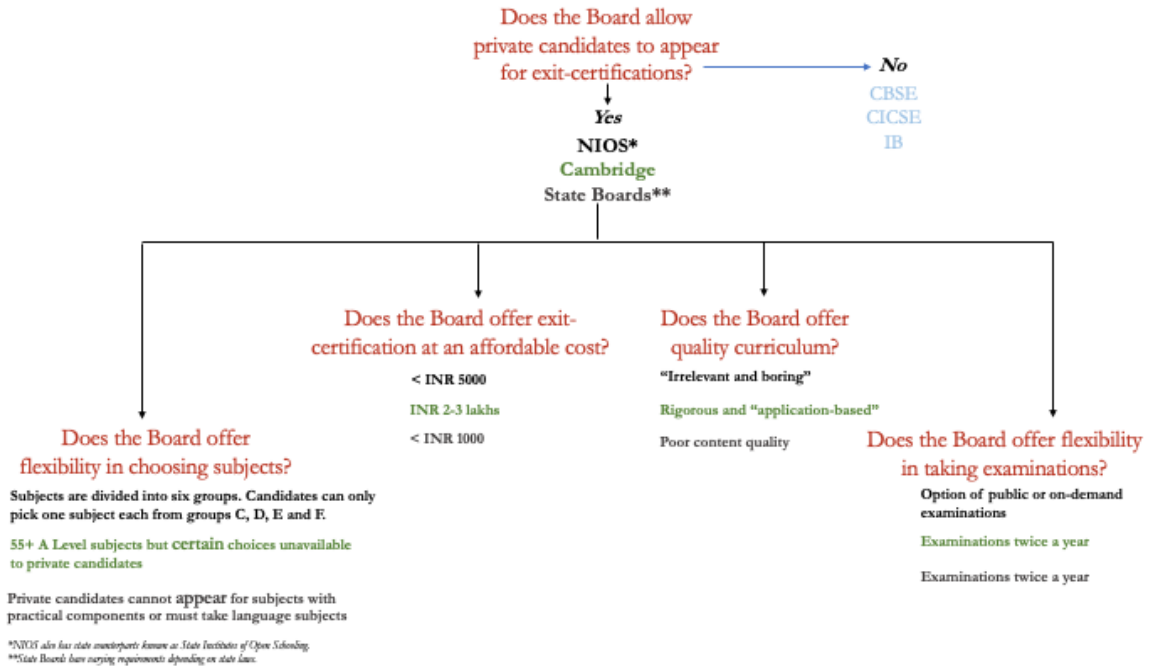


Figure 6.2: How non-traditional learners choose exit-certification.

Children of 11 respondents in our survey either appeared for or planned to acquire exit-certification.[5] Of these 11 respondents, seven chose to acquire exit certification as private candidates. Four respondents opted for NIOS and one for CAIE. One homeschooler said they would opt for both NIOS and CAIE since even though CAIE offered a high-quality curriculum, it is not clear whether universities will admit private candidates under CAIE. They suggested that taking NIOS alongside CAIE would serve as a backup in case Indian universities do not accept the latter certification for private candidates.

Many homeschoolers return to mainstream schools because of the reputational risk of not being certified by a premier Board

Some homeschoolers that we interviewed chose to return to mainstream schools for completing their higher secondary education. Four respondents went back to mainstream schools in grade 9 or 11 and appeared for exit-examinations as regular candidates. Two respondents chose to take the examination from state Boards: Maharashtra State Board Of Secondary and Higher Secondary Education and Karnataka Board of Pre-University Education. One opted to go through the International Baccalaureate programme and the other through CAIE as a regular student.

One of the main reasons for this was apprehension about the recognition of exit-certification for non-traditional learners while applying for admission in universities. Some parents considered sending their children back to schools as the only resort for gaining exit-certification. These non-traditional learners were also not clear whether AIU would recognise private candidates appearing

5. Children of remaining respondents either did not want to opt for exit-certification or were too young to make a decision regarding the same. Homeschoolers who did not opt for any form exit-certification identified as "open learners." They defined their approach as a learning process without definitive boundaries. It is a step beyond "schooling" which did not end up in grade 10, 12 and higher education.

from CAIE, a foreign Board, for admission in Indian universities. Moreover, they were doubtful about the "rigour" of NIOS curriculum.

Other factors such as socialising and understanding the "outside world" also played a role in this decision to return to mainstream schooling. One respondent opted for homeschooling to focus on specific extra-curricular activities. He chose NIOS because the child could take exams as convenient, but later returned to mainstream schooling because homeschooling did not offer them as much flexibility as they had anticipated.

How does National Institute of Open Schooling fare on quality, affordability, and flexibility?

In 1979, CBSE established a pilot Open School. In 1989, MHRD set up the National Open School and amalgamated within it CBSE's pilot Open School.

In 1990, CBSE ceased to act as the examining and certifying authority on behalf of the National Open School Society. Instead, the National Open School Society was granted the authority by MHRD to conduct examinations at the level of school education upto pre-degree level. In July 2002, MHRD changed the name of the organisation from the National Open School to the National Institute of Open Schooling (NIOS).

Figure 6.3: How NIOS operates.

NIOS offers a national Board examination at two levels: secondary and higher secondary. The secondary level is equivalent to the ICSE, CBSE, and other national or state Standard 10 Board examinations. The higher secondary level is equivalent to the Pre-University Courses (PUC) and other Standard 12 Board examinations.

NIOS meets the demands of flexibility and customisation of learning with three critical features: flexibility of appearing for examinations, choice of subjects, and certainty for entry into higher education. But it also fails to deliver well on quality curriculum and learner support services.

What NIOS does well from the point of view of non-traditional learners

Flexibility in appearing for examinations

Two respondents in our survey opted for NIOS for its flexibility of taking examinations. Under NIOS, non-traditional learners have two options: public examinations and on-demand examinations.

Public examinations are conducted twice a year. Learners register for a span of five years and are offered nine examination chances to complete the course. Non-traditional learners can also choose

to use the On-Demand Examinations System (ODES)[6], where they can book slots for examinations per their convenience. Candidates can choose to appear for examinations as per convenience.

From 2013 to 2018, the number of learners who opted for public examinations fell from 3,74,331 to 3,03,319. During the same period, learners opting for on-demand examinations rose nearly four times from 30,360 to 1,08,656.[7]

On-demand examinations offer many benefits to learners. Learners can appear when they are ready and take examinations as often as they want if they want to improve performance (Andrade 2008). This lowers the pressure on learners and allows them to go through the course at their own pace.

Such a system is starkly different from high-stakes examinations conducted by "premier" Boards such as CBSE or ICSE (Kapur 2019). Boards other than NIOS generally offer learners limited chances to take exit-examinations. Take for instance, CBSE. Students get one chance to attempt to take the examination. If they fail any one subject, they get three chances to clear the compartment examinations. If unsuccessful in all three attempts, students have to take examinations for all subjects again. Universities also use these examinations to eliminate candidates seeking admission into higher education, ramping up the pressure on students(Chowdhury 2018). By allowing learners to take examinations as per their convenience, NIOS reduces the stress of exit-examinations and moulds the learning experience as per the learner's needs.

One respondent also opted for NIOS because of its flexible credit accumulation and transfer facilities. NIOS allows students who have failed to obtain minimum marks under other Boards recognised by AIU (but passed at least one subject) to transfer credits. They can transfer their marks in two subjects to NIOS and opt-out of taking examinations for those subjects when they enrol in NIOS. If a student has failed three subjects but passed two under CBSE-conducted examinations, they can take NIOS-conducted examinations for the failed subjects without having to sit for the subjects they passed. The credit transfer facility ensures that learners do not discontinue education by failing to score the minimum marks in a course. It also saves them a complete academic year in the regular schooling system (Minni et al. 2016). (Minni et al. 2016) also point out that this flexibility of taking examinations under NIOS might encourage learners to choose it more for earning a certificate but not necessarily use it to "enhance their learning".

Flexibility in choosing subjects

The National Curriculum Framework 2005 sets the basic curricular framework for K-12 education across India. The Framework recommends that students should be free to choose from a variety of subjects in the higher secondary level without being restricted by "streams". This flexibility, particularly in secondary school, allows students to design their own paths of study and careers (Kasturirangan Committee 2019).

Several Boards narrow down the choice of subjects available to students. In the past, students who opted for CBSE could only choose from three streams: Science, Commerce and Humanities.[8]

6. The subjects presently available for appearing through ODES at the Senior Secondary level are: Hindi, English, Sanskrit, Mathematics, Physics, Chemistry, Biology, History, Geography, Political Science, Economics, Business Studies, Accountancy, Home Science, Psychology, Sociology, Painting, Environmental Science, Mass Communication, Data Entry Operations, and Introduction to Law.

7. Based on data from NIOS Annual Reports.

8. As per the latest curriculum framework of CBSE, the Board does not restrict the flexibility to choose different subjects across streams.

Universities also set admission criteria based on the combination of subjects that learners had in their higher secondary stage (National Council of Educational Research and Training 2005). Two respondents preferred NIOS because of the flexibility it granted learners to choose their subjects.

But the freedom envisioned by the National Curriculum Framework seems unfulfilled by NIOS as well. Learners have to appear for and pass at least five subjects to acquire exit-certification. The subjects that they can opt for are divided into six groups. They can pick up two languages from Group A and one subject each from groups C, D, E and F. Learners may also take two additional subjects (only one subject from groups C, D, E and F) after paying Rs 720 per subject.

For example, a learner can choose a combination of Physics (Group C) from science stream and Political Science (Group D) from the humanities stream. But they cannot choose a combination of Physics (Group C) from science stream and History (Group C) as they are categorised under the same group. Public examinations for subjects within each of these groups are conducted on the same day and same time. While this may have been structured for administrative feasibility, it restricts the subject combinations a student can choose.

Table 6.2: Scheme of studies for senior secondary level.[9]

Group A	Hindi, English, Urdu, Sanskrit *Gujarati, Bengali, Tamil, Odia, Punjabi, Arabic, Persian, Malayalam
Group B	Mathematics, Home Science, Psychology, Geography, Economics, Business Studies, Painting, Data Entry Operations, Early Childhood Care & Education, Veda Adhyan, Sanskrit Vyakaran, Bharatiya Darshan, Sanskrit Sahitya
Group C	*Physics, History, Environmental Science, Library and Information Science
Group D	*Chemistry, Political Science, Mass Communication, Military Studies
Group E	*Biology, Accountancy, Introduction to Law, Military History
Group F	*Computer Science, Sociology, Tourism, Physical Education and Yog

Certainty regarding entry into higher education

Government of India has vested NIOS with authority to review, examine and certify students upto pre-degree level including all academic, vocational and technical courses[10]. The NIOS Senior Secondary Certificate Examinations are also recognised by AIU as equivalent to Senior Secondary examinations conducted by CBSE.[11] Many homeschoolers from our survey chose NIOS for the guaranteed acceptance of a government-provided certification.

But NIOS has struggled with the validity of its certification over the years.

In 2010, a student who graduated from NIOS was denied admission to diploma programmes in any polytechnic colleges in Gujarat. His NIOS degree was not recognised under the Professional Diploma Courses (Regulation of Admission and Payment of Fees) Rules, 2008 that listed the eligibility criteria for admission. As per the rules, candidates had to obtain certification from the Gujarat State Board, CBSE or ICSE. NIOS did not feature on this list. But as NIOS is constituted by the Central Government, the Gujarat High Court directed the state government to consider the

9. Examination of subjects with asterisk* will be held on the same day and same time. The learner can only choose one subject each from Group C, D, E, F.

10. D.N- 128/90 dated 20 October 1990.

11. D.O. No. DS:C:47:91 dated 30 October 1991.

petitioner for admission, and amend the rules appropriately as they were in violation of Article 14 of the Constitution. The state government has, since then, amended the rules to include NIOS under its eligibility criteria.

Until June 2015, the Pharmacy Council of India did not consider NIOS learners eligible for admission to various pharmacy courses. Separately, the Medical Council of India (MCI) issued a notification in 2017 declaring that candidates with Senior Secondary certifications from NIOS and state Open Schools were ineligible to take the National Eligibility and Entrance Test (NEET). MCI reasoned that private candidates did not work on practical components, as compared to regular candidates. This was later struck down by the High Court of Delhi as unconstitutional in 2018.

Despite these obstacles, non-traditional learners continue to choose NIOS partly because of the uncertainty surrounding the validity of other exit-certifications. Many Indian universities require a Certificate of Equivalence from AIU for exit-certifications from foreign Boards such as CAIE. This is a challenge as AIU does not grant this Certificate to candidates who opt for home studies or appear as private candidates under foreign Boards.

What NIOS does not do well from the point of view of non-traditional learners

Education at a low cost but with poor quality curriculum

NIOS provides its material and exit-certification at a low cost compared to other Boards to fulfil its aim of universalisation of secondary education in India. Three respondents from our survey chose NIOS for their children due to costs. One homeschooler "chose NIOS as they could not afford CAIE due to financial constraints".

NIOS fees are starkly different from those of CAIE. NIOS admission fees for senior secondary courses start at INR 1,650 for females and INR 2,000 for males. Examination fees cost INR 500 per subject and INR 200 for practicals. Information on CAIE examination and practical fees and cost of books is not available since these costs vary from school to school. Respondents mentioned that CAIE might cost up to INR 2-3 lakhs for certification, including INR 5,000 as examination fee per subject.

While NIOS charges low fees, it has failed to deliver on the quality curriculum. Four respondents in our survey pointed out problems with the low-standard curriculum of the Board. Some of their concerns revolved around the lack of an application-based curriculum and unavailability of technical education.

Due to the weak academic rigour of the Board's syllabus, some non-traditional learners have their doubts regarding the NIOS qualification being considered as a genuine equivalent to other Boards. One respondent even mentioned that books provided by NIOS are "irrelevant and boring" with low-value content. Another element of the NIOS curriculum are Tutor Marked Assignments (TMAs). TMAs are internal assessments that a student is required to submit shortly after enrolling with NIOS. These assessments carry 20% weightage in the final exams. One of the respondents pointed out that either the parent or the tutor at the study centre directs the student on what to write in these assessments. One respondent remarked that TMAs do not facilitate any "real learning" and are simply an exercise of "copying and pasting" answers.

In addition, research documents that tutors assigned for open and distance learning classes tend to have no prior specialised training in conducting such classes. Yet, they participated in activities

such as the setting of question papers and evaluation in NIOS. This was a reflection of the lack of academic support to students (Minni et al. 2016).

NIOS poor pass percentage also indicates the poor quality of learning. Bose (2014) points out that the percentage of candidates from the academic stream passing the secondary level examination has exceeded 50% only thrice since 1991—in May 2003, April 2012 and April 2013. For senior secondary, the percentage of those passing has always been below 50%, dipping to 18.23% in May 2000. Though pass percentage is not a strong indicator of the quality of learning, the consistently low performance does raise cause for concern. It could be an indication that the teaching-learning mechanisms of NIOS are not able to bridge the transactional distance, psychological or communicative, separating the instructor from the learner (Bose 2014). NIOS recognises this poor performance in its Handbook for Academic Facilitators and argues for the need to further expand academic support to learners (Mitra, Tanwar, and Rout, n.d.).

According to Pant (2009), there is a need to revamp the development of course materials, including the preparation of conceptual literature on principles and procedures for creating and evaluating self-learning materials. Moreover, recurrent training programmes based on well-designed training packages are needed to build the capacity of NIOS functionaries.

Research on the rigour of NIOS curriculum is limited. In a 2016 survey of NIOS graduates, when asked whether NIOS added value to their career progression, 65% of self-employed respondents replied in the negative. Since certification is less important for those who are self-employed, Jha, Ghatak and Mahendiran (2016) argue that these responses can be interpreted as a comment on the irrelevance of the education or skills imparted by NIOS. Bose (2014) also highlights that none of the policies that govern quality of school education in India extend to open schooling. Even the National Curriculum Framework that provides guidelines on teaching processes in schools does not mention curriculum in open schools.

Jha, Ghatak and Mahendiran (2016) propose that NIOS tends to offer an easier route for certification, rather than an innovative quality alternative to regular schooling. This is similar to the responses we received from our survey. One respondent mentioned that they would choose NIOS simply because it was "less of a hassle".

Inadequate support for learners

Availability of information in an organised manner can ease the experience of candidates and parents with a particular Board. NIOS has established a Learner Support Centre to facilitate smooth redressal of grievances through emails, an interactive voice response system and a toll-free number.

From our interviews, we found that this learner support platform is ineffective. Respondents stated that they faced trouble contacting the authorities. Either all contact numbers provided on the NIOS website were non-operational, or calls and emails regarding queries remained unanswered. One of the respondents also mentioned that due to this lack of communication, they needed to visit the Regional Centres of NIOS. This was a cumbersome process, more so for candidates in rural areas where transportation and infrastructure are weaker.

NIOS also provides Personal Contact Programmes via accredited institutions for academic support to learners. But in reality, these programmes are not held in some states. For instance, in Rajasthan and Andhra Pradesh, contact classes were not conducted. Accredited Institutions reported that this was because NIOS had not transferred funds for the same (Minni et al. 2016).

Conclusion

Exit-certifications signal skill level and facilitate entry into higher education and the job market. Non-traditional learners that opt out of regular schooling have limited options for acquiring these exit-certifications compared to other students. In this paper, we attempt to document how non-traditional learners perceive the certification options available to them. In particular, we focus on how NIOS matches up to the demands of non-traditional learners on flexibility and quality curriculum.

We find that non-traditional learners prefer NIOS for the flexibility it offers when it comes to appearing for examinations and choice of subjects. They also choose NIOS for ensuring entry into higher education. Yet these offerings may not be accompanied by high-quality curriculum or learning. Many learners simply opt for NIOS because of the ease of gaining exit-certification.

Critical areas for reform include the quality of NIOS curriculum and learner support services. Unless NIOS updates and improves its content and reach, it will risk not imparting relevant skills and information to its affiliated learners.

All learners, enrolled in mainstream or non-traditional schooling, should be able to access exit-certification on an equal footing. In the absence of a robust certification system without prohibitive options, learners who opt out of the regular schooling system are left behind the others. Improving the quality of NIOS certification for non-traditional learners is necessary for the broader aim of democratising education (Sudhakar and Anand 2020).

Right of admission reserved

Redundancy of entry credentials in legal and teaching professions

Ishita Gupta, Kaavya Rajesh, and
and Prashant Narang

Executive Summary

Many professions legally mandate occupational licensing or credentials before granting entry to new aspirants prior to practicing in the field. In India, the BEd degree and the Teacher Eligibility Test (TET) are mandatory requirements for entering into the teaching profession. For a legal professional, a three/five year LLB degree followed by a Bar examination is compulsory for being eligible to practice in a court of law.

The rationale behind such regulations is to protect consumer interest through quality control. This intuition is based on public interest theory, which argues that entry qualifications act as signals of quality. These signals help reduce information asymmetry in the market, as they can indicate proficiency of individuals to employers and customers.

Those against occupational licensing argue that degrees and/or exams are not the best indicator of one's practical skills. The TET can measure one's knowledge of child psychology theories but not how well they engage with students in a classroom. There seems to be a disconnect between what is taught and what professionals like teachers and lawyers actually require in their jobs. Besides, professions are often regulated by insiders. The regulator is often the one benefiting from the regulations. By creating stringent entry barriers, the regulator/professional benefits from artificially inflating wages through restricted supply.

The current COVID-19 crisis has forced a shift to new ways of teaching and learning. This gives us an opportunity to reimagine ways to train and certify professionals. In this paper, we examine the entry requirements for two professions—teaching and legal, evaluate them using the lens of public interest theory and capture theory, and ask if the current entry requirements for teachers and lawyers are fit for purpose.

We interviewed teacher and lawyer recruiters to gauge employer perception of degree and exam requirements and to understand what they value in candidates. Recruiters indicated that the degree and the exams focus on theoretical knowledge instead of job-relevant skills. But in reality, employers place more importance on a candidate's performance during the interview than their performance on paper (college marks, attendance, rank of college). Degree requirements take away the option of hiring exceptional candidates who may have relevant skills but not the degree, thus limiting entry into the profession. Employers also think that most practical skills can be picked up on the job as long as candidates have the right attitude.

Our literature review and interviews indicate that the current entry requirements for teachers and lawyers in India may not be appropriate. Employers seem unsatisfied with the quality of applicants. They also face many shortages, especially for teachers. From our interviews, skill-based training and assessments emerged as popular alternatives that both promote lateral entry and ensure that candidates are adequately prepared for the tasks required of them. A study of foreign jurisdictions and their way of conducting occupational licensing has shown interesting alternatives to the Indian system.

Introduction: Occupational licensing in India

The conventional definition of a "profession" differentiates it from other occupations by categorising it as a field that requires specialised training. Entry into professions is regulated through occupational licensing and mechanisms such as minimum marks, eligibility tests, interviews, demonstration of practical skills. These serve as filtering mechanisms and are meant to ensure competence.

Take for instance the professions of teaching and practicing law. The mandatory entry requirements for teachers and lawyers are quite similar, despite the differences in what each profession does. Both require a specialised degree, BEd or LLB, and a certification exam, the Teacher Eligibility Test (TET) or the All India Bar Exam (AIBE). These requirements are set by government bodies such as the National Council for Teacher Education (NCTE) or Bar Council of India (BCI) respectively. Employers can only recruit teachers or lawyers who have cleared these requirements.

COVID-19 has caused us to question the relevance and rigidity of some of these requirements.A student petitioned the High Court of Andhra Pradesh to be exempted from the exam or be declared AIBE qualified for the year 2020. The petitioner claimed that the postponement of the AIBE had caused serious prejudice against several advocates like him as they were prevented from filing vakalatnama.[1] Additionally, the pandemic has elevated distance learning as a legitimate learning mode, one the BCI does not recognise. For teachers, COVID-19 has raised other questions. Moving online exposed gaps in teachers' adaptability, innovation, and technological literacy, which BEd programs do not adequately address.

This paper examines the relevance of the entry requirements for teachers and lawyers. We disaggregate the elements of the requirements for both professions, outline the rationale behind them, and attempt to construct a critical analysis of these requirements. In the paper, we explore economic, political, empirical, and comparative arguments to explain the debate over the need for these requirements. Through interviews with recruiters, we attempt to gauge employers' perception of these entry requirements and raise questions on the relevance of the requirements.

The first part of the paper lists the entry requirements in the teaching and legal professions in India. The second part examines the merits and demerits of components of the entry requirements. The third part looks at selected foreign jurisdictions and compares their entry requirements with the Indian requirements.

What are the entry requirements for teachers and lawyers?

Evolution from vocation to professions

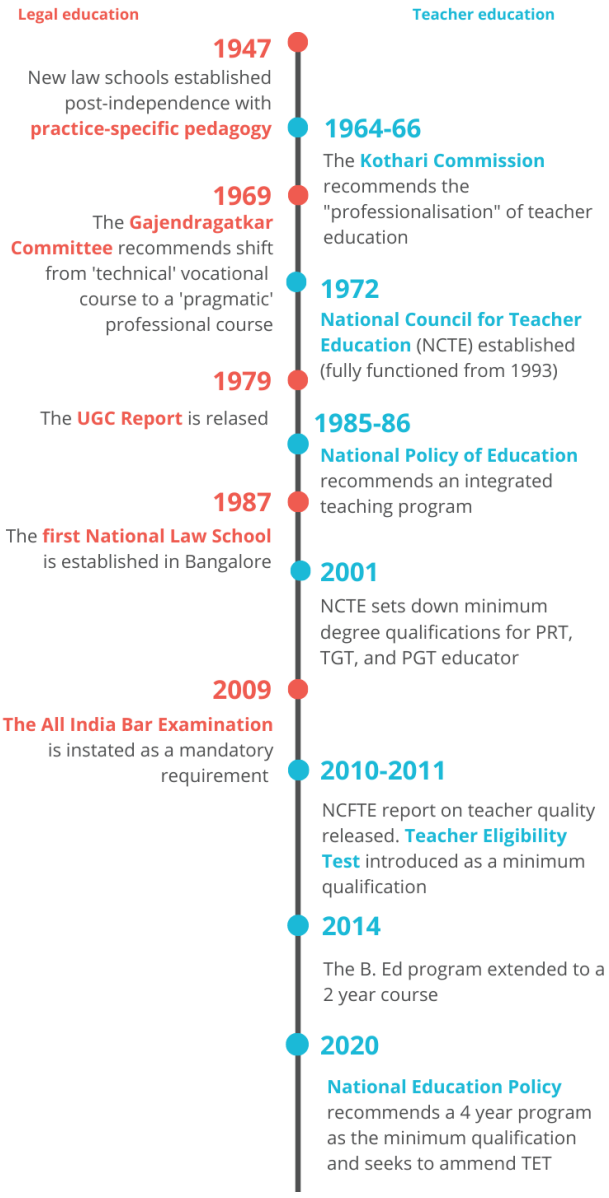
Standardisation for teachers

The Teacher Eligibility Test (TET) was introduced in 2011 to set a national standard for teacher quality (National Council of Teacher Education 2011). The National Council for Teacher Education (NCTE) designed the TET to check whether a teacher was qualified. This was motivated by fake BEd degrees. Candidates would purchase degrees or write exams without attending classes or knowing the material. TETs are either conducted by the Central Board of Secondary Education (CBSE) or by state boards. Only those who have completed or are completing their BEd, Diploma

1. Vakalatnama is the power given to an advocate to plead a case and represent a client before the court.

in Elementary Education, or an equivalent educational degree can take this exam. Candidates require 60% to pass.

The National Commision on Teachers (1983-1985) suggested an integrated BEd program which one could enroll in after completing school (Mustafa, n.d.). However, policy did not reflect this suggestion until a 2019 NCTE notification announced the implementation of a 4-year Integrated Teacher Education Program (ITEP) that students could enroll in after class 12 (National Council of Teacher Education 2019). The National Education Policy (NEP) 2020 recommends making the TET mandatory for teachers of all grade levels and requiring a 4 year integrated BEd program as the minimum degree qualification.



The story so far.

Raising the bar for lawyers

The legal education system in India has gone through multiple phases of reform since independence. Practice-specific institutions were set up to cater to the need of a growing legal profession (Ballakrishnen 2009). Over the years the legal professional education system witnessed a shift from a "society-divorced professional techniques" that focused mainly on practice-specific pedagogy to a pragmatic, service-oriented program that was described as "more than just training in litigation".

In 1973, the Bar Council of India (BCI) asked Madhava Menon, a legal educator considered as the father of modern legal education in India, to help restructure legal education throughout the country. He dismissed the recommendation of graduation requirements and argued that the country needed a BA-LLB system, where the student could enter immediately after graduating from school and exit with both degrees (Krishnan 2005). Menon's idea was to have a five-year programme, by incorporating the strengths of international law schools that he had closely studied. The first National Law School offering a five-year integrated program was set up in Bangalore in 1987. Around 24 National Law Schools have come up across the country in the last 30 years.

The Advocates Act 1961 required law graduates to complete a practical training program and pass an examination. However, State Bar Councils took away the requirement of passing the examination. Ten years later, amendments to the Act removed the compulsory training for enrollment into the State Bar Councils. In 2009, BCI announced that from 2009, advocates enrolled in the Bar Council had to pass the All India Bar Examination (AIBE) to be eligible to practice law in courts in India.

Current Entry Requirements

How does one become a teacher in Delhi?

In 2001, NCTE mandated certain requirements via a minimum qualifications guideline (National Council of Teacher Education 2001). This applies to all government schools including Delhi State-run schools, Kendriya Vidyalaya Sangathan (KVS), and Jawahar Navodaya Vidyalaya (JNV). CICSE and CBSE private schools also follow these standards, while schools affiliated with other boards such as the IB do not. In addition to these requirements, schools run by the state government of Delhi also mandate that teachers clear Tier 1 and Tier 2 of Delhi Subordinate Service Selection Board (DSSSB) exams.[2] KVS and JNV also hold their respective exams and panel interviews for teacher selection. Teacher selection in private schools affiliated with CBSE and CISCE may consist of written applications, essays, interviews, and teaching demonstrations, in addition to NCTE requirements.

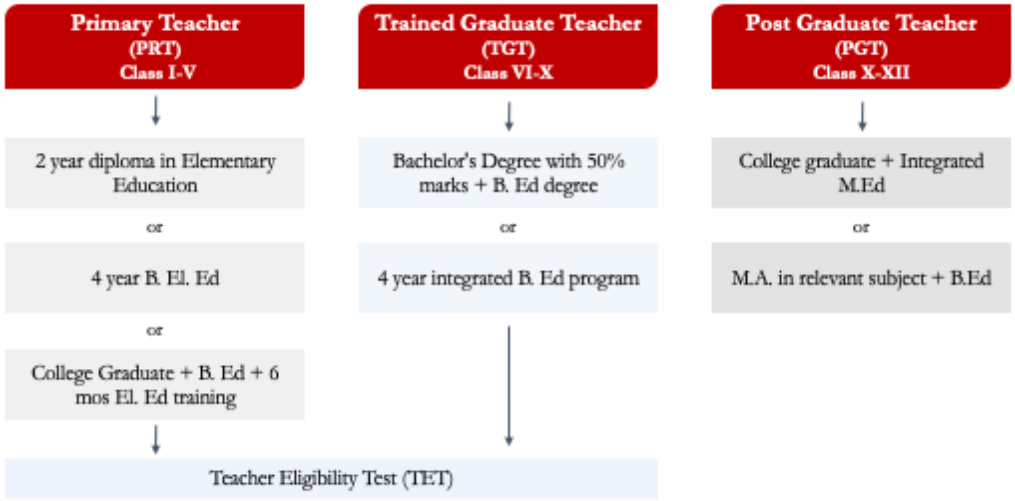


Figure 7.1: NCTE Minimum Qualifications and path for becoming a teacher.

How does one become a lawyer?

A future lawyer needs a degree from a five-year integrated full-time programme or from a three-year full-time LLB programme from any college recognised by the Bar Council of India (BCI). The candidate must then pass the All India Bar Examination (AIBE) and enrol with a state bar council. AIBE is only required for litigation practice. For transactional lawyering, legal process outsourcing or judicial clerkship, AIBE is not required. BCI has deemed that degrees acquired through distance learning are not valid if a candidate wants to practice in a court of law.

2. The DSSSB is responsible for recruiting candidates for numerous government positions in Delhi ranging from teachers to lawyers to clerks. They conduct a standardised exam for all applicants. Teachers are required to clear to levels of this competitive exam to be eligible for hiring.

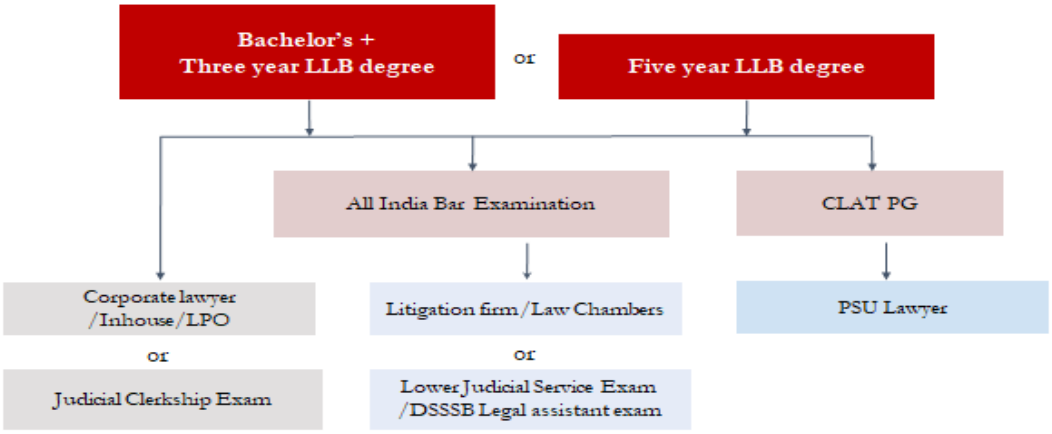


Figure 7.2: Entry routes for common entry level legal professions in Delhi.

The Entry Requirement Debate

Entry requirements help in controlling and signalling quality

The most common arguments in favour of a professional certification process are the need to maintain the quality of professionals and the need to signal competence.

Entry requirements screen applicants and act as a check against "illegitimate" candidates. Employee quality cannot be controlled without thorough training and national accreditation bodies (Hammond 1997). For example, the TET aims to ensure a national standard for teacher quality and induce teacher education institutions to improve their performance (National Council of Teacher Education 2011).

The rationale behind the bar examination and other licensure examinations is to raise the quality of professional practice and protect the public by filtering out candidates not prepared for entry-level practice. The examinations are not aimed at ranking candidates, but at testing their knowledge, skill ,and judgement in the technical domains (Kane 2012). The average quality of professionals might be raised by filtering out less competent persons from entering the occupation (Kleiner 2000). However, Kleiner also points out that it is near impossible "on theoretical grounds to determine whether more intense regulation will increase or decrease the quality of the service provided".

Entry requirements solve the problem of information asymmetry by signalling candidate proficiency to potential employers (Pagliero 2019). By setting standardised metrics by which to judge a lawyer, teacher, or other professional, an entry requirement is meant to signal competence and the quality of service to a consumer. For example, the completion of a BEd degree is meant to signal knowledge of teaching, pedagogical approaches, and child psychology. Similarly, an LLB is supposed to be an indicator of proficiency in legal knowledge and the appropriate drafting, negotiation, and other relevant skills.

But, they are often a weak indicator of practical ability and competence

Many employers have expressed dissatisfaction with college degrees as entry requirements. Google's Head of People Operations dismissed GPAs and test scores as "worthless" signals of competence (Staton 2015). Other tech firms have affirmed that degrees do not necessarily equate to proficiency

and that intelligence scores "are a much better indicator for job potential" (Chamorro-Premuzic and Frankiewicz 2019). Scholar Bryan Caplan argues that higher education in itself is redundant as "students forget most of what they learnt after their final exam". He also maintains that the degree helps candidates get jobs rather than helping perform well in the job role (Caplan 2018).

Entry requirements for teachers may be particularly redundant. Numerous studies have indicated that teacher qualification levels and licensure test scores are "unrelated to teacher performance" (Buddin and Zamarro 2009). Using a value-added approach, Buddin and Zamaro's study finds no correlation between teacher licensure scores and the test scores of their students—confirming results from previous studies. The authors state that advanced teacher education degrees have no bearing on their students' performance either.

Muralidharan (2020) highlights that teacher education in India contains very little content on the process of teaching students. The Justice Verma Commision points out that the BEd program curriculum in India does not teach candidates how to apply their knowledge in different classroom situations (Department of School Education and Literacy 2012). Instead, courses focus on building familiarity with different subject matters such as Sociology or Political Science. The TET only has one section on Child Psychology and Pedagogy worth 30 marks total. The other 120 marks are dedicated to knowing two languages, maths, and environmental studies. A candidate only needs 60% to pass the exam, meaning that technically one could pass with no knowledge of how to actually teach or handle children. The TET was also seen as a way of improving the quality of BEd programmes. While it has failed in that mission, it has spawned coaching institutes as an additional business model solely aiming to help candidates clear the exam (Joshi 2013).

Studies also show that there is little to no difference in student learning outcomes when taught by permanent or para teachers (Kingdon and Sipahimalani-Rao 2010).[3]

Kingdon (2010) finds that permanent teachers may have more subject knowledge due to their qualifications, but this does not translate to better teaching ability. In fact, several studies also show that despite the qualification requirements, teachers in India are not performing at an acceptable standard (Sandhu and Vohra 2019). A study of public schools in Delhi indicated that "teacher qualifications and experience do not predict teacher effectiveness" (Goel and Barooah 2017).

Students of para and permanent teachers have uniformly low learning outcomes indicated by testing. Spending years in teacher education courses and preparing for the TET does not seem to improve teacher quality as demonstrated in student learning.

In case of legal education in the US, under the current licensing process, people who can answer multiple-choice questions may get a law licence. However, they may not be able to stand up in court and answer a judge's question, research the law, or negotiate and perform factual investigations (A 2002). Licensing and the bar examination only assess a narrow set of skills and some commentators even argue that "the bar exam should be eliminated" (Hansen 1995). Instead, Hansen suggests a special practical education, combined with a mandatory postgraduate clerkship during the otherwise "under utilised" third year. He believes it will produce more competent lawyers and bridge the gap between law school and legal practice.

3. In India, para teachers are hired on a contractual basis in schools. Teach For India (TFI) Fellows volunteer their time as teachers in under-served schools. Both para teachers and TFI fellows essentially perform the same tasks as permanent teachers, but are not required to meet the same minimum qualifications as permanent teachers. TFI fellows need a bachelor's degree and must clear an application process consisting of an online test, phone interview, teacher demonstration, and group activities. The entry requirements for para teachers vary across states. In tribal (SKV) schools in Rajasthan, for example, para teachers simply need to have completed class 12 (Education For All).

They also restrict the supply of professionals

Entry regulations limit competition to benefit a few, and artificially inflate professional wages. Ultimately, the consumer bears the higher costs of the professional monopoly set up by the guild that controls entry (Friedman and Friedman 1962). Entry gate-keeping by members of the profession amounts to professional capture and a conflict of interest. Stigler (1971)theorises that professional associations will devise regulations for the benefit of their members. Licensing increases the apprenticeship period while reducing the number of apprentices, resulting in higher income for the people in the occupation (Smith 1776) The limited competition affects prices, quality of service, and restricts mobility of professionals including doctors, teachers and lawyers.

Teacher associations, for instance, increase costs of completing these licensing regulations to make a profit from entry fees and test prep kits. Angrist and Guryan (2008) show that "testing has acted more as a barrier to entry than a quality screen".

In the case of the legal profession, research shows that the board that sets the entry regulations is influenced by lawyers and judges, swaying the rules in favour of legal professionals over public need (Barton 2011). Empirical evidence from a study conducted on the US market for entry level lawyers found that " licensing… increases salaries and decreases the availability of lawyers, thus significantly reducing consumer welfare" (Pagliero 2011). Thus, the gate-keeping body successfully captured the profession instead of advancing public interest.

The theory of professional monopoly rings especially true for the legal system in India. Multiple cases filed at the Supreme Court since 2010 have questioned the BCI's legitimacy to administer the Bar exam. The cases claim that the BCI does not hold the power to regulate enrollment under the Advocates Act. A Supreme Court bench in 2016 questioned the BCI's authority to negate a lawyers right to appear in court by instilling the Bar Exam[4] (Mahapatra 2016). In 2018, the BCI strongly opposed a government proposal to put legal education under the ambit of the proposed Higher Education Commission of India (HECI), which would act as a single regulator for higher education institutes across the country. The BCI viewed it as a threat to its power to regulate legal education. "Legal education cannot be allowed to be regulated by outsiders, social workers or teachers" said BCI chairman, Manan Kumar Mishra (Saxena 2019). BCI's influence is evident from the fact that NEP 2020 has exempted legal professional education from the HECI.

Regulation in professional education reduces the diversity of individuals engaged in the field. Gillian Hadfield (2011) argues that professional education programs 'extinguish the energy of market creativity' for economic development. Requirements also make the talent pool static by prohibiting or inhibiting more qualified applicants from entry.

Education specialist Frederick Hess (2002) uses an example to explain this barrier. Janet obtains an excellent GPA while pursuing her Bachelor's in English. She goes on to work as a Marketing Director and receives glowing reviews about her ability to lead teams, communicate, and work with different types of people– all valuable skills for a teacher. Yet Janet would not be allowed to be a teacher unless she spent years undergoing teacher training, secured a license, and cleared multiple competitive exams.

Data indicates that high entry requirements are contributing to teacher shortages in India. Delhi for instance recorded a 45% shortage of regular teachers in government schools– that is over 29,000 vacancies (Mehta 2019). In 2019, only 14.8% of candidates who took the TET passed (Kirti 2019). Similarly, in the search for Urdu teachers, only 1 candidate cleared the Delhi Subordinate Services

4. We have been unable to find any further information on this case hearing.

Selection Board (DSSSB) exams (Chettri 2019). The process for accrediting TEIs is also inefficient. Between 2002 and 2017, the National Assessment and Accreditation Council accredited less than 10% of teacher education institutes (Gohain 2017). Low accreditation rates have resulted in the sale of degrees and created standalone institutions that simply hold BEd exams but do not impart any education.

These examples demonstrate a double challenge: entry standards are difficult to meet, yet not good enough to ensure high quality.

What do Indian employers think?

We interviewed recruiters to understand their views on the entry requirements. We interviewed school principals and legal professionals who both recruit and supervise entry level employees. Respondents were selected based on convenience and interviewed based on availability. We interviewed 8 school owners/principals and 10 legal recruiters, ranging from supreme court advocates to private boutique firms. We were unable to contact government teacher recruiters other than 1 KVS principal. We also could not get in touch with any legal employers from Public Sector Units (PSUs) and judicial services.

BEd and LLB degrees do not impart practical skills

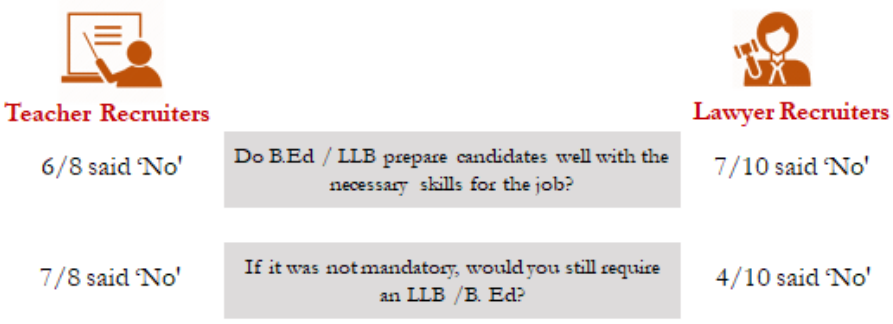


Figure 7.3: Interview responses on the relevance of degree programs.

Degree programmes are more theoretical than practical in nature

Six teacher recruiters criticised the BEd on grounds that the program was "too theoretical" and did not have an "adequate teaching component". Out of the two who stated that the BEd should be required, one was a government school principal who said "it is sufficient" and another was the manager of a budget private school, who said that "the curriculum is fine...but the institutions are failing". One respondent pointed out that "the syllabus is good but the practicality is missing". Interestingly, the government school teacher who said the BEd was sufficient also said that they have intensive teacher training programs more than five times a year, conducted by "skilled academicians".

The majority of respondents in both fields agreed that practical skills that prepared the candidates for the job were absent from both degree programmes. A principal at a private school said that "the BEd only prepares you to make a lesson plan, but doesn't prepare you to teach different types of students". Seven legal employers were of the opinion that Indian law school education functions on

the principles of "rote learning" and does not add to a candidate's "logical thinking abilities". A legal employer said that "the course is very content-based and theoretical… people don't even understand the meaning of contracts" and that many candidates thus lack "drafting skills". Two out of the three legal respondents who said that the degree prepares candidates well, added that it depended on the law school the candidate graduated from.

Candidates may not necessarily need a professional degree to work as teachers or lawyers

While law firm recruiters and school owners/principals agreed that the current degree programs are too theoretical and need modification, they had differing views on whether such professional degrees were needed at all.

Teacher recruiters shared that they did not observe much difference between BEd instructors and non-BEd (para teacher/helper teacher) instructors. One principal stated that BEd teachers "might have a little more technical knowledge, but there are plenty of other good teachers". There was also a sentiment that the mandated BEd degree puts limits on who they can hire. Three principals shared that they felt restricted by the mandatory BEd requirement while recruiting. An elite private school recruiter commented that "engineers and CAs could be great math teachers, but we cannot hire them due to the strict regulations".

One principal also explained that in many cases the BEd is "just a stamp" and "roughly 70% of the students just take the final exam, but don't attend class". Moreover, many schools offer on the job training and "comprehensive skilling workshops", so they are not too particular about having certified teachers. Overall, teacher recruiters indicated that while they do not mind if a candidate has a degree, "teachers don't need it to succeed". Employers are "very open" to hiring candidates without this qualification as long as they have a college degree related to their teaching subject and perform well in interviews and teaching demonstrations.

Law firm recruiters we interviewed tended to veer to the other side. Four respondents expressed that some sort of law degree was essential to "develop a foundation in legal knowledge" and to "ensure basic understanding of the law". To them, a law school is a "basic requirement...like school" and without it there would be "no basis on which to hire candidates". A Supreme Court lawyer stated that legal colleges provide "a mechanism for research and analysis" and that it is "important to understand the theory before diving into practice". Three lawyers, however, indicated that having an LLB need not be a hard and fast rule as "exceptions should be made if someone has excellent abilities and experience" as most skills can be "picked up on the job". The entry requirements preclude employers from hiring candidates with potential on a case by case basis. Employers also referred to the course being too rigid and having redundant content as "no one needs to study specific laws". One respondents suggested that candidates should be allowed to take the bar exam without a degree and use that to test for a basic legal foundation.

Entry exams do not check practical knowledge but attempt to create a standardised filter

TET and AIBE are too theoretical in nature

Teacher and lawyer recruiters both explicitly stated that the current standardised exams (TET and AIBE) are "too theoretical" in nature. Respondents conveyed that these exams are "bookish" and "cannot measure a candidate's practical ability".

One principal conceded that "the test is good, but teaching is more than just having academic knowledge", while others were firm that the test was redundant. One teacher recruiter argued that "teaching talent, personality, and dedication are the most important" and the interview and written assessment were better ways to measure these competencies.

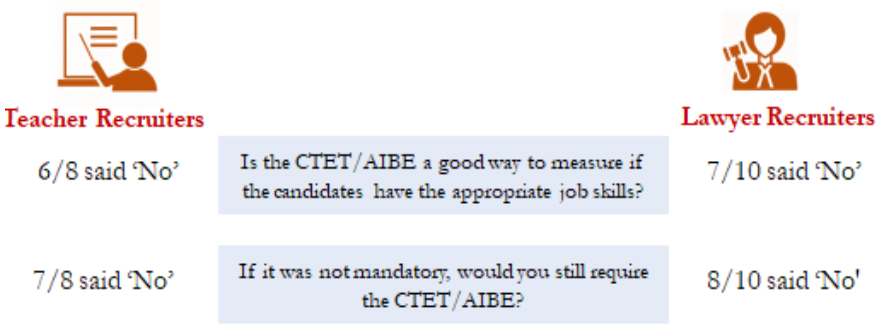


Figure 7.4: Interview responses on the relevance of standardised exams.

Some legal employers agreed that the AIBE is a good way to test basic legal conceptual knowledge, but one also maintained that "it tests some random [unnecessary] concepts as well". Two respondents criticized the bar exam saying that "mugging up" cannot measure a candidate's "conceptual understanding". An IP firm partner accurately summed up the collective sentiment by stating, "yes, it is a good way to measure legal knowledge. However, it does not measure practical job skills... as it is very theory based".

There was an interesting contradiction in the responses of the legal and teacher recruiters regarding their perception of the 'rigour' of the standardised exam. On the one hand, four legal recruiters responded that the Bar examination was a "mild exam" and not as "demanding" as seen in other countries like the US. On the other hand, the teacher recruiters in elite and budget private schools said that the TET had a "very low clearance", making it difficult to find eligible candidates. They further added that there was no strict check on passing the test and one school owner admitted that "only 13 out of 70 teachers" they had hired were CTET qualified.

The exams attempt to set a uniform entry filter

One common argument in favour of having such exams was that it sets a national standard for the quality of candidates. A recruiter commented that scams surrounding the BEd program and fake degrees justify the need for the TET. She mentioned that "many go for a distance course in BEd which is not of good quality, so the TET might help", implying that the test acts as a check against degree programs that might not adequately equip candidates. However, this sentiment was not common as no other principal shared this point of view.

In the case of lawyers, a law firm partner argued that "there are thousands of lawyers… we need a Bar Exam for standardisation". Three lawyers established a difference in the quality of NLUs and other law colleges, especially in the "hinterlands". They held that an AIBE is a good way to check a candidate's capability, given the differences in the calibre of the institutions. While they advocate for a standardised exam, these same respondents expressed that it should not be mandatory or should at least be modified.

Recruiters use interviews and practical skill checks to assess competency

Interviews help recruiters understand a candidate's personality and conceptual understanding

Every employer we spoke to emphasised that the interview was a critical part of their recruitment process. Teacher recruiters stated that the answers during an interview informed them about an applicant's "communication skills", "personality" and "passion for the job". In some cases, such as Kendriya Vidyalayas, interviews are conducted by a panel consisting of "a child psychologist, subject expert, current teachers, principal, and members of the NCERT".

"We use interviews to check if the candidate lives up to their CV, but also to gauge their personality", mentioned a partner at a law firm, a sentiment that was echoed by most others. Three employers mentioned that interviews help them verify if the candidate really learned anything during past internships. Another senior partner mentioned that they try to "determine how a candidate thinks" by asking situational questions.

Skill Application Tests Allow Employers to Gauge Candidates' Job Capability

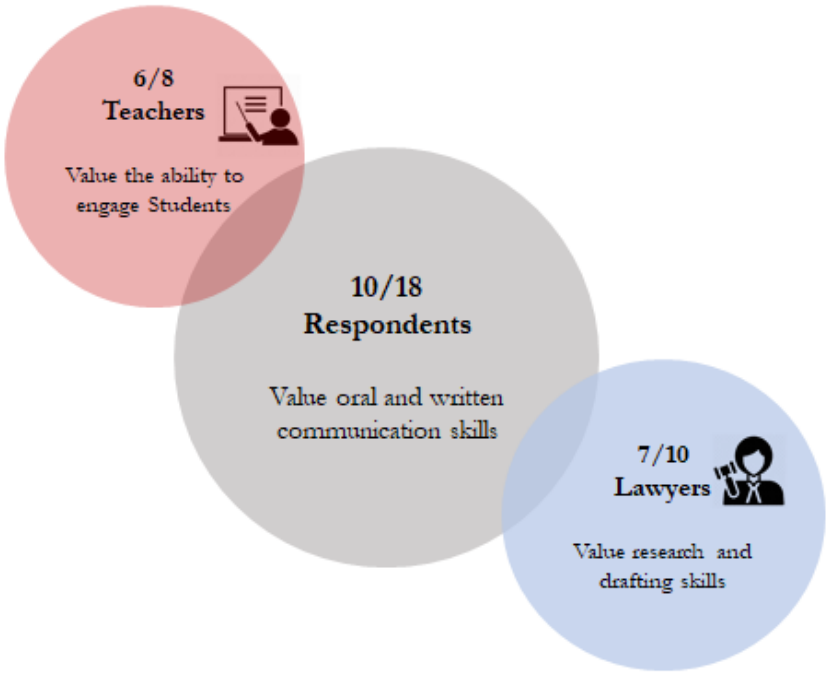


Figure 7.5: What skills employers valued that candidates lacked

In most responses, the employers listed the same skills when asked what they look for and what candidates lack the most.

All seven private school recruiters mentioned that they conducted some form of a "teacher demonstration" or "trial class" to observe whether teachers could present well and "connect with the students". An employer mentioned that applicants usually "run out of patience", and another added that "if the students don't understand or care about what they are teaching, there is no point".

Three schools implemented a written assessment in addition to the teaching demonstration. This varied from school to school[5]. To understand if the candidates had "subject specific knowledge", one private school recruiter said that they "give applicants a passage to write on any topic such as global warming". Another principal shared that their tests "assesses comprehension and ability to write and express ideas about passages given… because if a teacher cannot do this well, how will they check the students' work?".

Four legal recruiters expressed that they were open to receiving writing samples for consideration. Two implemented a timed practical skill check to test "drafting skills" and the firms "give candidates a basic proposition to draw a legal note on".

Mandatory requirements prevent employers from hiring desirable candidates

Teacher recruiters demonstrated a willingness to hire professionals from other fields. A manager of a budget private school in Delhi stated that temporary teachers who came through organisations like 'Teach For India' had the "passion" and "skills" that his permanent BEd teachers lacked. The principal of a reputed private school mentioned that the BEd degree creates a limitation to hiring professionals from various disciplines like "pilots, CA's, engineers, historians…" to impart their expertise.

A partner at a law firm said that "as long as they (candidates) can exhibit knowledge and understanding of the law, any candidate that could pass the bar could qualify". Two of the legal respondents said they would be open to hiring candidates who had an "open university degree" or had "quality internship experience". An advocate at a legal firm said that she prioritised candidates who had a bachelor's degree in another subject like economics before graduating from law. She explained that this would give the candidate knowledge of the "world conditions" and enable them to "develop their own thinking".

Thus, respondents from both fields were open to the possibility of modifying the entry requirements for candidates without the professional degree/ who had not taken the standardised exam. Standardised exams are supposed to signal competence to potential recruiters. However respondents say that the AIBE and TET are too theoretical in nature and do not adequately screen candidates. Some employers also implement comprehensive on-the-job training to bring new employees up to the mark, hinting at a skill deficit. Teacher recruiters were clear that one could be a good teacher without the BEd or CTET. Legal employers also agreed that they would appreciate the freedom to hire based on their judgment.

What lessons can we learn from other countries?

Teacher Education

USA shifts away from a professional education degree

Until the 1980s, a professional education program and a separate examination was required to be a teacher in every state in the US. Due to teacher shortages, the requirements were changed to allow anyone with a college degree to apply and take the exam (Hatch and Grossman 2008). This alternative route to becoming a teacher requires 200 hours of practical training. There are

5. KVS schools administer an independent entrance examination

negligible differences in student outcomes when taught by teachers with an education degree and those without (Boyd et al. 2005). Today, a bachelor's degree followed by teacher licensing—without a specific degree in education—is the norm for school teachers in the country (Eliers 2020).

UK, Finland, and the Practical Aspect

Teacher training programs in the UK and Finland have used portfolios—a purposeful collection of evidence and samples of real life work—to assess teacher quality. The candidate is expected to reflect upon their experiences within classroom situations during the practical section of the program and showcase their growth. This technique increases innovation among teacher-applicants and motivates them to improve their performance (Groom and Maunonen-Eskelinen 2007). UK, Finland, Singapore and the Netherlands also emphasize practical skills developed through intensive teacher internships integrated into the curriculum.

Legal Education

Flexibility of entry routes in Ireland

In Ireland, a candidate's entry routes vary based on their educational qualification. Ireland's approach is radical as it does not have any minimum degree requirement. The Irish system promotes enrollment from multiple fields, while providing uniform training to maintain quality control. The entry requirement is different for those with and without a degree. Non-graduates above the age of 21 are eligible to apply by appearing for a preliminary examination. All candidates appear for a Final Exam, followed by a uniform process of induction that is the same for all candidates. Candidates must go through a 24-month apprenticeship period under a solicitor and two professional training programs (PPC). The training solicitor attests to the competency of the candidate, after which the trainee may apply to have their name entered in the roll of the solicitor(Law Society of Ireland, n.d.).

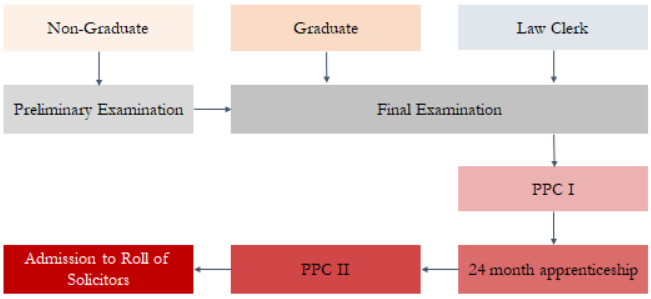


Figure 7.6: Pathways to becoming a lawyer in Ireland

California and the multiplicity of entry routes

A few states in the USA, such as California, allow taking the bar exam without attending an accredited law school. A candidate in California has a variety of entry routes to qualify for the bar exam. Going to law school is optional in California. All candidates are required to take a Multistate Professional Responsibility Exam any time between completing an year of law school and being licenced to practice law in California (The State Bar of California, n.d.)

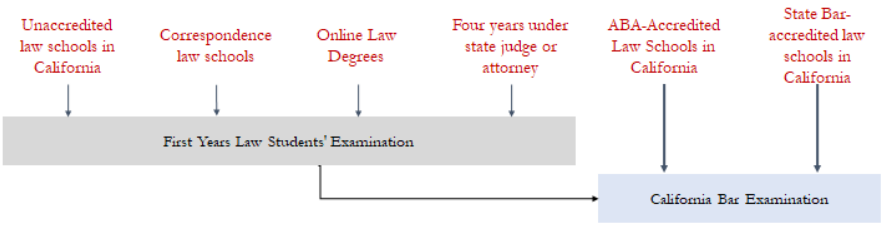


Figure 7.7: Pathways to become a lawyer in California

Conclusion

Research and our perception survey both refute the argument that entry requirements ensure a high quality of professionals. Studies conducted in schools have shown negligible difference in student learning outcomes between teachers with a professional education degree and those without, such as alternate route teachers in the US and para teachers in India. Some of our respondents also confirmed that they observed this pattern as well. Legal employers also expressed dissatisfaction in the professional courses' ability to impart appropriate research and writing skills. Overall, employers criticized both the LLB and BEd programs for being too theoretical and not equipping candidates with practical job skills.

This paper argues that existing entry requirements for lawyers and teachers in India are ineffective. While the study does not use a rigorous sampling method, the collected responses support research findings from other countries. Policy makers need to re-examine the relevance of current entry requirements accommodating for employers' views about occupational licensing. India could consider the possibilities of making professional educational degrees optional, along the lines of alternative entry routes in the US or like Finland and the UK, encourage a more practical hands-on approach. School principals indicated that many teacher applicants do not know how to engage the students, this could perhaps be solved by portfolio methods and intensive internships incorporated in the BEd programs.

In the case of the legal profession, India could ease entry restrictions into the profession to mitigate the risks of professional capture and monopoly. Ireland for example, lowered entry qualifications for the legal profession by requiring systematic apprenticeships, and California opened the doors to a diverse pool of candidates by eliminating the degree requirement.

Bibliography

Introduction to this compendium

Alm, Richard, and W. Michael Cox. 2020. "Creative Destruction." Econlib. Accessed September 25. https://cutt.ly/CfJDyGr.

Centre for Monitoring Indian Economy. 2020. "Unemployment Rate in India." Accessed September 25, 2020. https://cutt.ly/EfJSnve.

Centre for Policy Research. 2020. "Podcast: How has India's lockdown impacted unemployment rates and income levels?" *Scroll.in* (April 22). Accessed September 18, 2020. https://cutt.ly/1fJSRIm.

Eckstein, Asaf. 2015. "Regulatory Inertia and Interest Groups: How the Structure of the Rulemaking Process Affects the Substance of Regulations." *Michigan Business & Entrepreneurial L. Rev.* Accessed September 19, 2020. https://cutt.ly/MfJSOMh.

Jebraj, Priscilla. 2020. "GDP contracts by record 23.9% in Q1." *The Hindu* (August 31). Accessed September 18, 2020. https://cutt.ly/lfJSzdv.

Kopp, Carol. 2019. "Creative Destruction." Investopedia. Accessed September 25, 2020. https://cutt.ly/0fJDuGD.

Kumar, Chitranjan. 2020. "Indian economy on ventilator: Goldman Sachs, Fitch cut FY21 GDP growth estimates." *Business Today* (September 11). Accessed September 18, 2020. https://cutt.ly/NfJA6Xu.

Ranciere, Romain, and Aaaron Tornell. 2015. "Why Do Reforms Occur in Crises Times?" *UCLA.* Accessed September 19, 2020. https://cutt.ly/ZfJSJCP.

Virmani, Arvind. 2001. "India's Balance of Payment Crisis and External Reforms." *Indian Council for Research on International Economic Relations.* Accessed September 18, 2020. https://cutt.ly/mfJSMmy.

A bitter pill to swallow

Abrar, Peerzada. 2020. "Medlife, PharmEasy agree to merge; deal may be valued at over $1 bn." *Business Standard* (August 19). Accessed August 19, 2020. https://cutt.ly/qfS4cOe.

Atkinson, Robert D. 2015. *The 2014 ITIF Luddite Awards.* The Information Technology & Innovation Foundation. https://cutt.ly/JfD3rnY.

Bedi, Jayana, Adarsh Ranjan, Jibin Joseph, and Prajwal Seth. 2018a. "Disruption on Demand." https://cutt.ly/afD8ZI6.

Bouchard, Fr. Charles. 2016. "If the World is Flat, What about Health Care?" *Health Progress.* Accessed August 19, 2020. https://cutt.ly/7fD3p9P.

Browne, Ryan. 2019. "Uber stripped of its London license as regulator says it put passengers at risk." *CNBC.* Accessed February 9, 2020. https://cutt.ly/ifFw35P.

Chalasanil, Ahalya. 2019. "Diagnosing the issues of E-pharmacies." *Lakshmikumaran & Sridharan Attorneys* (January 17). Accessed August 19, 2020. https://cutt.ly/pfFeYqG.

Deshpande, Prasanna R, Raghuram Vantipalli, Chaitanya Lakshmi C H, Jagadeswara Rao, Bishnu Regmi, Abdul Ahad, and Sharmila Nirojini P. 2015. "Clinical pharmacists: The major support to Indian healthcare system in near future." *Journal of Pharmacy & BioAllied Science.* Accessed July 19, 2020. https://cutt.ly/GfFrobu.

Eggers, William D, Mike Turley, and P Kishnani. 2018. "The future of regulation: Principles for regulating emerging technologies." *Deloitte Insights* 19.

Eshwar, Bart. 2016. "Uber Has Just Completed 3 Years In India, And Its Story Reads Like A Bollywood Potboiler." *OfficeChai* (August 30). Accessed August 19, 2020. https://cutt.ly/HfD30YR.

Express News Service. 2015. "FIR against Snapdeal CEO Kunal Bahl, 5 firms for selling drugs online." *The Indian Express* (May 2). Accessed August 20, 2020. https://cutt.ly/cfD387q.

Express Pharma. 2020. "FDI in pharma and related implications of COVID-19." July 14. Accessed September 20, 2020. https://cutt.ly/QfD3Zyi.

FICCI. 2020. "Quick notification of e-pharmacy rules needed: FICCI." Accessed January 16, 2020. https://cutt.ly/qfD8lqC.

Free, Mitch. 2014. "The Luddites Are At It Again." *Forbes* (June 11). Accessed August 19, 2020. https://cutt.ly/sfFdphZ.

Frost and Sullivan. 2019. *In the spotlight: e-pharmacy in India An exponential growth opportunity.* Accessed August 19, 2020. https://cutt.ly/afD8ZI6.

Global Health Observatory. 2016. "Telehealth." World Health Organisation. Accessed August 19, 2020. https://cutt.ly/xfFveA5.

Goundrey-Smith, Stephen. 2014. "Examining the role of new technology in pharmacy: now and in the future." *The Pharmaceutical Journal* (February 11). Accessed August 19, 2020. https://cutt.ly/2fFxSED.

Indian Brand Equity Foundation. 2018. *Indian Pharmaceutical Industry.* Industrial Report. Accessed September 21, 2020. https://cutt.ly/ofD8LDu.

Jain, Arushi. 2019. "The Conflict between Generic vs. Branded Medicines in India." *The Economic Times* (June 4). Accessed August 20, 2020. https://cutt.ly/vfFhKXG.

Jaisani, Leena, Surabhi Pant, Kumar Shivam, Jayant Singh, and Dr. Suhasini. 2015. "E-pharmacy in India: Last-mile access to medicines." FICCI. Accessed August 19, 2020. https://cutt.ly/QfFsBT5.

Kapoor, Cheena. 2019. "Pharmacists can substitute branded drugs with generics." *DNA* (March 7). Accessed September 12, 2020. https://cutt.ly/NfFh0sC.

Kaur, Banjot. 2019. "There's an unhealthy alliance between doctors and pharma firms." *Down To Earth* (May 15). Accessed August 19, 2020. https://cutt.ly/NfFh0sC.

Kiberd, Roisin. 2015. "Burn It All Down: A Guide To Neo-Luddism." *Gizmodo* (January 29). Accessed August 19, 2020. https://cutt.ly/GfD80vN.

Kulkarni, Dr.Sameer. 2018. "A study of consumer'smotivation and attitude about medicine buying through mobile apps." *International Journal of Advanced Research in Management and Social Sciences.* Accessed August 19, 2020. https://cutt.ly/4fD7qbO.

Kumar, Tushar. 2018. "Is India Ready for the e-Pharma Revolution?" (January 30). Accessed August 19, 2020. https://cutt.ly/VfFk1kX.

Leo, Leroy. 2019. "Why E-pharmacy cos are not worried by regulator's ban on online sales?" *LiveMint* (December 4). Accessed August 19, 2020. https://cutt.ly/ZfFlayk.

Loya, Akash, Santosh, and Pratik Joshi. 2019. "Analysing the Draft E-Pharmacy Rules." *IndiaCorpLaw* (January 20). Accessed August 19, 2020. https://cutt.ly/yfFlYc9.

Mabiyan, Rashmi. 2019. "Will regulations on e-pharmacies affect the brick-and-mortar stores?" *The Economics Times* (July 2). Accessed July 2, 2020.

Merton, Kate. 2020. "The World's Top Online Marketplaces 2020." *Web Retailer* (February 18). Accessed February 18, 2020. https://cutt.ly/qfD7sVN.

Minister of Health and Family Welfare. 2018. "Draft E-pharmacy Rules." Government of India. Accessed August 28, 2020. https://cutt.ly/lfD7TRv.

———. 2020. "Telemedicine Practice Guidelines." Government of India. March 25. https://cutt.ly/AfD7Gw0.

Ministry of Health and Family Welfare. 2018. "Providing a separate shelf/rack for generic medicines in retail shops visible to the consumers- Regarding." Government of India. No 18-17/2018. Accessed August 19, 2020. https://cutt.ly/efFegeB.

Ministry of Road Transport and Highway. 2015. "Advisory for licensing, Compliance and liability of on-demand Information Technology based Transportation aggregators operating within the jurisdiction of India." Government of India. https://cutt.ly/yfFktFa.

Nation Wide Pharmacies. 2017. "UK Online Pharmacies - what has been fuelling the growing popularity?" (November 24). Accessed August 19, 2020. https://cutt.ly/vfFkmBQ.

Padmanabhan, Ananth. 2019. "Regulating New Technologies: Three Central Principles." *Centre for Policy Research* (June 27). Accessed August 19, 2020. https://cutt.ly/vfFkmBQ.

Parikh, Jay, and Priyanka Sunjay. 2020. "India: E-Pharmacies: The Story So Far & The Way Forward." *Mondaq* (July 22). Accessed July 22, 2020. https://cutt.ly/VfD7Ca2.

Paul, Sujit. 2019. "Making healthcare affordable: Beliefs and attitude towards Generic Medicines in India." *Financial Express* (June 21). Accessed September 20, 2020. https://cutt.ly/IfHN0n7.

PTI. 2015. "Delhi govt finds discrepancies in Uber application for licence." January 28. Accessed August 19, 2020. https://cutt.ly/cfFhIPv.

Roy, Shubho, and Ajay Shah. 2012. "Movement at SEBI towards principles-based regulation." *The Leap Blog* (March 11). Accessed July 11, 2020. https://cutt.ly/WfFzoG9.

Sandy. 2019. "What Is E-Prescribing and How Does It Work?" *ICANotes* (November 21). Accessed August 19, 2020. https://cutt.ly/tfFzczk.

Shah, Ajay. 2010. "Taxi companies in Bombay: an episode in India's urban transportation." *The Leap Blog* (March 23). Accessed August 19, 2020. https://cutt.ly/TfFzOM7.

Sharma, Neetu Chandra. 2019. "Blow to e-pharmacies as Centre orders a halt to sales." *Mint* (December 4). Accessed August 19, 2020. https://cutt.ly/MfFxnVZ.

Silicon India. 2020. "Amazon & Reliance will Plunge into e-Pharmacy Segment." August 17. Accessed August 17, 2020. https://cutt.ly/QfFxv5h.

Singh, Manish. 2020. "India's Reliance Retail acquires a majority stake in online pharmacy Nedmeds' parent firm for $83.2M." *Tech Crunch* (September 19). Accessed September 19, 2020. https://cutt.ly/3fHCiK5.

Sood, Sanjay P, Solomon Negash, Victor WA Mbarika, Mengistu Kifle, and Nupur Prakash. 2007. "Differences in public and private sector adoption of telemedicine: Indian case study for sectoral adoption." *Studies in health technology and informatics* 130:257.

Stigler, George J. 1971. "The theory of economic regulation." *The Bell Journal Economics and Management Science.* Accessed August 19, 2020. https://cutt.ly/gfFxXVV.

Tahmasbi, Vivian. 2019. "4 Important Technology Advancements in Pharmacy." *IWP* (July 22). Accessed August 19, 2020. https://cutt.ly/VfFx6Ot.

Tax, Shared Economy. 2019. "How to Navigate the NYC Airbnb Law" (December 24). Accessed September 12, 2020. https://cutt.ly/tfFxtz1.

Thacker, Teena. 2019. "Government plans to roll out e-pharmacy project in 100 days." *Mint* (June 5). Accessed August 19, 2020. https://cutt.ly/FfFcz08.

Transport Department. 2014. "Modified Radio Taxi Scheme-2006." Government of NCT of Delhi. Accessed August 26, 2020. https://cutt.ly/lfFcIno.

Ved, Yash. 2019. "Large number of medical stores in UP run without pharmacists as state has only 88,065 pharmacists against 1,24,632 drug stores." *Pharmabiz.com* (September 30). Accessed August 19, 2020. https://cutt.ly/QfFcJTn.

Vora, Priyanka. 2017. "E-pharmacies: Doctors fear rise in self-medication and abuse unless online drug sales are checked." *Scroll.in* (February 10). Accessed August 19, 2020. https://cutt.ly/TfFc2bo.

To eat or not to eat

Anand, Bhuvana, and Jayana Bedi. 2019. "Don't Bite the Hand that Feeds you: Regulating Aggregators in India." *Emergence of Artificial Intelligence and Internet of Things.*

Bedi, Jayana, Adarsh Ranjan, Jibin Joseph, and Prajwal Seth. 2018b. *Disruption on Demand.* Policy Paper. Centre for Civil Society. Accessed June 5, 2020. https://cutt.ly/zfCMxbU.

Bhotvawala, Mustafa, Harsh Balihallimath, Nishant Bidichandani, and M.P Khond. 2016. *Growth of Food Tech: A Comparative Study of Aggregator Food Delivery Services in India.* Research Paper. International Conference on Industrial Engineering and Operations Management. Accessed June 30, 2020. https://cutt.ly/YfCMR6r.

Comptroller and Auditor General of India. 2017. *Report of the Comptroller and Auditor General of India on Performance Audit of Implementation of Food Safety and Standards Act, 2006.* Performance Audit Report. No. 37, 2017. Ministry of Health and Family Welfare, Union Government (Civil). Accessed August 3, 2020. https://cutt.ly/ofC1xdw.

Confederation of Indian Industry and GS1 India. 2012. *Food Traceability in India: A study report by CII FACE & GS1 India.* Study Report. Confederation of Indian Industry. Accessed June 30, 2020. https://cutt.ly/7fCMZyO.

Desai, Ashok V. 1998. "Self-Regulation in the Civil Society." *New Delhi: Centre for Civil Society.*

Eskeland, Gunnar, and Emmanuel Jimenez. 1992. "Policy Instruments for Pollution Control in Developing Countries." *World Bank Research Observer* 7 (August): 145–69. https://cutt.ly/NfC0cMV.

Fagotto, Elena. 2014. "Private roles in food safety provision: the law and economics of private food safety." *European Journal of Law and Economics* 37 (1): 83–109.

Fielding, Jonathan E, Steven M Teutsch, and Stephanie N Caldwell. 2013. *Public health practice: what works.* Oxford University Press.

Fleetwood, Janet. 2019. "Scores on doors: restaurant hygiene ratings and public health policy." *Journal of Public Health Policy* 40 (4): 410–422. https://cutt.ly/YfC0zFj.

Food Safety and Standards Authority of India. 2017. *Order: Guidelines for operations of E-commerce Food Business Operators.* Report. Accessed June 30, 2020. https://cutt.ly/bfJIc0o.

———. 2018. *Hygiene Rating and Right Place to Eat Schemes.* Report. Accessed June 30, 2020. https://cutt.ly/8fJIXI4.

———. 2020. "Food Safety Training and Certification · for Food Business Operators across the food value chain." Accessed July 15, 2020. https://cutt.ly/lfJO8YB.

Garcia, Marian, Andrew Fearne, Julie Caswell, and Spencer Henson. 2007. "Co-Regulation as a Possible Model for Food Safety Governance: Opportunities for Public-Private Partnerships." *Food Policy* 32 (June): 299–314. https://cutt.ly/PfC1JVL.

Goyal, Deepinder. 2020. "Food Hygiene Ratings: More than a Band-Aid." Zomato. Accessed July 2, 2020. https://cutt.ly/wfC0iLZ.

Gupta, Gaurav. 2020. "Introducing Contactless Dining for a post-lockdown world." Zomato. Accessed July 2, 2020. https://cutt.ly/yfC11GF.

Hobbs, Jill E. 2003. "Information, Incentives and Institutions in the Agri-food Sector." *Canadian Journal of Agricultural Economics/Revue canadienne d'agroeconomie* 51 (3): 413–429. https://cutt.ly/ifCM8gv.

Kashyaap, Sindhu, and Vishal Krishna. 2020. "Appetite for cloud kitchens grows as COVID-19 eats into restaurant business." *YourStory.com* (July 30). Accessed August 9, 2020. https://cutt.ly/ifCMlZk.

Klein, Daniel B. 1998. "Quality-and-Safety Assurance: How Voluntary Social Processes Remedy Their Own Shortcomings." *The Independent Review* 2 (4): 537–555.

Kristkova, Zuzana Smeets, Delia Grace, and Marijke Kuiper. 2017. *The economics of food safety in India: a rapid assessment.* Technical report. Wageningen University & Research.

Levi-Faur, David. 2010. *Regulation & Regulatory Governance.* Research Paper. Hebrew University of Jerusalem. Accessed June 30, 2020. https://cutt.ly/dfCMPaA.

McAllister, Lesley. 2012. "Regulation by third-party verification." *BCL Rev.* 53. Accessed July 10, 2020. https://cutt.ly/YfC1cgz.

———. 2014. "Harnessing Private Regulation." *Michigan Journal of Environmental and Adminsitrative Law.* Accessed August 16, 2020. https://cutt.ly/pfCMHIO.

Mehta, Pratap Bhanu, Michael Walton, et al. 2014. "Ideas, interests and the politics of development change in India: capitalism, inclusion and the state." *Effective States and Inclusive Development Research Center, Working Paper* 36.

Moghe, Ritwik. 2020. "Facing up to a Pandemic — A look at Swiggy's efforts to counter the COVID-19 threat." Swiggy. Accessed July 1, 2020. https://cutt.ly/CfC1NbB.

Powell, D.A., S Erdozain, C Dodd, R Costa, K Morley, and B.J. Chapman. 2012. *Audits and inspections are never enough: A critique to enhance food safety.* Research Paper. Food Control. Accessed June 30, 2020. https://cutt.ly/AfCMKx1.

PTI. 2018. "Swiggy, Zomato, others remove 10,500 restaurants for violating food safety law." *Economic Times* (December 14). Accessed August 9, 2020. https://cutt.ly/ifCMCjM.

Roy, Shubho, Ajay Shah, BN Srikrishna, Somasekhar Sundaresan, et al. 2018. "Building State capacity for regulation in India." *National Institute of Public Finance and Policy.* Accessed September 12, 2020. https://cutt.ly/KfC0wGH.

Shah, Ajay. 2016. "Sequencing in the construction of State capacity: Walk before you can run." The Leap Blog. Accessed September 12, 2020. https://cutt.ly/cfC0uvu.

Thierer, Adam, Christopher Koopman, Anne Hobson, and Chris Kuiper. 2015. "How the internet, the sharing economy, and reputational feedback mechanisms solve the lemons problem." *U. Miami L. Rev.* 70:830. https://cutt.ly/ufC1g5Z.

Unnevehr, L, and V Hoffmann. 2015. "Food safety management and regulation: International experiences and lessons for China." *Journal of Integrative Agriculture* Vol. 14, Issue No. 11:2218–2230. https://cutt.ly/vfC0UYo.

Verbeke, Wim. 2005. "Agriculture and the Food Industry in the Information Age." *European Review of Agricultural Economics* 32:347–368. https://cutt.ly/mfCMM9y.

The right to sow

Agarwal, P.K. 2018. "Public Administration Challenges in the World of AI and Bots." *Public Administration Review.* Accessed September 12, 2020. https://cutt.ly/PfHr9Zt.

Brown, Paul. 1999. "Monsanto drops GM 'terminator'." *The Guardian.* Accessed September 12, 2020. https://cutt.ly/hfHFDcG.

Bruenings, G, and J.M Lyons. 2000. "The case of the FLAVR SAVR tomato." *California Agriculture.* Accessed September 9, 2020. https://cutt.ly/OfHeHme.

Charles, Dan. 2012. "Top Five Myths of Genetically Modified Seeds." *National Public Radio.* Accessed September 12, 2020. https://cutt.ly/pfHHuFT.

Choudhary, Bhagirath, Godelieve Gheysen, Jeroen Buysse, Piet van der Meer, and Slyvia Burssens. 2013. "Regulatory options for genetically crops in India." *Plant Biotechnology Journal.* Accessed September 12, 2020. https://cutt.ly/qfHTGpz.

DNA India. 2015. "Maharashtra gives nod for field trial of 5 GM crops." Accessed September 12, 2020. https://cutt.ly/KfHKJFn.

Minutes of the 116th meeting of GEAC. 2012. Accessed September 12, 2020. https://cutt.ly/AfHKyWk.

Minutes of the 129th meeting of GEAC. 2016. https://geacindia.gov.in/Uploads/MoMPublished/2016-geac-129.pdf.

Minutes of the 136th meeting of GEAC. 2018. Accessed September 12, 2020. https://cutt.ly/pfHKwm3.

Indian Environmental Portal. 2014. "Gujarat Govt joins other states says will permit Field Trials of GM food crops in the state." Accessed July 12, 2020. https://cutt.ly/zfHKDLd.

International Service for the Acquisition of Agri-biotech Applications. 2018. "Biotech Crops Continue to Help Meet the Challenges of Increased Population and Climate Change." *ISAA Briefs.* Accessed September 18, 2020. https://cutt.ly/FfHK4um.

———. 2019a. "27000 Farmers in Bangladesh Reap the benefits of Bt Brinjal due to strong Political Support." Accessed September 18, 2020. https://cutt.ly/8fHtjPj.

———. 2019b. "ISAA in 2019 Accomplishment Report."

James, C. 2012. "The Global Status of Commercialized Biotech." *ISAAA Briefs.*

James, Clive, and Anatole F Krattiger. 1996. "Global Review of the Field Testing and Commercialization of Transgenic Plants, 1986 to 1995: The First Decade of Crop Biotechnology." *ISAA Briefs.*

Jayan, TV, and Radheshyam Jadhav. 2019. "Maharashtra farmers defy ban to plant GM cotton." *The Hindu Business Line.* Accessed September 12, 2020. https://cutt.ly/sfHKXGU.

Jayaraman, K. 2017. "Activists bury India's GM mustard hopes." *Nature Biotechnology.* Accessed September 12, 2020. https://cutt.ly/nfHGVLy.

Jishnu, Latha. 2015. "Rajasthan bans GM trials." *Down to Earth.* Accessed September 12, 2020. https://cutt.ly/dfHJfLS.

Kameswara Rao, C. 2010. *Bt Brinjal: A Review of the Orderof the Minister of Environment and Forest, Government of India.* Technical report. FBAE, Bangalore. Accessed September 12, 2020. https://cutt.ly/nfHTnKk.

Koshy, Jacob. 2018. "GM mustard trials may get nod soon." *The Hindu.* Accessed September 12, 2020. https://cutt.ly/YfHJcWO.

Kuwalekar, Shrikant. 2019. "Maharashtra farmers' union defies govt ban, sows GM brinjal,cotton." *Cogencis.*

Lusser, Maria, Terri Raney, Pascal Tilli, Koen Dillen, Emilio RodrıFIXMEguez Cerezo, et al. 2013. *International workshop on socio-economic impacts of genetically modified crops co-organised by JRC-IPTS and FAO.* Technical report. Joint Research Centre (Seville site).

Menon, Meena. 2014. "Gujarat refuses GM field trials of food crops." *The Hindu.* Accessed September 12, 2020. https://cutt.ly/2fHKPqf.

———. 2019. "Maharashtra farmers' group agitates for 'freeing' GM seeds, but illegal varieties are rampant in India." *FirstPost.* Accessed September 12, 2020. https://cutt.ly/0fHKk4h.

Outlook India. 2020. "SC issues notice on illegal; planting of non-approved GM crops." Accessed August 12, 2020. https://cutt.ly/4fJnr4v.

Plewis, Ian. 2014. "Indian farmer suicides: Is GM cotton to blame?" *Significance Journal.* Accessed September 12, 2020. https://cutt.ly/hfHDtjG.

Raman, Ruchir. 2017. "The impact of Genetically Modified (GM) crops in modern agriculture." *GM Crops & Food.* Accessed September 12, 2020. https://cutt.ly/OfHFWT2.

Ramesh, Sandhya. 2019. "Thousands to risk jail, Rs 1 lakh fine at world's first farmer stir in favour of GM crops." *The Print.* Accessed September 12, 2020. https://cutt.ly/OfHYnkx.

Science, The Cornell Alliance for. 2019. "Indian farmer escalates civil disobedience campaign to sow GMO seeds." Accessed September 21, 2020. https://cutt.ly/LfHKf5u.

Shelton, A.M. 2010. "The long road to comercialization of Bt Brinjal(eggplant) in India." *Crop Protection.* Accessed September 12, 2020. https://cutt.ly/UfHGlU6.

Shiva, Vandana. 2012. "The seed emergency: The threat to food and democracy." *Al Jazeera.* Accessed August 12, 2020. https://cutt.ly/afHKmTO.

———. 2016. "Defending Farmers' Freedom." *Antyajaa: Indian Journal of Women and Social Change.* Accessed September 12, 2020. https://cutt.ly/OfHH3mB.

Shiva, Vandana, and Vaibhav Singh. 2011. "Health Per Acre." Accessed September 12, 2020. https://cutt.ly/5fHLtgv.

Shukla, Al Busaidi, Trivedi, and Tiwari. 2018. "Status of research, regulations and challenges for genetically modified crops in India." *GM Crops and Food:* 173–188.

Specter, Michael. 2014. "Seeds of Doubt." *The New Yorker.* Accessed September 12, 2020. https://cutt.ly/ufHTlDk.

Sullivan, J. 2015. "India's Anti GMO Rhetoric: Wielding Gandhian Thought to Undermine Corporate-Capitalist Agriculture." *Clocks and Clouds.* Accessed September 12, 2020. https://cutt.ly/5fHKE8F.

Taleb, Nassim Nicholas, Rupert Read, Raphael Douady, Jospeh Norman, and Yaneer Bar Yam. 2014. "The Precautionary Principle (with Application to the Genetic Modification of Organism)." *Extreme Risk Initiative - NYU School of Engineering Working Paper Series.* Accessed September 15, 2020. https://cutt.ly/zfHTdV6.

The Hindu. 2010. "Moratorium on Bt Brinjal." *The Hindu.* https://cutt.ly/lfVdV14.

Labour pains

Ahsan, Ahmad, Carmen Pages, and Tirthankar Roy. 2008. "Legislation, enforcement and adjudication in Indian labor markets: origins, consequences and the way forward" (January). https://cutt.ly/ffGskv7.

ASSOCHAM. 2006. "Night Shift for Women : Growth & Opportunities." *National Commission for women.* https://cutt.ly/HfGs9B4.

Bartelsman, Eric J., Pieter A. Gautier, and Joris De Wind. 2016. "Employment protection, technology choice, and worker allocation." *International Economic Review* 57 (3): 787–826. https://cutt.ly/XfGsykv.

Beegle, Kathleen G, Jesko S Hentschel, and Martin G. Rama. 2013. "World development report 2013 : jobs." https://cutt.ly/6fGa251.

Bentolila, Samuel, and Giuseppe Bertola. 1990. "Firing Costs and Labour Demand: How Bad is Eurosclerosis?" *The Review of Economic Studies* 57 (3): 381–402. ISSN: 00346527, 1467937X. https://cutt.ly/ffGsxne.

Besley, Timothy, and Robin Burgess. 2004. "Can Labor Regulation Hinder Economic Performance? Evidence from India." *The Quarterly Journal of Economics* 119, no. 1 (February): 91–134. https://cutt.ly/BfGssgw.

Bhattacharjea, Aditya. 2009. "The Effects of Employment Protection Legislation on Indian Manufacturing." *Economic and Political Weekly* 44 (22): 55–62. ISSN: 00129976, 23498846. https://cutt.ly/DfGsdzx.

Bjuggren, Carl Magnus. 2018. "Employment protection and labor productivity." *Journal of Public Economics* 157:138–157. ISSN: 0047-2727. https://cutt.ly/jfGa4DW.

Chikermane, Gautam. 2018. *70 Policies that shaped India: 1947 to 2017, Independence to $2.5 Trillion.* Observer Research Foundation. https://cutt.ly/HfGfrrI.

Debroy, Bibek, and Laveesh Bhandari. 2008. "India Labour Report 2008." *Teamlease Services.* https://cutt.ly/rfHVMCw.

Dougherty, Sean. 2008. "Labour Regulation and Employment Dynamics at the State Level in India," no. 624. https://cutt.ly/ofGaCz5.

Dougherty, Sean, Veronica Frisancho, and Kala Krishna. 2014. "State-level Labor Reform and Firm-level Productivity in India." *India Policy Forum* 10 (1): 1–56. https://cutt.ly/MfGaDIi.

Fallon, Peter R, and Robert E.B. Lucas. 1991. "The impact of changes in job security regulations in India and Zimbabwe." *The World Bank Economic Review* 5 (3): 395–413. https://cutt.ly/KfGsADK.

———. 1993. "Job security regulations and the dynamic demand for industrial labor in India and Zimbabwe." *Journal of development Economics* 40 (2): 241–275. https://cutt.ly/wfGs1HG.

Garibalidi, Pietro, and Zuzana Brixiova. 1998. "Labor Market Institutions and Unemployment Dynamics in Transition Economies." *IMF Staff Papers.* https://cutt.ly/XfGsvfT.

Global Alliance for Mass Entrepreneurship. 2020. "Improving Economic Dynamism and Accelerating MSME Growth." https://cutt.ly/TfGsrPa.

Ministry of Labour and Employment. 2015. "Third Report of Standing Committee on Labour." https://cutt.ly/7fGfuah.

Ministry of Micro, Small and Medium Enterprises. 2019. "Annual Report 2018-19." *Government of India.* https://cutt.ly/UfGlsuz.

Ministry of Statistics and Programme Implementation. 2017. "Key Indicators of Unincorporated Non-Agricultural Enterprises (Excluding Construction) in India." https://cutt.ly/8fGsQIC.

OECD. 2013a. "OECD Indicators of Employment Protection 2013." *OECD.* https://cutt.ly/lfGgq1R.

———. 2013b. "Protecting jobs, enhancing flexibility: A new look at employment protection legislation." *OECD Employment Outlook 2013.* https://cutt.ly/3fGaBy5.

———. 2020. *Worker Security and the COVID-19 Crisis.* 368. OECD Employment Outlook 2020. https://cutt.ly/ifGaOrv.

Pratap Singh, Ameya, and Urvi Tembey. 2020. "India's labour reforms trying what Bangladesh, China, Vietnam did — swap income for security." *The Print* (May 11). https://cutt.ly/TfGsFFg.

Teamlease. 2019. "India's road to a $5 Trillion economy: Reducing regulatory cholesterol." *Teamlease Services.* https://cutt.ly/CfGftVb.

Thakur, Atul. 2019. "India enters 37-year period of demographic dividend." *The Economic Times* (July 22). https://cutt.ly/EfGsJ15.

Varkkey, Biju, and Rupa Korde. 2012. "Minimum Wage Comparison:Asian Countries: Official Representation of Minimum Wages." *Indian Institute of Management Ahmedabad.* https://cutt.ly/4fGfrNb.

World Bank. 2004. "Doing Business in 2004." https://cutt.ly/YfGaLHL.

———. 2005. "Doing Business in 2005." https://cutt.ly/LfGslG4.

———. 2013. "World Development Indicators." https://cutt.ly/HfGkNUl.

———. 2020. "Doing Business 2020." https://cutt.ly/BfGaRvc.

Yadav, Anumeha. 2015. "Factories Act Amendment Bill being revised." *The Hindu* (January 29). https://cutt.ly/YfGfea8.

The difficulty of doing good

Association for Democratic Reforms. 2014. "ADR and Anr Vs Union of India AND Ors." https://adrindia.org/sites/default/files/ADR%20vs.%20UOI%20(Delhi%20High%20Court%20judgment%20on%20foreign%20funding%20received%20by%20INC%20and%20BJP).pdf.

Bhagwati, Anant, Arpan Sheth, Deval Sanghavi, and Srikrishnan Srinivasan. 2019. "Indian Philanthropy Report 2019." https://www.bain.com/insights/india-philanthropy-report-2019/.

Bob, Clifford. 2005. "The marketing of rebellion: Insurgents, media, and international activism." *Cambridge University Press.* https://books.google.co.in/books?hl=en%5C&lr=%5C&id=bkRn6pl2fcwC%5C&oi=fnd%5C&pg=PP1%5C&ots=6j62O8rbA6%5C&sig=qD7ezo_A5ahD9oz6BsyrWzte0eo%5C&redir_esc=y%5C#v=onepage%5C&q%5C&f=false.

Chakravarti, Sudeep. 2019. "Opinion — Greenpeace India won some battles but lost the war." *LiveMint.* https://www.livemint.com/opinion/columns/opinion-greenpeace-india-won-some-battles-but-lost-the-war-1548956053016.html.

Citizens for Justice and Peace. 2017. "Cancellation of FCRA of Sabrang Trust to stop public justice says Teesta Setalvad." *Citizens for Justice and Peace.* https://cjp.org.in/cancellation-of-fcra-of-sabrang-trust-to-stop-public-justice-says-teesta-setalvad/.

CSIP Ashoka University. 2020. *How COVID-19 Is Shaping India's Philanthropic Responses and Strategies.* Youtube. Accessed September 12, 2020. https://www.youtube.com/watch?v=Hk4xziVp_2o.

Dupuy, Kendea, James Ron, and Aseem Prakash. 2016. "Hands OFIXME My Regime! Governments' Restrictions on Foreign Aid to Non-Governmental Organisations in Poor andMiddle-Income Countries." *World Development.* Accessed September 12, 2020. https://www.researchgate.net/publication/291377932_Stop_Meddling_in_my_Country_Governments'_Restrictions_on_Foreign_Aid_to_NGOs.

Economic Times. 2020. "CBDT defers requirement of registration of charitable, religious trusts by 4 months till Oct 1." https://economictimes.indiatimes.com/news/economy/policy/cbdt-defers-requirement-of-registration-of-charitable-religious-trusts-by-4-months-till-oct-1/articleshow/75635504.cms.

Fogla, Manoj, Suresh Kejriwal, Sanjay Patra, and Sandeep Sharma. 2019. "New circular condoning belated submission of audit report in Form 10B." *Standard and Norms.* https://accountingforngos.org/public/storage/form_downloads/pdf/190320100438-New%5C%20circular%5C%20condoning%5C%20before%5C%20submission%5C%20of%5C%20audit%5C%20report%5C%20in%5C%20form%5C%2010B.pdf.

Hafner-Burton, Emilie M. 2008. "Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem." *International Organization.* https://www.jstor.org/stable/40071894?seq=1%5C#metadata_info_tab_contents.

Indian Express. 2019. "Explained: What is the FCRA violation case against Indira Jaising's NGO." https://indianexpress.com/article/explained/fcra-violation-case-cbi-lawyers-collective-indira-jaisingh-anand-grover-5787169/.

Ministry of Home Affairs. 2015. "Cancellation Order." Government of India. https://fcraonline.nic.in/home/PDF_Doc/education18032015.PDF.

PRS Legislative Research. 2010. "Bill Summary: The Foreign Contribution (Regulation) Bill, 2006." https://www.prsindia.org/sites/default/files/bill_files/FCRI_Bill_Summary.pdf.

PTI. 2010. "New Law to Regulate Foreign Contributions." *The Times of India.* Accessed September 12, 2020. https://timesofindia.indiatimes.com/business/india-business/New-law-to-regulate-foreign-contributions/articleshow/6445968.cms.

———. 2019. "Members of NGOs Must Declare They Weren't Involved in Faith Conversion, Says Home Ministry." *The Wire.* https://thewire.in/government/members-of-ngos-must-declare-they-werent-involved-in-faith-conversion-says-home-ministry.

Rajya Sabha. 2008. "One Hundred and Thirty Fourth Report on the Foreign Contribution (Regulation) Bill, 2006." https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/15/15/134_2016_6_16.pdf.

Rao, Nageswara M. 2020. "The Dangers of Foreign Funding." *Organiser.* https://www.organiser.org/Encyc/2020/1/27/The-Dangers-of-Foreign-Funding.html.

Rutzen, Douglas. 2015. "Aid barriers and the rise of philanthropic protectionism." *International Journal of Not-for-Profit Law.* Accessed September 12, 2020. https://caps.org/doing-good/aid-barriers-rise-philanthropic-protectionism/.

Salamon, Lester M. 1994. "The Rise of the Nonprofit Sector." *Foreign Affairs.* Accessed September 12, 2020. https://www.foreignaffairs.com/articles/1994-07-01/rise-nonprofit-sector.

Singh, Varsha. 2020. "PM Cares Fund cannibalises NGO funding." *Media India Group.* https://mediaindia.eu/business/pm-cares-fund-cannibalises-ngo-funding/.

Srinath, Ingrid, and Ashish Karamchandani. 2020. "India's recovery depends on the state of its social sector. Government must come to its aid." *The Times of India.* Accessed September 12, 2020. https://cutt.ly/0fKp8cg.

Srivas, Anuj. 2018. "Finance Bill Amends FCRA Again to Condone Illegal Donations to BJP, Congress from Foreign Companies." *The Wire.* https://thewire.in/business/finance-bill-seeks-amend-fcra-condone-illegal-donations-bjp-congress-received-foreign-companies.

Sundar, Pushpa. 2020. "Opinion — NGOs being starved of funds." *The Hindu.* https://www.thehindubusinessline.com/opinion/ngos-being-starved-of-funds/article31670090.ece.

US Department of State. 2001. "President Freezes Terrorists' Assets." Accessed September 12, 2020. https://2001-2009.state.gov/s/ct/rls/rm/2001/5041.htm.

An education without an exit

Andrade, Chittaranjan. 2008. "The National Institute of Open Schooling." *Indian Journal of Psychiatry* 50 (3): 227. https://cutt.ly/wfC9oVh.

Bhalla, Vineet. 2018. "Homeschooling in India: Enabling a Right to Education of Choice." *The Quint.* https://cutt.ly/ifC9t4n.

Bhattacharji, Prashant, and Geeta Kingdon. 2017. "The Great Indian Exam Debacle." *The Observer Research Foundation Brief* 191. https://cutt.ly/TfC9eG0.

Bishop, John H. 1999. "Are national exit examinations important for educational efficiency?" *Swedish Economic Policy Review:* 349–398.

Bose, Sutapa. 2014. "Curriculum transaction in NIOS: Overcoming the limitations of packaged instructions." *Commonwealth of Learning (COL).* https://cutt.ly/DfC9sh0.

Choudhary, Richa. 2020. "COVID-19 Pandemic: Impact and Strategies for Education Sector in India." *ET Government.com.* https://cutt.ly/EfC25e8.

Chowdhury, Shreya Roy. 2018. "Assessing students or selecting them for higher education – Indian board exams fail in both." *Scroll.in.* https://cutt.ly/ZfC9ayw.

Holt, John Caldwell. 1982. *Teach Your Own.* Delta Trade Paperbacks. https://cutt.ly/4fC9yFq.

Jain, P, A Dhawan, G Ishwaran, and A Jhingan. 2014. *Private sector's contribution to K-12 education in India.* https://cutt.ly/qfC9rGW.

Jha, Jyotsna, Neha Ghatak, and Shreekanth Mahendiran. 2016. "Tracing the education and employment status of open school graduates in India." *Commonwealth of Learning (COL) and Open University Malaysia (OUM).* https://cutt.ly/OfC9s00.

Kapur, Manavi. 2019. "India's culture of high-stakes testing needs to be dismantled." *Quartz India.* https://cutt.ly/ZfC9pn1.

Ministry of Human Resource Development. 2016. *Educational Statistics at a Glance.* https://cutt.ly/9fC9zds.

Minni, Puja, Padmaja Pancharatnam, Shobhita Rajgopal, and Jyotsna Jha. 2016. "How "Open" is Open School in India?: A Learners' Perspective." https://cutt.ly/PfC9aDl.

Mitra, Amit. 2008. "India, Non-Formal Education." *Country Profile commissioned for the EFA Global Monitoring Report 2008, Education for All by 2015: will we make it?* https://cutt.ly/qfC9tfW.

Mitra, Sushmita, S.K. Tanwar, and Aditi Ranjan Rout. n.d. *Handbook for Academic Facilitators of NIOS.* https://cutt.ly/OfC9lU0.

National Council of Educational Research and Training. 2005. *National Curriculum Framework.* https://cutt.ly/0fC9vOj.

National University of Educational Planning and Administration. n.d. *COBSE Through Decades.* https://cutt.ly/1fC9cF4.

Pant, Mahesh Chandra. 2009. "National Institute of Open Schooling, India: A Case Study." *Open Schooling in the 21st Century:* 111. https://cutt.ly/OfC9dWv.

Planning Commission. 1998. *Report of the Steering Committee for Formulation of Ninth Plan (1997-2002).* https://cutt.ly/JfC9xbt.

Sharma, Shikha. 2020. "Reopening Schools — Reform education and change the outlook towards schools." *MoneyControl.* https://cutt.ly/EfC26dk.

Sudhakar, Tarini, and Bhuvana Anand. 2020. "Reforms required for democratic certification." *Education World.* https://cutt.ly/3fC26Sn.

Right of admission reserved

A, Curcio Andrea. 2002. "A Better Bar: Why and How the Existing Bar Exam Should Change." *Nebraska Law Review* 81 (1). https://cutt.ly/6fC0Cq1.

Angrist, Joshua, and Jonathan Guryan. 2008. "Does Teacher Testing Raise Teacher Quality? Evidence from State Certification Requirements?" *Economics of Education Review* 27 (5). https://cutt.ly/6fC2QY4.

Ballakrishnen, S. 2009. "Where did we come from? Where do we go? An enquiry into the students and systems of legal education in India." *Journal of Commonwealth Law and Legal Education* 7. https://cutt.ly/NfC2OIX.

Barton, Benjamin H. 2011. "The Lawyer Judge Bias in the American Legal System." *Cambridge University Press.*

Boyd, Donald, Pamela Grossman, Hamilton Lankford, Susanna Loeb, and James Wyckoff. 2005. "How Changes In Entry Requirements Alter The Teacher Workforce And Affect Student Achievement." *National Bureau Of Economic Research.* https://cutt.ly/RfC2ScN.

Buddin, Richard, and Gemma Zamarro. 2009. "Teacher Qualifications and Student Achievement in Urban Elementary Schools." *Journal of Urban Economics* 66. https://cutt.ly/ffC2Jfq.

Caplan, Bryan. 2018. *The Case against Education: Why the Education System Is a Waste of Time and Money.* Princeton University Press.

Chamorro-Premuzic, Tomas, and Becky Frankiewicz. 2019. "Does Higher Education Still Prepare People for Jobs?" *Harvard Business Review* (January 14). https://cutt.ly/UfC2MCd.

Chettri, Shradha. 2019. "Teacher Shortage in Delhi Government Schools: Manish Sisodia writes to DoE." *The Times of India* (July 15). https://cutt.ly/cfC2XdS.

Department of School Education and Literacy. 2012. "Review of the Report of the Justice Verma Commission on Teacher Education." *Sage Publications.*

Eliers, Christian. 2020. "How to Become a Teacher (Steps, Requirements & Tips)." *Zety.*

Friedman, Milton, and Rose D. Friedman. 1962. *Capitalism and freedom.* University of Chicago Press.

Goel, Deepti, and Bidisha Barooah. 2017. "Identifying an Effective Teacher in Public Schools in Delhi." *International Growth Center.* https://cutt.ly/KfC206v.

Gohain, Manash Pratim. 2017. "NCTE orders closure of over 1,000 teacher training institutes." *The TImes of India* (December 5). https://cutt.ly/HfC27kj.

Groom, Barry, and Irmeli Maunonen-Eskelinen. 2007. "The use of portfolios to develop reflective practice in teacher training: a comparative and collaborative approach between two teacher training providers in the UK and Finland." *Teaching in Higher Education.*

Hadfield, Gillian. 2011. "Legal Barriers to Innovation: The Growing Economic Cost of Professional Control Over Corporate Legal Markets." Entrepreneurship & Law eJournal." *Entrepreneurship & Law eJournal.*

Hammond, Linda. 1997. "Doing What Matters Most: Investing in Quality Teaching." *National Commission on Teaching & America's Future.* https://cutt.ly/bfC9pA5.

Hansen, Daniel. 1995. "Do We Need the Bar Examination–A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives?" *Case Western Reserve Law Review.*

Hatch, Thomas, and Pam Grossman. 2008. "Learning to Look Beyond the Boundaries of Representation: Using Technology to Examine Teaching (Overview for a Digital Exhibition: Learning From the Practice of Teaching)." *Journal of Teacher Education.* https://cutt.ly/ofC9ld4.

Hess, Frederick. 2002. "Tear Down This Wall: The Case for a Radical Overhaul of Teacher Certification." *Educational Horizons.* https://cutt.ly/ofC9cW5.

Joshi, Prasad. 2013. "Ahead of first TET, coaching classes in city do brisk business." *The Indian Express* (November 15). https://cutt.ly/NfC9nxv.

Kane, Michael T. 2012. "What the Bar Examination Must Achieve: Three Perspectives." *The Bar Examiner.*

Kingdon, Geeta Gandhi, and Vandana Sipahimalani-Rao. 2010. "Para-Teachers in India: Status and Impact." *Economic & Political Weekly* 45 (12). https://cutt.ly/XfC9EQx.

Kirti, Shristi. 2019. "CTET Result Analysis 2019 - Over 3 Lakh 52 Thousand Candidates Qualified." *Careers 360* (July 30). https://cutt.ly/UfC9OQi.

Kleiner, Morris M. 2000. "Occupational Licensing." *Journal of Economic Perspectives.* https://cutt.ly/afC0Tuj.

Krishnan, Jayanth. 2005. "Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India." *The American Journal of Legal History.*

Law Society of Ireland. n.d. "Become a Solicitor." https://cutt.ly/7fVpNFV.

Mahapatra, Dhananjay. 2016. "SC: Can BCI hold Bar exam?" *The Times of India* (March 2). https://cutt.ly/JfC0KcS.

Mehta, Ipsita. 2019. "Teaching India: Analyzing the Four-Year B.Ed Programme." *The Bastion.*

Muralidharan, Karthik. 2020. "Episode 185: Fixing Indian Education." *The Seen and the Unseen Podcast with Amit Verma.* https://cutt.ly/7fC3ePB.

Mustafa, Sheikh. n.d. "Historical Development of Teacher Education in India." *Institute of Advanced Studies in Education, Srinagar.* https://cutt.ly/hfVpGyU.

National Council of Teacher Education. 2001. "NCTE (Determination of minimum qualifications for recruitment of teachers in schools) Regulations." *The Gazette of India.*

———. 2011. "Guidelines for Conducting Teacher Eligibility Test (TET)." http://righttoeducation.in/sites/default/files/Guidelines%20for%20conducting%20Teacher%20Eligibility%20Test%20(TET)%20under%20RTE%20Act.pdf#overlay-context=.

———. 2019. "NCTE (Determination of minimum qualifications for recruitment of teachers in schools) Regulations." *The Gazette of India.* https://ncte.gov.in/Website/PDF/regulation/ITEP_2019.pdf.

Pagliero, Mario. 2011. "What Is The Objective Of Professional Licensing? Evidence From The US Market For Lawyers." *International Journal of Industrial Organization* 29 (4). https://cutt.ly/mfVp4HW.

———. 2019. "Occupational Licensing in the EU: Protecting Consumers or Limiting Competition." *Review of Industrial Organization* 55. https://cutt.ly/pfVawLg.

Sandhu, Rohan, and Tushar Vohra. 2019. "Spotlight Needed on Training Teachers in India." *Mint* (June 19). https://cutt.ly/1fC3y4K.

Saxena, Akshita. 2019. "Legal Education Cannot Be Allowed To Be Regulated By Outsiders': BCI Opposes Higher Education Commission Of India Bill." *LiveLaw* (October 2). https://cutt.ly/XfC3pUz.

Smith, Adam. 1776. *Wealth Of Nations.* W. Strahan and T. Cadell.

Staton, Michael. 2015. "When a Fancy Degree Scares Employers Away." *Harvard Business Review* (January 6). https://cutt.ly/1fC3d7j.

Stigler, George J. 1971. "The theory of economic regulation." *The Bell Journal Economics and Management Science.* Accessed August 19, 2020. https://cutt.ly/gfFxXVV.

The State Bar of California. n.d. "Admission Requirements." https://cutt.ly/ofVp0pv.

Researching Reality 2020 Interns

ANUBHAV AGARWAL

Anubhav has done his Bachelor's in Economics from St. Stephen's College and is now pursuing a Master's in International Economic Policy from Sciences-Po, Paris. He plans to become a researcher-policymaker specializing in developing economies (who also speaks fluent French).

GUNTASH OBHAN

Guntash is pursuing Political Science and Economics from Lady Shri Ram College for Women, University of Delhi. Aspire to pursue further studies to gain deeper insight into Public Policy with a special focus on gender-related issues.

ISHITA GUPTA

Ishita is a third-year undergraduate student at Jadavpur University, pursuing an honours degree in Political Science. She is the editor at the JU official student media body and a core member of the JU debating society. Her interest areas include public policy, comparative politics and conflict studies.

ISRAR HASAN

Israr Hasan is a recent graduate from BRAC University in Dhaka, Bangladesh. He graduated with a major in Economics and minor in Anthropology. He plans to do a Masters in Anthropology, which he believes will help him understand the complex world a little bit better.

KAAVYA RAJESH

Kaavya Rajesh is currently studying International Relations– with minors in Education, Applied Analytics, and Screenwriting– on a full merit scholarship at the University of Southern California. She is passionate about gender equality and started a non-profit that provides scholarships and mentorship to low-income female college students called My Daughter Is Precious. Kaavya plans to work in economic development or education policy.

MANASI MERTIA

Manasi Mertia has completed her undergraduate degree in Economics from Shri Ram College of Commerce. She has been involved in social entrepreneurship college projects and extensively volunteered with social work foundations across India. She wishes to pursue development studies and economics and work for multilateral agencies in the near future.

MEHAK RAINA

Mehak is a third-year student pursuing B.A. Economics (Hons.) from Shri Ram College of Commerce, University of Delhi. In her second year Mehak was the core team member of the Finance and Investment Cell of her college and attended summer school at London School of Economics.

MOZAIEN TAK

Mozaien Tak is a final year student of Delhi University, and is pursuing a degree in Economics and Philosophy. They are passionate about feminist philosophy, politics, and is and an avid debater and athlete. In the future, Mozaien hopes to become an academic, and pursue anthropological research.

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Nirikta is pursuing B.A. Economics (Hons) from Shri Ram College of Commerce, Delhi University. Her academic interests are Development Economics, International Economics and Public Policy. She wants to work in the field of development and policy.

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Shruti is pursuing a postgraduate degree in Development Communication and Extension from Lady Irwin College, University of Delhi. Her academic interests include community development, participatory communication and socio-economic issues stemming from the rural-urban dichotomy. She has interned and volunteered with various non-profit organisations covering geographies such as Delhi, Uttarakhand and Rajasthan. She aspires to be a development researcher with a focus on Communication for Development.

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Centre for Civil Society

Centre for Civil Society (CCS) is a Delhi-based public policy think tank that advances social change through public policy. Our work in education, livelihoods, governance and policy training furthers choice and accountability across public and private sectors. To translate policy into practice, we engage with policy and opinion leaders through research, pilot projects and advocacy. We have been ranked in the top 100, in the Global Go To Think Tank Index Report 2018 by Think Tanks and Civil Societies Program at the University of Pennsylvania

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The Friedrich Naumann Foundation for Freedom (FNF) is an international non-profit organization promoting the ideas of liberal democracy, respect for human rights, rule of law and economic freedom.

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