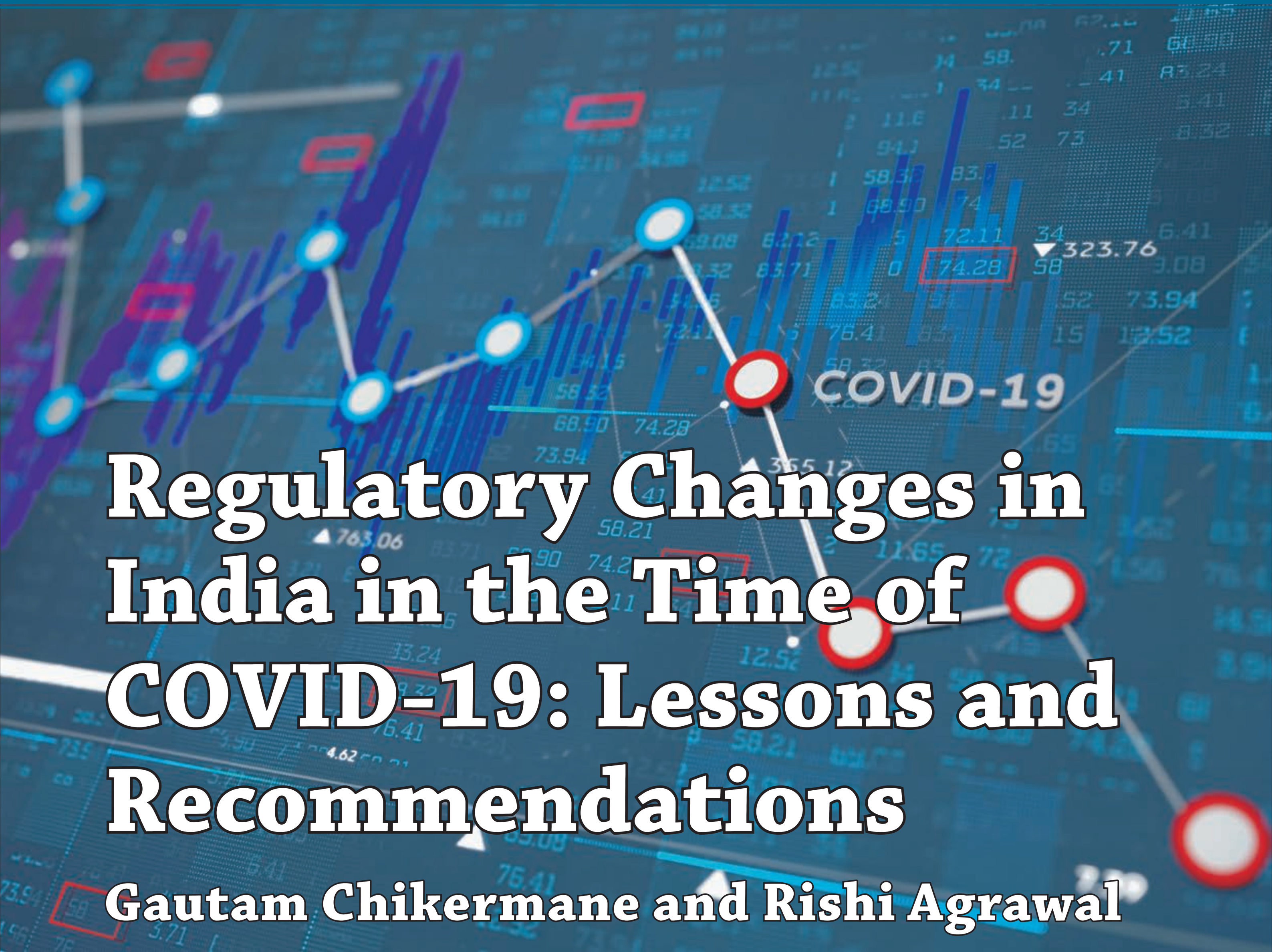
110

ORF SPECIAL REPORT

JUNE 2020




# Regulatory Changes in India in the Time of COVID-19: Lessons and Recommendations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Attribution: Gautam Chikermane and Rishi Agrawal, "Regulatory Changes in India in the Time of COVID-19: Lessons and Recommendations," *ORF Special Report No. 110*, June 2020, Observer Research Foundation.


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ISBN 978-93-90159-26-0

## ABSTRACT

This report tracks the changes to India's business regulatory framework in the first 40 days of the nationwide lockdown due to the COVID-19 virus. The Union and state governments have been highly proactive in creating spaces for doing business while managing the ongoing health crisis. The governments have attempted to modify the business-related legal infrastructure within the confines imposed through the lockdown. While under normal circumstances, the governments present hurdles to doing business, in crises such as the current one, they can—and do—deliver respite and ease. This report analyses the changes in Union and state laws, rules and regulations over the first 40 days of the nationwide lockdown, identifies key learnings and makes recommendations to improve the regulatory environment.


## INTRODUCTION

In the 40 days between Prime Minister Narendra Modi announcing a nationwide lockdown starting 25 March 2020[1] in response to the COVID-19 crisis[2] and the end of its first extension on 3 May, the Union and state governments made several changes to the laws, rules and regulations that apply to doing business in the country. These modifications came through formal tools like 'ordinances', 'notifications', and 'guidelines'. From banking and financial services to food and education, the Union and state governments drafted several COVID-19-related legal readjustments to benefit people and the business environment.

At the Union level, a relaxation on tax return filings was announced,[3] while the Central Board of Direct Taxes relaxed the reporting of information under some clauses.[4] The Reserve Bank of India (RBI) permitted a three-month moratorium on loans[5] and infused liquidity in the money markets,[6] capital markets regulator Securities and Exchange Board of India (SEBI) extended the timeline for compliances,[7] and the Central Pollution Control Board issued an 'advisory' on facilitating the operation of common biomedical waste treatment and disposal facilities as essential services under healthcare infrastructure during the COVID-19 pandemic.[8]

At the subnational level, union territories like Andaman and Nicobar Islands[9] and Pondicherry[10] restricted the entry of people, and states such as Assam[11] and Tripura[12] issued 'guidelines' for factory management. Haryana[13] and Kerala[14] issued 'advisories' on hand sanitiser use and thermal scanners. Most state governments, such as in Haryana[15] and Odisha,[16] also notified processes to ensure that vehicles passes were issued to avoid any interruptions to the supply of essential commodities.

These crisis-driven responses of modifying the existing legal system comprised clarifications on exemptions, new guideline 'amendments', and included requests for employees to contribute to the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (also known as PM CARES Fund).[17]

By tracking the changes to the regulatory framework over the 25 March-3 May period, this report finds that a crisis can become the trigger for positive change, such as easing the regulatory pressures on businesses. Although most entrepreneurs expected more relaxations, the Union and state governments made many regulatory changes even as they worked in tandem to deliver safety while managing a health crisis and its economic fallout. As India begins to ease the lockdown, the challenge will be to boost economic activity and job creation, without compromising on health and safety.

While a 40-day timeline and a 272-strong policy sample may not be an exhaustive data set through which to analyse governmental action for a country as large and diverse as India, it is reflective of what can be done. This report draws out lessons from regulatory actions and offers policy recommendations that can serve the country more efficiently.

## REGULATORY CHANGES: ANALYSING THE DATA

ORF partnered with Avantis Regtech to track the regulatory changes made by the Union and state governments in the first 40 days of the countrywide lockdown. Avantis monitored 2,233 government websites concerned with creating or amending laws, rules and regulations, including 437 Union government and allied websites, 1,240 state and union territory government websites, and 556 city and municipal government websites.

Avantis tracked over 1,074 central and state laws and 58,726 compliances across six categories—labour; finance and taxation; secretarial; environment, health and safety (EHS); commercial; and industry-specific—to capture any regulatory introduction or modification. These could be a change of frequency, revisions to forms, change in penalty or interest, changes to rates or duty structures, the addition of new compliance, reduction in existing compliance, and any other additional information or clarification to existing law, rule or regulation.

Based on this data, this report captures 272 changes in laws, rules and regulations over the 40 days, on limited liability partnerships, private limited, public limited, listed and unlisted companies. These changes are across industries and included factories, shops and establishments, and other commercial establishments such as hospitals and construction projects. However, they do not include changes on small establishments or unorganised sector entities such as small traders, grocery stores or cigarette and ice-cream vendors.

More than half (50.7 percent) of the changed laws, rules and regulations were drafted by the Union government, while 48.9 percent were by the states and union territories (See Table 1).

**Table 1: Total COVID-19-related changes since lockdown**

| | |
|---|---|
| Union | 140 |
| States | 132 |
| Total | 272 |

*Source: Avantis RegTech*

Almost half of the regulatory changes were in two areas—EHS and labour, accounting for 23.9 percent and 23.2 percent, respectively (See Table 2). For both, the larger share of changes was driven by state governments (86.2 percent for EHS and 68.3 percent for labour).

**Table 2: Category-wise breakup of COVID-19-related changes since lockdown**

| Category | Total | Union | States |
|---|---|---|---|
| Labour | 63 | 20 | 43 |
| Finance and taxation | 28 | 26 | 2 |
| Environment, health and safety | 65 | 9 | 56 |
| Secretarial | 27 | 27 | 0 |
| Commercial | 30 | 15 | 15 |
| Industry specific | 59 | 43 | 16 |

*Source: Avantis Regtech*

## EHS

These include the Union home ministry's 1 May 'order'[18] extending the lockdown, as well as Maharashtra's drafting of two changes: first, 'guidelines' on the collection, transportation and disposal of waste,[19] and second, a 'circular' extending the validity period of consent from the Maharashtra Pollution Control Board for biomedical waste management.[20]

**Labour**

These include the Union home ministry's 29 March 'order' directing the state and union territories to "mitigate economic hardship to the migrant members,"[21] and the 19 April 'order' creating a standard operating system for the movement of stranded labour.[22]

The state governments did the heavy lifting on the labour regulations front. An 11 April 'order' by the Rajasthan Factories and Boilers Inspection Department, for instance, exempted some provisions of the Factories Act, 1948, and extended working hours from eight hours to 12 for three months, with the additional four hours to be considered as 'overtime'.[23] Likewise, the Madhya Pradesh government issued 'guidelines' on 23 March that no deductions be made in the salaries of workers during the period of closure of factories, shops or commercial institutions.[24]

After EHS and labour, the next category with the highest number of changes was industry-specific (21.7 percent). About 72.9 percent of the modifications were made by the Union.

**Industry Specific**

Among the 43 changes introduced by the Union government was the 27 March 'circular' by the RBI allowing commercial banks, cooperative banks, financial institutions and non-banking financial companies to grant a three-month moratorium for instalments due till 31 May 2020.[25] Also included was the 1 April 'notification' from the finance ministry's Department of Financial Services allowing policyholders whose health premiums were due for renewal between 25 March and 14 April to pay by 21 April.[26]

At the state and union territory level, there were 16 changes. These included a 4 April 'circular' by the Karnataka Real Estate Regulatory Authority (KRERA) allowing all KRERA-registered projects to extend the completion date by three months,[27] and a 1 April 'notice' by the Gujarat State Electricity Commission (GSEC) allowing electricity trading, transmitting, and distributing licensees to pay their licence fees by 30 June.[28]

Between 10 percent and 11 percent of all regulatory changes were for the finance and taxation, secretarial, and commercial categories (See Table 2).

While the Union and state governments both announced an equal number of changes in the commercial category (laws and rules on trade and sale of goods), all changes in the secretarial category (corporate governance or risk management policies) came from the Union government. In the finance and taxation category (direct and indirect taxes), the Union government dominated with 92.9 percent of the changes.

**Finance and Taxation**

A 9 April 'notification' by the Central Board of Indirect Taxes and Customs exempted customs duty on ventilators, face and surgical masks, personal protection equipment, COVID-19 testing kits and inputs for these goods.[29] A 31 March Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance relaxed some provisions of the Wealth Tax Act, 1957; Income Tax Act, 1962; Prohibition of Benami Property Transactions Act, 1988; Finance Act; Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015; and Direct Tax Vivad se Vishwas Act, 2020.[30]

Analysing a state-wise breakdown of the regulatory changes illustrates the extent of economic activity in all states (see Table 3).

**Table 3: State-wise breakup of COVID-19-related changes between 25 March and 3 May**

| | |
|---|---|
| Andaman and Nicobar Islands | 3 |
| Andhra Pradesh | 8 |
| Arunachal Pradesh | 0 |
| Assam | 3 |
| Bihar | 1 |
| Chandigarh | 3 |
| Chhattisgarh | 3 |
| Dadar and Nagar Haveli | 2 |
| Daman and Diu | 0 |
| Delhi | 8 |

| | |
|---|---|
| Goa | 4 |
| Gujarat | 4 |
| Haryana | 10 |
| Himachal Pradesh | 2 |
| Jammu and Kashmir | 2 |
| Jharkhand | 2 |
| Karnataka | 7 |
| Kerala | 3 |
| Ladakh | 0 |
| Lakshadweep | 2 |
| Madhya Pradesh | 3 |
| Maharashtra | 16 |
| Manipur | 1 |
| Meghalaya | 3 |
| Mizoram | 1 |
| Nagaland | 2 |
| Orissa | 7 |
| Pondicherry | 1 |
| Punjab | 4 |
| Rajasthan | 7 |
| Sikkim | 0 |
| Tamil Nadu | 4 |
| Telangana | 3 |
| Tripura | 5 |
| Uttar Pradesh | 2 |
| Uttarakhand | 3 |
| West Bengal | 3 |

*Source: Avantis RegTech*

Eight states—Maharashtra, Haryana, Andhra Pradesh, Delhi, Karnataka, Orissa, Rajasthan, and Tripura—have drafted more than half (51.5 percent) of the COVID-19-related changes in laws, rules and regulations. Maharashtra leads with 16 changes (12.1 percent); followed by Haryana with 10 (7.6 percent); Andhra Pradesh and Delhi with eight (6.1 percent) each; Karnataka, Orissa and Rajasthan with seven (5.3 percent) each; and Tripura with five (3.8 percent). Other states and union territories drafted 2.3 regulations on average, with Arunachal Pradesh, Daman and Diu, Ladakh, and Sikkim making no changes.

The dominance of Maharashtra, Haryana, Andhra Pradesh, Karnataka, Rajasthan and Delhi correlates to the extent of their economic activity. In terms of state gross domestic product, Maharashtra ranks first, Karnataka fourth, and Rajasthan seventh, Andhra Pradesh ninth, Haryana twelfth, and Delhi thirteenth.[31]

## LESSONS FROM THE DATA

Four lessons can be drawn from the governments' regulatory responses for businesses while managing the COVID-19 crisis over the 25 March-3 May period.

### Crisis is a mechanism for regulatory relaxations

In a pinch, the Union and state governments can and do deliver ease of doing business. Relaxations in filings, extensions of deadlines, the temporary easing of rules and similar measures create spaces within which businesses can get regulatory relief as they battle the bigger enemy of managing to stay afloat without activity.

For instance, the corporate affairs ministry's 18 March decision to relax the requirement of holding board meetings with a physical presence and allow video conferencing until 30 June was a step in the right direction at the right time.[32] That the lockdown necessitated this change is not important; what is, is that such a rule can and has been made. The new rule is temporary but should be made permanent in Digital India.

### Crisis is a tool to end turf wars

Although government departments are usually known to compete with each other, the COVID-19 crisis has forced them to work together. Bound together by a common enemy, the diverse departments are harmonising their regulations.

For instance, the corporate affairs ministry, through a 21 April 'general circular', extended the annual general body meetings (AGMs) timeline for companies whose financial year ended on 31 December 2019 from six to nine months.[33] Similarly, SEBI's 23 April 'circular' granted India's top 100 companies by market capitalisation a one-month extension to hold their AGM, from five months to six.[34]

### Crisis is a trigger for change

A life-threatening, economy-debilitating crisis can force governments to transform into enablers of doing business. Barring a few exceptions, a crisis can get governments to serve citizens better.

On 28 April, for instance, the Karnataka[35] and Chhattisgarh[36] governments separately permitted shops and establishments to reopen with 50 percent of workers. Madhya Pradesh[37] (on 24 April) and Haryana[38] (on 30 April) notified the relaxation in the number of hours labour can work, from eight to 12, under the Factories Act, 1948. On 30 March, Tripura[39] issued protective measures for migrant workers through an 'advisory'.

### Crisis is a trigger for union-state regulatory harmonisation

Despite the constitutional division of powers between the Union and the states, they have been able to work together to serve citizens during the COVID-19 crisis. There have been a few public conflicts, mostly political and administrative, between the Union and state governments.[40]

All states harmonised their regulatory changes to be in tune with the national lockdown, from the home ministry's announcement of lockdown[41] to the subsequent extensions.[42] Beyond official notifications, a reverse policy direction has been noted in public conversations. Odisha was the first state to announce a lockdown extension beyond 3 May,[43] and once other state governments followed, the Union government extended the nationwide[44] lockdown.

At the same time, policy decisions often do not reach the bottom rung of India's labyrinthine regulatory system soon enough. For instance, several essential licenses, such as factory license and CLRA license under the Contract Labour Regulation and Abolition Act, came up for renewal between February and April (during the lockdown). Most Indian states have a manual, paper-based renewals system. Typically, a labour consultant must physically submit an application 30-60 days in advance to the Director of Factories in the state labour departments. Entrepreneurs make several trips to the department to submit the form, resolve queries and follow up. Due to COVID-19, the Centre issued a moratorium on these licences till 31 May,[45] but most state labour departments did not issue reconciling moratoriums. As government offices, including state labour departments, were shut during the lockdown, several contractor and factory licenses may have expired, becoming non-compliant, meaning the executives of these firms could face prosecution.

## RECOMMENDATIONS

Given that governments must concentrate all efforts on resolving crises such as the current one, their consequent actions showcase their agility and accountability. Such urgent actions, however, should not be restricted only to managing crises. For decades, India has discussed reforms in the areas of land, labour, infrastructure, administration, politics and judiciary. But such changes seldom go past the initial report.

It is tough to determine whether it is laxity and bureaucratic indolence that allows government officials to get away with carelessness in drafting policy or the assumption that economic agents will figure out what's best for them. But what is clear is that it is unacceptable in the middle of a crisis. If governments are to write policy directions that impact people, then policy communication is just as important as policy drafting.

Even during the COVID-19 pandemic, several lacunae have been identified in policy files, drafts and amendments. Accordingly, this report offers four recommendations around access that can be applied during the current crisis but are also extendable beyond it.

### Draft to reach

Drafting a law, rule or regulation is one thing; reaching them to citizens is quite another. Just because a change has been drafted does not mean citizens can read it and alter their behaviour. Access to these changes is not linear, nor is ensuring the delivery of these changes to those who need to know about them. The change must be clearly announced to the citizens.

For instance, the first official regulatory decision came on 4 March from the finance ministry's Department of Financial Services, which directed all public sector banks to set up special cells to provide full assistance to industry and micro, small and medium enterprises affected by the pandemic. It further stated that the banks should inform their customers about all documents and procedural requirements "in one go" and accept self-certification. This 'office memorandum' was based on an industry interaction between Finance Minister Nirmala Sitharaman and business representatives on 18 February. Curiously, this memorandum is not on the department's website but is enclosed as an 'addendum' on the Directorate General of Foreign Trade page, under the commerce ministry's 12 March trade 'notice'.[46]

**Single digital location for all policies**

Often, between the drafting of a change and the affected party finding it lies a regulatory void. Worse, the onus of finding the law is on the concerned party. This creates a huge information asymmetry between governments and entrepreneurs, particularly those running small and medium enterprises. Further, the locations of notifications are not fixed, first residing in a temporary address and then being archived on a separate link.

It is recommended that any law, notice, rule, office memorandum, or any document by any government agency, be placed on a single website. This must be segregated by ministries, departments, or laws, and tagged keeping ease of reach in mind. Old notifications must not be deleted. Finally, they should be in machine-readable form and not dry scans of physical paper.

All these laws, compliances and filings must be located on a national portal—a single information centre—the mandate and responsibility of which should be to ensure that nothing is hidden. If a law is not on this portal, with a timestamp of when it was placed there, it should not be seen to be law. The portal should offer the updates through a free subscription-based mechanism. For instance, entrepreneurs in the textiles industry should be able to choose to receive updated on regulatory changes in their sector, apart from all other relevant compliances, such as updates relating to labour or safety.

Currently, there are more than 2,000 websites on which such updates are published. No entrepreneur can stay on top of all these updates. A single unified portal will not merely become the hub of regulatory communication, it will also bring ease of compliance to businesses and reduce rent-seeking.

**Communicate in the languages of citizens**

Attracting foreign direct investment to India's manufacturing sector,[47] particularly as they exit China,[48] is now a strategic intent for the Union and state governments.[49] Other than making India an appealing investment destination through reforms and ease of doing business, using the business language (English) as a conversation standardiser will help, particularly in the states. Information need not be exclusively in English. But apart from the state language (for instance, Hindi in Uttar Pradesh or Malayalam in Kerala), an English translation of the same policy should also be published.

Further, as states compete for investments within India, translating policy documents into all 22 state-level official languages will also go a long way in reaching out to Indian companies and entrepreneurs within the country. For instance, if the government is seeking investments into the union territory of Jammu and Kashmir, the compliance expectations must reach entrepreneurs in Tamil Nadu, Gujarat or Telangana, and speak to them in their languages. It shows how willing a state or union territory would be to make doing business easier.

Essentially, the politics of language and regionalism must not get in the way of economics of development and growth.

**Shun sloppiness**

A 29 March 'order' from the home ministry directed the states and union territories to take additional measures for migrants to ensure adequate availability of temporary shelters and food.[50] It also directed employers in industry, shops, and commercial establishments to make payments to workers without delay or deduction. Finally, it ordered the landlords of migrant workers not to demand rent for one month. Although signed by the home secretary, the order was uploaded on the website as an attachment to an email from the "Second-In-Command (DM-I), Disaster Management Division".

There are also cases of minor drafting issues. A 19 April home ministry 'order' issued a "Standard Operating Protocol (SOP)," which became "Standard Operating System (SOP)" when detailed. Not only did the nomenclature change from 'protocol' to 'system' in a span of one page, but the short form SOP remained.[51]

Similarly, although the GSEC Secretary signed the firm's 1 April 'notice' extending the deadline for licence fee payment, the notice was not on a GSEC letterhead nor did it have any symbol expressing the authority of the state.[52] It could have been written by anyone, on any computer, anywhere. The only measure of authenticity was that it was hosted on the GSEC website.

Urgency is understandable; haste is not. Why were these errors not rectified? Was pressure, excess work, sloppiness, or the usual bureaucratic inertia to blame?

The casualness with which notifications are issued is evident in various ways. The Tripura government's Factories and Boilers Organisation's 31 March 'notification' has 'April 2020' printed on it, which was scratched out by hand and replaced with "31 March."[53] In an age when the date on a notification can be modified in less than six seconds and reprinted, why would any bureaucrat muddle it? Such callousness of approach to drafting serious regulatory changes needs to end.

In contrast, the 23 March circular from Madhya Pradesh's Office of Labour Commissioner is clear.[54] All details, from the circular number and date to subject and originator, are legible, with a download link provided. The only dissonance here is that while the information about the circular is in English, the circular itself is in Hindi.

## CONCLUSION

By capturing, analysing and observing the data on 272 Union and state policies during the first 40 days of the national lockdown, the extent to which the governments have gone to support businesses through policy adjustments, even if temporary, is clear. This report should be seen as a window to India's larger policymaking process.

Overall, the Union and state governments, and the accompanying regulators, have done a commendable job. Much thought has gone into ensuring citizen convenience in organised business. In times of crises, the Union and state governments and their regulatory agencies can and do deliver governance. The lack of communication remains an issue that needs to be addressed. Policymakers must perform their role as an enabling institution, rather than a hurdle creating one, during the fight against COVID-19 and beyond.

There should be no let-up in the pressure. The political leadership, egged on by the bureaucracy, may be tempted to take their eyes off the ball, but this must not happen. This sense of urgency and the accompanying readjustments to the regulatory framework should become the new normal going forward. The health crisis is not over yet. The economic crisis has only just begun. India has done well on the former so far. It must replicate this success on the latter. Policy flexibility, policy communication, policy access, and communication sensitivity, all must march in tune with citizen expectations and political will.

## ABOUT THE AUTHORS

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